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# Applications for Process Before North Carolina Magistrates

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## Introduction

In the criminal law context, proceedings before North Carolina magistrates generally begin with one of two circumstances. In one, law enforcement has a person in custody and brings that person before the magistrate, with or without existing criminal process, on the basis that the person may have committed a criminal offense. In the other, law enforcement (or others) appears before the magistrate seeking some form of process. In these circumstances, one of the magistrate's tasks is to evaluate whether to issue a magistrate's order (in the case of a warrantless arrest) or other process (depending on what the applicant is seeking). This bulletin focuses on these applications for process. It describes the procedural and substantive requirements for the issuance of process, such as search warrants, charging documents, and orders for arrest. Because nearly all applications for some form of process require determining probable cause, this bulletin starts by exploring the probable cause standard and how probable cause may be established.

### The Magistrate's Role

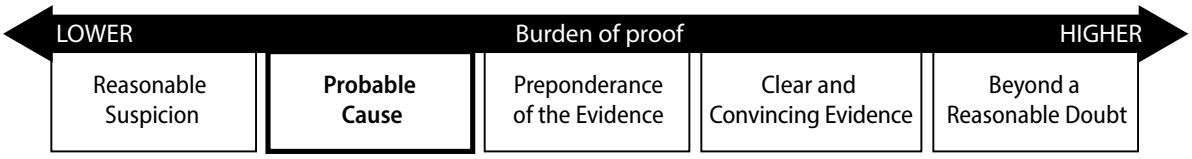
Applications for process involve an interested party (often law enforcement, but not always) applying for the issuance of a search warrant or criminal charges. These orders permitting entry into protected places (search warrants) and initiating criminal proceedings (charging documents and orders for arrest) must be signed by a "neutral and detached" judicial official.[1] Occasionally, applicants may perceive or desire a magistrate to be "on their side" during an application for process, which runs afoul of the magistrate's role to promote public confidence in the integrity and impartiality of the judicial system.[2] A careful, critical review by the magistrate of any application for process is the best approach for ensuring that process will be upheld if challenged later in the trial courts. This is particularly true for search warrants, which may not be corrected after execution. In applications for criminal charges, approaches vary between charging only the requested offense(s) and charging all offenses for which probable cause exists, notwithstanding the request of the applicant. This is discussed in further detail below in Step 4 of "Applications for Charging Documents."

## Probable Cause

For almost every form of process, a magistrate must determine whether probable cause exists. Applications for search warrants must establish probable cause that a crime has been committed and probable cause that the evidence sought is in the place or places to be searched.[3] Applications for charging documents must establish probable cause that a crime has been committed and that the named defendant is the perpetrator.[4]

1. Johnson v. United States, 333 U.S. 10 (1948).
2. N.C. Rules of Conduct for Magistrates, r. 2A. (N.C. Administrative Office of the Courts 2025).
3. Illinois v. Gates, 462 U.S. 213 (1983); Chapter 15A, Section 244(2) of the North Carolina General Statutes (hereinafter G.S.).
4. State v. Martin, 315 N.C. 667 (1986); G.S. 15A-303(c), -304(d), -511(c)(1).

**Figure 1. The Burdens of Proof**




## What Is Probable Cause?

Probable cause is best described as a "fair probability."[5] It is also helpful to consider probable cause in relation to other legal standards (see Figure 1). The most rigorous standard is beyond a reasonable doubt, the standard that must be met to sustain a criminal conviction. Less certain than beyond a reasonable doubt is clear and convincing evidence, the standard that must be met for the termination of a person's parental rights. After that, a preponderance of the evidence, or by a greater weight of the evidence, is the standard required in most civil proceedings. This standard is also easily quantified as any amount over 50 percent certainty. The least rigorous legal standard is reasonable suspicion, which is the level of certainty required for law enforcement to seize and/or frisk a person. Reasonable suspicion is commonly described as a particularized and objective basis for suspecting criminal activity, that is, something more than a "hunch."[6]

Probable cause requires more certainty than reasonable suspicion, but less than a preponderance of the evidence. In terms of probable cause to arrest, the U.S. Supreme Court has defined probable cause as "whether, at the moment the arrest was made, the facts and circumstances within [the officer's] knowledge and of which [the officer] had reasonably trustworthy information were sufficient to warrant a prudent [person] in believing that the [defendant] had committed or was committing an offense."[7] As a result, a magistrate may apply this definition when considering an alleged offense or search warrant application by examining the facts and circumstances within the magistrate's knowledge and of which the magistrate has reasonably trustworthy information. If the facts and circumstances are sufficient to cause a prudent person to believe that the defendant committed the offense, or that the evidence or person being sought is in the place to be searched, then probable cause exists.

## Proper Considerations

Particular rules for issuing criminal charges and for issuing search warrants are discussed in their respective sections. That said, there are general rules that apply to either type of application for process. Most notably, the rules of evidence do not apply to probable cause determinations for issuing criminal process or search warrants.[8] While this permits broader forms of evidence than would be admissible at trial to be presented, the weight and significance of any evidence presented remains entirely within the magistrate's discretion.

5. State v. Crawford, 125 N.C. App. 279 (1997).
6. United States v. Cortez, 449 U.S. 411, 417 (1981).
7. Beck v. Ohio, 379 U.S. 89, 91 (1964).
8. Brinegar v. United States, 338 U.S. 160 (1949) (hearsay that would be otherwise inadmissible at trial is admissible when determining probable cause if it is reliable).

The probable cause determination is based on the "totality of the circumstances."[9] This approach permits magistrates to consider broad factors and evidence in determining probable cause. These factors include, among others, whether the applicant or witness is credible, whether any physical evidence corroborates the applicant's testimony, whether law enforcement has corroborated any claims by lay witnesses, whether there is any scientific evidence, whether the alleged defendant engaged in any attempts to flee or evade capture, and the level of training and experience of law enforcement applicants. With few exceptions (described at the end of this section), the law permits magistrates to consider anything they deem relevant in determining probable cause.

### *Hearsay*

The applicant for a search warrant or criminal charges is not required to have personal knowledge of the evidence they present.[10] It is entirely permissible for a law enforcement officer or other person to repeat what someone else told them, without that other person being present for the determination of probable cause (otherwise known as hearsay). While hearsay is admissible, the magistrate's inability to inquire further or seek clarification may reduce the weight of that evidence. Namely, a magistrate may listen to hearsay testimony but later choose not to give it any weight when determining whether probable cause exists. A magistrate may need additional indications of reliability or nonhearsay evidence before finding that the applicant has provided probable cause.

