

THURSDAY, MAY 11

	MISDEMEANOR TRACK	FELONY TRACK
9:15-10:00 a.m. [45 min.]	Issue Spotting in DWI Cases Zach Thayer, Ass't. Public Defender Cassandra Tilley, Ass't. Public Defender Office of the Public Defender, Durham, NC	DNA Evidence Samantha Grill, Ass't. Public Defender Office of the Public Defender, Charlotte, NC
10:00-11:00 a.m. [60 min.]	Litigating Capacity and ITP Jason Lunsford, Attorney Office of Special Counsel, Butner, NC	Rule 702 Challenges and Update Jim Grant, Ass't. Appellate Defender Office of the Appellate Defender, Durham, NC
11:00-11:15 a.m.	<i>Break</i>	
11:15 a.m.-12:00 p.m. [45 min.]	Pretrial Prep in CVRA cases Derek Brown, Attorney The Derek K. Brown Law Firm, Greenville, NC	Bruen and Challenges to Gun Regulations Jeff Welty, Professor UNC School of Gov't., Chapel Hill, NC
12:00-1:15 p.m.	<i>Recess for Lunch</i>	
1:15-2:15 p.m. [60 min.]	Defending Protestor Cases Heather Rattelade, Attorney The Rattelade Law Firm, Pittsboro, NC Dawn Blagrove, Executive Director, Emancipate NC, Durham, NC	Forensic Risk Evaluations Jan Tate, LCSW, Forensic Evaluator Tate Psychological Services, Mebane, NC
2:15-3:15 p.m. [60 min.]	Drugged Driving: A Practical Refresher Laura Gibson, Chief Public Defender Office of the Public Defender, Washington, NC	Motions for Appropriate Relief Beth Thomas, Executive Director NC Prisoner Legal Services, Raleigh, NC
3:15-3:30 p.m.	<i>Break</i>	
3:30-4:15 p.m. [45 min.]	Relief from Monetary Obligations Leigh Wicclair, Senior Staff Attorney N.C. Pro Bono Resource Center, Raleigh, NC	Innocence Commission Claims Catherine Matoian, Associate Director Emma Paul, Victim Services Program Manager NC Innocence Inquiry Commission
4:15-5:00 p.m. [45 min.]	Probation Update and Review Judy Blevins, Ass't. Public Defender Office of the Public Defender, Charlotte, NC	Character Evidence in Sexual Assault Cases Jordan Duhe-Willems, Attorney Cecilia Reyna, Attorney, Wilmington, NC
5:00 p.m.	<i>Adjourn</i>	

12:00 p.m. - *LUNCH* (on your own, except):

- Chief Public Defenders and IDS Administration meet for lunch (*Butcher Room*)
- N.C Forensic Consultant Network Attorneys meet for lunch (*Meet in the Lobby*)
- Juvenile Defenders meet for lunch (*Meet in the Lobby*)

ISSUE SPOTTING IN DWI CASES

Zac Thayer, Assistant Public Defender

Cassandra Tilley, Assistant Public Defender

1

REASONABLE
SUSPICION

- Standard
- Basis for Stop
- Single Car Accidents
 - Anonymous Tips
 - Witness Statements
- Race

2

CHALLENGING
PROBABLE
CAUSE

(SUPPRESS THE ARREST)

PC: Reasonable ground of suspicion supported by sufficiently strong circumstances to warrant a cautious man in believing the accused to be guilty.

SFST: Are ONLY admissible if properly administered and the officer is trained and qualified to perform them.

PBT: Results are NOT admissible in court. The officer can testify that the PBT reading was positive, but the number itself is not admissible.

3

DWI SENTENCING

NCS § 30-179

LEVEL	MINIMUM	MAXIMUM	OTHER CONDITIONS
Aggravated Level 1 = 3+ GAF	12 Months	36 Months	Mandatory jail time to be served for some
Level 1 = 1 GAF or child under 14 years with alcohol	30 Days	24 Months	Mandatory jail time
Level 2 = 1 GAF	7 Days	12 Months	Mandatory jail time CPI assistance
Level 3 = Aggravating factors outweigh mitigating factors	72 Hours	6 Months	72 hours jail OR community service
Level 4 = Aggravating factors and mitigating factors are balanced	48 Hours	120 Days	48 hours jail OR community service
Level 5 = Mitigating factors outweigh aggravating factors	24 Hours	30 Days	24 hours jail OR community service

4

APPELLATE ISSUES

Things to pay attention to after your case is appealed to Superior Court

- Extent of Trial de Novo
- Perfecting the Appeal
- Speedy Trial

5

CONTACTS US

- Zachary.H.Thomas@ncscourts.org
- Cassandra.M.Tillotson@ncscourts.org

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Litigating Commitment and ITP

Jason Lunsford
Office of Special Counsel
Central Regional Hospital

1

What Does it Mean to be Mentally Ill?

- ▶ "At one time or another every person exhibits some abnormal behavior which might be perceived by some as symptomatic of a mental or emotional disorder, but which is in fact within a range of conduct that is generally acceptable." *Addington v. Texas*, 441 U.S. 418, 426-27 (1978).

2

Commitment Criteria – Incapable to Proceed (ITP) vs Involuntary Commitment (IVC)

- ▶ 15A-1001 - No proceedings when defendant mentally incapacitated
 - ▶ Unable to understand the nature and object of the proceedings against him,
 - ▶ To comprehend his own situation in reference to the proceedings,
 - ▶ Or to assist in his defense in a rational or reasonable manner.

- ▶ 122C-3 - Definitions
 - ▶ Mental illness – DSM V
 - ▶ Dangerousness – 122C-3(i1)
 - ▶ Danger to Self (this is generally very broad)
 - ▶ Danger to Others
 - ▶ Or Both
 - ▶ Plus "The future element"
 - ▶ "Although the trial court need not say the magic words 'reasonable probability of future harm,' it must draw a nexus between past conduct and future danger" in *re J.P.S.*, 264 N.C. App. 38 (2015).

3

Treatment in Jail vs Hospital

- ▶ Jails lack the ability to force medicate
- ▶ Jails cannot offer all medications available at hospitals
- ▶ Increased patient supervision at hospitals
- ▶ Jails do not (currently) offer restoration services
- ▶ Psychologist assisting in restoration services
- ▶ Dedicated social worker

4

15A-1002(a) and (b)(1)
Determination of incapacity to proceed;
evidence; temporary commitment; temporary
orders

- ▶ "The question of the capacity of the defendant to proceed may be raised at **any time** on motion by the prosecutor, the defendant, the defense counsel, or the court."
- ▶ "The court shall hold a hearing to determine the defendant's capacity to proceed."
- ▶ If an evaluation is ordered, the hearing shall take place after the examination

5

15A-1002(b)(1a) - "Local Forensic"

- ▶ If a client meets the criteria set forth in 15A-1001, then a defendant may be referred for evaluation pursuant to 15A-1002 (Pretrial).
- ▶ This applies to both misdemeanor and felony charges
- ▶ The evaluator shall return a written report "describing the present state of the defendant's mental health."

6

15A-1002(b)(b1) - "Commitment Order"

The judge's order "shall contain findings of fact to support its determination of the defendant's capacity to proceed."

if the judge finds that the defendant lacks capacity, WVC proceedings may be instituted on the basis of the report . . .

7

Local Forensic Evaluator

8

How Does a Defendant get Hospitalized?

9

15A-1003 - "Restoration"

- ▶ The judge "shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes."
- ▶ The judge "shall make findings of fact and issue a custody order . . . pursuant to G.S. 122C-261."
- ▶ "Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes."

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[illegible][illegible][illegible][illegible]

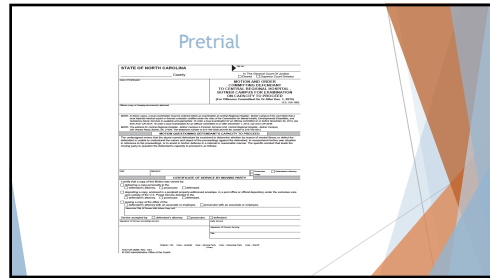
15A-1002(b)(2) - “Pretrial”

- ▶ “At any time in the case of a defendant charged **with a felony**, the court may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant’s capacity to proceed.”

- ## 15A-1002(b)(2) - “Pretrial”
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15A-1002(b)(2) - “Pretrial”

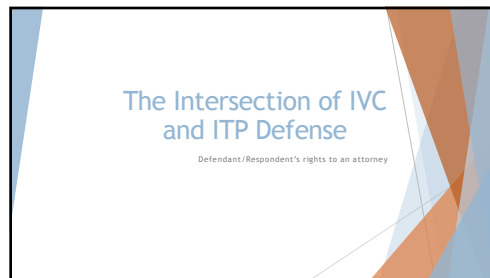
- ▶ “At any time in the case of a defendant charged **with a felony**, the court may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant’s capacity to proceed.”



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15

122C-266(a)(3) - Second Evaluation

- ▶ "If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), the physician shall release the respondent and the proceedings shall be terminated."

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Exception to 122C-266 "House Bill" ITP Patients and 122C

- ▶ (b) "If the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. **However, the physician may not release him from the facility until ordered to do so following the district court hearing."**
- ▶ This is not a hearing in criminal court concerning the defendant. This is a hearing for civil commitment held within the State hospital before a district court judge.
- ▶ This hearing must be scheduled within 10 days of the defendant/respondent's custody order.
 - ▶ With ITP patients, we look at the custody order to determine when the defendant/respondent arrived at the State hospital, not when the judge ordered the commitment. See N.C. Gen. Stat 122C-268(a)

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Trial Advocacy for IVC Patients

- ▶ With all IVC patients, it is their right to go to court and challenge for their release.
 - ▶ Even if they have pending criminal charges,
 - ▶ Even if they have not yet been found capable,
 - ▶ Even if they have to return to jail,
 - ▶ Even if they are likely to just return to the hospital,
 - ▶ Even if a Superior Court Judge issues an order that states the hospital shall not discharge the patient until found capable to proceed.

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122C-268(j) - Inpatient commitment; district court hearing

► (j) "To support an inpatient commitment order, the court shall find by **clear, cogent, and convincing evidence** that the respondent is **mentally ill and dangerous to self**, as defined in G.S. 122C-3(11)a., or **dangerous to others**, as defined in G.S. 122C-3(11)b."

- 19

[illegible]

Duration of Commitment - Disposition

- ▶ 122C-271 – Disposition
 - ▶ A (b) "If the respondent has been held in a 24-hour facility pending the district court hearing pursuant to Gen. Stat. 122C-268, the court may make one of the following dispositions:
 - ▶ (2) "...it may order **inpatient commitment** at a 24-hour facility described in Gen. Stat. 122C-252 for a period not in excess of 90 days."

- 20

[illegible]

15A-1007 - Supplemental Hearings

- ▶ What happens once your client is restored and released from the hospital?
- ▶ (a) "Upon receiving the notification that the defendant gained capacity or was released], the district attorney shall calendar the matter for hearing at the next available term of court but no later than 30 days after receiving the notification."
- ▶ (d) The case shall be calendar for trial at the earliest practicable time.
 - ▶ Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.

- 21

[illegible]

15A-1008 - Dismissal of charges

▶ When a defendant lacks capacity to proceed, the court shall dismiss the charges upon the earliest of the following occurrences:


▶ (1) "When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed." (Not capable not restorable)

▶ (2) "When as a result of incarceration, involuntary commitment to an inpatient facility, or other court-ordered confinement, the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the maximum term of imprisonment permissible for prior record Level VI for felonies or prior conviction Level III for misdemeanors for the most serious offense charged." (Time served maximum)

▶ (3) "Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges." (Look back period)

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Central Regional Hospital



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Units at CRH

▶ A2-E2 – Adult units (General Admission and the starting point for ITP)

▶ A2 – Co-ed

▶ B2, D2- Male

▶ C2 – Female

▶ E2 – Currently not staffed

▶ F2 – Adult Medical Unit

▶ A1-C1 – Community Transition Unit - Long Term Care

▶ D1 – Quarantine Unit – Initial Intake Unit

▶ E1-F1 – Geriatric Units

▶ A0-B0 – High risk, NGRs and long-term ITP (older cases), Pretrial Evaluation under 15A-1002

▶ C0 – High risk management (General Adult or ITP)

▶ D0-E0 – Children

▶ F0 – Child medical

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Supervising Doctor – Dr. Barbara Mattox

- ▶ The point of contact for ITP related questions is Dr. Mattox. She is the supervising doctor for the general admissions/adult units.
- ▶ Dr. Mattox's office number 919.764.2153

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Questions?

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County _____

Client Record # _____

File # _____

FIRST EXAMINATION FOR INVOLUNTARY COMMITMENT

Name of Respondent	DOB	Age	Sex	Race	M.S.
Address (Street or Box Number)	City	State	Zip	County	Phone
Legally Responsible Person or Next of Kin (Name)		Relationship			
Address (Street or Box Number)	City	State	Zip	County	Phone
Petitioner (Name)		Relationship			
Address (Street or Box Number)	City	State	Zip	County	Phone

EXAMINATION INFORMATION

The First-Level examination and evaluation for the above-named respondent:

was conducted on ____/____/____ (MM/DD/YYYY) **at** ____:____ ☐ **A.M.** ☐ **P.M.**

was conducted:

☐ In person at the following facility _____ **OR** ☐ Via telemedicine technology

Included in the examination was an assessment of the respondent's:

☐ (1) Current and previous mental illness and intellectual disability including, if available, previous treatment history; (2) Dangerousness to self or others as defined in G.S.122C-3 (11*); (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends, or others; and (4) Capacity to make an informed decision concerning treatment.

☐ (1) Current and previous substance abuse including, if available, previous treatment history; and (2) Dangerousness to self or others as defined in G.S.122C-3 (11*).

The following findings and recommendations are made based on this examination[^]:

SECTION I – CRITERIA FOR COMMITMENT

It is my opinion that the respondent meets the criteria for the selected type of commitment as the respondent is:

<input type="checkbox"/> Inpatient (1 st Exam – Commitment Examiner, eligible Psychologist or Physician) <input type="checkbox"/> An individual with a mental illness; <input type="checkbox"/> Dangerous to: <input type="checkbox"/> Self or <input type="checkbox"/> Others; <input type="checkbox"/> In addition to having a mental illness is also intellectually disabled; <input type="checkbox"/> None of the above	<input type="checkbox"/> Outpatient (1 st Exam – Commitment Examiner, eligible Psychologist or Physician) <input type="checkbox"/> An individual with a mental illness; <input type="checkbox"/> Capable of surviving safely in the community with available supervision; <input type="checkbox"/> Based upon the respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness as defined by G.S. 122C-3 (11*); <input type="checkbox"/> Current mental status or the nature of his/her illness limits or negates his/her ability to make an informed decision to seek treatment voluntarily or comply with recommended treatment; <input type="checkbox"/> None of the above	<input type="checkbox"/> Substance Abuse (1 st Exam – LCAS CE, eligible Psychologist or Physician) <input type="checkbox"/> A Substance Abuser; <input type="checkbox"/> Dangerous to: <input type="checkbox"/> Self or <input type="checkbox"/> Others; <input type="checkbox"/> None of the above
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[^]For telemedicine evaluations only: ☐ I certify to a reasonable degree of medical certainty that the results of the examination via telemedicine were the same as if I had been personally present with the respondent **OR** ☐ The respondent needs to be taken for a face-to-face evaluation. (*Statutory definitions begin on page 3)

Name of Respondent:	DOB:
SECTION II – DESCRIPTION OF FINDINGS	
Clear description of findings (findings for each criterion checked in Section I must be described):	
Impression/Diagnosis:	
HEALTH SCREENING	
<i>A health screening (N.C. G.S. § 122C-3(16a)) does not constitute a medical evaluation[†] and should be completed at the same location as the first examination or by utilizing telemedicine equipment and procedures (N.C.G.S. § 122C-263(a1)).</i>	
<input type="checkbox"/> Check box & sign to attest that the health screening is being replaced by a medical evaluation[†] skip to Section III	
_____ Signature	_____ Printed Name, Credentials, Date & Time
Vital Signs	
BP _____ HR _____ RR _____ Temp _____ Date & Time _____ If person taking vitals is different than person completing this form, sign/print name & credentials below:	
_____ Signature	_____ Printed Name, Credentials, Date & Time
Known/reported medical problems (diabetes, hypertension, heart attacks, sickle cell anemia, asthma, etc.):	
Known/reported allergies:	
Known/reported current medications (please list):	
If ANY of the below are present, check box and send respondent to an <u>Emergency Department</u> by the most appropriate means:	
<input type="checkbox"/> Chest pain or shortness of breath <input type="checkbox"/> Suspected overdose on substances or medications within the past 24 hours (including acetaminophen) <input type="checkbox"/> Presence of severe pain (e.g. abdominal pain, head pain) <input type="checkbox"/> Disoriented, confused, or unable to maintain balance <input type="checkbox"/> Head trauma or recent loss of consciousness <input type="checkbox"/> Recent physical trauma or profuse bleeding <input type="checkbox"/> New weakness, numbness, speech difficulties or visual changes <input type="checkbox"/> Other Rationale (including medical evaluation indicated, but not available at current location):	
<input type="checkbox"/> None of the above	

Name of Respondent:

DOB:

IF ANY of the below are present, check box and consult* with medical provider† within one hour:

- ☐ Age < 12 or > 65 years old
 - ☐ Systolic BP > 160 or < 100 and/or diastolic > 100 or < 60
 - ☐ Heart Rate > 110 or < 55 bpm
 - ☐ Respiratory Rate > 20 or < 12 breaths per minute
 - ☐ Temperature > 38.0 C (100.4 F) or < 36.0 C (96.8 F)
 - ☐ Known diagnosis of diabetes and not taking prescribed medications
 - ☐ Recent seizure or history of seizures and not taking seizure medications
 - ☐ Known diagnosis of asthma or chronic obstructive pulmonary disease and not taking prescribed medications
 - ☐ Visible or reported open sores, wounds, or active bleeding
 - ☐ Severe constipation **or** vomiting **or** diarrhea
 - ☐ Painful urination or new onset incontinence
 - ☐ Known or suspected pregnancy
 - ☐ Used substances of abuse, (e.g. alcohol, opiates, benzodiazepines, cocaine, etc.) or prescription medication not prescribed to them, within the past 48 hours
 - ☐ Other Rationale:
-
- ☐ None of the above

Signature of Person Completing Health Screening

Printed Name, Credentials, Date & Time

[†]**DEFINITION OF Medical Evaluation:** Medical history and physical exam performed by a medical provider

[‡]**DEFINITION OF Medical Provider:** MD, DO, PA, or NP licensed in N.C.

