

Selecting Process

SELECTING PROCESS

Selecting (and Completing) Process In-Class Materials	Selecting Process-Page 1
Selecting Process Class Exercises	Selecting Process-Page 11
Statutory Limits on Issuing Process	Selecting Process-Page 15
Affidavit (AOC-CR-158)	Selecting Process-Page 19
Criminal Process Pop Quiz.....	Selecting Process-Page 21

**SELECTING (AND
COMPLETING)
PROCESS**

John Rubin
UNC School of Government
February 2020

1

Three Steps

Is there probable cause that the offense was committed by the person to be charged?

What process, if any, should be issued?


What is the correct charging language for the offenses to be charged?

2


I. Determining Probable Cause

- "The probable-cause standard is *incapable of precise definition or quantification* into percentages because it deals with probabilities and depends on the totality of the circumstances. We have stated, however, that "[t]he substance of all the definitions of probable cause is a *reasonable ground* for belief of guilt."

Maryland v. Pringle, 540 U.S. 366 (2003)



3

	YOUR ROLE _____
---	-------------------------------

4

 Evidence from officers <small>Including via remote testimony</small>	 Evidence from citizens	 Hearsay evidence
Sources of Evidence		

5

Credibility	Can you consider credibility?
	If so, what factors should you consider?

6



7

Reasons Not to Charge

Felonies

School employees. G.S. 15A-301(b1), (b2)

Patient abuse. G.S. 14-32.2(g)

Obscenity offenses. G.S. 14-19.20

Offenses in other counties

8

Defenses

Can you consider defenses? If so, which ones?

Can you consider whether evidence may be excluded or suppressed?

9

Loose Ends about Probable Cause

- What if the complainant isn't asking for the most serious offense the facts support?
- What should you do if you find no PC?

10

II. Purposes of Criminal Process

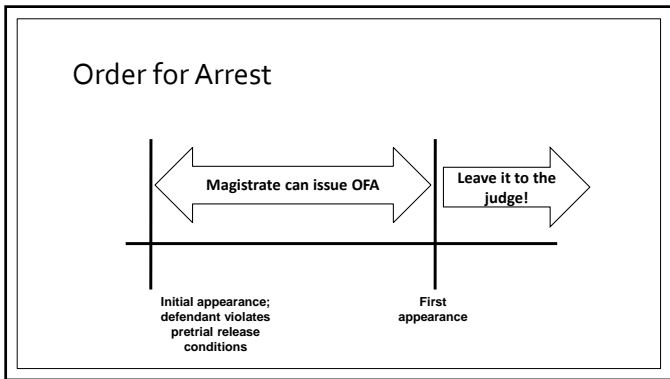
- Establishes the court's authority to act
- Compels the defendant to come to court
- Gives the defendant notice of the charge
- Provides a record of the case

11

Selecting Process: the Options

Process	Citation	Who Issues	What Charges
Citation	G.S. 15A-302	LEO	MDM or infraction
Summons	G.S. 15A-303	Judicial Official	Felony, MDM, or infraction
Arrest Warrant	G.S. 15A-304	Judicial Official	Felony or MDM
Magistrate's Order	G.S. 15A-511(c)	Judicial Official	Felony or MDM
Order for Arrest	G.S. 15A-305	Judicial Official	None

12




13

Selecting Process: Warrant vs. Summons

- Statutory preference
- Statutory factors
- Felonies
- Citizens

14



Statutory Preference

- "A warrant for arrest may be used, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody."

15

<h3>Statutory Factors</h3>	<ul style="list-style-type: none"> • "Circumstances to be considered . . . include <ul style="list-style-type: none"> • failure to appear when previously summoned, • facts making it apparent that a person summoned will fail to appear • danger that the person accused will escape, • danger that there may be injury to person or property, or • the seriousness of the offense."
----------------------------	---

16

<h3>15A-303 Official Commentary</h3>	<ul style="list-style-type: none"> • "The appropriate use of the criminal summons is in any case in which it appears that it is not necessary to arrest the defendant and take him into custody. . . ." • "This should be true in many misdemeanors and a number of felonies. If the defendant is simply directed to appear in court on the appropriate date, the entire machinery of arrest, processing, and bail can be avoided with resultant savings to the system of criminal justice"
--------------------------------------	---

