

Magistrate's Oath of Office

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



SCHOOL OF GOVERNMENT
North Carolina Judicial College

Basic School for Magistrates: Winter 2022 Criminal Session

UNC School of Government

February 21-25, 2022

Pre-Recorded Lectures (to be viewed prior to the course; available starting February 14, 2022)

Motor Vehicle Crimes: Shea Denning (30 mins)

CVRs and Vehicle Seizures: Shea Denning (40 mins)

Impaired Driving Holds: Shea Denning (20 mins)

Live Session Schedule

Monday, February 21

- 9:00 a.m.** **Welcome and Introduction to Criminal Law**
Thomas Thornburg, School of Government
- 9:30 a.m.** **Elements of Crimes: Assaults (60 mins)**
Jonathan Holbrook, School of Government
- 10:30 a.m.** *Break*
- 10:40 a.m.** **Elements of Crimes: Assaults (continued) (45 mins)**
- 11:15 a.m.** *Break*
- 11:30 a.m.** **Elements of Crimes: Motor Vehicle Offenses (60 mins)**
(Magistrates must watch the pre-recorded lecture in advance of this session)
Shea Riggsbee Denning, School of Government
- 12:30 p.m.** *Lunch*
- 1:30 p.m.** **Elements of Crimes: Trespass (60 mins)**
Jamie Markham, School of Government
- 2:30 p.m.** *Break*
- 2:45 p.m.** **Under 18: Juvenile vs Adult (30 mins)**
Jacqui Greene, School of Government
- 3:15 p.m.** **Elements of Crimes: Sexual Assaults (60 mins)**
Jamie Markham, School of Government
- 4:15 p.m.** *Break*

4:25 p.m. **Elements of Crimes: Sexual Assaults** (*continued*) (35 mins)

5:00 p.m. *Adjourn*

Tuesday, February 22

9:00 a.m. **Elements of Crimes: Larceny and Robbery** (75 mins)

Jonathan Holbrook, School of Government

10:15 a.m. *Break*

10:25 a.m. **Elements of Crime: Burglary** (75 mins)

Phil Dixon, School of Government

11:40 a.m. *Break*

11:50 a.m. **Solicitation, Conspiracy, Attempts, Principals, and Accessories Offenses** (30 mins)

Brittany Williams, School of Government

12:20 p.m. *Lunch*

1:20 p.m. **Initial Appearance** (75 mins)

John Rubin, School of Government, and Takeeta Tyson, Business Systems Analyst, NCAOC

2:35 p.m. *Break*

2:50 p.m. **Initial Appearance** (*continued*) (75 mins)

4:05 p.m. *Break*

4:20 p.m. **Initial Appearance** (*continued*) (60 mins) (*Technology*)

5:20 p.m. *Adjourn*

Wednesday, February 23

9:00 a.m. **Selecting Process** (60 mins)

Thomas Thornburg, School of Government

10:00 a.m. *Break*

10:10 a.m. **Selecting Process** (*continued*) (60 mins)

11:10 a.m. *Break*

- 11:20 a.m.** **Selecting Process** (*continued*) (60 mins)
- 12:20 p.m.** *Lunch*
- 1:15 p.m.** **Elements of Crimes: Drunk, Weapons, Resisting** (40 mins)
Christopher Tyner, School of Government
- 1:55 p.m.** *Break*
- 2:00 p.m.** **Elements of Crimes: Drunk, Weapons, Resisting** (*continued*) (20 mins)
- 2:20 p.m.** *Break*
- 2:30 p.m.** **Elements of Crimes: Drugs** (60 mins)
Phil Dixon, School of Government
- 3:30 p.m.** *Break*
- 3:40 p.m.** **Elements of Crimes: Drugs** (*continued*) (60 mins)
- 4:40 p.m.** *Adjourn*

Thursday, February 24

- 9:00 a.m.** **Search Warrants** (60 mins)
Jeff Welty, School of Government
- 10:00 a.m.** *Break*
- 10:10 a.m.** **Search Warrants** (*continued*) (60 mins)
- 11:10 a.m.** *Break*
- 11:20 a.m.** **Search Warrants** (*continued*) (60 mins)
- 12:20 p.m.** *Lunch*
- 1:30 p.m.** **Impaired Driving Holds, Civil License Revocations, and Vehicle Seizures** (75 mins)
(*Magistrates must watch the pre-recorded lectures in advance of this session*)
Shea Riggsbee Denning, School of Government, and Takeeta Tyson, Business Systems Analyst, NCAOC
- 2:45 p.m.** *Break*
- 3:00 p.m.** **Contempt** (60 mins)
Cheryl Howell, School of Government
- 4:00 p.m.** *Break*
- 4:05 p.m.** **Check In: How's It Going?** (45 mins)
Thomas Thornburg, School of Government
- 4:50 p.m.** *Adjourn*

Friday, February 25

- 9:00 a.m.** **Domestic Violence Procedure** (60 mins)
Brittany Williams, School of Government
- 10:00 a.m.** *Break*
- 10:15 a.m.** **Capstone Exercise** (75 mins)
Thomas Thornburg, School of Government
- 11:30 a.m.** *Lunch*
- 12:30 p.m.** **Criminal Session Exam**

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

Public Roster

February 21-25, 2022

Basic School for Magistrates: Winter 2022 Criminal Session

| Name | Job Title | County |
|---------------------|------------|-------------|
| Matthew Baity | Magistrate | Davidson |
| Madison Banks | Magistrate | Haywood |
| Valerie Caldwell | Magistrate | Mecklenburg |
| Samantha Chappell | Magistrate | Perquimans |
| Deborah Christopher | Magistrate | Brunswick |
| Taylor Daniels | Magistrate | Carteret |
| Ashley Desiato | Magistrate | Brunswick |
| Elizabeth Eddins | Magistrate | Alamance |
| John Gagan | Magistrate | Moore |
| Tosha Green | Magistrate | Randolph |
| Gary Greene | Magistrate | Wilkes |
| Roger Gregory | Magistrate | Durham |
| Kelley Grigg | Magistrate | Catawba |
| David Hanson | Magistrate | Currituck |
| Sue Harrell | Magistrate | Wilson |
| Karin Haywood | Magistrate | Wake |
| Lucinda Hernandez | Magistrate | Onslow |
| Robert Jeffers | Magistrate | Cumberland |
| Roosevelt Kellum | Magistrate | Forsyth |
| Sarah Mayo | Magistrate | Craven |
| Cassidy Newman | Magistrate | Davidson |
| Kathleen Newsham | Magistrate | Onslow |
| Marti Stewart | Magistrate | Vance |
| John Swanson | Magistrate | Moore |
| Michael Wise | Magistrate | Lincoln |
| Ashley Witherspoon | Magistrate | Durham |

Magistrates' Basic School, Criminal Session

Welcome and Introduction

Tom Thornburg, January 28, 2022

I. Expectations and Goals for Course

A. Expectation:

You have already, or will very soon, review the video sessions available on the course webpage. You will complete any advance work that's been requested. These online presentations will not be repeated in the sessions my colleagues spend with you. Instead, they will lead you through examples that illustrate the material in their presentations.

You will actively participate when instructors ask questions and in group exercises. Questions are generally welcome.

B. Learning goals:

- (1) Yes, we are here to help you pass a test.
- (2) Help you think about a general framework for approaching your criminal law and procedure work.

You must maintain perspective—at the beginning and over time--in your job. You cannot know every detail of every topic immediately. And you'll never know some of topics or details by heart. Some detail will inevitably change because that's the nature of criminal law.

I recommend you think about making sure you develop a general framework for approaching the topics that make up your work. Over time you will fill in more of the detail.

For example: for Crimes understanding that basically your job is to know or be able to find elements for criminal offenses and have a sense of whether probable cause exists to support their allegation. For criminal process and search warrants, it's understanding how to choose the appropriate process and being able to determine probable cause.

II. Remember Values of the NC Code of Conduct for Magistrates

The North Carolina Code of Conduct for Magistrates

(<https://www.nccourts.gov/documents/publications/north-carolina-rules-of-conduct-for-magistrates>) was promulgated on October 1, 2021. This topic was covered in the civil session of the

magistrates' basic school. This session is not the place for in-depth examination of these rules. However, I want to note that the code emphasizes the importance of:

- upholding the integrity of the Office of Magistrate
- promoting public confidence in the integrity and impartiality of the judicial branch

III. Criminal Law and Procedure Reference Books for your Library

In this world where you develop a general framework, it is essential to identify core reference resources to assist you. Here are some on my list:

- The Digital Notebook for this course. I recommend you have a copy for use as reference. Note you can download as a PDF. In Acrobat, you can move through text with bookmarks on the left.
- *North Carolina Crimes* with supplement, by Smith and Markham (reference book from SOG) (book and online version)
- *Arrest, Search, and Investigation in NC*, with supplement, by Farb and Tyner (reference book from SOG)
- *The Law of Impaired Driving and Related Implied Consent Offenses in NC*, by Denning (reference book from SOG)
- *Pulled Over: The Law of Traffic Stops and Offenses in NC*, by Denning, Tyner, and Welty (reference book from SOG)
- SOG website resources <https://www.sog.unc.edu/resources/microsites/nc-magistrates/> Includes handouts, overheads from recent training. Includes Domestic Violence: 48-Hour Rule paper.
- North Carolina Criminal Law Blog <https://nccriminallaw.sog.unc.edu/>
- *Criminal Proceedings before North Carolina Magistrates*, by Jessica Smith (reference book from SOG)
- Important, but less relevant than in the past: *Arrest Warrant and Indictment Forms*, by Welty and Tyner (reference book from SOG)

Find a good source for statutes. One source is *North Carolina Criminal Law and Procedure* (LexisNexis) (the red book). Another is the North Carolina General Assembly website: <https://ncleg.gov/Laws/GeneralStatutes> . Do not rely upon a general internet search to turn up the latest version of statutes.

IV. The School of Government as a Resource for Criminal Law and Procedure

See information about the SOG and our faculty just after the agenda in the Digital Notebook for this course. We are here to help you understand the basic legal framework of your work. My colleagues and I are experts in the law and some practice. We are not expert in AOC processes or online systems. And we are not magistrates, so we do not have your exact perspective on matters.

It will be important that you confer with colleagues as issues arise. SOG experts are available to help, but not always. We are teaching and working with other audiences as well, from superior and district court judges to prosecutors and defenders, to law enforcement, to appellate judges.

V. A 2020 Snapshot of North Carolina Crimes, for Context

I want to give you context about crime. For data, I am relying on work done by my SOG colleague Jessica Smith. You can find up-to-date data about criminal charges on the SOG's Criminal Justice Innovation Lab's website (<https://cjl.sog.unc.edu/>), under the Measuring Justice link.

- Significant variation occurs in the types and frequency of crimes charged from county to county. I encourage you to look at the website for data about your county.
- **There were 1,579,000 criminal charges statewide in 2020 (a 26.5% decrease from 2019). 12% were felonies and 88% were misdemeanors. Note the predominance of misdemeanors.**
- **193,200 felonies were charged statewide in 2020. 84.3% were for nonviolent offenses. Felony drug crimes makeup 33% of total felonies.**
- Top ten most charged violent felonies in 2020
 - Armed Robbery 2,298
 - Indecent Liberties
 - Assault by Strangulation
 - Assault with a deadly weapon inflicting serious injury
 - Breaking or entering, terrorize or injury
 - Common law robbery
 - Second-degree kidnapping
 - Assault with a deadly weapon with intent to kill
 - Armed Robbery, conspiracy
 - Assault with a deadly weapon with intent to kill inflicting serious injury 974
- Top seven most charged nonviolent felonies in 2020
 - Obtaining property by false pretenses 10,498
 - Possession of Methamphetamine
 - Breaking or entering a motor vehicle
 - Felony breaking or entering
 - Possession of a firearm by a felon
 - Maintaining a dwelling (controlled substances)
 - Felony larceny (after breaking or entering) 5,746
- Top three most charged Chapter 90 drug felonies in 2020
 - Possession of Methamphetamine 8,375
 - Maintaining a dwelling (controlled substances) 6,657
 - Possession of marijuana wisd 3,803
- **There were 1,386,462 total misdemeanor charges statewide in 2020. Most (89%) are nonviolent non-DWI misdemeanors. 4.54% were DWI offenses.**

- Most charged violent misdemeanors
 - Assault on a female 24,126
 - Simple assault 15,871
 - Communicating threats 15,569

- Most charged nonviolent misdemeanors
 - Misdemeanor larceny 34,010
 - Possession of drug paraphernalia 27,449
 - Possession of marijuana paraphernalia 27,070
 - Possession of marijuana up to ½ ounce, 21,532
 - Resisting an officer 20,339
 - Second-degree trespass 19,788

BACKGROUND: Laws and standards concerning magistrate conduct

- A. North Carolina Code of Conduct for Magistrates
(<https://www.nccourts.gov/documents/publications/north-carolina-rules-of-conduct-for-magistrates>) Primary source for ethical guidance. Promulgated by NC AOC.

- B. North Carolina Code of Judicial Conduct. <https://www.nccourts.gov/assets/inline-files/North-Carolina-Code-of-Judicial-Conduct-Codified-12-February-2020.pdf?u7FrRKrvuqPnPMcpZSQ.M19iDBvuV2OS> Before creation of the NC Code of Conduct for Magistrates, magistrates looked to this code for ethical guidance.

- C. NC Judicial Standards Commission not authorized to hear complaints about magistrates, clerks of court, or prosecutors, among others. Focus on trial and appellate judges.
<https://www.nccourts.gov/commissions/judicial-standards-commission/about-the-judicial-standards-commission>

Background 2017 PowerPoint from Magistrates Spring Conference about NC Judicial Standards Commission. Note, this is pre-Code of Conduct for Magistrates.
https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/Ethics%20and%20Judicial%20Service%20%28Jameson%20Marks%20presentation%29.pdf

- D. Three laws address magistrates' conduct and removal:
 1. NC Const. Art. IV, sec. 17(3), (General Assembly shall provide by general law for the removal of magistrates for misconduct or mental or physical incapacity).
 2. G.S. 7A-173 (removal procedure for magistrates, for violation of standards applicable to judges of the General Court of Justice.)

3. G.S. 14-230 (magistrate is one of several listed public officers who can be punished by misdemeanor conviction and removal for willful failure to discharge duties).

E. NC Judicial Branch Magistrate Fact Sheet:

https://www.nccourts.gov/assets/documents/publications/North-Carolina-Magistrate-Fact-Sheet_2019-20.pdf?7qzS4CARWtMRCctefKwGhkxTxoS6.TJ6

F. Magistrates are not suspended or removed in the same manner as district, superior, or appellate judges. Because the grounds for discipline are the same, it may be interesting to look at a summary of the kinds of activities that have led the N.C. Supreme Court to discipline judges. See Crowell, Michael. *What Gets Judges in Trouble*. Administration of Justice Bulletin No. 2015/01 (January 2015). School of Government, UNC Chapel Hill.

https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/aojb1501_0.pdf See, especially, the conclusion at pp 13-14.

SOG FACULTY BIOGRAPHIES

Mark Botts

botts@sog.unc.edu / (919) 962-8204

Mark Botts joined the School of Government (then the Institute of Government) in 1992. Prior to that, he served judicial clerkships with the US Court of Appeals for the Sixth Circuit and the US District Court for the Western District of Michigan. Botts' publications include *A Legal Manual for Area Mental Health, Developmental Disabilities, and Substance Abuse Boards in North Carolina*. Mark holds a BA from Albion College and a JD from the University of Michigan School of Law.

Areas of Interest: Confidentiality; governing boards; HIPPA privacy rule; involuntary commitment law and procedure; local management entities/managed care organizations; magistrates (involuntary commitment); mental health law; public health system; subpoenas (mental health records)

Shea Riggsbee Denning

denning@sog.unc.edu / (919) 843-5120

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

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

Phil Dixon

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Phil Dixon joined the School of Government in 2017. Previously he worked for eight years as an attorney in Pitt and surrounding eastern North Carolina counties, focusing primarily on criminal defense and related matters. Dixon served as assigned counsel to indigent clients throughout his career, and represented adult and juvenile clients charged with all types of crimes at the trial level. He earned a BA from the University of North Carolina at Chapel Hill and a JD with highest honors from North Carolina Central University. He works with the indigent education group at the School to provide training and consultation to public defenders and defense lawyers, as well as to research and write about criminal law issues.

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

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

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

Areas of Interest: Raise the Age; juvenile justice**Jonathan Holbrook****jholbrook@sog.unc.edu / (919) 962-0942**

Jonathan Holbrook joined the School of Government in 2017 as the School's first-ever Prosecutor Educator. Jonathan previously worked as a prosecutor for nearly ten years, both in state court with the Wake County District Attorney's Office and in federal court with the U.S. Attorney's Office for the Eastern District of North Carolina. Jonathan earned his B.A. from Northwestern University, and his J.D. with Honors from UNC Chapel Hill School of Law. Jonathan writes and updates legal entries for NC PRO, the new online criminal procedure resource for prosecutors, as well as the NC Criminal Law Blog, and he provides assistance, consultation, and training to prosecutors on a wide variety of issues.

Areas of Interest: Criminal law and procedure; evidence; prosecutor training**Cheryl Howell****howell@sog.unc.edu / (919) 966-4437**

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

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

Dona Lewandowski**lewandowski@sog.unc.edu / (919) 966-7288**

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.

Areas of Interest: Magistrates' issues (non-criminal law), including small claims law and procedure; ethics; marriage; magistrate personnel matters, including appointment and removal; landlord-tenant law

Jamie Markham**markham@sog.unc.edu / (919) 843-3914**

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*.

Areas of Interest: Community corrections; criminal law and procedure; jails; probation and parole; sentencing law; sex offender registration

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

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

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

Thomas Thornburg**thornburg@sog.unc.edu / (919) 966-4377**

Tom Thornburg served as the School's senior associate dean from 2004 to 2020. He was also director of the North Carolina Judicial College from 2011 through 2015. He joined the School of Government (then the Institute of Government) in 1990 as an assistant professor. He was associate director, then associate dean, from 1996 until 2004. His faculty work focused primarily on criminal law and courts. Thornburg was chief legal counsel to the North Carolina Department of Correction in 1992–1993. He edited and revised *North Carolina Crimes: A Guidebook on the Elements of Crime (Fourth Edition, 1995)*; revised *Introduction to Law for North Carolinians (Second Edition, 2000)*; edited and revised *Notary Public Guidebook for North Carolina (Ninth Edition, 2004)*; and has published on the topic of juvenile curfews. Thornburg earned a BA from Earlham College and an MPP and JD from the University of Michigan.

Areas of Interest: Criminal law and procedure; courts

Christopher Tyner**ctyner@sog.unc.edu / (919) 843-8404**

Christopher Tyner joined the School of Government in 2012. He is a member of the North Carolina State Bar and provides research support to faculty members in the areas of criminal and local government law. Tyner earned a BA and a JD from the University of North Carolina at Chapel Hill.

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

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

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

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

Brittany Williams**bwilliams@sog.unc.edu / (919) 445-1090**

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

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

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School of Government Administration

| | |
|--------------------------|--------------|
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| Dean's Office | 919.966.4107 |
| Advancement | 919.843.2556 |
| Knapp Library | 919.962.2760 |
| Strategic Communications | 919.966.4178 |
| Reception | 919.966.5381 |
| Registration | 919.966.4414 |

Visit sog.unc.edu or call 919.966.5381 to learn more about courses, publications, webinars, blogs, and other information resources at the School of Government.

Upcoming School of Government Courses for Magistrates

2022

Basic School for Magistrates **January 24-28 (Civil) & February 21-25 (Criminal)**
<https://www.sog.unc.edu/courses/basic-school-magistrates> *By appointment only* Chapel Hill, NC

NC Magistrates' Spring Conference **March 14-18**
<https://www.sog.unc.edu/courses/nc-magistrates-spring-conference> Asheville, NC

Introduction to Small Claims: Part 1 **Canceled**
<https://www.sog.unc.edu/courses/introduction-holding-small-claims-court-magistrates-0>

Introduction to Small Claims: Part 2 **Canceled**
<https://www.sog.unc.edu/courses/introduction-holding-small-claims-court-magistrates-0>

Special Topic in Small Claims **Canceled**
<https://www.sog.unc.edu/courses/special-topics-small-claims-magistrates>

Basic School for Magistrates **July 18-22 (Civil) & August 15-19 (Criminal)**
<https://www.sog.unc.edu/courses/basic-school-magistrates> *By appointment only* Chapel Hill, NC

NC Magistrates' Fall Conference **September 26-30**
<https://www.sog.unc.edu/courses/nc-magistrates-fall-conference> Atlantic Beach, NC

One-Day Civil Law Seminar **October 17**
<https://www.sog.unc.edu/courses/one-day-seminar-magistrates-civil-law> Online

One-Day Criminal Law Seminar **October 19**
<https://www.sog.unc.edu/courses/one-day-seminar-magistrates-criminal-law> Online

Advanced Criminal Procedure for Magistrates **December 12-13**
<https://www.sog.unc.edu/courses/advanced-criminal-procedure-magistrates> Chapel Hill, NC

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

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

Website Resources

School of Government Website

www.sog.unc.edu

School of Government's Magistrate Website

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

School of Government's Criminal Law Website

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

School of Government's District Court Judges Website

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

NC Judicial College Website

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

NC Magistrate's Association Website

www.aoc.state.nc.us/magistrate

Administrative Office of the Courts' (AOC) Website

www.nccourts.gov

General Assembly's Website

(can download any bill or statute)

<https://www.ncleg.gov>

School of Government Blogs

School of Government's Criminal Law Blog

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

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

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

On the Civil Side

A UNC School of Government Blog

We are creating this blog – “On The Civil Side” – in direct response to the popularity of The Criminal Law Blog, administered by our colleague Jeff Welty. Our contributors believe civil cases can be just as interesting and exciting as criminal proceedings and we are going to use this forum to prove it. We will write about issues of interest to court personnel and lawyers working in a variety of civil court proceedings, including general civil district and superior court, domestic relations matters, juvenile cases, small claims court, and hearings before clerks. We hope readers will contribute to the discussion by using the comment feature or by emailing the author directly.

There are three ways to follow this blog. First, you can regularly check this site. You can expect two posts a week—one on Wednesday and one on Friday. Second, you can use an RSS feed, which automatically sends new posts to an RSS reader. Third, you can subscribe by email, which will result in new posts magically arriving in your inbox.

We look forward to sharing our thoughts, hearing yours, and revealing the intrigue that lies on the civil side.

To Subscribe to the *On the Civil Side* Blog

Go to the URL listed below:

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

To subscribe fill in your email address on the right hand side of the page and hit enter. You will see a message that you have been added to the blogs listserv.

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Address: P.O. Box 2448
Raleigh, NC 27602
Phone: (919) 890-1000

Location: NC Judicial Center
901 Corporate Center Drive
Raleigh, NC. 27607-5045

Personnel Matters (919) 890-1000

LaShonda Brown, Travel (919) 890-1007

Michael Bendiksby, Instructional Designer (919) 890-1282
(keeps records of magistrate CE hours in LearningCenter)

Help Desk (919) 890-2407

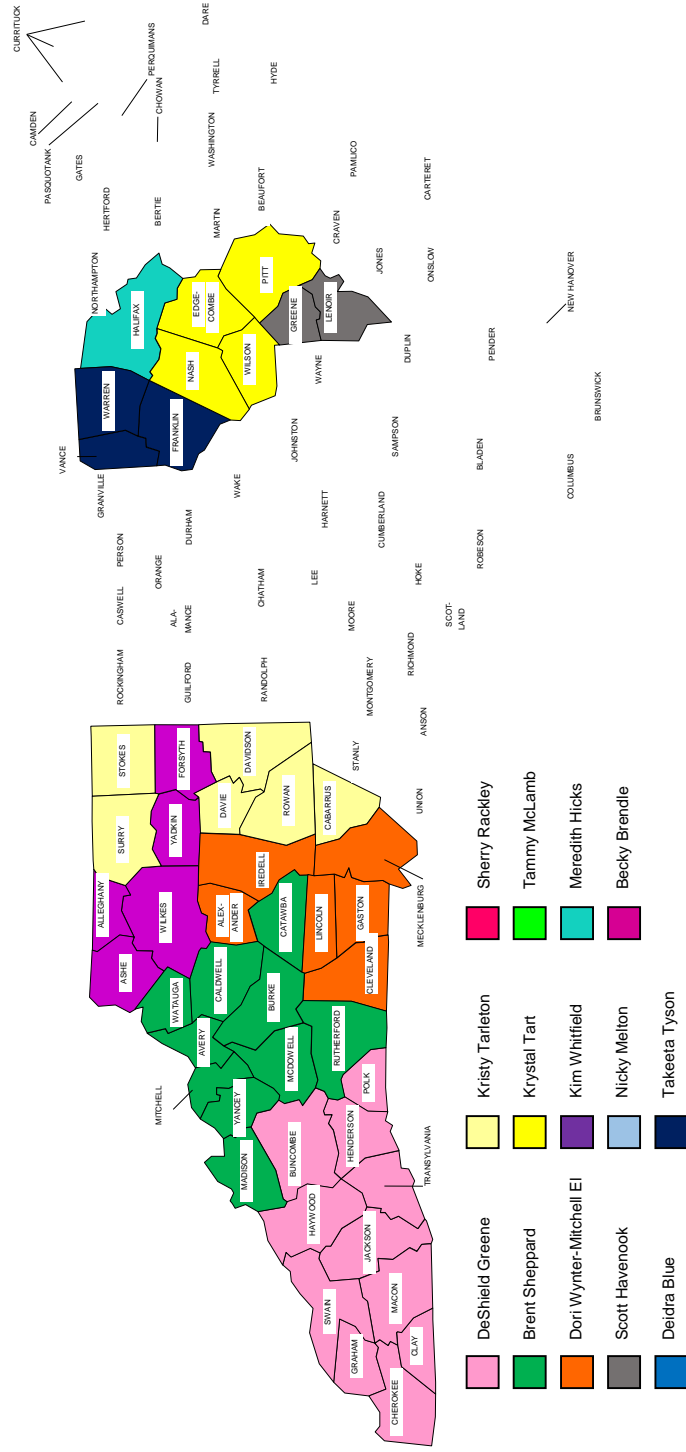
NCAWARE

StateWide Warrant Search

Office 2013

Other Mainframe NCAOC Applications (ACIS, VCAP, etc.)

Technical Computer Assistance



For an up-to-date AOC contact directory , please refer to: <https://juno.nccourts.org/resources/references/ncaoc-contact-directory>

For current Training and Development resources and contacts, please refer to the online version of this map: <https://juno.nccourts.org/resources/references/training-and-development-bsa-field-support-staff-assignments-map>

REIMBURSEMENT FOR TRAVEL AND SUBSISTENCE

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

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

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

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

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

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

MEALS:

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

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

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

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

ROOM:

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

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

TRAVEL:

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

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

Recent Legislation

RECENT LEGISLATION

| | |
|--|-----------------------------|
| 2021 Criminal Law Legislation | Recent Legislation – Page 1 |
| 2021 Motor Vehicle Law Legislation | Recent Legislation – Page 3 |
| 2021 Changes to First Appearance Law | Recent Legislation – Page 5 |
| 2020 Criminal Law Legislation | Recent Legislation – Page 7 |
| 2020 Motor Vehicle Legislation | Recent Legislation – Page 9 |

[An Overview of 2021 Criminal Law Legislation](#)

Posted on [Sep. 7, 2021, 2:26 pm](#) by [Brittany Williams](#)

Each year the School of Government summarizes legislation enacted by the North Carolina General Assembly affecting criminal law and procedure and motor vehicle laws. We also explore selected legislation in more depth on this blog. Most criminal law legislation has an effective date of December 1 to allow the courts to prepare for the changes. What follows is a brief summary of the criminal law and related legislation with earlier effective dates enacted thus far during the 2021 legislative session. It isn't everything the legislature has done, and by no means is it everything you need to know.

Laws Effective Now

[S.L. 2021-24](#) (S 69) went into effect on May 24, 2021. This act amends G.S. 20-11 to require a person who is at least 16 years old but less than 18 years old to have held a limited learner's permit for at least six months to obtain a limited provisional license. Previously, the requirement was twelve months. This law is set to expire on December 31, 2021.

Laws Effective October 1, 2021

The following laws have an effective date of October 1, 2021:

[S.L. 2021-33](#) (S 241) redefines modified utility vehicles, eliminating the requirement in G.S. 20-4.01(27) that they have an engine displacement greater than 2400 cubic centimeters and the requirement that they be equipped with windshields and windshield wipers. The driver of and all passengers on a modified utility vehicle that is not equipped with a windshield and windshield wipers must wear a safety helmet. The law also specifies that modified utility vehicles may only be operated on a roadway with four or more travel lanes if the posted speed limit is 35 miles per hour or less. My colleague Shea Denning wrote more on this session law [here](#).

[S.L. 2021-94](#) (H 522) regulates the service and release of alternate jurors, amending G.S. 15A-1215(a) to (1) direct courts to ensure that alternate jurors do not discuss the case with anyone until they become a juror or are discharged; (2) permit alternate jurors to become jurors at any time before a verdict is rendered; (3) require that jury deliberations begin anew when an alternate juror becomes a juror; (4) provide that no more than twelve jurors can participate in deliberations; and (5) provide that alternate jurors must be discharged at the same time and in the same manner as the original jury. Shea wrote more about this act [here](#).

S.L. 2021-107 (H 312) amends G.S. 162-2(a) to disqualify any person who has been convicted of any felony from holding the office of sheriff. G.S. 162-2 is further amended to require the disclosure of felony convictions by any candidate for the office of sheriff, by filing a valid disclosure statement verifying that the candidate has no prior felony convictions or expunctions of felony convictions.

Below are some other noteworthy criminal law enactments with effective dates later this year, which I will summarize as those dates approach.

- S.L. 2021-36 (H 743), providing punishment for the alteration, destruction, or removal of permanent identification marks from personal property
- S.L. 2021-47 (S 255), modifying several laws governing the administration of justice, such as allowing court proceedings to be conducted by audio and video transmission
- S.L. 2021-68 (H 238), making the possession, sale, or delivery of a credit card skimming device a Class I felony
- S.L. 2021-89 (H 297), providing a defense for driving without a license for deployed Armed Forces
- S.L. 2021-115 (H 84), expanding sex offender premises restrictions
- S.L. 2021-118 (S 301), expanding expunction eligibility for certain misdemeanors and felonies
- S.L. 2021-123 (S 207), making various changes to the Juvenile Justice Reinvestment Act (Raise the Age)
- S.L. 2021-128 (H 692), prohibiting certain modifications to passenger vehicles
- S.L. 2021-137 (H 536), requiring law enforcement officers to intervene and report excessive use of force
- S.L. 2021-138 (S 300), modifying several laws related to criminal justice, such as: requiring first appearances for people held in custody on misdemeanor charges; potentially addressing constitutional issues with satellite-based monitoring and creating a process to review eligibility; and creating new resist, delay, and obstruct offenses and penalties

We will continue to let you know about new laws as they are enacted. A document with more detailed summaries of the criminal and motor vehicle laws enacted this session will be available toward the end of the year. In the meantime, please feel free to email my colleagues or me if you have any questions.

[2021 Legislation Amends Rules for Modified Utility Vehicles](#)

Posted on Jul. 26, 2021, 5:59 pm by [Shea Denning](#)

Last year, I wrote about new legislation defining and regulating modified utility vehicles. The legislature returned to that subject again this year in S.L. 2021-33 (S 241), amending that definition and modifying the rules governing the use of such vehicles.

What is a modified utility vehicle? If you are like me, you may need a picture. The one below is from [The High Point Enterprise](#). It features State Senator Steve Jarvis (a sponsor of Senate Bill 241) sitting in the passenger seat of such a vehicle on the grounds of the State Legislative Building.



Photo by The High Point Enterprise

S.L. 2021-33 amends the definition of modified utility vehicle in G.S. 20-4.01(27), effective October 1, 2021. As redefined, modified utility vehicles are four-wheeled motor vehicles that are manufactured or upfitted for off-road use. They must be at least 110 inches long, at least 58 inches wide, and 60 inches tall. As before, they must have a maximum speed of 40 miles per hour or

greater. The requirement that modified utility vehicles have an engine displacement of greater than 2,400 cubic centimeters is, however, eliminated by this year's legislation. (Some folks asked me last year whether this requirement was intentionally included as part of the definition because they thought that was an awfully large engine for this type of vehicle.)

Modified utility vehicles must be equipped with the following operable safety features:

- headlamps,
- stop lamps,
- turn signal lamps,
- tail lamps,
- reflex reflectors,
- parking brakes,
- rearview mirrors,
- a speedometer, and
- seat belts.

The 2020 legislation had required that modified utility vehicles also be equipped with windshields and windshield wipers; that requirement is eliminated effective October 1, 2021. The driver of and all passengers on a modified utility vehicle that is not equipped with a windshield and windshield wipers must wear a safety helmet.

As before, modified utility vehicles must have a vehicle identification number. If they were not manufactured with one, DMV must assign one before registration.

Where may modified utility vehicles be driven? S.L. 2021-33 amends G.S. 20-121.1 to specify that, while modified utility vehicles generally may be operated only on roadways where the posted speed limit is 55 miles per hour or less, they may only be operated on a roadway with four or more travel lanes if the posted speed limit is 35 miles per hour or less. These amendments likewise are effective October 1, 2021.

Not always motor vehicles. Sure, modified utility vehicles are vehicles. And they have motors. But S.L. 2021-33 amends G.S. 20-286(10) to specify that a modified utility vehicle, like a moped, is not a "motor vehicle" for purposes of the laws governing the licensure of motor vehicle dealers and manufacturers. These vehicles still are classified as motor vehicles for other purposes — including applying the rules governing financial responsibility. Indeed, G.S. 20-121.1(3) continues to require that modified utility vehicles be registered and insured.

[North Carolina's First Appearance Process Amended for Second Time in this Legislative Session](#)

Posted on [Nov. 29, 2021, 12:22 pm](#) by [Tom Thornburg](#)

In this earlier [blog post](#), I discussed changes made to North Carolina's first appearance process, to be effective for criminal processes served on or after December 1, 2021. Additional amendments have been made in new legislation.

In Session Law [2021-182 \(S183\)](#), Section 2.5.(a) revised [G.S. 15A-601](#) as previously amended by [S.L. 2021-138](#).

Defendants charged with misdemeanors and in custody to get first appearance

This amendment does not affect a significant change made by S.L. 2021-138—the expansion of first appearance to include defendants charged with misdemeanors who are in custody. Under current law, only criminal defendants with felony charges are required to get first appearance.

Exception provided for when courthouse is closed for transactions for a period longer than 72 hours

S.L. 2021-138 changed the deadline for first appearance from the current period of 96 hours to 72 hours. This new amendment revises G.S. 15A-601(c) to provide that if “the courthouse is closed for transactions for a period longer than 72 hours,” first appearance must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever is first. So, a longer period will be allowed for first appearances on holiday weekends or when anything closes the courthouse to transactions for more than 72 hours.

Magistrates removed as judicial official who may conduct first appearance

Further, S.L. 2021-182 reverses one change made in the previous amendment of this statute. It removes magistrates from G.S. 15A-601(e) as a judicial official who may conduct first appearance if a district court judge is “not available.” The clerk of court remains authorized to conduct first appearance when a district court judge is not available.

Neither the statute nor case law defines “not available.” In practice, that might mean a judge is sick, in a training session, too far away to conveniently appear for a hearing, or in any number of situations that might reasonably signify not being available. Also, for purposes of G.S. Chapter 15A, clerk includes “any clerk of superior court, acting clerk, or assistant or deputy clerk” [[G.S. 15A-101\(2\)](#)].

Another statute listing window for first appearance as 96 hours changed

S.L. 2021-182, Section 2.5.(b) adds something new, though consistent with the new legislative preference for a 72-hour window for first appearances.

Currently G.S. 15A-534(d2) (procedures for determining conditions of pretrial release) provides for a 96-hour window for first appearance to be held for an in-custody defendant charged with a felony offense and currently on probation for a prior offense for whom a judicial official found insufficient information to determine whether pretrial release should be granted. As with other kinds of first appearance, this amendment changes that window from the current 96 hours to “72 hours or 96 hours if the courthouse is closed for transactions for a period longer than 72 hours.”

The upshot of all this is that effective for criminal processes served on or after December 1, 2021:

— First appearance requirements statewide will apply to defendants charged with misdemeanors and in custody as well as those charged with felonies.

–The new window for first appearance will be 72 hours, instead of the current 96 hours, except in instances where the courthouse is closed to transactions for longer than 72 hours. Then, the window for first appearance will continue to be 96 hours.

–District court judges will generally conduct first appearance, with the clerk of superior court authorized to do so if a district court judge is not available in the time window, as is the case under current law. Magistrates are no longer listed as an official who may conduct first appearance.

— First appearances conducted pursuant to G.S. 15A-534(d2) (felony defendants on probation being held in custody because there is insufficient information to determine pretrial release conditions) will also be covered by the 72-hour window, with the same exception of 96 hours if the courthouse is closed to transactions for longer than 72 hours. The NC AOC Legal Counsel Office issued a memorandum on this topic last week. It includes helpful information about what might be needed in local case management plans as well as changes that this legislation will require to NCAOC forms

You can find previous posts about first appearance by searching this site.

2020 Criminal Law Legislation

Posted on [Jun. 2, 2020, 7:00 am](#) by [John Rubin](#)

Each year the School of Government summarizes legislation enacted by the North Carolina General Assembly affecting criminal law and procedure. If you would like to receive periodic summaries of enacted legislation (as well as summaries of appellate decisions), subscribe at no charge to the School's criminal law listserv [here](#). We also explore selected legislation in more depth on this blog. So far in 2020, one bill has been enacted that affects criminal law and procedure.

S.L. 2020-3 (S 704): COVID-19 measures. This act addresses various matters relating to COVID-19, including the following criminal law provisions, which are effective May 4, 2020 and expire August 1, 2020 unless otherwise noted.

Wearing mask for health purpose. New G.S. 14-12.11(a)(6) creates an exception to G.S. 14-12.7, 14-12.8, 14-12.9, 14-12.10, and 14-12.14, which prohibit wearing a mask on public ways, public property, and other settings unless an exception applies. The new provision allows a person to wear a mask "for the purpose of ensuring the physical health or safety of the wearer or others." New G.S. 14-12.11(c) requires the person to remove the mask during a traffic stop, including a checkpoint or roadblock under G.S. 20.16.3A, or when approached by a law-enforcement officer with reasonable suspicion or probable cause during a criminal investigation.

Electronic signatures on search warrants and court orders. Section 4.4 of the act provides that any signature required for the issuance of a search warrant pursuant to Article 11 (Search Warrants) of G.S. Chapter 15A, or for any judicial order issued following a court hearing conducted by remote audio or visual transmission in a civil or criminal case, may be signed by use of an electronic signature.

Extension of credentials issued by the Division of Motor Vehicles (DMV). Section 4.7 of the act extends for five months the validity of any "credential" issued by DMV that expires on or after March 1, 2020 and before August 1, 2020. The act contains a list of 27 credentials, including driver's licenses, commercial driver's licenses, and vehicle registrations, and provides that the extension applies notwithstanding renewal, duration, or expiration provisions in various Ch. 20 statutes or any other provision of law. The act requires DMV to notify individuals affected by an extension, including information on new expiration dates and how the extension affects subsequent renewal and expiration dates. The act provides that a person may not be convicted or found responsible for any offense resulting from the failure to renew a credential issued by DMV if the person shows that the offense occurred during the period of the extension; however, if a credential expires after the extension, the expiration is treated as occurring on the date prescribed by law without regard to the extension.

Security services at state prisons. New G.S. 74C-3(a)(6)e. includes in the definition of security guards providing services subject to G.S. Chapter 74C, Article 1 (Private Protective Services Board) "security services related to entry and exit, direction and movement of individuals at entry and exit, security working towers, and perimeter security patrols at State prison facilities." New G.S. 148-5.5 requires that these security

guards receive training on State prison policies, including policies on the use of force, before providing security services at a State prison; and it authorizes personnel who receive such training “to detain and use necessary force pursuant to State prison policies to prevent contraband entry or inmate escape.”

Release of communicable disease information to law enforcement. Effective May 4, 2020, revised G.S. 130A-143(7a) allows the Department of Health and Human Services (DHHS) and local health departments to release otherwise confidential information subject to G.S. Chapter 130A, Article 6 (Communicable Diseases) “to prevent or lessen a serious or imminent threat to the health or safety of a person or the public, to the extent that disclosure is permitted under 45 Code of Federal Regulations § 164.512(j).”

Extension of training and certification of law enforcement officers by Forensic Tests for Alcohol Branch of DHHS. Effective March 10, 2020 and expiring January 1, 2021, Section 4.39 of the act authorizes the Forensic Tests for Alcohol Branch to delay or modify educational or examination requirements for recertification of law enforcement officers and, for any certification issued before March 10, 2020, to extend that certification until December 31, 2020 if education or examination requirements are delayed.

Modification of sentence of imprisonment in local jail. Section 4.41 of the act, entitled “Authorize Modification of Criminal Judgments Requiring Intermittent Active Time,” allows the chief district court judge where the judgment was entered to modify any criminal judgment requirement that a defendant serve periods of confinement or imprisonment in a local confinement facility if the chief judge finds all of the following: “(1)The defendant is unable to serve one or more ordered periods of confinement or imprisonment due to the local confinement facility’s restrictions on inmates during the COVID-19 state of emergency. (2) Without modification, the defendant will be in violation of the criminal judgment. (3) The District Attorney consents to modification of the criminal judgment.” The act states that any modification should be as minimal as possible to allow the defendant to comply with the requirements of the criminal judgment.

Category: [Uncategorized](#) | Tags: [2020 legislation](#), [legislation](#)

2020 Motor Vehicle Legislation of Interest — To Me and the Kids

Posted on Jul. 13, 2020, 9:22 pm by Shea Denning

It is somewhat rare for one of my children to know more about recently enacted legislation than I do. But it happened a few weeks ago when the General Assembly adopted legislation that allows my sixteen-year-old to get his driver's license without taking a road test. This post will cover that legislation and other recent amendments to the state's motor vehicle laws.

