

DOMESTIC VIOLENCE CRIMES AND PROCEDURE FOR CLERKS

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ROADMAP

- Initial appearances
- Substantive law: the 48-hour rule
- Victims' rights
- Documenting criminal judgments
- Firearm notices

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INITIAL APPEARANCES

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CONDUCTING AN INITIAL APPEARANCE

- Judicial official must inform defendant of crime(s) charged, right to communicate with counsel and friends, and general circumstances under which defendant may secure release. *G.S. 15A-511(b)*.
- Usually conducted by magistrates but clerks of superior court, assistant clerks, and deputy clerks can also conduct initial appearances. *G.S. 15A-511(f) and G.S. 7A-181(3)*.

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SETTING CONDITIONS OF RELEASE

- Generally, clerks of superior court, assistant clerks, and deputy clerks have statutory authority to set conditions of release. *G.S. 15A-511(f) and G.S. 7A-181(3)*.
- However, clerks may not set conditions of release in domestic violence cases. See *G.S. 15A-534.1*.

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PROCEDURE

- At the initial appearance, order the defendant to be produced at the next available session of court to have conditions of release set by a judge, as required by statute. **AOC-CR-200**

ORDER OF COMMITMENT			
To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: <input type="checkbox"/> produce him/her in Court as provided above.			
<input type="checkbox"/> hold him/her <input type="checkbox"/> as provided on the attached AOC-CR-272. <input type="checkbox"/> for the following purpose: _____			
<input type="checkbox"/> (for charges covered by G.S. 15A-533(n), 15A-534.1, 15A-534.7, 15A-534.8, or 15A-534.9) produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before (for G.S. 15A-534.8, enter date and time 24 hours after arrest; for all others, 48 hours after arrest) _____ <input type="checkbox"/> AM <input type="checkbox"/> PM, produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.			
Name Of Detention Facility	Date	Name Of Judicial Official	Signature Of Judicial Official

- If conditions of release are not set by a judge within 48 hours of arrest, then a magistrate can set the conditions. *G.S. 15A-534.1(b)*.

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CRIMINAL DOMESTIC VIOLENCE

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G.S. 15A-534.1 (THE 48-HOUR RULE)

In all cases in which the defendant commits **certain crimes** against “a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship”

the judicial official who determines the conditions of pretrial release shall be a judge.

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**G.S. 15A-534.1
(THE 48-HOUR
RULE)**

“Certain crimes”:

- [GROUP A]
 - assault on,
 - stalking,
 - communicating a threat to, or
 - committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes.
- [GROUP B]
 - domestic criminal trespass,
 - violation of G.S. 14-32.5 (misdemeanor crime of domestic violence), or
 - violation of an order entered pursuant to Chapter 50B

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**DV UNDER G.S. 15A-534.1 -
ACTS**

Assaults (and felonies in Article 8)	Stalking	Communicating threats
Rape and other sex offenses (felonies in Article 7B)	Kidnapping and abduction (felonies in Article 10)	Arson and other burnings (felonies in Article 15)
Domestic criminal trespass	Violation of a 50B order	Misdemeanor crime of domestic violence

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DV UNDER G.S. 15A-534.1 -
RELATIONSHIPS

A spouse or former spouse

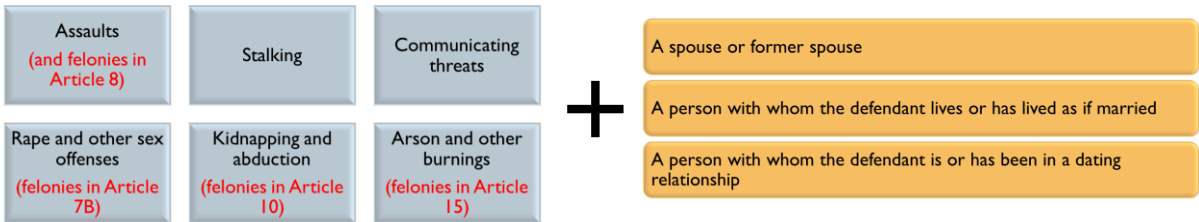
A person with whom the defendant lives or has lived as if married

A person with whom the defendant is or has been in a dating relationship

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TWO PATHWAYS

OPTION 1



OPTION 2



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IF THE OFFENSE IS A CRIME OF DOMESTIC VIOLENCE:

- Then the defendant charged with an offense should be brought before a judge to have conditions of release set as soon as possible.
- The defendant should not be held for 48 hours if a judge is available sooner.
- Holding defendant without setting conditions of release when judge is available could result in due process violation and the charges being dismissed. See *State v. Thompson, 349 N.C. 483 (1998)*.
- If no judge is available in the first 48 hours after defendant's arrest, then magistrate should set conditions of release.