17

<h3>Citizen-Initiated Charges</h3>	<ul style="list-style-type: none"> • If probable cause is based solely on an affidavit or oral testimony of a person who is not a law enforcement officer, use a summons instead of a warrant unless: <ul style="list-style-type: none"> • There is corroborating testimony from an officer or disinterested witness. • Investigation by law enforcement would be a substantial burden for the complainant. • There is substantial evidence of one or more statutory factors
------------------------------------	---

18

III. Creating Process Correctly

The image shows a screenshot of a 'WARRANT FOR ARREST' form from the State of North Carolina. The form is titled 'STATE OF NORTH CAROLINA' and is issued by the 'General Court of Justice'. It includes fields for 'County', 'Name', 'Sex', 'Date of Birth', 'Race', 'Height', 'Weight', 'Hair Color', 'Eye Color', 'Complexion', 'Build', 'Distinguishing Features', 'Date of Arrest', and 'Arrested by'. A section for 'Charging Language' is also visible, with a note: 'To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged herein, the undersigned, but that there is probable cause to believe that on or about the date of offense (shown) and in the county named above the defendant named above, unlawfully, wilfully and feloniously did...'

19

Charging Language

NCAWARE



20

Charging Language

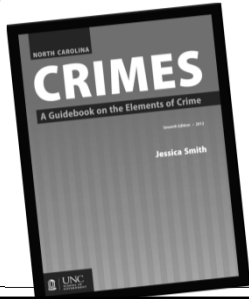
Arrest Warrant & Indictment Forms



21

Charging Language

North Carolina
Crimes



22

Charging Language

General Statutes

§ 14-10. Secret political and military organizations forbidden.

If any person, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or resisting the laws, shall join or in any way connect or unite himself with any oath-bound secret political or military organization, society or association of whatsoever name or character, or shall form or organize or combine and agree with any other person or persons to form or organize any such organization, or as a member of any secret political or military party or organization shall use, or agree to use, any certain signs or grips

23

Charging Language

School of Government Hotline



24

Requirements for Criminal Process (G.S. 15A-924)

- (3) A criminal pleading must contain:
- (1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.
 - (2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.
 - (3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.
 - (4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.
 - (5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.
 - (6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.

25

More Requirements

- Name of victim (when there is one)
- Prior convictions if element of offense
- Feloniously if felony
- Any requirements for particular offense
- And, please do not abbrev.

26

Charging Language: Common Problems

- In larceny cases, failing to allege victim's name and, if a business, that it is an entity capable of owning property
- In larceny cases, failing to describe the property stolen accurately
- In drug cases, failing to identify the controlled substance accurately
- In R/D/O cases, failing to include the specific duty the officer was performing

27

Loose Ends re Creating Process

- Should you charge greater and lesser included offenses?
- How many charges per process?
- Copies and distribution

28

Pop Quiz

29

Selecting (and Completing) Process

In Class Exercises

Jeff Welty

UNC School of Government

Rev'd Feb. 2020 by John Rubin

Considering Evidence from Citizens

1. Lisa Lopez comes before you. She reports that her boyfriend, Dan Spillane, pushed her to the ground during an argument last night. She has no visible injuries. She says that she did not call the police at the time, but she has decided that what Dan did was not OK. You know that Lisa has taken out charges on Dan twice before and has asked that the charges be dropped each time. What do you do?

2. Do you have an office policy regarding citizen complainants who have been drinking? What is the policy? Is it written or unwritten? What is the justification for the policy?

3. Tom Tanker comes before you. He just turned 16 and got a red Ford Mustang for his birthday. He says that Sam Singleton, a 19-year-old from his neighborhood, "keyed" the car yesterday afternoon while taunting Tom by saying, "How do like your new car now, pretty boy?" Tom reports that Sam has bullied him before and that Sam may be jealous of Tom because Tom's family is better off financially than Sam's. What do you do?

Considering Defenses

1. Officer Smith comes before you. She has arrested Jim Anderson and Alex Zimmerman for assaulting one another during a bar fight and has Anderson with her for his initial appearance. She tells you that she responded to a call at the bar and found the two men punching each other. All the witnesses agreed that the fight began when Anderson offered to buy a drink for Zimmerman's girlfriend, and Zimmerman pushed Anderson to the ground and started kicking him. Anderson says "I was just defending myself!" What do you do?

