

- FIRST APPEARANCE  
NCGS §15A-601

- PRETRIAL RELEASE  
NCGS §15A-534

JUDGE STEPHEN STOKES  
9/28/2022

NORTH  
CAROLINA

INITIAL APPEARANCE  
NCGS §15A-511; NCGS §15A-501(2)

- A LAW ENFORCEMENT OFFICER MAKING AN ARREST:
  - MISDEMEANOR OR FELONY
  - WITH OR WITHOUT A WARRANT
  - MUST TAKE ARRESTED PERSON BEFORE A JUDICIAL OFFICIAL
  - WITHOUT UNNECESSARY DELAY

## FIRST APPEARANCE NCGS §15A-601

- D MUST ALSO HAVE A FIRST APPEARANCE
- (MORE ON THIS SHORTLY)

3

## CONSOLIDATION OF APPEARANCES

- PERMISSIBLE UNDER G.S §15A-601(b) TO CONSOLIDATE INITIAL APPEARANCE AND FIRST APPEARANCES
- RARELY DONE

4

## LEGISLATIVE CHANGES TO GS §15A-601

- ONCE, TWICE, THREE TIMES A SESSION LAW:
  - SL 2021-138 (SB 300) -- 9/2/2021
  - SL 2021-182 (SB 183) -- 11/18/2021
  - SL 2022-6 (H 243) § 8.4 -- 3/17/2022

5

## NCGS §15A-601: PRE-DEC, 1, 2021

- PERSONS CHARGED WITH A FELONY OR ACCOMPANYING MISDEMEANOR IN THE ORIGINAL JURISDICTION OF SUPERIOR COURT:
  - BEFORE A DISTRICT COURT JUDGE (OR CLERK, IF DCJ NOT AVAILABLE)
  - WITHIN 96 HOURS FOLLOWING ARREST; OR
  - AT THE FIRST REGULAR SESSION OF THE DISTRICT COURT;
  - WHICHEVER OCCURS FIRST

6

## FIRST APPEARANCE PROCESS CHANGED SL 2021-138(SB 300)

- SL 2021-138 AMENDED G.S. §15A-601 FIRST APPEARANCE PROCESS:
  - D CHARGED WITH A MISD, IF IN CUSTODY, VIA MAGISTRATE'S ORDER (G.S. § 15A-511), OR PROCESS (CITATION; WARRANT), MUST HAVE FIRST APPEARANCE - G.S. §15A-601(a)
  - D MUST GO BEFORE DCJ WITHIN 72 HOURS, OR AT THE FIRST REGULAR SESSION OF THE DISTRICT COURT, WHICHEVER OCCURS FIRST. G.S. §15A-601(c)
  - AUTHORIZES MAGISTRATES TO CONDUCT FA (IF DCJ OR CLERK NOT AVAILABLE)
  - FOR PROCESSES SERVED ON OR AFTER 1 DEC 2021

7

## A SECOND LOOK AT FIRST APPEARANCE SL 2021-182 (SB 183) § 2.5(a)(b)

- REVISED G.S. §15A-601, AS AMENDED BY SL 2021-138 – 18 NOV 2021 - CHANGES INCLUDE:
  - EXCISED MAGISTRATES (NOT CLERK) FROM AMONG JUDICIAL OFFICIALS AUTHORIZED TO CONDUCT FIRST APPEARANCE IF DCJ NOT AVAILABLE. G.S. §15A-601(e)
  - SL 2021-182 (SB 183) § 2.5(a) PROVIDES FOLLOWING EXCEPTION TO G.S. §15A-601(c):  
"IF THE COURTHOUSE CLOSES FOR TRANSACTIONS FOR A PERIOD LONGER THAN 72 HOURS," MUST HOLD FIRST APPEARANCE WITHIN 96 HOURS, OR AT THE FIRST REGULAR SESSION OF THE DISTRICT COURT, WHICHEVER OCCURS FIRST.

8

## A SECOND LOOK AT FIRST APPEARANCE SL 2021-182 (SB 183) § 2.5(a)(b) –CON'T

- REVISED G.S. §15A-601, AS AMENDED BY SL 2021-138 – MORE CHANGES:
  - PRIOR 96-HOUR FA WINDOW IF D (1) IN CUSTODY AND (2) ON PROBATION FOR PRIOR OFFENSE, AND INSUFFICIENT INFO EXIST TO DETERMINE IF PRETRIAL RELEASE POSES A DANGER TO THE PUBLIC. G.S. 15A-534(d2)
  - SL 2021-182 (SB 183) § 2.5(b) CONFORMS G.S. 15A-534(d2) TO 72 HOURS WINDOW, BUT 96 HOURS IF COURTHOUSE CLOSES FOR TRANSACTIONS LONGER THAN 72 HOURS.
  - SL 2021-182 (SB 183) § 2.5(a) LEAVES IN TACT FIRST APPEARANCE TO D'S WITH A MISDEMEANOR, IF HELD IN JAIL VIA MAGISTRATE'S ORDER (G.S. 15A-511), OR PROCESS