^{*}Consultation can be via telephone, telemedicine or in person

***STATUTORY DEFINITIONS for Form No. DMH 5-72-19**

Commitment examiner. - A physician, an eligible psychologist, or any health professional or mental health professional who is certified under G.S. 122C-263.1 to perform the first examination for involuntary commitment described in G.S. 122C-263(c) or G.S. 122C-283(c).

Dangerous to others. - Within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

Dangerous to self. - Within the relevant past the individual has done any of the following: (1) acted in such a way as to show all of the following: (I) The individual would be unable without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of the individual's daily responsibilities and social relations or to satisfy the individual's need for nourishment, personal or medical care, shelter, or self-protection and safety. (II) There is a reasonable probability of the individual suffering serious physical debilitation within the near future unless adequate treatment is given. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a **prima facie** inference that the individual is unable to care for himself or herself. (2) The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given. (3) The individual has mutilated himself or herself or attempted to mutilate himself or herself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given. NOTE: Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

Health screening. - An appropriate screening suitable for the symptoms presented and within the capability of the entity, including ancillary services routinely available to the entity, to determine whether or not an emergency medical condition exists. An emergency medical condition exists if an individual has acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Name of Respondent: _____	DOB: _____
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Local management entity/managed care organization or LME/MCO. - A local management entity that is under contract with the Department to operate the combined Medicaid Waiver program authorized under Section 1915(b) and Section 1915(c) of the Social Security Act.

Local management entity or LME. - An area authority.

Mental illness. - When applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of the individual's affairs and social relations as to make it necessary or advisable for the individual to be under treatment, care, supervision, guidance or control. When applied to a minor, a mental condition, other than an intellectual disability alone, that so lessens or impairs the minor's capacity to exercise age adequate self-control and judgment in the conduct of the minor's activities and social relationships so that the minor is in need of treatment.

Substance abuser. - An individual who engages in the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. Substance abuse may include a pattern of tolerance and withdrawal.

SECTION III – RECOMMENDATION FOR DISPOSITION

- ☐ **Inpatient Commitment** for _____ days (*respondent must have a mental illness **and** dangerous to self or others*)
- ☐ **Outpatient Commitment** (*respondent must meet **ALL** of the first four criteria outlined in Section I, **Outpatient***)
 Proposed Outpatient Treatment Center or Physician: (Name) _____
 (Address & Phone Number) _____
- ☐ **Substance Abuse Commitment** (*respondent must meet both criteria outlined in Section I, **Substance Abuse***)
- ☐ Release respondent pending hearing – Referred to: _____
- ☐ Hold respondent at 24-hour facility pending hearing – Facility: _____
- ☐ Respondent or Legally Responsible Person Consented to Voluntary Treatment
- ☐ Respondent was held at first evaluation site pending placement at a 24-hour facility and no longer meets criteria for inpatient commitment:
- ☐ Terminate proceedings and release respondent
- ☐ Recommend outpatient commitment
- Proposed Outpatient Treatment Center or Physician: (Name) _____
- (Address & Phone Number) _____
- ☐ Release Respondent and Terminate Proceedings (*insufficient findings to indicate that respondent meets commitment criteria*)

<div style="margin-bottom: 10px;">_____ Signature of Commitment Examiner</div> <div style="margin-bottom: 10px;">_____ Print Name of Examiner</div> <div style="margin-bottom: 10px;"> Credentials (<i>check one</i>): <input type="checkbox"/> MD/DO <input type="checkbox"/> Eligible Psychologist <input type="checkbox"/> PA <input type="checkbox"/> NP (<i>Master's-level or Higher</i>) <input type="checkbox"/> LCSW <input type="checkbox"/> LCMHC <input type="checkbox"/> LMFT <input type="checkbox"/> LCAS (<i>Substance Abuse Evaluation Only</i>) </div> <div style="margin-bottom: 10px;">_____ Address of Facility</div> <div style="margin-bottom: 10px;">_____ City and State</div> <div style="margin-bottom: 10px;">_____ Telephone Number</div>	<div style="margin-bottom: 10px;">This is to certify that this is a true and exact copy of the Examination and Recommendation for Involuntary Commitment</div> <div style="margin-bottom: 10px;">_____ Original Signature – Record Custodian</div> <div style="margin-bottom: 10px;">_____ Title</div> <div style="margin-bottom: 10px;">_____ Address of Facility</div> <div style="margin-bottom: 10px;">_____ Date</div>
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CC: Clerk of Superior Court where petition was initiated; Clerk of Superior Court where 24-hour facility is located or where outpatient treatment is supervised; Respondent or Respondent's Attorney and State's Attorneys, when applicable; Proposed Outpatient Treatment Center or Physician (Outpatient Commitment); Area Facility/Physician (Substance Abuse Commitment). NOTE: If it cannot be reasonably anticipated that the clerk will receive the copies within 48 hours of the time that it was signed, the examiner shall communicate his findings to the clerk by telephone.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS

Name Of Defendant

MOTION AND ORDER APPOINTING LOCAL CERTIFIED FORENSIC EVALUATOR (For Offenses Committed On Or After Dec. 1, 2013)

G.S. 15A-1002

Offense(s) (copy of charging document(s) attached)

MOTION QUESTIONING DEFENDANT'S CAPACITY TO PROCEED

The undersigned moves that the above named defendant be examined to determine whether by reason of mental illness or defect the defendant is unable to understand the nature and object of the proceedings against the defendant, to comprehend his/her own situation in reference to the proceedings, or to assist in his/her defense in a rational or reasonable manner. The specific conduct that leads the moving party to question the defendant's capacity to proceed is as follows:

Date _____ Signature _____ ☐ Prosecutor ☐ Defendant's Attorney
☐ Defendant ☐ Judge

Name And Address Of Defendant's Attorney

District Attorney's Office Address

Telephone No.

Telephone No.

CERTIFICATE OF SERVICE BY MOVING PARTY

I certify that a copy of this Motion was served by:

☐ delivering a copy personally to the ☐ defendant's attorney. ☐ prosecutor. ☐ defendant.

☐ depositing a copy, enclosed in a postpaid properly-addressed envelope, in a post office or official depository under the exclusive care and custody of the U.S. Postal Service directed to the ☐ defendant's attorney. ☐ prosecutor. ☐ defendant.

☐ leaving a copy at the office of the ☐ defendant's attorney with an associate or employee. ☐ prosecutor with an associate or employee.

Name And Title Of Person With Whom Copy Left

Service accepted by: ☐ defendant's attorney. ☐ prosecutor. ☐ defendant.

Signature Of Person Accepting Service

Date Served

Signature Of Person Serving

Title

Original - File Copy - Local Management Entity Copy - Moving Party Copy - Opposing Party Copy - Sheriff

AOC-CR-207B, Rev. 1/23

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(Over)

ORDER APPOINTING LOCAL CERTIFIED FORENSIC EVALUATOR

A motion questioning the defendant's capacity to proceed having been made and considered, the Court finds that the defendant's capacity to proceed is in question. The Court Orders that:

1. One or more Forensic Evaluators of the Local Management Entity named below, certified by the North Carolina Forensic Services, shall screen the defendant within seven (7) days after receiving this Order and determine the questions set forth in the motion.
2. The Area Director of the Local Management Entity shall cause a written report of findings and recommendations to be submitted to the Court.
3. If the screening examination reveals a need for evaluation by a medical expert which can be done at the Local Management Entity, the evaluator shall arrange for this evaluation and notify the Clerk of Superior Court in writing. The medical expert's evaluation summary shall be transmitted to the Court in the manner described later in this Order. If the defendant is charged with a felony and the screening evaluation reveals that the evaluation by medical experts at the forensic unit of Central Regional Hospital - Butner Campus is needed, the evaluator shall notify the Court immediately.
(NOTE: Effective for offenses committed on or after December 1, 2013, an examination at a state facility may not be ordered for a person charged only with misdemeanors.)
4. The report required by items 2 and 3 of this Order shall be transmitted to the Court in the following manner:
 - (a) A brief covering statement (containing only the facts of the examination and any conclusions) shall be prepared in duplicate and enclosed in an envelope addressed to the Clerk of Superior Court in this county.
 - (b) Three copies of the complete report shall be prepared. Two copies are to be enclosed in a separate sealed envelope addressed to the attention of the undersigned Judge and marked "confidential," one copy is to be forwarded to defense counsel, or to the defendant, if the defendant is not represented by counsel.
 - (c) The envelope containing the covering statement and the sealed envelope addressed to the Judge shall be enclosed in a larger envelope which shall be addressed to the Clerk of Superior Court of this county. All envelopes shall show the file number of the case.
 - (d) The Clerk shall open and file the covering statement with the Court file. The complete report shall be retained unopened in the envelope addressed to the undersigned Judge until requested by the Court.
5. The moving party shall immediately advise the Local Management Entity named below of the entry of this Order and shall provide the Local Management Entity with a copy of this Order and the defendant's charging document(s). The moving party shall transmit an additional copy of this Order to the jailer of this county if the defendant is confined.
6. ☐ a. The Sheriff is Ordered to transport the defendant and all relevant documents to the Certified Local Forensic Evaluator designated by the Local Management Entity and return the defendant afterwards.
☐ b. The defendant shall present himself/herself to the Certified Local Forensic Evaluator designated by the Local Management Entity for evaluation.
7. Upon presentation of a copy of this Order by the forensic evaluator, any physician or clinician, licensed health care facility, licensed health care provider, local management entity, area mental health care program, the Division of Prisons of the Department of Adult Correction, the Division of Juvenile Justice of the Department of Public Safety, any county detention facility, or any school district is hereby authorized and required to furnish copies of all records, including school records and records containing information relating to alcohol abuse, drug abuse and psychological or psychiatric conditions, concerning defendant to the forensic evaluator. Nothing herein shall be construed to require record holders to release information in violation of relevant federal law.

Name Of Local Management Entity

Date

Signature Of Judge

Name Of Judge (type or print)

RETURN OF SERVICE

I certify that this Order was received and served as follows:

- ☐ By transporting the defendant to the Certified Local Forensic Evaluator designated by the Local Management Entity.
☐ Other: (specify)

Date Received

Signature Of Deputy Sheriff Making Return

Date Served

Date Of Return

Name Of Deputy Sheriff Making Return (type or print)

Name Of Sheriff (type or print)

County Of Sheriff

CAPACITY DETERMINATION

Following a hearing under G.S. 15A-1002, and a review of the record in this case, including the forensic evaluation of the defendant, the Court has determined that (check one)

- ☐ 1. the defendant is **ABLE** to understand the nature and object of the proceedings against him/her, to comprehend his/her own situation in reference to the proceedings, and to assist in his/her defense in a rational and reasonable manner. Accordingly, this matter shall proceed.
- ☐ 2. by reason of mental illness or defect, the defendant is **UNABLE** to (check all that apply)
- ☐ understand the nature and object of the proceedings against him/her ☐ comprehend his/her own situation in reference to the proceedings
☐ assist in his/her defense in a rational or reasonable manner and therefore the defendant lacks capacity to proceed.

Date

Name Of Presiding Judge (type or print)

Signature Of Presiding Judge

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Defendant

**MOTION AND ORDER
COMMITTING DEFENDANT
TO CENTRAL REGIONAL HOSPITAL -
BUTNER CAMPUS FOR EXAMINATION
ON CAPACITY TO PROCEED
(For Offenses Committed On Or After Dec. 1, 2013)**

G.S. 15A-1002

Offense (copy of charging document(s) attached)

NOTE: In felony cases, a local examination must be ordered before an examination at Central Regional Hospital - Butner Campus if the court finds that a local impartial medical expert or forensic evaluator certified under the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services is available and appropriate. To order a local examination for an offense committed on or before November 30, 2013, use form AOC-CR-207A. To order a local examination for an offense committed on or after December 1, 2013, use AOC-CR-207B.

NOTE: The address for Central Regional Hospital - Butner Campus is Forensic Services Unit, Central Regional Hospital - Butner Campus, 300 Veazey Road, Butner, NC 27509. The telephone number is 919-764-5009 and the fax number is 919-764-5012.

MOTION QUESTIONING DEFENDANT'S CAPACITY TO PROCEED

The undersigned moves that the above named defendant be examined to determine whether by reason of mental illness or defect the defendant is unable to understand the nature and object of the proceedings against the defendant, to comprehend his/her own situation in reference to the proceedings, or to assist in his/her defense in a rational or reasonable manner. The specific conduct that leads the moving party to question the defendant's capacity to proceed is as follows:

Date

Signature

☐ Prosecutor☐ Defendant's Attorney☐ Judge**CERTIFICATE OF SERVICE BY MOVING PARTY**

I certify that a copy of this Motion was served by:

☐ delivering a copy personally to the
☐ defendant's attorney. ☐ prosecutor. ☐ defendant.☐ depositing a copy, enclosed in a postpaid properly-addressed envelope, in a post office or official depository under the exclusive care and custody of the U.S. Postal Service directed to the
☐ defendant's attorney. ☐ prosecutor. ☐ defendant.☐ leaving a copy at the office of the
☐ defendant's attorney with an associate or employee. ☐ prosecutor with an associate or employee.

Name And Title Of Person With Whom Copy Left

Service accepted by: ☐ defendant's attorney. ☐ prosecutor. ☐ defendant.

Signature Of Person Accepting Service

Date Served

Signature Of Person Serving

Title

Original - File Copy - Hospital Copy - Moving Party Copy - Opposing Party Copy - Sheriff
(Over)

FINDINGS

This cause was heard before the undersigned judge upon the motion of the person named on the reverse questioning the defendant's capacity to proceed. Having considered the motion, and after hearing evidence, the Court finds that:

- ☐ 1. The defendant's capacity to proceed ☐ is in question. ☐ is not in question.
- ☐ 2. The defendant is charged with a felony.
(NOTE: An examination at a state facility may not be ordered for a person charged with misdemeanor(s) only.)
- ☐ 3. The defendant has been examined in connection with the current charges by one or more local impartial medical experts or forensic evaluators certified under the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.
- ☐ 4. An examination of the defendant at Central Regional Hospital - Butner Campus to determine the defendant's capacity would be more appropriate under the provisions of G.S. 15A-1002(b)(2) than a local evaluation.