### *Credibility*

For every applicant and form of evidence, a magistrate determining probable cause must consider credibility. In assessing credibility, factors that may assist the magistrate include whether the applicant has a history of lying or making false charges, whether they have a bias or interest in the outcome, whether they are able to provide details, and whether they are consistent in their recitation of the facts. Corroboration through the testimony of other witnesses or documentary evidence is another commonly used indicator of credibility.

Witness demeanor is also commonly cited as a test of credibility. Factors such as nervousness, lack of eye contact, and the inability to sit still or appear confident may also be attributable to a person's lack of familiarity and comfort with the legal system or to cultural differences. As a result, magistrates may want to consider factors related to demeanor with caution when assessing credibility.

### Law Enforcement and Identifiable Witnesses

Law enforcement officers and witnesses who provide their identity (either as victims of an offense or as bystanders) may be presumed to be truthful and are not required to provide any additional indicators of reliability.[11] At the same time, the regular assessment of credibility still applies, and this presumption may be overturned if there is reason to doubt the witness's credibility.

9. State v. Bullin, 150 N.C. App. 631, 638 (2002).
10. *Brinegar*, 338 U.S. at 160.
11. State v. Horner, 310 N.C. 274 (1984); State v. Crawford, 104 N.C. App. 591 (1991); State v. Sanders, 327 N.C. 319 (1990).

### Confidential Informants

Law enforcement officers often work with confidential informants, who assist in investigations and evidence-gathering. When an informant's identity is kept confidential, the information provided may not be presumed to be truthful without additional indicators of reliability. This is due, in part, to the lack of attribution of the information and the likelihood that the informant is assisting in exchange for pay or a more favorable outcome of their own pending charges. When evaluating information provided by a confidential informant, a magistrate should consider the "totality of the circumstances" provided in the affidavit.[12] In doing so, a magistrate is able to give appropriate weight to various pieces of information and assess different indicators of credibility in finding whether the applicant has established that the informant's information is reliable.

When providing evidence of the informant's reliability, it is not sufficient for law enforcement to provide only a conclusory statement that the informant is reliable.[13] One way of establishing reliability is for the applicant to provide a "track record," or instances where the informant has been reliable in the past.[14] This information does not necessarily have to have led to convictions. Past correct information that led to arrests may suffice.[15] Another way to establish reliability is for the information to be corroborated. When providing corroboration, it is not sufficient for law enforcement to provide only widely available, general information. The corroboration should be based on information the informant would only know if they were providing reliable information. For example, accurately predicting future drug transactions or corroborating details of a suspect's behavior or practices (such as accurately predicting travel plans) would weigh in favor of the reliability of the informant.

### Anonymous Tipsters

Anonymous tips may be considered as part of the totality of the circumstances when determining probable cause. Like information from confidential informants, they must be accompanied by additional indications of reliability. Because they are anonymous and cannot provide a track record, anonymous tips must normally be corroborated before they may be considered reliable. Even once corroborated, anonymous tips are unlikely to provide probable cause on their own. The U.S. Supreme Court considered an anonymous tip and whether it provided reasonable suspicion—a lower standard than probable cause—in *Navarette v. California*.[16] In *Navarette*, an anonymous 911 caller stated that they had been run off the road by another vehicle and provided that vehicle's make, model, color, and license plate, as well as the location of the incident. The Court found that it was a "close case" and that the detailed and contemporaneous nature of the call gave it enough reliability to be considered in determining reasonable suspicion to stop the offending vehicle. Because probable cause is a higher burden of proof than reasonable suspicion, anonymous tips should almost always be accompanied by other sources of information in order to provide probable cause.

12. Illinois v. Gates, 462 U.S. 213 (1983); State v. Arrington, 311 N.C. 633 (1984).
13. State v. Hughes, 353 N.C. 200 (2000).
14. State v. Riggs, 328 N.C. 213 (1991).
15. *Arrington*, 311 N.C. at 633.
16. 572 U.S. 393 (2014).

### Improper Considerations

While magistrates may broadly consider information brought before them in determining probable cause, there are also improper considerations. Magistrates should not consider whether evidence or information will be admissible at trial or most defenses when determining whether probable cause has been established.

#### *Admissibility at Trial*

As mentioned earlier, the rules of evidence do not apply when determining probable cause for a criminal offense or a search warrant. Evidence that might otherwise be inadmissible at trial (such as hearsay) may be considered. It is also improper to consider whether the evidence provided was itself obtained illegally. While the exclusionary rule prohibits the admission of illegally obtained evidence at trial, like the rules of evidence, it does not apply when determining probable cause for a criminal offense or a search warrant.[17]

#### *Defenses*

Generally, a magistrate should not consider defenses that may be argued later at trial. A magistrate has broad discretion in considering information that weighs both for and against probable cause in reviewing the totality of the circumstances, but whether a defense may exist or be raised later at trial is outside of this consideration. This is not always easily applied. There are times when, after finding probable cause for every element, a defense may justify denying the issuance of process. For example, in clear, undisputed cases of self-defense or misdemeanor offenses brought after the two-year statute of limitations has passed,[18] it may be appropriate to deny an application for criminal charges.

## Applications for Search Warrants

One of the most important and demanding rulings a magistrate can make is the issuance of a search warrant. Typically brought by law enforcement, search warrants permit otherwise private places to be searched and otherwise personal items to be seized. Unlike other forms of process that magistrates issue, search warrants cannot be modified once signed. Further, if a deficient search warrant is executed, any evidence obtained as a result may be excluded for use at trial. Considering these aspects, it is crucial for magistrates to closely and deliberately evaluate search warrants before signing them.

Search warrants may be issued by any judicial official. Appellate judicial officials and superior court judges may issue search warrants for persons or property throughout the state.[19] District court judges may issue search warrants limited to their judicial district, and magistrates and clerks may issue search warrants limited to their county.[20]

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17. United States v. Calandra, 414 U.S. 338 (1974) (permitting illegally obtained evidence to be considered by a grand jury issuing an indictment).

18. G.S. 15-1(a) requires misdemeanors to be charged within two years of the date of offense. G.S. 15-1(b) extends the time limit to ten years for violations of G.S. 7B-301(b) and G.S. 14-27.33, -202.2, -318.2, and -318.6.