9

## A THIRD LOOK AT FIRST APPEARANCE SL 2021-6 (H243) § 8.4

- SL 2021-6 (H243) § 8.4 REVISES G.S. §15A-601(e) YET AGAIN.
  - ANSWERS IN THE AFFIRMATIVE, “TO HAVE OR NOT TO HAVE?” REGARDING MAGISTRATE’S AUTHORITY TO CONDUCT FIRST APPEARANCE.
  - RETROACTIVE TO 1 JUL 2021 (PRIOR AMENDMENTS WERE EFFECTIVE FOR PROCESSES SERVED ON OR AFTER 1 DEC 2021)

10

## DUTIES OF JUDICIAL OFFICIAL CONDUCTING FIRST APPEARANCE

- DCJ / CLERK / MAGISTRATE MUST:
  - ADVISE D OF RIGHT TO COUNSEL – G.S. 15A-603
  - INFORM HIM OF CHARGES
  - EXAMINE CHARGES FOR SUFFICIENCY
  - WARN D OF RIGHT AGAINST SELF-INCRIMINATION – G.S. 15A-602

11

## DUTIES OF JUDICIAL OFFICIAL CONDUCTING FA – CON'T

- SET PRETRIAL RELEASE CONDITIONS - G.S. 15A-532
- SCHEDULE PROBABLE CAUSE HEARING – G.S. 15A-606
  - UNLESS GJ RETURNS TRUE BILL OF INDICTMENT PRIOR TO PC HRG

12

## DETERMINATION OF SUFFICIENCY OF CHARGES AT FIRST APPEARANCE

- DCJ / CLERK / MAGISTRATE MUST DETERMINE
  - WHETHER EACH CHARGE IN THE MAGISTRATE'S ORDER OR PROCESS
  - CHARGES A CRIMINAL OFFENSE WITHIN THE ORIGINAL JUR OF THE SUPERIOR COURT -- G.S.15A-604

13

## PROCESSES AND PLEADINGS

- **CITATION** - G.S. 15A-302: MUST IDENTIFY –
  - ALLEGED CRIME CHARGED & DATE
  - PERSONS & PROPERTY INVOLVED
  - ISSUING OFFICER
  - NAME & ADDRESS OF PERSON CHARGED & ORDER TO APPEAR

14

## PROCESSES AND PLEADINGS

- **CRIMINAL SUMMONS** - G.S. 15A-303: MUST –
  - CONTAIN A STATEMENT OF THE CRIME OR INFRACTION
  - ORDER D TO APPEAR IN COURT AT A TIME AND DATE CERTAIN
  - ADVISE D OF RISK OF CONTEMPT OF COURT IF HE FAILS TO APPEAR

15

## PROCESSES AND PLEADINGS

- **WARRANT FOR ARREST** - G.S. 15A-304: MUST –
  - CONTAIN A STATEMENT OF THE CRIME CHARGED
  - DIRECT OFFICER TO ARREST AND TAKE D,
  - WITHOUT UNNECESSARY DELAY
  - BEFORE A JUDICIAL OFFICIAL

16



## PROCESSES AND PLEADINGS

- **MAGISTRATE'S ORDER** - G.S. 15A-511(c):
- MUST CONTAIN:
  - STATEMENT OF THE CRIME CHARGED (SAME FOR A WARRANT)
  - FINDING THAT D WAS ARRESTED WITHOUT A WARRANT
  - FINDING THAT THERE IS PC FOR D'S DETENTION

17

## PROCESSES AND PLEADINGS

- **ORDER FOR ARREST** - G.S. 15A-305: MUST –
  - STATE WHY THE OFA IS ISSUED
  - DIRECT AN OFFICER TO BRING D BEFORE THE COURT

18

## DEFECTIVE OR IMPROPER ORDER/PROCESS

- OPTIONS WHEN ORDER OR PROCESS FAILS TO CHARGE OFFENSE:
  - **DISMISS** THE CHARGE(S) - G.S. 15A-604(b)(1)
  - ALLOW ADA TO **AMEND** STATEMENT OF THE CRIME - G.S. 15A-604(b)(2)
  - **CONTINUE** PROCEEDINGS NOT MORE THAN 24 HOURS - G.S. 15A-604(b)(3)
    - ALLOWS STATE TIME TO FILE NEW CHARGES
    - EXTENDS 72 HOURS WINDOW TO 96 HOURS