ORDER

It is ORDERED that: (check all that apply)

- ☐ 1. The defendant be committed to Central Regional Hospital - Butner Campus for a period not to exceed sixty (60) days for observation and treatment, pursuant to G.S. 15A-1002, to determine the defendant's capacity to proceed. The moving party shall provide Central Regional Hospital - Butner Campus with a copy of this Order, the defendant's charging document(s) and any local forensic report on the defendant. The Director of Central Regional Hospital - Butner Campus must direct a written report describing the present state of the defendant's mental health to the defense attorney and to the Clerk of Superior Court for the above referenced county. The sheriff of this county shall transfer the defendant and all relevant documents to Central Regional Hospital - Butner Campus and shall return the defendant to this county when notified that the evaluation has been completed.
- ☐ 2. Upon presentation of a copy of this Order by the forensic evaluator designated by Central Regional Hospital - Butner Campus, any physician or clinician, licensed health care facility, licensed health care provider, local management entity (LME), area mental health program, the Division of Prisons of the Department of Adult Correction, the Division of Juvenile Justice of the Department of Public Safety, any county detention facility, or any school district is hereby authorized and required to furnish copies of all records, including school records and records containing information relating to alcohol abuse, drug abuse and psychological or psychiatric conditions, concerning defendant to the forensic evaluator designated by Central Regional Hospital - Butner Campus. Nothing herein shall be construed to require record holders to release information in violation of relevant federal law.
- Upon request of the forensic evaluator designated by Central Regional Hospital - Butner Campus, counsel for the State and defendant shall furnish to the forensic evaluator designated by Central Regional Hospital - Butner Campus such records and information in counsel's possession as the evaluator requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant, defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.
- ☐ 3. The motion is denied as the defendant's capacity to proceed is not in question.

Name And Address Of Defendant's Attorney

Date

Signature Of Presiding Judge

Telephone No.

Name Of Presiding Judge (type or print)

RETURN OF SERVICE

I certify that this Order was received and served as follows:

- ☐ By transporting the defendant to Central Regional Hospital - Butner Campus.
- ☐ Other: (specify)

Date Received

Signature Of Deputy Sheriff Making Return

Date Served

Date Of Return

Name Of Deputy Sheriff Making Return (type or print)

Name Of Sheriff (type or print)

County Of Sheriff

CAPACITY DETERMINATION

Following a hearing under G.S. 15A-1002, and a review of the record in this case, including the forensic evaluation of the defendant, the Court has determined that (check one)

- ☐ 1. the defendant is **ABLE** to understand the nature and object of the proceedings against him/her, to comprehend his/her own situation in reference to the proceedings, and to assist in his/her defense in a rational and reasonable manner. Accordingly, this matter shall proceed.
- ☐ 2. by reason of mental illness or defect, the defendant is **UNABLE** to (check all that apply)
- ☐ understand the nature and object of the proceedings against him/her ☐ comprehend his/her own situation in reference to the proceedings
- ☐ assist in his/her defense in a rational or reasonable manner and therefore the defendant lacks capacity to proceed.

Date

Name Of Presiding Judge (type or print)

Signature Of Presiding Judge

STATE OF NORTH CAROLINA

File No. _____

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division**IN THE MATTER OF**

Name And Address Of Respondent

Date Of Birth*

Race*

Sex*

*Date of birth, race, and sex are collected so that this information may be transmitted to NICS in the event of a qualifying finding under G.S. 14-409.43(a)(5).

INVOLUNTARY COMMITMENT**CUSTODY ORDER****DEFENDANT FOUND****INCAPABLE TO PROCEED****(For Offenses Committed On Or After Dec. 1, 2013)**

G.S. 15A-1003, -1004; 122C-261, -262, -263

FINDINGS

The respondent has been charged in File No. _____ with a criminal offense in the above named county and has been found incapable of proceeding to trial under G.S. 15A-1002. The Court considered the opinion of _____ (name of forensic evaluator) in the report dated _____ (list date of report) as evidence of incapacity to proceed. A copy of the evaluator's report is attached.

Based on the evidence presented, the Court finds that there are reasonable grounds to believe that the respondent probably has a mental illness and is either dangerous to self or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness in that (insert appropriate findings)

In addition, the Court finds that the respondent

☐ 1. probably has an intellectual disability, in that (insert appropriate findings)☐ 2. is charged with a violent crime in violation of G.S. _____, in that (insert appropriate findings)

NOTE TO JUDGE: If this finding is made, you must designate a law enforcement agency below to take custody of the defendant upon release from treatment.

ORDER**To The Sheriff Of _____ County:**

- The Court ORDERS you to take the above named respondent into custody and transport the respondent:
☐ a. to a local person authorized by law to conduct an examination, for examination. (Use when not charged with a violent crime.)
☐ b. directly to the 24-hour facility named below for temporary custody, examination and treatment pending a district court hearing. (Use when charged with a violent crime.)
- The Court further ORDERS that you deliver a copy of the forensic evaluation report referenced in the Findings above, by the forensic evaluator named above, to the 24-hour facility named below.

To The Director Of The 24-Hour Facility Named Below:

The Court ORDERS you to deliver a copy of the forensic evaluation report referenced above to the Assistant Attorney General and the Special Counsel at the program where the respondent is to receive capacity restoration and that report is ordered released to them.

Notice To Hospital, Institution, 24-Hour Facility:

Criminal charges are still pending against the respondent. If defendant-respondent is released he/she must be released to the law enforcement agency named below. If the defendant-respondent is not charged with a violent crime and no law enforcement agency is specified, you may release him/her to whomever you think appropriate. You must examine the defendant-respondent to determine whether he/she has gained the capacity to proceed to trial prior to releasing him/her from custody. A report of the examination must be provided to the court pursuant to G.S. 15A-1002.

Name Of Law Enforcement Agency

Name And Address Of 24-Hour Facility

Date

Signature Of Judge

Or Following Facility Designated By Area Authority:

Name Of Judge (type or print)

NOTE: Use AOC-SP-910 for involuntary commitment if defendant found not guilty by reason of insanity.

(Over)

RETURN OF SERVICE

☐ I certify that this Order was received and served as follows:

Date Respondent Taken Into Custody

Time

☐ AM

☐ PM

A. FOR USE WHEN RESPONDENT NOT CHARGED WITH VIOLENT CRIME

☐ 1. The respondent was presented to an authorized examiner locally available as shown below.

☐ 2. The respondent was temporarily detained at the facility named below until the respondent could be examined by an authorized examiner locally available.

Date Presented

Time

☐ AM

☐ PM

Name Of Examiner

Name Of Local Facility

☐ 1. Upon examination, the examiner named above found that the respondent did meet the criteria for outpatient commitment. I returned the respondent to his/her regular residence or to the home of a consenting person.

☐ 2. Upon examination, the examiner named above found that the respondent did meet the criteria for inpatient commitment.

☐ I transported the respondent and placed the respondent in the temporary custody of the 24-hour facility named below for observation and treatment.

☐ I placed the respondent in the custody of the agency named below for transportation to the 24-hour facility.

☐ 3. Upon examination, the examiner named above found that the respondent did not meet the criteria for inpatient or outpatient commitment.

☐ I examined the respondent for capacity to proceed to trial and returned him/her to his/her regular residence or the home of a consenting person.
(Use for offenses occurring on or after December 1, 2013.)

(NOTE: Submit report of capacity examination to Clerk of Superior Court in accordance with G.S. 15A-1002.)

☐ 4. The examiner's written statement ☐ is attached. ☐ will be forwarded.

Name Of 24-Hour Facility

Date Delivered

Time Delivered

☐ AM

☐ PM

Date Of Return

Name Of Transporting Agency

Signature Of Law Enforcement Official

B. FOR USE WHEN RESPONDENT CHARGED WITH VIOLENT CRIME

☐ I transported the respondent directly to and placed him/her in the temporary custody of the facility named below.

Name Of 24-Hour Facility

Date Delivered

Time Delivered

☐ AM

☐ PM

Date Of Return

Name Of Transporting Agency

Signature Of Law Enforcement Official

C. FOR USE WHEN ANOTHER AGENCY TRANSPORTS THE RESPONDENT

☐ I took custody of the respondent from the officer named above, transported the respondent and placed him/her in the temporary custody of the facility named below for observation and treatment.

Name Of 24-Hour Facility

Date Delivered

Time Delivered

☐ AM

☐ PM

Date Of Return

Name Of Transporting Agency

Signature And Rank Of Law Enforcement Official

D. FOR USE WHEN STATE FACILITY TRANSFERS WITHOUT ADMISSION

☐ Pursuant to G.S. 122C-261(f), I took custody of the respondent from the State 24-hour facility named above, where he/she was not admitted, and transported the respondent and placed him/her in the temporary custody of the facility named below for observation and treatment.

Name Of Facility To Which Transferred

Date Delivered

Time Delivered

☐ AM

☐ PM

Date Of Return

Name Of Transporting Agency

Signature Of Law Enforcement Or State Facility Official

CERTIFICATION

I certify that this Involuntary Commitment Custody Order Defendant Found Incapable To Proceed is a true and complete copy of the original on file in this case.

Date

Name (type or print)

Signature

☐ Deputy CSC ☐ Asst. CSC

☐ Clerk Of Superior Court

SEAL

District Court Strategy and Use of Motions after CVRA

What is CVRA ? – Notice and their Constitutional Rights in Criminal Cases

<https://nccriminallaw.sog.unc.edu/wp-content/uploads/2019/09/CVRA-Offenses-1.pdf>

Know Your Clients, Know the Law, Know the DA (ADA), and Know the Judge, Know the Policy of the District

Local Action Plan (LAP) – time for resolution

The Dreaded DWI

Factual Basis –

Client is charged with DWI, Reckless Driving, and Misdemeanor Child Abuse while on probation after being convicted of a DWI less than 2 months ago. Client is involved in a three (3) vehicle car wreck with injuries to people in the other cars and client's 5-year-old son was in the car. Officer puts in CVR that client had red glassy eyes, strong odor of alcohol, and an open container of Bud light was found in the vehicle. Because of injuries to client, blood draw was done to determine alcohol concentration. Client is in jail under a \$5,000 secured bond for DWI and \$2,500 secured bond for Probation violation. Accident was 10 days ago, and first court date is set for 2 months out. Client advises that in the middle of a custody battle, civil case set in 3 months.

Bond motion?

Motion to continue?

Move case out beyond blood return date –

Move Case up- Plea and PJC or Plea and resolve or Plea and PJC for restitution-

Move to set DWI with Probation Case-

Motion for Expert for Blood?

Motion for Expert for Accident Recreation?

Jail Credit

Plea and appeal? Remand?

HOT HANDS HOOLIGAN

Factual Basis –

Client charged with Assault on Female on his mother and Interfering with an Emergency Communication. At the time of the alleged offense, the client's wife, 10-year-old child, and aunt was

present. Aunt called the police to report the crime and ask for assistance. Client knocked the phone out of the Aunt's hand when she first attempted to call the 911. Client was arrested Saturday night and first appearance Monday morning. Judge at first appearance set a bond of \$5,000 secured. Mother and wife show up to office with medications and documentation that client has a history of psychotic behavior and that after arrest, they went before the magistrate and had client IVC'd.

Bond Motion?

When to set bond motion?

Can you get a consent bond modification?

Time....

Motion for Evaluation?

Motion for independent evaluation?

Time....

Motion to Continue?

Time....

Sticky Fingers Crafty Sam (Samantha)

Factual Basis

Client charged with misdemeanor larceny. Bond is secured at \$10,000. Court date is set for the Lowes next court date in 3 months. Client used boss's Lowes credit card to purchase paint and a Mt. Dew, but "forgot" to scan the 3 rolls of painter's tape and 2 tubes of caulk, for a restitution of \$39.65. Client is a level 2 with 4 prior convictions of larceny, but you know client has a bad substance abuse problem. Client is a painter by trade, and boss wants client out as soon as possible to get back to work. Boss wants him out, but isn't willing to post bond because client isn't known for going to Court and he didn't give permission for the purchase of the paint; boss thinks client was doing a side job.

Bond Motion?

Time v. Jail Credit?

Enhancement? Felonies???????

Motion for Evaluation

Plea and PJC

Defending Protesters:

Good Trouble
or
Constitutionally Protected Speech







1

Defending Protesters

Protest Rights are Property Rights

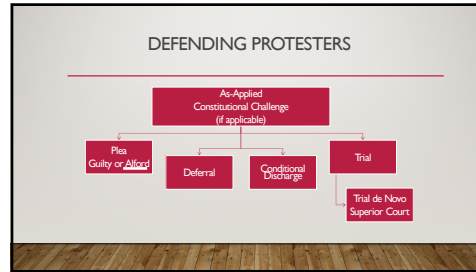
- The First Amendment protects the right to free speech, including:
 - the right of the people peaceably to assemble
 - The right to petition the Government for a redress of grievances.

2

Protests Rights are Limited

- Some acts done while protesting are unlawful including but not limited to:
 - Failure to Disperse
 - Resist Delay and Obstruct
 - Permit Violations/Rule Violations
 - Disorderly Conduct
 - Obstructing Traffic
 - Trespass
 - Injury to Property


3



4

Constitutionally Protected Speech?

As-Applied Challenge



Is the dispersal order based on a violation of criminal statute, rule, or permit as it is applied in the specific context applied to the accused unconstitutional?


- There is no "clear and present" danger. Brandenburg v. Ohio, 395 US 444 (1969) - A lawful order to disperse can only issue in the presence of actual violence or where lawless action is imminent.
- The order is not narrowly tailored to the protester engaged in illegal activity. McCullen v. Coakley, 573 U.S. 464 (2014)

5

Constitutionally Overbroad Order to Disperse

- Law enforcement must deploy less intrusive means of addressing a protester's illegal activity without burdening law-abiding protesters freedom of speech.
- An order that infringes on the expression rights of protesters who were peacefully assembling, AND not engaged conduct causing an imminent threat of violence, is CONSTITUTIONALLY OVERBROAD.
- To constitutionally order a protester to leave, the State is required to tailor their order to the protester engaged in illegal activity.

6

Guilty Pleas


- A plea of guilty is a confession that the defendant did the acts in question and "is itself a conviction" in that "nothing remains but to give judgment and determine punishment." *Boykin v. Alabama*, 395 U.S. 238, 242 (1969).
- An Alford plea is when a defendant maintains his innocence but admits that the state has sufficient evidence to convict him and agrees to be treated as guilty. It's called an Alford plea after *North Carolina v. Alford*, 400 U.S. 25 (1970).

7

Deferred Prosecution Eligibility
N.C.G.S. 15A-1341(a1)

To be eligible for deferred prosecution under this statute, a defendant must be charged with a Class H or I felony or a misdemeanor, and (upon motion of both the prosecutor and the defendant), does your client satisfy prerequisites enumerated in the statute?

8

Conditional Discharge Eligibility
N.C.G.S. 15A-1341(a3)-(a6)

To be eligible Conditional Discharge under this statute, a defendant must be charged with a Class H or I felony or a misdemeanor, and (upon joint motion of the prosecutor and the defendant), does your client satisfy prerequisites enumerated in the statute?

9

Trial → Trial de Novo

COMPEL DISCOVERY

- Dash camera/body camera footage from all responding officers.
- Police Personnel Files
- Research the number of times the officer or agency charges people with unlawfully resisting a public officer, note race of the people they charged with RDO.

KNOW YOUR AUDIENCE

- Request Juror Summons List and research who you WILL need to strike. Win or Lose your case Appeal to the sympathies.

IN ADDITION TO YOUR MOTIONS TO DISMISS FOR INSUFFICIENT EVIDENCE

- Best practice: renew any as-applied challenges before opening, close of state evidence, close of defense evidence, after verdict

NULLIFICATION

10

N.C.G.S. 14-223 Resist, Delay, Obstruct

The defendant WILLFULLY AND UNLAWFULLY:

- resist, delay, or obstruct
- a public officer
- knowing or having reasonable grounds to believe the person is a public officer,
- while the public officer is discharging or attempting to discharge a duty of his or her office.

State v. Humphreys, 275 N.C.App. 788 (Dec. 31, 2020); State v. Dammons, 152 N.C. App. 284 (2003).

11

Resist, Delay, Obstruct Defenses

- Not Willful
- Wrongful Arrest

Every person has the right to resist an *unlawful arrest* by using the force reasonably necessary to prevent it from occurring, *Roberts v. Swait*, 126 N.C. App. 712 (1997).

- Self Defense

An accused is justified in using reasonable force to defend if they reasonably believe that their action was necessary or apparently necessary to protect themselves from an officer's excessive force.

- Unawareness of The Officer's Identity

If a person is unaware of a police officer's identity during an arrest, then the law against resisting an arrest does not apply to them.

12

N.C.G.S. 14-288.5 Failure to Disperse

- The defendant failed to comply with a lawful demand to disperse;
- The command to disperse must be made in a manner reasonably calculated and communicated to the assemblage;
- A **reasonable belief** that a riot or disorderly conduct by an assemblage of three or more persons was occurring.

13

DEFENSES TO FAILURE TO DISPERSE

- Unlawful Order to Disperse
- Constitutionally Overbroad Order to Disperse



14

UNLAWFUL ORDER TO DISPERSE


If a reasonable LEO can not articulate affirmative answers to the following questions, the order to disperse is unlawful:

1. Is there a riot?
2. Is there a clear and present danger of injury or damage to persons or property?

Note, both "riot" and "disorderly conduct" require either actual violence or imminent lawless action (damage to persons or property).

