

## Advanced Criminal Procedure for Magistrates

November 12-13, 2019

UNC School of Government, Chapel Hill

**Room 2402**

### Tuesday, November 12

- |                             |   |
|-----------------------------|---|
| 8:30 to 10:00 a.m.          | <b>Determining Probable Cause</b> (90 min)<br>Jeff Welty, School of Government  |
| 10:00 to 10:15 a.m.         | <i>Break</i>  |
| 10:15 a.m. to<br>12:00 p.m. | <b>Issuing Process</b> (105 min)<br>John Rubin, School of Government  |
| 12:00 to 12:45 p.m.         | <i>Lunch (SOG Dining Room)</i>  |
| 12:45 to 2:15 p.m.          | <b>Probation, Post-Release Supervision, and Extradition</b> (90 min)<br>Jamie Markham, School of Government   |
| 2:15 to 2:30 p.m.           | <i>Break</i>  |
| 2:30 to 3:45 p.m.           | <b>Ethical Issues Related to Relationships with<br/>Law Enforcement Officers</b> (75 min, <i>ethics</i> )<br>Dona Lewandowski, School of Government |
| 3:45 to 4:00 p.m.           | <i>Break</i>  |
| 4:00 to 5:00 p.m.           | <b>Search Warrants: Advanced Issues</b> (60 min)<br>Jeff Welty, School of Government  |
| 5:00 p.m.                   | <i>Adjourn</i>  |
| 5:30 to 7:00 p.m.           | <b>Group Dinner</b> ( <i>optional</i> )   |

### **Wednesday, November 13**

8:30 to 10:00 a.m.	<b>Setting Conditions of Release</b> (90 min) Jeff Welty, School of Government
10:00 to 10:15 a.m.	<i>Break</i>
10:15 a.m. to 12:15 p.m.	<b>Initial Appearances in Impaired Driving Cases</b> (120 min) Shea Denning, School of Government Takeeta Tyson, NC Administrative Office of the Courts
12:15 to 1:15 p.m.	<i>Lunch (SOG Dining Room)</i>
1:15 to 2:15 p.m.	<b>Procedural Justice</b> (60 min) Jeff Welty, School of Government
2:15 to 2:30 p.m.	<i>Break</i>
2:30 to 3:30 p.m.	<b>Ethics and Professionalism in Criminal Cases</b> (60 min, <i>ethics</i> ) Jim Drennan, School of Government
3:30 p.m.	<i>Closing and Adjourn</i>

<b><u>Credit Hours:</u></b>	
<b>General:</b>	<b>10.25</b>
<b>Ethics:</b>	<b>2.25</b>
<b>TOTAL:</b>	<b>12.5</b>

*The AOC will apply Magistrate CE accordingly.  
CLE pending approval.*

## **SOG FACULTY BIOGRAPHIES**

**Shea Riggsbee Denning**

**[denning@soq.unc.edu](mailto:denning@soq.unc.edu) / (919) 843-5120**

Shea Riggsbee Denning is not only a UNC School of Government faculty member; she is a double Tar Heel. After earning an AB with distinction in journalism and mass communication from the University in 1994, and a JD with high honors from the UNC School of Law in 1997, she began her legal career by clerking for the Honorable Malcolm J. Howard, US District Judge for the Eastern District of North Carolina, in Greenville. She then practiced law in Atlanta with the firm of King & Spalding before returning to North Carolina to work as a research attorney and then as an assistant federal defender for the Eastern District of North Carolina. She joined the SOG faculty in 2003. Denning's scholarship focuses on motor vehicle law and criminal law and procedure. She teaches and advises judges, magistrates, prosecutors, defense attorneys, and law enforcement officers. She has written extensively about North Carolina's motor vehicle laws, including a book on the law of impaired driving. She is a regular contributor to the North Carolina Criminal Law blog and a co-coauthor of *Pulled Over: The Law of Traffic Stops and Offenses in North Carolina*.