19

## AUDIO & VIDEO TRANSMISSION FOR FA

- G.S. 7A-49.6 – AVT PERMISSIBLE IN “**ALL TYPES**” OF PROCEEDINGS, TO INCL CAPITAL CASES, PROVIDED:
  - JUDICIAL OFFICIAL AND PARTICIPANTS CAN SEE EACH OTHER
  - NO OBJECTION MADE FOR CAUSE
  - AOC APPROVES OF THE VIDEO-CONFERENCING APPLICATION
  - PROCEDURES SAFEGUARD CONSTITUTIONAL RIGHTS OF PERSONS INVOLVED
  - PRESERVE D’S RIGHT TO CONFIDENTIAL COMMUNICATIONS WITH COUNSEL

20

## RIGHT TO COUNSEL AT “CRITICAL STAGES”

- 6<sup>TH</sup> AMENDMENT RIGHT TO COUNSEL AT TRIAL & ANY “CRITICAL STAGE” I.E.,
  - PROCEEDING WHERE D’S LAWYER MAY AVOID SUBSTANTIAL PREJUDICE TO D’S RIGHTS
    - BAIL HEARINGS – G.S. 7A-451(b)(3)
    - EXTRADITION HEARINGS - G.S. 7A-451(a)(5)
    - PROBABLE CAUSE HEARINGS – G.S. 15A-606(a)
    - ARRAIGNMENTS – G.S. 15A-942
    - PROBATION REVOCATION HEARING --G.S. 15A-1345(e)

21

## NON-CRITICAL STAGES

- **INITIAL APPEARANCE** – G.S. 15A-511
  - RIGHT TO COUNSEL ATTACHES, AND MUST BE APPOINTED WITHIN A REASONABLE TIME AFTER THE RIGHT ATTACHES, TO ASSIST D AT ANY PROSPECTIVE CRITICAL STAGE

22

## NON-CRITICAL STAGES

- **FIRST APPEARANCE – G.S. 15A-601(a)**
  - STATUTORILY REQ'D IN FELONIES & MISDs IF D IS IN CUSTODY; NOT A CRITICAL STAGE
  - JUDGE STILL MUST:
    - DETERMINE WHETHER D HAS A LAWYER
    - INFORM D OF RIGHT TO COUNSEL, AND TO APPOINTED COUNSEL IF INDIGENT
    - APPOINT COUNSEL, IF NECESSARY
    - OBTAIN WRITTEN WAIVER (AOC-CR-227) IF D ELECTS TO REPRESENT HIMSELF

23

## PROCEDURES FOR DETERMINING RELEASE CONDITIONS: G.S. 15A-534

- **G.S. 15A-534(a) – MUST IMPOSE AT LEAST ONE OF THESE CONDITIONS:**
  - WRITTEN PROMISE TO APPEAR
  - UNSECURED APPEARANCE BOND IN AN AMOUNT SPECIFIED BY JUDICIAL OFFICIAL
  - RELEASE D TO CUSTODY OF DESIGNATED PERSON OR ORGANIZATION
  - APPEARANCE BOND IN SPECIFIED AMOUNT, SECURED BY CASH, MORTGAGE OR SURETY
  - HOUSE ARREST WITH ELECTRONIC MONITORING

24

## PRETRIAL RELEASE CONDITIONS CON'T

- G.S. 15A-534(b) – EXPRESS PREFERENCE FOR NONFINANCIAL CONDITIONS: WRITTEN PROMISE; UNSECURED BOND; CUSTODY RELEASE
  - UNLESS SUCH RELEASE WILL:
    - NOT ASSURE DEFENDANT'S PRESENCE IN COURT
    - POSE A DANGER OF INJURY TO PERSON OR PROPERTY
    - RESULT IN DESTRUCTION OF EVIDENCE
    - LEAD TO SUBORNATION OF PERJURY, OR INTIMIDATION OF WITNESSES

25

## PRETRIAL RELEASE CONDITIONS CON'T

- G.S. 15A-534(c) – DETERMINATION OF CONDITIONS OF RELEASE
  - NATURE AND CIRCUMSTANCES OF CHARGES AND WEIGHT OF EVIDENCE
  - FAMILY AND COMMUNITY TIES
  - JOB STATUS AND FINANCIAL RESOURCES
  - CHARACTER AND MENTAL HEALTH CONDITION
  - WHETHER D'S IMPAIRMENT LEVEL POSES RISK TO PUBLIC IF RELEASED UNSUPERVISED
  - PRIOR CONVICTIONS, HISTORY OF FTA's OR FLIGHT TO AVOID PROSECUTION

26

## OTHER PRETRIAL RELEASE CONDITIONS

- JUDGE SHALL CONSIDER IMPOSING OTHER RESTRICTIONS ON:
  - TRAVEL
  - ASSOCIATIONS
  - CONDUCT
  - PLACE OF ABODE
  - CONTACT WITH PROSECUTION WITNESSES, OR CO-DEFENDANTS, ETC.