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VICTIMS' RIGHTS

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VICTIMS' RIGHTS

- Apply to:
 - Offenses against the person
 - Felony property crimes

CVRA Offenses Committed On Or After Aug. 31, 2019

For offenses committed on or after Aug. 31, 2019, the CVRA applies to victims of offenses listed in G.S. 15A-830(a)(3b) (felony property crime) or 15A-830(a)(6a) (offense against the person).

- A **felony property crime** is any felony set out in:
 - Subchapter IV of Chapter 14 of the General Statutes (G.S. 14-51 through 14-69.3); or
 - Subchapter V of Chapter 14 of the General Statutes (G.S. 14-70 through 14-125).
- An **offense against the person** is an offense involving the person of the victim which constitutes a violation of:
 - Subchapter III of Chapter 14 of the General Statutes (G.S. 14-17 through 14-50.43);
 - Subchapter VII of Chapter 14 of the General Statutes (G.S. 14-177 through 14-208.46);
 - Article 39 of Chapter 14 of the General Statutes (G.S. 14-313 through 14-321.2);
 - Chapter 20 of the General Statutes, if an element of the offense involves impairment of the defendant, or injury or death to the victim;
 - A valid protective order under G.S. 50B-4.1, including, but not limited to, G.S. 14-134.3 and G.S. 14-269.8;
 - Article 35 of Chapter 14 of the General Statutes (G.S. 14-269 through 14-277.8), if the elements of the offense involve communicating a threat or stalking; or
 - An offense that triggers the enumerated victims' rights, as required by the North Carolina Constitution.*

* This final category of offenses against the person, set out in G.S. 15A-830(a)(6a)g., appears to apply the CVRA to offenses that fit the constitutional criterion of Article I, § 37(a), a "crime ... against or involving the person of the victim," but are not otherwise enumerated in the list above. Which additional offenses satisfy that criterion would appear to be a case-by-case determination by the officials with assigned duties under the CVRA.

- Victims have enumerated rights, including the right to be present and to be heard at court proceedings

CITIZEN-INITIATED CHARGES

When a judicial official issues misdemeanor charges based on testimony from a complaining witness, must record victim's contact information on **AOC-CR-181B**

- Form must be delivered to clerk.
- Clerk must send to DA's office within 72 hours.

STATE VERSUS	CRIME VICTIMS' RIGHTS ACT MISDEMEANOR VICTIM INFORMATION SHEET (For Offenses Committed On Or After Aug. 31, 2019) <small>G.S. 15A-832.1</small>
<small>Defendant Name</small>	
<small>NOTE TO LAW ENFORCEMENT: Do not use this form. This form is for use only by a judicial official issuing a criminal pleading for a misdemeanor "offense against the person," as defined in G.S. 15A-830(a)(6a), based on evidence from a complaining witness other than a law enforcement officer. To collect victim information for delivery to the district attorney for an offense committed on or after Aug. 31, 2019, and covered by the Crime Victims' Rights Act, use form AOC-CR-180B.</small>	
<small>NOTE TO JUDICIAL OFFICIAL ISSUING CHARGES: Do not use this form for a domestic violence misdemeanor under the Crime Victims' Rights Act committed before Aug. 31, 2019. Instead use form AOC-CR-181A.</small>	
<small>For offenses committed on or after Aug. 31, 2019, complete this form when issuing any criminal pleading that charges a misdemeanor "offense against the person," as defined in G.S. 15A-830(a)(6a) (see Side Two for a list), based only on evidence from a complaining witness other than a law enforcement officer. Deliver the court's copy of the criminal pleading and this form to the clerk of superior court by close of the next business day. Enter the victim's name, address, and telephone number below, unless the victim refuses to disclose some or all of the information, in which case mark the field(s) that the victim refused to disclose.</small>	
VICTIM INFORMATION	
<small>Name</small>	<small>Telephone No.</small> <input type="checkbox"/> Refused to Disclose
<small>Address</small> <input type="checkbox"/> Refused to Disclose	<small>Other Contact Information (email address, etc.)</small> <input type="checkbox"/> Refused to Disclose

CVRA INFORMATION SHEETS

- The **CR-181B** is a form used by judicial officials on citizen-initiated charges to record “Victim Information.”
- The **CR-180B** is a form used by law enforcement to record “Victim Information.”
 - Clerks receives this form only if the defendant is convicted.
- If the defendant is convicted of CVRA offense (eligible offenses listed on side two of each form), then the clerk should forward the form along with judgment to agency that will have custody or supervision over the defendant, if any.
- Clerk should maintain the CR-180B or CR-181B as a confidential record. *G.S. 15A-832(g) and G.S. 15A-832.1(b)*.

