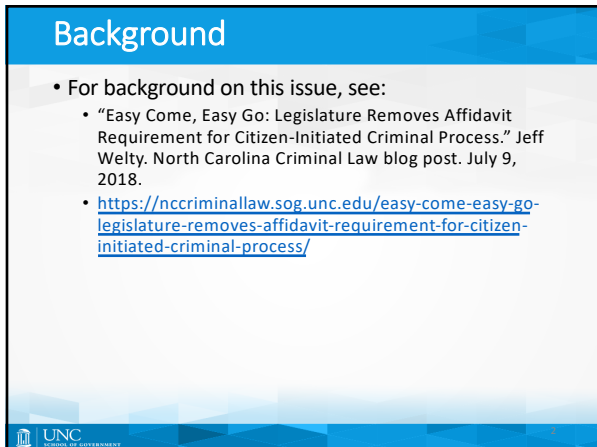
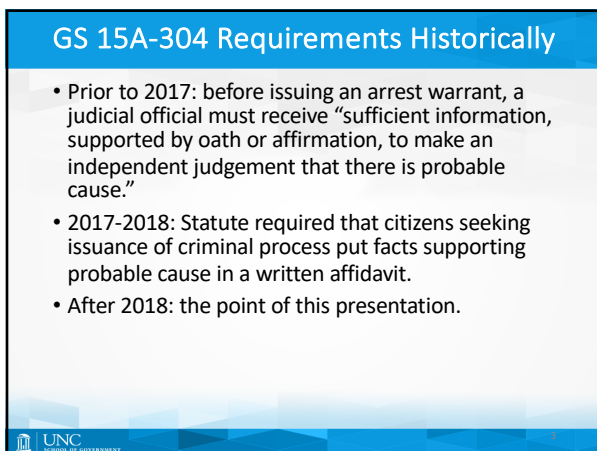


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2018 Removal of Affidavit Requirement

- Concern that requiring citizens to provide written affidavits to substantiate probable cause as a blanket rule is inconsistent with federal law regarding the access of disabled persons and non-English speakers to the courts.
- May also be a due process issue if there are no exceptions to the written affidavit requirement.
- Writing may help complainants organize their thoughts and present issues more cogently. Maybe it helps promote truthfulness.

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Selecting Process: Warrant vs. Summons

- Felonies versus misdemeanors alleged in citizen complaints
- Statutory factors for warrants
- Statutory preference for summons in citizen-initiated complaints

5

5

What if citizen alleges a felony?

- Statewide practice to not charge felonies without a law enforcement investigation. So, citizen-based complaints concerning felonies should be referred to law enforcement for investigation.

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Local Practice with Misdemeanors?

- Does your district require anything of a person alleging misdemeanor violations?
 - Put complaint in writing?
 - Local forms?
 - Complete a signed affidavit?
 - NC AOC affidavit (AOC-CR-158)?
 - Bring a witness?
 - If the person is a minor, bring an adult?
 - What about hearsay?
 - Anything else?
- None of the above are required by law. Some may be legally questionable. All may be possible as a local variation.

7

Types of Criminal Process

Process	Statute	Who Issues	What Charges
Citation	G.S. 15A-302	LEO	Misd. or Infraction
Criminal Summons	G.S. 15A-303	Judicial Official	Felony, Misd, or Infraction
Arrest Warrant	G.S. 15A-304	Judicial Official	Felony or Misd.
Magistrate's Order	G.S. 15A-511(c)	Judicial Official	Felony or Misd.
Order for Arrest	G.S. 15A-305	Judicial Official	None

8

When should a warrant be used generally?

"A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody."

GS 15A-304(b)(1)

9

Circumstances Supporting Warrant (GS 15A-304(b)(1))

- May include but are not limited to:
 - Failure to appear when previously summoned
 - Facts making it apparent that a person summoned will fail to appear
 - Danger that the person accused will escape
 - Danger that there may be injury to person or property, or
 - The seriousness of the offense.

10

Statutory Preference in GS 15A-304(b)(3) in citizen-initiated cases

- In a **citizen-initiated case**, "the issuing official ~~shall~~ **not** issue a warrant for arrest and ~~instead shall~~ **issue a criminal summons, unless one of the** following circumstances exists:"
 - Corroboration by LEO or at least one disinterested witness
 - Law enforcement investigation would be a substantial burden for the complainant
 - The official finds substantial evidence of one of the statutory circumstances supporting a warrant and listed in GS 15A-304(b)(1)

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Circumstances Supporting Warrant (GS 15A-304(b)(1)) (again!!)

- May include but are not limited to:
 - Failure to appear when previously summoned
 - Facts making it apparent that a person summoned will fail to appear
 - Danger that the person accused will escape
 - Danger that there may be injury to person or property, or
 - The seriousness of the offense.

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Can a Criminal Summons be Used for a Felony?

Yes. See Official Commentary from General Assembly to GS 15A-303:

"The criminal summons can appropriately be used in any case in which it appears that it is not necessary to arrest the defendant and take him into custody to assure his appearance at court."

"This should be true in many misdemeanors and a number of felonies. If the defendant is simply directed to appear in court on the appropriate date, the entire machinery of arrest, processing, and bail can be avoided with resultant savings to the system of criminal justice." (1973-1985)

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Quiz!!

When a citizen initiates a criminal complaint, a magistrate should always issue a criminal summons. True or False?

To punish the alleged offender is one of the factors listed in GS 15A-304 that may be considered in issuing an arrest warrant rather than a criminal summons. True or False?

A criminal summons may never be issued for a felony. True or False?

What is the statutory standard for issuance of an arrest warrant?

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When a citizen initiates a criminal complaint, a magistrate should always issue a criminal summons. True or False?

False. G.S. 15A-304 lays out an analysis you should do to decide whether the appropriate process is a summons or an arrest warrant. While there is a preference for a summons, that can be overcome if other factors are present.

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To punish the alleged offender is one of the factors listed in GS 15A-304 that may be considered in issuing an arrest warrant rather than a criminal summons. True or False?

False. "Punishment" is not one of the factors listed for consideration in GS 15A-304(b)(1). While the statute says that you are not confined to just the listed factors, note that you are dealing with offenders who have not been convicted. We have a constitutional presumption of innocence. Punishment is about conviction.

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A criminal summons may never be issued for a felony. True or False?

False. The General Assembly's Official Commentary for G.S. 15A-303 makes clear that when the current statute describing the criminal summons was created, the legislature contemplated that a summons could be issued for a felony. Whether that's possible in practice will depend on policies and practices where you work.

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Statutory Standard for Issuance of a Warrant

Follow the rule of G.S. 15A-304(b).

Does it appear to you that "the person named should be taken into custody?"

Consider the circumstances listed in subsection (b)(1) in reaching that conclusion. Remember that list is not exclusive.

For citizen-initiated complaints, follow the rules of subsection (b)(3).

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Thanks!!

Please let me know if this presentation was helpful to you, or if you have questions.

I am interested to learn whether you have practices or policies in your district about citizen-initiated complaints that are not reflected in the statutes I discussed in this presentation.

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