19. G.S. 15A-243.

20. G.S. 7A-291 (district court judge limited to judicial district), -180, -181 (clerks limited to their county), -273(4) (search warrants issued by magistrates only valid throughout their respective county).

There are two Administrative Office of the Courts (AOC) forms commonly used for search warrants. AOC-CR-119 contains a warrant application and search warrant template for general use. AOC-CR-155 contains a warrant application and search warrant template for seizing blood or urine in driving while impaired (DWI) cases. These forms are not required—so long as the warrant application and warrant include the necessary information, any form may be used. The following guide is intended to align with the warrant application and search warrant in AOC-CR-119. Search warrants for blood or urine in DWI cases are discussed separately at the end of this section.

Search warrants may be executed by law enforcement officers who are not involved in the underlying investigation or warrant application. Therefore, the warrant should be sufficiently detailed to provide a person with no prior knowledge of the case all the information needed to properly locate, search, and seize the subject person or property.

## Step 1: Swearing in the Applicant

Search warrant applications must be based on an affidavit or oral testimony (that is then recorded) under oath or affirmation.[21] If the applicant is a law enforcement officer, ensure that the officer's name, rank, and agency are clearly listed in the warrant application.[22] Other individuals and entities may also apply for a search warrant, including animal-control officials and local governments.[23] However, it is important to note and remind applicants that search warrants may only be executed by law enforcement officers acting within their territorial and investigative jurisdiction.[24] Therefore, if the applicant is not a law enforcement officer, they should be advised to contact the appropriate law enforcement agency for execution of the search warrant once it is issued.[25]

Due to the requirement that all information relied on for the issuance of the warrant be memorialized in some way (discussed later in "Recordation"), it is advisable at this point for a magistrate to review the warrant application as written, without any additional input from the applicant. This ensures that there is no uncertainty that information outside the warrant application is used in its consideration. See "Recordation" below for guidance if more information or modifications are needed in the warrant application. These proceedings may occur in person or via audio and video transmission under Chapter 7A, Section 49.6 of the North Carolina General Statutes (hereinafter G.S.), but in either case, they must meet the same recordation standards.

## Step 2: Reviewing Restrictions

Only a district attorney or assistant district attorney may request a search warrant for evidence of an obscenity offense under G.S. 14-190.1 (disseminating obscenity and other offenses), 14-190.4 (coercing acceptance of obscene materials), or 14-190.5 (preparing obscene materials).[26]

21. G.S. 15A-245. If conducted via audio and video, the warrant application must also comply with G.S. 7A-49.6.
22. G.S. 15A-244(1).
23. *In re* 1990 Red Cherokee Jeep, VIN 1J4FJ38L4LL146261, 131 N.C. App. 108, 112–13 (1998).
24. G.S. 15A-247.
25. Search warrants must be executed within forty-eight hours from the time of issuance. G.S. 15A-248.
26. G.S. 14-190.20.

## Step 3: Determining Jurisdiction

Magistrates may only issue search warrants directing the search of designated premises, vehicles, or persons located within their county.[27] There is no similar requirement that the crime under investigation occur within their county. It is possible that at the time of the investigation, the date and location of the crime are uncertain. There is also no restriction on a magistrate issuing a search warrant after that application has been denied by another magistrate. However, it may be best practice to confer with the denying magistrate about their reasons for finding the application deficient.

## Step 4: Reviewing the Description of a Person or Property to Be Seized

*Person*

If the search warrant is intended to allow law enforcement to enter a premises in order to arrest a person, the person subject to arrest should be described here. This is typically the case when an arrest warrant or order for arrest authorizes the arrest of a person who is in a third party's residence. Because the third party has a privacy interest separate from the person subject to arrest, a search warrant is required to enter their home.[28] The same rule applies when law enforcement has probable cause to arrest someone, but that person is in a third party's residence and no other exceptions allow entry. If the person subject to arrest is identified, only their name is required, although a physical description may be helpful. If law enforcement does not know their identity, the person must be described by identifiable physical characteristics.

*Property*

Property subject to seizure must be described with enough specificity to ensure that the warrant's authority is limited to only the property for which there is probable cause to believe a connection to criminal activity exists. This helps protect against the seizure of unrelated property. Put another way, the description should be detailed enough that an officer not involved in the case could execute the warrant and seize the correct items. For items that are otherwise lawful to possess, this means including information such as serial number, brand, model, and a detailed visual description. Simply describing something as "stolen" does not provide sufficient identifying information.[29] For example, "stolen gun" would not sufficiently assist a law enforcement officer in identifying the gun to be seized, so additional identifying details are required. The same applies when the item to be seized is an electronic device such as a computer, hard drive, or cell phone.

A detailed description is not required for property that is contraband or otherwise unlawful to possess. For example, while it is preferable to use the specific name of any illegal drugs to be seized, "narcotic drugs, the possession of which is a crime" has been upheld as a sufficiently detailed description.[30] Inclusions as general as "methamphetamine" or "cocaine" are likewise

27. G.S. 7A-273(4).
28. Steagald v. United States, 451 U.S. 204 (1981).
29. State v. Ellison, 296 N.C. App. 227 (2024).
30. State v. Foye, 14 N.C. App. 200 (1972).

permissible. This is because illegal drugs and other property that is unlawful to possess are subject to seizure in any amount or form and may be seized whether or not they are connected to the criminal activity underlying the search warrant.[31]

## Step 5: Determining the Connection to a Crime or to the Identity of a Person Participating in a Crime

Persons and property are subject to seizure pursuant to a search warrant when they constitute evidence of a crime or evidence of the identity of a person participating in a crime.[32] This is sometimes referred to as the "nexus" requirement. That is, there must be a nexus between the person or property to be seized and the crime, or between the person or property to be seized and the identity of a person participating in a crime. In stating the crime, the applicant may describe the crime in general terms. For example, it is sufficient to list the statutory reference and name of the offense. Because practice varies around the state, it is not advised to use abbreviations for offenses (for example, FBF, PFF, and FAF may all refer to possession of a firearm by a convicted felon pursuant to G.S. 14-415.1).

When a search warrant is used to execute an arrest, arrest warrant, or order for arrest in a third party's premises, it is sufficient to state the "nexus" between the search warrant and the crime or identification in general terms. For example, if the search warrant is used to execute an arrest or arrest warrant, the underlying criminal offense should be listed. If the search warrant is used to execute an order for arrest, it may list the underlying offense for the order for arrest or the reason for the order for arrest. For example, "order for arrest for failure to appear" would be sufficient. Where the circumstances are described in greater detail in an attached affidavit, "see affidavit" may also be used to provide the legal authority for the issuance of the search warrant.