2. Felicia Jackson comes before you. She wants you to charge her sister Angela with misdemeanor larceny for stealing Felicia's Olympic silver medal. Felicia tells you that she keeps the medal in a display case in her guest bedroom. Angela came for a three-day visit recently and when she left, the case had been opened and the medal was gone. Felicia says that Angela struggles with mental illness and substance abuse and during one part of the visit claimed to be "Athena reborn, goddess of the Olympics." At other times, she acknowledged that she was Angela. Felicia has no idea what Angela was thinking when she took the medal or whether she even understood that it was wrong to do so. What do you do?

3. Ophelia Welborn comes before you. She is a 21-year-old college student. She wants you to charge her former high school classmate, Thad Brinks, with sexual battery. She describes an incident that took place during a “beach week” trip three years ago, just after graduation, when both she and Thad were 18 years old. Thad grabbed her buttocks without her consent and made a lewd remark about her body. Ophelia did not report the incident at the time, but she has decided that Thad should be held accountable. You know that the statute of limitations for misdemeanors in North Carolina is two years. What do you do?

Warrant vs. summons

1. There is probable cause that Darlene stole a soccer ball from a neighbor’s yard and gave it to her nephew for his birthday. Darlene lives in town, works as a cashier at the local Wal-Mart, and has no criminal record. Would you issue a summons or a warrant?

2. There is probable cause that Eric assaulted Zeke after the two got into an argument over a parking space at Food Lion. Eric punched and kicked at Zeke, who received several bruises before another patron intervened. Eric lives in town, works as a plumber’s apprentice when the plumber has work for him to do, and was charged with simple possession of marijuana 8 years ago but the charge was dismissed. Would you issue a summons or a warrant?

3. There is probable cause that Sterling, a businessman who owns multiple fast-food franchises in town, committed statutory rape of a person 15 years or younger. He had sex with a 14-year-old girl he met when she came to interview him for her school newspaper. Sterling has lived in town his entire life, owns significant property in town, and has no criminal record. Would you issue a summons or a warrant?

4. Alexis was stopped while driving on an interstate highway that passes through your county. She consented to a search of her car, which revealed several small baggies of cocaine in the glove compartment. You plan to charge her with PWIMSD cocaine. She is from New Jersey and is not working right now. She has two cocaine-related charges, and one conviction resulting in probation, in the New York/New Jersey area. Would you issue a summons or a warrant?

Arrest warrant form treasure hunt

G.S. 15A-924(a) lists six things that a criminal pleading must contain. (Don't worry about G.S. 15A-924(a)(7), as it is only rarely applicable.) Looking at the arrest warrant form, AOC-CR-100, find and mark the spot on the form where each of the items listed in G.S. 15A-924(a) is addressed.

Drafting charging language

In the 2018 legislative session, the General Assembly enacted a new statute, as follows:

14-277.7. Communicating a threat of mass violence at a place of religious worship.

(a) A person who, by any means of communication to any person or groups of persons, threatens to commit an act of mass violence at a place of religious worship is guilty of a Class H felony.

(b) The following definitions apply to this section:

(1) Mass violence. – As defined in G.S. 14-277.5(a)(2).

(2) Place of religious worship. – Any church, chapel, meetinghouse, synagogue, temple, longhouse, or mosque, or other building that is regularly used, and clearly identifiable, as a place for religious worship."

Neither NCAOC nor the School of Government has drafted charging language for this offense. You want to charge Kevin Denny with a violation of this statute based on his statement to his ex-girlfriend Alexis Anderson that he "will blow up her stupid church with all her stupid friends and family in it." She attends First Baptist Church of Hometown, NC. How should the charge read?

Statutory Limits on Issuing Process

John Rubin, UNC School of Government, Feb. 2020

G.S. 15A-301(b1) and (b2)

Charges against school employees

Basic rule: Except as described below, a magistrate may not issue an arrest warrant or other criminal process against a school employee for an alleged offense committed in the discharge of his or her duties.

Exceptions: This policy does not apply to traffic offenses and offenses committed in the presence of a law enforcement officer.

Procedure: Before issuing process, the magistrate must obtain the approval of the DA's office unless one of the above exceptions applies. If the DA's office has declined approval authority, the magistrate must obtain the approval of a magistrate appointed by the chief district court judge before issuing process against a school employee for an alleged misdemeanor committed in the discharge of his or her duties. If the appointed magistrate is unavailable to review the case, the magistrate may proceed as in other cases.

G.S. 14-32.2(g)

Patient abuse causing death or bodily injury (felony)

Basic rule: Criminal process for a violation of G.S. 14-32.2 may be issued only on the request of a District Attorney.

Exceptions: None stated.