Temporary road test waivers. The North Carolina Division of Motor Vehicles (DMV) halted road tests in March 2020 due to COVID-19. That left many 16- and 17-year-olds unable to obtain a Level 2 limited provisional driver's license. To obtain such a license, a driver must, in addition to meeting other requirements, have held a limited driving privilege for a year, log 60 hours of supervised driving, and pass a road test. G.S. 20-11(d). S.L. 2020-30 (H 158) permits teenagers who meet all of the requirements *other than passing a road test* to obtain a Level 2 limited provisional license. This is a reprieve — not a permanent waiver. To obtain a Level 3 full provisional license (which allows unsupervised driving after 9 p.m.), a Level 2 limited provisional licensee who was granted a road test waiver must first pass a road test.

S.L. 2020-30 became effective June 19, 2020. DMV instructs limited provisional license applicants who qualify for a road test waiver to make an appointment at a DMV license office. And, yes, we have an appointment.

New limited driving privilege. S.L. 2020-77 (S 488) enacts new G.S. 20-24.1(f), effective December 1, 2020, authorizing a new limited driving privilege for a person whose license is revoked under G.S. 20-24.1(a)(2) for failure to pay a fine, penalty or court cost. The privilege may be valid for up to one year or until any fine, penalty or court costs is paid. If the person's license also is revoked for another reason, the person is not eligible for the privilege.

The privilege is granted in the same manner and under the terms and conditions that authorize the granting of a limited driving privilege for a first offense of excessive speeding. See G.S. 20-16.1. Thus, to obtain a G.S. 20-24.1(f) privilege, the person must apply to the trial judge, who may impose any restrictions that he or she deems advisable, including conditions of days, hours, types of vehicle, routes, geographical boundaries, and specific purposes for which the limited driving privilege is allowed.

A person may not apply for a limited privilege under this subsection if the person has held a G.S. 20-24.1(f) limited driving privilege within the previous three years.

Regulation of modified utility vehicles. S.L. 2020-40 (H 307) enacts new G.S. 20-4.01(27), defining a modified utility vehicle as a motor vehicle that

- is manufactured for off-road use;
- has headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, windshield wipers, speedometer, and seat belts;

- has four wheels,
- has an engine displacement greater than 2400 cubic centimeters;
- is at least 142 inches long, at least 58 inches wide, and at least 70 inches tall;
- has a maximum speed of at least 40 miles per hour; and
- does not require an operator or passenger to straddle a seat.

A modified utility vehicle does not include an all-terrain vehicle, golf cart, utility vehicle as defined in G.S. 20-4.01(48c), or a riding lawn mower.

Having trouble picturing this vehicle? So was I. I found [this article](#) from Popular Mechanics and the accompanying photographs to be helpful.

S.L. 2020-40 amends G.S. 20-121.1 to [authorize the operation of modified utility vehicles](#) on streets or highways where the speed limit is 55 miles per hour or less and to require that modified utility vehicles be registered and insured in accordance with G.S. 20-50 and G.S. 20-309.

The act is effective October 1, 2020.



Category: [Motor Vehicles](#), [Uncategorized](#) | Tags: [20-24.1](#), [2020 motor vehicle legislation](#), [failure to pay](#), [license revocation](#), [limited driving privilege](#), [modified utility vehicle](#), [road test waiver](#)

Elements of Crimes

ELEMENTS OF CRIMES

| | |
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Conspiracy, Solicitation, Attempts, and Principals and Accessories

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

Crimes of Preparation
Solicitation
Conspiracy
Attempt

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

Selected Assault Crimes

Last updated by John Rubin, 2/20

| Injury | Weapon | Victim Characteristics | Victim's Job |
|---|---|---|--|
| Simple assault [Class 2] | With deadly weapon [A1] | On female [A1] | On court officer: - simple [I] - on another person as retaliation [I] - with deadly weapon or inflicting serious injury [F] |
| Inflicting serious injury [A1] | By pointing gun [A1] | On child under 12 [A1] | On gov't officer/employee or company/campus police officer [A1] |
| Inflicting serious bodily injury [F] | With deadly weapon with intent to kill [E] | In presence of minor [A1] | With deadly weapon on: - gov't officer/employee or company/campus police [F] |
| Inflicting physical injury: strangulation [H] | With deadly weapon inflicting serious injury [E] | On handicapped person: - simple [A1] - aggravated (deadly weapon, serious injury, intent to kill) [F] | On school personnel [A1] |
| | With deadly weapon with intent to kill inflicting serious injury [C] | On unborn child : - battery [A1] - inflicting serious bodily injury [F] | On sports official [I] On transit operator [A1] On TNC driver [A1, 12/1/19] |
| | Discharge of firearm into occupied: - property [E] - dwelling/conveyance in operation [D] - property causing serious bodily injury [C] | | On firefighter, EMT, medical responder, hospital personnel, and hospital security personnel: - inflicting physical injury [I] - inflicting serious bodily injury or with deadly weapon other than firearm inflicting physical injury [G instead of H, 12/1/19] - with firearm [E instead of F, 12/1/19] |
| | Discharge of firearm within property to incite fear [F] | | On emergency personnel in declared emergency/riot: - inflicting physical injury [I] - with dangerous weapon or substance [F] |
| | Secret assault [E] | Malicious conduct by prisoner [F] | |

| | | | | | | |
|--|--|---|--|--|--|--|
| <p>RAPE</p> <p>1. _____</p> | <p>First-degree FORCIBLE</p> <p>Rape that is: _____ + at least one of the following:</p> <p>1. _____ 2. _____ 3. _____ 4. _____</p> <p>Class: _____</p> | <p>Second-degree FORCIBLE</p> <p>Rape that is:</p> <p>1. _____ or 2. With a person who is: a. _____ b. _____ c. _____</p> <p>Class: _____</p> | <p>First-degree STATUTORY</p> <p>D at least: _____ V under: _____</p> <p>Age differential: _____</p> <p>Class: _____</p> | <p>STATUTORY— Victim 15 or younger of a Child by an Adult</p> <p>D at least: _____ V under: _____</p> <p>Class: _____</p> <ul style="list-style-type: none"> • _____ • _____ | <p>STATUTORY— Victim 15 or younger (Defendant at least 6 years older than Victim)</p> <p>D at least: _____ V under: _____</p> <p>Age differential: _____</p> <p>Class: _____</p> | <p>STATUTORY— Victim 15 or younger (Defendant more than 4 but less than 6 years older than Victim)</p> <p>D at least: _____ V under: _____</p> <p>Age differential: _____</p> <p>Note: _____</p> <p>Class: _____</p> |
| <p>SEXUAL OFFENSE</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> <p>5. _____</p> | <p>First-degree FORCIBLE</p> <p>Sexual offense that is: _____ + at least one of following:</p> <p>1. _____ 2. _____ 3. _____ 4. _____</p> <p>Class: _____</p> | <p>Second-degree FORCIBLE</p> <p>Sexual offense that is:</p> <p>1. _____ or 2. With a person who is: a. _____ b. _____ c. _____</p> <p>Class: _____</p> | <p>First-degree STATUTORY</p> <p>D at least: _____ V under: _____</p> <p>Age differential: _____</p> <p>Class: _____</p> | <p>STATUTORY— Victim 15 or younger of a Child by an Adult</p> <p>D at least: _____ V under: _____</p> <p>Class: _____</p> <ul style="list-style-type: none"> • _____ • _____ | <p>STATUTORY— Victim 15 or younger (Defendant at least 6 years older than Victim)</p> <p>D at least: _____ V under: _____</p> <p>Age differential: _____</p> <p>Class: _____</p> | <p>STATUTORY— Victim 15 or younger (Defendant more than 4 but less than 6 years older than Victim)</p> <p>D at least: _____ V under: _____</p> <p>Age differential: _____</p> <p>Note: _____</p> <p>Class: _____</p> |

INDECENT LIBERTIES WITH CHILDREN (p. 246)

- Takes or attempts to take an indecent liberty with a child for the purpose of arousing or gratifying sexual desire, or
- Willfully commits or attempts to commit any lewd or lascivious act upon or with the body of a child

D at least: _____

V under: _____

Age differential: _____

Class: _____

SEXUAL BATTERY (p. 254)

- Sexual contact, defined as:
 - Touching the sexual organ, anus, breast, groin, or buttocks of any person;
 - Touching another person with one's own sexual organ, anus, breast, groin, or buttocks; or
 - Ejaculating, emitting, or placing semen, urine, or feces on another person
- For a sexual purpose
- Either
 - By force and against the will of a victim, or
 - With a person who is mentally disabled, mentally incapacitated, or physically helpless.

Class: _____

CRIME AGAINST NATURE (p. 281)

- Sex acts other than vaginal intercourse.
- Constitutional limitation: Does not apply to adults engaged in consensual acts in private. Lawrence v. Texas, 539 U.S. 558 (2003).

Class: _____

Note: _____

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

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

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

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

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

* Not a charging decision made by magistrates.

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

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

REVIEW QUESTIONS ON ASSAULT AND RELATED OFFENSES

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

1. A city law enforcement officer is on the way home, still wearing his uniform, after completing his shift for that day. For no apparent reason, another man comes up behind the officer, shoves him to the ground, and runs.
2. A husband beats his wife about her head and body with his fists, and she suffers a broken arm and lacerations to her face that requires 35 stitches.
3. A man is standing next to his house when his angry neighbor, about 50 yards away, fires a pistol at him—but only trying to scare him. The shot misses about five feet to the left of the man.
4. After having a violent argument in a bar, a man is walking through the parking lot when the man he was arguing with comes at him in his car, going about 50 m.p.h. The man jumps out of the way and just avoids being hit.
5. Smith shoots a law enforcement officer who is attempting to execute a search warrant at his house. The officer suffers serious chest injuries but survives.

6. An 18 year-old male kicks a 5 year-old boy one time.

7. While being tried in district court for impaired driving, a man gets angry at the judge, jumps up on the judge's bench, and hits her twice in the shoulder.

8. While on patrol in a residential neighborhood, a city law enforcement officer has the back side window of his car shot out with a rifle.

9. An officer arrests Jones for armed robbery. While taking Jones to the magistrate's office for the initial appearance, he spits in the officer's face.

10. Unhappy with the amount of noise they are making, a theater manager grabs two 10-year old boys, drags them into his office, spanks them both, and sends them out of the theater.

11. At the end of a heated argument in a bar, one man yells at the other, "I'm going to kill you some day, you damn bastard!" He then leaves.

12. After stopping a car for impaired driving, a state trooper is jumped on by the driver. The man has a knife in his hand but the trooper manages to subdue him without being cut.

13. After being called by the neighbors, an officer finds a man standing on his front porch holding a butcher knife in his hand. He is yelling at his wife in the front yard that he will kill her if she tries to come back in the house.

14. Two men have an argument in a bar. One leaves and hides behind a car in the parking lot. When the second man comes out, the first jumps from behind the car with a knife in his hand and makes several superficial cuts before two other men intervene and stop the attack.

15. When two men pull into a parking space at the same time, one driver gets out of his car, pulls the other driver out and hits him with his fist several times, knocking the man unconscious. When he is taken to the hospital, the doctor says he has a mild concussion and will have to stay overnight.

16. Two neighbors get in an argument about the noise made by one of the neighbor's kids. After saying "I'll get even with you for those damn noisy brats of yours; I'm going to cut your damn head off," one man stabs the other in the shoulder with a nine-inch knife. He is about to stab again when stopped by another neighbor.

17. While his wallet is being taken, a man is beaten over the head with a pistol carried by the thief. When the victim raises his arm to protect himself, his arm is broken.

18. John Jones is the former husband of Susan Jones. She is now dating Howard Findley. John Jones follows her to work every day for a week, after having told her over the telephone that if she continues to date Findley, “something serious might happen” to her. Findley calls John Jones and tells him that Susan Jones wants him to stop following her to work. The next day, John Jones follows her to work again.

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

20. An officer arrests John Jones for assault by pointing a gun. The victim of the assault suffered no injury. He has previously been convicted of simple assault and assault with a deadly weapon inflicting serious injury. Both convictions have occurred within the past 12 years. Assuming the magistrate finds probable cause for assault by pointing a gun, what is the most serious charge that may be brought against Jones?

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON SEXUAL ASSAULTS

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

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

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

15. Three 30 year-old men pick up a 16 year-old woman who is hitchhiking, drive her to a wooded area and make her perform fellatio on each by threatening to beat her and abandon her.

16. A 16 year-old male and a 12 year-old female are dating. His birthday is on July 15; hers is on July 1. On August 1, she voluntarily performs fellatio on him.

17. A 15 year-old male and a 15 year-old female voluntarily have sexual intercourse with each other.

18. Two 30 year-old men hold down a 24 year-old woman and threaten to beat her, making her perform fellatio on one man. After that, the second man forces a soft drink bottle into her vagina.

REVIEW QUESTIONS ON LARCENY, ROBBERY, & RELATED OFFENSES

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

1. A man picks a lock and enters a home at 4 p.m., takes three magazines off the coffee table and nothing else.
2. A man goes into another man's field and takes a hunting dog worth about \$300.
3. A woman is trying on jackets at a department store. While the sales clerk is busy elsewhere, the woman puts on one of the jackets worth \$200 and walks out without paying for it.
4. At the State Fair a man picks the wallet out of another man's back pocket without being noticed. The wallet has about \$40 in cash and four gasoline credit cards.
5. Two men are working together at the State Fair. While one man bumps into, pushes, and starts an argument with the victim, the second man slips behind the victim and takes his wallet. There is \$25 in the wallet.
6. Seeing that the clerk at a jewelry store has gone to the back of the store, a man tells a 6-year old kid that he left his wife's ring on the store counter. The child goes in, picks up the ring off the counter, and brings it out to the man. The ring, which belongs to the store, is worth about \$1,750.
7. Two neighbors have been arguing for several months about which one owns a lawn mower. Each asserts that another neighbor who moved recently gave it to him. One night one of the two men sneaks over to the other's yard and takes the mower. It is worth about \$80.

8. A man steals two television sets from the beach cottage he is renting. The sets were bought for \$1,500 about a year and a half before. The owner says he recently had someone offer to buy the sets for \$950.
9. A man hits another man over the head with a blackjack and takes from him a wallet containing \$12.
10. A man enters a grocery store and tells the clerk that he will shoot her unless she gives him the cash from her cash register. He has an object in his pocket which he points at her. She hands over the cash. The man is captured as he leaves the store; all that is found in his pocket other than the cash is a large cell phone. The amount of cash was \$327.
11. While searching a house for drugs, officers finds 6 iPods which were stolen one week earlier in a housebreaking. The iPods are worth about \$75 each.
12. A man has a television set worth \$450 and a stereo worth \$600 he is holding for a friend. The friend, who is taking a short vacation out of state, tells him the goods are stolen. The man will be giving the goods back to the friend when he returns in a week.
13. Two teenage boys see a car with the keys still in it, get in, and drive the car around town for about five hours. They then leave the car parked on the street about two miles from where they took it.
14. A man puts a watch worth \$50 in his pocket and walks out of the department store without paying for it.
15. A store employee sees a man put a pen worth \$3.00 in his pocket while shopping in the store.
16. A man goes into a sporting goods store, puts on a tennis racket a price tag which was on another racket, listing the price at \$25 instead of \$75, then takes the racket to the cashier to pay for it.

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

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

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

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

14. A man breaks into a garage about 20 feet from a house and takes a bicycle worth \$150. This takes place at 4:30 in the morning.

15. A man goes into a house under construction at 11:00 p.m. to take shelter from the rain.

16. A man enters an open window of a house at 3 a.m., walks down the hallway, opens a closed bedroom door, and enters and takes a watch worth \$12 and leaves, while Thelma Jones is sleeping in the room.

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

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

1. Elmo Suggins takes his shotgun and goes hunting for doves on the property of John James without his consent. The property is not posted.

2. Peter Ryder, a college student, has a one-year lease with Paul Jones to rent an apartment; there are no restrictions in the lease about visitors. Jones realizes that Ryder is inviting Sylvia Sweetheart over to Ryder's apartment each night. Jones tells Sweetheart that she cannot come to Ryder's apartment, but she ignores him.

3. John Alston lives in his house at 312 Main Street. His neighbor, Jim Billerman, and he get into an argument in Alston's living room. Alston tells him to leave and never come back. Billerman leaves, but he comes back an hour later into Alston's house and begins to argue with him again.

4. At 4:30 a.m., Howard Garfield climbs over the ten-foot high chain link fence surrounding Powe's Lumber Yard. As he begins to examine the lumber, a law enforcement officer drives by and arrests him.

5. Phil Garner enters the woods surrounding Sally Jeffrey's house where there are posted "NO TRESPASSING" signs every twenty feet. There is no direct evidence that Garner saw the signs.

6. Sam and Alice Simmons, who are married, are living separate and apart by written agreement. Alice tells Sam that she never wants him entering her property. One night Sam (after a few drinks) enters her property and knocks on her door, because he wants to tell her how happy he is that he is no longer living with her.

7. Howard Jones, owner of the Eastowne Shopping Mall, signs an agreement with the West Orange Police Department authorizing its officers to give trespass warnings to anyone who is on Mall property from 12 midnight to 6 a.m. without a reasonable basis for being there. Officer Jones tells three teenagers parked on Mall property at 3 a.m. to leave because they give no reason for being there. The teenagers refuse to leave.

8. A person hired by the owner of a tavern to keep order there tells an unruly person to leave the tavern. He refuses to leave.

9. Fred Smith is using his neighbor's mountain cabin for the weekend. Three deer hunters, carrying deer rifles, appear and tell Smith to get off the property because they want to use the cabin that night. Smith leaves because he is afraid he will get hurt.

10. Husband and wife orally agree to break up, with the wife staying in the house and the husband renting an apartment. A boyfriend moves into the house with the wife. One night the husband, angry about his wife having a boyfriend, enters the house and refuses to leave when asked by the boyfriend.

11. Sam Jones gets into an argument with his neighbor while both are on Jones's front lawn and tells the neighbor to leave. The neighbor refuses to leave.

12. A neighbor deliberately throws one brick through a window of his neighbor's house and another brick through a window of this neighbor's car, causing a total of \$100 damage.

13. Fred Smertz deliberately and maliciously spray paints his brother's car, causing \$750 damage.

14. Peter Jones puts a bomb in the car of his ex-wife, hoping that it will kill her when she turns the ignition switch. Instead it goes off prematurely before she enters the car, destroying the car but not injuring her.

15. Sylvia Kitchens plants a bomb in the local movie theater. It goes off during a movie, damaging the movie screen but not injuring any person.

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON DRUG OFFENSES

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

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

6. When they enter a man's house to arrest him for receiving stolen goods, officers find approximately 10 ounces of marijuana, some of which is in eight small envelopes but most of which is in one large bag, plus about 30 empty envelopes and a small scale.

7. Officers execute a search warrant to search a house rented by Jack Sterling for cocaine. There is no cocaine there, but the officers find 450 Ritalin (methylphenidate, Schedule II) tablets. On the dresser are some credit cards in the name of Jack Sterling and on the kitchen table are some letters addressed to him at that address. Sterling's name is also on the mailbox.

8. Two college students are sitting on a bench on campus. One puffs on a marijuana cigarette and passes it to the other.

9. When a car is stopped for speeding, the officer smells marijuana and asks for permission to search. The driver-owner gives consent and the driver and three passengers (one in front, two in back) step out. The remains of a marijuana cigarette are found in the ash tray below the radio.

10. A person arrested for an assault in a bar has 30 grams of ethcathinone in his pocket.

11. A 21-year-old man sells five ounces of marijuana to an undercover agent about 150 feet from an elementary school.

12. A search of a boat tied to the dock discloses that 400 grams of cocaine are aboard. The boat owner is present at the time of the search.

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON WORTHLESS CHECKS

1. On June 15, John Smith writes and delivers a check to ABC Cleaners for \$27.50 for cleaning. He dates the check June 25. ABC deposits the check with its bank, and two weeks later the check is returned stamped “insufficient funds.” The owner of ABC Cleaners appears before you seeking a worthless check warrant. What would you do?

2. On June 20, Susie Barnes writes and delivers a check to Best Buy for \$800.00. The check is dated June 20. Susie wrote the check to purchase a TV. When she got the TV home, it didn't work. She called the bank and asked them to stop payment on the check. Today, a Best Buy employee comes before you seeking a worthless check warrant. They indicate that Ms. Barnes wrote and delivered the check on June 20. The check is stamped “stop payment.” What would you do?

3. An employee of Kroger's appears before you seeking issuance of process for writing a check on a closed account. The employee shows you a check written by Frederick Williams to Kroger, dated June 10. The employee indicates that the check was delivered to the store on June 10. The check is marked “closed account.” What would you do?

4. Robert Smith appears before you seeking issuance of process for writing a worthless check. Smith tells you that James Walker came to his business on March 25 and asked him to accept a check for \$2500 written on Walker’s account and to hold it and not deposit it for 20 days until Walker’s next pay day. Walker wrote the check on March 25, dated it March 25, and delivered it to Smith. Smith waited until April 16 to deposit the check. He shows you the check, which was returned marked “insufficient funds.” What would you do?

5. An employee of your local Food Lion appears before you seeking process. They bring a check written to Wade Brown, signed by William Golding, dated May 30. The check is for \$50. The employee testifies that Wade Brown endorsed the check over to Food Lion on June 2, and that the check was returned for insufficient funds. The employee shows you the check, which is stamped “insufficient funds.” What would you do?

Review Questions

Chapters 19-22


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

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


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

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

Elements of Assaults



Jonathan Holbrook,
Prosecutor Educator
February 2021




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1

Five Core Components

#1: Assault

#3: Weapon



#2: Injury


#4: Victim

#5: Job/Duty

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2

#1: Assault



- **Striking, Battery**
 - Overt act or attempt
 - Force and violence, reasonable fear
- **Show of Violence**
 - Apparent ability to carry out
 - Reasonable fear of immediate injury
 - Victim changes activity/response
- **Culpable negligence**
 - Intentional act
 - Reckless disregard for safety of others

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3

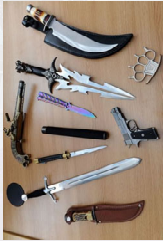
#2: Injury

- **Serious Bodily Injury**
 - Risk of death, permanent disfigurement, coma
 - Ex: broken bones, jaw wired shut, scars
 - More than serious injury
- **Serious Injury**
 - Pain and suffering, blood loss, hospitalization
 - Ex: shot, stabbed, head injury, tooth knocked out
- **Physical Injury**
 - Cuts, scrapes, bruises
 - Less than serious injury



4

#3: Weapon or Means



- **Deadly Weapon**
 - Under circumstances, capable of causing death or serious bodily injury
 - AWDW, AWDWISI
- **Intent to Kill**
 - AWDWIK, AWDWIKISI
- **By Pointing a Gun**
 - Intentionally pointed at a person
- **Firing into Occupied Property**
 - Three versions: occupied? moving? injury?
- **Secret Assault**
 - AWDWIK + "secret"

5


#4: Based on Victim

- **Female**
 - By a male, over 18
- **Child Under 12**
 - More than moderate punishment
 - Lasting injury? Parent? Child abuse?
- **Unborn Child**
 - Battery of mother + AISI/AISBI on child
- **Disabled/Handicapped**
 - Simple or Aggravated
- **Ethnic Intimidation**
 - Race, religion, nationality



6

#5: Based on Job



- Government Officer/Employee
- Law Enforcement Officers
- Executive/Legislative/Court Officers
- School Personnel
- Sports Officials
- Public Transit Operators
- Firefighters
- Emergency Personnel

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7

#6: Bonus!

Other Enhancements, Offenses:

- Habitual Misd. Assault
 - 2+ prior offenses
 - New assault + physical injury
- A few others...
 - Bombs/explosives
 - Maiming/castration
 - Throwing acid



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8

Threats/Harassment



- Communicating Threats
 - Threat to injure person property
 - Reasonable belief, did believe
- Harassing Phone Calls
 - Threat by phone
- Cyberstalking
 - Threat and harassment by email
- Cyberbullying
 - Computer harassment/embarrassment
- Stalking
 - Repeat harassment causing fear/distress

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9


Questions?

- Use the chart and NC Crimes
- Discuss at upcoming online session



Or feel free to contact me:
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Larceny and Robbery




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February 2021





1

3 Levels of Coverage




- 1) **Core Charges:**
Larceny, Robbery
- 2) **Related Charges:**
Poss. Stolen Property,
Shoplifting, Embezzlement
- 3) **Quick Coverage:**
Retail Theft, Financial Card
Theft





2

#1: Core Charges



- Misdemeanor Larceny
- Felony Larceny
- Common Law Robbery
- Armed Robbery

3

Misdemeanor Larceny

- 1) Takes
- 2) Personal Property
- 3) In the Possession of Another *and*
- 4) Carries it Away
- 5) Without the Consent of the Possessor *and*
- 6) With Intent to Deprive Possessor Permanently
- 7) Knowing Not Entitled to It






4

Felony Larceny

Same as Misd. Larceny #1-7, *and* add #8:

- a) Property Worth More Than \$1,000
- b) From the Person
- c) Committed Pursuant to a B&E Offense
- d) Of an Explosive/Incendiary Device
- e) Of a Firearm
- f) Of a Record Paper at NC State Archives
- g) Of a Horse/Mule/Swine/Cattle/Dog



5

Common Law Robbery

Larceny From a Person (or the Person's Presence) and:

Committed by...

- 1) Violence
- or*
- 2) Intimidation





6

Armed Robbery

Larceny (or Attempt) From a Person or the Person's Presence, and:
Committed by...

- 1) Possession, Use, or Threatened Use of a Firearm or Other Dangerous Weapon
- 2) That Endangers or Threatens the Life of a Person



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7

#2: Related Charges

- Stolen Property
- Unauthorized Use of M.V.
- Shoplifting
- Embezzlement
- Extortion



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8

Misd. Possession of Stolen Property

- 1) Possesses
- 2) Stolen Property
- 3) Knowing, or Having Reasonable Grounds to Know, That it was Stolen
- 4) With a Dishonest Purpose



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9

Felony Possession of Stolen Property

Misdemeanor PSP, plus Element #3 (& 4):

- 1) Possesses
- 2) Property
- 3) Stolen or Taken Feloniously
- 4) Knowing, or Having Reasonable Grounds to Know, That it was Stolen Feloniously
- 5) With a Dishonest Purpose



10

Receiving Stolen Property

- 1) Receives or Conceals
- 2) Property
- 3) Stolen or Taken (Feloniously) by Another
- 4) Knowing, or with Reasonable Grounds to Believe, That it was (Feloniously) Stolen or Taken
- 5) With a Dishonest Purpose



11

Unauthorized Use of a Motor Vehicle

- 1) Willfully
- 2) Takes or Operates
- 3) Car (or Other "Motor-Propelled Conveyance")
- 4) Of Another
- 5) Without the Consent of the Owner, or Other Person in Lawful Possession



12

Shoplifting (“Basic”)

- 1) Willfully Conceals
- 2) Goods or Merchandise of a Store
- 3) Without Authority
- 4) Without Having Purchased the Goods or Merchandise *and*
- 5) While Still on the Premises of the Store




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13

Shoplifting (“Advanced”)

- 1) Repeat Shoplifting by Concealment
- 2) Concealing by Using a Lead- or Aluminum-Lined Bag
- 3) Shoplifting by Substitution of Prices
- 4) Repeat Shoplifting by Substitution of Prices




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14

Embezzlement (Standard)

- 1) Fraudulently, or Knowingly and Willingly
- 2) Uses for a Purpose Other Than That for Which the Defendant Received It
- 3) Property of Another
- 4) Held by Defendant Under His Care




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15

Embezzlement (Variations)

- 1) By Employee (Most Common)
- 2) Of State Property by Public Officers and Employees
- 3) By Officers, Agents or Employees of Government Agencies, Local Boards, Churches, or Institutions
- 4) By Clerks, Sheriffs, Treasurers, Register of Deeds, Other Officials




16

Extortion

- 1) Threatens, or Communicates a Threat to Another
- 2) With the Intent to Obtain Wrongfully
- 3) Property of Another
- 4) Anything of Value, or any Acquittance, Advantage, or Immunity




17



#3: Quick Coverage

- Property Represented as Stolen
- Retail Theft
- Other Motor Vehicle Charges
- Financial Card Crimes
- Serial Number Offenses



18

Possession of Property *Represented as Stolen*

- 1) Knowingly
- 2) Possesses
- 3) Property
- 4) In the Custody of Law Enforcement
- 5) Explicitly Represented as Stolen By
- 6) A Law Enforcement Agent or Person Authorized to Act on Their Behalf



19

Other “Retail Theft” Offenses

- 1) Larceny from a Merchant
- 2) Organized Retail Theft
- 3) Receiving or Possessing Stolen Retail Property



20

Other Motor Vehicle Offenses


- 1) Possession of a Stolen Vehicle
- 2) Receiving/Transferring a Stolen Vehicle
- 3) Altering/Destroying Vehicle or Parts
- 4) Purchasing/Selling Car with Altered VIN
- 5) Permitting “Chop Shop” Activity
- 6) Purchasing/Disposing Vehicles or Parts in Connection With a “Chop Shop”
- 7) Larceny of Vehicle Parts



21

Financial Transaction Card Theft



- 1) Taking or Withholding a Card
- 2) Receiving a Wrongfully Obtained Card
- 3) Wrongful Retention of Misplaced Card
- 4) Buying a Card
- 5) Selling a Card
- 6) Receiving Two Cards in Different Names
- 7) Obtaining/Receiving Encoded Information



22

Serial Number Offenses

- 1) Altering/Removing Serial Number
- 2) Buying/Selling/Possessing Property With an Altered Serial Number

23

Questions?

- Use these notes and NC Crimes
- Discuss at upcoming online session

Or feel free to contact me:
jholbrook@sog.unc.edu
 919-962-0942




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Burglary and Related Offenses
 Basic School for Magistrates
 Thursday, February 25, 2021

PHIL DIXON, JR.
DEFENDER EDUCATOR
UNC SCHOOL OF GOVERNMENT
 DIXON@SOG.UNC.EDU

1

First-Degree Burglary

(1) breaks
 (2) **AND** enters
 (3) without consent
 (4) dwelling house or sleeping apartment
 (5) of another
 (6) while it is actually occupied
 (7) at night
 (8) with the intent to commit any felony or larceny therein

▪ Class D felony (Attempted 1st Degree Burglary is Class E felony)

2


First-Degree Burglary

(1) breaks
 (2) **AND** enters
 (3) without consent
 (4) dwelling house or sleeping apartment
 (5) of another
 (6) while it is actually occupied
 (7) at night
 (8) with the intent to commit any felony or larceny therein

▪ Class D felony

3


Breaks



- Making of some kind of opening, however slight
 - Destructive force ✓ (but not necessary)
 - Opening an unlocked window ✓
 - Opening a partly opened door ✓
 - Go down chimney with open flue ✓
 - Opening an inner door ✓
 - Induce another to open with trickery, force or intimidation ✓
 - Get accomplice or co-conspirator to open ✓
 - Going through an open door or window ✗

4

First-Degree Burglary




- (1) breaks
- (2) **AND enters**
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

▪ Class D felony

5

Enters



Burglary requires breaks AND enters

- Inserting any part of body ✓
- Inserting tool for purpose of committing felony ✓
 - e.g., put gun in to shoot occupant
- Inserting tool for purpose of breaking ✗
 - e.g., use gun barrel to smash window

6

First-Degree Burglary

○

- (1) breaks
- (2) **AND enters**
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

• Class D felony

7

Without Consent

○

- Owner or person entitled to possession consents to entry ✕
- Owner / possessor / occupant induced to allow entry with trickery, force or intimidation ✓

8

First-Degree Burglary

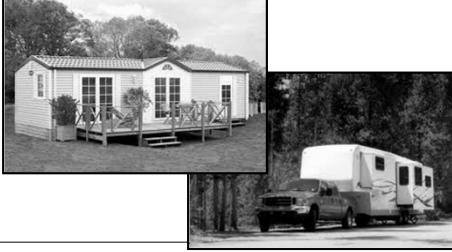
○

- (1) breaks
- (2) **AND enters**
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

• Class D felony

9

Dwelling or Sleeping Apt.



10

Dwelling or Sleeping Apt.



11

Dwelling or Sleeping Apt.



12

Dwelling or Sleeping Apt.



13

Dwelling or Sleeping Apt.



14

Dwelling or Sleeping Apt.



15

Dwelling or Sleeping Apt.

- A dwelling is a structure regularly used by a person for sleeping.
 - Mobile home or house trailer ✓
 - Room in a hotel, motel or rooming house ✓
 - Crude habitation with walls and a roof ✓
 - Commercial space with sleeping apt. ✓
- Regularly used: use occurs in ordinary course of events
 - Abandoned home ✗
 - Sold home where new owner has not moved in ✗
 - Summer cottage if has been used regularly for sleeping and intent to use it again ✓

16

First-Degree Burglary

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

▪ Class D felony

17

Of Another

- Property must be legally possessed by someone other than D.
- Possession, not ownership, is the key.
 - Landlord enters tenant's room without consent ✓
 - One spouse has legal and exclusive possession of marital home, and other enters without consent ✓

18

First-Degree Burglary

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

• Class D felony

19

Actually Occupied

- Someone must be inside when the B&E occurs.
- D does not need to know someone was there.



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First-Degree Burglary

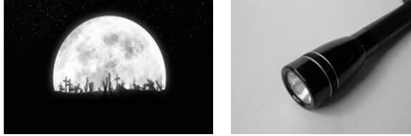
- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

• Class D felony

21

At Night

- Time after sunset and before sunrise, when it is so dark that a man's face cannot be identified except by artificial light or moonlight.



22

First-Degree Burglary

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

• Class D felony

23

Intent to Commit Felony or Larceny

- D must have the requisite intent **WHEN** the breaking and entering occurs.
- D need not succeed in committing larceny or felony.

Proof:

- Committed felony
- Preparation
- Inference of intent to steal
- Doctrine of recent poss.




24

| Burglary | |
|-----------------|--------------------|
| 1st Degree | 2d Degree |
| breaks | breaks |
| and enters | and enters |
| w/o consent | w/o consent |
| dwelling | dwelling/curtilage |
| of another | of another |
| while occupied | ... |
| at night | at night |
| w/intent | w/intent |

25

Second-Degree Burglary

- Does not need to be occupied
- Includes buildings within curtilage



* Class G

26

Felony Breaking or Entering of a Building

- (1) breaks **OR** enters
- (2) without consent
- (3) any building
- (4) with intent to commit any felony/larceny therein

* Class H

27

| 1st Degree Burglary | 2d Degree Burglary | Felony B or E |
|---------------------|------------------------|---|
| breaks | breaks | breaks |
| and enters | and enters | or enters |
| w/o consent | w/o consent | w/o consent |
| dwelling | dwelling/ curtilage | any building <ul style="list-style-type: none">• Store• Trailer used for storage• Warehouse• Bank• Bldg under construction |
| of another | of another | of another |
| while occupied | --- | --- |
| at night | at night | --- |
| w/intent | w/intent | w/intent |

28

| Felony B or E | Misd. B or E |
|---------------|--------------|
| breaks | breaks |
| or enters | or enters |
| w/o consent | w/o consent |
| any building | any building |
| of another | of another |
| --- | --- |
| --- | --- |
| w/intent | --- |

29

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

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Motor Vehicle Offenses

MOTOR VEHICLE Law

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

Elements of Motor Vehicle Offenses

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

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

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

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

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

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

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

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

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

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

Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- G.S. 20-13.2 Driving after consuming alcohol/drugs while less than 21
 - G.S. 20-16(a)(8b) Military driving while impaired
 - G.S. 20-16.2 Refused chemical test
 - G.S. 20-16.5 Civil license revocation
 - G.S. 20-17(a)(2) Driving while impaired; driving while impaired in a commercial motor vehicle
 - G.S. 20-17(a)(12) Transporting open container – second or subsequent
 - G.S. 20-138.5 Habitual driving while impaired
 - G.S. 20-16(a)(7) Out-of-state offense similar to DWI resulting in NC revocation
 - G.S. 20-17(a)(1) Manslaughter involving DWI
 - G.S. 20-17(a)(3) Any felony in the commission of which a motor vehicle is used if the offense includes impaired driving
 - G.S. 20-17(a)(9) Any offense set forth under G.S. 20-141.4 based on impaired driving
 - G.S. 20-17(a)(11) Conviction of assault with a motor vehicle if the offense involves impaired driving; or
 - The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed above.
- G.S. 20-28.2(a).

Crash: Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash share the same meaning. G.S. 20-4.01(4b).

Self-test.

Basic School for Magistrates, August 2019

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

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

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

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

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

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

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

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

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

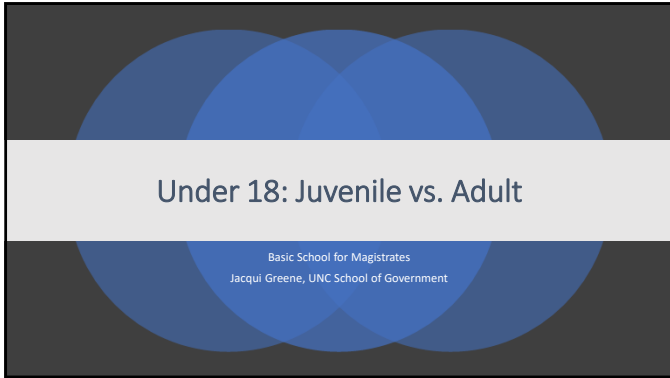
10. May Merle, in this second example, continue to drive until the charges are disposed of?
 - a. Yes, the license remains in effect until it is revoked by the trial court
 - b. No, the magistrate must suspend and order Merle to surrender his license

Under 18:

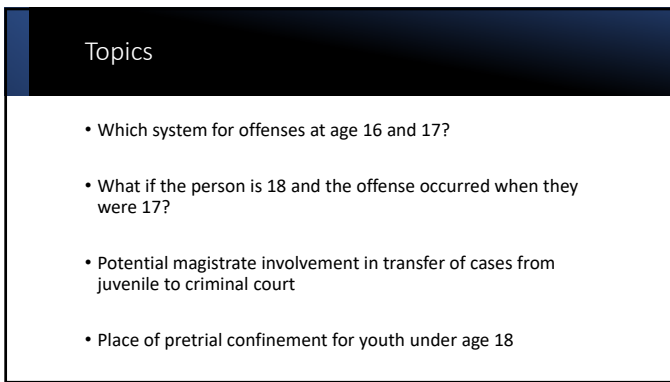
Juvenile vs Adult

UNDER 18: JUVENILE VS. ADULT

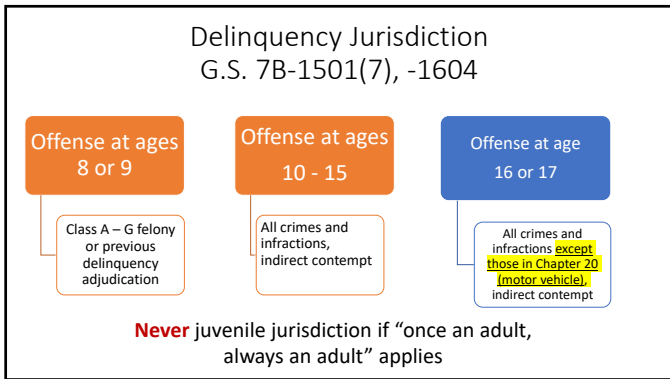
Under 18: Juvenile vs. Adult In-Class Materials Juvenile vs. Adult – Page 1
Recommended Best Practices for Raise the Age Juvenile vs. Adult – Page 5



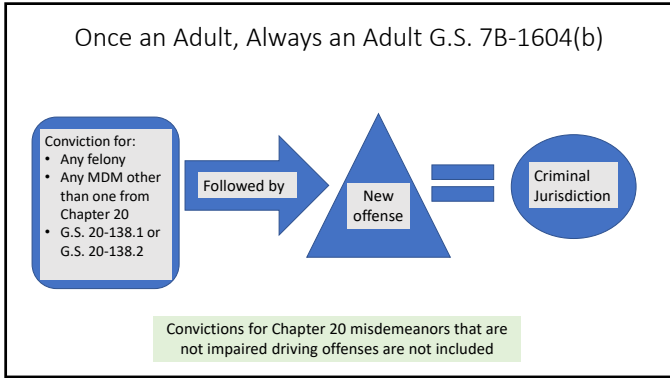
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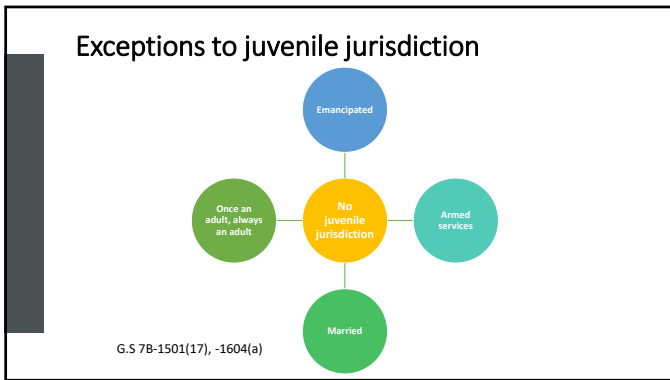
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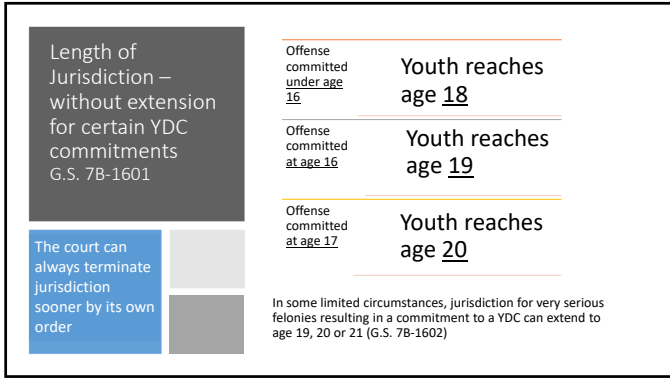
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5



6

Felony Transfer to Superior Court

Table 1. Transfer Mechanisms by Age at Offense and Felony Classification

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

a. G.S. 7B-2200.
 b. *Id.*
 c. G.S. 7B-2200, -2203.
 d. *Id.*
 e. G.S. 7B-2200.5(a).
 f. *Id.*
 g. *Id.*
 h. G.S. 7B-2200.5(a1).
 i. G.S. 7B-2200.5(b), -2203.
 j. *Id.*

7

If Transfer Ordered



MUST SET BOND

G.S. 7B-2204



IMMEDIATE APPEAL TO SUPERIOR COURT

G.S. 7B-2603



FINGERPRINTING REQUIRED

G.S. 7B-2201

8

Pre-trial Secure Confinement

Under juvenile jurisdiction

In juvenile detention

Transferred to Superior Court

Under 18 – juvenile detention

18 and over – jail

Original criminal jurisdiction (Ch. 20 at 16/17 or once an adult)

Under 18 – juvenile detention

18 and over – jail

9



Contact Info

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RECOMMENDED BEST PRACTICES FOR MANAGEMENT OF CRIMINAL PROCESSES INVOLVING INDIVIDUALS 16-17 YEARS OF AGE **MAGISTRATE**

February 2020

NOTE:

- ❖ Juveniles, as referenced in this document, refer to unemancipated defendants who, at any point while committing an offense on or after 12/1/2019, were 16- or 17-years-old.
- ❖ For additional details regarding Raise the Age (RTA) legislation and its impact on Judicial Branch operations, please see the FAQs and Legislative Summary located on the [Raise the Age Resources web page on JUNO](#).

