


Selecting (and Completing) Process

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United States Constitution, Amendment IV


- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

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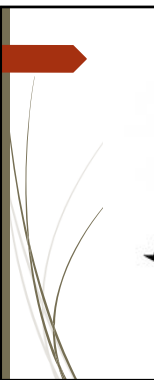
- An arrest is a seizure under the Fourth Amendment and must be reasonable to be constitutional.


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■ Arrest is reasonable if there is a factual basis for believing the person arrested/ to be arrested has committed a crime. The amount of factual information necessary to justify an arrest is called probable cause.


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**YOUR
ROLE**

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**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?

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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)



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- Probable cause to arrest means that at the moment of arrest, 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 committed the offense.
- *Beck v. Ohio*, 379 U.S. 89 (1964)


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Evidence from officers
Including via remote testimony



Evidence from citizens



Hearsay evidence

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Credibility

Can you consider credibility?

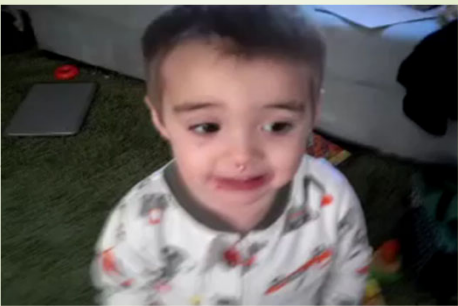
If so, what factors should you consider?

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Credibility Factors

- Basis of Knowledge
 - First hand? Detailed? Consistent?
- Indicators of reliability
 - Officers or others trained to be neutral, victims presumed to be reliable, disinterested parties, history of truthfulness (may consider reasons to doubt)
 - Corroborating evidence or witnesses
 - Be more wary of interested witnesses and anonymous parties

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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

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Defenses

Can you consider
defenses? If so, which
ones?

Can you consider
whether evidence may be
excluded or suppressed?

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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?

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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

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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

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Order for Arrest

The diagram shows a horizontal timeline with two vertical markers. The first marker is labeled 'Initial appearance; defendant violates pretrial release conditions'. The second marker is labeled 'First appearance'. A double-headed arrow between the markers is labeled 'Magistrate can issue OFA'. A single-headed arrow pointing right from the second marker is labeled 'Leave it to the judge!'.


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Selecting Process: Warrant vs. Summons

- Statutory preference
- Statutory factors
- Felonies
- Citizens


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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."

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Statutory Factors

- "Circumstances to be considered . . . include
 - 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."

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G.S. 15A-303
Official
Commentary

- "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"

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Citizen-Initiated Charges (G.S. 15A-304)

- If probable cause is based solely on an affidavit or oral testimony of a person who is not a law enforcement officer, the issuing official shall issue a summons instead of a warrant unless:
 - 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 favoring a warrant.

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III. Creating Process Correctly

WARRANT FOR ARREST

STATE OF NORTH CAROLINA

In The General Court Of Justice
County

THE STATE OF NORTH CAROLINA VS.

To any officer with authority and jurisdiction to execute a warrant for arrest for the offense charged below
I the undersigned, find 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, willfully and knowingly did

NAME

DATE

DATE OF BIRTH

SEX

ARRESTED BY (Name, Title & No.)

OFFENSE (Name & No.)

ARRESTED AT (Location)

ARRESTED ON (Date & Time)

DATE OF ARREST & CHECK DATE BY (Arresting Officer's Signature)

COMPLAINANT (Name, Address & Telephone)

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

(4)


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.

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Charging Language


NCAWARE



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Charging Language

Arrest Warrant & Indictment Forms



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Charging Language

North Carolina Crimes

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Charging Language

§ 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 or passwords, or any disguise of the person or voice, or any disguise whatsoever for the advancement of its object, and shall take or administer any extrajudicial oath or other secret, solemn pledge, or any like secret means; or if any two or more persons, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or circumventing the laws, shall secretly assemble, combine or agree together, and the more effectually to accomplish such purposes, or any of them, shall use any certain signs, or grips, or passwords, or any disguise of the person or voice, or other

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Charging Language

School of Government Hotline???


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More Requirements for Factual Statement

- 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 abbreviate.


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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

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Loose Ends re Creating Process

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

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