Procedure: None indicated.

G.S. 14-19.20

Obscenity offenses (felony/misdemeanor)

Basic rule: Criminal process for a violation of G.S. 14-190.1 or G.S. 14-190.5 may be issued only on the request of a prosecutor.

Exceptions: None stated.

Procedure: None indicated.

G.S. 15A-304(b)

Warrant for arrest

(b) When Issued.--

- (1) Generally.--A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.
- (2) Repealed by [S.L. 2018-40, § 7.1, eff. Oct. 1, 2018](#).
- (3) When Citizen-initiated.--If the finding of probable cause pursuant to subsection (d) of this section is based solely upon an affidavit or oral testimony under oath or affirmation of a person who is not a sworn law enforcement officer, the issuing official shall not issue a warrant for arrest and instead shall issue a criminal summons, unless one of the following circumstances exists:
 - a. There is corroborating testimony of the facts establishing probable cause from a sworn law enforcement officer or at least one disinterested witness.
 - b. The official finds that obtaining investigation of the alleged offense by a law enforcement agency would constitute a substantial burden for the complainant.
 - c. The official finds substantial evidence of one or more of the circumstances listed in subdivision (1) of this subsection.

G.S. 7A-38.5

Mediation of citizen-initiated charges

- (e) Except as provided in this subsection and subsection (f) of this section, each chief district court judge and district attorney shall refer any misdemeanor criminal action in district court that is generated by a citizen-initiated arrest warrant or criminal summons to the local mediation center for resolution, except for (i) any case involving domestic violence; (ii) any case in which the judge or the district attorney determine that mediation would be inappropriate; or (iii) any case being tried in a county in which mediation services are not available. The mediation center shall have 45 days to resolve each case and report back to the court with a resolution. The district attorney shall delay prosecution in order for the mediation to occur. If the case is not resolved through mediation within 45 days of referral, or if any party declines to enter into mediation, the court may proceed with the case as a criminal action. For purposes of this section, the term "citizen-initiated arrest warrant or criminal summons" means a warrant or summons issued pursuant to G.S.15A-303 or G.S.15A-304 by a magistrate or other judicial official based upon information supplied through the oath or affirmation of a private citizen.
- (f) Any prosecutorial district may opt out of the mandatory mediation under subsection (e) of this section if the district attorney files a statement with the chief district court judge declaring that subsection shall not apply within the prosecutorial district.

§ 15A-924. Contents of pleadings; duplicity; alleging and proving previous convictions; failure to charge crime; surplusage.

- (a) A criminal pleading must contain:
- (1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.
 - (2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.
 - (3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.
 - (4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.
 - (5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.
 - (6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.
 - (7) A statement that the State intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise factual statement indicating the factor or factors it intends to use under the authority of that subdivision.

(b) If any count of an indictment or information charges more than one offense, the defendant may by timely filing of a motion require the State to elect and state a single offense alleged in the count upon which the State will proceed to trial. A count may be dismissed for duplicity if the State fails to make timely election.

(c) In trials in superior court, allegations of previous convictions are subject to the provisions of G.S. 15A-928.

(d) In alleging and proving a prior conviction, it is sufficient to state that the defendant was at a certain time and place convicted of the previous offense, without otherwise fully alleging all the elements. A duly certified transcript of the record of a prior conviction is, upon

proof of the identity of the person of the defendant, sufficient evidence of a prior conviction. If the surname of a defendant charged is identical to the surname of a defendant previously convicted and there is identity with respect to one given name, or two initials, or two initials corresponding with the first letters of given names, between the two defendants, and there is no evidence that would indicate the two defendants are not one and the same, the identity of name is prima facie evidence that the two defendants are the same person.

(e) Upon motion of a defendant under G.S. 15A-952(b) the court must dismiss the charges contained in a pleading which fails to charge the defendant with a crime in the manner required by subsection (a), unless the failure is with regard to a matter as to which an amendment is allowable.

(f) Upon motion of a defendant under G.S. 15A-952(b) the court may strike inflammatory or prejudicial surplusage from the pleading. (1973, c. 1286, s. 1; 1975, c. 642, s. 2; 1989, c. 290, s. 3; 2005-145, s. 3.)