**Areas of Interest:** Courts; criminal law and procedure; driver's license revocations; impaired driving law; motor vehicle law; prosecutor training

**Jim Drennan**

**[drennan@soq.unc.edu](mailto:drennan@soq.unc.edu) / (919) 966-4160**

Jim Drennan joined the School of Government (then the Institute of Government) in 1974. He teaches and advises on court administration issues, judicial ethics and fairness, criminal sentencing, and judicial leadership. While on leave from 1993 through 1995, he served as director of the North Carolina Administrative Office of the Courts. Drennan earned a BA from Furman University and a JD from Duke University, where he served on the editorial board of the *Duke Law Journal*.

**Areas of Interest:** Courts; judicial education; leadership development

**Dona Lewandowski**

**[lewandowski@soq.unc.edu](mailto:lewandowski@soq.unc.edu) / (919) 966-7288**

Dona Lewandowski joined the faculty of the Institute of Government in 1985 and spent the next five years writing, teaching, and consulting with district court judges in the area of family law. In 1990, following the birth of her son, she left the Institute to devote full time to her family. She rejoined the School of Government in 2006. Lewandowski earned a BS and an MA from Middle Tennessee State University and a JD with honors, Order of the Coif, from the University of North Carolina at Chapel Hill. After law school, she worked as a research assistant to Chief Judge R.A. Hedrick of the NC Court of Appeals.

**Areas of Interest:** Magistrates' issues (non-criminal law), including small claims law and procedure; ethics; marriage; magistrate personnel matters, including appointment and removal; landlord-tenant law

**Jamie Markham****[markham@sog.unc.edu](mailto:markham@sog.unc.edu) / (919) 843-3914**

Jamie Markham joined the School of Government faculty in 2007. His area of interest is criminal law and procedure, with a focus on the law of sentencing, corrections, and the conditions of confinement. He was named Albert and Gladys Coates Distinguished Term Associate Professor for 2015–2017. Markham earned a bachelor's degree with honors from Harvard College and a law degree with high honors, Order of the Coif, from Duke University, where he was editor-in-chief of the *Duke Law Journal*. He is a member of the North Carolina Bar. Prior to law school, Markham served five years in the United States Air Force as an intelligence officer and foreign area officer. He was also a travel writer for Let's Go Inc., contributing to the Russia and Ukraine chapters of *Let's Go: Eastern Europe*.

**Areas of Interest:** Community corrections; criminal law and procedure; jails; probation and parole; sentencing law; sex offender registration

**John Rubin****[rubin@sog.unc.edu](mailto:rubin@sog.unc.edu) / (919) 962-2498**

John Rubin joined the School of Government in 1991. He previously practiced law for nine years in Washington, DC and Los Angeles. At the School, he specializes in criminal law and indigent defense education. He has written several articles and books on criminal law; teaches and consults with judges, prosecutors, public defenders, and other officials in the criminal justice system; and manages the School's indigent defense education program. He is a frequent consultant to the Office of Indigent Defense Services, which is responsible for overseeing and enhancing legal representation for indigent defendants and others entitled to counsel under North Carolina law. In 2008, he was awarded a two-year distinguished professorship for faculty excellence. In 2012, he was named Albert Coates Professor of Public Law and Government. Rubin earned a BA from the University of California at Berkeley and a JD from UNC-Chapel Hill.

**Areas of Interest:** Bail and pretrial release; collateral consequences (criminal convictions); criminal law and procedure; domestic violence; evidence; expunction; indigent defense education; public defender training; search and seizure; sentencing law; sex offender registration; subpoenas

**Jeff Welty****[welty@sog.unc.edu](mailto:welty@sog.unc.edu) / (919) 843-8474**

Jeff Welty joined the School of Government in 2008 and works in the area of criminal law and procedure. His research interests include search and seizure, digital evidence, criminal pleadings, capital punishment, and firearms law. He serves as the director of the North Carolina Judicial College, which provides training and education to the state's judicial officials.

Welty founded and contributes regularly to the *North Carolina Criminal Law Blog*, an award-winning resource visited by approximately 100,000 users each month. He has written for, appeared on, or been quoted in the *New York Times*, the *Washington Post*, *Newsweek*, National Public Radio, Bloomberg News, *Lawyers' Weekly*, the *Raleigh News and Observer*, and many other media outlets. His books about capital punishment and digital evidence are widely-used legal references.