15


2023 Riot Law



- § 14-288.2. Riot; inciting to riot; punishments.
- A riot is a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.

16

2023 Riot Law




- Any person who willfully engages in a riot is guilty of a Class 1 misdemeanor.
- Any person who willfully engages in a riot is guilty of a Class H felony if in the course of the riot the person brandishes any dangerous weapon or uses a dangerous substance.
- Any person who willfully engages in a riot is guilty of a Class F felony if in the course of the riot the person causes property damage in excess of two thousand five hundred dollars (\$2,500) or serious bodily injury.

Mere presence alone without an overt act is not sufficient to sustain a conviction pursuant to this section.

17

2023 Riot Law




- Any person who willfully engages in a riot is guilty of a Class E felony if in the course of the riot the person causes a death.
- Any person who willfully incites or urges another to engage in a riot, so that as a result of such inciting or urging a riot occurs or a clear and present danger of a riot is created, is guilty of a Class A1 misdemeanor.
- Any person who willfully incites or urges another to engage in a riot, and such inciting or urging is a contributing cause of a riot in which there is property damage in excess of two thousand five hundred dollars (\$2,500) or serious bodily injury, shall be guilty of a Class E felony.

Mere presence alone without an overt act is not sufficient to sustain a conviction pursuant to this section.

18

2023 Riot Law




- Any person who willfully incites or urges another to engage in a riot, and such inciting or urging causes a death, shall be guilty of a Class D felony.
- Any person whose person or property is injured by reason of a violation of this section may sue for and recover from the violator three times the actual damages sustained, as well as court costs and attorneys' fees.

Mere presence alone without an overt act is not sufficient to sustain a conviction pursuant to this section.

19

2023 Riot Law




§ 15A-534.8. Rioting or looting; bail and pretrial release.

(a) In all cases in which the defendant is charged with a violation of C.S. 14-288.2 or C.S. 14-288.6, the judicial official who determines the conditions of pretrial release shall be a judge...

CONTINUE NEXT SLIDE

20

2023 Riot Law



§ 15A-534.8. Rioting or looting; bail and pretrial release.

(1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to persons and upon a determination that the execution of an appearance bond as required by C.S. 15A-534 will not reasonably assure that such injury will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

(2) A judge may order the defendant to stay away from specific locations or property where the offense occurred. This condition may be imposed in addition to requiring that the defendant execute a secured appearance bond.

(3) Should the defendant be mentally ill and dangerous to himself or herself or others, or a substance abuser and dangerous to himself or herself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

21

2023 Riot Law Defenses

No Overt Act

Mere presence alone without an overt act is not sufficient to sustain a conviction pursuant to this section.

Selective Prosecution

22

Resources

[Emancipate NC](#)

[National Lawyers Guild](#)

Mass Defense Resources

[National Association of Criminal Defense Lawyers](#)

First Amendment Strike Force and Mass Defense Unit

[American Bar Association: How to advise clients on civil disobedience](#)

Information for attorneys on counseling clients engaged in civil disobedience

[Trespassing On White Supremacy: The Legacy Of Establishment White Supremacy in North Carolina](#)

100 N.C. L. REV. F. 149 (2022)

23

DRUG IMPAIRED
DRIVING
A PRACTICAL REFRESHER

Laura Neal Gibson
Chief Public Defender, 2nd District
May 11, 2023
Public Defender Conference

1

NCGS 20-138.1
IMPAIRED
DRIVING

(a) Offense. - A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

- (1) While under the influence of an impairing substance; or
- (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; 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.

2

FIRST MEETING WITH CLIENT:
THE DIFFICULT CONVERSATION

Client

- ▶ "I took some ambien, percocet and my anxiety medication that I am prescribed. I took it just like my doctor told me to. I drove to pick my child up from school and I never would have done that if I was impaired."
- ▶ "I take Tylenol PM to sleep, but I wasn't feeling well so I was also taking Mucinex DM oh and I think I also took some Benadryl because my allergies were acting up. I wasn't planning on driving, but I needed some cigarettes."

Attorney

- ▶ "I understand that you took your medication just like you were told to by your doctor, but unfortunately in NC, if the State can prove that you were under the influence and impaired by your medication, it is still DWI."
- ▶ "I understand that every single one of the medications that you took is something you can go to Walgreens and buy, but unfortunately in NC, if the state can prove that you were under the influence and impaired by those OTC medications, it is still DWI."

3

FIRST MEETING WITH CLIENT: HIRING A REAL LAWYER

Client:

Response #1: "Ok, well maybe I need to hire a real lawyer since you clearly don't know what you are taking care of."

WHEN THEY RETURN...

Response #2: "Ok, fine, I met with two other attorneys and they told me the same thing and were going to charge me \$2500. But I took that medication the night before and I fell fine. We pulled me over because I was speeding. He asked me if I had drunk anything and I said no and said nothing I didn't drink. I only took those medications, so I'll be right thisyyyyy". I don't have \$2500.

Attorney:

"I understand your frustration, I am the lawyer you were given, not the one you chose. You are free to hire any attorney you choose. Most attorneys will give a free consultation. I have defended many of these cases and I always encourage my clients to meet with other attorneys, ask them about my work, and about my fees. I will be happy to give them a copy for you to give them."

"Yes, we can try to fight this. It doesn't stop with the prosecution. We are going to get the discovery, the video, and your lab results, and we are going to see if they can prove that you were in fact under the influence of these medications."

4

DISCOVERY PROCESS: What should you try to get AND why?

DISCOVERY

- SWINE AND/OR OTHER NARRATIVE
- VIDEO - DASH AND BODY CAM
- BEATHE AND/OR BLOOD RIGHTS FORM
- OFFICER'S AFFIDAVIT
- CRIMINAL ANALYST AFFIDAVIT
- DRUG RECOGNITION EXPERT'S REPORT
- VIDEO OF DRE EXAMINATION
- LAB RESULTS
- NOTICE OF INTENT TO USE BLOOD RESULTS WITHOUT IN-PERSON TESTIMONY
- HOSPITAL RECORDS
- DRE REPORT
- CLIENT'S MEDICAL RECORDS
- CLIENT'S LIST OF PRESCRIPTIONS

POTENTIAL ISSUES

- Alcohol impairment
 - Reckless/Aggravated
- Prostate Case
- Blindness
- Evidence of non-impairment?
- Other explanations for evidence of impairment?
- Prostate Issues?
- Meds/Drugs Issues?
- No challenge of the DRE?
- Was the defendant given to EMS in the ambulance or by the hospital prior to the blood draw?
- Is there a medical condition that is a defendant that can explain your client's behavior that may seem like impairment?

5

CAN I DO MORE?

 If your client hasn't been to the doctor for a while and they have a previously diagnosed condition, make them get

 If your client has been prescribed a medication for their entire life, and they have more than one hour of time spent along the highway, make them go get all their prescriptions checked to prove how normal they are at the medication.

 Call your client's doctor. Research their medical conditions. Make the go need to get the medical condition to get the doctor to sign off on the client's condition. Make the go get all their prescriptions checked to prove how normal they are at the medication. Make the go get all their prescriptions checked to prove how normal they are at the medication. Make the go get all their prescriptions checked to prove how normal they are at the medication.

6

REALLY LAURA....THIS IS DISTRICT COURT

YES JUDGE AND DA AND WHOEVER ELSE I HAVE TO EXPLAIN IT TO...REALLY!

- License suspension
- Criminal record
- Insurance increase
- LARGE financial burden of fines and costs
- Jail time
- Impacts of child custody resulting in potential loss of custody

HOW WOULD YOU WANT TO BE TREATED IF IT WAS YOU FACING THESE REALITIES...

- Loss of professional licenses
- Loss of CDL
- Loss of employment
- Loss of future employment
- Background checks for housing
- Loss of scholarships
- Rejections from colleges

7

EVALUATING A PLEA:

LITTLE GRAY AREA

- ▶ The lab shows heroin and there is no RS or PC issue to raise (Sch 1).
- ▶ The client who just wants to get this over with...\$600 for a lab fee...no thank you!
- ▶ No RS or PC issue (i.e. bad impairment evidence) + admission within relevant time of impairing substance + long half-life substance found in the blood (research is key)

THE TRIABLE CASE

- ▶ The case your client refuses to plead
- ▶ The lab shows impairing substance but their impairment evidence does not...don't forget PC 1st.
- ▶ No impairing substance on the lab.
- ▶ Most marijuana cases – ESPECIALLY IF NO LAB!

8

DRUGGED DRIVING SCENARIOS:

EVIDENCE OF IMPAIRMENT
NO BLOOD

Defense Checklist:

- MIS Reasonable Suspicion?
- MIS Probable Cause?
- Beyond a Reasonable Doubt?

Practical: Why not just go through to BAC?

Rationale: Why give up a bite of the apple? Make your Judge read that. Have your mic disengagement for once...

EVIDENCE OF IMPAIRMENT + BLOOD

Defense Checklist:

- MIS Reasonable Suspicion?
- MIS Probable Cause?
- Blood rights issue?
- Collection issue?

Once you pass the preliminary and end up with a blood result (1/20/17/20/19) you need to know if the substance in the blood does not impair! This is where your extra work comes in.

EVIDENCE OF IMPAIRMENT + DRE + BLOOD

Defense Checklist:

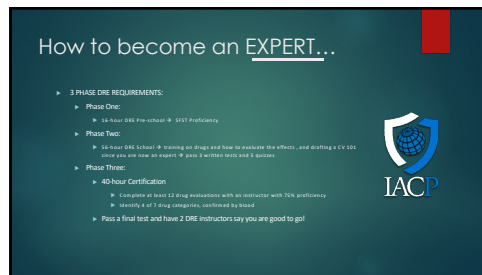
- MIS Reasonable Suspicion?
- MIS Probable Cause?
- Blood rights issue?
- Collection issue?
- DRE challenge?

Once you pass the preliminary, it is now on to the DRE. This is where we'll spend the bulk of our time left.

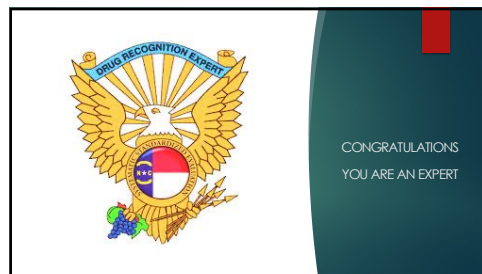
9



10



11



12



Now that we feel great about the 4 years of college and 3 years of law school we endured, \$100k we owe to pay for said school, summer we spent doing nothing but studying for one test that determined the course of the rest of our lives, and the real biling you did waiting for that 1 page letter in the mail telling you that you are a lawyer but no you aren't an expert because you haven't actually practiced law yet...


Let's see how to challenge the EXPERT opinion of this game warden who took this extremely demanding course and gets to be right 75% of the time....

13

What is a DRE good for?

- Is the person impaired?
- Is it drugs or a medical condition?
- If it's drugs...what category or combination of categories?

14



Please tell me they do more than just look at them and know all of that after their extensive training to become an expert!

Well, there is a 12 step process....

15

STEP ONE: THE BREATH ALCOHOL TEST

Are they just drunk?

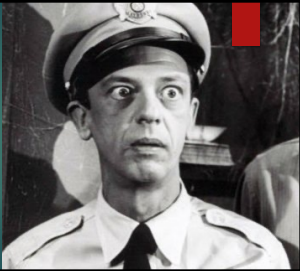
Does their BAC match their impairment level?

They just blew a .00...here we go!

16

STEP TWO: INTERVIEW OF ARRESTING OFFICER

- Driving?
- Behavior?
- Appearance?



17

STEP THREE: PRELIMINARY EXAMINATION AND FIRST PULSE

Questions: health, ingestion of food, alcohol, drugs, medications

Observations: attitude, coordination, speech, breath and face

Eyes: Equal pupil size, tracking equally, can follow stimulus, HGN presence

First Pulse Check

WARN! the best drug...this is a significant medical condition...seek medical assistance immediately.

THIS IS DRUGS! GO TO STEP 4

18

STEP FOUR: EYE EXAMINATION

The real one...not the one we did to rule out medical conditions

Horizontal Gaze Nystagmus

Vertical Gaze Nystagmus

Lack of convergence

19

STEP FIVE: DIVIDED ATTENTION
PSYCHOPHYSICAL TESTS

Modified Romberg Balance Test


Walk and Turn


One Leg Stand


Finger to Nose Test

20

STEP SIX: VITAL
SIGNS AND
SECOND
PULSE

 Blood Pressure

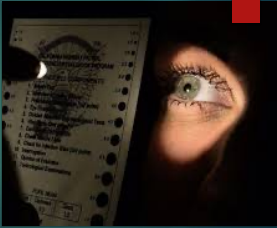
 Temperature

 Second Pulse

21

STEP SEVEN:
DARK ROOM
EXAMINATION

- ▶ The DRE estimates the subject's pupil sizes under 3 different lighting conditions with a measuring device called a pupillometer.
- ▶ The device will assist the DRE in determining whether the subject's pupils are dilated, constricted, or normal.



22

STEP EIGHT:
EXAMINATION
FOR MUSCLE
TONE


The DRE examines the subject's skeletal muscle tone.

Certain categories of drugs may cause the muscles to become rigid.

Other categories may cause the muscles to become very loose and flaccid.

Aren't you glad you aren't present in the room for this very awkward examination?

23



STEP NINE:
CHECK FOR
INJECTION
SITES AND
THIRD PULSE

24

STEP TEN:
SUBJECTS
STATEMENTS
AND OTHER
OBSERVATIONS

The DRE will FINALLY read
the *Miranda Rights*.

A series of questions are
asked about drug use.

25

STEP ELEVEN:
ANALYSIS AND
OPINIONS OF
THE
EVALUATOR

Based on the totality of the evaluation, the DRE
forms an opinion as to whether or not the subject
is impaired.

If the DRE determines that the subject is impaired,
the DRE will indicate what category or categories
of drugs may have contributed to the subject's
impairment.

And yes, now they actually have to prepare a
report that **MUST** be given to you along with their
Curriculum Vitae because they are an
expert...remember!

26

STEP TWELVE:
TOXICOLOGICAL
EXAMINATION

THIS IS A FANCY WAY OF SAYING...THEY THEN GET A BLOOD DRAW

27

SEVEN DRUG CATEGORIES



CNS DEPRESSANTS
Slow down the operations of the brain and the body (i.e. Valium, Xanax, alcohol, etc.)



CNS STIMULANTS
Accelerate the heart rate and elevate the blood pressure (i.e. Cocaine and Meth).



HALLUCINOGENS
Cause user to perceive things differently than they are (i.e. LSD and Ecstasy).

28

SEVEN DRUG CATEGORIES



DISSOCIATIVE ANESTHETICS
Block pain by cutting off brain's perception of pain (i.e. PCP and Ketamine).




NARCOTIC ANALGESICS
Relieve pain, induces euphoria, and creates mood change (i.e. opium, heroin, morphine, etc.).



INHALANTS
Block sensory input and effects (i.e. paint thinner, gasoline, nitrous, etc.).

29

SEVEN DRUG CATEGORIES



CANNABIS
THC and other synthetics

30

HOW DO I CHALLENGE AN EXPERT:

1
RULE 702
CHALLENGE:
VOIR DIRE

2
CROSS
EXAMINATION

3
GET YOUR
OWN EXPERT

31

RULE 702 CHALLENGE

YES: In NC, DRE Testimony is accepted as EXPERT TESTIMONY.

BUT: They still have to pass 702(a)(3)

What's your challenge:
DID THE DRE FOLLOW THE 12 STEP PROCESS COMPLETELY AND ACCURATELY?

32

CROSS EXAMINATION

Standardization: Just like any other SFTS, these tests have to be done CORRECTLY to be standardized.

- If you didn't do this on voir dire, you are going to go through every nit picking detail of his report and testimony that you know from your research of the 12 step process that he didn't do correctly.
- When you are done, you will have crafted a nice closing argument of why we now have no clue if this client was actually impaired because Deputy DRE didn't do the standardized tests to make his opinion reliable.

Accuracy: Remember that whole 75% thing...

- The DRE has to keep a log of his accuracy. He has to compare his opinion to the blood results and keep a record of every examination he has given and how accurate he was.
- Questions: Is he actually keeping this record? What is his accuracy rate? If he gives you just a bunch of numbers, do the math real quick and call him out on his percentage.
- Hal in the coffin if you have it: Was he accurate in your case? "You said stimulants and the lab came back as THC Deputy DRE, isn't that right?"