Before Issuing Initiating Processes (ex. Magistrate Order) Determine if Juvenile Has Any Prior Convictions

NOTE: When processing Chapter 20 offenses, there is no need to check for prior convictions as described below — process Chapter 20 offenses using normal procedures.

- ❖ **Juvenile has no prior convictions:**
 - ✓ If the current charge is NOT a Chapter 20 offense, refer law enforcement officer (LEO) and citizen complainants to the local Division of Adult Correction and Juvenile Justice (DACJJ)
- ❖ **Juvenile only has prior convictions for misdemeanor or infraction Chapter 20 offenses that are not offenses involving impaired driving as defined in G.S. 20-4.01(24a):**
 - ✓ If the current charge is NOT a Chapter 20 offense, refer LEO or citizen complainant to the local DACJJ
- ❖ **If juvenile has other prior convictions, including convictions for misdemeanor or infraction Chapter 20 offenses that involve impaired driving as defined in G.S. 20-4.01(24a):**
 - ✓ Create the process manually

When Issuing Release Orders for Juveniles Who Were Charged as Adults

- ❖ **Warrants for Arrest (WFA) charging an offense other than a Chapter 20 offense:**
 - ✓ Create Release Order manually
 - ✓ For those processes that exist in NCAWARE
 - Update the WFA with service information via Process Tracking in NCAWARE
- ❖ **In cases in which the original WFA is not available:**
 - ✓ Refer to local practice regarding service without process
- ❖ **WFA or Magistrate Order issued for an arrestable Chapter 20 offense:**
 - ✓ Enter Release Order in NCAWARE using current procedures
- ❖ **When issuing a release order and it is later determined that the WFA should not have been issued because either no age was entered, or the wrong age was entered when the WFA was issued:**
 - ✓ Print the unserved WFA
 - ✓ Recall the unserved WFA via Process Tracking in NCAWARE
 - ✓ Forward the printed WFA and any additional paperwork to the criminal clerk
 - Notify the criminal clerk that the WFA was recalled because the defendant is under juvenile jurisdiction
 - Advise the criminal clerk to delete the case from CCIS-CC and forward the paperwork to DACJJ
 - ✓ Refer LEO to DACJJ if they wish to proceed with a juvenile petition

Additional Recommended Best Practices

- ❖ Refer to local practice regarding who is responsible for making initial contact with the local Juvenile Justice Office (DACJJ) and what information is required from the local DACJJ for the magistrate to move forward with issuing a process on a 16- or 17-year-old juvenile.
- ❖ When a request is made to issue a warrant on a juvenile who is (or assumed to be) 16- or 17-years of age, confirm that the juvenile should be charged as an adult before issuing the process.
- ❖ **If the process which was issued in error is unable to be recalled*:**
 - *Issued processes can only be recalled by the issuing magistrate*
 - ✓ Print the issued unserved process(es)

- ✓ Forward the printed process and any additional paperwork to the criminal clerk
 - Refer to local rules regarding the correct process for notifying the criminal clerk
 - Advise the criminal clerk to immediately delete the case from CCIS-CC and forward the paperwork to DACJJ

Resources to Identify Prior Convictions, If Necessary

❖ **Local Juvenile Justice Office (DACJJ)**

- ✓ Refer to local practice regarding who is responsible for making this initial contact (magistrate or LEO/complainant)

- ✓ If the LEO or complainant is responsible for contacting DACJJ to confirm a juvenile's status, and it is determined that the juvenile should be charged as an adult, refer to local practice regarding what information is required for the magistrate to move forward with issuing the process(es)

❖ **ACIS**

- ✓ Magistrates who have inquiry access to ACIS can view prior convictions

- ✓ Contact your BSA or consult the Learning Center for ACIS training

- ✓ ACIS access can be requested via the AOC-A-151 form

❖ **CJLEADS**

- ✓ Magistrates who have access to CJLEADS can view prior convictions

- ✓ Consult the Learning Center for CJLEADS training
 - Search for *DIT CJLEADS (End User Training) Judicial Only*

- ✓ CJLEADS access can be requested via the CJLEADS Judicial Users Access Request Form available on JUNO.
 - Search for *CJLEADS Judicial Users Access Request Form*

Initial Appearance

INITIAL APPEARANCE

Exceptions to Pretrial Release Procedures:

A Guide for Magistrates Initial Appearance-Page 1

Domestic Violence 48-Hour Rule Initial Appearance-Page 5

Problems in Determining the

Conditions of Pretrial Release Initial Appearance-Page 13

Problems in Setting Pretrial Release Conditions Initial Appearance-Page 17

EXCEPTIONS TO PRETRIAL RELEASE PROCEDURES: A GUIDE FOR MAGISTRATES

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

| Category | Specific Situation | Response | Statutory Basis | Form to Use |
|--|--|---|------------------------|--|
| Delay initial appearance altogether | Person is unable to understand rights (ex., person is unconscious, grossly intoxicated, does not understand English) | Delay initial appearance for reasonable time without setting PTR conditions. If you commit person to jail until able to understand rights, set reasonable outer time limit and check regularly with jail. To avoid delay of initial appearance if person does not speak English, use telephone interpreting service when possible. | 15A-511(a)(3) | AOC-CR-200 Fill out commitment portion of form only. Check the box to hold person “for the following purpose” and write purpose. Do not set PTR conditions in upper portion of form. |
| Conduct initial appearance, BUT delay setting pretrial release conditions | Person is charged with domestic violence offense under “48-hour” law | Conduct initial appearance, but do not set PTR conditions. Order that person be returned to magistrate if judge does not set PTR conditions within 48 hours. After 48 hours, magistrate has authority to delay setting of PTR conditions for reasonable time if person continues to pose danger | 15A-534.1 | AOC-CR-200 Fill out commitment portion of form only. Check the domestic violence box and indicate when defendant should be returned to magistrate if judge has not acted. |
| | Felony by person on probation if insufficient information about danger to public | Conduct initial appearance, but do not set PTR conditions. Order that person be brought for first appearance before judge no later than 96 hours. If sufficient information before then, set PTR conditions. | 15A-534(d2) | AOC-CR-200, AOC-CR-272 (side one) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side one) |
| | Violation of probation by person who has pending felony charge or who is subject to sex offender registration if insufficient information about danger to public | Conduct initial appearance, but do not set PTR conditions. If defendant has been held for 7 days without PTR conditions, defendant must be brought before any judicial official to set PTR conditions. If sufficient information before then that not a danger, set PTR conditions. | 15A-1345(b1) | AOC-CR-200, AOC-CR-272 (side two) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side two) |
| | Violation of 14-277.6 or 14-277.7 (threat of mass violence on educational property or place of worship) | Conduct initial appearance, but do not set PTR conditions. Order that person be returned to magistrate if judge does not set PTR conditions within 48 hours. After 48 hours, magistrate may retain defendant for reasonable time while determining PTR conditions if immediate release poses danger of injury and appearance bond will not prevent injury | 15A-534.7 | AOC-CR-200 |

| Category | Specific Situation | Response | Statutory Basis | Form to Use |
|--|--|---|---|--|
| <p>Conduct initial appearance, set pretrial release conditions, BUT delay release</p> | <p>Probable cause of impaired driving offense and clear and convincing evidence that person is so impaired as to present danger to self or others if released</p> | <p>Set pretrial release conditions and order defendant into custody, up to 24 hours, until he or she is no longer impaired to dangerous extent or sober responsible adult agrees to take custody.</p> | <p>15A-534.2</p> | <p>AOC-CR-200, AOC-CR-270 Make special findings in AOC-CR-270 (side one). Use AOC-CR-200 for PTR conditions; check the box that release is subject to AOC-CR-270.</p> |
| <p>Conduct initial appearance, BUT deny any pretrial release conditions if criteria met</p> | <p>Probable cause that individual was exposed to defendant in a nonsexual manner that poses significant risk of transmission of AIDS or Hepatitis B</p> | <p>Contact public health official to determine risk of transmission. If risk exists, order defendant detained for up to 24 hours for testing. Set PTR conditions, to go into effect once testing is completed.</p> | <p>15A-534.3</p> | <p>AOC-CR-200, AOC-CR-270 (side two) See above.</p> |
| <p>Conduct initial appearance, BUT deny any pretrial release conditions if criteria met</p> | <ul style="list-style-type: none"> • Capital offense • Fugitive from another state charged with offense punishable by life in prison or death, or fugitive charged with any offense after arrest on Governor's warrant • Out-of-state probationer arrested for violation of probation if subject to Interstate Compact for Adult Supervision • Offense while person was involuntarily committed or on escape from involuntary commitment if person is still subject to commitment • Certain drug trafficking offenses • Certain gang offenses • Certain offenses with firearm • Violation of certain health control measures if person poses health and safety threat • Certain methamphetamine offenses • Military deserter • Violation of post-release supervision or parole • Violation of probation by person who has pending felony charge or is subject to sex offender registration if danger to public¹ | <p>In all of these situations, deny release if criteria are met. Make findings if required.</p> <p>If offense is while person was involuntarily committed or on escape from involuntary commitment, and person is still subject to commitment, person should be returned to treatment facility.</p> <p>If offense is violation of health control measure (under 130A-145 or 130A-475), pretrial confinement terminates when judicial official finds, based on recommendation of state or local health director, that person no longer poses health and safety threat.</p> | <ul style="list-style-type: none"> • 15A-533(c) • 15A-736 • Ch. 148, Art. 4B (Interstate Compact) • 15A-533(a) • 15A-533(d) • 15A-533(e) • 15A-533(f) • 15A-534.5 • 15A-534.6 • Case law • 15A-1368.6, • 15A-1376 • 15A-1345(b1) | <p>AOC-CR-200</p> <p>In upper portion of form, check the box that states "Your release is not authorized." In additional information section, write any findings or instructions.</p> <p>If a violation of probation by a person who has a pending felony charge or is subject to sex offender registration, also check appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side two)</p> |

1. Also applies if probationer would be subject to sex offender registration but for the effective date of NC's sex offender registration program.

| Category | Specific Situation | Response | Statutory Basis | Form to Use | |
|---|---|--|------------------------|---|--|
| <p>Conduct initial appearance, BUT set certain pretrial release conditions</p> | <p>Arrested on order for arrest (OFA) after failure to appear (FTA)</p> | <p>If OFA requires certain PTR conditions, set those conditions. If OFA does not require PTR conditions, set secured bond in at least twice the amount of previous bond. If OFA does not require conditions and there was no previous bond, set secured bond of at least \$1,000. If defendant was already surrendered by surety for this FTA and made new bond, release defendant without setting new bond.</p> | <p>15A-534(d1)</p> | <p>AOC-CR-200 Set pretrial release conditions. Check the box in upper portion of form that defendant was arrested or surrendered for FTA. Also check the box if this is defendant's second or subsequent FTA.</p> | |
| | <p>Surrendered by surety following FTA</p> | <p>Require secured bond in at least twice the amount of previous bond. If defendant was already arrested for this FTA and made new bond, release defendant without setting new bond. If defendant has not been arrested for this FTA, attempt to get OFA recalled.</p> | <p>15A-534(d1)</p> | <p>AOC-CR-200 See immediately above. See also AOC-CR-214 (surrender of defendant by surety)</p> | |
| | <p>New offense while on pretrial release for prior offense</p> | <p>May require (was, shall require) secured bond in at least twice the amount of previous bond for the charges. If no previous bond for the charges, may require (was, shall require) secured bond of at least \$1,000.</p> | <p>15A-534(d3)</p> | <p>AOC-CR-200 Set pretrial release conditions with required bond amount.</p> | |
| | <p>Felony by person on probation if danger to public</p> | <p>Set secured bond, with or without electronic house arrest.</p> | <p>15A-534(d2)</p> | <p>AOC-CR-200, AOC-CR-272 (side one) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side one)</p> | |
| | <p>Electronic house arrest</p> | <p>If you require house arrest with electronic monitoring, set secured bond.</p> | <p>15A-534(a)</p> | <p>AOC-CR-200 Check appropriate box.</p> | |
| | <p>Order of judge</p> | <p>Follow judge's order.</p> | | <p>AOC-CR-200</p> | |
| | <p>Domestic violence offense</p> | <p>If authorized to set PTR conditions, magistrate may impose conditions that defendant stay away from victim, not assault victim, not damage specified property, and may visit defendant's children at times specified in court order</p> | <p>15A-534.1(a)(2)</p> | <p>AOC-CR-200, AOC-CR-630 In space for restrictions in AOC-CR-200, refer to AOC-CR-630 if additional conditions included there.</p> | |
| | | | | | |
| | | | | | |
| | | | | | |

| Category | Specific Situation | Response | Statutory Basis | Form to Use |
|--|---|---|--|---|
| Set certain pretrial release conditions (cont'd) | Sex offenses and crimes of violence against a minor | In addition to any other PTR conditions, require that defendant stay away from, not communicate with, and not assault, threaten, or harm alleged victim; stay away and non-communication conditions may be waived on proper findings. | 15A-534.4 | AOC-CR-200, AOC-CR-631 In space for restrictions in AOC-CR-200, refer to AOC-CR-631 if additional conditions included there. |
| | Threats of mass violence | If authorized to set PTR conditions, magistrate may impose conditions that defendant stay away from threatened educational property or place of worship and, unless granted permission by person in control of property, other such properties. | 15A-534.7 | AOC-CR-660 |
| Reasons that initial appearance and/or pretrial release conditions may NOT be delayed or denied | When fingerprints or DNA sample have not been collected as required by certain statutes | In addition to any other PTR conditions, require the collection of fingerprints or DNA sample as condition of release. | 15A-534(a) | AOC-CR-200 In space for restrictions, write condition. |
| | Noncitizens | No authority to delay or deny PTR conditions. If ICE has filed detainer, defendant may be detained by jail for additional 48 hours (excluding weekends and holidays) after defendant makes PTR conditions. | 8 C.F.R. 287.7 (ICE detainer) | AOC-CR-200 Fill out release order as in other cases. |
| Reasons that initial appearance and/or pretrial release conditions may NOT be delayed or denied | Out-of-county offenses or violations | No authority to delay or deny PTR conditions. | | AOC-CR-200, AOC-CR-241 (out-of-county process verification recall and transmission) |
| | Arrest without paperwork | No authority to delay or deny PTR conditions. | 15A-401(a)(2) (arrest authority when warrant not in possession of officer) | AOC-CR-200 |
| Reasons that initial appearance and/or pretrial release conditions may NOT be delayed or denied | DCI hit states "no bond" | No authority to delay or deny PTR conditions. | | AOC-CR-200 |
| | Probation violation by in-state probationer or "absconder" | No authority to delay or deny PTR conditions except in the circumstances in 15A-1345(b1), described above. | 15A-1345(b) (bail following arrest for probation violation) | AOC-CR-200 |

Domestic Violence Crimes and the 48-Hour Rule

Jeff Welty
UNC School of Government
December 2019

Overview

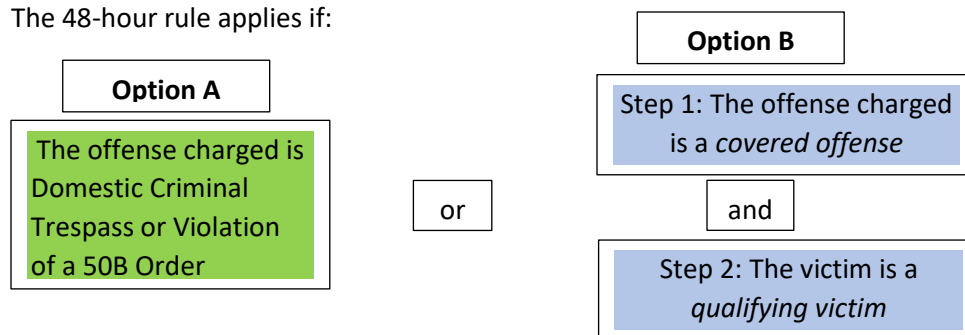
G.S. 15A-534.1 provides that, for certain domestic violence crimes, only a judge may set conditions of release in the first 48 hours after the defendant’s arrest. A magistrate is empowered to set conditions only if 48 hours pass without a judge setting conditions. For example, if a defendant is arrested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

The rule applies “[i]n all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.” G.S. 15A-534.1.

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

48-Hour Rule Flow Chart

The 48-hour rule applies if:



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

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

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

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

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

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

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

Step 1: Covered offenses

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

Assaults

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

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

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

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

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

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

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

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

Stalking

The only offense that is clearly covered under this provision is

- G.S. 14-277.3A: Stalking

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

Communicating threats

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

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

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

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

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

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

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

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

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

Felonies in Article 8 (“Assaults”)

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

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

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

Felonies in Article 10 (“Kidnapping and Abduction”)

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

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

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

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

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

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

Step 2: Qualifying victims

If a defendant is charged with a covered offense, the applicability of the 48-hour rule depends on the existence of a qualifying victim. The statute provides that such a victim is “a spouse or former spouse [of the defendant], a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6).” Thus, a qualifying victim must have one of the following relationships to the defendant:

- *Spouse*. Presumably this applies when the victim and the defendant are legally married, even if separated or in the process of divorce.
- *Former spouse*. There is no time limit in the statute, so this provision appears to apply even if the defendant and the victim divorced years or decades ago.
- *Person with whom the defendant lives as if married*. Although this term is not defined in the statute, presumably this provision applies when the victim and the defendant live together and have a romantic or sexual relationship.
- *Person with whom the defendant has lived as if married*. As with the category “former spouse,” there is no time limit in the statute regarding when the defendant and the victim must have lived together.
- *Person with whom the defendant is in a dating relationship as defined in G.S. 50B-1(b)(6)*. Under G.S. 50B-1(b)(6), a “a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.”
- *Person with whom the defendant has been in a dating relationship as defined in G.S. 50B-1(b)(6)*. Again, there is no time limit in the statute regarding when the dating relationship must have existed.

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

persons of the opposite sex who are in a dating relationship or have been in a dating relationship. A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

Note that nothing in the definition of “dating relationship” requires the parties to be of different sexes. Under the statute, a “dating relationship” is a “personal relationship” only if the parties are of different sexes, but the applicability of the 48-hour rule turns on the existence of a “dating relationship,” not the existence of a “personal relationship.”⁶

Conclusion

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

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

PROBLEMS IN DETERMINING THE CONDITIONS OF PRETRIAL RELEASE

[Choose best answer(s) for each problem]

1. Frank Furrillo is arrested and brought before you for communicating threats to Joyce Davenport. Furrillo has been living as if married with Davenport for the past 18 months. Furrillo appears to be very upset at being arrested, but he cooperates with you and makes no threats. What action should you take?
 - a. Set release conditions as usual.
 - b. Set release conditions and commit him to jail for a reasonable time.
 - c. Do not set release conditions and commit him to jail for a reasonable time.
 - d. Place him in a holding cell for about 30 minutes.
 - e. Commit him to jail because only a judge may set release conditions for the period of 48 hours from Furrillo's arrest.

2. Charles Manson was arrested and was charged with being drunk and disruptive. After you have found probable cause he starts screaming obscenities in a loud voice. You ask him to be quiet and he yells louder. This continues for several minutes and then he quiets down. Every few minutes he continues to mumble obscenities. What action should you take?
 - a. Place him in a holding cell for about 30 minutes.
 - b. Set release conditions as usual.
 - c. Set release conditions and commit him to jail for a reasonable time.
 - d. Do not set release conditions and commit him to jail for a reasonable time.

3. Amy Ames, a local prostitute, is arrested and charged with assault on a government officer. She walked up to his patrol car, leaned in the open window, yelled "buzz off," and slapped him in the face. You have placed her under a \$500 secured bond. May you specify that the bond is to be satisfied with "cash only"?
 - a. Yes
 - b. No, unless authorized by a judge in local pretrial release policy

4. It is near the end of your shift and you have just conducted an initial appearance for Wilson Snipes. You have placed him under a \$2,000 secured bond. Snipes is resting uncomfortably in the jail because he cannot make bond. On the next shift (you are asleep at home) another magistrate, without consulting you, modifies Mr. Snipes' bond and places him under an unsecured bond. Snipes is released. Was the second magistrate's modification legally authorized based on these facts?
 - a. Yes
 - b. No

5. Willis Souse has been charged with disorderly conduct. He is grossly intoxicated and you have decided to delay the initial appearance pursuant to G.S. 15A-511(a)(3). You have checked the box to "hold him for the following purpose" on the commitment order. What is the best choice for completing that part of the order?
 - a. "Hold until sober."
 - b. "Hold a maximum of 8 hours."
 - c. "Hold until sober or a maximum of 24 hours."
 - d. "Hold until sober or a maximum of 8 hours."

6. Ruby Jones tells you that her husband, Will Jones, beat her and she asks you to issue an assault warrant against him. Ruby is badly bruised and her husband has a history of hitting her. You issue a warrant for his arrest. When Will Jones is brought before you he mumbles “that bitch will pay for this when I hit the street tonight.” What action should you take?
- Set release conditions as usual.
 - Set release conditions and commit him to jail for a reasonable time.
 - Do not set release conditions and commit him to jail for a specified reasonable period of time.
 - Commit him to jail for 12 hours.
 - Commit him to jail because only a judge may set release conditions for the period of 48 hours from Will Jones' arrest.
7. Pierre “Happy Feet” Jones has been arrested and charged with criminal trespass. This is the fifth time that he has been arrested for trespass after being forbidden. On each occasion he has trespassed on the property of Joan Arke. You have placed him under a \$500 secured bond and have attached a condition that he refrain from going on her property. Is that a legally authorized condition?
- Yes
 - No
8. Otis, the town drunk, is arrested and charged with misdemeanor breaking and entering. He has a bottle of Thunderbird stuffed into his coat pocket and he reeks of alcohol. Otis falls asleep on the floor while you are talking with the officer. He wakes up when prodded, but each time he goes back to sleep. Otis does not appear to recognize you, though you have known him for years. What action should you take?
- Set release conditions as usual.
 - Set release conditions and commit him to jail for a reasonable time until he is sufficiently sober to appear before you for an initial appearance.
 - Do not set release conditions and commit him to jail for a reasonable time until he is sufficiently sober to appear before you for an initial appearance.
9. Peter “The Rabbit” Martin has been arrested and charged with misdemeanor breaking and entering. You have known Peter for years and believe that basically he is a good kid. He does not have a criminal record. Recently you have heard that he is being influenced by a group of thugs (who have been charged with break-ins) who hang out at the local pool hall, the Corner Pocket. You release Peter on his written promise to appear and attach a condition that he stay away from the Corner Pocket. Is this condition legally authorized?
- Yes
 - No
- Are you required to change his pretrial release conditions if Peter gets mad and demands a secured bond without conditions?
- Yes
 - No
10. L. Winston Vanderbilt has been arrested and charged with second-degree forcible rape. You have placed him under a \$10,000 secured bond. Vanderbilt has lived in the community all his life and certainly will appear for trial. However, he has no friends, is not married, and has no relatives in North Carolina. He is a millionaire, but his assets are frozen in numerous investments. May Vanderbilt be released if he agrees to sign his own secured bond by posting his own cash?
- Yes
 - No

11. Walt Crowell has been arrested and charged with assaulting his wife, Wanda Crowell. Walt Crowell is brought before you after 48 hours have elapsed because a judge was not available to set conditions of pretrial release. You place him under a \$500 secured bond. You also have attached a condition that Walt stay away from Wanda at home and at work. In addition, you have attached a condition that he not harass or assault her. Are these conditions legally authorized?

a. Yes

b. No

12. Defendant was arrested by law enforcement officers on a DCI hit on a warrant from another county. The officers do not have the warrant when they bring the defendant to you. What should you do?

PROBLEMS IN SELECTING THE PROPER CHARGE AND SETTING PRETRIAL RELEASE CONDITIONS

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

To assist in doing these problems, the following is a list of each class of felonies and the minimum and maximum punishment for each, with the minimum based on a mitigated sentence in Prior Record Level 1 and the maximum based on an aggravated sentence in Prior Record Level VI:

| | | | |
|---------------|-----------------------------------|--------------|-----------------|
| Class A..... | life without parole or death | Class E..... | 15 to 98 months |
| Class B1..... | 144 months to life without parole | Class F..... | 10 to 59 months |
| Class B2..... | 92 to 471 months | Class G..... | 8 to 44 months |
| Class C..... | 44 to 261 months | Class H..... | 4 to 30 months |
| Class D..... | 38 to 229 months | Class I..... | 3 to 15 months |

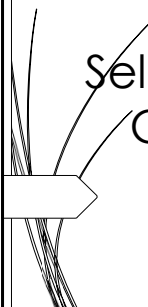
1. Detective Steve Roman arrests without a warrant and brings in Allen Watts Ewing, age 26, of 1150 Brookside Drive. Earlier this evening—in the course of a search of Ewing’s home with a search warrant—ten pounds of marijuana were found in his bedroom. He also had a .38 caliber pistol under his jacket in his belt. Ewing has two previous arrests and convictions for misdemeanor assault and has been employed as a cook at the same place for the past two years.
2. Officer Kerry Davis arrests without a warrant Jerry Dennis Lawrence, age 18, of 1407 Roosevelt Drive, and brings him to you. Early this afternoon, Lawrence saw the keys in the ignition of Marsha Williams’ 1982 Volkswagen, license TRG 887, when the car was parked on Kennedy Street. Lawrence got in the car, drove it to Frame Street on the other side of town, and abandoned it, just before being apprehended by Davis. Lawrence lives with his parents and is a high school student. He has a previous conviction for reckless driving.
3. SBI agent Felix Katz brings in Troy K. Cake, age 24, arrested under an arrest warrant for selling heroin and possessing heroin with intent to sell and deliver. The arrest warrant was issued in a county located 200 miles from your county. Cake has no prior arrests. Cake has \$1,500 cash and says he would be willing to post a cash bond.

4. A Highway Patrol Officer arrest K.T. Rowse, age 19, of 65 Roosevelt Drive, for DWI. Rowse's alcohol concentration is 0.27. Rowse is cooperative but appears to be extremely intoxicated. There is no sober adult willing and able to take care of him.
5. A new .45 caliber Smith & Wesson revolver, serial #RR456J77, fair market value of \$345, was stolen from Smithville Gun and Hobby Shop during a nighttime break-in two days ago. An undercover officer bought it this morning for \$30 from Fred Lloyd, age 30, and then arrested him without a warrant and brings him to you. Lloyd is a resident of the county and has one prior conviction for felonious breaking and entering.
6. Detective Nancy Stone arrests Wayne Buchanan without a warrant and brings him to you and explains: Last night Wayne Buchanan poured gasoline inside and set fire to Donald Bell's 1991 Ford Mustang. The entire back seat was burned before the fire was extinguished. Buchanan is 16 years old and lives with his parents in town. He refuses to be released to the custody of his parents and he has previously failed to appear in court for a reckless driving charge.
7. Deputy Sheriff Samuel Burden arrests Steve Wiles, age 18, with an order for arrest for Wiles for failing to appear in court for the charge of accessory after the fact of armed robbery. The order for arrest was issued by a district court judge in your county and bears the notation "\$25,000 secured bond."
8. A city police officer arrests Susan T. Jones, age 35, of 66 E. Main Street, for DWI. Jones's alcohol concentration is 0.20. Jones is uncooperative and extremely intoxicated. Her husband, age 37, was a passenger in the car that Jones was driving. He is sober, has a valid driver's license, and states that he will take care of her until she becomes sober.
9. Officer Jesse Wilson appears at your office with Ron Z. Bloat, age 31. The officer has arrested Bloat based on an outstanding arrest warrant for a \$55 worthless check. It is Saturday night. Bloat has a long history of mental trouble. Shortly after his appearance a worker from the Franklin Mental Health Clinic appears and says the Clinic would be happy to see to it that Bloat appears in court.

Selecting Process

SELECTING PROCESS


| | |
|--|---------------------------|
| Selecting (and Completing) Process In-Class Materials | Selecting Process-Page 1 |
| Selecting Process Class Exercises | Selecting Process-Page 13 |
| Core North Carolina Statutes Defining Forms of Criminal Process (Current as of February 2022): | |
| NCGS 15A-302 (Citation) | Selecting Process-Page 17 |
| NCGS 15A-303 (Criminal Summons)..... | Selecting Process-Page 19 |
| NCGS 15A-304 (Arrest Warrant)..... | Selecting Process-Page 21 |
| NCGS 15A-305 (Order for Arrest)..... | Selecting Process-Page 23 |
| NCGS 15A-511 (Subsection (c) Defines Magistrate’s Order)..... | Selecting Process-Page 25 |
| “Going Back to the Well, er, Magistrate” Blog Post..... | Selecting Process-Page 27 |
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| Affidavit (AOC-CR-158) | Selecting Process-Page 33 |
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Selecting (and Completing) Process

John Rubin/ Tom Thornburg
UNC School of Government
February 2022


1



United States Constitution, Amendment IV

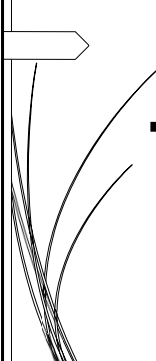
- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

2





- An arrest is a seizure under the Fourth Amendment and must be reasonable to be constitutional.

3



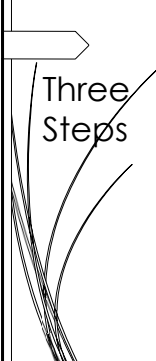
■ Arrest is reasonable if there is a factual basis for believing the person arrested/ to be arrested has committed a crime. The amount of factual information necessary to justify an arrest is called probable cause.

4



**YOUR
ROLE**

5



**Three
Steps**

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

What process, if any, should be issued?


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

6

I. Determining Probable Cause

- "The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances. We have stated, however, that "[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt."

Maryland v. Pringle, 540 U.S. 366 (2003)



7

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

Beck v. Ohio, 379 U.S. 89 (1964)

8



Evidence from officers
Including via remote testimony



Evidence from citizens



Hearsay evidence

Sources of Evidence


9

Credibility

Can you consider credibility?

If so, what factors should you consider?

10



11

Credibility Factors

- Basis of Knowledge
 - First hand? Detailed? Consistent?
- Indicators of reliability
 - Officers or others trained to be neutral, victims presumed to be reliable, disinterested parties, history of truthfulness (may consider reasons to doubt)
 - Corroborating evidence or witnesses
 - Be more wary of interested witnesses and anonymous parties

12

When not to charge

Felonies based on citizen complaints

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

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

Obscenity offenses. G.S. 14-19.20

Offenses committed entirely in other counties

13

Defenses

Can you consider defenses? If so, which ones?

Can you consider whether evidence may be excluded or suppressed?

14

Loose Ends about Probable Cause

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

15

II. Purposes of Criminal Process

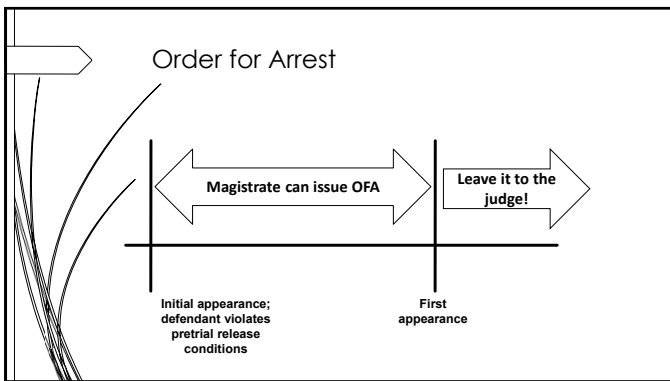
- Establishes the court's authority to act
- Compels the defendant to come to court
- Gives the defendant notice of the charge
- Provides a record of the case

16

Selecting Process: the Options

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

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Selecting Process:
Warrant vs. Summons

- Statutory preference
- Statutory factors
- Felonies
- Citizens

19



Statutory Preference

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

20

Statutory Factors

- "Circumstances to be considered . . . include
 - 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."

21

G.S. 15A-303
Official
Commentary

- "The appropriate use of the criminal summons is in any case in which it appears that it is not necessary to arrest the defendant and take him into custody. . . ."
- "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"

22

Citizen-Initiated Charges (G.S. 15A-304)

- If probable cause is based solely on an affidavit or oral testimony of a person who is not a law enforcement officer, the issuing official shall issue a summons instead of a warrant unless:
 - There is corroborating testimony from an officer or disinterested witness.
 - Investigation by law enforcement would be a substantial burden for the complainant.
 - There is substantial evidence of one or more statutory factors favoring a warrant.

23

III. Creating Process Correctly

24

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


(a) A criminal pleading must contain

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

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Charging Language

NCAWARE



26

Charging Language

Jeffrey B. Welty and Christopher Tyrner

Arrest Warrant & Indictment Forms

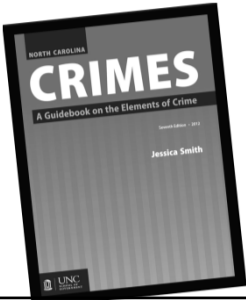
ARREST WARRANT AND INDICTMENT FORMS

2019 EDITION

27

Charging Language

North Carolina Crimes



28

Charging Language


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

If any person, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or resisting the laws, shall join or in any way connect or unite himself with any oath-bound secret political or military organization, society or association of whatsoever name or character; or shall form or organize or combine and agree with any other person or persons to form or organize any such organization; or as a member of any secret political or military party or organization shall use, or agree to use, any certain signs or grips or passwords, or any disguise of the person or voice, or any disguise whatsoever for the advancement of its object, and shall take or administer any extrajudicial oath or other secret, solemn pledge, or any like secret means; or if any two or more persons, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or circumventing the laws, shall secretly assemble, combine or agree together, and the more effectually to accomplish such purposes, or any of them, shall use any certain signs, or grips, or passwords, or any disguise of the person or voice, or other

29

Charging Language

School of Government Hotline???



30

More Requirements for Factual Statement

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

31

Charging Language: Common Problems

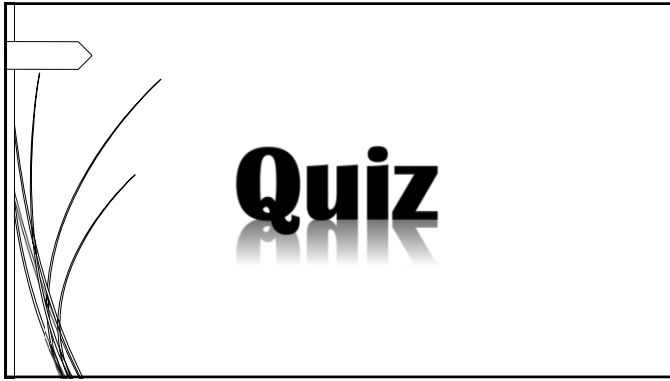
- In larceny cases, failing to allege victim's name and, if a business, that it is an entity capable of owning property
- In larceny cases, failing to describe the property stolen accurately
- In drug cases, failing to identify the controlled substance accurately
- In R/D/O cases, failing to include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

32

Loose Ends re Creating Process

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

33



34

Selecting (and Completing) Process

In Class Exercises

Jeff Welty

UNC School of Government

Rev'd Feb. 2020 by John Rubin

Considering Evidence from Citizens

1. Lisa Lopez comes before you. She reports that her boyfriend, Dan Spillane, pushed her to the ground during an argument last night. She has no visible injuries. She says that she did not call the police at the time, but she has decided that what Dan did was not OK. You know that Lisa has taken out charges on Dan twice before and has asked that the charges be dropped each time. What do you do?

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

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

Considering Defenses

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

2. Felicia Jackson comes before you. She wants you to charge her sister Angela with misdemeanor larceny for stealing Felicia's Olympic silver medal. Felicia tells you that she keeps the medal in a display case in her guest bedroom. Angela came for a three-day visit recently and when she left, the case had been opened and the medal was gone. Felicia says that Angela struggles with mental illness and substance abuse and during one part of the visit claimed to be "Athena reborn, goddess of the Olympics." At other times, she acknowledged that she was Angela. Felicia has no idea what Angela was thinking when she took the medal or whether she even understood that it was wrong to do so. What do you do?

3. Ophelia Welborn comes before you. She is a 21-year-old college student. She wants you to charge her former high school classmate, Thad Brinks, with sexual battery. She describes an incident that took place during a "beach week" trip three years ago, just after graduation, when both she and Thad were 18 years old. Thad grabbed her buttocks without her consent and made a lewd remark about her body. Ophelia did not report the incident at the time, but she has decided that Thad should be held accountable. You know that the statute of limitations for misdemeanors in North Carolina is two years. What do you do?

Warrant vs. summons

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

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

3. There is probable cause that Sterling, a businessman who owns multiple fast-food franchises in town, committed statutory rape of a person 15 years or younger. He had sex with a 14-year-old girl he met when she came to interview him for her school newspaper. Sterling has lived in town his entire life, owns significant property in town, and has no criminal record. Would you issue a summons or a warrant?

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

Arrest warrant form treasure hunt

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

Drafting charging language

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

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

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

(b) The following definitions apply to this section:

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

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

Neither NCAOC nor the School of Government has drafted charging language for this offense. You want to charge Kevin Denny with a violation of this statute based on his statement to his ex-girlfriend Alexis Anderson that he "will blow up her stupid church with all her stupid friends and family in it." She attends First Baptist Church of Hometown, NC. How should the charge read?

§ 15A-302. Citation.

(a) Definition. – A citation is a directive, issued by a law enforcement officer or other person authorized by statute, that a person appear in court and answer a misdemeanor or infraction charge or charges.

(b) When Issued. – An officer may issue a citation to any person who he has probable cause to believe has committed a misdemeanor or infraction.

(c) Contents. – The citation must:

- (1) Identify the crime charged, including the date, and where material, identify the property and other persons involved,
- (2) Contain the name and address of the person cited, or other identification if that cannot be ascertained,
- (3) Identify the officer issuing the citation, and
- (4) Cite the person to whom issued to appear in a designated court, at a designated time and date.

(d) Service. – A copy of the citation shall be delivered to the person cited who may sign a receipt on the original which shall thereafter be filed with the clerk by the officer. If the cited person refuses to sign, the officer shall certify delivery of the citation by signing the original, which shall thereafter be filed with the clerk. Failure of the person cited to sign the citation shall not constitute grounds for his arrest or the requirement that he post a bond. When a citation is issued for a parking offense, a copy shall be delivered to the operator of a vehicle who is present at the time of service, or shall be delivered to the registered owner of the vehicle if the operator is not present by affixing a copy of the citation to the vehicle in a conspicuous place.

(e) Dismissal by Prosecutor. – If the prosecutor finds that no crime or infraction is charged in the citation, or that there is insufficient evidence to warrant prosecution, he may dismiss the charge and so notify the person cited. An appropriate entry must be made in the records of the clerk. It is not necessary to enter the dismissal in open court or to obtain consent of the judge.

(f) Citation No Bar to Criminal Summons or Warrant. – If the offense is a misdemeanor, a criminal summons or a warrant may issue notwithstanding the prior issuance of a citation for the same offense. If a defendant fails to appear in court as directed by a citation that charges the defendant with a misdemeanor, an order for arrest for failure to appear may be issued by a judicial official.

(g) Preparation of Form. – The form and content of the citation is as prescribed by the Administrative Officer of the Courts. The form of citation used for violation of the motor vehicle laws must contain a notice that the driving privilege of the person cited may be revoked for failure to appear as cited, and must be prepared as provided in G.S. 7A-148(b). (1973, c. 1286, s. 1; 1975, c. 166, ss. 3, 27; 1983, c. 327, s. 4; 1985, c. 385; c. 764, s. 4; 1989, c. 243, s. 1; 2003-15, s. 1.)

§ 15A-303. Criminal summons.

(a) **Definition.** – A criminal summons consists of a statement of the crime or infraction of which the person to be summoned is accused, and an order directing that the person so accused appear and answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) **Statement of the Crime or Infraction.** – The criminal summons must contain a statement of the crime or infraction of which the person summoned is accused. No criminal summons is invalid because of any technicality of pleading if the statement is sufficient to identify the crime or infraction.

(c) **Showing of Probable Cause; Record.** – The showing of probable cause for the issuance of a criminal summons, and the record thereof, is the same as provided in G.S. 15A-304(d) for the issuance of a warrant for arrest.