Welty completed a federal judicial clerkship and worked in private practice before coming to the School. Welty earned a JD at Duke University School of Law, where he served as executive editor of the *Duke Law Journal* and graduated in 1999 with highest honors.

**Areas of Interest:** Bail and pretrial release; capital punishment; criminal law and procedure; firearm law; judicial education; magistrates; police attorneys; prosecutor training; search and seizure law

# **Issuing Process: Questions on Issuing, Deferring, and Denying Process**

John Rubin

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November 2019

### **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.

## **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.

### **Policy Question No. 1: Felonies (as a class)**

A local resident, Bob Smith, comes to you and says that yesterday he was approached by Jimmy Jones, who had done some work at Bob's house. Bob says that Jimmy was acting a little odd and demanded money. When Bob said no, Jimmy hit him in the face, knocked him to the ground, and took his wallet. Bob's face is bruised and his back pocket torn.

### **Questions**

1. Does your office have a policy on issuing felony process?
2. Does your policy defer issuance of process or deny it?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy? For example, if you require law enforcement investigation before issuing process for a felony, do you contact law enforcement or is that the complaining witness's responsibility? If the latter, do you do any follow-up with law enforcement or the complaining witness? After law enforcement investigates, who requests process from you?
6. Please write out the policy.

## **Policy Question No. 2: Law Enforcement Officers (as a class)**

Ray Phillips comes to you and says that yesterday he was assaulted by city police officer Perkins. Ray and other students were outside the administration building of a local college, protesting the college's position on monuments and building names. Ray and other students were arrested and handcuffed. After being cuffed, Ray said to Officer Perkins, "This is bulls—t." Ray says that Officer Perkins punched him twice in the stomach and shoved him into the police car, banging Ray's head and raising a visible welt.

### **Questions**

1. Does your office have a policy on issuing process against law enforcement officers?
2. Does your policy defer issuance of process, deny it, or have some other effect (such as authorizing a summons but not a warrant)?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

### **Policy Issue No. 3: Drinking (all groups)**

Mary Watts is before you, alleging that her boyfriend, Jack Jones, hit her several times earlier in the day, including in the face. You see bruising. After Jack left, she came to your office. She says she did not call the police because last time they arrested both Jack and her. You determine that Jack has a criminal record of assaulting women, including Mary. You can tell she's had something to drink. She freely admits that she has had a couple of glasses of wine, the second one to calm her nerves after Jack hit her.

### **Questions**

1. Does your office have a policy on issuing process if the complainant has had something to drink?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

**Policy Issue No. 4: Delay (Table No. 1)**

John Hunter comes to you and says that one of his son's friends, Rob Wilson, was over at the house and stole some baseball cards from John's baseball card collection. The value of the stolen cards was about \$200. John confronted the friend about it, who admitted that he took them and sold them. The friend was supposed to pay John back but never did. The theft occurred about six months ago, when the friend was 18, and John is still mad about it.

**Questions**

1. Does your office have a policy on issuing process when a citizen witness has delayed seeking charges?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

**Policy Issue No. 5: Dropping Process (Table No. 2)**

Mary Watts is before you, again, alleging that her boyfriend, Jack Jones, hit her several times earlier in the day, including in the face. You can see bruising. After Jack left, she came to your office. Mary is stone sober, but you believe she dropped the charges against Jack three previous times.

**Questions**

1. Does your office have a policy on issuing process if the complainant has previously dropped process? Does your policy differ depending on the type of the offense?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

**Policy Issue No. 6: Civil (Table No. 3)**

Ben Stone comes to you and says that he bought a \$2,000 used car on ebay and paid the seller half the selling price, but the seller never actually had a car and never delivered a car. Stone has sued the seller for return of his money. Stone has learned that the seller has done this before, taking money on ebay without actually having the goods and without delivering the goods. Assume that law enforcement verifies Stone's allegations. Stone wants process against the seller for obtaining money by false pretenses.