33

CROSS EXAMINATION:
CHALLENGE THEIR OPINION



CLUE CORRELATION



NORMAL RANGES OF
VITAL SIGNS AND
PUPILS



DO YOUR RESEARCH



CHALLENGE THE
OPINION

34

GET YOUR OWN EXPERT



WHY?




HOW DO I FIND
ONE?




WHAT DO I SEND
THEM?

35


In closing



Have the hard conversation
early and often



Evaluate your case after you
have the discovery you
have received and the
discovery you backed down




Learn the DRE Process and
know how to fight it

36

And have fun doing it...



Laura Gibson



laura.n.gibson@nccourts.org

37

NORTH CAROLINA
PRO BONO
RESOURCE CENTER

Pursuing Justice Through Service

A Program of the
North Carolina Equal Access to
Justice Commission

Relief from Financial Obligations

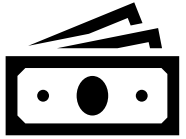
May 11, 2023

Leigh Wicclair

leigh@ncprobono.org

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Legal Financial Obligations in NC

A defendant in a criminal or traffic case may be assigned the following types of legal financial obligations:

- (1) Fines
- (2) Restitution
- (3) Court costs
- (4) Attorney fees
- (5) Other fees

Only fines and restitution are actually part of the criminal sentence.

(Costs and fees are an administrative byproduct of the sentence and are not intended as punishment. *State v. Arrington*, 215 N.C. App. 161 (2011).)



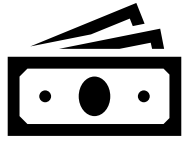
Legal Financial Obligations in NC

NC law only requires the court to consider Ability to Pay before imposing restitution.

- § 15A-1340.36 states, “The court shall take into consideration the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters.”

NC law encourages- but does not require- the court to consider Ability to Pay before imposing fines.

- §15A-1362 states “[i]n determining the method of payment of a fine, the court should consider the burden that payment will impose in view of the financial resources of the defendant.”



Legal Financial Obligations in NC

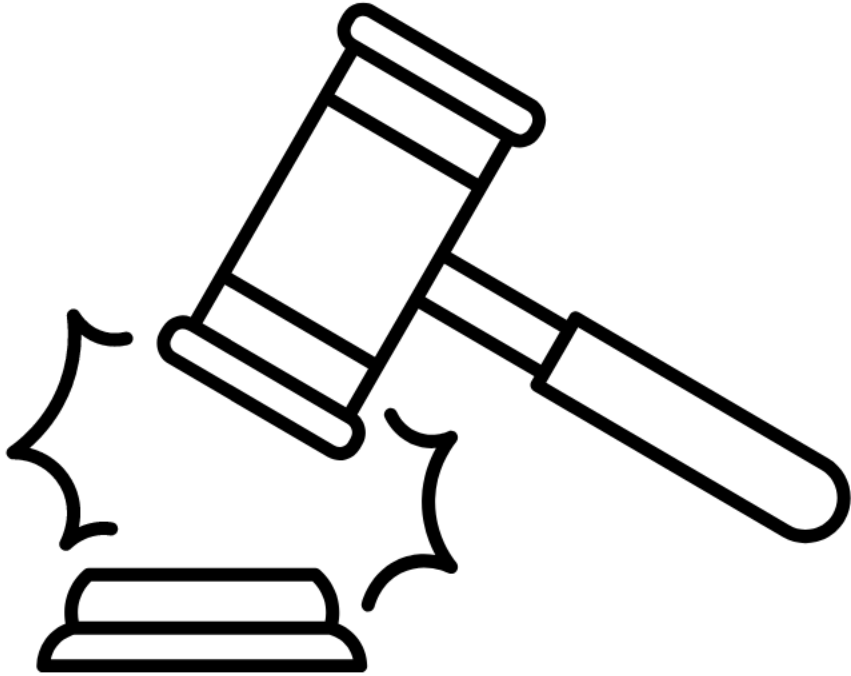
Costs and Fees:

NC law does not address the consideration of Ability to Pay before imposing costs and fees but does allow the court to waive costs and exempt the defendant from paying most fees.

Mandatory fee:

- Attorney appointment fee of \$75.00. § 7A-455.1.

Consequences of Unpaid Legal Financial Obligations



- Perpetual Debt
- Prolonged probation
- Jail
- Driver's license suspension

“Because the costs and fees are so high and so arbitrarily waived, and because the impact on our clients' lives is so great, we (those in public defense) end up focusing on our clients' poverty. We make the story about the desperate situations that our clients are in—because that's the only chance of getting them some relief. But what does this do to our clients' dignity? We stand in front of the judge, with an entire gallery of people listening in, and explain all the ways in which our clients haven't been able to make it.

For people with money, the story is about the ways they have been able to give back to the community. We hear about therapy and volunteer hours, higher education and altruistic work. Because our clients spend so much of their lives trying to provide the basic necessities for themselves and their families, they don't have the luxury of activities like volunteering. People who have working cars that are insured and registered don't know how much more difficult life can be if your transportation is the bus, or paying a friend with a car a few dollars to give you a ride. The current system forces us to present our clients' lives in the most abject way we can, because there is very little understanding of what it means to live in poverty. We are forced to choose between the chance of real relief for our clients and upholding their dignity. We try to do both, but it is a difficult task.”

Mani Dexter

Heather Hunt and Gene Nichol, COURT FINES AND FEES: CRIMINALIZING POVERTY IN NORTH CAROLINA (2017).



Court Debt and Driver's License Suspensions

§ 20-24.1 (a) Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and he:

- (1) failed to appear, after being notified to do so, when the case was called for a trial or hearing; or
- (2) failed to pay a fine, penalty, or court costs ordered by the court.

Revocation orders entered under the authority of this section are effective on the sixtieth day after the order is mailed or personally delivered to the person.

Estimates as of Jan. 2023 suggest that there are **404,807 people** in NC with active **driver's license suspensions** due to **unpaid traffic court debt** ("failure to pay"/ "failure to comply).



Rising Court Costs in North Carolina

Sample of 2022 Court Costs and Fees

- **General Court of Justice fee (District): \$147.50**
- General Court of Justice fee (Superior): \$154.50
- Jail fee: \$10 per day of pretrial confinement
- Facilities fee (District): \$12
- Facilities fee (Superior): \$30
- Telecommunications and Data fee: \$4
- Law enforcement officer retirement fee: \$7.50
- Community Service fee: \$250
- **Failure to Appear fee: \$200**
- **Failure to Comply fee: \$50**
- State Crime Lab fee: \$600
- **Installment fee: \$20**
- Probation fee: \$40 per month
- **Appointment of Counsel fee for Indigent Defendant: \$75**

Additional Fees for Traffic Offenses

- Chapter 20 fee: \$10
- Chapter 20, Improper Equipment fee: \$50
- Seat Belt fee: \$10
- Civil Revocation fee: \$100
- Limited Driving Privilege fee: \$100

In 1995, the General Court of Justice Fee (District) was \$41. Today it is \$147.50.

260% Increase

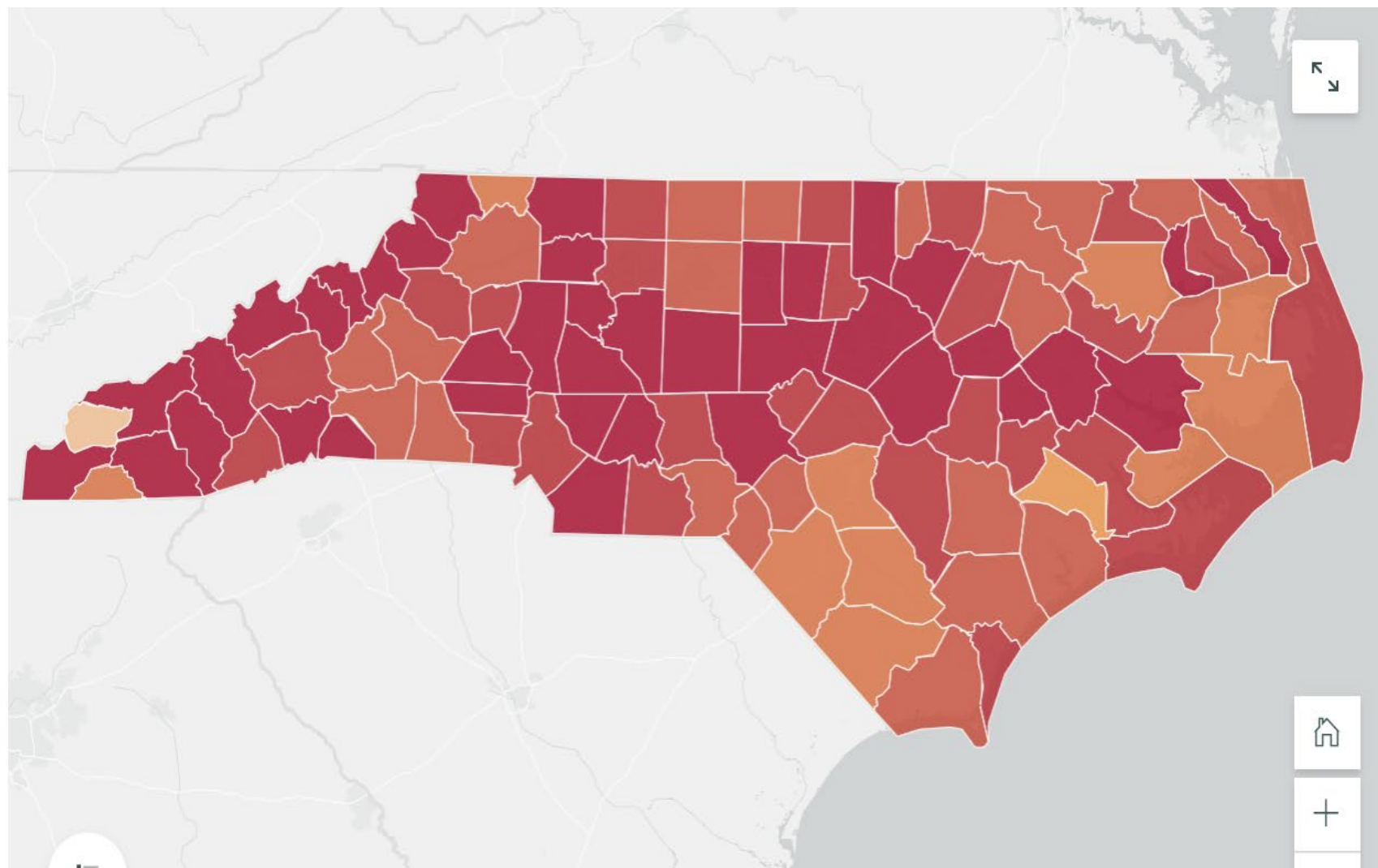
Note: If that court fee had only increased to take account for inflation, the fee would be \$71.34 today.



Adapted from the Second
Chance Mobility Project's
*Resolve Traffic Debt: Advocate
Toolkit*

Racial Disparities

Statewide, based on available data*, the suspension rate of Black or African American drivers was **four times higher** than that of White, non-Hispanic drivers. The counties in the darkest color are those where the racial disparity in suspension rates was higher than the statewide average – in some cases **up to 14 times higher**.



1

Criminal debt and driver's license suspensions affect massive numbers of people.

2

Both criminal debt and suspensions disproportionately affect communities of color and the poor and are racially and economically unfair.

3

Both criminal debt and driver's license suspensions impose a wide of range of counter-productive hardships on those affected.

From the Wilson Center at Duke Law's *2021 Driving Injustice Report*

Method of Relief

§ 20-24.1(b) Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses

(b) A license revoked under this section **remains revoked until** the person whose license has been revoked:

- (1) disposes of the charge in the trial division in which he failed to appear when the case was last called for trial or hearing; or
- (2) demonstrates to the court that he is not the person charged with the offense; or
- (3) pays the penalty, fine, or costs ordered by the court; or
- (4) demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted.

Upon receipt of notice from the court that the person has satisfied the conditions of this subsection applicable to his case, **the Division must restore the person's license** as provided in subsection (c).

§ 15A-1363. Remission of a fine or costs.

A defendant who has been required to pay a fine or costs, including a requirement to pay fine or costs as a condition of probation, or a **prosecutor**, may at any time petition the sentencing court for a **remission or revocation of the fine or costs** or any unpaid portion of it. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine or costs no longer exist, that it would otherwise be unjust to require payment, or that **the proper administration of justice requires resolution of the case**, the court **may remit or revoke the fine or costs** or the unpaid portion in whole or in part or may modify the method of payment.

DA- Initiated Mass Debt Relief



**Partner
with**

District Attorneys
willing to motion for
relief



Utilize

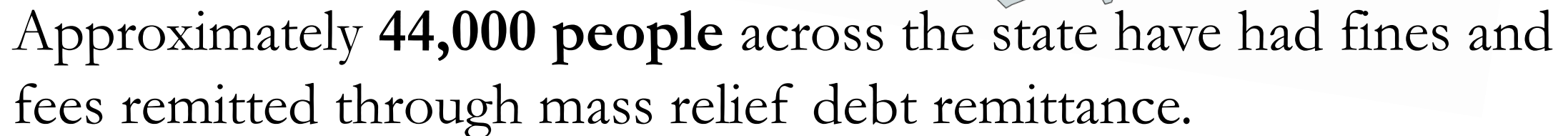
Data from the AOC to
identify qualifying cases
based on the DA's
criteria

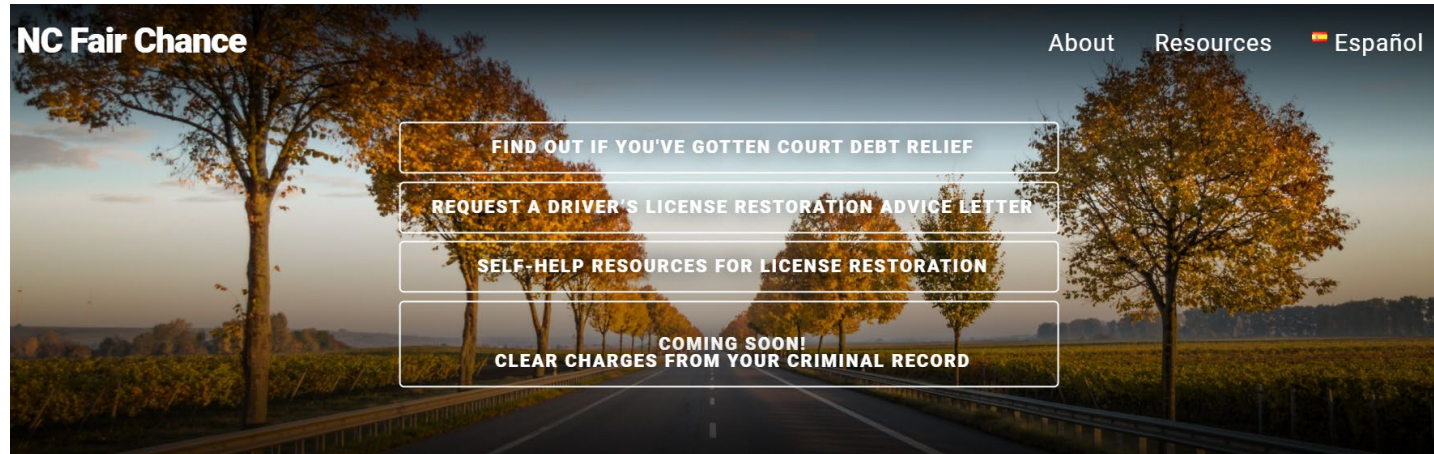


Engage

Pro Bono Attorneys
and paralegals to and
draft advice letters
and review data.

NORTH
CAROLINA
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RESOURCE
CENTER





Getting you safely back on the road and back to work!