(d) **Order to Appear.** – The summons must order the person named to appear in a designated court at a designated time and date and answer to the charges made against him and advise him that he may be held in contempt of court for failure to appear. Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the issuance or reissuance of the criminal summons.

(e) **Enforcement.** –

(1) If the offense charged is a criminal offense, a warrant for arrest, based upon the same or another showing of probable cause, may be issued by the same or another issuing official, notwithstanding the prior issuance of a criminal summons.

(2) If the offense charged is a criminal offense, an order for arrest, as provided in G.S. 15A-305, may issue for the arrest of any person who fails to appear as directed in a duly executed criminal summons.

(3) A person served with criminal summons who willfully fails to appear as directed may be punished for contempt as provided in G.S. 5A-11.

(4) Repealed by Session Laws 1975, c. 166, s. 4.

(f) **Who May Issue.** – A criminal summons, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, ss. 4, 5; 1975, 2nd Sess., c. 983, s. 138; 1983, c. 294, s. 3; 1985, c. 764, s. 5.)

§ 15A-304. Warrant for arrest.

(a) Definition. – A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused, and an order directing that the person so accused be arrested and held to answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) When Issued. –

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

(c) Statement of the Crime. – The warrant must contain a statement of the crime of which the person to be arrested is accused. No warrant for arrest, nor any arrest made pursuant thereto, is invalid because of any technicality of pleading if the statement is sufficient to identify the crime.

(d) Showing of Probable Cause. – A judicial official may issue a warrant for arrest only when he is supplied with sufficient information, supported by oath or affirmation, to make an independent judgment that there is probable cause to believe that a crime has been committed and that the person to be arrested committed it. The information must be shown by one or more of the following:

- (1) Affidavit;
- (2) Oral testimony under oath or affirmation before the issuing official; or
- (3) Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts.

If the information is insufficient to show probable cause, the warrant may not be issued. A judicial official shall not refuse to issue a warrant for the arrest of a person solely because a prior warrant has been issued for the arrest of another person involved in the same matter.

(e) Order for Arrest. – The order for arrest must direct that a law-enforcement officer take the defendant into custody and bring him without unnecessary delay before a judicial official to answer to the charges made against him.

(f) Who May Issue. – A warrant for arrest, valid throughout the State, may be issued by:

- (1) A Justice of the Supreme Court.
- (2) A judge of the Court of Appeals.
- (3) A judge of the superior court.
- (4) A judge of the district court, as provided in G.S. 7A-291.
- (5) A clerk, as provided in G.S. 7A-180 and 7A-181.
- (6) A magistrate, as provided in G.S. 7A-273. (1868-9, c. 178, subch. 3, ss. 1-3; Code, ss. 1132-1134; 1901, c. 668; Rev., ss. 3156-3158; C.S., ss. 4522-4524; 1955, c. 332; 1969, c. 44, s. 27; c. 1062, s. 1; 1973, c. 1286, s. 1; 1997-268, s. 2; 2004-186, s. 15.1; 2017-176, s. 5(a); 2018-40, s. 7.1.)

§ 15A-305. Order for arrest.

(a) **Definition.** – As used in this section, an order for arrest is an order issued by a justice, judge, clerk, or magistrate that a law-enforcement officer take a named person into custody.

(b) **When Issued.** – An order for arrest may be issued when:

- (1) A grand jury has returned a true bill of indictment against a defendant who is not in custody and who has not been released from custody pursuant to Article 26 of this Chapter, Bail, to answer to the charges in the bill of indictment.
- (2) A defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required.
- (3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to G.S. 15A-303 or a citation issued by a law enforcement officer or other person authorized by statute pursuant to G.S. 15A-302 that charged the defendant with a misdemeanor.
- (4) A defendant has violated the conditions of probation.
- (5) In any criminal proceeding in which the defendant has become subject to the jurisdiction of the court, it becomes necessary to take the defendant into custody.
- (6) It is authorized by G.S. 15A-803 in connection with material witness proceedings.
- (7) The common-law writ of *capias* has heretofore been issuable.
- (8) When a defendant fails to appear as required in a show cause order issued in a criminal proceeding.
- (9) It is authorized by G.S. 5A-16 in connection with contempt proceedings.

(c) **Statement of Cause and Order; Copy of Indictment.** –

- (1) The process must state the cause for its issuance and order an officer described in G.S. 15A-301(b) to take the person named therein into custody and bring him before the court. If the defendant is to be held without bail, the order must so provide.
- (2) When the order is issued pursuant to subdivision (b)(1), a copy of the bill of indictment must be attached to each copy of the order for arrest.

(d) **Who May Issue.** – An order for arrest, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, s. 6; 1977, c. 711, s. 21; 2003-15, s. 2.)

Article 24.

Initial Appearance.

§ 15A-511. Initial appearance.

(a) Appearance before Magistrate. –

- (1) A law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate as provided in G.S. 15A-501.
- (2) The magistrate must proceed in accordance with this section, except in those cases in which he has the power to determine the matter pursuant to G.S. 7A-273. In those cases, if the arrest has been without a warrant, the magistrate must prepare a magistrate's order containing a statement of the crime with which the defendant is charged.
- (3) If the defendant brought before a magistrate is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, upon order of the magistrate he may be confined or otherwise secured. If this is done, the magistrate's order must provide for an initial appearance within a reasonable time so as to make certain that the defendant has an opportunity to exercise his rights under this Chapter.

(a1) A proceeding for initial appearance in a noncapital case under this section may be conducted by an audio and video transmission between the magistrate or other authorized judicial official and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding. Prior to the use of audio and video transmission pursuant to this subsection, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts.

(b) Statement by the Magistrate. – The magistrate must inform the defendant of:

- (1) The charges against him;
- (2) His right to communicate with counsel and friends; and
- (3) The general circumstances under which he may secure release under the provisions of Article 26, Bail.

(c) Procedure When Arrest Is without Warrant; Magistrate's Order. – If the person has been arrested, for a crime, without a warrant:

- (1) The magistrate must determine whether there is probable cause to believe that a crime has been committed and that the person arrested committed it, and in the manner provided by G.S. 15A-304(d).
- (2) If the magistrate determines that there is no probable cause the person must be released.
- (3) If the magistrate determines that there is probable cause, he must issue a magistrate's order:
 - a. Containing a statement of the crime of which the person is accused in the same manner as is provided in G.S. 15A-304(c) for a warrant for arrest, and
 - b. Containing a finding that the defendant has been arrested without a warrant and that there is probable cause for his detention.

(4) Following the issuance of the magistrate's order, the magistrate must proceed in accordance with subsection (e) and must file the order with any supporting affidavits and records in the office of the clerk.

(d) Procedure When Arrest Is Pursuant to Warrant. – If the arrest is made pursuant to a warrant, the magistrate must proceed in accordance with subsection (e).

(e) Commitment or Bail. – If the person arrested is not released pursuant to subsection (c), the magistrate must release him in accordance with Article 26 of this Chapter, Bail, or commit him to an appropriate detention facility pursuant to G.S. 15A-521 pending further proceedings in the case.

(f) Powers Not Limited to Magistrate. – Any judge, justice, or clerk of the General Court of Justice may also conduct an initial appearance as provided in this section. (1868-9, c. 178, subch. 1, s. 7; Code, s. 1130; Rev., s. 3182; C.S., s. 4548; 1973, c. 1286, s. 1; 1975, c. 166, ss. 9-11; 1975, 2nd Sess., c. 983, s. 141; 1997-268, s. 1.)

North Carolina Criminal Law

A UNC School of Government Blog

Going Back to the Well, er, Magistrate

Posted on [Feb. 2, 2010, 8:40 am](#) by [Jeff Welty](#)



I've been asked several times recently whether an officer who asks a magistrate to issue an arrest warrant and is turned down based on a lack of probable cause can simply go to another magistrate and ask the other magistrate to issue the warrant. The answer is yes.

There's no double jeopardy problem because jeopardy hasn't attached yet. In district court matters, it attaches when the first witness begins to testify, and in superior court matters, it attaches when the jury is empaneled and sworn. Nor is there any other principle of law that prevents the officer from "shopping" for a favorable magistrate. The situation is analogous to when a grand jury declines to issue an indictment in a matter — in such a circumstance, the state is free to resubmit the case to a later grand jury in the hopes of a different result. *See generally* 42 C.J.S. Indictments § 39 ("At common law, and in the absence of a governing statute, the prosecuting attorney may, without first obtaining leave of court, submit to one grand jury charges which a previous grand jury has ignored."); *In re Superior Court Order*, 70 N.C. App. 63 (1984), *rev'd in part on other grounds*, 315 N.C. 378 (1986) (recognizing that "[t]here is apparently no [legal] prohibition against resubmitting the same information on a new bill of indictment," though noting that such a procedure may be burdensome). Similarly, when one magistrate turns down a search warrant application for lack of probable cause, an officer generally may submit the same application to another magistrate. *United States v. Pace*, 898 F.2d 1218 (7th Cir. 1990) (holding that the government is not estopped "from seeking a second magistrate's approval to search when another magistrate denies a search warrant").

Of course, if a magistrate is aware that another magistrate has previously refused to issue a warrant in a particular matter, the magistrate should pay close attention to the officer's showing of probable cause. But in the end, the magistrate must make a probable cause determination using his or her best independent judgment. The first magistrate may have erred, or the officer may have obtained additional evidence in the interim that justifies a different result.

Category: [Procedure](#), [Uncategorized](#) | Tags: [arrest warrants](#), [grand jury](#), [magistrates](#), [search warrants](#)

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North Carolina Criminal Law
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Statutory Limits on Issuing Process

John Rubin, UNC School of Government, Feb. 2020

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

Charges against school employees

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

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

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

G.S. 14-32.2(g)

Patient abuse causing death or bodily injury (felony)

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

Exceptions: None stated.

Procedure: None indicated.

G.S. 14-19.20

Obscenity offenses (felony/misdemeanor)

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

Exceptions: None stated.

Procedure: None indicated.

G.S. 15A-304(b)

Warrant for arrest

(b) When Issued.--

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

G.S. 7A-38.5

Mediation of citizen-initiated charges

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

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

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

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

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

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

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

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

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

STATE OF NORTH CAROLINA

File No. (if applicable)

Scan No. (Official Use Only)

_____ County

In The General Court Of Justice
 District Superior Court Division

NOTE TO AFFIANT: Do not sign this Affidavit until you are before a notary or other public official authorized by law to administer an oath in North Carolina. If this Affidavit is provided in a case already pending in the courts, include the file number and county in which the case is pending above and the name of the defendant below. An affidavit is a statement given under oath that its contents are true and accurate. Any false statement or information contained in this affidavit may subject you to prosecution for the felony of perjury, N.C.G.S. 14-209, or under other statutes that prohibit false statements under oath. False statements or the unauthorized disclosure of information protected by law from disclosure also might subject you to civil liability to any person harmed by those statements. This Affidavit may be disclosed to the public as provided in the North Carolina Public Records Act, N.C.G.S. Chapter 132, and related statutes. You cannot prevent that disclosure by marking statements with "confidential," "privileged," or any similar terms.

STATE VERSUS

Name Of Defendant (if applicable)

Name Of Affiant (type or print)

Agency (if law enforcement officer)

AFFIDAVIT

AFFIDAVIT

The undersigned Affiant, having been duly sworn or affirmed, deposes and states that Affiant is competent to give the testimony below. Affiant makes the following statements of fact from Affiant's personal knowledge, except as to statements specifically identified below as made upon information and belief, which Affiant believes to be true and for which the source of information and the basis for belief are stated.

This is page number 1 of _____ (total number of pages).

NOTE: If additional pages are needed, use form AOC-CR-158A (Affidavit Continuation) for all subsequent pages.

NOTE TO OFFICIAL ADMINISTERING OATH: For a multi-page affidavit, complete the oath/affirmation on the last page. If the Affidavit was transcribed by another person for an Affiant who understands English but cannot read, do not swear the scribe to the Affidavit. Only the Affiant is to be sworn to the Affidavit, but read the Affidavit completely to the Affiant before administering the oath/affirmation. For an Affidavit translated into English from a statement in another language, record the oath/affirmation only on the English version, and swear the translator to the Affidavit on Side Two of the last page.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Name (type or print)

Signature Of Affiant

Notary

Signature

SEAL

Date My Commission Expires

County Where Notarized

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

AOC-CR-158, New 12/17

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TRANSLATOR'S AFFIDAVIT

Name Of Translator (type or print)

I, the translator named above, having been duly sworn or affirmed, depose and say the following:

I have translated into English the Affidavit on the reverse and all additional pages of this Affidavit from _____,
 (identify original language)

and I hereby certify that the translation is a true, complete, and accurate translation to the best of my knowledge and ability based upon (check one)

- the Affiant's verbal relation to me, for which this Affidavit also is a complete and accurate transcription of the verbal statements as related to me, without material omission or substantive alteration.
- the Affiant's written statement in its original language, which is attached to this Affidavit and incorporated herein by reference.

I further certify that I'm qualified to render such a translation by:

- federal certification by the Administrative Office of the United States Courts (AOUSC) as a court interpreter;
- certification by the North Carolina Administrative Office of the Courts (NCAOC) as a court interpreter;
- ATA certification in the requested language combination; and/or
- _____
 (state other basis for qualification to translate)

| | | |
|---|---|--|
| SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME | | Date |
| Date | Name (type or print) | Signature Of Translator |
| <input type="checkbox"/> Notary | Signature | |
| SEAL | Date My Commission Expires | County Where Notarized |
| <input type="checkbox"/> Deputy CSC | <input type="checkbox"/> Assistant CSC | <input type="checkbox"/> Clerk Of Superior Court |
| <input type="checkbox"/> Superior Court Judge | <input type="checkbox"/> District Court Judge | <input type="checkbox"/> Magistrate |

Criminal Process—In Class Materials
Rev'd by John Rubin, Feb. 2020

Quiz

1. What are the 5 types of process/pleadings encountered by magistrates?

2. When can you issue a citation?

3. A magistrate never has to worry about whether an officer completed a citation correctly.
True False

4. You can use the AOC criminal summons form to charge a felony.
True False

5. When deciding whether to issue a summons or a warrant, what should you consider?

6. Officer arrests the defendant, brings the defendant to you, swears out facts supporting probable cause, and asks for a warrant for arrest. If you find probable cause, what should you do?

7. An order for arrest charges a crime?
True False

Search Warrants

SEARCH WARRANTS

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| Search Warrant Form (AOC-CR-119) and copy | Search Warrants-Page 23 |
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A Short Introduction to Search Warrants

Jeff Welty

UNC School of Government

July 2018

Overview and history. The founders of the United States of America valued individual liberty. They abhorred the absolute power of the English king and believed in limiting the power of the government. The first ten amendments to the Constitution – commonly known as the Bill of Rights – reflect the founders’ shared commitment to freedom from government oppression.

Different amendments protect different rights. For example, the First Amendment protects free speech and the free exercise of religion, while the Second Amendment protects the right to bear arms. The Fourth Amendment to the Constitution is the amendment that is pertinent to search warrants. It protects citizens’ rights to be free from unreasonable searches and seizures. The Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In this context, the reference to “Warrants” means search warrants. A search warrant is simply “a court order . . . directing a law-enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items.”¹ The Fourth Amendment requires that a search warrant be supported by *probable cause* and that it be limited in scope to a *particular place* to be searched and *particular things* to be seized. These requirements were reactions to the English concept of a general warrant, which gave the king’s officers unlimited authority to enter and search people’s homes for evidence of wrongdoing. The founders believed that officers should be able to invade people’s homes only to the extent necessary to collect evidence of a specific offense, and only after a judicial official had determined that it was likely that evidence of wrongdoing would be found. The North Carolina Constitution contains similar provisions protecting citizens from unreasonable searches.²

¹ G.S. 15A-241.

² Art. I sec. 20 of the North Carolina Constitution provides: “General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.” Court decisions have interpreted this language to be virtually coextensive with the protections of the Fourth Amendment.

The Fourth Amendment is the cornerstone of the law concerning search and seizure.³ Courts have interpreted the Amendment as stating or implying the following precepts:

- Searches and seizures must be reasonable.
- Searches conducted pursuant to a valid warrant are reasonable.
- A valid warrant requires (1) probable cause, (2) a specific description of the place to be searched, and (3) a specific description of the property to be seized.
- Searches conducted without a valid warrant are unreasonable unless an exception to the warrant requirement applies. (There are quite a few exceptions, including consent and exigent circumstances, but the exceptions are beyond the scope of this paper.)

Because the Fourth Amendment often requires officers to obtain search warrants before conducting searches, and because applications for search warrants are often directed to magistrates, it is important for magistrates to understand the legal limits on search warrants, including the requirements of probable cause and particularity. Those topics are discussed in greater detail below.

Applying for a search warrant. Normally, the person seeking a search warrant will be a law enforcement officer. The officer may use form AOC-CR-119, which is available on the NCAOC website, or may use a form or format created by his or her agency. It is common, but not required, for officers to attach supplementary pages to the form rather than trying to cram all of the necessary information into the blanks on the form.

Whatever form is used, the application will contain a sworn statement, or affidavit, from the applicant. The statement must set forth factual information that establishes probable cause to believe that items subject to seizure – generally, evidence of a crime – will be found in a particular place.⁴

The application may be submitted to any magistrate or judge. If the issuing official is a superior court judge or an appellate judge, the search warrant is valid statewide, while a search warrant issued by a district court judge is valid throughout the judge's district, and one issued by a magistrate is valid in

³ Although the Fourth Amendment is the foundation of the law in this area, statutory and case law are also pertinent. For example, Article 11 of Chapter 15A of the North Carolina General Statutes establishes a number of important procedural requirements governing search warrants.

⁴ G.S. 15A-244.

the magistrate's county.⁵ Because judges are often busy with court during the day and are not formally "on duty" at night, most search warrant applications are presented to magistrates.

Determining probable cause. The magistrate must determine whether the application does, in fact, establish probable cause. Probable cause is meant to be a practical and common sense standard. It is a lower hurdle than proof beyond a reasonable doubt, or even proof by a preponderance of the evidence. On the other hand, it must be more than a hunch or a suspicion. There is a considerable body of case law regarding whether certain facts amount to probable cause. Many of those cases are collected and summarized in Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (5th ed. 2015).

Often, the application will provide information that the applicant received from another source, as opposed to his or her own observations. That is perfectly acceptable, but it is important to consider the reliability of the source when determining whether probable cause exists. The other source may be another officer; a crime victim; a witness; a confidential informant; or an anonymous tipster. Generally, information from other officers, victims, and ordinary witnesses may be treated as credible unless there is a reason to do otherwise. By contrast, information from confidential informants and anonymous tipsters should be viewed with a healthy skepticism. Such information normally isn't reliable enough to provide probable cause on its own – it must be corroborated, at least in part, unless it comes from an informant with a proven track record of reliability.

Sometimes the information in an application will provide probable cause that evidence of a crime was present at a particular location at one time, but that time is long past. For example, an officer may develop evidence that a suspect sold drugs from his house six months ago. Such information is said to be "stale" and will not provide probable cause to support a search warrant. Courts have suggested that information older than two months is at a greater risk of being stale, but staleness depends on many factors other than how old the information is, including what kind of evidence is at issue and whether the crime in question was a one-time incident or an ongoing business activity.

Determining particularity. In addition to determining probable cause, a judicial official must determine whether a search warrant application describes the place to be searched and the property to be seized with sufficient particularity. The purpose of the particularity requirement is to ensure that officers search for the right items in the right places and do not go on general rummaging expeditions.

⁵ G.S. 15A-243.

As to the place to be searched, it is generally sufficient to describe real property, such as a home or an apartment, by its address. However, providing additional information, such as a description of the premises, its longitude and latitude, or driving directions to reach it, is a common practice and may be helpful if the address turns out to be inaccurate. Vehicles likewise may be identified by plate number or VIN number but also may be described by make, model, color, and the like.

As to the object of the search, the description should be sufficiently precise that an officer not involved in the investigation could read the description of the items to be seized and know what property to seize and what to leave in place. The more common an item is, and the more likely that it may be possessed legally, the more specific the description should be. For example, in a case involving a stolen bicycle, it might not be sufficient to describe the property to be seized simply as “a bicycle” – bicycles are very common and are legal to possess, and an officer executing the warrant could easily come across multiple bicycles on the premises and be unsure which one to seize. “A blue girls’ Trek bicycle with a white wicker basket on the handlebars” would be a much better description. By contrast, courts are more forgiving when the property in question is contraband that it would never be wrong to seize. So, “a quantity of cocaine” might be a perfectly adequate description.

Issuance, execution, and return. If the application establishes probable cause, satisfies the particularity requirement, and is otherwise in order, a magistrate should issue the warrant. An officer must execute the warrant – that is, must conduct the search – within 48 hours.⁶ Once the warrant has been executed, the officer must provide a list of items seized to the person from whom they were taken,⁷ and must return the warrant to the clerk along with a copy of the list.⁸

⁶ G.S. 15A-248.

⁷ G.S. 15A-254.

⁸ G.S. 15A-257.

Test Yourself

Answer the following questions, then check the answers on the back side of this sheet.

1. Which amendment to the United States Constitution concerns search and seizure?
 - a. The First Amendment
 - b. The Second Amendment
 - c. The Fourth Amendment
 - d. The Fourteenth Amendment

2. What is the legal standard for issuance of a search warrant?
 - a. Probable cause
 - b. Reasonable suspicion
 - c. Preponderance of the evidence
 - d. Beyond a reasonable doubt

3. Which of the following may not issue a search warrant?
 - a. Magistrate
 - b. Sheriff
 - c. District court judge
 - d. Chief Justice of the Supreme Court of North Carolina

4. May probable cause be based on information provided by a confidential informant?
 - a. No
 - b. Yes, if the informant has a track record of reliability
 - c. Yes, if the information has been corroborated by a law enforcement officer
 - d. Both (b) and (c)

5. What period of time have courts said increases the risk that information will be stale?
 - a. 24 hours
 - b. 48 hours
 - c. Two weeks
 - d. Two months

Answers: c, a, b, d, d

Problem Pack for Search Warrants 101

Jeff Welty
School of Government
July 2018

1. Does the following information provide probable cause?

A narcotics officer states that yesterday, he purchased two ounces of cocaine for \$1,650 in marked bills. The cocaine was delivered to the applicant by three men, who were arrested when they delivered the cocaine. The officer further states that during the purchase, he and the suspects were under surveillance by other officers. The applicant states that “from the movement of the suspects during and before the purchase . . . and information received from two confidential sources of information after the purchase . . . the applicant has reason to believe that the U.S. currency . . . and other controlled substances are at this time located in” a residence belonging to a fourth man.

2. Does the following information provide probable cause?

An officer applies for a search warrant, stating: “A reliable informant who has provided accurate and reliable information in the past and whose information in the past had led to arrest[s] and convictions under the N.C. Controlled Substance[s] Act has told the undersigned that approximately one week ago the informant saw Lilly Ann Beam with approximately one pound of marijuana at her home on Ridge Road. Another informant told the undersigned that Lilly Ann Beam sold marijuana to them [today]. Lilly Ann Beam is on probation for [a] violation of the Controlled Substance[s] Act.” The officer wants a warrant to search Beam’s home for marijuana.

3. Does the following information provide probable cause?

An officer states that he has been “informed by a reliable confidential informant that he has been inside the [residence that is the subject of the warrant] within the past 48 hours and has seen cocaine inside the residence and cocaine is being sold at this time by the . . . occupants. The informant is familiar with how cocaine is packaged and sold on the streets, and he has used cocaine in the past. We have known this informant for three weeks and information provided by this informant has resulted in the seizure of controlled substances included in the N.C. Controlled Substances Act and led to the arrest of at least six individuals for violations of the N.C. Controlled Substances Act.”

4. Does the following information provide probable cause?

A deputy states: "During the last year I have been involved in several investigations concerning drug offenses in [this] County. Within the past five days . . . [a person] contacted me. This person offered his assistance . . . in the investigation of drug sales . . . This person told me that he had been inside the residence [that is the subject of the warrant] where he observed a room filled with marijuana plants. He stated that the suspect Charles Wayne Newcomb was maintaining the plants. This applicant confirmed the identity of the suspect to be Charles Wayne Newcomb. This information was obtained through D.M.V. records through vehicle registration. This applicant further checked with Duke Power Company and found this residence to have Charles Wayne Newcomb listed as the current occupant."

5. Does the following information provide probable cause?

An officer states: "Sometime between [one and five days ago]," the Fairchild Christian School in the City of Livingston "was broken into and two microscopes [described by brand elsewhere in the application]" were stolen. The officer also states that "sometime prior to this application a reliable and confidential informant personally contacted the applicant with the information that the stolen microscopes are in the above described residence of Mark Timothy Roark." The officer is seeking a warrant to search Roark's residence.

6. Does the following information provide probable cause?

An officer states that she and other officers "have received information from a confidential and reliable informant that . . . Bo King is residing at 1509 Luther Street and is possessing cocaine for the purpose of sale at 1509 Luther Street. This informant has been to 1509 Luther Street within the past 48 hours and has observed Bo King possessing cocaine. This informant is familiar with cocaine and how it is packaged for street use. [The officers] have known this informant for approximately [one and a half years] and during this time this informant's information has led to the arrests and convictions of many people for violations of the North Carolina Controlled Substances Act." The officer is seeking a search warrant for 1509 Luther Street.

7. Does the following information provide probable cause?

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

8. Does the following information provide probable cause?

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

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

True/False

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

True/False

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

True/False

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

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

13. Which of the following describe the place to be searched adequately?
- a. single family dwelling at 1132 Yale Place, Durham, N.C.
 - b. an apartment in the building at 198 West Cameron Avenue, Chapel Hill, N.C.
 - c. single family dwelling at 1818 Jameston Drive, Greensboro, N.C. and a 1990 Oldsmobile Delta 88, N.C. license plate number SFL 298, located in the driveway there
 - d. John Smith's apartment at the Oaks Apartments, Chapel Hill, N.C.
 - e. yellow 2 story stucco, Dutch colonial dwelling, located on Arrow Wood Drive (street number unknown), exactly 1 mile north of the intersection of US 15, on the east side of the road, Bahama, N.C. The dwelling has a green roof, green shutters, and a driveway with an oak tree on either side.

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

True/False

15. Failure to include a physical description of the building will render a search warrant invalid even if the address (street and number) is given and is correct.

True/False

16. If the officer who applies for a search warrant gives the magistrate information other than that in the affidavit, the magistrate

- a. may not consider this information under any circumstances.
- b. may always consider this information.
- c. may consider this information only if the affidavit is amended or a new affidavit is submitted.
- d. may consider this information only if the affidavit is amended or a new affidavit is submitted or if magistrate reduces the information to writing and files it with clerk, or if magistrate prepares a tape recording of the oral testimony.

Evaluation of Search Warrant Applications

Application 1

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

If so, do you have any reservations or concerns about it? Be specific. _____

Application 2

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

If so, do you have any reservations or concerns about it? Be specific. _____

Application 3

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

If so, do you have any reservations or concerns about it? Be specific. _____

IN THE MATTER: TIMOTHY WEAVER 1/26/1960 AND KENNETH WAYNE BARTLETT 12/27/1961 507 PARK AVENUE DURHAM NC

Description of Premises to be Searched

In the following premises: 507 PARK AVENUE. 507 PARK AVENUE IS A WHITE FRAME HOUSE WITH THE NUMBERS 507 DISPLAYED ON THE FRONT OF THE HOUSE. THERE ARE BRICK PILLARS ON THE FRONT OF THE HOUSE AND THERE IS ALSO A PORCH THAT EXTENDS THE LENGTH OF THE FRONT OF THE HOUSE. THERE IS A WHITE SHED IN THE BACK OF THE HOUSE USED AS A RESIDENCE BY KENNETH WAYNE BARTLETT AND KIMBERLY GRAY.

In the following vehicles: A BLUE PINTO STATION WAGON POSSESSED BY MR. TIMOTHY WEAVER AND MR. KENNETH WAYNE BARTLETT. A WHITE VOLVO POSSESSED BY MR. TIMOTHY WEAVER AND MR. KENNETH WAYNE BARTLETT. ANY OTHER VEHICLE THAT IS POSSESSED OR OCCUPIED BY TIMOTHY WEAVER, KENNETH WAYNE BARTLETT, OR ANY OTHER PERSONS INVOLVED IN ILLEGAL ACTIVITY AT 507 PARK AVENUE DURHAM NC.

Directions from Police Station 1, 2400 Holloway Street Durham N.C. -- TURN LEFT ONTO HOLLOWAY STREET. TRAVEL WEST ON HOLLOWAY STREET FOR APPROXIMATELY 1 MILE UNTIL YOU GET TO NORTH GUTHRIE AVENUE. TURN LEFT ONTO NORTH GUTHRIE AVENUE. MAKE A RIGHT ONTO SOUTHGATE STREET AND THEN ANOTHER RIGHT ONTO PARK AVENUE, ENDING AT 507 PARK AVENUE.

Probable Cause Affidavit

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant: I BEING THE AFFIANT, INVESTIGATOR A.M. CRISTALDI, AM CURRENTLY EMPLOYED AS A POLICE OFFICER WITH THE DURHAM POLICE DEPARTMENT. MY JOB DUTIES INCLUDE INVESTIGATING AND ENFORCING THE CRIMINAL LAWS ENACTED BY THE STATE OF NORTH CAROLINA. I HAVE RECEIVED OVER 900 HOURS OF FORMAL TRAINING FROM THE DURHAM POLICE DEPARTMENT IN VARIOUS TOPICAL AREAS INCLUDING POLICE LAW INSTITUTE, CRIMINAL INVESTIGATIONS, AND INTERVIEW & INTERROGATION. I HAVE BEEN EMPLOYED BY THE DURHAM POLICE DEPARTMENT FOR OVER 6 YEARS AND HAVE CONDUCTED OR BEEN INVOLVED IN EXCESS OF 100 INVESTIGATIONS AND AM CURRENTLY ASSIGNED TO THE DISTRICT 1 INVESTIGATIONS DIVISION WHERE I INVESTIGATE PROPERTY AND VIOLENT CRIMES TO INCLUDE ROBBERIES, RAPES, KIDNAPPINGS, ASSAULTS, AND BURLGARIES.

ON 3/25/07 I SPOKE WITH TWO INDEPENDENT WITNESSES THAT TOLD ME TIMOTHY WEAVER HAS BEEN PAYING KENNETH WAYNE BARTLETT AND

Affiant: A.M. Cristaldi Magistrate: [Signature]

Date: 4/26/07

APPLICATION 1: BARTLETT

000006

IN THE MATTER: TIMOTHY WEAVER 1/26/1960 AND KENNETH WAYNE
BARTLETT 12/27/1961 507 PARK AVENUE DURHAM NC

OTHERS CASH MONEY FOR PIPES AND COIL. MR. BARTLETT GOES OUT TO NEW HOUSING DEVELOPMENTS, APARTMENT COMPLEXES AND ANYWHERE ELSE HE CAN FIND PIPES AND COILS AND STEALS IT FROM THESE LOCATIONS. MR. BARTLETT USES ONE OF MR. WEAVERS VEHICLES TO TRANSPORT THIS STOLEN PIPE AND COIL BACK TO MR. WEAVER. MR. WEAVER THEN SELLS THE COPPER WIRE TO A SCRAP YARD AND SPLITS THE PROFITS WITH MR. BARTLETT. MY INDEPENDENT WITNESSES TOLD ME THAT ON 3/24/07 MR. BARTLETT WENT INTO CARY DRIVING A VEHICLE THAT MR. WEAVER GAVE TO HIM TO USE. MR. BARTLETT THEN WENT WITH HIS GIRLFRIEND (KIMBERLY GRAY) TO CARY WHERE THEY MADE FOUR TRIPS BACK AND FORTH FROM CARY TO DURHAM WITH COPPER WIRE MR. BARTLETT HAD STOLEN FROM THE HOUSES. THE COPPER WIRE INCLUDED THE LARGE COPPER PIPE THAT HAD THE PLACEMENT LOCATION INSIDE THE HOUSE WRITTEN ON IT. MR. WEAVER THEN WENT TO AMERICAN METALS IN GARNER NORTH CAROLINA ON THE MORNING OF 3/25/07 AND SOLD IT. I KNOW FROM DEALING WITH AMERICAN METALS THAT THEY ONLY BUY COPPER ON WEDNESDAYS AND FRIDAYS.

MY TWO INDEPENDENT WITNESSES ALSO TOLD ME THAT MR. WEAVER IS IN POSSESSION OF A SHOTGUN. MR. WEAVER KEEPS THE SHOTGUN HIDDEN INSIDE 507 PARK AVENUE. MR. WEAVER IS ALSO A CONVICTED FELON AND DOES NOT HAVE THE RIGHT TO POSSESS A FIREARM.

ON 4/26/07 I SPOKE WITH A REPRESENTATIVE FROM AMERICAN METALS WHO TOLD ME THAT TIMOTHY WEAVER WAS AT THAT LOCATION THE MORNING OF 4/25/07 SELLING WIRE AND COIL. THE REPRESENTATIVE SAID MR. WEAVER WAS THERE AROUND 0900 HOURS.

Description of Evidence to be Seized

There is probable cause to believe that the following property will be contained in the residence.

- 1- STOLEN COPPER WIRE TO INCLUDE PIPE AND COIL.
- 2- FIREARMS AND AMMUNITION
- 3- TOOLS USED FOR BUGLARIES INCLUDING BUT NOT LIMITED TO WIRE CUTTERS, SAWS, SCREW DRIVERS, PLIERS AND WRENCHES.
- 4- U.S. CURRENCY THAT IS THE FRUIT OF ILLEGAL SALES OF COPPER WIRE
- 5- TIMOTHY WEAVER WHITE MALE D/O/B 1/26/1960

Affiant: AM Cristaldi

Magistrate: AKC

Date: 4/26/07

Application For Search Warrant

I, Corporal Kevin Perry, Special Investigations Division, Sampson County Sheriff's Office, being duly sworn, request that the court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that:

- (1) Books, records, receipts, notes, ledgers, and other papers relating to the transportation, ordering, purchasing, in particular, Cocaine, a scheduled controlled substance included in the North Carolina Controlled Substance Act;
- (2) Books, records, receipts, bank statements and records, money drafts, letters of credit, money orders, cashier's check receipts, passbooks, bank checks, safe deposit boxes, safe deposit box keys, and other items evidencing the obtaining, secreting, transfer, and / or concealment of assets and the obtaining, secreting, transfer, concealment, and / or expenditure of money;
- (3) United States currency, precious metals, jewelry, and financial instruments, and other items indicative of the proceeds of illegal narcotics trafficking;
- (4) Photographs, including still photos, negatives, videotapes, undeveloped film and the contents therein, slides, in particular photograph of co-conspirators, of assets, and / or controlled substances;
- (5) Address and / or telephone books, rolodex entries and any papers reflecting the names, addresses, telephone numbers, pager numbers, fax numbers, cellular phone numbers of any co- conspirators, sources of supply, customers, financial institutions, and other individual or business with whom a financial relationship exist;
- (6) Papers and documents that would establish occupancy, residency, rental and / or ownership of the premises described herein, including, but not limited to utility and telephone bills, canceled envelopes, rental, purchase or lease agreements, and keys;
- (7) Firearms and ammunition, including, but not limited to handguns, pistols, revolvers, rifles, shotguns, machine-guns, and other weapons, and any records or receipts pertaining to firearms;

APPLICATION 2: TAYLOR

SWORN AND SUBSCRIBED BEFORE ME

Signature: [Signature] Date: September 27, 2006

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

Signature of Applicant: [Signature] Date: September 27, 2006

Application For Search Warrant

- (8) Electronic equipment, such as computers, cellular phones, pagers, facsimile machines, currency counting machines, tape recording devices, video recording devices, cameras and other items and related manuals used to generate, transfer, count, and / or to store information described in items 1, 2, 3, 4, 5, and 6 of this affidavit. Additionally, computer software tapes and discs, audiotapes, and the contents there in, containing the information generated by the aforementioned electronic equipment;
- (9) Controlled substances, in particular Cocaine, which is included in Schedule II of the North Carolina Controlled Substance Act and would be illegal to possess; in violation of North Carolina General Statute 90-95;
- (10) Paraphernalia, used to weigh, manufacture, sell, distribute, package, re-package, store, secret, ingest, inhale, inject, or otherwise introduce into the body a controlled substance, in particular Cocaine, which would be illegal to possess; in violation of North Carolina General Statute 90-113.22;

Would constitute evidence of a crime and the identity of a crime and the identity of a person participating in a crime, namely **Illegal Distribution of a Controlled Substance in Violation of North Carolina General Statute 90-95** and is located;

[X] on the following premises: which is described as a tan single wide mobile home located at 3095 Brewer Rd Faison, NC 28341 and the single story wood frame house that is located directly behind the mobile home. Directions to the residence are as follows: Travel Hwy 403 North from Clinton towards Faison. After crossing I-40 stay to the right and continue on Hwy 403 towards Faison. Turn right on to Brewer Rd. The house is located on the right side of the road just after a curve to the right approximately 100 feet off the roadway.

(and)

[X] on the following person(s): Any person or persons as may be on the premises of the residence to be searched at the time of the execution of this Search Warrant, should it please the Court for its issuance.

(and)

[X] in the following vehicle(s): Any vehicle as may be located within the curtilage of the residence to be searched or as may be determined to be under the dominion and control of any of the persons located within the residence to be searched at the time of the execution of this Search Warrant, should it please the Court for its issuance.

(and)

[X] Any outbuildings or other such appurtenances as may be affixed to the residence to be searched or situated within its curtilage at the time of the execution of this Search Warrant, should it please the Court for its issuance.

Application For Search Warrant

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

I, Corporal Kevin Perry, am a sworn law enforcement officer for the Sampson County Sheriff's Office and assigned as a Narcotic/Alcohol Enforcement Special Agent in the Special Investigation Division Previously I was a sworn law enforcement officer with the Goldsboro Police Department. I have been a sworn law enforcement officer for 02 years. I have served 10 years as a United States Marine where I was promoted to the rank of Sergeant and was awarded the Navy Achievement Medal, along with two Meritorious Mass commendations. As a law enforcement officer, I have received 500 hours training in the area of investigations and have been involved in over 100 Narcotic/Alcohol investigations. I have been awarded the Patriot award; meritorious award and I hold certificates for, The United States Department of Justice, Drug Enforcement Administration Basic Narcotic's Investigator School, Interview and Interrogations, and Methamphetamines awareness and recognition. I am familiar with the methods of operations of people involved in Narcotic/Alcohol and the evidence associated with these crimes. I will be known as Applicant from this point on.

-Based upon the Affiant's training, knowledge, experience and participation in other investigations involving the illegal distribution of controlled substances, He knows that:

-That persons involved in the illegal drug trade must maintain, on hand, U. S. currency in order to maintain and finance their on-going narcotics business. That this U. S. currency is maintained in the residence, businesses or other locations in which these persons maintain control over;

-That it is common for persons involved in the illegal drug trade to maintain books, tally sheets, records, notes, ledgers, airline tickets, receipts relating to the purchase of financial instruments and / or the transfer of funds, and other papers relating to the transportation, ordering, sale and distribution of controlled substances. That the aforementioned books, records, receipts, notes, ledgers, etc., are maintained within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to secret contraband, proceeds of drug sales, and records of drug transactions in secure locations within their residences, their businesses and / or other locations which they maintain dominion and control over, for the ready access and to conceal these items from law enforcement authorities.

SWORN AND SUBSCRIBED BEFORE ME:

Signature: [Signature] Date: September 27, 2006

Deputy CSC Assistant CSC Clerk of Superior Court

Magistrate District Court Judge Superior Court Judge

Signature of Applicant: [Signature] Date: September 27, 2006

Application For Search Warrant

-That it is common for persons involved in the illegal drug trade to maintain evidence pertaining to their obtaining, secreting, transfer, concealment and / or expenditure of narcotics proceeds such as: currency, financial instruments, precious metals and gemstones, jewelry, books, records, invoices, receipts, records of real estate transactions, bank statements and related records, passbooks, money drafts, letters of credit, money orders, bank drafts, cashiers checks, bank checks, safe deposit boxes, safe deposit box keys, and money wrappers. These items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to maintain address and / or telephone numbers in books or on papers, in rolodex entries and reflect the names, addresses, telephone numbers, pager numbers, fax numbers of their associates in the illegal drug trade. That these items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to have in their possession photographs / videotapes of themselves, their associates, their property and their product. That these items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to commonly have in their possession, that is on their person, at their residences, and / or other locations in which they have dominion and control over, firearms and other weapons. Said firearms and other weapons are used to protect and secure property. Such property may include, but not limited to: narcotics, jewelry, narcotics paraphernalia, books, records, and U. S. currency;

-That it is common for persons involved in the illegal drug trade to utilize electronic equipment, such as computers, cellular phones, pagers, facsimile machines, currency counting machines, tape recording devices, video recording devices, cameras and other items and related manuals used to generate, transfer, count, and / or to store information described in items 1, 2, 3, 4, 5, and 6 above;

-That it is common for persons involved in the illegal drug trade to keep on hand, that is on their person, in their residences, and / or other locations in which they have dominion and control over, controlled substances, in particular Cocaine. That this Cocaine would be used for the illegal sale, distribution and use of this controlled substance;

SWORN AND SUBSCRIBED BEFORE ME

Signature: _____

Date: September 27, 2006

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

Signature of Applicant: _____

Date: September 27, 2006

Application For Search Warrant

-That it is common for persons involved in the illegal drug trade to keep on hand, that is on their person, in their residences, and / or other locations in which they have dominion and control over, paraphernalia. That this Paraphernalia would be used to weigh, manufacture, sell, distribute, package, re-package, store, secret, ingest, inhale, inject, or otherwise introduce into the body a controlled substance which would be illegal to possess;

-In addition, the Affiant is aware that: during the past several months the Special Investigations Division of the Sampson County Sheriff's Office has received several complaints in reference to the sale of the controlled substance Cocaine, a controlled substance that is included in Schedule II of the North Carolina Controlled Substance Act, at the above location.