**Questions**

1. Does your office have a policy on issuing process for matters that give rise to civil liability?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

**Policy Issue No. 7: Cross Warrants (Table No. 4)**

Jack Jones is before you alleging that his girlfriend, Mary Watts, hit him on the legs with a baseball bat. He shows you large purple bruises where he says she hit him. Jack just met his pretrial release conditions on a warrant against him for assaulting Mary. Jack's mother, who bailed him out, is with him. She says she was present and corroborates Jack's version.

**Questions**

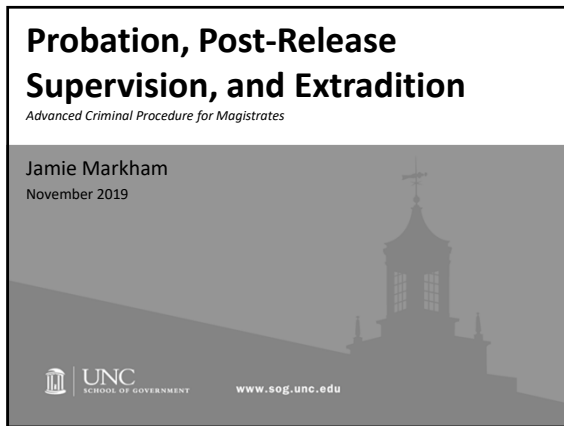
1. Does your office have a policy on issuing cross-process in domestic violence cases?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

**Policy Issue No. 8: Unauthorized Use of a Motor Conveyance (Table No. 5)**

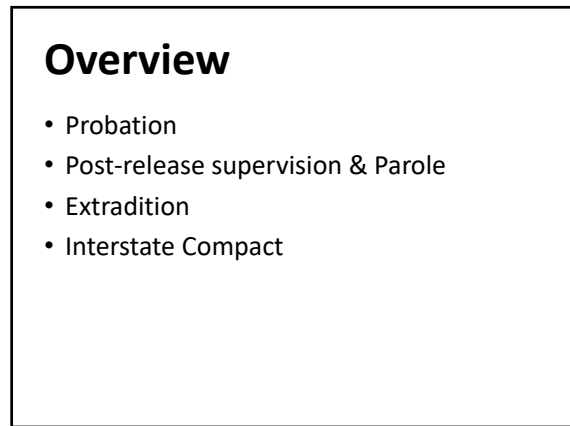
Sharon Bryson comes to you at noon and says she loaned her car to Mike Wright yesterday and told him to get it back to her by 9 am today. He hasn't returned it and didn't answer his phone when she called him. Sharon wants you to issue process for unauthorized use of a motor conveyance.

**Questions**

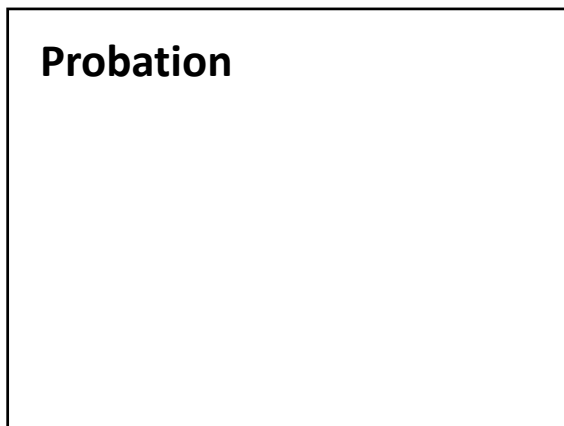
1. Does your office have a policy on issuing process for unauthorized use in the circumstances described above? Are there other offenses when you would delay issuing process to see whether the matter would be resolved?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.