Notification and Relief

AOC-CR-415

Motion for Relief from Fines, Fees and Other Monetary Obligations, and Order On Motion

STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
STATE VERSUS		REQUEST FOR RELIEF FROM FINES, FEES AND OTHER MONETARY OBLIGATIONS, AND ORDER ON REQUEST
Name Of Defendant		
Defendant's Telephone No.		
Defendant's Date Of Birth		
Defendant's Street Address <input type="checkbox"/> I am homeless.		Name And Address Of Attorney <input type="checkbox"/> I am self-represented.
		Attorney's Telephone No.
ABILITY TO PAY WORKSHEET		
Employment Income (per month) <i>List employer(s):</i>	<input type="checkbox"/> I am unemployed.	\$
Other Income (per month) <i>Specify, including for example rental income, investment income, pension, spouse's income, and gifts and financial support from family:</i>		\$
How many people, including yourself, does this income support?		
What is the total value of your cash on hand and in bank accounts?		\$
What is the total value of all real property you own?		\$
What is the total value of all major personal property you own (vehicles, jewelry)?		\$
Rent/mortgage you pay monthly		\$
Childcare/child support payments you pay monthly		\$
<i>(check all that apply)</i> I receive the following public assistance: <input type="checkbox"/> TANF (Temporary Assistance for Needy Families) <input type="checkbox"/> Supplemental Security Income (SSI) <input type="checkbox"/> Social Security Disability Insurance (SSDI) <input type="checkbox"/> SNAP/Food Stamps <input type="checkbox"/> Veterans' Benefits		
<input type="checkbox"/> I have been homeless in the past 6 months <input type="checkbox"/> I have been incarcerated on an active sentence in the past 6 months <input type="checkbox"/> I am under 18 <input type="checkbox"/> I am a full-time student		
Use the space below to provide any additional information about other circumstances the court should consider when evaluating your ability to pay, such as a disability or illness, a change in work hours, or other support obligations or significant expenses:		
AOC-CR-415, Rev. 3/22		

Interviewing Your Client

“Research has shown that people who are surveyed regarding income data typically ‘provide consistent, although not necessarily perfect, estimates of their legal income.’ Additional studies suggest that self-reporting is largely reliable even with respect to illegal income sources, though at least some researchers have found that people may over-estimate illegal income.”

Beth A. Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 IOWA L. REV. 53, 63 (2017).

Rule 28. Equitable Imposition of Monetary Obligations in Criminal Cases and Infraction Cases Based on the Defendant's Ability to Pay

- **(a) Scope.** This rule applies only in criminal cases and infraction cases in which the court has discretion to impose costs, fees, fines, restitution, or other monetary obligations equitably based on the defendant's ability to pay.
- **(b) Motion for Relief.** A defendant convicted of a crime or found responsible for an infraction may use AOC-CR-415, Request for Relief from Fines, Fees, and Other Monetary Obligations, to move the court to impose costs, fees, fines, restitution, or other monetary obligations equitably based on the defendant's ability to pay.
- **(c) Determination by Court.** The court must consider the defendant's motion and, if necessary, conduct a hearing. The court must rule on the motion prior to imposing costs, fees, fines, restitution, or other monetary obligations and may grant the defendant any relief permitted by law.

Johnson v. Jessup

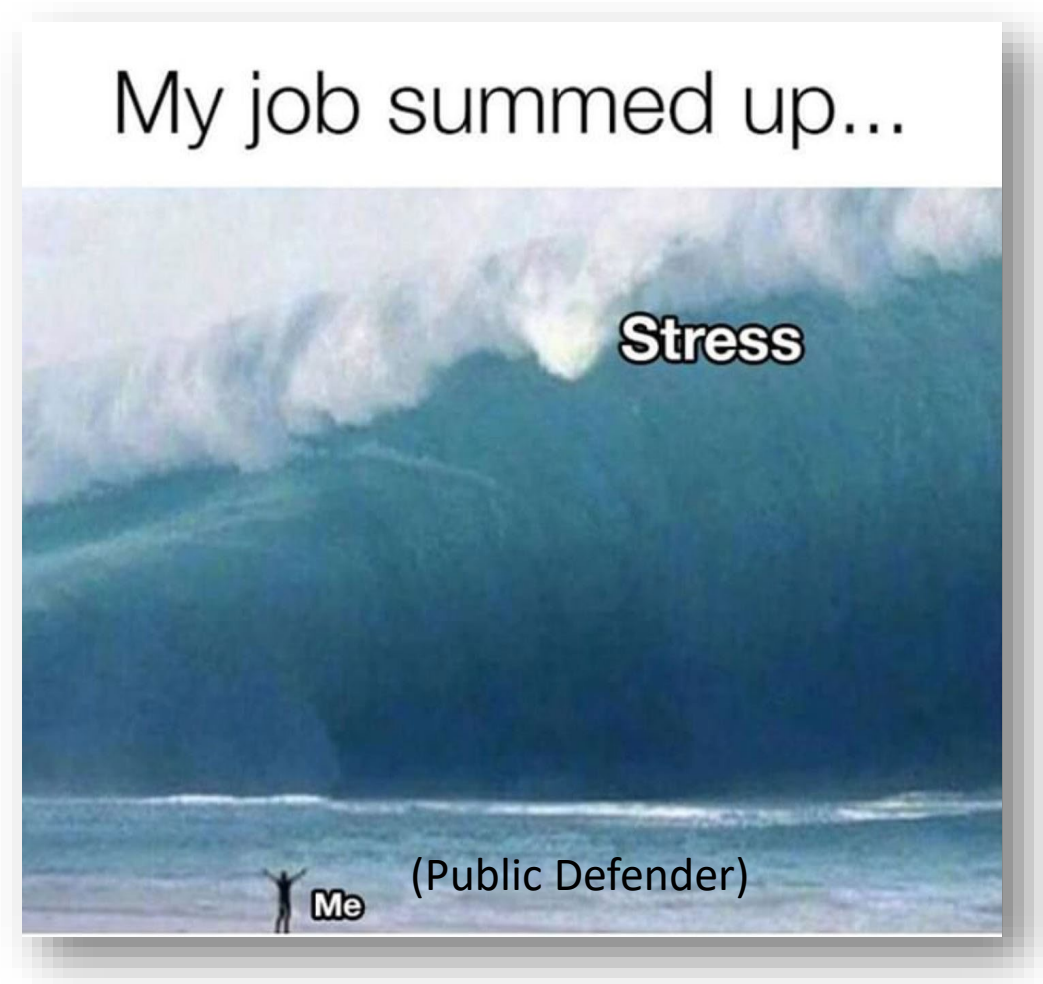
- The DMV sent notices to 185,000 drivers with a revoked license that informs them how they can seek reinstatement of their licenses if their licenses were revoked due to inability to pay.
- The DMV will revise future notices to include information on how a driver can petition and demonstrate to the court their inability to pay a traffic-related fine or cost prior to a failure to pay revocation.
- DMV to fund an informational website that hosts videos, written explanations, and other materials on preventing or removing a license suspension for non-payment.

Resources/ Challenges

- [Guide and File](#)
- <https://ncfairchance.org/>
- <https://resolvetrafficdebtnc.org/>

Suggestions for Collaboration

- Remember AOC-CR-415 which can be used at sentencing or after.
- Raise the issue of ATP in restitution hearings, put on evidence, and push the judge to make a ruling.
- When possible, ask to roll in “FTA” traffic charges with plea offers.
- Let us know if there are local policies or local court stakeholders (district attorneys or judges) that are particularly sympathetic to this issue or particularly hostile.



License Restoration Network

- **Charlotte Center for Legal Advocacy** - help in Mecklenburg County.
 - Call 704-376-1600 (Mecklenburg County), 800-438-1254 (Outside Mecklenburg County).
 - Janon Harris, janonh@charlottelegaladvocacy.org
 - Courtney Viebrock, Courtney.viebrock@charlottelegaladvocacy.org
 - charlottelegaladvocacy.org
- **Legal Aid of NC** –help **Statewide** through the Central Intake Office.
 - Call 1 (866) 219-LANC (5262) at the following times:
 - 8:30 AM - 4:30 PM, Monday – Friday
 - 5:30 PM - 8:30 PM, Monday & Thursday
 - Emily Mistr, emilym2@legalaid.org
 - legalaidnc.org
- **The DEAR Program** – offers advice for Durham residents with traffic offenses in Durham.
 - Intake Hours: Monday – Wednesday 10 a.m. to 3 p.m., Durham Courthouse, Drug Court Administration office on the 6th floor or call and leave a message at 984-297-2007 or send an email to jeremiahb@legalaidnc.org.
 - Rachel Smith-Morgan, rachels3@legalaidnc.org
 - deardurham.org

License Restoration Network

- **Orange County Restoration Legal Counsel-** help in Orange County.
 - Call (919) 245-2313
 - Mitchell Lucas, mlucas@orangecountync.gov
 - <https://www.orangecountync.gov/2301/Restoration-Legal-Counsel>
- **Pisgah Legal Services-** help in Buncombe and limited services in surrounding counties.
 - Call (828) 253-0406 or toll free 1-800-489-6144 Monday – Friday 8:30am – 5:00pm or [click here](#).
 - Ed Treat, ed.treat@pisgahlegal.org
 - <https://www.pisgahlegal.org/>
- **NC Pro Bono Resource Center-** offers advice letters statewide and limited assistance on AOC-CR-415.
 - Leigh Wicclair, leigh@ncprobono.org
 - Meghan Martie, Meghan@ncprobono.org
 - ncfairchance.org

PROBATION VIOLATION DEFENSE PRACTICE POINTERS

1

STATE OF NORTH CAROLINA COUNTY OF _____ In the General Court of Justice District _____ Superior Court Division STATE VERSUS Name of Defendant _____ Race _____ Sex _____ Date of Birth _____ Attorney For State _____ (Def. Found) (Def. Waived) (Def. Released) (Def. Not Released) (Attorney) _____ Attorney For Defendant _____ (Def. Found) (Def. Waived) (Def. Released) (Def. Not Released) (Attorney) _____ The defendant was found guilty/responsible, pursuant to _____ (pursuant to Affidavit) (of no contest) _____ trial by judge _____ trial by jury of _____ File No. (s) _____ OR _____ Offense Description _____ Offense Date _____ G.S. No. _____ F.M. Ct. _____ *NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement). The Court _____ 1 has determined, pursuant to G.S. 15A-1341.14, the prior record points of the defendant to be _____. Any prior record was prior under G.S. 15A-1341.14(b)(7) is based on the examination of this issue by the _____ 2 makes no prior record entry finding because none is required. The Court (NOTE: Block 1 or 2 MUST be checked): <input type="checkbox"/> 1 makes no further finding herein as the record term involved is within the presumptive range of sentences authorized under G.S. 15A-1341.17(a). <input type="checkbox"/> 2 makes no further finding herein as the record term involved is within the presumptive range of sentences authorized under G.S. 15A-1341.17(b).		• Review the probation statutes found in Article 82, sections 15A-1341 through 1347. • Look at the probation judgment.
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2

