

Types of Process and Their Key Features (Aug. 2011)

	Citation	Criminal Summons	Arrest Warrant	Magistrate's Order	Order for Arrest
Which offenses can it be used to charge?	Misdemeanor or infraction. 15A-302(a).	Any crime or infraction, although AOC form does not permit summons for felony. 15A-303(a).	Any crime, but not infractions	Any crime, but not infractions. 15A-511(c).	None; an order for arrest does not charge an offense. 15A-305(b) (listing purposes of order for arrest).
Who issues it?	Law-enforcement officer	Judicial official	Judicial official	Judicial official	Judicial official
Is the person taken into custody?	No, it directs the person to appear in court; however, an officer may arrest the person if grounds exist	No, it directs the person to appear in court	Yes	Yes	Yes
When is it used?	When the officer has probable cause of a misdemeanor or infraction. 15A-303(b).	When the person does not need not be taken into custody	When the person has not previously been taken into custody and needs to be taken into custody	When the person has been arrested for a crime without a warrant	For any of the reasons listed in 15A-305
What if the person fails to appear after service?	If the person is charged with a misdemeanor, an arrest warrant or order for arrest is issued. 15A-302(f), 15A-305(b)(3). If an infraction, a criminal summons is issued. 15A-1116(b).	If a person is charged with a crime, an order for arrest is issued, 15A-303(e)(2). If an infraction, an order to show cause is issued (possibly with order for arrest under 5A-16(b)). 15A-303(e)(3).	Order for arrest is issued	Order for arrest is issued	Order for arrest is issued

Notes about Process

Citation

A citation should charge no more than two offenses—one in the upper portion and the other in the last numbered item in the citation. This limitation comes from 15A-924(a)(2), which provides that a criminal pleading must contain a separate count for each offense charged. A citation is a pleading, and the citation form contains two counts only—one is the upper portion, currently numbered 1 through 16 in AOC-CR-500, and the other is number 17.

A failure of the defendant to sign a citation is not grounds for arrest or a requirement that he or she post bond. 15A-302(d).

Criminal Summons and Arrest Warrant

The official commentary to 15A-303 (criminal summons) states:

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 in order to ensure his appearance in court. This should be true in many misdemeanors and a number of felonies. If the defendant simply is 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. This section is separated from the warrant provisions (unlike the present statute), and placed first, in order to call it to the attention of readers of the statutes and encourage its use.

15A-304(b) (warrant for arrest) states:

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.

Circumstances to be considered in determining whether a person should be taken into custody include:

- failure to appear when previously summoned,
- facts making it apparent that a person summoned will fail to appear,
- danger that the accused will escape,
- danger that there may be injury to a person or property, and
- seriousness of the offense.

An arrest warrant is not required solely on the ground that the offense is one for which the defendant must be fingerprinted if arrested. 15A-1383 requires each judicial district to adopt a plan for fingerprinting defendants for certain offenses. A requirement that a defendant be fingerprinted does not supersede a magistrate's discretion to determine whether to issue a criminal summons or arrest warrant. AOC-CR-113 (criminal summons) recognizes this option by providing a check box for offenses in which a magistrate has issued a misdemeanor summons and the defendant is to be fingerprinted.

An arrest warrant may not be used for an infraction.

Orders for Arrest

An order for arrest does not charge a criminal offense. 15A-305(b) (order for arrest) states that an order for arrest may be used 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.

Violations of Pretrial Release Conditions

A magistrate may issue an order for arrest for a violation of pretrial release conditions before a defendant's first appearance in court. 15A-305(b)(2), 15A-534(e). (Effective for violations of pretrial release conditions occurring on or after December 1, 2011, 15A-401(b) authorizes law enforcement officers to make a warrantless arrest for any violation of a pretrial release order entered under 15A-534, the general provision on pretrial release; officers may make a warrantless arrest whether the violation occurs in or out of their presence.) On arrest for a violation of pretrial release conditions, with or without a warrant, the defendant must be brought before a magistrate for the setting of new or modified pretrial release conditions on the underlying offense.

A violation of pretrial release conditions, without more, is not a criminal offense. Therefore, a magistrate may not issue an arrest warrant charging a defendant with a crime for violating pretrial release conditions. The appropriate mechanism for a magistrate to address a violation is an order for arrest, which a magistrate may issue before the defendant's first appearance in court.

A violation of pretrial release conditions also cannot be charged as contempt. A pretrial release order authorizes release of the defendant on condition that he or she comply with the terms of the order. The remedy for a violation is revocation of release and the setting of new or modified conditions (higher bond, stricter conditions, etc.). A pretrial release order is unlike a court order requiring that a person do or not do something on pain of contempt for a violation. *Compare* 5A-11(a)(9) (providing that a willful refusal to comply with a term of probation is a form of contempt as well as a ground for revoking probation; there is no comparable provision for a violation of pretrial release conditions). Even assuming that a violation of a pretrial release condition could constitute contempt, it would be improper for a magistrate to issue an arrest warrant for a violation. Rather, a judicial official would have to institute

plenary proceedings for indirect criminal contempt by issuing an order to show cause against the person. *See* 5A-15. Assuming further that magistrates would be authorized to institute proceedings for indirect criminal contempt in these circumstances, a magistrate could do so only before the defendant's first appearance in court.