## Step 6: Reviewing the Description of a Place or Person to Be Searched

A search warrant may authorize the search of more than one location. As long as the locations or persons to be searched are sufficiently connected to the statement of probable cause, they may be included in the same warrant application and warrant. The description of a place or person to be searched must be sufficiently detailed to permit identification with "reasonable certainty."[33] In other words, it must be detailed enough that a law enforcement officer unfamiliar with the investigation could execute the warrant. Relying solely on the written descriptions in reviewing the warrant best ensures that the descriptions will be upheld if later challenged in trial court.

### *Premises*

When the place to be searched is a residence or other premises, the street address may be sufficient if it is detailed enough.[34] For example, in an apartment complex, "John Anderson's apartment at 1234 Apartments Drive" could refer to more than one residence and would not be sufficient. But "1234 Apartments Drive, Apt. D" specifies a particular residence and would

31. For example, if law enforcement searches a home and discovers illegal drugs not mentioned in the warrant, the drugs may be seized under the plain-view doctrine or incident to arrest.

32. G.S. 15A-242(4).

33. G.S. 15A-246(4).

34. Steele v. United States, 267 U.S. 498 (1925).

be sufficient. A description of an apartment may also rely on its physical location, so long as it specifies one particular residence, for example, "the first apartment on the north side of the hall on the first floor, 1234 Apartments Drive."

If the description clearly identifies a particular residence, it is sufficiently detailed. But if it is incorrect and there is no physical description, the warrant will be invalid. Therefore, the best practice is to include a physical description of the property alongside the street address. If the street address is incorrect but the physical description is correct and law enforcement searches the correct residence, the warrant will still be considered valid.[35] The name of the owner or possessor of the premises may also be helpful, although it is not sufficient on its own, in identifying the place to be searched.

If the building is located in an area without a street address, a physical description detailed enough to identify the building with reasonable certainty will be sufficient. For example, information such as directions from a named highway or location and the building's distance from other structures may suffice. A sufficiently detailed description would be "the red barn with double doors, white window trim, and black roof, on the east side of John Anderson's sweet potato field, 50 yards north of the service station at Barn Road and Cabin Street."

If the applicant wishes to search additional structures or vehicles, the best practice is to include and specifically identify them as places to be searched. When there are multiple separate residences on the same parcel, generally each residence may only be searched if there is probable cause for each residence and each residence is identified in the search warrant. Although authority exists permitting the search of outbuildings within the curtilage and vehicles on the property, if the applicant wishes to search additional places and there is probable cause to do so, the best practice is to include them in the warrant application.

### *Persons*

When describing a person to be searched, the applicant should include as much information as possible. While a name may be sufficient, including information such as an alias, age, physical description, and distinguishing marks best ensures that the description will direct law enforcement executing the warrant to search the correct person. The description may also be conditional, based on information that comes later, such as "a white male, approximately 25 years old, 5'10", medium build, to be identified by Detective Mark Lee when the officers enter the premises."

A search warrant for premises or property does not by default permit searching all persons in or on that property. Including the language "all persons present in the premises" is generally disfavored but may be upheld if the statement of probable cause establishes that anyone on the premises is likely to be involved in the underlying criminal activity and likely to have the evidence being sought in their possession.[36] Identifying a person separately, even when the applicant believes they will be on the premises and may be subject to search, permits law enforcement to search that person if they are nearby but not in the premises otherwise described.

35. State v. Hunter, 208 N.C. App. 506 (2010).

36. State v. Jackson, 616 N.W.2d 412 (S.D. 2000); United States v. Abbott, 574 F.3d 203 (3d Cir. 2009), *aff'd on other grounds*, 562 U.S. 8 (2010).

Additionally, when law enforcement is executing a search warrant for a premises not open to the public or a private vehicle, any person present (identified or not) may be detained and searched if the search does not produce the items named in the warrant and the items are concealable.[37]

### *Vehicles*

Vehicles, like persons, may be searched in certain circumstances during the execution of a search warrant for a premises or building. However, like persons, if the applicant for the search warrant knows of vehicles they would like to search (and there is probable cause to do so), they should include the vehicle in the warrant application. This also authorizes law enforcement executing the search warrant to search the vehicle if it turns out not to be on the premises already described.

When describing a vehicle to be searched, the applicant should provide as much detail as possible. The vehicle identification number (VIN) and license plate number will best differentiate the vehicle, and including the make, model, color, year, and other unique characteristics will also help.

### *Electronic Devices*

An increasingly common category of items to be searched is electronic devices. When an applicant is seeking evidence saved locally on an electronic device, a magistrate may issue the search warrant. For example, this includes photographs, text messages, phone numbers, and other data that may be evidence of criminal activity saved directly on the device. This is not the case for data saved by service providers not located on the device, such as a person's social-media profile or data saved by a third-party company like Gmail or Facebook. Search warrants for data saved by service providers may not be issued by magistrates, and applicants should be referred to a superior court judge.[38]

## Step 7: Determining Probable Cause

In order for a search warrant to be valid, it must be supported by probable cause. The warrant application must provide probable cause that an offense has been committed and probable cause that the evidence or person sought is in the place to be searched.[39] The applicant must provide information supporting probable cause by affidavit or sworn oral testimony (which must then be recorded) and may attach additional pages to the warrant application as needed. See the discussion at the beginning of this bulletin for general guidance in determining probable cause. If the warrant application provides probable cause that an offense has been committed and that the evidence or person sought is in the place to be searched, then it may be issued.

37. G.S. 15A-256.

38. This requirement is based on the federal Stored Communications Act, 18 U.S.C. §§ 2701–2713, which mandates that such search warrants be issued by a "court of competent jurisdiction." For further discussion, see Jeff Welty, *May Search Warrants for Cell Phones Include Connected Cloud Services?* UNC Sch. of Gov't: N.C. Crim. L. Blog (June 24, 2019), https://nccriminallaw.sog.unc.edu/2019/06/24/may-search-warrants-for-cell-phones-include-connected-cloud-services/.