STATE OF NORTH CAROLINA COUNTY OF _____ In the General Court of Justice District _____ Superior Court Division STATE VERSUS Name of Defendant _____ Race _____ Sex _____ Date of Birth _____ Attorney For State _____ (Def. Found) (Def. Waived) (Def. Released) (Def. Not Released) (Attorney) _____ Attorney For Defendant _____ (Def. Found) (Def. Waived) (Def. Released) (Def. Not Released) (Attorney) _____ The defendant was found guilty/responsible, pursuant to _____ (pursuant to Affidavit) (of no contest) _____ trial by judge _____ trial by jury of _____ File No. (s) _____ OR _____ Offense Description _____ Offense Date _____ G.S. No. _____ F.M. Ct. _____ *NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement). The Court _____ 1 has determined, pursuant to G.S. 15A-1341.14, the prior record points of the defendant to be _____. Any prior record was prior under G.S. 15A-1341.14(b)(7) is based on the examination of this issue by the _____ 2 makes no prior record entry finding because none is required. The Court (NOTE: Block 1 or 2 MUST be checked): <input type="checkbox"/> 1 makes no further finding herein as the record term involved is within the presumptive range of sentences authorized under G.S. 15A-1341.17(a). <input type="checkbox"/> 2 makes no further finding herein as the record term involved is within the presumptive range of sentences authorized under G.S. 15A-1341.17(b).		JUDGMENT SUSPENDING SENTENCE - FELONY PUNISHMENT: <input checked="" type="checkbox"/> COMMUNITY <input type="checkbox"/> INTERMEDIATE (STRUCTURED SENTENCING) (For Offenses Committed On Or After Dec. 1, 2019) G.S. 15A-1341 - 1345, 1345.1 - 1345.2, 1345.3 - 1345.4, 1345.5 - 1345.6, 1345.7 - 1345.8, 1345.9 - 1345.10, 1345.11 - 1345.12, 1345.13 - 1345.14, 1345.15 - 1345.16, 1345.17 - 1345.18, 1345.19 - 1345.20, 1345.21 - 1345.22, 1345.23 - 1345.24, 1345.25 - 1345.26, 1345.27 - 1345.28, 1345.29 - 1345.30, 1345.31 - 1345.32, 1345.33 - 1345.34, 1345.35 - 1345.36, 1345.37 - 1345.38, 1345.39 - 1345.40, 1345.41 - 1345.42, 1345.43 - 1345.44, 1345.45 - 1345.46, 1345.47 - 1345.48, 1345.49 - 1345.50, 1345.51 - 1345.52, 1345.53 - 1345.54, 1345.55 - 1345.56, 1345.57 - 1345.58, 1345.59 - 1345.60, 1345.61 - 1345.62, 1345.63 - 1345.64, 1345.65 - 1345.66, 1345.67 - 1345.68, 1345.69 - 1345.70, 1345.71 - 1345.72, 1345.73 - 1345.74, 1345.75 - 1345.76, 1345.77 - 1345.78, 1345.79 - 1345.80, 1345.81 - 1345.82, 1345.83 - 1345.84, 1345.85 - 1345.86, 1345.87 - 1345.88, 1345.89 - 1345.90, 1345.91 - 1345.92, 1345.93 - 1345.94, 1345.95 - 1345.96, 1345.97 - 1345.98, 1345.99 - 1345.100, 1345.101 - 1345.102, 1345.103 - 1345.104, 1345.105 - 1345.106, 1345.107 - 1345.108, 1345.109 - 1345.110, 1345.111 - 1345.112, 1345.113 - 1345.114, 1345.115 - 1345.116, 1345.117 - 1345.118, 1345.119 - 1345.120, 1345.121 - 1345.122, 1345.123 - 1345.124, 1345.125 - 1345.126, 1345.127 - 1345.128, 1345.129 - 1345.130, 1345.131 - 1345.132, 1345.133 - 1345.134, 1345.135 - 1345.136, 1345.137 - 1345.138, 1345.139 - 1345.140, 1345.141 - 1345.142, 1345.143 - 1345.144, 1345.145 - 1345.146, 1345.147 - 1345.148, 1345.149 - 1345.150, 1345.151 - 1345.152, 1345.153 - 1345.154, 1345.155 - 1345.156, 1345.157 - 1345.158, 1345.159 - 1345.160, 1345.161 - 1345.162, 1345.163 - 1345.164, 1345.165 - 1345.166, 1345.167 - 1345.168, 1345.169 - 1345.170, 1345.171 - 1345.172, 1345.173 - 1345.174, 1345.175 - 1345.176, 1345.177 - 1345.178, 1345.179 - 1345.180, 1345.181 - 1345.182, 1345.183 - 1345.184, 1345.185 - 1345.186, 1345.187 - 1345.188, 1345.189 - 1345.190, 1345.191 - 1345.192, 1345.193 - 1345.194, 1345.195 - 1345.196, 1345.197 - 1345.198, 1345.199 - 1345.200, 1345.201 - 1345.202, 1345.203 - 1345.204, 1345.205 - 1345.206, 1345.207 - 1345.208, 1345.209 - 1345.210, 1345.211 - 1345.212, 1345.213 - 1345.214, 1345.215 - 1345.216, 1345.217 - 1345.218, 1345.219 - 1345.220, 1345.221 - 1345.222, 1345.223 - 1345.224, 1345.225 - 1345.226, 1345.227 - 1345.228, 1345.229 - 1345.230, 1345.231 - 1345.232, 1345.233 - 1345.234, 1345.235 - 1345.236, 1345.237 - 1345.238, 1345.239 - 1345.240, 1345.241 - 1345.242, 1345.243 - 1345.244, 1345.245 - 1345.246, 1345.247 - 1345.248, 1345.249 - 1345.250, 1345.251 - 1345.252, 1345.253 - 1345.254, 1345.255 - 1345.256, 1345.257 - 1345.258, 1345.259 - 1345.260, 1345.261 - 1345.262, 1345.263 - 1345.264, 1345.265 - 1345.266, 1345.267 - 1345.268, 1345.269 - 1345.270, 1345.271 - 1345.272, 1345.273 - 1345.274, 1345.275 - 1345.276, 1345.277 - 1345.278, 1345.279 - 1345.280, 1345.281 - 1345.282, 1345.283 - 1345.284, 1345.285 - 1345.286, 1345.287 - 1345.288, 1345.289 - 1345.290, 1345.291 - 1345.292, 1345.293 - 1345.294, 1345.295 - 1345.296, 1345.297 - 1345.298, 1345.299 - 1345.300, 1345.301 - 1345.302, 1345.303 - 1345.304, 1345.305 - 1345.306, 1345.307 - 1345.308, 1345.309 - 1345.310, 1345.311 - 1345.312, 1345.313 - 1345.314, 1345.315 - 1345.316, 1345.317 - 1345.318, 1345.319 - 1345.320, 1345.321 - 1345.322, 1345.323 - 1345.324, 1345.325 - 1345.326, 1345.327 - 1345.328, 1345.329 - 1345.330, 1345.331 - 1345.332, 1345.333 - 1345.334, 1345.335 - 1345.336, 1345.337 - 1345.338, 1345.339 - 1345.340, 1345.341 - 1345.342, 1345.343 - 1345.344, 1345.345 - 1345.346, 1345.347 - 1345.348, 1345.349 - 1345.350, 1345.351 - 1345.352, 1345.353 - 1345.354, 1345.355 - 1345.356, 1345.357 - 1345.358, 1345.359 - 1345.360, 1345.361 - 1345.362, 1345.363 - 1345.364, 1345.365 - 1345.366, 1345.367 - 1345.368, 1345.369 - 1345.370, 1345.371 - 1345.372, 1345.373 - 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1345.566, 1345.567 - 1345.568, 1345.569 - 1345.570, 1345.571 - 1345.572, 1345.573 - 1345.574, 1345.575 - 1345.576, 1345.577 - 1345.578, 1345.579 - 1345.580, 1345.581 - 1345.582, 1345.583 - 1345.584, 1345.585 - 1345.586, 1345.587 - 1345.588, 1345.589 - 1345.590, 1345.591 - 1345.592, 1345.593 - 1345.594, 1345.595 - 1345.596, 1345.597 - 1345.598, 1345.599 - 1345.600, 1345.601 - 1345.602, 1345.603 - 1345.604, 1345.605 - 1345.606, 1345.607 - 1345.608, 1345.609 - 1345.610, 1345.611 - 1345.612, 1345.613 - 1345.614, 1345.615 - 1345.616, 1345.617 - 1345.618, 1345.619 - 1345.620, 1345.621 - 1345.622, 1345.623 - 1345.624, 1345.625 - 1345.626, 1345.627 - 1345.628, 1345.629 - 1345.630, 1345.631 - 1345.632, 1345.633 - 1345.634, 1345.635 - 1345.636, 1345.637 - 1345.638, 1345.639 - 1345.640, 1345.641 - 1345.642, 1345.643 - 1345.644, 1345.645 - 1345.646, 1345.647 - 1345.648, 1345.649 - 1345.650, 1345.651 - 1345.652, 1345.653 - 1345.654, 1345.655 - 1345.656, 1345.657 - 1345.658, 1345.659 - 1345.660, 1345.661 - 1345.662, 1345.663 - 1345.664, 1345.665 - 1345.666, 1345.667 - 1345.668, 1345.669 - 1345.670, 1345.671 - 1345.672, 1345.673 - 1345.674, 1345.675 - 1345.676, 1345.677 - 1345.678, 1345.679 - 1345.680, 1345.681 - 1345.682, 1345.683 - 1345.684, 1345.685 - 1345.686, 1345.687 - 1345.688, 1345.689 - 1345.690, 1345.691 - 1345.692, 1345.693 - 1345.694, 1345.695 - 1345.696, 1345.697 - 1345.698, 1345.699 - 1345.700, 1345.701 - 1345.702, 1345.703 - 1345.704, 1345.705 - 1345.706, 1345.707 - 1345.708, 1345.709 - 1345.710, 1345.711 - 1345.712, 1345.713 - 1345.714, 1345.715 - 1345.716, 1345.717 - 1345.718, 1345.719 - 1345.720, 1345.721 - 1345.722, 1345.723 - 1345.724, 1345.725 - 1345.726, 1345.727 - 1345.728, 1345.729 - 1345.730, 1345.731 - 1345.732, 1345.733 - 1345.734, 1345.735 - 1345.736, 1345.737 - 1345.738, 1345.739 - 1345.740, 1345.741 - 1345.742, 1345.743 - 1345.744, 1345.745 - 1345.746, 1345.747 - 1345.748, 1345.749 - 1345.750, 1345.751 - 1345.752, 1345.753 - 1345.754, 1345.755 - 1345.756, 1345.757 - 1345.758, 1345.759 - 1345.760, 1345.761 - 1345.762, 1345.763 - 1345.764, 1345.765 - 1345.766, 1345.767 - 1345.768, 1345.769 - 1345.770, 1345.771 - 1345.772, 1345.773 - 1345.774, 1345.775 - 1345.776, 1345.777 - 1345.778, 1345.779 - 1345.780, 1345.781 - 1345.782, 1345.783 - 1345.784, 1345.785 - 1345.786, 1345.787 - 1345.788, 1345.789 - 1345.790, 1345.791 - 1345.792, 1345.793 - 1345.794, 1345.795 - 1345.796, 1345.797 - 1345.798, 1345.799 - 1345.800, 1345.801 - 1345.802, 1345.803 - 1345.804, 1345.805 - 1345.806, 1345.807 - 1345.808, 1345.809 - 1345.810, 1345.811 - 1345.812, 1345.813 - 1345.814, 1345.815 - 1345.816, 1345.817 - 1345.818, 1345.819 - 1345.820, 1345.821 - 1345.822, 1345.823 - 1345.824, 1345.825 - 1345.826, 1345.827 - 1345.828, 1345.829 - 1345.830, 1345.831 - 1345.832, 1345.833 - 1345.834, 1345.835 - 1345.836, 1345.837 - 1345.838, 1345.839 - 1345.840, 1345.841 - 1345.842, 1345.843 - 1345.844, 1345.845 - 1345.846, 1345.847 - 1345.848, 1345.849 - 1345.850, 1345.851 - 1345.852, 1345.853 - 1345.854, 1345.855 - 1345.856, 1345.857 - 1345.858, 1345.859 - 1345.860, 1345.861 - 1345.862, 1345.863 - 1345.864, 1345.865 - 1345.866, 1345.867 - 1345.868, 1345.869 - 1345.870, 1345.871 - 1345.872, 1345.873 - 1345.874, 1345.875 - 1345.876, 1345.877 - 1345.878, 1345.879 - 1345.880, 1345.881 - 1345.882, 1345.883 - 1345.884, 1345.885 - 1345.886, 1345.887 - 1345.888, 1345.889 - 1345.890, 1345.891 - 1345.892, 1345.893 - 1345.894, 1345.895 - 1345.896, 1345.897 - 1345.898, 1345.899 - 1345.900, 1345.901 - 1345.902, 1345.903 - 1345.904, 1345.905 - 1345.906, 1345.907 - 1345.908, 1345.909 - 1345.910, 1345.911 - 1345.912, 1345.913 - 1345.914, 1345.915 - 1345.916, 1345.917 - 1345.918, 1345.919 - 1345.920, 1345.921 - 1345.922, 1345.923 - 1345.924, 1345.925 - 1345.926, 1345.927 - 1345.928, 1345.929 - 1345.930, 1345.931 - 1345.932, 1345.933 - 1345.934, 1345.935 - 1345.936, 1345.937 - 1345.938, 1345.939 - 1345.940, 1345.941 - 1345.942, 1345.943 - 1345.944, 1345.945 - 1345.946, 1345.947 - 1345.948, 1345.949 - 1345.950, 1345.951 - 1345.952, 1345.953 - 1345.954, 1345.955 - 1345.956, 1345.957 - 1345.958, 1345.959 - 1345.960, 1345.961 - 1345.962, 1345.963 - 1345.964, 1345.965 - 1345.966, 1345.967 - 1345.968, 1345.969 - 1345.970, 1345.971 - 1345.972, 1345.973 - 1345.974, 1345.975 - 1345.976, 1345.977 - 1345.978, 1345.979 - 1345.980, 1345.981 - 1345.982, 1345.983 - 1345.984, 1345.985 - 1345.986, 1345.987 - 1345.988, 1345.989 - 1345.990, 1345.991 - 1345.992, 1345.993 - 1345.994, 1345.995 - 1345.996, 1345.997 - 1345.998, 1345.999 - 1345.1000.
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3

for a minimum term of _____ months _____ for a maximum term of _____ months in the custody of the NC DAC.

1. This sentence shall run at the expiration of sentence imposed in the number _____

The defendant shall be given credit for _____ days spent in confinement prior to the date of this judgment as a result of this charge(s) to be applied toward the _____ sentence imposed above _____ imprisonment required for special probation set forth in AOC-CR-6020 Page Ten.

2. Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on _____ supervised _____ unsupervised probation for _____ months.

3. The Court finds that a _____ longer _____ shorter _____ period of probation is necessary than that which is specified in G.S. 15A-1342.2(a).

4. The Court finds that it is NOT appropriate to delegate to the Division of Community Supervision and Reentry the authority to impose any of the requirements in G.S. 15A-1342.2(a) for community punishment or G.S. 15A-1342.2(f) for intermediate punishment.

5. This period of probation shall begin _____ when the defendant is released from incarceration _____ at the expiration of the sentence _____ in the case below.

(File No.) _____ (Officer) _____ (County) _____ (Court) _____ (Date) _____

6. The defendant shall comply with the conditions set forth in the number _____

7. The defendant shall provide a DNA sample pursuant to G.S. 15A-268.4 (AOC-CR-319 required)

WHAT IS THE LENGTH OF PROBATION AND CREDITED TIME?

4

PROBATIONARY PERIODS

Misdemeanors: community level 6-18 months

intermediate level 12-24 months

Felonies : community level 12-30 months

intermediate level 18-36months

5

INTERMEDIATE PUNISHMENTS

1. In addition to complying with the regular and any special, community, or intermediate conditions of probation set forth in the "Judgment Supervising, Imprisonment" or "Custody" by the above court(s), the defendant shall also comply with the following intermediate punishment(s) under G.S. 15A-1342.1(b):

2. The defendant shall comply with the following intermediate punishment(s):

(a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____

3. The defendant shall report to a probation officer in the Division of Community Supervision and Reentry _____ (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____

4. The defendant shall report to a probation officer in the Division of Community Supervision and Reentry _____ (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____

5. The defendant shall report to a probation officer in the Division of Community Supervision and Reentry _____ (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____

6. The defendant shall report to a probation officer in the Division of Community Supervision and Reentry _____ (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____

7. The defendant shall report to a probation officer in the Division of Community Supervision and Reentry _____ (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____


8. The defendant shall report to a probation officer in the Division of Community Supervision and Reentry _____ (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____

9. The defendant shall report to a probation officer in the Division of Community Supervision and Reentry _____ (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____


10. The defendant shall report to a probation officer in the Division of Community Supervision and Reentry _____ (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____

WERE SPECIAL CONDITIONS IMPOSED (SPLIT)

6



The conditions must be given to probationer in writing.



This includes the requirement to pay money - a schedule for payments must be given to probationer

SEEK AND SUGGS- 15A-1343 (C)


7

THE VIOLATION REPORT...


- Must be file stamped within the period of probation or any lawful extensions of probation
- Addendums may be issued but must also be filed within the period of probation
- Cite back vs arrest...

8


THE 7 DAY RULE- 15A-134(R) AND (C)



conditions of bond to be set no later than 7 business days following arrest,

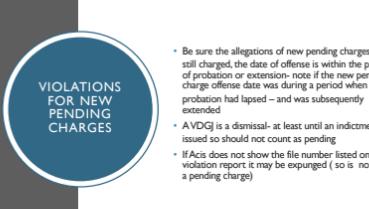


Remedy for failure to comply is unsecured bond

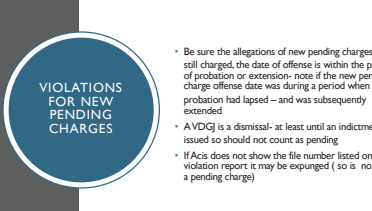


If judicial official has found reason to deny bond, probationer can attempt to overcome presumption of 'no bond' hold

9




- Be sure the allegations of new pending charges are still charged, the date of offense is within the period of probation or extension- note if the new pending charge offense date was during a period when probation had lapsed – and was subsequently extended
- A.V.D.G.J. is a dismissal- at least until an indictment is issued so should not count as pending
- If Acis does not show the file number listed on the violation report it may be expunged (so is no longer a pending charge)

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- Violation hearing based on new pending charges should be held after resolution of the pending charges – exception may be if there is another revocable violation (absconding, multiple CRVs) alleged
- Work with the attorney on the new charge to see if a 'global' is possible-
- Get agreement that: new charge doesn't violate existing probation in writing on both the judgment and the transcript of plea
- Reasonably satisfied – is the burden of proof of new charge listed on violation
- The court never HAS to revoke, it is discretionary

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- Top Row (Left to Right):**
 - Blue box:** Missed office appointments, standing alone, do not mention absconding.
 - Light blue box:** ... rather do charges of address or leaving the area. Things are neither visitors, probationer leaves and can't tell the visitors to leave, but to whereabouts the unknown.
 - Green box:** Being homeless is not absconding.
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DRUG TESTS AS A VIOLATION

CPD vs Hemp vs Pot- you know this argument!

Dip test can only detect the presence, not amount of any drug

Highly susceptible to corruption due to age, storage and handling

To be accurate, the test has to be administered properly

Probationer- can deny use, demand a lab analysis of sample

NEVER admit to using, get the test, no points for being honest!

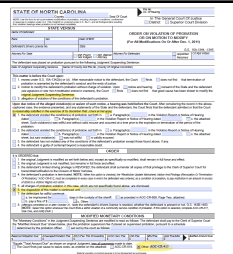
13

MONEY VIOLATIONS

- Probably one of the most frequently mentioned violations.
- Check in ACIS (F4 screen) to see what was assessed and check it with judgment
- Was a payment schedule given to the probationer- or was he told to make payments?
- Attorney fees can be a civil judgment. Jail fees pre-judgment are \$10 per day and \$40 per day post-judgment.
- Court can remit, use form AOC-CR-415

14

PROBATION GETS MODIFIED



15

EXTENSIONS
OF
PROBATION
15A-1342
(A) AND
13432(D)

- Ordinary extension can be done – max extension is 3 years but no more than 5 years on probation- done for 'good cause shown' if probation already expired.
- Special purpose extension- only in last 6 months of original period of probation. If original probation was 60 months (5 years) extension can go 3 years more (to 8 yr max) but only for payment of restitution, and to complete medical or psychiatric treatment – Substance Abuse treatment is not medical or psychiatric treatment. Extensions must be with consent
- If probation originally for 60 months and is already over, no special use extension can be done.

16

OTHER MODIFICATIONS OF PROBATION

X

1. The defendant's term of probation is extended for a period of:

a. for good cause shown, pursuant to G.S. 15A-1344(d). (NOTE: The total of the original period of probation plus all extensions under G.S. 15A-1344(d) may not exceed five years.)

b. with the defendant's consent, pursuant to G.S. 15A-1342(a) or G.S. 15A-1343.2(d). (NOTE: The extension must be for the purpose of allowing the defendant to complete a program of restitution or continue medical or psychiatric treatment ordered as a condition of probation. The extension may be ordered only during the last six months of the original, unextended period of probation and may not exceed three years beyond the original period of probation.)

2. The defendant's assignment to intensive supervision is terminated and the defendant is continued on supervised probation.

3. The defendant is transferred to unsupervised supervised probation.

4. The defendant is allowed until to comply with the following condition(s):

5. The special conditions of probation identified below, as numbered and set out in the Judgment Suspending Sentence, are modified as follows: (State number of each condition to be modified and set out modification.)

17

OTHER
DISPOSITIONS
AND
SANCTIONS

- The 'PJC'
- CRV (terminal CRV)
- Split and terminal split
- EHA/EM
- Extension
- Other Modifications- treatment, community service, MH assessment
- Revocation

18

THE MODIFICATION FORM MUST BE SIGNED

CERTIFICATION			
I certify that this Order with the attachment(s) marked below is a true and complete copy of the original which is on file in this case. <input type="checkbox"/> Order On Violation Of Probation Or On Motion To Modify (AOC-CR-608, Page Two) <input type="checkbox"/> Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-415, Side Two) <input type="checkbox"/> Restitution Update Worksheet, Notice And Findings (Revocation Or Termination Of Probation) (AOC-CR-412) <input type="checkbox"/> Other: _____			
Date _____	Date Certified Copies Delivered To Sheriff _____	Signature Of Clerk _____	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC Clerk Of Superior Court
SEAL			
NOTE: Defendant signs the following statement in all cases of supervised probation where probation is terminated or not modified. <i>A witness should sign at the same time as the defendant.</i> For non-compliance current supervision, defendant and prosecutor must sign prior to entry of the Order. I have received a copy of this Order (which was read _____ before its entry _____ after a hearing _____) and I agree to the modification(s) of my probation set out in it. I understand that no person who supervises me or for whom I work while performing community service is liable to me for any loss or damage which I may sustain unless my injury is caused by that person's gross negligence or intentional wrongdoing. I understand that my probation may be extended pursuant to S.S. 15A-144(a), 15A-144(b), or 15A-143.2(c).			
Date _____	Signature Of Defendant _____	Signature Of Prosecutor _____	Signature Of Witness _____
NOTE TO CLERK: Send certified copies to the Clerk of Superior Court of county of original conviction. If different, AOC-CR-608, Side Two, Rev. 1/23. Material opposite unmarked squares is to be designated asSupra.			
© 2023 Administrative Office of the Courts			

19

KNOW THE CREDITABLE TIME

- Figure this out before going in front of the judge
- Often, knowing credit can help with negotiations and frame dispositions and give probationers a sense of what to expect.
- Quick dip, split, Dart or Black Mountain time counts
- Local time inpatient for treatment does not count. Impact can count and so does time waiting capacity determination if inpatient
- Time spent outside the jurisdiction can also count, look in the court file and call jails to confirm.