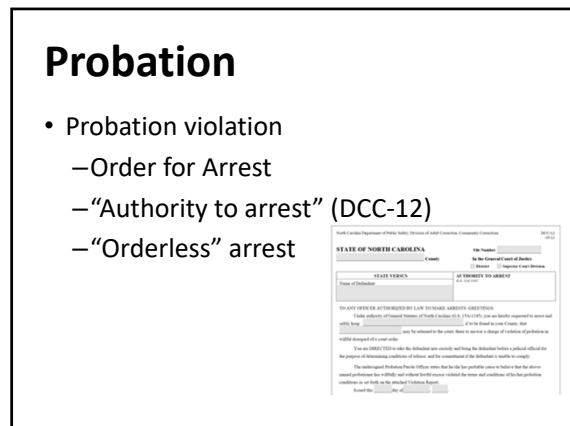
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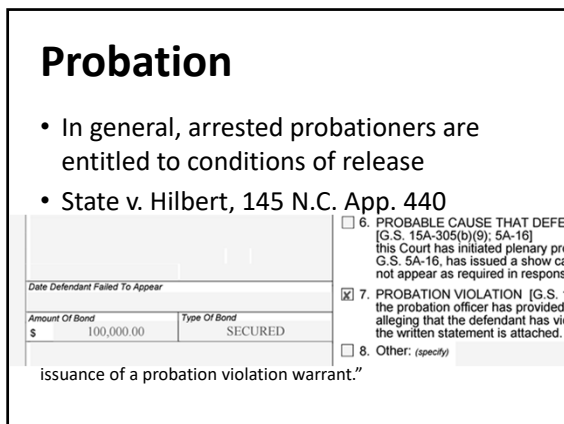
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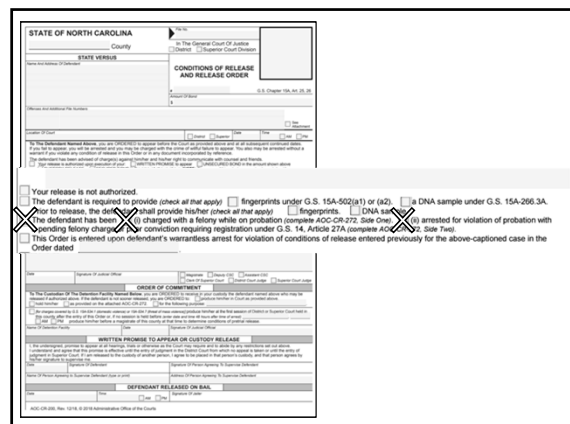
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4



5



6

**STATE OF NORTH CAROLINA** **AOC-CR-272** **Side One**

County \_\_\_\_\_

File No. \_\_\_\_\_

In The General Court Of Justice  
☐ District ☐ Superior Court Division

**STATE VERSUS**

Name Of Defendant \_\_\_\_\_

**DETENTION OF PROBATIONER  
ARRESTED FOR FELONY**

G.S. 15A-534(d2)

**NOTE:** Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order.

**FINDINGS AND DETENTION ORDER**

The undersigned, having found on the attached AOC-CR-200, incorporated herein by reference, that the defendant has been charged with a felony offense while on probation for a prior offense, hereby finds in addition that (check only one):

☐ 1. the defendant poses a danger to the public, and therefore a secured bond or electronic house arrest with secured bond is required if release is otherwise authorized.

☐ 2. the defendant does not pose a danger to the public, and therefore conditions of release are set on the attached AOC-CR-200 as otherwise provided in G.S. Chapter 15A, Article 26.

☐ 3. there is insufficient information to determine whether the defendant poses a danger to the public, and therefore makes the following additional findings and orders below. (NOTE: Nos. 3.a. and 3.b. must be completed when making this finding.)

a. The undersigned finds the following basis for the decision that additional information is needed to determine whether the defendant poses a danger to the public: \_\_\_\_\_

b. The undersigned further finds that the following additional information is necessary to make that determination: \_\_\_\_\_

c. The custodian of the detention facility named on the attached AOC-CR-200 is ORDERED to detain the defendant pursuant to G.S. 15A-534(d2)(3). The custodian is further ORDERED to bring the defendant before a judge for first appearance at the location, date and time specified on the attached AOC-CR-200, but if the information identified in No. 3.b. becomes available before that time, the custodian is ORDERED to bring the defendant immediately before any judicial official to set conditions of release.

Date \_\_\_\_\_ Signature Of Judicial Official \_\_\_\_\_

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

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## Probation

- Defendant charged with felony while on probation for prior offense
- Magistrate must determine whether defendant is "danger to the public" before releasing
  - If not dangerous, set conditions as usual
  - If dangerous: set secured bond or bond + EHA
  - If you have insufficient information on dangerousness . . .