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

Within the past seventy-two, (72) hours, a Confidential Informant had visited the described location at the direction and surveillance of this Applicant and while at the location the Confidential Informant made a purchase of the controlled substance. Immediately after leaving the location, the Confidential Informant met with the applicant and turned over the controlled substance.

The Confidential Informant has proven reliable by making numerous controlled buys of controlled substances at the direction of the Applicant. This was accomplished by insuring the Confidential Informant has no controlled substances in his / her possession, then furnishing the informant with Special Funds, then directing the Confidential Informant to a predetermined location known as an illegal outlet for the sale of controlled substances. The Confidential Informant was observed entering the location and after only a few minutes leaving, then meeting with the applicant and turning over the substance purchased.

-Based on the above-mentioned facts, the Applicant prays to the Court for the issuance of this Search Warrant.

SWORN AND SUBSCRIBED BEFORE ME:

Signature:  Date: September 27, 2006

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

Signature of Applicant:  Date: September 27, 2006

Continuation page attached to the SEARCH WARRANT application, dated Thursday, July 14, 2005

CONTINUATION OF "PROPERTY / EVIDENCE TO BE SEIZED"

Hydrocodone (Schedule III), devices used to introduce controlled substances into the body which are illegal to possess, and evidence of ownership access, possession and control; also beepers, firearms, cellular phones, and US currency.

CONTINUATION OF "PREMISES, PERSON, VEHICLE, OR OTHER ITEM (S) TO BE SEARCHED"

A single story, single family dwelling, constructed of white vinyl siding with brick underpinning and black shutters, located at 5228 Statesville Road, Charlotte, Mecklenburg County, N.C., USA.

CONTINUATION OF "PROBABLE CAUSE AFFIDAVIT"

This applicant swears to the following facts to establish probable cause for a search warrant: Officer M.F. Warren #353 has received information from a confidential and reliable informant who has been in 5228 Statesville Road and has seen a large quantity of the Schedule III drug Hydrocodone in the residence without a prescription. This informant states that they have been in the above described location within the past 48 hours and have seen various forms of Hydrocodone throughout the house. This officer has known this informant for approximately 9 years. During this time, this officer has used information provided by this confidential and reliable informant to be true through independent investigations. This informant is familiar with various forms of Hydrocodone and the uses of various forms of Schedule III drugs.

Officer M.F. Warren #353 has been a Charlotte-Mecklenburg Police officer for 24 years and 6 months, including 7 years of Street level Drug Interdiction. I have been to various drug schools at the federal, state and local level. I have been directly or indirectly involved with over 1,900 drug arrests and have assisted with the execution of approximately 550 search warrants. Based on this affiant's training and experience, I have knowledge that firearms, beepers, cellular phones, and U.S. Currency are commonly used in the furtherance of drug distribution.

Based on the information contained in this application, I have knowledge that firearms, beepers, cellular phones, and US currency are commonly used in the furtherance of drug distribution. Based on the information contained in this application and the proven reliability of this informant, I request that a search warrant be issued for a single story, single family dwelling, constructed of white vinyl siding with brick underpinning and black shutters, located at 5228 Statesville Road, Charlotte, Mecklenburg County, N.C., USA.

SEP 01 2005

APPLICATION 3: EDWARDS

SWORN AND SUBSCRIBED TO BEFORE ME:

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

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

File No.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District/Superior Court Division

County

SEARCH WARRANT

IN THE MATTER OF

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Name Of Applicant

Name Of Additional Affiant(s)

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

| | | | |
|---------------|---------------|-----------------------------|-----------------------------|
| Date Received | Time Received | <input type="checkbox"/> AM | <input type="checkbox"/> PM |
| Date Executed | Time Executed | <input type="checkbox"/> AM | <input type="checkbox"/> PM |

I made a search of _____

_____ as commanded.

- I seized the items listed on the attached inventory.
- I did not seize any items.
- This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.

Name Of Officer Making Return (type or print)

Signature Of Officer Making Return

Department Or Agency Of Officer

Incident Number

Date Issued

Time Issued AM PM

Signature

Deputy CSC Assistant CSC CSC Magistrate District Ct. Judge Superior Ct. Judge

NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date

Time AM PM

Signature Of Magistrate

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

Date

Time AM PM

Name Of Clerk (type or print)

Signature Of Clerk

Dep. CSC
 Asst. CSC
 CSC

Original - File Copy - For Search of a Person, to Person from Whom Items Taken

Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon (Over)

File No.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District/Superior Court Division

County

SEARCH WARRANT

IN THE MATTER OF

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Name Of Applicant

Name Of Additional Affiant(s)

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

| | | | | |
|---------------|--|---------------|-----------------------------|-----------------------------|
| Date Received | | Time Received | <input type="checkbox"/> AM | <input type="checkbox"/> PM |
| Date Executed | | Time Executed | <input type="checkbox"/> AM | <input type="checkbox"/> PM |

I made a search of _____

_____ as commanded.

- I seized the items listed on the attached inventory.
- I did not seize any items.
- This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.

Name Of Officer Making Return (type or print)

Signature Of Officer Making Return

Department Or Agency Of Officer

Incident Number

Date Issued

Time Issued AM PM

Signature

Deputy CSC Assistant CSC CSC Magistrate District Ct. Judge Superior Ct. Judge

NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date

Time AM PM

Signature Of Magistrate

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

Date

Time AM PM

Name Of Clerk (type or print)

Signature Of Clerk


Dep. CSC
 Asst. CSC
 CSC

Original - File Copy - For Search of a Person, to Person from Whom Items Taken

Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon (Over)

Search Warrants

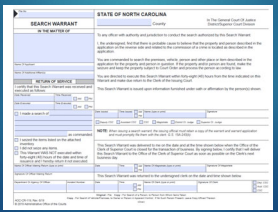
Jeff Welty
UNC School of Government
February 2022



1

What is a search warrant?

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



2

When do officers need warrants?

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

3

Where do the rules about warrants come from?

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

4

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

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

5

Plan for learning the law

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

6

Description of people

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

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that (Describe property to be seized, or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)

10

Naming the crime

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

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

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

11

Description of the place to be searched

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

12

Premises

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

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

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

(and)

Case

Sign

13

Person

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

(and)

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

(and)

14

Vehicles

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

(and)

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

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

15

Other items

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

OR SEARCH WARRANT

(and)
(Name and/or describe other places or items to be searched, if applicable)

The applicant swears or affirms to the following facts to establish probable cause for

16

Statement of probable cause (I)

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

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

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME Date

17

Statement of probable cause (II)

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

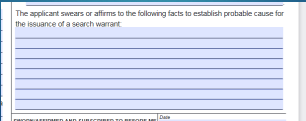
The applicant swears or affirms to the following facts to establish probable cause for the issuance of a search warrant:

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME Date

18

What you need to determine probable cause

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



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More about probable cause

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

20

Informants (I)

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

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Informants (II)

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

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Additional pages

- ▶ Common to use additional pages

NOTE: If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.

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Additional affidavits

- ▶ Not as common, but still OK

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

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

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

24

Execution and Return

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

| RETURN OF SEARCH WARRANT | | Officer |
|--|-------------|---------|
| I certify that the Search Warrant was received and executed as follows: | | |
| Date Issued | Time Issued | Officer |
| I executed a search of _____ | | |
| I returned the items listed on the attached inventory | | |
| I did not seize any items | | |
| NOTE: This form must be returned to the Clerk of the Court within 48 hours of the date and time of execution, along with a copy of the executed warrant and a copy of the inventory. | | |
| Signature of Officer | Name | Officer |
| Signature of Clerk of Court | Name | Clerk |

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Search Warrants

Jeff Welty
UNC School of Government
February 2022



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Impaired Driving Holds

IMPAIRED DRIVING HOLDS

Impaired Driving Holds & Implied Consent Offense Notices.....
..... Impaired Driving Holds-Page 1

Impaired Driving Holds & Implied Consent Offense Notices


Shea Denning
School of Government
February 2020



1

Impaired Driving Holds

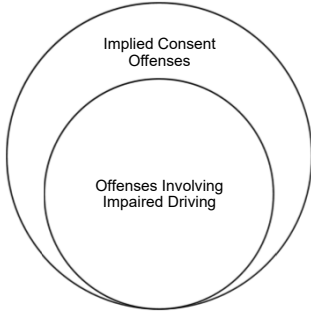

§ 15A-534.2. Detention of impaired drivers.
 (a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede a defendant's right to communicate with counsel and friends.
 (b) If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection (c) is met; provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.



2

Offenses involving impaired driving

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

3

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

10

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

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

11

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

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

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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 for a period no longer than 24 hours after the judicial official releases the defendant under this section for a period no longer than 24 hours. 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.

Callouts:

- No longer impaired to extent that he presents danger
- Sober, responsible adult willing and able to assume responsibility for defendant until no longer impaired
- No longer than 24 hours

UNC logo and navigation icons at the bottom.

13

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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15

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

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



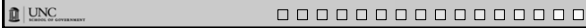
19

Implied Consent Offense Notice

§ 20-38.4. Initial appearance.
(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.
(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.
(2) In determining whether there is probable cause to believe a person is

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

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



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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 Offense
Decree to N.C.G.S. 20-38.4

1. Any person seeking to observe jailed or incarcerated impaired drivers shall first check in with the Staff Duty Officer or Detention staff on duty at the Guilford County Sheriff's Office. Observations are limited to the first twenty-four hours following the defendant's admission into the jail.
2. The Staff Duty or Detention Officer shall immediately notify the arresting officer and Booking officer that a witness is present to observe the defendant. The time of this notification shall be documented by Booking in the Booking log book and by the dispatcher on the attached witness observation form.
3. Booking shall inform the jail supervisor on-duty of the witness's presence in the facility. The supervisor shall send a detention officer to escort the witness to the jail or appropriate viewing area. The escorting officer shall obtain the form and complete the information concerning the name of the witness, the person to be observed, the time and date the witness was escorted to the jail and the time and date of the completion of the observation.
4. A witness seeking to observe the defendant shall be admitted to observe the defendant in an area designated by the Sheriff for observation of the defendant. Jail staff shall note the time the witness is admitted to the jail and the time the observation begins.
5. All witnesses shall be required to submit to a search of their person and belongings prior to 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 the provisions of G.S. 15A-534.2 apply to the person arrested.
 (b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)

AOC shall adopt forms of the established procedure to have the person who is unable to make bond, serve his condition or to administer an affidavit if the person is unable to make bond.

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23

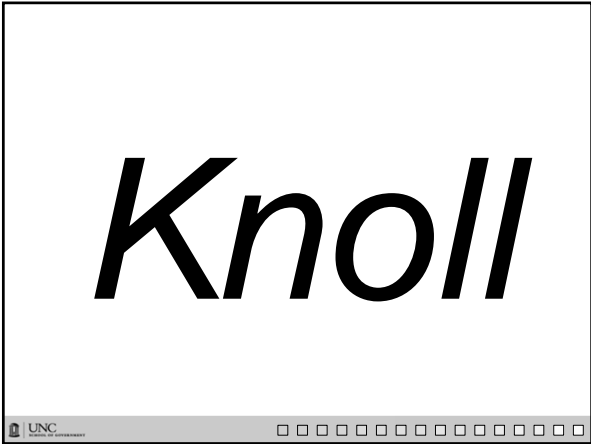
AOC-CR-271: Implied Consent Offense Notice

Defendant must list contacts and phone numbers

Magistrate: I informed defendant in writing of access procedures

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

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

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CVRs and Vehicle Seizures

CVRs AND VEHICLE SEIZURES

Civil License Revocations & Motor Vehicle SeizuresCVRs/Vehicle Seizures - Page 1

AOC-CR-323A – Affidavit for Seizure and Impoundment and

Magistrate Order for Impaired Driving.....CVRs/Vehicle Seizures - Page 17

Civil License Revocations & Motor Vehicle Seizures

Shea Denning
School of Government
February 2020



1

What is a CVR?

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

Know for Name: _____ IN THE MATTER OF: _____

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

FINDINGS FOR PROBABLE CAUSE

The undersigned judicial officer finds probable cause to believe that:

1. A law enforcement officer had reasonable grounds to believe that the above-named person committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
2. The above-named person has been charged with that offense as provided in G.S. 20-16.2(a);
3. All the reasonable grounds and the chemical analysis completed with the provisions of G.S. 20-16.2 and 20-136.1 in respect to the above-named person's submission to or procuring a chemical analysis, are:
 - a. A chemical analysis is subject to the provisions of G.S. 20-16.2;
 - b. Had an alcohol concentration of 0.08 or more at any relevant time after the driving;
 - c. Had an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle;
 - d. Had any alcohol concentration at any relevant time after the driving, and at the time of the offense, was under 21 years of age.
4. The above-named person has one or more pending offenses in the following jurisdiction(s): _____ in which the person's driver's license had been or is revoked under G.S. 20-16.5.

CONCLUSION

It is **CONCLUDED** that the above-named person's driver's license or privilege to drive is revoked. The above-named person is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation. The revocable periods in effect shall be: **20 days** for (a) through (c) above.

The state further requests whether driver's license or privilege to drive to the Court, or administrator that holds or has custody, be returned to the Court for Probable Cause No. 3 above is checked the state further requests whether driver's license or privilege to drive to the Court for Probable Cause No. 3 above is checked the state further requests to drive with restrictions and if that judgment, including any request, has been entered for the same offense and for all pending offenses for which holder driver's license or privilege to drive has 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 received appropriate notice from the person's jurisdiction of residence and has paid a \$100 fee to the Office of Register of Motor Vehicles.

State of North Carolina Department of Transportation, Office of Motor Vehicle Services, 1000 North Salisbury Street, Raleigh, NC 27601-1000
Date of Issuance: _____

NOTE: See statute for supplemental findings and order, and for allocation of blame.

Signature: _____ Title: _____
Signature: _____ Title: _____

If all the lines of this form are not fully completed, including the signature, do not forward the package, and then you may not receive your license and revocation order until you have completed the form.

2

CVRs in Implied Consent Cases

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

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



3

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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10

Compliance with procedures

- 5. After the driver was charged, I took the driver before _____, a chemical analyst authorized to administer a test of the driver's breath.
- 6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to conduct chemical analyses of the breath utilizing the Intox ECIR II.
- 7. I informed the driver orally and also gave notice in writing of the rights specified in G.S. 20-16.2(a). I completed informing the driver of the rights as indicated on the attached DHHS 4082.
- 8. I began observing the driver for the purpose of complying with the observation period requirements for a breath analysis in accordance with the methods/rules approved by the Department of Health and Human Services at _____ (a.k.a. j.p.m.) on the _____ day of _____, _____ at _____ (a.k.a. j.p.m.). I requested the driver to submit to a chemical analysis of his/her breath or blood or urine.
- 9. The driver was unconscious or otherwise incapable of refusal and therefore the notification of rights and request to submit to a chemical analysis were not made. I directed that taking of a blood sample by a person qualified under G.S. 20-138.1 based on the arrest warrant _____ (AOC-CR-155 search warrant issued and executed in this case) [] totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.
- 10. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methods/rules approved by the Department of Health and Human Services using an Intox ECIR II, and I printed the results of the driver's chemical analysis on the attached test record, DHHS 4082, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intox ECIR II on the _____ day of _____, _____ as shown on the preventive maintenance record. I provided the driver with a copy of the attached test record before any trial or proceeding in which the results of the chemical analysis may be used.

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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)

Last _____ First _____ MI _____
Driver License Number / State _____ Date of Birth _____ Citation Number _____

Breath Blood Subsequent Test

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

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

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

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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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Duplicate sequential breath samples?

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



14


Observation Period

- A period during which a chemical analyst observes the person . . . to determine that the person . . . has not ingested alcohol or other fluids, regurgitated, vomited, eaten, or smoked in the 15 minutes immediately prior to the collection of a breath specimen. The chemical analyst may observe while conducting the operational procedures in using a breath-testing instrument.



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




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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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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
- G.S. 20-138.5 - Driving While Impaired In Commercial Motor Vehicle
- G.S. 20-17(a)(12) - Habitual Driving While Impaired
- G.S. 20-17(a)(12) - Transporting Open Container - 2nd Or Subsequent
- G.S. 20-16(a)(7) - Out-Of-State Offense Similar To Driving While Impaired Resulting In NC Revocation
- G.S. 20-17(a)(1) - Manslaughter Involving Driving While Impaired
- G.S. 20-17(a)(3) - Any Felony In The Commission Of Which A Motor Vehicle Is Used, If The Offense Involves Impaired Driving
- G.S. 20-17(a)(9) - Any Offense Set Forth Under G.S. 20-141.4 Based On Impaired Driving
- G.S. 20-17(a)(11) - Conviction Of Assault With A Motor Vehicle If Offense Involves Impaired Driving
- G.S. 20-28.2(a)(3) - Laws of another state when the offense for which the person's drivers license is revoked prohibits substantially similar conduct that if committed in this state would result in a revocation based on one of the offenses listed above.

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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

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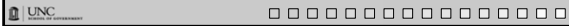
Purpose?

"[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."

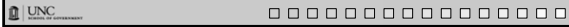
NHTSA, 2011 Highway Safety Countermeasure Guide at 1-34.



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DWI Seizure and Impoundment

- No waiver of towing and storage fees!
- G.S. 20-28.3(c): if requirements for seizure not met, the magistrate must order motor vehicle released to owner "upon payment of towing and storage fees"



44

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

File No.

In The General Court Of Justice
 District Court Division

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

G.S. 20-28.3

| | | | | | | | | | | | | | | | |
|---------------------------------|------|-----------------|---------------------|--|--|--|--|--|--|-----------------------------------|--|--|--|--|--|
| Name And Address Of Defendant | | | | | OFFICER'S AFFIDAVIT FOR SEIZURE AND IMPOUNDMENT AND MAGISTRATE'S ORDER - IMPAIRED DRIVING G.S. 20-28.3 | | | | | | | | | | |
| Defendant's Drivers License No. | | | State | | | | | | | Name And Address Of Vehicle Owner | | | | | |
| Vehicle Identification No. | | | Vehicle License No. | | | | | | | | | | | | |
| State | Year | Make | Model | Body Style | | | | | | Present Location Of Motor Vehicle | | | | | |
| Date Of Offense | | Date Of Seizure | | Time Of Seizure <input type="checkbox"/> AM <input type="checkbox"/> PM | | | | | | | | | | | |

I. OFFICER'S AFFIDAVIT

The undersigned being first duly sworn says:

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

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

II. MAGISTRATE'S ORDER

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

| | | |
|------|------------------------------------|-------------------------|
| Date | Name Of Magistrate (type or print) | Signature Of Magistrate |
|------|------------------------------------|-------------------------|

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

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

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

(Over)

III. OFFENSES INVOLVING IMPAIRED DRIVING

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

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

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

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

- G.S. 20-13.2 - Driving After Consuming Alcohol/Drugs While Less Than 21
- G.S. 20-16(a)(8b) - Military Driving While Impaired
- G.S. 20-16.2 - Refused Chemical Test
- G.S. 20-16.5 - Civil Revocation
- G.S. 20-17(a)(2) - Driving While Impaired
- Driving While Impaired In Commercial Motor Vehicle
- G.S. 20-138.5 - Habitual Driving While Impaired
- G.S. 20-17(a)(12) - Transporting Open Container - 2nd Or Subsequent
- G.S. 20-16(a)(7) - Out-Of-State Offense Similar To Driving While Impaired Resulting In NC Revocation
- G.S. 20-17(a)(1) - Manslaughter Involving Driving While Impaired
- G.S. 20-17(a)(3) - Any Felony In The Commission Of Which A Motor Vehicle Is Used, If The Offense Involves Impaired Driving
- G.S. 20-17(a)(9) - Any Offense Set Forth Under G.S. 20-141.4 Based On Impaired Driving
- G.S. 20-17(a)(11) - Conviction Of Assault With A Motor Vehicle If Offense Involves Impaired Driving
- G.S. 20-28.2(a)(3) - Laws of another state when the offense for which the person's drivers license is revoked prohibits substantially similar conduct that if committed in this state would result in a revocation based on one of the offenses listed above.

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

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

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

Contempt

CONTEMPT

| | |
|--|----------------------------|
| Essentials of Contempt for Magistrates | Criminal Contempt – Page 1 |
| Show Cause Order, Findings and Judgment - Failure To Pay Fine and/or Costs, To Obey Jury Summons, To Appear Pursuant To Criminal Summons, Or For Contempt (AOC-CR-219) | Criminal Contempt – Page 7 |
| Direct Criminal Contempt/Summary Proceedings/ Findings and Order (AOC-CR-390) | Criminal Contempt – Page 9 |

ESSENTIALS OF CONTEMPT FOR MAGISTRATES

Michael Crowell
UNC School of Government
October 2013
Update by Thomas H. Thornburg, July 2021

Different kinds of contempt

There are two kinds of contempt: criminal contempt and civil contempt.

Criminal contempt is used to punish for acts that disrupt a court proceeding or show disrespect, and also can be used for violation of court orders. Criminal contempt can be direct or indirect. Direct criminal contempt occurs in the court's presence; indirect does not. Criminal contempt can be punished by imprisonment and/or a fine.

Civil contempt is used to get someone to comply with a court order. There is no distinction between direct and indirect civil contempt; in any event, virtually all civil contempt takes place outside the court's presence. The only means of enforcing civil contempt is to imprison the person until the person complies with the court order.

Magistrate's authority

A magistrate's authority to use contempt is stated in G.S. 7A-292(a)(2). A magistrate may punish only for direct criminal contempt. That is, a magistrate may punish only for criminal contempt that takes place in the magistrate's presence. Any other kind of contempt must be referred to a district court judge.

Meaning of criminal contempt

Criminal contempt is defined in G.S. 5A-11. Only the acts listed in the statute may be punished by criminal contempt.

The contemptuous acts listed in G.S. 5A-11 most likely to be committed directly before a magistrate are:

- "Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings."
- "Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority."

It is also possible, though less likely, that this form of criminal contempt will be committed directly before a magistrate:

- “Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.”

One can also think of unusual situations in which the following forms of criminal contempt could occur directly before a magistrate, but most often they would not be direct contempt because the magistrate would not have actually observed the violation:

- “Willful disobedience of, resistance to, or interference with a court’s lawful process, order, directive, or instruction or its execution.”
- “Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.”

Meaning of direct contempt

G.S. 5A-13 says that an act is direct criminal contempt only when the act:

- “(1) Is committed within the sight and hearing of a presiding judicial official; and
- (2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and
- (3) Is likely to interrupt or interfere with matters then before the court.”

Summary or plenary proceeding

Contempt may be dealt with in a summary proceeding or a plenary proceeding. A summary proceeding means that the magistrate deals with the contempt right then and there as it occurs. That choice is always available for direct contempt. If for whatever reason the magistrate does not wish to deal with the contempt immediately, the magistrate may issue a show cause order for the defendant to appear before a district judge at a later time for a plenary proceeding. A summary proceeding is an on-the-spot quick determination of contempt; a plenary proceeding is more like a regularly-scheduled trial.

The summary proceeding

At a summary proceeding for direct criminal contempt the magistrate must tell the person that the magistrate is considering holding the person in contempt; describe what the person did that was contemptuous; and give the person a chance to respond why it is not contempt. Even if the conduct which is the basis for contempt is obvious to everyone, and it is clear that the defendant has no good excuse, the magistrate still must explain the basis for the contempt and still must give the defendant an opportunity to respond. The magistrate should also inform the person that contempt can be punished by imprisonment for up to 30 days and a fine of up to \$500.

The summary proceeding must be held “substantially contemporaneously” with the contempt. As a practical matter that means just as soon as the contempt occurs or within a few minutes thereafter. There can be situations in which it is permissible to delay the summary proceeding for a day or so, but a magistrate should not attempt to do that. If the contempt proceeding is not going to be held right away the magistrate should issue a show cause order for the defendant to appear before a district judge at a later time.

G.S. 15A-511(a)(3) says that if a defendant at an initial appearance is so unruly or is unconscious or so intoxicated as to be unable to understand what is going on the magistrate can order the person held for a short time before conducting the initial appearance. If the defendant’s unruliness includes contemptuous behavior, the magistrate may wait on the summary proceeding until the defendant is brought back for the initial appearance. If the defendant acts contemptuously but is too intoxicated for the initial appearance or for an orderly summary proceeding, the defendant probably is not capable of acting willfully (see below) and contempt is not appropriate.

G.S. 5A-16(a) authorizes a magistrate to order a person being charged with direct criminal contempt to be held and restrained “to the extent necessary to assure his presence for summary proceedings” That statute should be used only when necessary to keep the person from fleeing.

A magistrate conducting a summary proceeding should use form AOC-CR-390. The form should describe in detail the behavior that was contemptuous, including direct quotation of words that were spoken.

Show-cause order for a plenary proceeding

Although direct criminal contempt always may be punished summarily, it does not have to be done summarily. The magistrate may choose to issue a show cause order and direct the person to appear before a district court judge in a plenary proceeding. The plenary proceeding should be used when the person is so belligerent or disruptive that it is not possible to conduct a summary proceeding; when the office is too busy to stop for a summary proceeding; or when the magistrate has become too personally involved to decide the contempt.

The form a magistrate should use for a show-cause order for contempt is AOC-CR-219, but the form is not designed for the most common kind of direct criminal contempt. The simplest way to use the form usually will be to check box IV for “Failure To Obey Other Order Of the Court” but strike through that heading and substitute “Interruption of Court Proceeding” or “Disrespect to Court” and then describe the behavior which is contemptuous.

Willfulness and warning

G.S. 5A-12(b) provides that a person may be punished for criminal contempt only if the person’s actions are “willfully contemptuous” or the person was given “a clear warning by the court that the conduct is improper.” Willfulness has been defined by appellate court opinions to mean “more than deliberation or conscious choice; it also imports a bad faith disregard for authority

and the law.” Some acts such as spitting at a magistrate or yelling profanity or kicking a table are willfully contemptuous by their nature and so inherently disruptive and disrespectful that no warning is needed. However, when the defendant is doing something less disrespectful and disruptive, such as talking so much that no one else can speak or refusing to sit down and await one’s turn to be heard, the magistrate must warn the person that the behavior is unacceptable before using contempt.

To avoid later questions about whether the contempt was “willfully contemptuous,” it is better for the magistrate to always give a warning before holding a person in contempt. The willfully contemptuous defendant is not likely to stop just because of the warning.

Right to counsel

If a lawyer is present with a person charged with direct contempt, of course the lawyer may represent the defendant in the summary contempt proceeding. It is not necessary to delay the summary hearing to allow the defendant to get a lawyer, however. And it is not necessary to appoint a lawyer to represent an indigent defendant in a summary contempt proceeding. If the contempt is not addressed summarily by the magistrate and instead proceeds to a plenary hearing before a judge, the indigent defendant is entitled to have counsel appointed.

Recusal

Contemptuous conduct often can be very personal. A defendant may use degrading terms to speak to the magistrate and may be openly hostile in close quarters. In those circumstances the magistrate may feel personally insulted and want to get back at the defendant. If anything about the contemptuous behavior causes a magistrate to feel that way, the magistrate should not conduct a summary proceeding for contempt but instead should issue a show-cause order and allow the contempt charge to be heard by a judge at a later time.

Proof beyond a reasonable doubt

The standard for criminal contempt is the same as for conviction of a crime: A person may not be held in criminal contempt unless the contempt is proved beyond a reasonable doubt. Because direct contempt occurs in the presence of the magistrate, the magistrate’s own view of the defendant’s conduct will establish the proof.

Punishment

G.S. 5A-12 sets out the punishment for criminal contempt. The possible punishments include censure, imprisonment for up to 30 days, a fine of not more than \$500, or any combination of those three options. A magistrate will not use censure, leaving imprisonment and a fine as the choices. Before sentencing a defendant to jail for contempt, or imposing a fine, the magistrate should consider how the penalty will compare with the punishment a defendant likely would

receive for conviction of a crime. If a fine is being imposed, the magistrate needs to consider the person's ability to pay.

Although it will not be appropriate in most instances when a magistrate holds a person in contempt, the sentence for criminal contempt may be suspended with conditions, just as for other criminal offenses.

If a magistrate sentences a defendant to jail for criminal contempt, the magistrate may go back and reduce or terminate the sentence at any time. For example, if a magistrate sentenced a person to jail for two days for contempt, the magistrate could terminate the sentence after one day. Likewise, if a magistrate imposes a fine the magistrate may later reduce or eliminate the fine.

Appeal

Appeal for criminal contempt is from the magistrate to superior court. The appeal is for a hearing *de novo*.

G.S. 5A-17 provides that an appeal from criminal contempt is the same as an appeal in a criminal action. The statute on criminal appeals generally, G.S. 15A-1451, provides that the payment of a fine and costs is stayed upon the defendant's giving notice of appeal, but confinement is stayed only when the defendant is released pursuant to the bail statutes. Thus, if the defendant gives notice of appeal from a sanction of criminal contempt the payment of any fine is stayed automatically but the defendant starts serving the jail time until released on bail. Starting December 1, 2013, G.S. 5A-17 will require that the bail hearing be held by a district judge when a magistrate orders someone to jail for criminal contempt and that the hearing has to be within 24 hours. If a district judge has not held the bail hearing within 24 hours, any other judicial official may do so.

File No.

SHOW CAUSE ORDER, FINDINGS AND JUDGMENT - FAILURE TO PAY FINE AND/OR COSTS, TO OBEY JURY SUMMONS, TO APPEAR PURSUANT TO CRIMINAL SUMMONS, OR FOR CONTEMPT

STATE VERSUS/IN THE MATTER OF

Name And Address Of Defendant/Contemnor

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

RETURN OF SERVICE

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

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

Signature Of Officer _____

Department Or Agency _____

County Of Department/Agency _____

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

STATE OF NORTH CAROLINA

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

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

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

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

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

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

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

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

Failure to obey the order of the Court indicated below:

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

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

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

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

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

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

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

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

(Over)

Attorney For State/Moving Party

Attorney For Defendant/Contemnor

Def. Not Indigent Waived Appointed Retained

APPEAL ENTRIES - CRIMINAL CONTEMPT

NOTE TO COURT: *If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17. On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.*

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

The defendant/contemnor gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appellate entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

Date _____ Name Of Presiding Judge (type or print)

Signature Of Presiding Judge _____

CERTIFICATION

I certify that this Judgment and attachment(s) marked below is a true and complete copy of the original which is on file in this case.
 Appellate Entries (AOC-CR-350)
 Other: _____

Date _____ Date Certified Copies Delivered To Sheriff _____

Signature Of Clerk _____

SEAL

Deputy CSC Assistant CSC Clerk Of Superior Court

FINDINGS

The defendant/contemnor having appeared not appeared before the Court, the Court makes the following findings:
Contempt. G.S. Chapter 5A. (NOTE: The Court may not find both civil and criminal contempt for the same conduct. G.S. 5A-12(d), 5A-21(c), and 5A-23(g).)
 that the defendant/contemnor is not in criminal or civil contempt.
 that the defendant/contemnor is in criminal civil contempt of court, based on the Court's findings of fact beyond a reasonable doubt and conclusions of law herein: (attach additional pages if necessary)

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

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

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

that the defendant has defaulted in payment of the fine and/or costs imposed in this case, for which defendant had the ability to comply or failed to make a good faith effort to obtain the necessary funds for payment.
 Other: _____

JUDGMENT

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

Criminal Contempt. G.S. 5A-12. It is ORDERED that the defendant: (check all that apply)

NOTE TO COURT: *If suspending a sentence for contempt, impose judgment on form AOC-CR-604.*

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

The defendant shall be given credit for _____ days' pretrial confinement. Work release is recommended.

This sentence shall run at the expiration of the sentence imposed in file number _____.
 Civil Contempt. G.S. 5A-21. It is ORDERED that the contemnor be imprisoned in the custody of the Sheriff until the contemnor purges himself/herself of the contempt by: (describe conduct to purge) _____

The Sheriff shall release the contemnor from custody unconditionally upon finding pursuant to G.S. 5A-22 that the contemnor has satisfied the purge condition(s) above or upon notice from a judicial official of such satisfaction.

Rehearing Date. If the contemnor is not sooner released, the Sheriff is hereby ORDERED to produce him/her before this Court at the time, date, and location below for a *de novo* hearing on the issue of contempt.

NOTE TO COURT: *A person committed for civil contempt for nonpayment of a monetary obligation other than child support may not be imprisoned more than 90 days at one time. Recombmittment is allowed only after a de novo hearing for contempt. G.S. 5A-21 (b2).*

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

Failure To Obey Jury Summons. G.S. 9-13. The juror is ordered to pay a fine of \$ _____ (not to exceed \$50.00). If the fine is not paid by (date) _____, the Clerk shall docket a civil judgment for that amount and issue an execution against the juror's estate.
 Failure To Pay Fine And/Or Costs. G.S. 15A-1364. The Court hereby orders that:

NOTE TO COURT: *To activate a suspended sentence imposed at the time of conviction, use form AOC-CR-343, AOC-CR-607, or AOC-CR-608.*
 the defendant be imprisoned for _____ days (not to exceed 30) in the custody of the Sheriff N.C. DACJJ (felony fines, only).
 The Court finds that the defendant is is not suitable for placement in a county satellite jail/work release unit.

The defendant's fine and cost obligations are modified as follows:
 upon receipt of notice from a judicial official that the defendant has paid or satisfied the remaining obligation for the fine and costs,
 the custodian designated above shall release the defendant from custody.

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

ORDER OF COMMITMENT

It is ordered that the Clerk deliver two certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant/contemnor to be delivered with these copies to the custody of the agency named above to serve the sentence imposed or until the defendant/contemnor shall have complied with the conditions for his/her release.

SIGNATURE OF JUDICIAL OFFICIAL

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

STATE OF NORTH CAROLINA

File No.

County

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

IN THE MATTER OF

DIRECT CRIMINAL CONTEMPT/
SUMMARY PROCEEDINGS/
FINDINGS AND ORDER

Name And Address Of Contemnor

G.S. 5A-11, -12, -13, -14

Race Sex Date Of Birth Age

Date Time AM PM Place

On the date, time and place of hearing as stated above, the undersigned judicial official conducted:

- an initial appearance a probable cause hearing a trial
a first appearance an estates proceeding other:
a pre-trial motion hearing a special proceeding

The Court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did

The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond.

(NOTE: The contemnor should be given an opportunity to explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes act of contempt.)

The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority.

Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor

NOTE TO COURT: If suspending a sentence for contempt, impose judgment on form AOC-CR-604.

- be censured for contempt.
shall pay a fine of \$ (max. \$500.00). shall pay the costs of court.
be imprisoned for a term of hours days in the custody of the Sheriff Other:
The contemnor shall be given credit for days' pretrial confinement. Work release is recommended.
This sentence shall run at the expiration of the sentence imposed in file number

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

ORDER OF COMMITMENT/APPEAL ENTRIES

- It is ORDERED that the Clerk deliver two certified copies of this Findings and Order to the sheriff or other qualified officer and that the officer cause the contemnor to be delivered with these copies to the custody of the sheriff of the county named above to serve the sentence imposed or until the contemnor shall have complied with the conditions of release pending appeal.
The contemnor gives notice of appeal from this Findings and Order to the Superior Court.
The contemnor gives notice of appeal from this Findings and Order in the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

NOTE TO COURT: If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17. On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.

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

CERTIFICATION

I certify that this Findings and Order is a true and complete copy of the original which is on file in this case.

Date Signature SEAL

Date Certified Copies Delivered To Sheriff Deputy CSC Assistant CSC Clerk Of Superior Court

Original - File Copy - Sheriff

Domestic Violence Procedure

DOMESTIC VIOLENCE PROCEDURE

Special Procedures for Cases Involving Domestic Violence Statutes and Rules Sheet.....
..... Domestic Violence Procedure – Page 1

Domestic Violence Crimes and the 48-Hour Rule.....
..... Domestic Violence Procedure – Page 7

Conditions of Release Form (AOC-CR-630)..... Domestic Violence Procedure – Page 15

Domestic Violence Law and Procedure Blog Post Domestic Violence Procedure – Page 17

Same-Sex Marriage and Domestic Violence Blog Post.....
..... Domestic Violence Procedure – Page 21

Does a No Contact Order Apply While the Defendant is in Jail? Blog Post
..... Domestic Violence Procedure – Page 23

DVPOs for Same-Sex Dating Relationships? Blog Post
..... Domestic Violence Procedure – Page 27

State v. Elder: DVPO Cannot Authorize Search for Guns Blog Post
..... Domestic Violence Procedure – Page 29

Can the Person Protected by a DVPO be Charged with Violating the Order? Blog Post.....
..... Domestic Violence Procedure – Page 31

I’ve Been Arrested...But Committed No Crime Blog Post
..... Domestic Violence Procedure – Page 33

Cyberstalking and the 48-Hour Rule Blog Post..... Domestic Violence Procedure – Page 35

Special Procedures for Cases Involving Domestic Violence

DVPO Enforcement

Research has demonstrated repeatedly that DVPOs can be a powerful tool in reducing domestic violence when they are consistently enforced. In NC, violation of a DVPO is both a crime, punishable under criminal law statutes, and a violation of a court order, punishable by the contempt power of the court. In the majority of cases, violation of a DVPO is treated as a criminal offense, which may come before a magistrate either before or after an arrest is made.

Enforcement by Contempt [GS 50B-4(a)]

Party may file motion (AOC-CV-307) asserting violation of 50B DVPO with clerk or authorized magistrate. Motion must be filed in county in which order was issued.

If authorized magistrate determines that “facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child” at time when clerk is not available, magistrate must “schedule and issue notice of a show cause hearing” (AOC-CV-308) with district court at earliest possible date, and effect service of motion and notice of hearing.

Enforcement by Criminal Charges (GS 50B-4.1)

Violation of DVPO (Class A1 misdemeanor): Essential Elements

- (1) Knowingly
- (2) Violates
- (3) A valid protective order entered pursuant to
 - N.C. Gen. Stat. Ch. 50B, or
 - A court of another state, or
 - A court of an Indian tribe.

Other 50B criminal offenses (NC Crimes pp. 186-190)

- Repeat Violation of a DVPO
- Violation of a DVPO with a Deadly Weapon
- Entering DV Safe House

Legal issues related to elements of offense typically relate to whether violation was knowing and whether order was valid.

Validity Issues

- An *ex parte* order is valid for purposes of this statute.
- An expired order is no longer valid. In North Carolina, orders are for a fixed period not to exceed one year and may be renewed multiple times for up to two years. An order issued outside of North Carolina is valid for the length of time specified in the order, even if it exceeds the time limits applicable to NC orders.
- Statute permits, but does not require, registration of order.
- LEO may rely on copy of out-of-state order and on statement of protected person that order remains in effect.
- A DVPO is an order of the court; the person protected by the order has no authority to give the defendant permission to violate the order.

Special Rules for Law Enforcement

Immediate arrest (i.e., without a warrant) is mandatory if an officer has probable cause to believe that the defendant knowingly has violated a valid protective order

- a) excluding the defendant from the residence or household occupied by a victim of domestic violence or
- b) directing the defendant to refrain from threatening, abusing, or following the plaintiff, harassing the plaintiff, including by telephone, visiting the home or workplace, or other means, or otherwise interfering with plaintiff.

GS 50B – 4.1(b)

Arrest without a warrant is discretionary for any other violation of G.S. 50B-4.1.

The warrantless arrests described above are authorized even though the offenses are committed outside of the officer’s presence. If the officer has probable cause, the defendant may be arrested even though the defendant has left the premises by the time the officer arrives. GS 15A-401(b)(2)(e). However, the officer may not enter defendant’s home without consent to arrest unless officer gets arrest warrant and may not enter the home of another person to arrest defendant without consent unless the officer gets an arrest warrant for the defendant and a search warrant for the premises.

Magistrate's duty when defendant is arrested for a violation of G.S. 50B-4.1.

- If defendant is arrested by an officer **without** a warrant, the magistrate must determine whether there is probable cause to believe person violated order:
 - If magistrate does not find probable cause, defendant is released.
 - If magistrate finds probable cause, issues a magistrate's order.
- If defendant is arrested **with or without a warrant**, conduct initial appearance (i.e., notify defendant of rights and charges against him or her).
- Do not set conditions of pretrial release for defendant. (See discussion below, under **The 48-Hour Rule**.)
- If defendant has been arrested on other crimes in addition to G.S. 50B-4.1, determine whether the additional charges are subject to the special 48-hour pretrial release rules: If they are, do not set bond for any of the offenses. If they are not, the magistrate should set bond for those offenses not covered by the special pre-trial release provisions.

GS 15A-534.1: Setting Conditions of Pretrial Release & the 48-Hour Rule

The Rule: Conditions of pretrial release must be determined by a judge, rather than a magistrate, for the crimes listed below if the victim of the crime is

- The defendant's spouse or former spouse
- A person with whom the defendant lives or has lived as if married
- A person with whom the defendant has or has had a dating relationship as defined in GS 50B-1(a)(6)

Covered offenses:

- Assault
- Stalking
- Communicating threats
- Committing a felony identified in GS Ch. 14-
 - Art. 7B (Rape & Other Sex Offenses)
 - Art. 8 (Assaults)
 - Art. 10 (Kidnapping & Abduction)
 - Art. 15 (Arson & Other Burnings)

The 48-hour rule also applies to domestic criminal trespass (GS 14-134.3) and to violation of a DVPO under GS Ch. 50B.

See Domestic Violence Crimes & the 48-Hour Rule in your notebook under the *Setting Conditions of Pretrial Release* tab for a chart setting out this information in detail.

Special Note About Dating Relationships:

GS 50B-1(b)(6) allows issuance of a DVPO for

- persons of the opposite sex
- who are in, or have been in, a dating relationship.
A *dating relationship* is “one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.”

In Thomas v. Williams, filed 7/7/2015, NC App., the Court of Appeals found that whether a relationship falls within the category of “dating relationship” “is necessarily fact sensitive and thus warrants a *factor approach* rather than a *definitional approach*.”