39. Illinois v. Gates, 462 U.S. 213 (1983).

*Timeliness*

Part of this determination as it applies to search warrants is whether the information is stale or timely. This is because probable cause is connected to the likelihood that the evidence or person being sought is in the place to be searched, which may dissipate as time passes from the information gathered by the applicant. While there are no bright-line rules, the closer in time the information is to the issuance of the warrant, the more likely the warrant will be upheld as timely and not stale.

A factor to consider when evaluating timeliness is whether the criminal activity being investigated is continuous or isolated. When investigating continuous activities, such as the sale of drugs, more time is permissible between the gathering of the information and the execution of the warrant because the likelihood remains high that the evidence sought will be where the applicant believes it to be.[40] Another factor is whether the evidence to be seized is perishable, easily transported, useful for other purposes, or likely to be retained for long periods of time. Search warrant applications for perishable, easily transported incriminating evidence should be closer in time to execution than those for evidence that is not easily transported or may be kept for other purposes, such as regular gardening tools[41] or corporate records.[42] This is because evidence that is not easily transported or may be kept for other purposes is less likely to be disposed of quickly, and a magistrate may reasonably find that the evidence will be where the applicant believes it to be. A final factor that may affect timeliness is the nature of the place to be searched. If it is a place regularly used for criminal activity, as with investigations of continuous criminal activity, more time may pass and the search warrant will remain valid. In contrast, a more transitory location with multiple uses, like a specific hotel room, would lose its connection to the information providing probable cause more quickly.

If a warrant application does not indicate when the information was gathered or how much time has elapsed, a magistrate may choose to ask the sworn applicant to provide more detail (so long as it is properly recorded, discussed below). If a warrant application does not contain timeliness information, it may still be upheld if the items to be seized have "enduring utility," such as computers, computer equipment, and camera equipment.[43] That said, including information related to timeliness is the best practice for any warrant to be upheld if challenged at a later time.

## Step 8: Issuing the Search Warrant

Upon reviewing the warrant application, ensuring that the warrant is sufficiently detailed, and determining the presence of probable cause, a magistrate may issue the search warrant.

*Recordation*

All information considered when determining whether to issue a search warrant must be recorded.[44] The information must be provided by affidavit or by oral testimony under oath or affirmation. All oral testimony used in determining probable cause must be recorded or summarized in the record or on the face of the warrant. A magistrate can avoid considering unrecorded information by considering the warrant application and affidavit without any spoken

40. State v. Clark, ___ N.C. App. ___, 918 S.E.2d 225 (2025).
41. State v. Jones, 299 N.C. 298 (1980).
42. State v. Loucheim, 296 N.C. 314 (1979).
43. State v. Kochetkov, 280 N.C. App. 351 (2021).
44. G.S. 15A-245.

input from the applicant. If the magistrate determines that the application is sufficiently detailed and the affidavit provides probable cause, then they can be sure these determinations came solely from the recorded documents. If a magistrate requires more information with regard to specificity or probable cause, deliberately recording all information added by oral testimony on the warrant application likewise ensures that any information relied on for the issuance of the warrant is properly recorded. This may be accomplished either by having the applicant amend the application by hand and initial the amendments or, for greater clarity, by having the applicant withdraw and edit the application, then resubmit the improved application for approval.

#### *Modification*

Once a search warrant has been issued and executed, it may not be modified. If forty-eight hours have passed and the warrant has not been executed, it becomes void and must be marked "not executed" and returned to the clerk.[45] If a search warrant has been issued but requires modification or changes, issuing a new warrant and returning the first warrant unexecuted more reliably ensures that the new warrant is sufficient, correct, and supported by probable cause. A new warrant also provides a fresh forty-eight hours for execution, rather than counting forty-eight hours from the issuance of the first warrant.

#### *Search Warrants for Blood or Urine*

In driving while impaired cases, law enforcement may seek evidence in the form of a person's blood or urine. Form AOC-CR-155 is a template warrant and warrant application that may be used in these circumstances. These warrants designate bodily fluids as the evidence to be seized and a person as the place to be searched. Although the application portion of the form includes pre-written provisions, law enforcement may also draft and attach an affidavit establishing probable cause if that is more appropriate for the circumstances. By checking the appropriate box, this may also incorporate form AOC-CVR-1A (Affidavit and Revocation Report). That said, if an applicant is seeking medical records from a hospital, AOC-CR-155 would not be needed. A search warrant designating blood-alcohol-concentration records as the evidence to be seized and the hospital as the place to be searched would be appropriate instead.[46]

## Applications for Charging Documents

Another form of process that applicants may seek before a magistrate is a charging document. Charging documents charge a criminal offense and may also authorize a person's arrest. Applicants may seek different charging documents depending on the circumstances.

When a person has been arrested without an arrest warrant, law enforcement will bring that person before a magistrate for an initial appearance. As part of that initial appearance, the appropriate charging document to initiate criminal process is a magistrate's order. There are times where law enforcement will issue a citation and arrest the person contemporaneously. When that happens, a magistrate's order may be issued to replace the citation, or the citation may be converted to a magistrate's order.

45. G.S. 15A-248.
46. State v. Smith, 248 N.C. App. 804 (2016).

When a person appears before a magistrate seeking criminal charges, the appropriate charging document will be either a criminal summons or a warrant for arrest. Applicants for criminal charges are not required to be law enforcement, although the statute treats applications initiated by non–law enforcement differently from those initiated by law enforcement officers (discussed below).

## Step 1: Swearing in the Applicant

Issuing criminal summonses, warrants for arrest, and magistrate's orders requires a determination of probable cause.[47] The showing of probable cause must be based on sufficient information, supported by oath or affirmation, that enables the magistrate to determine whether probable cause exists. These proceedings may occur in person or via audio and video transmission under G.S. 7A-49.6. The requirement that the applicant provides information under oath or affirmation applies whether the applicant is a law enforcement officer or a lay applicant.

## Step 2: Reviewing Restrictions

There are some restrictions on the charging documents that magistrates may issue. These restrictions are based on the underlying offense. In these circumstances, the applicant should be referred to the local district attorney's office.

### *School Employees*

Without prior approval from the district attorney, magistrates may not issue a warrant for arrest, an order for arrest, a criminal summons, or other process against a school employee[48] for an offense committed while performing their duties of employment.[49] This does not apply to traffic offenses or offenses that occur in the presence of a sworn law enforcement officer.