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RECORDKEEPING

- Rule 9.17 of the eCourts Rules of Recordkeeping:
 - “The clerk shall apply to the CVRA information sheet(s) confidential security status in the ICMS, but this status should not apply to the entire case unless required by statute or court order.”
 - For local forms: “If a non-AOC form is used for the same purpose as the CVRA information sheets made available by NCAOC, the non-AOC form shall instead be maintained as a confidential record by the clerk.”
- The forms are maintained until the retention period ends for the case file.

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ENFORCEMENT AND SCOPE OF RIGHTS

- The court must determine whether the victim is present and wishes to be heard. See *G.S. 15A-832.1*; *G.S. 7B-2504*.
 - If the victim is present and desires to be heard, the judge must afford that opportunity.
 - The court is not required to determine whether a law enforcement agency or district attorney's office has complied with its statutory responsibilities.
- The victim is not entitled to appeal any decision made in a criminal or juvenile proceeding or challenge any verdict, sentence, or adjudication on the basis that his or her rights were violated.

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VIOLATION OF RIGHTS

- A victim may allege a violation of CVRA rights by filing a motion with the clerk. *G.S. 15A-834.5* and *G.S. 7B-2058*.
- The clerk of superior court of each county shall provide the form created by the Administrative Office of the Courts to enable a victim to allege a violation of the rights provided in this Article. No fees shall be assessed for the filing of this motion. *G.S. 15A-834.5(g)*.
 - **AOC-CR-182** for criminal cases; **AOC-J-380** for juvenile cases
 - The judge in the underlying criminal or juvenile proceeding must review and dispose of the motion.

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CRIMINAL JUDGMENTS

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DOCUMENTING DV OFFENSES ON CRIMINAL JUDGMENTS

“When a defendant is found guilty of an offense involving assault, communicating a threat, or any of the acts as defined in G.S. 50B-1(a), the presiding judge shall determine whether the defendant and victim had a personal relationship. If the judge determines that there was a personal relationship between the defendant and the victim, then the judge shall indicate in the judgment of conviction that the case involved domestic violence. The clerk of court shall insure that the official record of the defendant's conviction includes the court's determination, so that any inquiry into the defendant's criminal record will reflect that the offense involved domestic violence.” *G.S. 15A- 1382.1(a).*

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DOCUMENTING DV OFFENSES ON CRIMINAL JUDGMENTS

- If the court makes the finding, record it on the judgment.
- There's a pre-printed item for this finding on forms for judgments of conviction. (Examples: CR-601 [Box 11]; CR-602 [Box 6])

10. finds that a motor vehicle commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
11. finds this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
12. *(offenses committed on or after Dec. 1, 2017, only)* finds that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2). and that the defendant was a criminal gang leader or organizer as defined in G.S. 14-50.16A(3). This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or on the defendant's admission.
13. finds the above-designated offense(s) involved *(check one)* *(offenses committed Dec. 1, 2008 - Nov. 30, 2017)* criminal street gang activity *(offenses committed on or after Dec. 1, 2017)* criminal gang activity. G.S. 14-50.25.
14. did not grant a conditional discharge under G.S. 90-96(a) because *(check all that apply)* the defendant refused to consent. *(offenses committed on or after Dec. 1, 2013, only)* the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional

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FIREARMS

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FIREARM PROHIBITION NOTICE

- The **AOC-CR-617** is a notice that should be provided to anyone convicted of a misdemeanor involving violence and the defendant is/was a spouse, intimate partner, parent, or guardian of the victim.
- The notice alerts the defendant that due to the conviction, it may be unlawful for him/her to possess or purchase a firearm.
- The notice provides that “all defendants convicted of crimes subject to the firearm notification requirements shall be provided a copy of this form by the court.”

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QUESTIONS?

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