27

## OTHER PRETRIAL RELEASE CONDITIONS

- 15A-534(d2)(2) – IF D IS CHARGED WITH A FELONY AND CURRENTLY ON PROBATION FOR PRIOR OFFENSE --
- JUDGE SHALL:
  - DETERMINE **PRIOR** TO IMPOSING PTR CONDITIONS WHETHER D POSES A DANGER TO THE PUBLIC, AND
  - RECORD THAT DETERMINATION IN WRITING

28

## OTHER PRETRIAL RELEASE CONDITIONS

- 15A-534(d2)(2) – CON'T
- IF JUDGE DETERMINES D POSES A DANGER TO THE PUBLIC, JUDGE SHALL:
  - IMPOSE CONDITIONS (4) OR (5), IN LIEU OF (1), (2), OR (3). G.S. 15A-(d2)(1)
  - IF D POSES NO DANGER TO PUBLIC, IMPOSE EITHER (1), (2), OR (3).

29

## INSUFFICIENT EVIDENCE TO DETERMINE THREAT TO PUBLIC

- IF INSUFFICIENT INFO EXIST TO DETERMINE IF D POSES A THREAT TO THE PUBLIC, KEEP D IN CUSTODY UNTIL A DETERMINATION OF PTR IS MADE, AND INCLUDE IN ORDER:
  - THAT D IS BEING HELD PURSUANT G.S. 15A-534(d2)(3)
  - BASIS FOR CONCLUDING MORE INFORMATION IS NEEDED TO DETERMINE IF D POSES A THREAT, AND THE NATURE OF THE INFORMATION NEEDED
  - SET DATE WITHIN 96 HOURS OF TIME OF ARREST TO HOLD FIRST APPEARANCE

30

INSUFFICIENT EVIDENCE TO DETERMINE D'S  
THREAT TO PUBLIC – CON'T

IF THE COURT RECEIVES THE NEEDED INFORMATION  
PRIOR TO THE FIRST APPEARANCE, THE FIRST  
AVAILABLE JUDICIAL OFFICIAL SHALL SET PTR  
CONDITIONS. -- G.S. 15A-534(d2)(3)

31

BONDS  
TO DOUBLE OR NOT TO DOUBLE??

- IF DEFENDANT IS CHARGED WITH AN OFFENSE AND IS CURRENTLY ON PTR FOR A PRIOR OFFENSE, JUDGE **MAY** REQUIRE THE EXECUTION OF A SECURED APPEARANCE BOND, IN AN AMOUNT AT LEAST DOUBLE THE AMOUNT OF THE MOST RECENT PREVIOUS SECURED BOND, OR, IF NO BOND HAS YET BEEN SET, OF AT LEAST ONE THOUSAND DOLLARS (\$1,000.00). -- G.S. 15A-534(d3)

32



## BOND MODIFICATION

- MAGISTRATE OR CLERK MAY MODIFY HIS PTR BOND ANY TIME PRIOR TO FIRST APPEARANCE B/F DCJ - G.S. 15A-534(e)
- FOR GOOD CAUSE SHOWN, ANY JUDGE AT ANY TIME MAY REVOKE AN ORDER OF PTR. G.S. 15A-534(f)
- D MAY SEEK A NEW ORDER OF PTR, AND A JUDGE MUST SET NEW CONDITIONS OF PTR.

33

## LIFE OF A BAIL BOND

- BAIL BOND POSTED IS EFFECTIVE UNTIL ENTRY OF JUDGMENT IN DISTRICT COURT, FROM WHICH NO APPEAL IS TAKEN; OR ENTRY OF JUDGMENT IN SUPERIOR COURT (G.S. 15A-534(h) – **UNLESS** :
  - TERMINATED AT AN EARLIER TIME BY A JUDGE
  - THE PRINCIPAL IS SURRENDERED BY A SURETY IAW GS 15A-540;
  - THE PROCEEDING IS TERMINATED BY VOLUNTARY DISMISSAL BY THE STATE BEFORE FORFEITURE IS ORDERED IAW GS 15A-544.3;
  - A PRAYER FOR JUDGMENT IS ENTERED INDEFINITELY IN DISTRICT COURT; OR
  - D IS PLACED PROBATION VIA DEFERRED PROSECUTION OR CONDITIONAL DISCHARGE

34

QUESTIONS???

THANK YOU!



35