NOTE that GS 15A-534.1 references the definition of a dating relationship contained in GS 50B-1 but does not incorporate that statute’s requirement that the couple be “of the opposite sex.” The result is that a same sex couple involved in a dating relationship fall within the relationships triggering the application of the 48-hour rule.

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

48 Hours Later. . .

“A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section.” GS 15A-534.1(b).

If judge hasn’t set bond with 48 hours, defendant must be brought back before magistrate on duty. Cannot wait until next morning or day.¹

¹ *State v. Thompson*, 349 N.C. 483, 508 S.E.2d 277 (1998) (upheld constitutionality of statute but said unconstitutional as applied to defendant who was not taken before a judge at 9:30 in the morning when court opened but was held until 2:30 that afternoon).

In determining conditions of pretrial release, magistrate is required to consider the defendant's criminal history, unless obtaining such history will unreasonably delay setting conditions. GS 15A-534.1.

In addition to general law related to determining conditions set out in GS 15A-534, court is expressly authorized to impose specific additional conditions set out in GS 15A-534.1(a)(2) [also set out in AOC-CR-630: CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE].

In extraordinary circumstances, a magistrate might briefly further delay release pursuant to GS 15A-534.1(a)(1) if the magistrate determines

- “that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim,” and that
- “execution of an appearance bond will not reasonably insure that such injury or intimidation will not occur”

What If Defendant Violates Conditions of Pretrial Release?

A law enforcement officer is authorized to make an immediate arrest without a warrant if the officer has probable cause to believe that the defendant has violated a pretrial release order. G.S. 15A-401(b)(2).

If a defendant violates a condition of pretrial release for a domestic violence crime, but is not arrested by an officer, the magistrate can issue an order for arrest to bring the defendant in and modify the release order, provided that the first appearance before a district court judge has not been held. If a first appearance has been held, the magistrate should consult the chief district court judge about what practice the magistrate should follow.

NOTE: Violation of a condition of pretrial release is not a crime and does not trigger the 48-hour rule requiring delay in setting new conditions of release.

Domestic Violence Crimes and the 48-Hour Rule

Jeff Welty
UNC School of Government
December 2019

Overview

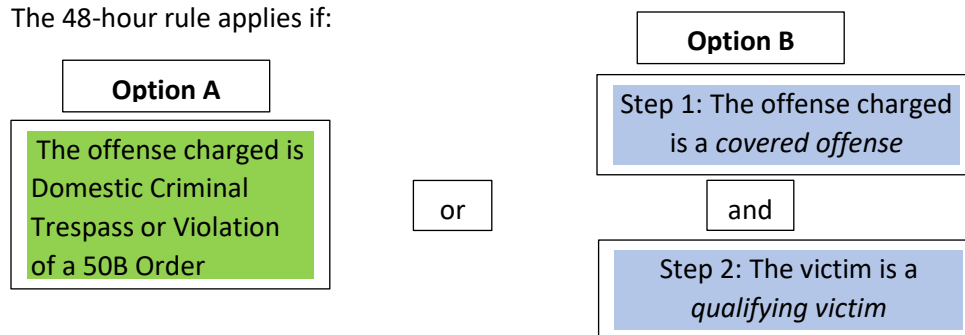
G.S. 15A-534.1 provides that, for certain domestic violence crimes, only a judge may set conditions of release in the first 48 hours after the defendant’s arrest. A magistrate is empowered to set conditions only if 48 hours pass without a judge setting conditions. For example, if a defendant is arrested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

The rule applies “[i]n all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.” G.S. 15A-534.1.

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

48-Hour Rule Flow Chart

The 48-hour rule applies if:



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

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

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

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

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

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

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

Step 1: Covered offenses

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

Assaults

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

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

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

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

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

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

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

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

Stalking

The only offense that is clearly covered under this provision is

- G.S. 14-277.3A: Stalking

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

Communicating threats

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

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

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

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

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

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

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

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

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

Felonies in Article 8 (“Assaults”)

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

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

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

Felonies in Article 10 (“Kidnapping and Abduction”)

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

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

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

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

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

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

Step 2: Qualifying victims

If a defendant is charged with a covered offense, the applicability of the 48-hour rule depends on the existence of a qualifying victim. The statute provides that such a victim is “a spouse or former spouse [of the defendant], a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6).” Thus, a qualifying victim must have one of the following relationships to the defendant:

- *Spouse*. Presumably this applies when the victim and the defendant are legally married, even if separated or in the process of divorce.
- *Former spouse*. There is no time limit in the statute, so this provision appears to apply even if the defendant and the victim divorced years or decades ago.
- *Person with whom the defendant lives as if married*. Although this term is not defined in the statute, presumably this provision applies when the victim and the defendant live together and have a romantic or sexual relationship.
- *Person with whom the defendant has lived as if married*. As with the category “former spouse,” there is no time limit in the statute regarding when the defendant and the victim must have lived together.
- *Person with whom the defendant is in a dating relationship as defined in G.S. 50B-1(b)(6)*. Under G.S. 50B-1(b)(6), a “a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.”
- *Person with whom the defendant has been in a dating relationship as defined in G.S. 50B-1(b)(6)*. Again, there is no time limit in the statute regarding when the dating relationship must have existed.

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

persons of the opposite sex who are in a dating relationship or have been in a dating relationship. A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

Note that nothing in the definition of “dating relationship” requires the parties to be of different sexes. Under the statute, a “dating relationship” is a “personal relationship” only if the parties are of different sexes, but the applicability of the 48-hour rule turns on the existence of a “dating relationship,” not the existence of a “personal relationship.”⁶

Conclusion

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

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

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

Name Of Defendant

CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE

#

G.S. 15A-534.1

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

FINDINGS

The undersigned judicial official finds that the defendant named above is charged with assault on, stalking, communicating a threat to, or committing a felony provided in former Article 7A or Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or (for offenses committed on or after December 1, 2015, only) a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.

The undersigned judicial official has considered the defendant's criminal history as shown on a criminal history report provided by a law enforcement officer or a district attorney. has not considered the defendant's criminal history as shown on a criminal history report because no report could be obtained within a reasonable time.

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:

- 1. The defendant shall stay away from the home, school, business or place of employment of the alleged victim.
2. The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.
3. The defendant shall refrain from removing, damaging or injuring the property listed below:
4. The defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.
5. (for offenses committed on or after December 1, 2012) The defendant shall abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney.
6. Other restrictions:
a. The defendant shall have no contact with the alleged victim.
b. The defendant shall comply with any valid domestic violence protective order in effect.
c. The defendant shall not possess any firearms.
d. Other:

Date

Signature Of Judicial Official

- Magistrate
District Court Judge
Superior Court Judge

NOTE TO JUDICIAL OFFICIAL: The law enforcement officer or district attorney who provided the defendant's criminal history report shall dispose of the report in accordance with DCI regulations. The report shall NOT be placed in the case file.



Domestic Violence Law and Procedure

Author : John Rubin

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

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

Date : September 5, 2017

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

Crimes Involving Domestic Violence

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

The offenses requiring a specific relationship include:

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

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

Several other offenses involve violations of domestic violence protective orders:

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

Arrest Procedures

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

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

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

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

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

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

Pretrial Release Procedures

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

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

Sentencing

The following provisions concern sentencing in cases involving domestic violence:

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

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

Victims' Rights

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

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

Firearm Consequences

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

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

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

Same Sex Marriage and Domestic Violence

Author : Jeff Welty

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

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

Date : October 29, 2014

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

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

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

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

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

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

As always, questions and comments are invited.



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

Author : Shea Denning

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

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

Date : June 6, 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DVPOs for Same-Sex Dating Relationships?

Author : Jeff Welty

Categories : [Uncategorized](#)

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

Date : August 15, 2017

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

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

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

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

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

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

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

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

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

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

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



State v. Elder: DVPO Cannot Authorize Search for Guns

Author : Shea Denning

Categories : [Search and Seizure](#)

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

Date : June 25, 2015

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

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

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

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

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

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

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

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

You know what they found growing in the basement.

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

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

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

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

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

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



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

Author : John Rubin

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

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

Date : April 27, 2015

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

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

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

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

to violate this order.”).

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

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

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



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

Author : Shea Denning

Categories : [Procedure](#)

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

Date : February 25, 2015

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

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

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

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

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

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

Cyberstalking and the 48 Hour Rule

Author : Jeff Welty

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

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

Date : November 28, 2012

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

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

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

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

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

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

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

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

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

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

Capstone

CAPSTONE

Capstone ExercisesCapstone - Page 1

Capstone Exercises

Magistrates' Basic School
February 2022 Tom Thornburg

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

Problem 1

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

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

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

If you would issue charges, would you use an arrest warrant or a criminal summons?

Problem 2

A local police officer has arrested the defendant, who was discovered concealing merchandise (three containers of baby formula that retail for \$35 each) under her loose-fitting clothes at a neighborhood grocery store. She was past the register and out the door on the sidewalk when the manager stopped her. After a previous shoplifting incident at the same store, the manager had told the arrestee not to return to the store. The arrestee says that her neighbor, who is a clerk at the store, had told her last this morning she should forget about the manager's ban from the store.

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

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

Bonus: what process?

Forms

FORMS

| | |
|--|-----------------|
| Arrest Warrant (AOC-CR-100) and Copy..... | Forms – Page 1 |
| Criminal Summons (AOC-CR-113) and Copy | Forms – Page 5 |
| Magistrate’s Order (AOC-CR-116) and Copy | Forms – Page 9 |
| Search Warrant (AOC-CR-119) and Copy..... | Forms – Page 13 |
| Conditions of Release and Release Order Form (AOC-CR-200) and Copy..... | Forms – Page 17 |
| Appearance Bond for Pretrial Release (AOC-CR-201)..... | Forms – Page 21 |
| Additional Accommodation Bondsmen (AOC-CR-201A)..... | Forms – Page 23 |
| Surrender by Surety (AOC-CR-214)..... | Forms – Page 25 |
| Order for Arrest (AOC-CR-217) and Copy..... | Forms – Page 27 |
| Order of Assignment or Denial of Counsel (AOC-CR-224) | Forms – Page 31 |
| Affidavit of Indigency (AOC-CR-226)..... | Forms – Page 33 |
| Transmittal of Out-of-County Process (AOC-CR-236) | Forms – Page 35 |
| Out-Of-County Process Verification Recall and Transmission (AOC-CR-241) | Forms – Page 37 |
| Conditions of Release Abstinence from Alcohol and Continuous Alcohol Monitoring (AOC-CR-242)..... | Forms – Page 39 |
| Detention of Impaired Driver (AOC-CR-270) | Forms – Page 41 |
| Detention for Communicable Disease Testing (AOC-CR-270 side 2)..... | Forms – Page 42 |
| Implied Consent Offense Notice (AOC-CR-271) | Forms – Page 43 |
| Detention of Probationer Arrested for Felony (AOC-CR-272)..... | Forms – Page 45 |
| Detention of Defendant Arrested for Probation Violation With Pending Felony or Prior Sex Offense (AOC-CR-272 side 2)..... | Forms – Page 46 |
| Direct Criminal Contempt/Summary Proceedings/Findings and Order (AOC-CR-390)..... | Forms – Page 47 |
| Uniform Citation (AOC-CR-500) | Forms – Page 49 |
| Uniform Citation (AOC-CR-500) Cover/Legend..... | Forms – Page 57 |
| Conditions of Release for Person Charged With a Crime of Domestic Violence (AOC-CR-630)..... | Forms – Page 59 |
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| Affidavit and Revocation Report of Law Enforcement Officer or Chemical Analyst (AOC-CVR-1A/DHHS 3907)..... | Forms – Page 63 |
| Revocation Order When Person Present (AOC-CVR-2)..... | Forms – Page 65 |
| Affidavit – No License (AOC-CVR-8) | Forms – Page 67 |
| Conditions of Release – Mass Violence (AOC-CR-660) | Forms – Page 69 |

All Forms Used by the AOC can be found at

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

| | | | | | |
|--|---------------------------------|--|----------------|---|--|
| File No. | Law Enforcement Case No. | LID No. | SID No. | FBI No. | |
| WARRANT FOR ARREST | | | | | |
| STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division _____ County | | | | | |
| THE STATE OF NORTH CAROLINA VS. | | | | | |
| <i>Name And Address Of Defendant</i> | | | | | |
| <i>Race</i> | <i>Sex</i> | <i>Date Of Birth</i> | <i>Age</i> | | |
| <i>Social Security No./Tax ID No.</i> | | <i>Drivers License No. & State</i> | | | |
| <i>Name Of Defendant's Employer</i> | | | | | |
| <i>Offense Code(s)</i> | | | | | |
| <i>Offense In Violation Of G.S.</i> | | | | | |
| <i>Date Of Offense</i> | | | | | |
| <i>Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)</i> | | | | | |
| <i>Complainant (Name, Address Or Department)</i> | | | | | |
| <i>Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)</i> | | | | | |
| <input type="checkbox"/> Misdemeanor or Offense Which Requires Fingerprinting Per Fingerprint Plan | | | | <i>Date Issued</i> | |
| | | | | <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC | |
| | | | | <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court | |
| | | | | <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| | | | | <input type="checkbox"/> (Over) | |

To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below:
I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.

RETURN OF SERVICE
I certify that this Warrant was received and served as follows:

Date Received _____ Time Served AM PM Date Returned _____

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

This Warrant WAS NOT served for the following reason:

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

Department Or Agency Of Officer _____

REDELIVERY/REISSUANCE

Date _____ Signature _____
 Dep. CSC
 Assst. CSC
 CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

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

Date Received _____ Time Served AM PM Date Returned _____

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

This Warrant WAS NOT served for the following reason:

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

Department Or Agency Of Officer _____

APPEAL ENTRIES

The defendant, in open court, gives notice of appeal to the
 District Superior Court.

The current pretrial release order is modified as follows:

Date _____ Signature Of District Court Judge Or Magistrate _____

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived _____ Signature Of Defendant _____

Signature Of Attorney _____

AOC-CR-100, Side Two, Rev. 12/17
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District Attorney _____ Attorney For Defendant _____
 Waived Not Indigent
 Denied

PLEA: guilty no contest
 guilty no contest
 guilty no contest
 not guilty _____

VERDICT: guilty
 guilty
 guilty
 not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: pay costs and a fine of \$ _____.

be imprisoned for a term of _____ days in the custody of the sheriff. MCR. DACJJ.* Pretrial credit _____ days served.

Work release is recommended. is not recommended. [is ordered. (use form AOC-CR-602)]

The Court finds that a longer shorter period of probation than that which is specified in G.S. 15A-1343.2(d) is necessary.

Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court; (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine \$ _____ Restitution** \$ _____ Attorney's Fee \$ _____ Community Service Fee \$ _____ Other \$ _____

**Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: (NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance).")

6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.

7. not be found in or on the premises of the complainant or _____

8. not assault, communicate with or be in the presence of the complainant or _____

9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)

10. Other: _____

It is **ORDERED** that this: Judgment is continued upon payment of costs.
 case be consolidated for judgment with _____
 sentence is to run at the expiration of the sentence in _____

COMMITMENT: It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE:
 Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury.
 No probable cause is found as to Count(s) _____ of this Warrant and the Count(s) is dismissed.

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

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date _____ Date Delivered To Sheriff _____ Signature _____

Dep. CSC Assst. CSC
 Clerk Of Superior Court

| | | | | | |
|--|---------------------------------|--|----------------|---|--|
| File No. | Law Enforcement Case No. | LID No. | SID No. | FBI No. | |
| WARRANT FOR ARREST | | | | | |
| STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division _____ County | | | | | |
| THE STATE OF NORTH CAROLINA VS. | | | | | |
| <i>Name And Address Of Defendant</i> | | | | | |
| <i>Race</i> | <i>Sex</i> | <i>Date Of Birth</i> | <i>Age</i> | | |
| <i>Social Security No./Tax ID No.</i> | | <i>Drivers License No. & State</i> | | | |
| <i>Name Of Defendant's Employer</i> | | | | | |
| <i>Offense Code(s)</i> | | | | | |
| <i>Offense In Violation Of G.S.</i> | | | | | |
| <i>Date Of Offense</i> | | | | | |
| <i>Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)</i> | | | | | |
| <i>Complainant (Name, Address Or Department)</i> | | | | | |
| <i>Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)</i> | | | | | |
| <input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan | | <i>Date Issued</i> | | | |
| | | | | <i>Court Date</i> | |
| | | | | <i>Court Time</i> | |
| | | | | <input type="checkbox"/> AM <input type="checkbox"/> PM | |

To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below:
I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.

RETURN OF SERVICE
I certify that this Warrant was received and served as follows:

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

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

This Warrant WAS NOT served for the following reason:

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

REDELIVERY/REISSUANCE

Date _____ Signature _____
 Dep. CSC
 Assst. CSC
 CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

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

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

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

This Warrant WAS NOT served for the following reason:

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

APPEAL ENTRIES

The defendant, in open court, gives notice of appeal to the
 District Superior Court.
 The current pretrial release order is modified as follows:

Date _____ Signature Of District Court Judge Or Magistrate _____

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived _____ Signature Of Defendant _____
Signature Of Attorney _____

AOC-CR-100, Side Two, Rev. 12/17
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District Attorney _____ Attorney For Defendant _____
 Waived Not Indigent
 Denied

PLEA: guilty no contest
 guilty no contest
 guilty no contest
 not guilty _____

VERDICT: guilty
 guilty
 guilty
 not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: pay costs and a fine of \$ _____
 be imprisoned for a term of _____ days in the custody of the sheriff. MCR. DACJJ.* Pretrial credit _____ days served.
 Work release is recommended. is not recommended. [is ordered. (use form AOC-CR-602)]
 The Court finds that a longer shorter period of probation than that which is specified in G.S. 15A-1343.2(d) is necessary.
 Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court; (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine _____ Restitution** _____ Attorney's Fee _____ Community Service Fee _____ Other _____
\$ _____ \$ _____ \$ _____

**Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: (NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance).")

- 6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.
- 7. not be found in or on the premises of the complainant or _____
- 8. not assault, communicate with or be in the presence of the complainant or _____
- 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)
- 10. Other: _____

It is **ORDERED** that this: Judgment is continued upon payment of costs.
 case be consolidated for judgment with _____
 sentence is to run at the expiration of the sentence in _____

COMMITMENT: It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE:
 Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury.
 No probable cause is found as to Count(s) _____ of this Warrant and the Count(s) is dismissed.

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

CERTIFICATION
I certify that this Judgment is a true and complete copy of the original which is on file in this case.
Date _____ Date Delivered To Sheriff _____ Signature _____
 Dep. CSC Assst. CSC
 Clerk Of Superior Court

*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DACJJ, use AOC-CR-602. If supervised probation, use AOC-CR-604.

| | | | | | |
|---|---------------------------------|------------------------------|-------------------|----------------|---|
| File No. | Law Enforcement Case No. | LID No. | SID No. | FBI No. | |
| CRIMINAL SUMMONS | | | | | |
| STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division _____ County | | | | | |
| To the defendant: I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully, willfully and feloniously did | | | | | |
| THE STATE OF NORTH CAROLINA VS. | | | | | |
| Name And Address Of Defendant | | | | | |
| Race | Sex | Date Of Birth | Age | | |
| Social Security No. | Drivers License No. & State | | | | |
| Name Of Defendant's Employer | | | | | |
| Offense Code(s) | | Offense In Violation Of G.S. | | | |
| Date Of Offense | | | | | |
| Complainant (Name, Address Or Department) | | | | | |
| Names & Addresses Of Witnesses (Including Counties & Telephone Nos.) | | | | | |
| <input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan | | | Date Issued | | |
| Signature | | | Location Of Court | | Court Date |
| <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court | | | | | Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM |

This act was in violation of the law referred to in this Criminal Summons. This Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge. If you fail to appear, an order for your arrest may be issued and you may be held in CONTEMPT OF COURT. Arrest and/or contempt for failure to appear is in addition to any sentence which may be imposed for the crime charged.

The undersigned finds the following cause to set a court date more than one month from the issue of this summons:

(Over)

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

RETURN OF SERVICE

I certify that this Criminal Summons was received and served as follows:

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

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

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

Department Or Agency Of Officer _____

REDELIVERY/REISSUANCE

Date _____

Signature _____

Dep. CSC
 Assst. CSC
 CSC

The above clerk finds the following cause to set a court date more than one month from reissue:

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Criminal Summons was received and served as follows:

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

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

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

Department Or Agency Of Officer _____

APPEAL ENTRIES

The defendant, in open court, gives notice of appeal to the
 District Superior Court.

The current pretrial release order is modified as follows:

Date _____

Signature Of District Court Judge Or Magistrate _____

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived _____

Signature Of Defendant _____

Signature Of Attorney _____

AOC-CR-113, Side Two, Rev. 12/17
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| | | | | |
|-------------------|---|------------------------|---|---|
| District Attorney | <input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied | Attorney For Defendant | <input type="checkbox"/> Appointed <input type="checkbox"/> Retained | PRIOR CONVICTIONS: |
| | | | | No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+) |

PLEA: guilty no contest not guilty
 guilty no contest not guilty
 guilty no contest not guilty
 guilty no contest not guilty

VERDICT: guilty not guilty
 guilty not guilty
 guilty not guilty
 guilty not guilty

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: pay costs and a fine of \$_____. be imprisoned for a term of _____ days in the custody of the sheriff. MCR. DACJJ.* Pretrial credit _____ days served.

Work release is recommended. is not recommended. [is ordered. (use form AOC-CR-602)]

The Court finds that a longer shorter period of probation than that which is specified in G.S. 15A-1343.2(d) is necessary.

Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine \$_____ Resitution** \$_____ Attorney's Fee \$_____ Community Service Fee \$_____ Other \$_____

Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: **(NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance).")

- 6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.
- 7. not be found in or on the premises of the complainant or _____
- 8. not assault, communicate with or be in the presence of the complainant or _____
- 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)
- 10. Other: _____

It is **ORDERED** that this: Judgment is continued upon payment of costs.
 case be consolidated for judgment with _____
 sentence is to run at the expiration of the sentence in _____

COMMITMENT: It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE:
 Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury.
 No probable cause is found as to Count(s) _____ of this Criminal Summons and the Count(s) is dismissed.

Date _____

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

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date _____

Date Delivered To Sheriff _____
 Signature _____

Dep. CSC Assst. CSC
 Clerk Of Superior Court

*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DACJJ, use AOC-CR-602. If supervised probation, use AOC-CR-604.

| | | | | | |
|---|---------------------------------|--|----------------|---|--|
| File No. | Law Enforcement Case No. | LID No. | SID No. | FBI No. | |
| CRIMINAL SUMMONS | | | | | |
| STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division _____ County | | | | | |
| To the defendant: I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully, willfully and feloniously did | | | | | |
| THE STATE OF NORTH CAROLINA VS. | | | | | |
| <i>Name And Address Of Defendant</i> | | | | | |
| <i>Race</i> | <i>Sex</i> | <i>Date Of Birth</i> | <i>Age</i> | | |
| <i>Social Security No.</i> | | <i>Drivers License No. & State</i> | | | |
| <i>Name Of Defendant's Employer</i> | | | | | |
| <i>Offense Code(s)</i> | | <i>Offense In Violation Of G.S.</i> | | | |
| <i>Date Of Offense</i> | | | | | |
| <i>Complainant (Name, Address Or Department)</i> | | | | | |
| <i>Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)</i> | | | | | |
| <input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan | | | | <i>Date Issued</i> | |
| <input type="checkbox"/> The undersigned finds the following cause to set a court date more than one month from the issue of this summons: | | | | <i>Location Of Court</i> | |
| | | | | <i>Court Date</i> | |
| <i>Signature</i> | | | | <input type="checkbox"/> Magistrate | |
| | | | | <input type="checkbox"/> Deputy CSC | |
| | | | | <input type="checkbox"/> Assistant CSC | |
| | | | | <input type="checkbox"/> Clerk Of Superior Court | |
| | | | | <input type="checkbox"/> AM | |
| | | | | <input type="checkbox"/> PM | |

This act was in violation of the law referred to in this Criminal Summons. This Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge. If you fail to appear, an order for your arrest may be issued and you may be held in CONTEMPT OF COURT. Arrest and/or contempt for failure to appear is in addition to any sentence which may be imposed for the crime charged.

The undersigned finds the following cause to set a court date more than one month from the issue of this summons:

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

RETURN OF SERVICE

I certify that this Criminal Summons was received and served as follows:

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

By personally serving this Criminal Summons on the defendant.
 This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

By personally serving this Criminal Summons on the defendant.

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

PLEA: guilty no contest not guilty
 guilty no contest not guilty
 guilty no contest not guilty
 guilty no contest not guilty

VERDICT: guilty not guilty
 guilty not guilty
 guilty not guilty
 guilty not guilty

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: pay costs and a fine of \$_____. be imprisoned for a term of _____ days in the custody of the _____ sheriff. MCR. DACJJ.* Pretrial credit _____ days served. Work release is recommended. is not recommended. [is ordered. (use form AOC-CR-602)]
 The Court finds that a longer shorter period of probation than that which is specified in G.S. 15A-1343.2(d) is necessary.
 Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

| | | | | |
|---------|------------------|-------------------|--------------------------|----------|
| Fine \$ | Restitution** \$ | Attorney's Fee \$ | Community Service Fee \$ | Other \$ |
|---------|------------------|-------------------|--------------------------|----------|

Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: **(NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance).")

- 6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.
- 7. not be found in or on the premises of the complainant or _____
- 8. not assault, communicate with or be in the presence of the complainant or _____
- 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)
- 10. Other: _____

It is **ORDERED** that this: Judgment is continued upon payment of costs.
 case be consolidated for judgment with _____
 sentence is to run at the expiration of the sentence in _____

COMMITMENT: It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE:
 Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury.
 No probable cause is found as to Count(s) _____ of this Criminal Summons and the Count(s) is dismissed.

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

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.
 Date _____
 Date Delivered To Sheriff _____
 Signature _____

| | |
|--|-------------------------------------|
| Dep. CSC <input type="checkbox"/> | Assst. CSC <input type="checkbox"/> |
| Clerk Of Superior Court <input type="checkbox"/> | |

*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DACJJ, use AOC-CR-602. If supervised probation, use AOC-CR-604.

| | | | | | |
|--|---------------------------------|--|----------------|--|--|
| File No. | Law Enforcement Case No. | LID No. | SID No. | FBI No. | |
| MAGISTRATE'S ORDER | | STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division | | | |
| Offense | | County | | | |
| <p>THE STATE OF NORTH CAROLINA VS.</p> <p>Name And Address Of Defendant</p> | | | | | |
| Race | Sex | Date Of Birth | Age | | |
| Social Security No. | Drivers License No. & State | | | | |
| Name Of Defendant's Employer | | | | | |
| Offense Code(s) | | Offense In Violation Of G.S. | | | |
| Date Of Offense | | | | | |
| Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) | | | | | |
| Arresting Officer (Name, Address Or Department) | | | | | |
| Names & Addresses Of Witnesses (Including Counties & Telephone Nos.) | | | | | |
| <input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan | | Date Issued | | Location Of Court Court Date Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court | | Signature This act was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant. | | | |

(Over)

| | | | |
|--|---|---|---|
| District Attorney | <input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied | Attorney For Defendant | <input type="checkbox"/> Appointed <input type="checkbox"/> Retained |
| PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty | | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | |
| JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine of \$ _____ days in the custody of the <input type="checkbox"/> sheriff. <input type="checkbox"/> MCP. <input type="checkbox"/> DAC.* Pretrial credit _____ days served. <input type="checkbox"/> Work release <input type="checkbox"/> is recommended. <input type="checkbox"/> is not recommended. <input type="checkbox"/> is ordered. (Use form AOC-CR-602) <input type="checkbox"/> The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary. <input type="checkbox"/> Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: 1. commit no criminal offense in any jurisdiction. 2. possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. 3. remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. 4. satisfy child support and family obligations, as required by the Court. 5. pay to the Clerk the costs of court and any additional sums shown below. | | | |

| | | | | |
|---------------|------------------------|-------------------------|--------------------------------|----------------|
| Fine \$ _____ | Restitution** \$ _____ | Attorney's Fee \$ _____ | Community Service Fee \$ _____ | Other \$ _____ |
|---------------|------------------------|-------------------------|--------------------------------|----------------|

Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: **NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance)."

- 6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.
- 7. not be found in or on the premises of the complainant or _____.
- 8. not assault, communicate with or be in the presence of the complainant or _____.
- 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)
- 10. Other: _____

It is **ORDERED** that this: Judgment is continued upon payment of costs.
 case be consolidated for judgment with _____.
 sentence is to run at the expiration of the sentence in _____.

COMMITMENT: It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE: Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury. No probable cause is found as to Count(s) _____ of this Magistrate's Order and the Count(s) is dismissed.

| | |
|------|---|
| Date | Signature Of District Court Judge Or Magistrate |
|------|---|

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

| | |
|-----------------------|---------------------------|
| Date | Date Delivered To Sheriff |
| Signature Of Attorney | Signature |

*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DAC, use AOC-CR-602. If supervised probation, use AOC-CR-604.

APPEAL ENTRIES

The defendant, in open court, gives notice of appeal to the District Superior Court.
 The current pretrial release order is modified as follows:

| | |
|------|---|
| Date | Signature Of District Court Judge Or Magistrate |
|------|---|

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

| | |
|-----------------------|------------------------|
| Date Waived | Signature Of Defendant |
| Signature Of Attorney | Signature |

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| | | | | | |
|--|---------------------------------|--|----------------|--|--|
| File No. | Law Enforcement Case No. | LID No. | SID No. | FBI No. | |
| MAGISTRATE'S ORDER | | STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division | | | |
| Offense _____ County _____ | | | | | |
| <p>THE STATE OF NORTH CAROLINA VS.</p> <p>Name And Address Of Defendant _____</p> | | | | | |
| Race | Sex | Date Of Birth | Age | | |
| Social Security No. | | Drivers License No. & State | | | |
| Name Of Defendant's Employer _____ | | | | | |
| Offense Code(s) | | Offense In Violation Of G.S. | | | |
| Date Of Offense _____ | | | | | |
| Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) _____ | | | | | |
| Arresting Officer (Name, Address Or Department) _____ | | | | | |
| Names & Addresses Of Witnesses (Including Counties & Telephone Nos.) _____ | | | | | |
| <input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan | | Date Issued _____ | | Location Of Court _____ Court Date _____ Court Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| Signature _____ This act was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant. | | | | | |

(Over)

| | | | |
|---|---|---|--|
| District Attorney | Attorney For Defendant | PRIOR CONVICTIONS: | |
| <input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied | <input type="checkbox"/> Appointed <input type="checkbox"/> Retained | No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+) | |
| PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 | |

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: pay costs and a fine of \$ _____ days in the custody of the sheriff. MCP. DAC.* Pretrial credit _____ days served.

Work release is recommended. is not recommended. is ordered. (Use form AOC-CR-602)

The Court finds that a longer shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary.

Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: 1. commit no criminal offense in any jurisdiction. 2. possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. 3. remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. 4. satisfy child support and family obligations, as required by the Court. 5. pay to the Clerk the costs of court and any additional sums shown below.

| | | | | |
|-------------|----------------------|-----------------------|------------------------------|--------------|
| Fine | Restitution** | Attorney's Fee | Community Service Fee | Other |
| \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ |

Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: **NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance)."

6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.

7. not be found in or on the premises of the complainant or _____.

8. not assault, communicate with or be in the presence of the complainant or _____.

9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)

10. Other: _____

It is **ORDERED** that this: Judgment is continued upon payment of costs.
 case be consolidated for judgment with _____.
 sentence is to run at the expiration of the sentence in _____.

COMMITMENT: It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE: Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury. No probable cause is found as to Count(s) _____ of this Magistrate's Order and the Count(s) is dismissed.

| | |
|---|--|
| Date | Signature Of District Court Judge Or Magistrate |
| _____ | _____ |
| CERTIFICATION | |
| I certify that this Judgment is a true and complete copy of the original which is on file in this case. | |
| Date | Signature |
| _____ | _____ |
| Date Delivered To Sheriff | Signature |
| _____ | _____ |

*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DAC, use AOC-CR-602. If supervised probation, use AOC-CR-604.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District/Superior Court Division

County

SEARCH WARRANT

IN THE MATTER OF

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Name Of Applicant

Name Of Additional Affiant(s)

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

| | | | |
|---------------|---------------|-----------------------------|-----------------------------|
| Date Received | Time Received | <input type="checkbox"/> AM | <input type="checkbox"/> PM |
| Date Executed | Time Executed | <input type="checkbox"/> AM | <input type="checkbox"/> PM |

I made a search of _____

_____ as commanded.

- I seized the items listed on the attached inventory.
- I did not seize any items.
- This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.

Name Of Officer Making Return (type or print)

Signature Of Officer Making Return

Department Or Agency Of Officer

Incident Number

Date Issued

Time Issued AM PM

Name (type or print)

Signature

Deputy CSC Assistant CSC CSC Magistrate District Ct. Judge Superior Ct. Judge

NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date

Time AM PM

Name Of Magistrate (type or print)

Signature Of Magistrate

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

Date

Time AM PM

Name Of Clerk (type or print)

Signature Of Clerk

Dep. CSC
 Asst. CSC
 CSC

Original - File Copy - For Search of a Person, to Person from Whom Items Taken

Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon (Over)

File No.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District/Superior Court Division

County

SEARCH WARRANT

IN THE MATTER OF

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Name Of Applicant

Name Of Additional Affiant(s)

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

| | | | |
|---------------|---------------|-----------------------------|-----------------------------|
| Date Received | Time Received | <input type="checkbox"/> AM | <input type="checkbox"/> PM |
| Date Executed | Time Executed | <input type="checkbox"/> AM | <input type="checkbox"/> PM |

I made a search of _____

_____ as commanded.

- I seized the items listed on the attached inventory.
- I did not seize any items.
- This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.

Name Of Officer Making Return (type or print)

Signature Of Officer Making Return

Department Or Agency Of Officer

Incident Number

Date Issued

Time Issued AM PM

Signature

Deputy CSC Assistant CSC CSC Magistrate District Ct. Judge Superior Ct. Judge

NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date

Time AM PM

Signature Of Magistrate

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

Date

Time AM PM

Signature Of Clerk

Dep. CSC
 Asst. CSC
 CSC

Original - File Copy - For Search of a Person, to Person from Whom Items Taken

Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon (Over)

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

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

District Superior

Date

Time

AM PM

To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. 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 SECURED BOND in the amount shown above (NOTE: Give a copy of this order to any surety who posts bond.)
HOUSE ARREST with ELECTRONIC MONITORING administered by (agency) and the SECURED BOND above. You may leave your residence for the purpose(s) of employment counseling course of study vocational training

- Your release is not authorized.
The defendant is required to provide (check all that apply) fingerprints under G.S. 15A-502. a DNA sample under G.S. 15A-266.3A.
Prior to release, the defendant shall provide his/her (check all that apply) fingerprints. DNA sample.
The defendant has been (i) charged with a felony while on probation (complete AOC-CR-272, Side One). (ii) arrested for violation of probation with a pending felony charge or prior conviction requiring registration under G.S. 14, Article 27A (complete AOC-CR-272, Side Two).
This Order is entered upon defendant's warrantless arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated.
The defendant was arrested or surrendered after failing to appear as required under a prior release order.
This was the defendant's second or subsequent failure to appear in this case.
Your release is subject to the conditions as shown on the attached AOC-CR-270. Other:

Additional Information

Date Signature Of Judicial Official Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court District Court Judge Superior Court Judge

ORDER OF COMMITMENT

To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: produce him/her in Court as provided above.

- hold him/her as provided on the attached AOC-CR-272. for the following purpose:
[for charges covered by G.S. 15A-534.1 (domestic violence) or 15A-534.7 (threat of mass violence)] produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before (enter date and time 48 hours after time of arrest) AM PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.

Name Of Detention Facility Date Signature Of Judicial Official

WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above. I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.

Date Signature Of Defendant Signature Of Person Agreeing To Supervise Defendant

Name Of Person Agreeing to Supervise Defendant (type or print) Address Of Person Agreeing To Supervise Defendant

DEFENDANT RELEASED ON BAIL

Date Time AM PM Signature Of Jailer

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

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

District Superior

Date

Time

AM PM

To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. 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 SECURED BOND in the amount shown above (NOTE: Give a copy of this order to any surety who posts bond.)
HOUSE ARREST with ELECTRONIC MONITORING administered by (agency) and the SECURED BOND above. You may leave your residence for the purpose(s) of employment counseling course of study vocational training

- Your release is not authorized.
The defendant is required to provide (check all that apply) fingerprints under G.S. 15A-502. a DNA sample under G.S. 15A-266.3A.
Prior to release, the defendant shall provide his/her (check all that apply) fingerprints. DNA sample.
The defendant has been (i) charged with a felony while on probation (complete AOC-CR-272, Side One). (ii) arrested for violation of probation with a pending felony charge or prior conviction requiring registration under G.S. 14, Article 27A (complete AOC-CR-272, Side Two).
This Order is entered upon defendant's warrantless arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated.
The defendant was arrested or surrendered after failing to appear as required under a prior release order.
This was the defendant's second or subsequent failure to appear in this case.
Your release is subject to the conditions as shown on the attached AOC-CR-270. Other:

Additional Information

Date Signature Of Judicial Official Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court District Court Judge Superior Court Judge

ORDER OF COMMITMENT

To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: produce him/her in Court as provided above.

- hold him/her as provided on the attached AOC-CR-272. for the following purpose:
[for charges covered by G.S. 15A-534.1 (domestic violence) or 15A-534.7 (threat of mass violence)] produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before (enter date and time 48 hours after time of arrest) AM PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.

Name Of Detention Facility Date Signature Of Judicial Official

WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above. I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.

Date Signature Of Defendant Signature Of Person Agreeing To Supervise Defendant

Name Of Person Agreeing to Supervise Defendant (type or print) Address Of Person Agreeing To Supervise Defendant

DEFENDANT RELEASED ON BAIL

Date Time AM PM Signature Of Jailer

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

Name And Mailing Address Of Defendant

Telephone No. Of Defendant

Total Bond Required

\$

Amount Of This Bond

\$

#

G.S. 15A-531, 15A-534, 15A-544.2

Offenses And Additional File Numbers

See Attachment

- Unsecured Appearance Bond - I, the undersigned defendant, acknowledge that my personal representatives and I are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.
Cash Appearance Bond By Defendant (See note on reverse side.) - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.
Defendant's Property Appearance Bond - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side, and as security for said Bond have executed a mortgage or deed of trust to real or personal property, payable to the State of North Carolina and with power of sale conditioned upon the breach of any condition of this Bond.
Surety Appearance Bond - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side. Any undersigned professional bondsman, bail agent, or runner attests that the AFFIDAVIT on the reverse side is complete and true. If a cash deposit is indicated below, surety(ies) has deposited the cash to secure the obligation as surety(ies) on this bond with the understanding that the deposit will be returned to the surety(ies) upon termination of that obligation as provided by law, and that it will NOT be available to satisfy defendant's obligations. (For cash bond, see note on reverse side.)

Date Of Execution Of Bond

Signature Of Defendant

ACCOMMODATION BONDSMAN

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

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Telephone No.

Telephone No.

PROFESSIONAL BONDSMAN

Name Of Bondsman

Name Of Runner, If Applicable

License No. Of Bondsman

Telephone No.

License No. Of Runner

Telephone No.

INSURANCE COMPANY

Name Of Insurance Company

Name Of Bail Agent

Power Of Appointment No. Of Bail Agent

License No. Of Bail Agent

Telephone No.

SIGNATURE

Signature Of Surety

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

Date

Signature

Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court

Custodian Of Detention Facility [G.S. 15A-537(c)]

Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court

Custodian Of Detention Facility [G.S. 15A-537(c)]

COMPLETE IF CASH DEPOSITED

Signature Of Official Accepting Cash

Name Of Official Accepting Cash (type or print)

Receipt No.

NOTE: If cash deposited, see note on reverse side.

AOC-CR-201, Rev. 4/18

(see AOC-CR-238 if release after judgment in superior court)

Original - File (Over)

© 2018 Administrative Office of the Courts

CONDITIONS

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required. It is agreed and understood that this Bond is effective and binding upon the defendant and each surety throughout all stages of the proceedings in the trial divisions of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or until the entry of judgment in the superior court, unless terminated earlier by operation of law or order of the court. If the defendant appears as ordered until termination of the Bond, then the bond is to be void, but if the defendant fails to appear as required, the Court will forfeit the bond pursuant to Part 2 of Article 26 of Chapter 15A of the General Statutes.

Each accommodation bondsman, by signing on the reverse or on the attached AOC-CR-201A, states: "I have reached the age of 18 years and am a bona fide resident of North Carolina. Aside from love and affection and release of the above named defendant, I have received no consideration for acting as surety. I own sufficient property over and above all liabilities, homestead and other exemptions allowed me by law to enable me to pay this Bond should it be ordered forfeited. I understand that if I sign this Bond without sufficient property, I am guilty of a crime."

AFFIDAVIT

NOTE: "Professional bondsmen, surety bondsmen [bail agents], and runners shall file with the clerk of court having jurisdiction over the principal an affidavit on a form furnished by the Administrative Office of the Courts." G.S. 58-71-140(d). Check all options that apply.