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THE PROBATION HEARING

- Deny all allegations(even if you know there is evidence) This puts more of a burden on the state's officer to get it all in the record.
- Make a list of what the state must show
- Assert your right to confront the state's witness- object. If witness needed is not present to confront, the court must make a finding of 'good cause shown' to deny confrontation- preserve the objection for appeal!
- Be careful what you cross on. Less is more. The less the officer says on direct and cross, the more you have to argue was not shown. (Especially how much was he in pay each month for court costs? How was this help given to him?)
- To rest is not your client on the stand.**
- Was off the State rests to make any motions.
- Remember, the State must prove willfulness. They may not rely on evidence of conduct not described in the report. Willfulness is the wrongful doing of an act without justification and purpose and deliberation

21

GENERAL
NOTES:

- When a judgment for a probation sentence is ordered the **probation** begins when it is **ordered by the judge and is concurrent with any other sentence** then given unless the judge (judgment) says otherwise.
- A revoked probation sentence can be modified so long as the modified sentence stays in the same grid box and consecutive sentences can be modified to run concurrently
- If the revoking judge does not say (and you don't ask), a revoked sentence of probation is served **concurrently** with any other active sentence to which the defendant is subject. Silence is **GOLDEN!**
- ALWAYS give the judge options to consider.
- You **can** appeal certain decisions- Revocation, sentence and possibly a terminal CRY, but if you admit- likely do not have grounds for appeal

PROBATION VIOLATION DEFENSE PRACTICE POINTERS

1. Review the probation statutes

Probation is a creature of statute whereby jurisdiction to punish the client continues beyond the date of conviction for a specific time so that the qualifying defendant has an opportunity to change criminalistic behaviors and demonstrate law abidance. It is governed entirely by statute. There are only a handful of statutes found in **Article 82 (sections 15A-1341 through 1347)** and a handful of appellate decisions that pertain to probation. There is also a very good resource done by Jamie Markham at the NCSOG, " Probation Violations in North Carolina" released in 2018 that is very helpful. You can also access the Policies and Procedures Manual for Probation online and it is full of good stuff to know about how Probation is supposed to be done!

2. Look at the probation judgment

- Community or Intermediate punishment, class and PRL correct?
- Length of probationary period ? Community or intermediate supervision level?
- Signed/dated?
- Check out the money owed-
- Total credit vs credit on a split
- Is this a 'contingent' case of probation?

3. How long is the probationary period? Misdemeanor community level-6-18 months, intermediate is 12-24, Felony community level – 12-30 and Intermediate is 18-36.

4. Seek and Suggs and conditions of probation

- Probationer is to receive a statement of the conditions of probation IN WRITING. If probation conditions are modified, the modifications are to be given to the probationer IN WRITING!
- Note that the requirement to pay money is also a condition of probation and probably the most common violation condition noted on a violation report. The schedule for payment of money is a condition and also must be IN WRITING. *The conditions of probation are found at 15A-1343.*

5. The Violation report

- * Must be filed within the period of probation and/or within any lawful extensions of probation.
- * Addendums can be issued but must also be filed within the period of probation.
- * Served as "cite back" or by arrest.

6. The 7 DAY Rule

If the probationer is arrested on an allegation of violation, he or she is to be taken before a judicial official and conditions of bond set no later than 7 business days following arrest. If not

timely before the court, the probationer is entitled to release on unsecured bond unless a judicial official has found reason to deny bond and the presumption of 'no bond' is not overcome { *see 15A-1345(b)-(c)* }

7. Pending new charges as a violation of probation.

- Check to be sure that the offense dates, judgment date and violation date make the new pending charge an actual violation and that the pending charge is still pending (not dismissed) a VDJD is a dismissal at least until an indictment is issued.
- Collaborate with the attorney on new pending charge regarding disposition and potential for 'global ' offer to include the disposition on the probation case.
- Seek out agreements with the state for current probation not to be violated/revoked if probationer pleads on new pending charge. **GET THIS LANGUAGE ON THE TRANSCRIPT OF PLEA AND in the JUDGMENT. --Alford pleas are also helpful for argument.**
- If no agreements seem possible, wait out the new pending charge before hearing the probation case.
- The burden of proof for revocation is 'reasonably satisfied' – a very low standard but does require some evidence- not just the po testifying that the probationer was charged.
- The State can't revoke based solely on the existence of a pending charge, there must be evidence presented that the probationer committed the crime and the court must make independent findings ***State v Guffey***, 253 N.C. 43 (1960) and ***State v. Monroe***, 83 N.C.App.143 (1986)
- *Conviction on a new charge does not require revocation* , EVER! Be a good salesman in suggesting ways the court can address the conduct short of prison time. Help the court gain perspective on the timing of the new convictions versus the overall performance on probation. If you client has done some things well, be sure to let the court know.

8. Absconding during probation. 15A-1343(b)(3a)

- Missed office appointments , failure to be at home , change of residence- all contribute to potential for absconding allegation. Being homeless is not a violation unless PO doesn't know where probationer is staying. It comes down to INTENT not mere assumption by the po.
- Make sure absconder investigation has been done before the violation is issued – transfer to ACE team usually starts the clock on this but there must be evidence of the absconder investigation done to locate the probationer. In a perfect world, the po doing the investigation should testify if there is a hearing. The intake sheet lists 'emergency' contacts and should be used to find the probationer (but seldom used by probation). Look to see when, where and how the probationer was served with the violation. Check the probation office 'sign in logs' if available (usually done via subpoena *duces tecum*.) There is a statutory right to confrontation- *see 15A-1345(e)*.
- Was the probationer's supervising officer changed and how would he have been notified ? Encourage clients to screen shot text or calls to probation on cell phone- even if calls and texts are not returned by the po. Always sign in when seeing the PO and take a picture. Covid office closures affected the way many probationers reported-

- If the probationer's location is known to po, but he isn't coming into the office, it may not be 'absconding' see **State v Williams** 243 N. C. App.198 (2015), **State v. Melton**, 811 S. E. 2d.678 (2018) and **State v. Krider**, 810 S. E. 2d.828 (2018).
- Absconding must be specifically alleged, the word 'absconding' needs to be there! Failure to report to the officer for office appointments or changing an address without permission (so long as the address becomes known to the po) probably are not absconding. Leaving the state is also not likely to be absconding unless the probationer doesn't return for awhile! This is true even if the offender left the state without permission and was charged and arrested in that other state. There must be an intent to keep the location of the probationer unknown. The po would get an alert if the probationer was arrested somewhere.
- *Your Judge may find that the probationer has absconded but such a finding does not require revocation. Be creative with a 'less than revocation' dispositional proffer for the court. Remember the court must find the alleged conduct willful. – without justification and with purpose and deliberation.*

9. Failed drug tests

- CBD vs Hemp vs Pot- what is the test showing? Dip stick tests cannot distinguish between these two substances
- For all the other drugs- how was test administered and were directions followed? How old was the test? How was it stored? DON'T ADMIT. If probationer denies a positive, the sample can be sent to a lab. Admission is considered to be a positive test, even where test is not done.

10. \$\$\$ Owing

- What money was assessed, was it remitted, is it restitution? Joint and Severally owed? Was the client given a written statement of the money owed and a payment schedule?- See **State v. Boone**
- Attorney fees become civil judgment. Court can remit some costs if proper form used (**AOC-CR-415**)
- What is the ability to pay and did anyone explore that when assessment of costs or restitution was done. Be sure jail fees were assessed correctly. Pre trial fees are \$10 per day, post trial time costs \$40 per day.
- Last 120 days of probation- officers must address all incomplete conditions of probation and money is usually one of those incomplete conditions.

11. Extensions of probation

- Special purpose extensions –**15A-1343.2(d) and 1342(a)**. for up to 3 years and done only ***within the last 6 months of original probation*** and only with consent and for psychiatric or medical treatment or to pay restitution. No extension under special purpose for drug treatment (see **State v. Peed**, 810 S. E.2d 777.) This allows probation to cap out at 8 years – no means of extending probation beyond 8 years and only done if original period was 60 months (5 yrs) *If client was on probation for 60 months and violation filed within period of probation BUT hearing after expiration = no extension allowed.*

- Ordinary extensions- (**15A- 1344(d)**) probation extended only up to 5 yrs total max. If probation was previously extended, the max is still 5 yrs. If done after probation has expired, it must be done for “good cause shown.” (*see box 1(b)AOC-CR-609 Side two*) See also **State v. Morgan**, 372 N.C. 609 , and *State v. Sasek* where the state must make finding of “good cause shown” to act after probation has expired.
- Conditional Discharge and deferred prosecution can be extended but not beyond a max of 5 years
- Was probationer given a copy of the modification that extended probation. Review in court or with po is not enough. He should also sign it. Does it have proper findings? Check for signatures. “ *Defendant signs the following statement in all cases, except where probation is terminated or not modified*”. (See **AOC-CR-609**) **The signature on the bottom is an acknowledgment that the probationer received a copy of the modification.**
- **When does the extension run?** If probation expired on 1-3-21 and a violation hearing was held and it was extended on 1-2-22 for 2 years, does probation expire on 1-2-23 or 1-2-24? This can be important if the probationer commits new crimes on 2-15-21. 😊

J. Markham says the extension begins on the day it is entered and there is no – relate back to original expiration date..

12. The “PJC”

- Under **Order** heading- page 1, side 1, see box 6. And in **Other Modifications**, page 1, side 2 , box 4 of the **AOC-CR-609 Modification form**. This is helpful to get a reprieve. Not used nearly enough. It is often very persuasive since it gives the probationer time to correct/finish something and the PO doesn’t have to file another violation.

13. Sanctions

- The CRV vs the split? (*split only up to 25% of max sentence-see 15A-1351*)
- Extension and further conditions added or to be completed (EHA, EM, community service)
- Try to negotiate a disposition with the po. Be willing to suggest a response to the court.
- If revocation eligible and you intend to have a hearing , DENY all the allegations.
- Make a check list of what the State has to prove - be methodical when questioning the po (consider NOT having client testify)
- If hearing is held and probationer is not revoked, that the result is may not be appealable- anything short of revocation may be ‘interlocutory’ but revocations, terminal splits and perhaps even terminal CRV’s may be appealable but MAKE THE RECORD for the appeal.
- If a (misdemeanor) probationer has received 2 quick dips, he is eligible for revocation but only if quick dip was for technical violations. Quick dips on misdemeanors = CRV for Felonies. (See **15A-1344(d2)**)

14. Probation violation hearings should begin with a denial as to all allegations. Make the State prove it all.

Exercise your right to confront and cross examine-this is especially helpful in absconding cases where the testifying/ supervising officer may not be the officer doing the absconder investigation. **Confrontation here is a 14th Amendment Due Process right, not a 6th Amendment confrontation right** and is referenced in 15A-1345(e) . The defendant is

entitled to confront and cross examine adverse witnesses unless the court makes a finding of good cause for not allowing the confrontation. See also **Gagnon v Scarpelli** 411 U.S.778 (1973) and **State v Coltrane**, 307 N.C.App511 (1983) and **State v. Jones**, 22 NCSC 103, 19 Aug. 2022, No.85 PA 20. Remember that you must object to the lack of **due process** confrontation and argue the **16th amendment** right *during the hearing* . The **state should** offer some evidence or testimony as to why the missing witness is not present . The **court should** make findings as to whether good cause exists for not allowing the confrontation. If there is no offer of explanation for the missing witness and the court makes no findings, you renew your objection on 16th amendment grounds at the close of the evidence and wait and see what the judge does. Without any explanation regarding the missing witness and If there are no findings by the court , an adverse (revocation) ruling should be appealed-(or perhaps addressed with a MAR). Also note that the defendant does not have to produce the witnesses for the defense to cross examine- the State must carry the (entire) burden of proof of all allegations in the report.

Be careful what you cross the State's witness on- do not ask if they gave your client a copy of the terms and conditions of the original judgment and any modifications- that is on them to prove. Use the *Policies and Procedures* of probation to suggest incompleteness of work or failure to do what was required. Less is generally more. The less the officer says on direct, the more you will have to argue was missing. Probation can't be revoked on allegations or evidence not a part of the report. If it didn't come out on direct, it is needed to be proven and you don't ask, the evidence isn't there! This is especially helpful with the requirement of written conditions being given to the probationer. (see **Seek** and **Suggs**). At the close of the State's case, move to dismiss because the State did not prove the probationer received a written statement of the conditions (and modifications) so how can the conduct be willful? This is such an important aspect of probation that it was **codified** and case law specifically says that verbal notice , in court or by the officer, is not enough to satisfy the requirement! The only exception is where the probationer deliberately fails to see the officer, even once- so that these conditions may be provided.

Try not to put your client on the stand. They usually do themselves no good . It is too easy for the State to punch holes in their testimony. If you have other witnesses, be sure to prepare them well.

The State must prove willfulness. Willfulness is the wrongful doing of an act without justification and with purpose and deliberation. Argue the mindset of the client and how it was reflected in his conduct.

The court must make findings of good cause to revoke probation after the expiration of the period of probation (15A-1344(f)(3)). Note that 'When a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby the right to appeal the court's action is preserved, notwithstanding defendant's failure to object at trial' , see **State v. Lytle**, COA 22-675, February 21, 2023 and **State v Ashe**, 314 N.C. 28, 331 S.E. 2d 652, (1985) and **State v. Morgan** 372 N.C. 609, 831 E.Ed.2d, 254 (2019)

15. Revocation, Modification or Other Dispositions

- **Calculation of available credit is extremely important and should be known before addressing the violation with the court.** Count ALL the possible days to certify credit. All

time on the judgment is used. (pretrial credit plus split all count.- look at the judgment to be sure) All time on CRV, quick dips , time for capacity determination, impact boot camp, contempt and any other time where probationer held on the violation. DART and Black Mountain time counts. Count time spent in other counties or states awaiting transport to court for the violation. Knowing how much time is left can be used as a negotiating tool .

- **Revoked probation sentences can be modified by the court-** a *consecutive* can be changed to *concurrent* and number of months can be changed so long as the change keeps the judgment in the same sentencing block on the grid.
- If the probationer is already serving a sentence, UNLESS the probation judge says otherwise, the revoked probation sentence is presumed to run concurrently with any other sentence the probationer is currently serving.
- Probation time begins when the order providing for probation is entered unless the judgment says otherwise- and it runs alongside any ACTIVE sentence the probationer may be serving unless the judgment says otherwise. “ *the probationary sentence imposed herein shall begin when the defendant is released from custody on the sentence imposed in ____...* ” OR the judgment provides “ *this probation period commences at the expiration of ____...* ” BUT, probation sentences cannot be stacked on top of one another. (**see 15A-1346 and 1354**)
- Talk to client about the amount of additional time needed to satisfy the judgment as a potential ‘split’ for termination instead of revocation. This saves the client the potential for Post Release Supervision and the possibility of a violation of PRS that could require up to 9 more months of custody.
- Save the credit for last. Don’t offer the credit until after sentencing. It may influence the court to impose more time. . If your client is revoked, don’t ask for work release , drug treatment or GED opportunities or other recommendations in prison. They are automatically offered . The last thing your client needs is a ‘no’ from the judge on these requests.
- Talk to your client and discuss **all** the possible outcomes first, be creative in negotiations with the PO- don’t be afraid to ask what they are looking to get from the hearing. Ask why that is their recommendation if you disagree with it and be ready to make a counter-offer. In most instances, if you and the PO present a unified front to the court, it is more likely to be accepted- but be ready to make good arguments to support the proffered disposition and accept that the judge has the final say. Remember to let the court know that there are options short of revocation. **Revocation is not mandatory.**
- If your client is facing a possible conviction on a habitual indictment, you may want to wait out the disposition on the habitual first since, by statute, habitual sentences imposed *must be served consecutively* to any other sentence to which the defendant is subject. BUT if the client pleads to the Habitual first, probation is *presumed* to run concurrently with any time to which the defendant is subject.