District attorneys may decline this authority and authorize magistrates to issue process against school employees without their preapproval for misdemeanor offenses. To do so, they must file a letter with the clerk of superior court and send a copy to the chief district court judge, who must specifically designate one or more magistrates to review any applications for process against school employees.[50] When the district attorney has declined this authority, any magistrate may nonetheless issue process against a school employee if the offense is a traffic offense, the offense occurred in the presence of a sworn law enforcement officer, or there is no specifically designated magistrate available to review the application.

47. G.S. 15A-303(c) (criminal summons), -511(c)(1) (magistrate's orders), -304(d) (warrants for arrest).

48. This term is broadly defined. In this context, it includes (1) an employee of a local board of education, a charter school authorized under G.S. 115C-218.5, or a nonpublic school that has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes; (2) an independent contractor, or an employee of an independent contractor, of a local board of education, charter school authorized under G.S. 115C-218.5, or a nonpublic school that has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes, if the independent contractor carries out duties customarily performed by employees of the school; and (3) an adult who volunteers services or presence at any school activity under the supervision of an otherwise defined school employee. G.S. 14-33(c)(6).

49. G.S. 15A-301(b1).

50. G.S. 15A-301(b2).

### *Patient Abuse*

Criminal process for charges of patient abuse and neglect may only be issued upon request of the district attorney.[51] Patient abuse and neglect occurs when a person physically abuses a patient of a health-care facility[52] or a resident of a residential care facility,[53] causing bodily injury or death. The term "person" includes any individual, association, corporation, partnership, or other entity.[54] For this offense, "abuse" is the willful or culpably negligent[55] infliction of physical injury or the willful or culpably negligent violation of any law designed for the health or welfare of a patient or resident.[56]

### *Obscenity Offenses*

Criminal process for obscenity offenses may only be issued upon the request of a district attorney or assistant district attorney.[57] This restriction applies to the offenses of disseminating obscenity; creating, buying, procuring, or possessing obscenity with intent to distribute; and advertising or promoting the sale of obscene material.[58] It also applies to coercing acceptance of obscenities[59] and the preparation of obscene photographs, slides, and motion pictures.[60]

### *Habitual Status Offenses*

Criminal process for a person's status as a habitual felon may only be issued at the discretion of the district attorney.[61] The same applies to the status offenses of being an armed habitual felon[62] and habitual breaking and entering.[63] While the status offense of violent habitual felon does not specifically limit issuance to the discretion of the district attorney, it only refers to indictments as the charging process.[64] Accordingly, it is best practice to also refer the decision to charge a defendant with being a violent habitual felon to the district attorney. That said, the statutes refer to habitual impaired driving,[65] habitual larceny,[66] habitual assault,[67] and habitual

51. G.S. 14-32.2(g).
52. A health-care facility "includes hospitals, skilled nursing facilities, intermediate care facilities, intermediate care facilities for individuals with intellectual disabilities, psychiatric facilities, rehabilitation facilities, kidney disease treatment centers, home health agencies, ambulatory surgical facilities, and any other health care related facility whether publicly or privately owned." G.S. 14-32.2(i)(3).
53. A residential care facility "includes adult care homes and any other residential care related facility whether publicly or privately owned." G.S. 14-32.2(i)(5).
54. G.S. 14-32.2(i)(4).
55. "Conduct of a willful, gross, and flagrant character, evincing reckless disregard of human life." G.S. 14-32.2(i)(2).
56. G.S. 14-32.2(i)(1).
57. G.S. 14-190.20.
58. G.S. 14-190.1.
59. G.S. 14-190.4.
60. G.S. 14-190.5.
61. G.S. 14-7.3.
62. G.S. 14-7.38.
63. G.S. 14-7.28.
64. G.S. 14-7.9.
65. G.S. 20-138.5.
66. G.S. 14-72.
67. G.S. 14-33.2.

domestic violence[68] as offenses and do not describe them as only being brought by indictment. As a result, it does not appear that these offenses are meant to be restricted to issuance by the district attorney.

## Step 3: Determining Venue

"Venue" refers to the proper geographic location for the trial or disposition of a charged offense. When practical, criminal summonses and warrants for arrest should be issued where there is venue for the charged offense. This is because charged offenses are almost always tried or disposed of in the counties with venue.[69] While a magistrate has authority to issue criminal summonses and warrants for arrest valid throughout the state,[70] doing so for an offense where venue is in another county will require the defendant and the case to be transferred to the county where the defendant will be tried.

Venue for an offense exists "if any act or omission constituting part of the offense occurs" within the county.[71] If an offense occurs in more than one county, those counties have concurrent venue, and the person may be properly tried in any of them. When a defendant transports a person for the purpose of committing a rape, sexual offense, or sexual battery and commits one of these offenses, venue is extended to any county where the transportation began, continued, or ended.[72] When concurrent venue exists, it lasts until criminal process is issued. Once that occurs, the county that initiated criminal process first has exclusive venue for the offense.[73]

## Step 4: Determining Probable Cause

After determining that a charge may be issued and that the applicant is seeking process in the most appropriate venue, the next step for the magistrate is to determine whether there is probable cause. Like determining probable cause for search warrants, there are two components to the probable cause required to issue criminal process. The first is that a crime was committed, and the second is that the person identified by the applicant committed the crime.[74] A magistrate must find probable cause for every element of an offense to charge that offense.

In the context of issuing process, the information provided for the probable cause determination may be given by affidavit or by oral testimony under oath or affirmation. The oral testimony may be in person or conducted via audio and video transmission. Unlike search warrants, the information provided for the probable cause determination may be recorded or memorialized, but it is not required. For more on the probable cause determination, see the discussion earlier on "Probable Cause."

A common consideration for magistrates when a person is applying for criminal process is whether to issue criminal process only for the offenses the applicant is seeking or for every offense for which probable cause exists. As discussed at the beginning of this bulletin, the magistrate's role during applications for search warrants and charging documents is that of a neutral and detached official. As a representative of the judicial branch, a magistrate's role is

68. S.L. 2025-70, sec. 18.(a), § 14-32.6.
69. G.S. 15A-131(a).
70. G.S. 15A-303(f) (criminal summons); 7A-273(3) (warrants for arrest).
71. G.S. 15A-131(e).
72. G.S. 15A-136.
73. G.S. 15A-132.
74. State v. Martin, 315 N.C. 667 (1986).

better described as reviewing probable cause for criminal allegations brought by the applicant, rather than initiating criminal allegations based on information brought by the applicant. Certainly, applicants may not be aware of what criminal offenses are implicated by the information they provide. In these circumstances, it can be beneficial to inform the applicant of what offenses may be implicated and to ask which offense or offenses they are applying for. Similar to reviewing applications for search warrants, while it is appropriate for a magistrate to have a conversation with the applicant and ensure that they are aware of all of their options, issuing charges not requested by the applicant may be a departure from the magistrate's role as a neutral and detached judicial official. North Carolina appellate courts have not yet addressed this issue.