- 1. I have not, nor has anyone for my use, been promised or received any collateral, security or premium for executing this Bond.
- 2. I have been promised a premium in the amount shown below, which is due on the date shown below.
- 3. I have received a premium in the amount shown below.
- 4. I have been given collateral security by the person named below, of the nature and in the amount shown below.

| | | |
|--|----------------------|----------------------------------|
| Amount Of Premium Promised \$ | Date Due | Amount Of Premium Received \$ |
| Name Of Person From Whom Collateral Received | Nature Of Collateral | Value |

**AFFIX STAMP OR
POWER OF ATTORNEY
HERE**

RETURN OF CUSTODIAN OF DETENTION FACILITY

The defendant named on the reverse was released from my custody on the date shown below upon the execution of this Appearance Bond.

| | | | |
|-------------------------|-----------------------------------|------------------------|--|
| Date Defendant Released | Name Of Custodian (type or print) | Signature Of Custodian | <input type="checkbox"/> Sheriff <input type="checkbox"/> Deputy Sheriff |
| | | | <input type="checkbox"/> Other _____ |

NOTES ON CASH BONDS:

- (1) **To Official Taking The Bond.** Use this form for all cash bonds. Complete this form as follows:
When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations.
 Enter defendant's name, address and telephone number at the top of Side One. Check "Cash Appearance Bond By Defendant." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.
When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations.
 Enter defendant's name, address and telephone number at the top of Side One. Check "Surety Appearance Bond." Have defendant sign. Enter name, address and telephone number of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature Of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.
- (2) **To Bookkeeper.** If case disposed without forfeiture, disburse cash as follows: (1) If "Cash Appearance Bond By Defendant" checked on Side One, disburse to defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" is checked on Side One, disburse only to the person(s) named under "Accommodation Bondsman."
- (3) **Bond By Insurance Company Or Professional Bondsman As Surety Is Same As Cash Except In Child Support.** G.S. 15A-531(4) provides that an appearance bond executed by an insurance company or a professional bondsman (or a bail agent or runner on behalf of one of those sureties) is considered the same as a cash deposit, except in child support contempt proceedings for which only cash may satisfy a cash bond requirement.

STATE VERSUS

File No.



Name Of Defendant

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Telephone No.

Telephone No.

SIGNATURE

Signature Of Surety

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

Date

Signature

- Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court
- Custodian Of Detention Facility [G.S. 15A-537(c)]

- Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court
- Custodian Of Detention Facility [G.S. 15A-537(c)]

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Telephone No.

Telephone No.

SIGNATURE

Signature Of Surety

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

Date

Signature

- Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court
- Custodian Of Detention Facility [G.S. 15A-537(c)]

- Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court
- Custodian Of Detention Facility [G.S. 15A-537(c)]

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Telephone No.

Telephone No.

SIGNATURE

Signature Of Surety

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

Date

Signature

- Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court
- Custodian Of Detention Facility [G.S. 15A-537(c)]

- Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court
- Custodian Of Detention Facility [G.S. 15A-537(c)]

STATE OF NORTH CAROLINA

File No. (lead file no. listed on Appearance Bond)

County Where Case Pending (if different from County Of Surrender)

_____ County Of Surrender

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

SURRENDER OF DEFENDANT BY SURETY

G.S. 15A-534, 15A-540, 58-71-20

Name Of Defendant

Name Of Surrendering Surety(ies) (required)

Name Of Surrendering Agent Of Surety (if applicable)

Date Of Appearance Bond

Amount Of Bond

\$

Additional File Nos. And Offenses (listed on Appearance Bond)

The undersigned hereby surrenders the defendant to the Sheriff of the above-captioned County Of Surrender, and in support of said surrender shows the following:

PRE-BREACH SURRENDER G.S. 15A-540(a), 58-71-20

POST-BREACH SURRENDER G.S. 15A-540(b)

NOTE TO SURETY: Complete this section if the surrender occurs before a breach of the bond (i.e., if the defendant has not failed to appear).

NOTE TO SURETY: Complete this section if the surrender occurs after a breach of the bond (i.e., after a failure to appear).

This surrender is offered before there has been a breach of the bond obligation. The County Of Surrender shown above is the county where: (check only one)

- the defendant is bonded to appear.
 the defendant was bonded (i.e., where the defendant was in custody when the bond was executed).

Upon delivery of this surrender form to the court with the custodian's completed receipt below, I hereby apply to the clerk for exoneration from the bond obligation pursuant to G.S. 15A-540(a).

This surrender is offered after there has been a breach of the bond obligation. The County Of Surrender shown above is the county where: (check only one)

- the defendant is bonded to appear.
 the defendant was bonded (i.e., where the defendant was in custody when the bond was executed).
 the county where the defendant currently is in custody.

A copy of the bail bond, forfeiture, or release order is attached.

Date

Signature Of Surety/Agent

Date

Signature Of Surety/Agent

RECEIPT BY CUSTODIAN

The undersigned custodian hereby accepts the surrender by the surety/agent and acknowledges that the defendant now is in custody of the County Of Surrender identified above.

Date

Name Of Custodian/Jailer (Type Or Print)

Signature Of Custodian/Jailer

NOTES TO CUSTODIAN:

- (1) Surrender by a surety is governed by G.S. 15A-540 and G.S. 58-71-20. You can determine whether or not the person offering the surrender is the surety on the bond or an agent of that surety by reviewing the Appearance Bond form (AOC-CR-201) or a Bond Forfeiture Notice (AOC-CR-213) issued for a forfeiture of that bond. Both forms identify the surety. If you have any questions about whether or not a person offering a defendant for surrender is authorized to do so, you should consult with your supervising authority or agency counsel; judicial officials may not give sheriffs' personnel advice or approval for the surrender process.
- (2) If the surety completed the section for the Pre-Breach Surrender, above, the previous Conditions Of Release And Release Order (AOC-CR-200) for which the appearance bond was executed remains in effect. You must obtain a copy of that release order from the court in order to determine the defendant's current conditions of release.
- (3) If the surety completed the section for Post-Breach Surrender, above, provide the surrendering surety or agent with a copy of this form with the Receipt By Custodian completed. Then without unnecessary delay, take the defendant before a judicial official along with the completed original of this form and all documentation attached by the surety for entry of a new commitment order and conditions of release.

(See **NOTES TO MAGISTRATE** on reverse.)

Original and Attachments-Clerk Copy-Surety Copy-Custodian

NOTES TO MAGISTRATE:

- (1) *A judicial official may not accept or approve a surrender. Surrender is to the Sheriff, only, not to a judicial official. G.S. 15A-540. Sureties who wish to surrender a defendant should be directed to the Sheriff. Custodial personnel with questions about the validity of a proposed surrender should be directed to consult with their supervising authority or agency counsel. You should conduct an appearance for the defendant only if the surety has indicated a Post-Breach Surrender on the reverse and only after the custodian has brought you the original of this form with a completed Receipt By Custodian.*
- (2) *If the defendant was surrendered pursuant to a Pre-Breach Surrender, the previous Conditions Of Release And Release Order (AOC-CR-200) for which the appearance bond was posted remains in effect. You may not enter a new release order for a pre-breach surrender, unless (i) the defendant has had no appearance before the court on any case covered by the bond for which he/she was surrendered, and (ii) you entered the original release order for which the bond was posted. G.S. 15A-534(e). Any court date already scheduled for the defendant remains the same.*
- (3) *If the defendant was surrendered pursuant to a Post-Breach Surrender, G.S. 15A-540(c) requires that a judicial official determine whether the defendant is again entitled to pretrial release and, if so, upon what conditions. If the breach was a failure to appear for any charge(s) covered by the appearance bond for which the defendant was surrendered. G.S. 15A-534(d1) provides that the official shall impose conditions of release as follows:*
 - a. *If an order for arrest (OFA) was issued for the failure to appear and any conditions of release were recommended in that OFA, you must at a minimum impose the conditions of release recommended in the OFA (even if the OFA is recalled pursuant to Note (4), below).*
 - b. *If there were no conditions recommended in an OFA issued for the failure to appear, you must require a secured bond at least double the amount of the most recent secured or unsecured bond.*
 - c. *If there were no conditions recommended in an OFA issued for the failure to appear, and there was no prior monetary condition of release, you must require a secured bond of at least \$1,000.*
- (4) *If an OFA was issued for the defendant's failure to appear, the court date in the new release order should be the same as the court date set in the order for arrest, if any. Arrange to have the OFA served on the defendant as quickly as possible, but do not detain the defendant beyond the time when he or she satisfies the conditions of release imposed in the new release order. If the OFA cannot be served before the defendant satisfies the new conditions of release, arrange to have the OFA recalled as quickly as possible to avoid a duplicate arrest of the defendant.*
- (5) *If the defendant was surrendered in a county other than the county where the defendant is to appear, return the original OFA, if any, with return of service completed, along with all original documentation for the defendant's surrender, conditions of release, and any new bond posted, to the county where the defendant is to appear.*

File No. See Attachment

ORDER FOR ARREST

Offense _____

THE STATE OF NORTH CAROLINA VS.

Name, Address & Telephone No. Of Defendant _____

Race _____ Sex _____ Date Of Birth _____ Age _____

Social Security No. _____ Drivers License No. & State _____

Name And Address of Defendant's Employer _____

Date Defendant Failed To Appear _____

Amount Of Bond _____ Type Of Bond _____ \$ _____

TRUE BILL OF INDICTMENT ONLY

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) _____

Offense Code _____ Offense In Violation Of G.S. _____

Date Of Offense _____ Date Issued _____

Law Enforcement Case No. _____ LID No. _____ SID No. _____ FBI No. _____

STATE OF NORTH CAROLINA
 In The General Court Of Justice
 District Superior Court Division
 _____ County

To any officer with authority and jurisdiction to serve an Order For Arrest:
 The Court finds that:

1. FTA - RELEASE ORDER [G.S. 15A-305(b)(2)]
 the defendant has been arrested and released from custody and has failed on the date shown to appear as required by the Release Order.
 This is the defendant's second or subsequent failure to appear on these charges.

2. FTA - CRIMINAL SUMMONS OR CITATION (Do not use for infraction.) [G.S. 15A-305(b)(3)]
 the defendant has failed on the date shown to appear as required by a duly executed Criminal Summons or by a Citation that charged the defendant with a misdemeanor.

3. TRUE BILL OF INDICTMENT [G.S. 15A-305(b)(1)]
 a Grand Jury has returned a true bill of indictment against the defendant, a copy of which is attached.
 [Note To Arresting Officer: If this option is checked, defendant must be fingerprinted. G.S. 15A-502(a)]

4. FTA - SHOW CAUSE AFTER FTC [G.S. 15A-305(b)(8)]
 the defendant has failed on the date shown to appear as required in a Show Cause Order entered in this criminal proceeding.

5. FTA - SHOW CAUSE ORDER IN ORIGINAL CRIMINAL JUDGMENT [G.S. 15A-305(b)(8); -1362(c); -1364(a)]
 the defendant has failed by the date shown to pay a fine or costs or both as required by a judgment entered in this case and has also failed, as required upon such failure, to appear on that date and show cause why the defendant should not be imprisoned.

6. PROBABLE CAUSE THAT DEFENDANT MAY FAIL TO APPEAR - CRIMINAL CONTEMPT [G.S. 15A-305(b)(9); 5A-16]
 this Court has initiated plenary proceedings for contempt against the defendant under G.S. 5A-16, has issued a show cause order and finds probable cause to believe that the defendant will not appear as required in response to that order.

7. PROBATION VIOLATION [G.S. 15A-305(b)(4); -1345(a)]
 the probation officer has provided the court with a written statement, signed by the probation officer, alleging that the defendant has violated specified conditions of the defendant's probation and a copy of the written statement is attached.

8. Other: (specify) _____

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.
 commitment since release of the defendant is not authorized.

Signature _____ Location Of Court _____ Court Date _____

Magistrate Deputy CSC DC Judge AM
 Asst. CSC Clerk Of Superior Court SC Judge PM

If this Order For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.

RETURN OF SERVICE

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

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

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

This Order WAS NOT served for the following reason:

| | |
|------------------------------------|---------------------------------|
| Signature Of Officer Making Return | Name Of Officer (type or print) |
| | |

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date Signature Dep. CSC Asst. CSC CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

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

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

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

This Order WAS NOT served for the following reason:

| | |
|------------------------------------|---------------------------------|
| Signature Of Officer Making Return | Name Of Officer (type or print) |
| | |

Department Or Agency Of Officer

| | | | | |
|----------|--------------------------|---------|---------|---------|
| File No. | Law Enforcement Case No. | LID No. | SID No. | FBI No. |
|----------|--------------------------|---------|---------|---------|

ORDER FOR ARREST

STATE OF NORTH CAROLINA
 In The General Court Of Justice
 District Superior Court Division
 _____ County

Offense _____

THE STATE OF NORTH CAROLINA VS.

Name, Address & Telephone No. Of Defendant _____

| | | | |
|--|-----------------------------|---------------|-----|
| Race | Sex | Date Of Birth | Age |
| Social Security No. | Drivers License No. & State | | |
| Name And Address of Defendant's Employer | | | |

Date Defendant Failed To Appear _____

Amount Of Bond \$ _____

Type Of Bond _____

To any officer with authority and jurisdiction to serve an Order For Arrest:
 The Court finds that:

1. FTA - RELEASE ORDER [G.S. 15A-305(b)(2)]
 the defendant has been arrested and released from custody and has failed on the date shown to appear as required by the Release Order.
 This is the defendant's second or subsequent failure to appear on these charges.

2. FTA - CRIMINAL SUMMONS OR CITATION (Do not use for infraction.) [G.S. 15A-305(b)(3)]
 the defendant has failed on the date shown to appear as required by a duly executed Criminal Summons or by a Citation that charged the defendant with a misdemeanor.

3. TRUE BILL OF INDICTMENT [G.S. 15A-305(b)(1)]
 a Grand Jury has returned a true bill of indictment against the defendant, a copy of which is attached.
 [Note To Arresting Officer: If this option is checked, defendant must be fingerprinted. G.S. 15A-502(a)]

4. FTA - SHOW CAUSE AFTER FTC [G.S. 15A-305(b)(8)]
 the defendant has failed on the date shown to appear as required in a Show Cause Order entered in this criminal proceeding.

5. FTA - SHOW CAUSE ORDER IN ORIGINAL CRIMINAL JUDGMENT [G.S. 15A-305(b)(8); -1362(c); -1364(a)]
 the defendant has failed by the date shown to pay a fine or costs or both as required by a judgment entered in this case and has also failed, as required upon such failure, to appear on that date and show cause why the defendant should not be imprisoned.

6. PROBABLE CAUSE THAT DEFENDANT MAY FAIL TO APPEAR - CRIMINAL CONTEMPT [G.S. 15A-305(b)(9); 5A-16]
 this Court has initiated plenary proceedings for contempt against the defendant under G.S. 5A-16, has issued a show cause order and finds probable cause to believe that the defendant will not appear as required in response to that order.

7. PROBATION VIOLATION [G.S. 15A-305(b)(4); -1345(a)]
 the probation officer has provided the court with a written statement, signed by the probation officer, alleging that the defendant has violated specified conditions of the defendant's probation and a copy of the written statement is attached.

8. Other: (specify) _____

TRUE BILL OF INDICTMENT ONLY

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) _____

Offense Code _____ Offense In Violation Of G.S. _____

Date Of Offense _____ Date Issued _____

Signature _____ Location Of Court _____ Court Date _____

Magistrate Deputy CSC DC Judge AM

Asst. CSC Clerk Of Superior Court SC Judge PM

If this Order For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.

RETURN OF SERVICE

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

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

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

This Order WAS NOT served for the following reason:

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

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date | Signature | Dep. CSC | Asst. CSC | CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

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

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

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

This Order WAS NOT served for the following reason:

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

Department Or Agency Of Officer

(TYPE OR PRINT IN BLACK INK)

File No.

STATE OF NORTH CAROLINA

Additional File Nos.

County

In The General Court Of Justice
District Superior Court Division

Name Of Defendant, Petitioner, Respondent
Street Address Of Defendant, Petitioner, Respondent
Permanent Mailing Address Of Defendant, Petitioner, Respondent (If Different Than Above)
Telephone Number Of Defendant, Petitioner, Respondent

ORDER OF ASSIGNMENT OR DENIAL OF COUNSEL

Check here if defendant is in jail
Full Social Security No. Has No Social Security No.

G.S. 7A-146(11), 7A-292(15), 7A-450, 7A-451(a), 15A-1340.23(d)

Date Of Offense Most Serious Class Of Offense

Offense(s) (List Offense(s) Only If File No. Has Not Been Assigned)

INSTRUCTIONS: The Court should complete Part I. or Part II. of this form. Do not use this form for first-degree murder cases or murder cases where the degree is undesignated, except for cases where the defendant was under 18 years of age at the time of the offense, or for capital post-conviction cases or appeals to the Court of Appeals or Supreme Court.

I. ASSIGNMENT OF COUNSEL

From the petition heard in this matter, the affidavit made by the applicant named above, and the inquiry made by the Court, which is documented in the record, it is determined that the applicant is not financially able to provide the necessary expenses of legal representation, and (check one):

- 1. is charged with a felony, a misdemeanor other than a Class 3, or a Class 3 misdemeanor that was committed before December 1, 2013, or is a petitioner or respondent in a proceeding or action listed in G.S. 7A-451(a); it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law; and that the attorney named below or the public defender in this judicial district shall provide representation.
2. is charged with a Class 3 misdemeanor that was committed on or after December 1, 2013, and (check one):
a. the Court has found that the defendant has more than three prior convictions; it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law.
b. the Court has not found at this time that the defendant has more than three prior convictions, the defendant is in custody, the Court does not intend at this appearance to modify the defendant's conditions of release to allow the defendant to be released pending trial without posting a secured bond, and the defendant has a constitutional right to meaningful access to the courts; it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law; and that the attorney named below or the public defender in this judicial district shall provide representation that is limited pursuant to G.S. 15A-141(3) and 15A-143 to the time period of the applicant's pretrial confinement on the Class 3 misdemeanor charge.

It is further ORDERED that the defendant shall be represented by:

- the attorney named below. the public defender in this judicial district.

Name Of Appointed Attorney (If Applicable) Next Court Date

Date Signature Judge Clerk Of Superior Court Asst. CSC Deputy CSC Magistrate

NOTE: A magistrate may appoint counsel if designated to do so by the Chief District Court Judge. See G.S. 7A-146(11) and G.S. 7A-292(15).

II. DENIAL OF COUNSEL

From the petition heard in this matter, the affidavit made by the applicant named above, and the inquiry made by the Court, which is documented in the record, it is determined that the applicant (*check all that apply*):

- 1. is charged with a felony, a misdemeanor higher than a Class 3, or a Class 3 misdemeanor that was committed before December 1, 2013, but will not receive an active or suspended term of imprisonment if he/she is convicted of the offense(s) for which he/she is charged; it is ORDERED that the defendant's petition is denied.
- 2. is charged with a Class 3 misdemeanor that was committed on or after December 1, 2013, the Court has found that the defendant has fewer than four prior convictions, and the case shall proceed as a fine only case; it is ORDERED that the defendant's petition is denied.
- 3. will not receive an active or suspended term of imprisonment if he/she is found in contempt; it is ORDERED that the defendant's petition is denied.
- 4. is financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is not indigent and his/her petition is denied.

| | | |
|------|-----------|--|
| Date | Signature | <input type="checkbox"/> Judge <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Magistrate |
|------|-----------|--|

NOTE: A magistrate may appoint counsel if designated to do so by the Chief District Court Judge. See G.S. 7A-146(11) and G.S. 7A-292(15).

(TYPE OR PRINT IN BLACK INK) In The General Court Of Justice

District Superior Court Division

File No.

Additional File Nos.

STATE OF NORTH CAROLINA

County

Name Of Applicant

AFFIDAVIT OF INDIGENCY

G.S. 7A-450 et seq.

Street Number And Street Name, Including Apartment Or Unit Number If Applicable

Offense(s)

City, State And Zip Code

Full Permanent Mailing Address Of Applicant (If Different Than Above)

Applicant: Do you have other pending criminal charge(s) in which a lawyer has been appointed? Yes No
Name Of Lawyer

Telephone Number Of Applicant

Date Of Birth

Full Social Security No. Of Applicant

Has No Social Security No.

Defendant Parent/Guardian/Trustee

MONTHLY INCOME (money you make)

MONTHLY EXPENSES (money you pay out)

Employment - Applicant \$

Number Of Dependents

Name And Address Of Applicant's Employer
(If not employed, state reason; if self-employed, state trade)

Shelter Buying Renting \$

Food (including Food Stamps) \$

Utilities
(power, water, heating, phone, cable, etc.) \$

Other Income (Welfare, Food Stamps, S/S, Pensions, etc.) \$

Health Care \$

Employment - Spouse \$

Installment Payments
 Vehicle Other \$

Name And Address Of Spouse's Employer

Car Expenses
(gas, insurance, etc.) \$

Support Payments \$

Other: (specify) \$

Total Monthly Income \$

Total Monthly Expenses \$

DESCRIPTION OF ASSETS AND LIABILITIES

ASSETS (things you own)

LIABILITIES (amounts you owe)

Cash On Hand And In Bank Accounts
(List Name Of Bank & Account No.)

\$

Money Owed To Or Held For Applicant

\$

Motor Vehicles (List Make, Model, Year)

(Fair Market Value)

(Balance Due)

\$

\$

Real Estate

(Fair Market Value)

(Balance Due)

\$

\$

Personal Property

(Fair Market Value)

(Balance Due)

\$

\$

Other Debts

\$

Last Income Tax Filed 20 _____ Refund Owe

\$

\$

Other

\$

\$

Total Assets And Liabilities

\$

\$

Bond Type

Amount

By Whom Posted

\$

NOTE: Read the notice on the reverse side before completing this form.

NOTICE TO PERSONS REQUESTING A COURT-APPOINTED LAWYER

1. When answering the questions on the Affidavit Of Indigency (*reverse side of this form*), please do not discuss your case with the interviewer. The interviewer can be called as a witness to testify about any statements made in his/her presence. Please wait and speak with your lawyer. Do not ask the interviewer for any advice or opinion concerning your case.
2. **A court-appointed lawyer is not free. If you are convicted or plead guilty or no contest, you may be required to repay the cost of your lawyer as a part of your sentence. The Court may also enter a civil judgment against you, which will accrue interest at the legal rate set out in G.S. 24-1 from the date of the entry of judgment. Your North Carolina Tax Refund may be taken to pay for the cost of your court-appointed lawyer. In addition, if you are convicted or plead guilty or no contest, the Court must charge you an attorney appointment fee and may enter this fee as a civil judgment against you pursuant to G.S. 7A-455.1.**
3. The information you provide may be verified, and your signature below will serve as a release permitting the interviewer to contact your creditors, employers, family members, and others concerning your eligibility for a court-appointed lawyer. A false or dishonest answer concerning your financial status could lead to prosecution for perjury. See G.S. 7A-456(a) ("A false material statement made by a person under oath or affirmation in regard to the question of his indigency constitutes a Class I felony.").

Under penalty of perjury, I declare that the information provided on this form is true and correct to the best of my knowledge, and that I am financially unable to employ a lawyer to represent me. I now request the Court to assign a lawyer to represent me in this case. I authorize the Court to contact my creditors, employers, or family members, any governmental agencies or any other entities listed below concerning my eligibility for a court-appointed lawyer.

I further authorize my creditors, employers, or family members, any governmental agencies or any other entities listed below to release financial information concerning my eligibility for a court-appointed lawyer upon request of the Court.

Governmental Agencies Or Other Entities Authorized To Be Contacted And/Or To Release Information

| | | |
|---|-----------------------------------|--|
| SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME | | <i>Date</i> |
| <i>Date</i> | <i>Signature</i> | <i>Signature Of Applicant</i> |
| <input type="checkbox"/> <i>Deputy CSC</i> <input type="checkbox"/> <i>Assistant CSC</i> <input type="checkbox"/> <i>Clerk Of Superior Court</i> <input type="checkbox"/> <i>Magistrate</i> | | <i>Name Of Applicant (Type Or Print)</i> |
| <input type="checkbox"/> <i>Notary</i> | <i>Date My Commission Expires</i> | <input type="checkbox"/> <i>Defendant</i> <input type="checkbox"/> <i>Parent/Guardian/Trustee</i> <input type="checkbox"/> _____ |
| SEAL | <i>County Where Notarized</i> | |

NOTE: *If you are less than 18 years old, or if you are at least 18 years old but remain dependent on and live with a parent or guardian, state name and address of parent, guardian or trustee below.*

| |
|---|
| <i>Name Of Parent/Guardian Or Trustee</i> |
| <i>Address</i> |
| <i>City, State, Zip</i> |

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

Name Of Defendant

Name And Address Of Law Enforcement Agency

**TRANSMITTAL OF
OUT-OF-COUNTY PROCESS**

TO THE LAW ENFORCEMENT AGENCY NAMED ABOVE:

Attached please find an Order For Arrest Criminal Summons Warrant For Arrest for execution in your county or city.

The judicial official who issued the process has made the following recommendations for conditions of release:

The judicial official in your county before whom the defendant is brought should set the trial or hearing at the date, time and location shown below.

Date Of Hearing

Time Of Hearing

AM PM

Location of Hearing

If the defendant is committed to jail, the person or agency listed below should be contacted for return to this county.

Name Of Person Or Agency

Date

Telephone No.

Signature

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

NOTE TO EXECUTING OFFICER: Following execution of the attached process, deliver this form to the judicial official before whom defendant is brought.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

 District Superior Court Division

Name Of Defendant

OUT-OF-COUNTY PROCESS VERIFICATION RECALL AND TRANSMISSION (For use when process electronically transmitted to out-of-county agency)

G.S. 15A-101.1; 15A-401; 15A-501

NOTE: The county name shown above is the county where the process was originally issued. See instructions on reverse side.

I. VERIFICATION

Date Of Issuance Of Process

Type Of Process

 Warrant Order For Arrest

Offense(s) Charged

 Domestic Violence Offense

Name Of Initiating Officer, If Any

Initiating Officer's Court Date(s)

NOTICE TO THE LAW ENFORCEMENT AGENCY THAT ARRESTED THE DEFENDANT:

The initiating law enforcement agency named below hereby verifies that:

1. The original of the process attached to this verification is in our physical possession.
2. The process is still outstanding and has not already been served on the defendant.
3. The defendant is still wanted for prosecution on these charges.
4. We have entered the following notation in the Return of Service on the original: "Defendant has been arrested in (name of county where defendant arrested) _____ County."
5. The initiating officer's next court date(s) are shown above.

Date

Signature

Name Of Initiating Law Enforcement Agency

Name (Type Or Print)

Fax Number of Initiating Law Enforcement Agency

Title (Type Or Print)

II. RECALL OF PROCESS AND TRANSMISSION TO CLERK

County Of Arrest, As Assigned By The Undersigned

Date Of Arrest

Date Of Service Of Process

Name And Address Of Arresting Agency

Defendant's Next Court Date In Your County

NOTICE TO THE LAW ENFORCEMENT AGENCY IN VERIFICATION SECTION ABOVE:

The defendant was arrested in the County of Arrest named above. The attached process has has not been served on the defendant. The process is hereby recalled. If you have not already done so, immediately return your original to the office of the Clerk of Superior Court of the county in which the charges are pending.

NOTICE TO THE CLERK OF SUPERIOR COURT OF THE COUNTY WHERE THE PROCESS WAS ISSUED:

The defendant named above has been arrested on the charges specified above and served with a copy of the process in this county. The original process has been recalled. Attached you will find the following:

1. The process served in this county, bearing the officer's return of service.
2. The original release order and appearance bond, if the defendant has been released, or a copy of the release order, if the defendant has not been released.
3. The defendant's next court date in your county is the date shown above, and the defendant has been notified of that court date in the Release Order, of which a copy is attached.

Date

Signature Of Judicial Official

County

Telephone Number

Name Of Judicial Official (Type Or Print)

(Over)

INSTRUCTIONS

THE LAW ENFORCEMENT AGENCY IN POSSESSION OF THE ORIGINAL PROCESS SHOULD:

1. Enter the applicable information in the boxes in the top portion and in the Verification on the reverse side.
2. Under "Name Of Initiating Officer, If Any," enter the name of the officer whose name appears as a complaining witness on the warrant in this case, if any. If the process is an order for arrest, refer to the warrant for this information.
3. If the charges are all misdemeanor(s), under "Initiating Officer's Court Date(s)" enter all the dates on which the initiating officer is scheduled to be in district court during the next month. Otherwise do not enter a date in this box.
4. Complete and sign the Verification on the reverse.
5. Fax this form, and the process, to the law enforcement agency that arrested the defendant.
6. Enter the following notation in the Return of Service on the original: "Defendant has been arrested in *(name of county where defendant arrested)* _____ County."
7. Immediately return the original, with that notation, to the office of the Clerk of Superior Court of the county where the process was issued, to be filed in the defendant's file.
8. Make no further effort to arrest the defendant on this process.
9. If you entered the defendant and the charges in DCI, update DCI with the arrest information.

THE LAW ENFORCEMENT AGENCY THAT ARRESTED THE DEFENDANT SHOULD:

1. By fax or other means, obtain the following from the law enforcement agency in possession of the process:
 - a. the original process,
 - b. this form, with the Verification on Side One of this form completed and signed.
2. Make a copy of the process, serve it on the defendant, and make a return of service on the original or duplicate original.
3. Take the defendant, and these papers, to a magistrate for an initial appearance without unnecessary delay.
4. Give the process bearing your return of service and two (2) copies of this form to the magistrate.
5. Notify DCI that the defendant has been arrested on these charges, if the process was entered.

THE MAGISTRATE SHOULD:

1. Enter the applicable information in the boxes under "RECALL OF PROCESS AND TRANSMISSION TO CLERK."
2. Conduct an initial appearance immediately and set conditions of pretrial release as soon as sufficient information is available.
3. Assign a court date in the county where the charges are pending. Communicate with that county to obtain an appropriate date. Enter this date under "Defendant's Next Court Date In Your County, As Assigned By The Undersigned."
4. Release the defendant upon satisfaction of the conditions of pretrial release.
5. Complete the "Recall Of Process And Transmission To Clerk" on the reverse.
6. Send this form to the Clerk of Superior Court of the issuing county. Attach the following:
 - a. the process bearing the return of service,
 - b. the original release order and appearance bond, if the defendant has been released from jail, or a copy of the release order if the defendant has not been released.
7. Send the above by fax and hard mail in all cases.
8. Send a copy of this form to the law enforcement agency in possession of the original process. Attach a copy of the Release Order.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

Name Of Defendant

**CONDITIONS OF RELEASE
ABSTINENCE FROM ALCOHOL AND
CONTINUOUS ALCOHOL MONITORING**

G.S. 15A-534

NOTE: Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order, or AOC-CR-922, Release Order For Juvenile Transferred To Superior Court For Trial.

ORDER

In addition to the conditions of release imposed on the attached AOC-CR-200 or AOC-CR-922, incorporated herein by reference:

- 1. (for offenses committed on or after December 1, 2011, but before December 1, 2012) The undersigned judicial official finds that the defendant has been charged with an offense involving impaired driving, G.S. 20-4.01(24a), and was convicted of a prior offense involving impaired driving, which prior offense occurred within 7 years before the date of this offense. The defendant therefore is ORDERED to abstain from alcohol consumption as verified by a continuous alcohol monitoring system for the period of pretrial release or until this condition is removed by entry of order of the court. G.S. 15A-534(i).
- 2. (for offenses committed on or after December 1, 2012) The defendant is ORDERED to abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney. G.S. 15A-534(a).
- 3. It is further ORDERED that the following conditions related to defendant's release on continuous alcohol monitoring shall apply:

Date

Signature Of Judicial Official

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

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
 District Superior Court Division**STATE VERSUS**

Name Of Defendant

DETENTION OF IMPAIRED DRIVER

Date Of Birth

G.S. 15A-534.2, 20-38.4

FINDINGS

The undersigned judicial official conducting an initial appearance for the defendant named above finds the following by clear and convincing evidence:

1. The defendant has been charged with an offense involving impaired driving as defined in G.S. 20-4.01(24a).
2. At the time of the defendant's initial appearance, the impairment of the defendant's physical or mental faculties presents a danger, if the defendant is released, of physical injury to the defendant or others or damage to property in that (*specify reasons*):

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff until an appropriate judicial official determines that

1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released or
2. a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

The period of detention under this Order shall not exceed twenty-four (24) hours.

| | | | |
|--------------------------------|--|--|--|
| Date | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | <input type="checkbox"/> Magistrate | <input type="checkbox"/> Clerk Of Superior Court |
| Signature Of Judicial Official | | <input type="checkbox"/> Deputy CSC | <input type="checkbox"/> District Court Judge |
| | | <input type="checkbox"/> Assistant CSC | <input type="checkbox"/> Superior Court Judge |

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released.
2. _____ (*name*), a sober, responsible adult, has indicated by signing below that he/she is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.
3. the period of detention has reached twenty-four (24) hours.

By signing immediately below, I certify that I am a sober, responsible person, age 18 or older, who is willing and able to assume responsibility for the defendant until the defendant's physical or mental faculties are no longer impaired.

| | |
|------|--------------------------------------|
| Date | Signature Of Sober Responsible Adult |
|------|--------------------------------------|

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

| | | | |
|--------------------------------|--|--|--|
| Date | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | <input type="checkbox"/> Magistrate | <input type="checkbox"/> Clerk Of Superior Court |
| Signature Of Judicial Official | | <input type="checkbox"/> Deputy CSC | <input type="checkbox"/> District Court Judge |
| | | <input type="checkbox"/> Assistant CSC | <input type="checkbox"/> Superior Court Judge |

NOTE: "If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed." G.S. 20-38.4(a)(3).

NOTE: If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. Use form AOC-CR-271 for this purpose. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

Name Of Defendant

Date Of Birth

DETENTION FOR COMMUNICABLE DISEASE TESTING

G.S. 15A-534.3

FINDINGS

The undersigned judicial official conducting an initial appearance or first appearance for the defendant named above finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by the defendant to the individual in that (specify reasons):

[NOTE: Do not include any information indicating that the defendant has or may have a communicable disease. Describe only the nature of the exposure that would pose a significant risk of transmission of the AIDS or Hepatitis B virus if the defendant were infected. Note that mere contact of the defendant's bodily fluids with a subject's clothing or unbroken skin does not pose a significant risk of transmission of either virus. A significant risk of transmission occurs when the defendant's bodily fluids come into contact with the subject's broken skin or mucous membranes. For example, a bite by the defendant that does not break the subject's skin does not pose a significant risk of transmission. Contact that may pose a significant risk includes things like a needlestick or a bite that actually breaks the subject's skin.]

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff to allow for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148.

The period of detention under this Order shall not exceed twenty-four (24) hours.

Date Time AM PM Magistrate Clerk Of Superior Court
Deputy CSC District Court Judge
Assistant CSC Superior Court Judge

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

- 1. public health officials have completed their investigation and testing, if any, under G.S. 130A-144 and G.S. 130A-148.
2. the period of detention has reached twenty-four (24) hours.

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date Time AM PM Magistrate Clerk Of Superior Court
Deputy CSC District Court Judge
Assistant CSC Superior Court Judge

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
Before The Magistrate

County

STATE VERSUS

IMPLIED CONSENT OFFENSE NOTICE

Name Of Defendant

G.S. 20-38.4

OBSERVATION PROCEDURE

TO THE DEFENDANT:

The established local procedure to contact other persons and have other persons appear at the jail to observe your condition or administer an additional chemical analysis to you is provided in writing with this form and incorporated into this form by reference. You are hereby notified of this procedure.

CONTACT PERSONS

TO THE DEFENDANT:

Pursuant to G.S. 20-38.4(a)(4), you are required to list all persons you wish to contact and their telephone numbers: (attach additional sheets if necessary)

Name

Telephone Number

- 1.
2.
3.

I do not wish to contact anyone for the purposes of observing me at the jail or administering an additional chemical analysis.

NOTE TO DEFENDANT: You still may contact other persons for other purposes, like an attorney, a bail bondsman, family members, or friends, according to the jail's regular procedures for those contacts.

SIGNATURE

By signing below, the defendant indicates that he/she has received notice of the contact and observation procedure and has listed all persons that he/she wishes to contact for the purposes of observing him/her at the jail or administering an additional chemical analysis.

Date

Signature Of Defendant

MAGISTRATE'S CERTIFICATION

The undersigned magistrate certifies that pursuant to Article 24 of Chap. 15A and G.S. 20-38.4 that

- 1. An initial appearance was held and the undersigned found probable cause to believe the defendant committed an implied consent offense.
2. The undersigned reviewed all alcohol screening tests, chemical analyses and testimony from law enforcement officers concerning impairment and the circumstances of the arrest, and observed the defendant.
3. The undersigned considered whether the defendant was impaired to the extent that the provisions of G.S. 15A-534.2 should have been imposed.
4. The undersigned informed the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or to administer an additional chemical analysis.
5. The undersigned required the defendant to list all persons the defendant wishes to contact and telephone numbers on a copy of this form.
The defendant returned this form to the undersigned at the initial appearance.
The defendant failed to return this form at the initial appearance.

Date

Time

AM
PM

Signature Of Magistrate

The defendant returned this form to the undersigned after the initial appearance.

Date

Time

AM
PM

Signature

Magistrate
Assistant CSC
Deputy CSC
Clerk Of Superior Court

NOTE: If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

DETENTION OF PROBATIONER
ARRESTED FOR FELONY

G.S. 15A-534(d2)

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

FINDINGS AND DETENTION ORDER

The undersigned, having found on the attached AOC-CR-200, incorporated herein by reference, that the defendant has been charged with a felony offense while on probation for a prior offense, hereby finds in addition that (check only one)

- 1. the defendant poses a danger to the public, and therefore a secured bond or electronic house arrest with secured bond is required if release is otherwise authorized.
2. the defendant does not pose a danger to the public, and therefore conditions of release are set on the attached AOC-CR-200 as otherwise provided in G.S. Chapter 15A, Article 26.
3. there is insufficient information to determine whether the defendant poses a danger to the public, and therefore makes the following additional findings and orders below. (NOTE: Nos. 3.a. and 3.b. must be completed when making this finding.)
a. The undersigned finds the following basis for the decision that additional information is needed to determine whether the defendant poses a danger to the public:
b. The undersigned further finds that the following additional information is necessary to make that determination:
c. The custodian of the detention facility named on the attached AOC-CR-200 is ORDERED to detain the defendant pursuant to G.S. 15A-534(d2)(3). The custodian is further ORDERED to bring the defendant before a judge for first appearance at the location, date and time specified on the attached AOC-CR-200, but if the information identified in No. 3.b. becomes available before that time, the custodian is ORDERED to bring the defendant immediately before any judicial official to set conditions of release.

Date Signature Of Judicial Official
Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court District Court Judge Superior Court Judge

RELEASE FROM DETENTION ORDER

NOTE: This order is required only if the defendant was detained pursuant to No. 3, above.

The undersigned judicial official ORDERS that the defendant be released from the Detention Order entered above, because (check one)

- 1. upon receipt and consideration of the additional information described above,
2. upon review of the defendant's eligibility for release at his/her first appearance,
the undersigned finds that the defendant does does not pose a danger to the public, and therefore sets or denies conditions of release accordingly on the attached AOC-CR-200.

Date Signature Of Judicial Official
Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court District Court Judge Superior Court Judge

NOTE TO JUDICIAL OFFICIAL: First appearance must be set for the first regular session of district court in the county or within 96 hours of arrest, whichever occurs first. G.S. 15A-601(c). A lack of information to determine whether the defendant poses a danger to the public does not permit a delay of the first appearance. If the defendant was detained pursuant to No. 3 above, then upon receipt of information identified in No. 3.b., any judicial official before whom the defendant is brought must set conditions of release pursuant to G.S. 15A-534(d2)(3), in accord with the official's further finding concerning danger to the public under Release From Detention Order above.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

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

G.S. 15A-1345(b1)

Name Of Defendant

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

FINDINGS AND DETENTION ORDER

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

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

Date

Signature Of Judicial Official

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

RELEASE FROM DETENTION ORDER

NOTE: This order is required only if the defendant was detained pursuant to No. 3, above.

The undersigned judicial official ORDERS that the defendant be released from the Detention Order entered above, because (check one)

- 1. upon receipt and consideration of additional information,
2. upon review of the defendant's eligibility for release after detention without bail pursuant to G.S. 15A-1345(b1) as specified in No. 3.b. above,

the undersigned finds that the defendant does does not pose a danger to the public and therefore sets or denies conditions of release accordingly on the attached AOC-CR-200.

Date

Signature Of Judicial Official

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

NOTE TO JUDICIAL OFFICIAL: If the defendant has been held for seven (7) days since arrest pursuant to G.S. 15A-1345(b1) and without a determination of conditions of release, the defendant must be brought before any judicial official, who must record in writing that the defendant has been held for 7 days and impose conditions of release as otherwise provided in G.S. 15A-1345. If the defendant is found to be a danger to the public, whether upon receipt of additional information or after 7 days without additional information, release must be denied pending the probation revocation hearing.

STATE OF NORTH CAROLINA

File No.

County

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

IN THE MATTER OF

DIRECT CRIMINAL CONTEMPT/
SUMMARY PROCEEDINGS/
FINDINGS AND ORDER

Name And Address Of Contemnor

Race Sex Date Of Birth Age

G.S. 5A-11, -12, -13, -14

Date Time AM PM Place

On the date, time and place of hearing as stated above, the undersigned judicial official conducted:

- an initial appearance a probable cause hearing a trial
a first appearance an estates proceeding other:
a pre-trial motion hearing a special proceeding

The Court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did

The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond.

(NOTE: The contemnor should be given an opportunity to explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes act of contempt.)

The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority.

Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor

NOTE TO COURT: If suspending a sentence for contempt, impose judgment on form AOC-CR-604.

- be censured for contempt.
shall pay a fine of \$ (max. \$500.00). shall pay the costs of court.
be imprisoned for a term of hours days in the custody of the Sheriff Other:
The contemnor shall be given credit for days' pretrial confinement. Work release is recommended.
This sentence shall run at the expiration of the sentence imposed in file number

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

ORDER OF COMMITMENT/APPEAL ENTRIES

- It is ORDERED that the Clerk deliver two certified copies of this Findings and Order to the sheriff or other qualified officer and that the officer cause the contemnor to be delivered with these copies to the custody of the sheriff of the county named above to serve the sentence imposed or until the contemnor shall have complied with the conditions of release pending appeal.
The contemnor gives notice of appeal from this Findings and Order to the Superior Court.
The contemnor gives notice of appeal from this Findings and Order in the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

NOTE TO COURT: If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17. On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.

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

CERTIFICATION

I certify that this Findings and Order is a true and complete copy of the original which is on file in this case.