STATE OF NORTH CAROLINA

File No. (if applicable)

Scan No. (Official Use Only)

_____ County

In The General Court Of Justice
 District Superior Court Division

NOTE TO AFFIANT: Do not sign this Affidavit until you are before a notary or other public official authorized by law to administer an oath in North Carolina. If this Affidavit is provided in a case already pending in the courts, include the file number and county in which the case is pending above and the name of the defendant below. An affidavit is a statement given under oath that its contents are true and accurate. Any false statement or information contained in this affidavit may subject you to prosecution for the felony of perjury, N.C.G.S. 14-209, or under other statutes that prohibit false statements under oath. False statements or the unauthorized disclosure of information protected by law from disclosure also might subject you to civil liability to any person harmed by those statements. This Affidavit may be disclosed to the public as provided in the North Carolina Public Records Act, N.C.G.S. Chapter 132, and related statutes. You cannot prevent that disclosure by marking statements with "confidential," "privileged," or any similar terms.

STATE VERSUS

Name Of Defendant (if applicable)

Name Of Affiant (type or print)

Agency (if law enforcement officer)

AFFIDAVIT

AFFIDAVIT

The undersigned Affiant, having been duly sworn or affirmed, deposes and states that Affiant is competent to give the testimony below. Affiant makes the following statements of fact from Affiant's personal knowledge, except as to statements specifically identified below as made upon information and belief, which Affiant believes to be true and for which the source of information and the basis for belief are stated.

This is page number 1 of _____ (total number of pages).

NOTE: If additional pages are needed, use form AOC-CR-158A (Affidavit Continuation) for all subsequent pages.

NOTE TO OFFICIAL ADMINISTERING OATH: For a multi-page affidavit, complete the oath/affirmation on the last page. If the Affidavit was transcribed by another person for an Affiant who understands English but cannot read, do not swear the scribe to the Affidavit. Only the Affiant is to be sworn to the Affidavit, but read the Affidavit completely to the Affiant before administering the oath/affirmation. For an Affidavit translated into English from a statement in another language, record the oath/affirmation only on the English version, and swear the translator to the Affidavit on Side Two of the last page.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Name (type or print)

Signature Of Affiant

Notary

Signature

SEAL

Date My Commission Expires

County Where Notarized

Deputy CSC Assistant CSC Clerk Of Superior Court Magistrate
 Superior Court Judge District Court Judge

AOC-CR-158, New 12/17

© 2017 Administrative Office of the Courts

TRANSLATOR'S AFFIDAVIT

Name Of Translator (type or print)

I, the translator named above, having been duly sworn or affirmed, depose and say the following:

I have translated into English the Affidavit on the reverse and all additional pages of this Affidavit from _____,
 (identify original language)

and I hereby certify that the translation is a true, complete, and accurate translation to the best of my knowledge and ability based upon (check one)

- the Affiant's verbal relation to me, for which this Affidavit also is a complete and accurate transcription of the verbal statements as related to me, without material omission or substantive alteration.
- the Affiant's written statement in its original language, which is attached to this Affidavit and incorporated herein by reference.

I further certify that I'm qualified to render such a translation by:

- federal certification by the Administrative Office of the United States Courts (AOUSC) as a court interpreter;
- certification by the North Carolina Administrative Office of the Courts (NCAOC) as a court interpreter;
- ATA certification in the requested language combination; and/or
- _____
 (state other basis for qualification to translate)

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		<i>Date</i>
<i>Date</i>	<i>Name (type or print)</i>	<i>Signature Of Translator</i>
<input type="checkbox"/> <i>Notary</i>	<i>Signature</i>	
SEAL	<i>Date My Commission Expires</i>	<i>County Where Notarized</i>
<input type="checkbox"/> <i>Deputy CSC</i>	<input type="checkbox"/> <i>Assistant CSC</i>	<input type="checkbox"/> <i>Clerk Of Superior Court</i>
<input type="checkbox"/> <i>Superior Court Judge</i>	<input type="checkbox"/> <i>District Court Judge</i>	<input type="checkbox"/> <i>Magistrate</i>

Criminal Process—In Class Materials
Rev'd by John Rubin, Feb. 2020

Pop Quiz

1. What are the 5 types of process/pleadings encountered by magistrates?

2. When can you issue a citation?

3. A magistrate never has to worry about whether an officer completed a citation correctly.

True False

4. You can use the AOC criminal summons form to charge a felony.

True False

5. When deciding whether to issue a summons or a warrant, what should you consider?

6. Officer arrests the defendant, brings the defendant to you, swears out facts supporting probable cause, and asks for a warrant for arrest. If you find probable cause, what should you do?

7. An order for arrest charges a crime?

True False