## Step 5: Determining the Form of Process

When a person has been arrested without an arrest warrant, the appropriate form of process for the underlying offense is a magistrate's order. This may be accomplished by issuing a magistrate's order or by converting a citation issued by law enforcement into a magistrate's order. Magistrate's orders may only be used to issue process for crimes, not infractions.[75] Infractions are noncriminal violations of law and are not punishable by confinement.[76] A criminal summons, rather than a magistrate's order, may be used for any infractions not already charged by a citation accompanying the crime for which the person has been arrested.[77]

When an applicant is seeking criminal process for a person who has not been arrested, the magistrate must determine whether to issue the process in the form of a warrant for arrest or a criminal summons.

### *General Considerations*

Upon the application of a sworn law enforcement officer, when choosing between issuing a warrant for arrest or a criminal summons for a criminal offense, a criminal summons should be used except "when it appears to the judicial official that the person named should be taken into custody."[78] This applies to both felonies and misdemeanors. Just as it may be appropriate to issue a warrant for arrest for a misdemeanor, it may be appropriate to issue a criminal summons for a felony.[79] Factors that may be considered in determining if a person should be taken into custody include, but are not limited to, whether the person has failed to appear when previously summoned; facts making it apparent that the person summoned will fail to appear; danger that an accused person will escape the jurisdiction; danger of injury to any person or property; and the seriousness of the offense.[80]

### *Lay Applicants*

When the sole source of information for the finding of probable cause for the underlying offense is a person who is not a sworn law enforcement officer, a magistrate must issue a criminal summons rather than a warrant for arrest.[81] There are three exceptions to this requirement. If

75. G.S. 15A-511(c)(3).
76. G.S. 14-3.1.
77. G.S. 15A-303(a).
78. G.S. 15A-304(b)(1).
79. G.S. 15A-303.
80. G.S. 15A-304(b)(1).
81. G.S. 15A-304(b)(3).

any of these exceptions exist, a magistrate may determine whether to issue a warrant for arrest or a criminal summons in the same manner as if the applicant were a sworn law enforcement officer. The first exception is when there is corroborating testimony of the facts establishing probable cause from a sworn law enforcement officer or at least one disinterested witness.[82] The second exception is when the magistrate finds that obtaining investigation of the alleged offense by a law enforcement agency would constitute a substantial burden on the complainant.[83] Put another way, the magistrate would have to find that the applicant has no way of enlisting the assistance of law enforcement. The third exception is when the magistrate finds substantial evidence of one or more of the circumstances listed in G.S. 15A-304(b)(1).[84]

### *Offenses That Trigger Additional Holds*

There are a number of offenses for which the law requires a judge, rather than a magistrate, to set conditions of pretrial release. When a person is arrested for one of these offenses, magistrates conduct an initial appearance and impose detention without bond so that the person can be seen by the next available judge. If a judge has not set conditions within a certain amount of time,[85] a magistrate may set conditions of release.

This distinction only applies upon a person's arrest and does not require the issuance of a warrant for arrest instead of a criminal summons. It may be considered as a factor among the others described above, such as weighing the seriousness of the offense. As a reminder, when the sole applicant is not a sworn law enforcement officer, the magistrate must issue a criminal summons rather than a warrant for arrest unless one of the exceptions in G.S. 15A-304(b)(3) applies, even if the charge would otherwise require a judge to set conditions of release had the person been arrested.

## Step 6: Drafting or Reviewing Charging Language

The next step in issuing charging documents is to draft or review any provided charging language. Until later superseded by a statement of charges, information, or indictment, any form of process issued by a magistrate serves as the State's pleading in the criminal case.

For many criminal offenses, the charging language will first be provided by a law enforcement applicant or may be generated by the eCourts software. In either case, it is important to review the provided language to ensure that all necessary details and every element of the offense are included. One resource that may be used is *Arrest Warrant and Indictment Forms* (hereinafter *AWIF*).[86] Many of the most commonly charged offenses are included in *AWIF*, along with sample charging language, particular offense-specific requirements, relevant AOC forms, and

82. G.S. 15A-304(b)(3)a.

83. G.S. 15A-304(b)(3)b.

84. These circumstances are the same as those considered when magistrates determine whether to issue a warrant for arrest or a criminal summons when the applicant is a sworn law enforcement officer: whether the person has failed to appear when previously summoned, facts making it apparent that the person summoned will fail to appear, danger that an accused person will escape the jurisdiction, danger that there may be injury to any person or property, and the seriousness of the offense.

85. For offenses included in G.S. 15A-533(b), a magistrate may set conditions of release if seventy-two hours pass without action by a judge, or ninety-six hours if the courthouse remains closed for longer than seventy-two hours after the arrest. G.S. 15A-601(c). For offenses covered by G.S. 15A-534.1, a magistrate may set conditions of release if forty-eight hours pass without any action by a judge.

86. Joseph H. Hyde, Arrest Warrant and Indictment Forms (UNC School of Government, 2025 ed.).

**Table 1. Types of Criminal Process**

| Process | Statute | Applicability | Issued By | Function |
|---|---|---|---|---|
| Citation | G.S. 15A-302 | Misdemeanors and infractions | Law enforcement officer | Directs a person to appear in court |
| Magistrate's Order | G.S. 15A-511(c) | Any crime | Judicial official | Finds an officer's warrantless arrest was proper |
| Criminal Summons | G.S. 15A-303 | Any crime or infraction | Judicial official | Directs a person to appear in court |
| Warrant for Arrest | G.S. 15A-304 | Any crime | Judicial official | Orders an officer to arrest a person |

punishment levels. Finally, if an offense is not included in a secondary resource, magistrates may always contact faculty focusing on criminal proceedings before magistrates at the School of Government.

## Step 7: Issuing Criminal Process

After determining that probable cause supports the offense or offenses requested and reviewing the charging language, a magistrate may issue the criminal process (see Table 1).