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## Probation

- If you have insufficient information about dangerousness . . .
  - Retain the defendant in custody
  - Record the basis for your decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information
  - Set a first appearance before a judge within 96 hours of the time of arrest
  - If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release

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## Probation

- If you have insufficient information about dangerousness . . .

- ☐ 3. there is insufficient information to determine whether the defendant poses a danger to the public, and therefore makes the following additional findings and orders below. (NOTE: Nos. 3.a. and 3.b. must be completed when making this finding.)
- a. The undersigned finds the following basis for the decision that additional information is needed to determine whether the defendant poses a danger to the public: \_\_\_\_\_
- b. The undersigned further finds that the following additional information is necessary to make that determination: \_\_\_\_\_
- c. The custodian of the detention facility named on the attached AOC-CR-200 is ORDERED to detain the defendant pursuant to G.S. 15A-534(d2)(3). The custodian is further ORDERED to bring the defendant before a judge for first appearance at the location, date and time specified on the attached AOC-CR-200, but if the information identified in No. 3.b. becomes available before that time, the custodian is ORDERED to bring the defendant immediately before any judicial official to set conditions of release.

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**STATE OF NORTH CAROLINA** **AOC-CR-272** **Side Two**

County \_\_\_\_\_

File No. \_\_\_\_\_

In The General Court Of Justice  
☐ District ☐ Superior Court Division

**STATE VERSUS**

Name Of Defendant \_\_\_\_\_

**DETENTION OF DEFENDANT  
ARRESTED FOR PROBATION VIOLATION  
WITH PENDING FELONY  
OR PRIOR SEX OFFENSE**

G.S. 15A-1345(b1)

**NOTE:** Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order.

**FINDINGS AND DETENTION ORDER**

The undersigned, having found on the attached AOC-CR-200, incorporated herein by reference, that the defendant has been arrested for a violation of probation with a pending felony charge or a prior conviction requiring registration under G.S. 14, Article 27A, hereby finds in addition that (check only one):

☐ 1. the defendant poses a danger to the public, and therefore release is denied pending the defendant's probation revocation hearing as ordered on the attached AOC-CR-200 and pursuant to G.S. 15A-1345(b1)(1).

☐ 2. the defendant does not pose a danger to the public, and therefore conditions of release are set on the attached AOC-CR-200 as otherwise provided in G.S. Chapter 15A, Article 26.

☐ 3. there is insufficient information to determine whether the defendant poses a danger to the public, and therefore enters the following Detention Order. (NOTE: A date and time for production of the defendant must be set in No. 3.b. when making this finding.)

a. The undersigned ORDERS that the custodian of the detention facility named on the attached AOC-CR-200 detain the defendant pursuant to G.S. 15A-1345(b1)(3), in order for the court to obtain sufficient information to determine whether the defendant poses a danger to the public.

b. It is further ORDERED that, if conditions of release have not been set based upon the receipt of additional information by (date) at \_\_\_\_\_ am \_\_\_\_\_ pm (no later than 7 days from arrest), the custodian shall bring the defendant immediately before any judicial official at that time to set conditions of release.

Date \_\_\_\_\_ Signature Of Judicial Official \_\_\_\_\_

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

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## Probation

- Arrested for a probation violation and:
  - Has pending felony charges
  - Has ever been convicted of a crime that requires sex offender registration
- For these probationers, magistrate must first assess "danger to public"
  - If not dangerous, set conditions as usual
  - If dangerous, deny release pending violation hearing
  - If insufficient information, retain defendant in custody for up to seven days to obtain sufficient information