Date Signature SEAL

Date Certified Copies Delivered To Sheriff Deputy CSC Assistant CSC Clerk Of Superior Court

Original - File Copy - Sheriff

WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

COURT USE ONLY

Signature Of Magistrate/Deputy/Assistant/CSC _____ Date _____

Signature Of District Court Judge _____ Date _____

I certify that this judgment is a true copy.

PLA: guilty/resp. no contest not guilty/resp.

VERDICT: guilty/resp. not guilty/resp.

FINDING: guilty/resp. not guilty/resp.

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: pay costs and a fine/penalty of \$ _____, be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. The Court finds that a longer shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: (1) pay costs and a fine/penalty of \$ _____; (2) not operate a motor vehicle until properly licensed by DMV; (3) complete _____ hours of community service within _____ days and pay the fee; (4) Other: _____.

It is ORDERED that this: judgment is continued upon payment of costs. case be consolidated for judgment with _____.

sentence is to run at expiration of sentence in _____.

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

COMMITMENT: It is ORDERED that the Clerk deliver certified copies of this judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

The defendant in open court, gives notice of appeal to the Superior Court. The current pretrial release order is modified as follows: _____.

Date _____ Signature Of District Court Judge _____

Date _____ Signature Of Deputy/Assistant/CSC _____

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

Misd. Class: A1 A2 A3 V/D

Misd. Class: A1 A2 A3 V/D

VERDICT: guilty/resp. not guilty/resp.

FINDING: guilty/resp. not guilty/resp.

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: pay costs and a fine/penalty of \$ _____, be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. The Court finds that a longer shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: (1) pay costs and a fine/penalty of \$ _____; (2) not operate a motor vehicle until properly licensed by DMV; (3) complete _____ hours of community service within _____ days and pay the fee; (4) Other: _____.

It is ORDERED that this: judgment is continued upon payment of costs. case be consolidated for judgment with _____.

sentence is to run at expiration of sentence in _____.

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

COMMITMENT: It is ORDERED that the Clerk deliver certified copies of this judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

The defendant in open court, gives notice of appeal to the Superior Court. The current pretrial release order is modified as follows: _____.

Date _____ Signature Of District Court Judge _____

Date _____ Signature Of Deputy/Assistant/CSC _____

C

File No. _____

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court

Day Of Week _____ Month _____ Day _____ Year _____ Time _____

N.C. AM PM

DL DCI Other # Of Chgs _____ Interpreter Needed SP OTS ASL

THE STATE OF NORTH CAROLINA VS.

Name Of Defendant _____

Address _____

City _____ State _____ Zip _____

Drivers License No. _____ State _____ CDL _____ Class _____

Race _____ Sex _____ Date Of Birth _____ Age _____

Telephone No. _____

Vehicle License No. _____ State _____

Vehicle Type _____ Trailer Type _____ CMV _____ Haz. Mat. _____ Make _____ Year _____

Name And Telephone No. Of Defendant's Employer _____

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) _____

ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE

I acknowledge receipt of this Citation and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as a waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.

Date _____ Signature Of Defendant _____

DEPARTMENTAL USE ONLY

Officer _____ No. _____ Troop _____ District _____

SHP Code N.C. Patrol Police/Sheriff _____

Area _____ Wea. _____ Vis. _____ Traffic _____ Accident _____ Speed _____

On Highway No./Street _____ Injury Or Serious Injury Passenger(s) Under 18

In Vicinity/City Of _____ At/Near Intersection _____

Wit. _____ Chemical Analyst _____ Refused AC Blood

DEFENDANT'S COPY (SEE IMPORTANT NOTICE ON REVERSE)

The undersigned officer has probable cause to believe that on or about _____ (a.) (p.) m., the _____ day of _____, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

1. At a speed of _____ MPH in a _____ MPH zone. G.S. 20-141.1.

77. work zone. G.S. 20-141(i)(2). school zone. G.S. 20-141.1.

2. In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

3. By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1.

4. By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1).

5. While subject to an impairing substance. G.S. 20-138.1.

6. Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

7. While the defendant's drivers license was revoked. G.S. 20-28(a). was revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) G.S. 20-28(a1).

8. While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

9. Without (displaying thereon a current approved inspection certificate) (having a current electronic inspection authorization for the vehicle), such vehicle requiring inspection in North Carolina. G.S. 20-183.8. Month Expired: _____.

10. By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

12. By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

14. (Possess an open container of) (Consume) an alcoholic beverage in the (motor) vehicle' and '(public vehicular area)' above.)

15. Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

16. _____

17. And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

Date _____ Signature Of Officer _____

NOTICE TO DEFENDANT

If you fail to appear in court at the time, place, and location specified on the front side, or to dispose of this case prior to your court date as outlined below, **CRIMINAL PROCESS MAY BE ISSUED AGAINST YOU AND SUBSTANTIAL ADDITIONAL FEES MAY BE ASSESSED**. If you are charged with a motor vehicle offense, your failure to appear may result in the revocation of your drivers license until you dispose of this charge, and certain fees may be assessed against you by the North Carolina Division of Motor Vehicles. In addition, if a cash bond is required and posted, it will be forfeited, and your failure to appear will be treated as a "conviction" resulting in "points" against your driving and insurance records or possible license revocation. If you have any questions regarding your legal rights and obligations, consult a licensed attorney.

1. You must appear in District Court at the time, place, and location specified on the front side. If this is a speeding offense, you may be able to dispose of it **online** without appearing in court at **OnlineServices.NCCourts.org**, but if you do not dispose of the offense online prior to your court date, you must appear in court.

2. You have the following options for disposing of the charge without appearing in court:

- You may dispose of the offense **online** without appearing in court by completing one of the options at **OnlineServices.NCCourts.org**. The online options available to you will vary depending on the offense.
- You may dispose of the offense without appearing in court by using US Mail or by visiting the office of the clerk or the magistrate. To do so, see the "INSTRUCTIONS FOR WAIVING BY MAIL OR IN PERSON" below.

If you do not use one of these two options prior to your court date, you must appear in court at the time, place, and location specified on the front side.

INSTRUCTIONS FOR WAIVING BY MAIL OR IN PERSON: You do not have to appear in District Court at the time, place, and location specified if you

waive your trial, plead Guilty/Responsible and pay the amounts shown below for fine/penalty (which is a standard amount set by the Chief District Court Judges of North Carolina) and for costs. You may do so by mail or in person so long as your payment is received by 5:00 p.m. on the last working day prior to your scheduled court date.

Payment By Mail - Date and sign this Citation in the space provided below, place your payment and this Citation in an envelope, affix a stamp, and mail to: Clerk of Superior Court, _____ County Courthouse, _____ North Carolina. Payment must be made by **certified check, cashier's check or money order** payable to the Clerk of Superior Court. **Do not** mail cash.

PERSONAL CHECKS WILL NOT BE ACCEPTED.
Payment In Person - Deliver your payment and this Citation to the office of the Clerk of Superior Court at the above address during regular business hours or to any Magistrate of the above county. Payment must be made by **cash, certified check, cashier's check or money order** payable to the Clerk of Superior Court. You may also pay by credit card, in person, in the clerk's office.

PERSONAL CHECKS WILL NOT BE ACCEPTED.

3. You do not have to appear in District Court at the time, place, and location specified on the front side if you waive your trial and plead Guilty. If you wish to do so, **you must appear in person before a Magistrate** of _____ County, because of the nature of the charge. Date and sign this Citation in the space provided below, deliver it to the Magistrate, and pay the fine imposed by the Magistrate and the costs shown below. Payment must be made by **cash, certified check, cashier's check or money order** payable to the Clerk of Superior Court.

PERSONAL CHECKS WILL NOT BE ACCEPTED.
If you wish to contest the charge or appear before a judge, you must appear at the time, place, and location specified on the front side.

WARNING: If you decide to plead Guilty/Responsible, you should do so **promptly** to minimize your costs. If you delay in entering your plea and making the specified payment, you may be liable for the costs of serving subpoenas on witnesses plus witness fees.

WAIVER OF TRIAL/HEARING - PLEA OF GUILTY/RESPONSIBLE - CONSENT TO ENTRY OF JUDGMENT

I acknowledge that I have been charged with the offense/infraction noted herein by the charging officer.

I understand that I am presumed by law to be Not Guilty/Not Responsible until proven Guilty/Responsible beyond a reasonable doubt. Nevertheless, I do hereby waive my constitutional rights to a trial/hearing in open court, to confront the witnesses against me, and to representation by an attorney.

I hereby plead Guilty/Responsible to this offense/infraction and tender to the court the sums listed below as payment of the fine/penalty and costs in this case. I request that the court accept my waiver of trial/hearing, plea of Guilty/Responsible and tender of fine/penalty and costs, and that a verdict/finding of Guilty/Responsible be entered. This request is made with the full understanding that a verdict/finding of Guilty/Responsible will be entered against my record, that if this is a motor vehicle offense, the North Carolina Division of Motor Vehicles (or the licensing authority of any other state that issued my license to drive) will be notified of the verdict/finding, that it will have the same legal effect for all purposes as a verdict/finding of Guilty/Responsible after a trial/hearing, and that it may result in the assessment of points on my driving and insurance records or the suspension or revocation of my drivers license.

| | |
|------------------------|----------|
| Amount Of Fine/Penalty | Costs |
| \$ _____ | \$ _____ |

| | |
|-------|------------------------|
| Date | Signature Of Defendant |
| _____ | _____ |

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

COURT USE ONLY

Signature Of Magistrate/Deputy/Assistant/CSC _____ Date _____

Signature Of District Court Judge _____ Date _____

I certify that this Judgment is a true copy.

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

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

MISD. CLASS: A1 1 2 3 A1 1 2 3

PLA: guilty/resp. no contest not guilty/resp.

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: pay costs and a fine/penalty of \$ _____, be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. The Court finds that a longer shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: (1) pay costs and a fine/penalty of \$ _____; (2) not operate a motor vehicle until properly licensed by DMV; (3) complete _____ hours of community service within _____ days and pay the fee; (4) Other: _____.

It is ORDERED that this: Judgment is continued upon payment of costs. Case be consolidated for judgment with _____.

sentence is to run at expiration of sentence in _____.

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

COMMITMENT: It is ORDERED that the Clerk deliver certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

The defendant in open court, gives notice of appeal to the Superior Court. The current pretrial release order is modified as follows: _____.

Date _____ Signature Of District Court Judge _____

Date _____ Signature Of Deputy/Assistant/CSC _____



File No. _____

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court

Day Of Week _____ Month _____ Day _____ Year _____ Time _____

N.C. AM PM

DL DCI Other # Of Chgs _____ Interpreter Needed SP OTS ASL

THE STATE OF NORTH CAROLINA VS.

Name Of Defendant _____

Address _____

City _____ State _____ Zip _____

Drivers License No. _____ State _____ CDL _____ Class _____

Race _____ Sex _____ Date Of Birth _____ Age _____

Social Security No. Of Defendant _____ Telephone No. _____

Vehicle License No. _____ State _____

Vehicle Type _____ Trailer Type _____ CMV _____ Haz. Mat. _____ Make _____ Year _____

Name And Telephone No. Of Defendant's Employer _____

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) _____

ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE

I acknowledge receipt of this Citation and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as a waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.

Date _____ Signature Of Defendant _____

DEPARTMENTAL USE ONLY

Officer _____ No. _____ Troop _____ District _____

SHP Code N.C. Patrol _____ Police/Sheriff _____

Area _____ Wea. _____ Vis. _____ Traffic _____ Accident _____ Speed _____

On Highway No./Street _____ Injury Or Serious Injury Passenger(s) Under 18

In Vicinity/City Of _____ At/Near Intersection _____

Wit. _____ Chemical Analyst _____ Refused AC Blood

The undersigned officer has probable cause to believe that on or about _____ (a.) (p.) m., the _____ day of _____, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

1. At a speed of _____ MPH in a _____ MPH zone. G.S. 20-141.1.

77. work zone. G.S. 20-141(i)(2). school zone. G.S. 20-141.1.

2. In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

3. By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1.

4. By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1).

5. While subject to an impairing substance. G.S. 20-138.1.

6. Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

7. While the defendant's drivers license was revoked. G.S. 20-28(a). was revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) G.S. 20-28(a1).

8. While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

9. Without (displaying thereon a current approved inspection certificate) (having a current electronic inspection authorization for the vehicle), such vehicle requiring inspection in North Carolina. G.S. 20-183.8. Month Expired: _____.

10. By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

12. By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

14. (Possess an open container of) (Consume) an alcoholic beverage in the (motor) vehicle' and '(public vehicular area)' above.)

15. Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

16. _____

17. And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

Date _____ Signature Of Officer _____

OFFICER'S NOTES

VIN

| | |
|--|-----------|
| <p>CONSENT TO TOW, REMOVE OR STORE VEHICLE AT THE SCENE</p> | |
| <p>I, the undersigned, declare that I am the <input type="checkbox"/> registered owner <input type="checkbox"/> legal possessor of the motor vehicle identified on the reverse of this Citation.</p> <p>(check appropriate block)</p> <p><input type="checkbox"/> I consent to have this vehicle <input type="checkbox"/> towed <input type="checkbox"/> removed <input type="checkbox"/> and stored by towing service _____.</p> <p><input type="checkbox"/> I consent to have this vehicle removed to the shoulder of the road by the undersigned law enforcement officer and left at this location.</p> | |
| Date | Signature |
| Date | Signature |

NORTH CAROLINA UNIFORM CITATION (G.S. 15A-302)

NOTE: First character of "C" is a "commercial motor vehicle" as defined in G.S. 20-4.01(3d).

LEGEND

(USE THESE LETTERS, NUMERALS AND WORDS APPROPRIATELY)



| VIOLATION AREA | VEHICLE TYPE |
|--|--|
| B Business or Industrial | AMB Ambulance |
| R Residential Section | BI Bicycle |
| S School or Playground | CAB Activity Bus - 16 or More Passengers |
| OC Open Country or Undeveloped | CB Commercial Bus |
| WEATHER | CSB School Bus - 16 or More Passengers |
| C Clear | CTTT Commercial Truck Tractor with Trailer |
| O Overcast | CT2A Commercial Truck with Two Axles |
| R Rain | CT3A Commercial Truck with Three Axles |
| S Sleet, Snow, or Hail | CT4A Commercial Truck with Four Axles |
| I Icing Due to Low Temperature | CT5A Commercial Truck with Five Axles |
| VISIBILITY | CT6A Commercial Truck with Six Axles |
| C Clear | CVN Van - 16 or More Passengers |
| R Rain on Windshield | FE Farm Equipment |
| S Sleet, Snow, or Hail Obscuring | FTR Farm Tractor |
| F Fog, Smoke, or Dust | MC Motorcycle |
| VISIBILITY | MP Moped |
| C Clear | MS Motor Scooter or Motor Bike |
| R Rain on Windshield | OT Other |
| S Sleet, Snow, or Hail Obscuring | P Two or Four Door Sedan (Passenger) |
| F Fog, Smoke, or Dust | PED Pedestrian |
| TRAFFIC VOLUME | PU Pickup Truck |
| H Heavy | RV Recreational Vehicle, Self-Contained |
| M Medium | SW Station Wagon (Passenger) |
| L Light | SWT Station Wagon (Truck) |
| N None | TAXI Taxicab |
| ACCIDENT INVOLVEMENT | TRV Camper Mounted on Two-Axle Truck |
| F Fatal (list number killed; if others are injured in the same accident, list I and number) Example F-1 | TT Truck Tractor Only |
| I-2 | TTT Truck Tractor with Trailer |
| I Injury (list number injured) | T2A Truck with Two Axles |
| P Property Damage (list number vehicles damaged) (if damage is under \$500, enter the word No under the other entries) | VN Van |
| NE Near Accident (almost collided) | Non-Semi Trailers: |
| NO No Accident Involvement | BT Boat |
| | CT Camper |
| | UT Utility |
| | HE Horse |
| | HS House Trailer (Mobile Home) |
| | TV Towed Vehicle |
| | OT Other |
| | Semi Trailers: |
| | TN Tanker |
| | VN Enclosed Van |
| | FB Flatbed |
| | DT Double/Twin |
| | OS Other Semi |

| SPEED OF VEHICLE | VICINITY |
|---|---|
| C Speed Computer (list speed) | Indicate name of community, intersection, or geographical landmark. Write name of street or list highway number preceded by type; that is, US 1, NC 10, RPR 1234 or RUR 5678. |
| P Pursuit (list speed) | |
| R Radar (list speed) | |
| A Approximation (list speed) | |
| DRIVERS LICENSE CLASS | VICINITY |
| A Class "A" License | |
| AR Class "A" License with Restriction | |
| B Class "B" License | |
| BR Class "B" License with Restriction | |
| C Class "C" License | |
| CR Class "C" License with Restriction | |
| LP Learner's Permit | |

NOTE: Select appropriate words in parentheses, or state specific facts, as directed. Strike words in the printed citation as directed. When charging a non-traffic offense, always strike "operate a (motor vehicle on a (street or highway) (public vehicular area))." When possible, a non-traffic offense should be charged in the second count.

- I. LICENSE VIOLATIONS**
- A. Restricted Privilege:** While the drivers license issued to the defendant was revoked by violation of the restrictions in the limited driving privilege issued to the defendant. G.S. 20-179.30; G.S. 20-28(a1).
- B. Unlicensed Driver:** Authorize or knowingly permit a motor vehicle owned by or under the control of the defendant to be driven by a person who was not licensed to drive by the Division of Motor Vehicles. G.S. 20-34. Strike "operate a (motor) vehicle."
- C. Improper Display Of License:** (Display) (Cause to be displayed) (Possess) a (driver license) (learner's permit) known to be (fictitious) (cancelled) (revoked) (suspended) (altered). G.S. 20-30(c). Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- D. Classified License:** Without being licensed for the type or class of vehicle being driven, to wit: (possessing a Class C license while operating a vehicle requiring a Class A license, etc.). G.S. 20-7.
- II. REGISTRATION VIOLATIONS**
- A.** Without having (registered the vehicle with the Division of Motor Vehicles) (attached thereto and displayed thereon the registration number plate assigned by the Division of Motor Vehicles for the current year), such vehicle being one required to be registered. G.S. 20-111(f).
- B.** (Display) (Permit to be displayed) (Possess) a (registration card) (certificate of title) (registration number plate), knowing the same to be (fictitious) (cancelled) (revoked) (suspended) (altered). G.S. 20-111(2). Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- III. INSURANCE VIOLATION**
- A.** Permit a motor vehicle the defendant owned and that was (registered) (required to be registered) in this state to be operated in this state without having in full force and effect the financial responsibility required by G.S. 20-313. Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- IV. COMMERCIAL MOTOR VEHICLE**
- A. Commercial DWI:** While subject to an impairing substance and the vehicle being operated was a commercial motor vehicle. G.S. 20-138.2.
- B. Commercial Drivers License Revoked:** While the defendant's commercial drivers license was under (suspension) (revocation) (disqualification) and the vehicle being operated was a commercial motor vehicle. G.S. 20-28. If the revocation was an impaired driving revocation, add "and the revocation was an impaired driving revocation as defined in G.S. 20-28.2(a)", and cite to G.S. 20-28(a7).
- V. SPEEDING VIOLATIONS**
- A. Exceeding A Safe Speed:** At a speed greater than was reasonable and prudent under, the then existing conditions of (specify conditions, e.g., fog, rain, etc.). G.S. 20-141(a).
- B. Speed Competition:** In willful speed competition with another motor vehicle. G.S. 20-141.3(b).
- C. Speeding To Elude Arrest:** At a speed of _____ MPH in a _____ MPH zone while (fleeing) (attempting to elude) arrest and apprehension by (name officer), a law enforcement officer with authority to enforce the motor vehicle laws. G.S. 20-141.5.
- VI. FOLLOWING TOO CLOSELY**
- A.** By following another vehicle more closely than is reasonable and prudent without due regard for the speed of such vehicles and the traffic upon and the condition of the highway. G.S. 20-152(a).
- VII. PASSING VIOLATIONS**
- A.** In overtaking and passing another vehicle proceeding in the same direction (without passing at least two feet to the left thereof. G.S. 20-149(a)) (without waiting until safely clear of such overtaken vehicle before again driving to the right side of the highway. G.S. 20-149(a)) (without waiting until the left side of the highway was clearly visible and free of oncoming traffic for a sufficiently safe distance ahead before driving to the left side of such highway. G.S. 20-150(a)).
- B.** By overtaking and passing another vehicle proceeding in the same direction upon (the crest of a grade) (a curve) in the highway without having an unobstructed view along such highway for 500 feet. G.S. 20-150(b).
- C.** By overtaking and passing another vehicle proceeding in the same direction at (a railway grade crossing) (an intersection of the highway). G.S. 20-150(c).
- E. Death By Vehicle:** And unintentionally cause the death of (name person) while engaged in a violation of (specify state law or local ordinance) which applies to the operation and use of a motor vehicle and the regulation of traffic. This violation was the proximate cause of the death. G.S. 20-141.4. Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- F. Driving After Drinking By Underaged Person:** (While consuming alcohol) (While the defendant has remaining in (his) (her) body alcohol previously consumed) (While the defendant has remaining in (his) (her) blood a controlled substance previously consumed) and the defendant is less than 21 years of age. G.S. 20-138.3.
- G. Sixteen Year Old Or Older Passenger:** Fail to have the provided seat belt properly fastened about the defendant's body, while a front seat passenger sixteen years of age or older in a motor vehicle in forward motion on a street or highway. G.S. 20-135.2A. Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- H. Resisting A Public Officer:** Resist, delay and obstruct (name officer), a public officer holding the office of (name office), by (describe act), while the officer was discharging and attempting to discharge a duty of (his) (her) office by (describe specific duty). G.S. 14-223. Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- I. Assault On A Public Official:** Assault and strike (name officer), a government officer of the (name agency, e.g., North Carolina State Highway Patrol; Durham, North Carolina Police Department) by (describe act), while the officer was discharging and attempting to discharge (his) (her) official duties by (describe duty, e.g., serving a traffic citation on the defendant). G.S. 14-33(c)(4). Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- J. Failing To Yield Right Of Way:** By failing to yield right of way in obedience to a duty erected (stop sign) (flashing red light) (yield sign). G.S. 20-158; G.S. 20-158.1.

Vehicle Seizure Revocations:

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

- G.S. 20-13.2 - Driving After Consuming Alcohol/Drugs While Less Than 21
 - G.S. 20-16(e)(8b) - Military Driving While Impaired
 - G.S. 20-16.2 - Refused Chemical Test
 - G.S. 20-16.5 - Civil Revocation
 - G.S. 20-17(e)(2) - Driving While Impaired
 - G.S. 20-17(e)(2) - Driving While Impaired In Commercial Motor Vehicle
 - G.S. 20-138.5 - Habitual Driving While Impaired
 - G.S. 20-17(e)(12) - Transporting Open Container - 2nd Or Subsequent
 - G.S. 20-16(e)(7) - Out-Of-State Offense Similar To Driving While Impaired Resulting In NC Revocation
 - G.S. 20-17(e)(1) - Manslaughter Involving Driving While Impaired
 - G.S. 20-17(e)(3) - Any Felony In The Commission Of Which A Motor Vehicle Is Used, If The Offense Involves Impaired Driving
 - G.S. 20-17(e)(9) - Any Offense Set Forth Under G.S. 20-141.4 Based On Impaired Driving
 - G.S. 20-17(e)(11) - Conviction Of Assault With A Motor Vehicle If Offense Involves Impaired Driving
 - G.S. 20-28.2(e)(3) - Laws of another state when the offense for which the person's drivers license is revoked prohibits substantially similar conduct that if committed in this state would result in a revocation based on one of the offenses listed above.
- A motor vehicle is subject to seizure if the driver is charged with an offense involving impaired driving and at the time of the offense (1) the driver's license is revoked for one of the reasons listed above or (2) the driver does not have a valid drivers license and is not covered by an automobile liability insurance policy.

The following states are NOT members of the Nonresident Violator Compact as of December 1, 2015: Alaska, California, Michigan, Montana, Oregon, and Wisconsin.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

Name Of Defendant

CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE

#

G.S. 15A-534.1

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

FINDINGS

The undersigned judicial official finds that the defendant named above is charged with assault on, stalking, communicating a threat to, or committing a felony provided in former Article 7A or Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or (for offenses committed on or after December 1, 2015, only) a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.

The undersigned judicial official has considered the defendant's criminal history as shown on a criminal history report provided by a law enforcement officer or a district attorney. has not considered the defendant's criminal history as shown on a criminal history report because no report could be obtained within a reasonable time.

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:

- 1. The defendant shall stay away from the home, school, business or place of employment of the alleged victim.
2. The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.
3. The defendant shall refrain from removing, damaging or injuring the property listed below:
4. The defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.
5. (for offenses committed on or after December 1, 2012) The defendant shall abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney.
6. Other restrictions:
a. The defendant shall have no contact with the alleged victim.
b. The defendant shall comply with any valid domestic violence protective order in effect.
c. The defendant shall not possess any firearms.
d. Other:

Date

Signature Of Judicial Official

- Magistrate
District Court Judge
Superior Court Judge

NOTE TO JUDICIAL OFFICIAL: The law enforcement officer or district attorney who provided the defendant's criminal history report shall dispose of the report in accordance with DCI regulations. The report shall NOT be placed in the case file.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

Name Of Defendant

**CONDITIONS OF RELEASE FOR PERSON
CHARGED WITH SEX OFFENSE OR CRIME OF
VIOLENCE AGAINST CHILD VICTIM**

G.S. 15A-534.4

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

FINDINGS

The undersigned judicial official finds that the defendant named above is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of G.S. 14-202.1, with rape or any other sex offense in violation of Article 7B or former Article 7A of Chapter 14 of the General Statutes against a minor victim, with incest with a minor in violation of G.S. 14-178, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of G.S. 14-320.1, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim.

The undersigned judicial official, upon request of the defendant, has waived one or more of the conditions required by No. 2 or No. 3 below based on the following findings that imposing the condition(s) on the defendant would not be in the best interest of the alleged victim: *(specify reasons)*

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:

1. The defendant shall refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.
2. The defendant shall stay away from the home, temporary residence, school, business, or place of employment of the alleged victim. *(Strike through and initial any waived conditions if block is checked, but not all conditions apply.)*
3. The defendant shall refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges. *(Strike through and initial any waived conditions if block is checked, but not all conditions apply.)*

Date

Signature Of Judicial Official

| | |
|--|--|
| <input type="checkbox"/> Magistrate | <input type="checkbox"/> Clerk Of Superior Court |
| <input type="checkbox"/> Deputy CSC | <input type="checkbox"/> District Court Judge |
| <input type="checkbox"/> Assistant CSC | <input type="checkbox"/> Superior Court Judge |

NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form.

ATTACH TEST RECORD TICKET HERE

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

NOTE: A "commercial motor vehicle" is as defined in G.S. 20-4.01(3d).

IN THE MATTER OF

AFFIDAVIT AND REVOCATION REPORT OF

LAW ENFORCEMENT OFFICER

CHEMICAL ANALYST

The charged offense is impaired supervision or instruction under G.S. 20-12.1. Accordingly, substitute "supervisor/instructor" wherever "driver" appears below.

G.S. 20-16.2, 20-16.5, 20-17.8, 20-19(c3), 20-139.1

| | | | | |
|---------|-----|---------------|---------------------|-------|
| Name | | | | |
| Address | | | | |
| City | | State | Zip | |
| Race | Sex | Date Of Birth | Drivers License No. | State |

| | | | |
|--------------|-----|-----------|--------------|
| Vehicle Type | CMV | Haz. Mat. | Citation No. |
|--------------|-----|-----------|--------------|

The undersigned being first duly sworn says:

1. I am a law enforcement officer. On the _____ day of _____, _____, at _____ (a.)(p.)m., a law enforcement officer had reasonable grounds to believe the above named person, hereinafter referred to as driver, operated a vehicle (commercial motor vehicle) in the above named county upon _____ (Give Street, Highway, Or Public Vehicular Area) while committing an implied-consent offense in that _____

(List Sufficient Facts To Establish Probable Cause)

- 2. The driver has a drivers license restriction: alcohol concentration. ignition interlock. conditional restoration (Restr: *9).
- 3. The driver violated a drivers license restriction by: refusing to be transported for testing. not having an operable ignition interlock on the vehicle being driven. failing to personally activate the ignition interlock on the vehicle being driven. exceeding the driver's alcohol concentration limitation. refusing a chemical analysis (if refusal, also complete items no. 14 and 15 below, as appropriate for this case).
- 4. The driver was charged with the implied-consent offense of: G.S. 20-138.1. Other: _____
- 4a. The driver has one or more pending offenses in the following county(ies) _____ for which the drivers license had been or is revoked under G.S. 20-16.5.
- 5. After the driver was charged, I took the driver before _____, a chemical analyst authorized to administer a test of the driver's breath.
- 6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to conduct chemical analyses of the breath utilizing the Intox EC/IR 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.
- 10. The driver was unconscious or otherwise incapable of refusal and therefore the notification of rights and request to submit to a chemical analysis were not made. I directed the taking of a blood sample by a person qualified under G.S. 20-139.1 based on the (check one) AOC-CR-155 search warrant issued and executed in this case. totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.
- 11. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methods/rules approved by the Department of Health and Human Services using an Intox EC/IR II, and it printed the results of the driver's chemical analysis on the attached test record, DHHS 4082, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intox EC/IR 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.
- 12. The chemical analysis of the driver's breath indicated an alcohol concentration of 0.15 or more.
- 13. The driver consented to the obtaining of a sample of his/her blood or urine for a chemical analysis, which was collected as indicated on the attached DHHS 4081.
- 14. The driver willfully refused to submit to a chemical analysis as indicated on the attached DHHS 4082. DHHS 4081. The willful refusal occurred in an implied-consent offense involving death or critical injury to another person.
- 15. After the driver's willful refusal, a blood sample was obtained based on the (check one) AOC-CR-155 search warrant issued and executed in this case. totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

| | |
|---|-----------------|
| Signature Of Chemical Analyst/Law Enforcement Officer | DHHS Permit No. |
|---|-----------------|

| | |
|------|--|
| Date | Signature Of Official Authorized To Administer Oaths |
|------|--|

| |
|--|
| Print Name Of Chemical Analyst/Law Enforcement Officer |
|--|

Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court

| | | |
|--------------------------------------|----------------------------|------------------------|
| <input type="checkbox"/> Notary SEAL | Date My Commission Expires | County Where Notarized |
|--------------------------------------|----------------------------|------------------------|

| |
|-------------|
| Agency Name |
|-------------|

NOTES TO LAW ENFORCEMENT OFFICER/CHEMICAL ANALYST**NOTE TO LAW ENFORCEMENT OFFICER WHO IS NOT GOING TO** *administer breath test or read the implied-consent rights:*

1. Complete the identifying information at the top,
2. Check the "Law Enforcement Officer" block under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 1-5 (and if the driver is unconscious or incapable of refusing so that the implied-consent rights need not be read, also review and check as appropriate paragraph 10), and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

NOTE TO LAW ENFORCEMENT OFFICER WHO CHARGES DRIVER AND IS CHEMICAL ANALYST *who administers the breath test or reads the implied-consent rights for a blood test:*

1. Complete the identifying information at the top,
2. Check both the "Law Enforcement Officer" and "Chemical Analyst" blocks under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 1-15, and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

NOTE TO CHEMICAL ANALYST WHO IS NOT THE CHARGING OFFICER:

1. Complete the identifying information at the top,
2. Check the "Chemical Analyst" block under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 6-15, and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

INSTRUCTIONS

1. This form should be used in District Court to prove alcohol concentration in implied-consent criminal cases.
2. This form should be used before the Magistrate for the pretrial civil revocation (CVR) when the driver is charged with DWI or another implied-consent offense and the driver
 - a. has an alcohol concentration of 0.08 or more;
 - b. has an alcohol concentration of 0.04 or more and was operating a commercial motor vehicle;
 - c. is under age 21 and has an alcohol concentration of 0.01 or more; or
 - d. refuses the breath test and/or a blood or urine test.
3. This form should be used to notify DMV of (i) an alcohol concentration of 0.15 or more or (ii) a refusal to submit to a breath test and/or a blood or urine test.
4. This form should be used to notify DMV of violations of the following drivers license restrictions⁺:
 - a. *9= the driver has a Conditional Restoration of his or her drivers license
 - b. 19= alcohol concentration (A/C) of 0.04
 - c. 20= A/C 0.04+ignition interlock
 - d. 21= A/C 0.00
 - e. 22= A/C 0.00+ignition interlock
 - f. 23= ignition interlock only

+ When a driver has violated a restriction and paragraphs 2 and 3 on Side One are completed, ALL sections in these paragraphs that apply must be checked. For example, if the driver had a restriction 20 and violated both the alcohol concentration and the ignition interlock provisions, both the "alcohol concentration" and the "ignition interlock" blocks should be checked in paragraph 2. The same applies to paragraph 3.
5. File the original and copies of this form, with a copy of the test record ticket attached, as follows:
 - a. Original - To the Magistrate for the pretrial civil revocation (CVR).
 - b. Second copy - To the Court for the criminal case.
 - c. Yellow copy - To DMV for violation of any alcohol or ignition interlock restriction on drivers license, alcohol concentration of 0.15 or more, or for refusal to submit to a breath test and/or a blood or urine test. DMV's address is: DMV, Information Processing Services, 3120 Mail Service Center, Raleigh, NC 27699-3120.
 - d. Pink copy - To the Law Enforcement Officer/Chemical Analyst.
 - e. Green copy - To the driver.

_____ County

IN THE MATTER OF

**REVOCATION ORDER
WHEN PERSON PRESENT**

G.S. 20-16.5

Name And Address

FINDINGS FOR PROBABLE CAUSE

The undersigned judicial official finds probable cause to believe that:

1. A law enforcement officer had reasonable grounds to believe that the above-named person committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
2. The above-named person has been charged with that offense as provided in G.S. 20-16.2(a);
3. Both the law enforcement officer and the chemical analyst(s) complied with the provisions of G.S. 20-16.2 and 20-139.1 in requiring the above-named person's submission to or procuring a chemical analysis; and
4. The above-named person:
 - a. willfully refused to submit to a chemical analysis.
 - b. had an alcohol concentration of 0.08 or more at any relevant time after the driving.
 - c. had an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle.
 - d. had any alcohol concentration at any relevant time after the driving, and at the time of the offense, was under 21 years of age.
5. The above-named person has one or more pending offenses in the following county(ies) _____ for which the person's drivers license had been or is revoked under G.S. 20-16.5.

ORDER

It is ORDERED that the above-named person's **drivers license or privilege to drive be revoked**. The above-named person is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation. The revocation remains in effect **at least thirty (30) days** from:

1. this date
2. the date he/she surrenders his/her drivers license or privilege to drive to the Court, or demonstrates that he/she is not currently licensed to drive.
3. (check this option if Findings For Probable Cause No. 5 above is checked) the date he/she surrenders his/her drivers license or privilege to drive to the Court, or demonstrates that he/she is not currently licensed to drive **and** indefinitely until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license or privilege to drive had been or is revoked under G.S. 20-16.5.

The above-named person's privilege to drive in North Carolina is revoked and will remain revoked until the person has actually surrendered his/her license for the period specified above and has paid a \$100 fee to the Clerk of Superior Court.

I informed the above-named person of his/her rights to a hearing and gave him/her a copy of this Order.

| | | |
|------|---|--------------------------------|
| Date | Name Of Judicial Official (Type Or Print) | Signature Of Judicial Official |
|------|---|--------------------------------|

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

- Judge Magistrate Deputy CSC
 Assistant CSC Clerk Of Superior Court

NOTICE

If at the time of this Order you have only a temporary driving certificate, you must surrender the certificate, and then you also must surrender your license card immediately when you later receive it in the mail from DMV.

If at the time of this Revocation you were not licensed to drive by the North Carolina Division of Motor Vehicles and did not have a valid drivers license from another state, an additional \$50 restoration fee must be paid to the Division of Motor Vehicles before you can drive again in North Carolina. This fee must be paid even though you are a resident of another state.

You have a right to a hearing to contest the validity of this Revocation before a magistrate or judge. To do so, a written request must be made within ten (10) days of the effective date of the revocation. A hearing request form is available from the office of the Clerk of Superior Court or magistrate. Your license will remain revoked and you are not authorized to drive pending the hearing. If you do request a hearing but fail to appear, you forfeit the right to a hearing.

If your license is revoked under Paragraph 1 or 2 of this Order, at the end of the revocation period you are still prohibited from driving until you have paid a fee of \$100 to the Clerk of Superior Court.

If your license is revoked under Paragraph 3 of this Order, that revocation remains in effect at least thirty (30) days and until a final judgment, including appeals, is entered for this current offense and for all pending offenses for which your license has been or is revoked under G.S. 20-16.5. At the end of the revocation period you are still prohibited from driving until you have paid a fee of \$100 to the Clerk of Superior Court. This fee is in addition to any fee you have paid or are to pay in connection with any other pending offense for which your drivers license has been revoked under G.S. 20-16.5.

The \$100 fee may be paid at any time, **even prior to the end of the period of revocation**, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Payment in person must be made in cash or by certified check, cashier's check or money order. Payment by mail must be made by certified check, cashier's check or money order, payable to the Clerk of Superior Court. If you wish to have your drivers license returned to you by mail, please enclose a stamped, self-addressed envelope with your payment.

IT IS UNLAWFUL FOR YOU TO DRIVE A MOTOR VEHICLE IN THE STATE OF NORTH CAROLINA UNTIL YOU ARE AUTHORIZED TO DO SO. THE DIVISION OF MOTOR VEHICLES MAY ALSO DISQUALIFY YOU FROM OPERATING A COMMERCIAL MOTOR VEHICLE UNDER G.S. 20-17.4.

SUPPLEMENTAL FINDINGS AND ORDER

It is further found that the person named herein appeared before the undersigned judicial official at _____ AM PM on this _____ day of _____, _____, and,

- 1. surrendered his/her drivers license to the Court.
- 2. was validly licensed but unable to locate his/her license card and filed an affidavit which constituted surrender of the drivers license.
- 3. demonstrated he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation of the drivers license of the person named herein:

- 1. remains in effect for at least thirty (30) days from the above date and until payment of a \$100 fee has been made to the Clerk of Superior Court.
- 2. (check this option if Findings For Probable Cause No. 5 on reverse side is checked) is indefinite and remains in effect for at least thirty (30) days from the above date and until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5, and until payment of a \$100 fee to the Clerk of Superior Court.

| | |
|---|---|
| Date | Signature Of Judicial Official |
| Name Of Judicial Official (Type Or Print) | <input type="checkbox"/> Judge <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court |

It is further found that a Pick-Up Order was issued for the license of the person named herein, and the person on the _____ day of _____, _____:

- 1. surrendered his/her license to the officer serving the Pick-Up Order.
- 2. demonstrated to the officer serving the Pick-Up Order that he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation:

- 1. remains in effect for at least thirty (30) days from the above date and until payment of a \$100 fee to the Clerk of Superior Court.
- 2. (check this option if Findings For Probable Cause No. 5 on reverse side is checked) is indefinite and remains in effect for at least thirty (30) days from the above date and until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5, and until payment of a \$100 fee to the Clerk of Superior Court.

| | | |
|------|-----------|--|
| Date | Signature | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court |
|------|-----------|--|

DISPOSITION OF LICENSE OR PRIVILEGE

- 1. Drivers license of person named herein returned to him/her, and receipt by him/her is acknowledged below.
- 2. At the licensee's request, license returned to him/her by mail. License mailed on the date shown below.
- 3. License mailed to Division of Motor Vehicles on date shown below, since the person named herein is not eligible to use the license for the following reason:

- 4. Limited driving privilege withheld and record forwarded to _____ County.
- 5. Other: _____

| | |
|---------------------|---|
| Date | Signature |
| Date License Mailed | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court |

ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of my license.

| | |
|---------------------|--|
| Date | Signature Of Licensee |
| Date \$100 Fee Paid | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court |

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address

AFFIDAVIT - NO LICENSE

G.S. 20-16.5

County Of Residence

State Of Residence

NORTH CAROLINA RESIDENTS

I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of this charge:

- I am not currently licensed to drive in the State of North Carolina because:
 - my license is revoked. my license has expired.
 - I have never had a license. other: _____.
- I am validly licensed to drive in North Carolina but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are:

_____.

OUT-OF-STATE RESIDENTS

I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of this charge:

- I am not currently licensed to drive in the State of North Carolina and do not have a valid drivers license from another state because:
 - my license is revoked. my license has expired.
 - I have never had a license. other: _____.
- I am validly licensed to drive by the State of _____, but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are:

_____.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Affiant

Date

Signature

- Deputy CSC Assistant CSC
- Magistrate Clerk Of Superior Court

Notary

Date Commission Expires

SEAL

County Where Notarized

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

Name Of Defendant

**CONDITIONS OF RELEASE FOR PERSON
CHARGED WITH THREAT OF MASS VIOLENCE**

#

G.S. 15A-534.7

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

FINDINGS

The undersigned judicial official finds that the defendant is charged with communicating a threat of mass violence on educational property, G.S. 14-277.6, or communicating a threat of mass violence at a place of religious worship, G.S. 14-277.7.

The undersigned judicial official has considered the defendant's criminal history as shown on a criminal history report provided by a law enforcement officer or a district attorney. has not considered the defendant's criminal history as shown on a criminal history report because no report could be obtained within a reasonable time.

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:

1. The defendant shall stay away from the following educational property(ies) or place(s) of worship, against which the threat was allegedly communicated:

2. The defendant shall stay away from the following, additional educational property(ies) or place(s) of worship, unless granted permission to be present by the person in control of the property (*list educational property or place(s) of religious worship other than the one(s) threatened in the present charge(s)*):

Date

Signature Of Judicial Official

Magistrate District Court Judge
 Superior Court Judge

NOTE TO JUDICIAL OFFICIAL: The law enforcement officer or district attorney who provided the defendant's criminal history report shall dispose of the report in accordance with DCI regulations. The report shall **NOT** be placed in the case file.