### *Fugitives*

When an individual is wanted by another state and is located in North Carolina, they may be arrested with or without a warrant. The procedure by which they are returned to the requesting state is extradition and is covered in detail in the *State of North Carolina Extradition Manual*.[87] The following provides a brief overview of applications for process relating to fugitives that a magistrate is most likely to encounter.

Extradition rules do not apply to individuals who violate probation conditions imposed by another state and are in North Carolina under a supervision agreement pursuant to the Interstate Compact for Adult Offender Supervision. For these individuals, the Interstate Compact rules in G.S. Chapter 148, Article 4B apply instead. Extradition rules do apply to individuals who violate probation conditions imposed by another state and do not have an Interstate Compact supervision agreement in place.

#### Fugitive Warrants

Law enforcement may apply for a fugitive warrant to arrest an individual present in North Carolina and wanted by another state.[88] This is permitted in the following three circumstances:

1. the person has been charged with a crime by another state and is in North Carolina;
2. the person was convicted of a crime in another state and has fled to avoid sentencing or has escaped imprisonment; or

87. Robert L. Farb, State of North Carolina Extradition Manual (UNC School of Government, 3d ed. 2013).

88. The Warrant for Arrest for Fugitive is form AOC-CR-910.

3. the person was convicted of a crime in another state and violated probation, parole, or postrelease supervision by fleeing.[89]

Under these circumstances, a magistrate is not required to determine whether probable cause exists for the underlying charge or conviction. The only determinations are whether one of the three grounds listed above exists, and, if so, whether the person brought before the magistrate is the person wanted by the other state. When these determinations are satisfied, the magistrate may issue the fugitive warrant. The information relied upon from the officer must be reliable. In order to make this determination, magistrates should place the law enforcement officer under oath and may rely on information such as a DCI (Division of Criminal Investigation) message, letter, fax, email, or phone call from an officer in the other state. A copy of a warrant or indictment from the other state may also be sufficient.[90] The fugitive affidavit[91] and fugitive warrant should be completed and attached, along with any documentation used to establish that the individual is a fugitive, as part of the court file.

### Arrests Without a Warrant

Law enforcement may arrest an individual on the basis that they are a fugitive and bring them before a magistrate even if a fugitive warrant has not already been issued. Warrantless arrests of fugitives from other states are only permitted when the crime with which the person has been charged in another state is punishable there by death or by more than one year's imprisonment. Like applications for fugitive warrants, the magistrate is not required to determine whether probable cause exists for the offense charged in the other state. The only determinations the magistrate must make are whether the person has been charged with a crime in another state and whether that crime is punishable in the other state by death or more than one year in prison. When the answer to both of those questions is yes, the arrest was lawful, and the magistrate should issue a magistrate's order.[92]

### North Carolina Fugitives in Other States

Law enforcement may apply for an arrest warrant intended for a North Carolina fugitive in another state. When this occurs, the arrest warrant should be accompanied by a written affidavit from an investigating officer or victim. The affidavit must establish the grounds for charging the defendant and must be sworn to before a magistrate or judge. While this is usually before the same judicial official who issues the arrest warrant, there is no requirement that it be the same official. Finally, the date of the affidavit should be the same as the arrest warrant (or earlier). If an arrest warrant was initially issued based on oral testimony alone, a new arrest warrant should be issued with the affidavit, so that both have the same issuance date.[93]

89. G.S. 15A-733.
90. Farb, Extradition Manual, at 36.
91. The Fugitive Affidavit is form AOC-CR-911M.
92. The proper magistrate's order in these cases is the Magistrate's Order for Fugitives (AOC-CR-909M).
93. For additional discussion of the requirements for pursuing North Carolina fugitives in other states, see Farb, Extradition Manual.

### *Orders for Arrest*

Orders for arrest are orders issued by a magistrate (or other judicial officials) that direct law enforcement to take a person into custody. They do not initiate criminal proceedings and are commonly issued based on a violation of a court order or conditions of pretrial release. Law enforcement and civilian applicants may approach magistrates for the issuance of an order for arrest when a person has violated a condition of their pretrial release.

#### Timing

If the person on pretrial release has not had their first appearance before a district court judge, a magistrate may issue an order for arrest for a violation of their conditions of pretrial release. If the person has already had their first appearance, the statutes indicate that jurisdiction for the case is now in district court, and a magistrate may not issue an order for arrest. This is based on G.S. 15A-534(e), which permits magistrates and clerks to modify pretrial release orders only prior to the first appearance.

As a reminder, law enforcement may arrest a person without an order for arrest when they have probable cause that the person violated a condition of their pretrial release, both prior to and after the first appearance in district court.[94] If this occurs, the person would then be brought before a magistrate for an initial appearance. At this initial appearance, the magistrate should proceed as in an initial appearance for a new offense, except the magistrate should not issue new criminal process because no new criminal offense is being alleged.

### *Recalling Criminal Process*

In some circumstances, magistrates may recall process that they have issued. Governed by G.S. 15A-301(g), recall depends on the type of process, the timing, and the reason for recall. That said, in all circumstances, process may only be recalled before the defendant has been served. Citations may not be recalled.[95]

#### Warrants for Arrest and Criminal Summonses

The rules for recall are the same for warrants for arrest and criminal summonses. As long as the defendant has not been served, if the magistrate who issued the warrant or summons determines that probable cause did not exist for its issuance, they must recall the warrant or summons. When these circumstances have been met, recall is not discretionary; it is required. The person recalling the process must be the issuing magistrate or a person the issuing magistrate has authorized to act on their behalf.[96]

#### Orders for Arrest

A magistrate may recall an order for arrest, before it has been served, upon finding good cause. An order for arrest may only be recalled by a judicial official in the same trial division where it was issued.[97] That said, a magistrate should only recall an order for arrest issued by another judicial official after consultation with them, and a magistrate may always defer the recall to the

94. G.S. 15A-401(b)(2)f.
95. G.S. 15A-301(g).
96. G.S. 15A-301(g)(1).
97. G.S. 15A-301(g)(2).

issuing official. This is because, in contrast with the recall of warrants for arrest and criminal summonses, recall of orders for arrest is discretionary. The statute does not limit what may constitute good cause and provides the following examples of what may rise to that level:

1. the order for arrest has already been served;
2. the charge on which the order for arrest is based has been disposed of;
3. the person named as the defendant in the order for arrest is not the person who committed the charged offense; or
4. it has been determined that the grounds for issuance of the order for arrest did not exist, no longer exist, or have been satisfied.