

Changes in North Carolina's First Appearance Process

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October 1, 2021

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What is First Appearance?

- Where criminal defendants in custody prior to adjudication are taken before a judicial official for review of any bond previously set for them and a determination that detention is warranted before adjudication of their charges.
- Typically advised of rights and informed about court process ahead.
- NCGS 15A-601

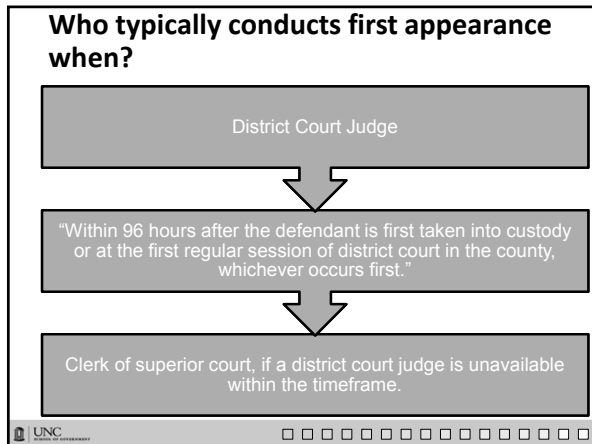
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Versus Initial Appearance

First Appearance is a procedural safeguard that follows arrest and initial appearance.

In initial appearance, magistrate typically sets release conditions. Release conditions, such as bond, affect whether a defendant is detained or released.

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Changes made by General Assembly



- NCGS 15A-601 amended, effective for criminal processes served on or after December 1, 2021.

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To include those charged with misdemeanors who are in custody

- Amends GS 15A-601(a) to include defendants charged with misdemeanors and held in custody via a magistrate's order, citation, or warrant for arrest.
- Now is limited to defendants with felony charges.

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Changes Timeframe for Requiring First Appearance

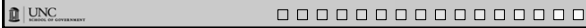
- Amends GS 15A-601(c) to state that a “first appearance... must be held within 72 hours after the defendant is first taken into custody or at the first regular session of district court in the county, whichever occurs first.”
- Now 96 hours.



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Expands judicial officials who may conduct first appearance

- Amends GS 15A-601(e) to add magistrates as officials who may conduct first appearance if the clerk is not available.
- Now, just clerk of superior court, if district court judge is unavailable.
- Both the clerk and a magistrate must conduct first appearance as a district court judge would.



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Basics of First Appearance

- To assure defendant’s right to counsel for the next stages of the proceedings.
- To determine sufficiency of charge (NOT probable cause of charge).
- To inform defendant of charges and furnish a copy of charges.
- To determine or review defendant’s eligibility for release on bail.
- To set date for, or secure waiver of, probable cause hearing. NCGS Ch. 15A, Art. 29.



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Effective Date

- Effective for criminal processes served on or after December 1, 2021.
- We should expect some guidance from AOC in their legislative summaries. And possibly from chief district court judges.



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Issues

- What happens if a defendant is in custody, so a first appearance is set, and then released before first appearance and doesn't appear?
- Can a magistrate review release conditions set by a fellow magistrate? When should they not? Can a magistrate review release conditions they set themselves?
- Ongoing policy conversation about bond and when people charged with crimes should be detained before disposition of charges.



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Resources

- Clerks have some guidance in their manual, which I am assessing.
- Should expect forms and other guidance from AOC.



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