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FINDINGS AND DETENTION ORDER	
The undersigned, having found on the attached AOC-CR-200, incorporated herein by reference, that the defendant has been arrested for a violation of probation with a pending felony charge or a prior conviction requiring registration under G.S. 14, Article 27A, hereby finds in addition that (check only one)	
<input type="checkbox"/> 1.	the defendant poses a danger to the public, and therefore release is denied pending the defendant's probation revocation hearing as ordered on the attached AOC-CR-200 and pursuant to G.S. 15A-1345(b)(1).
<input type="checkbox"/> 2.	the defendant does not pose a danger to the public, and therefore conditions of release are set on the attached AOC-CR-200 as otherwise provided in G.S. Chapter 15A, Article 26.
<input type="checkbox"/> 3.	there is insufficient information to determine whether the defendant poses a danger to the public, and therefore enters the following Detention Order. (NOTE: A date and time for production of the defendant must be set in No. 3.b. when making this finding.)
a. The undersigned ORDERS that the custodian of the detention facility named on the attached AOC-CR-200 detain the defendant pursuant to G.S. 15A-1345(b)(3), in order for the court to obtain sufficient information to determine whether the defendant poses a danger to the public.	
b. It is further ORDERED that, if conditions of release have not been set based upon the receipt of additional information by (date) at _____ am _____ pm (no later than 7 days from arrest), the custodian shall bring the defendant immediately before any judicial official at that time to set conditions of release.	
Date	Signature Of Judicial Official
<input type="checkbox"/> Magistrate	<input type="checkbox"/> Deputy CSC
<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court
<input type="checkbox"/> District Court Judge	<input type="checkbox"/> Superior Court Judge
RELEASE FROM DETENTION ORDER	
NOTE: This order is required only if the defendant was detained pursuant to No. 3. above.	
The undersigned judicial official ORDERS that the defendant be released from the Detention Order entered above, because (check one)	
<input type="checkbox"/> 1.	upon receipt and consideration of additional information,
<input type="checkbox"/> 2.	upon review of the defendant's eligibility for release after detention without bail pursuant to G.S. 15A-1345(b-1) as specified in No. 3.b. above,
the undersigned finds that the defendant <input type="checkbox"/> does <input type="checkbox"/> does not pose a danger to the public and therefore sets or denies conditions of release accordingly on the attached AOC-CR-200.	

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## Probation

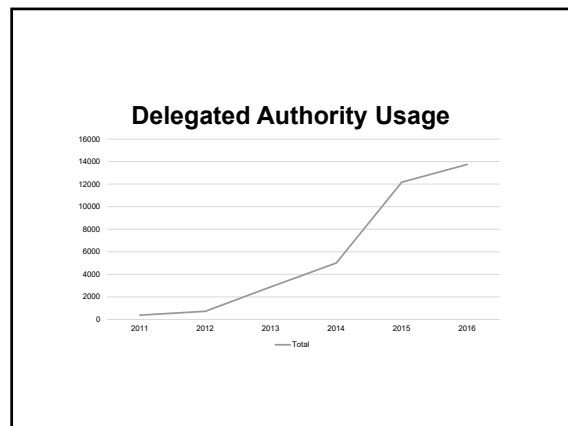
- Pending felony charges: statewide search
- Sex offenders:
  - Search registry
  - Check criminal history

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## “Quick Dips”

- Probation officers can jail certain probationers for violations without a court hearing
  - 2 or 3 days of confinement
  - No more than 6 days per month
  - Used in no more than three separate calendar months of a person's probation
  - Not permitted in DWI cases

15

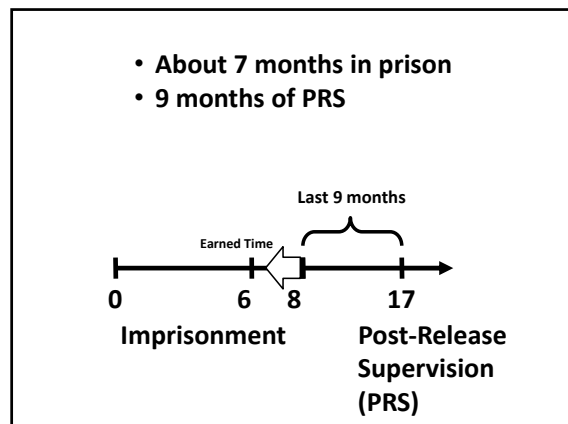


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## Post-Release Supervision

Offender Population Nov 12, 2019	
Prison Inmates	35,551
Probationers	80,191
Post Release/Parole	12,343
<b>Total</b>	<b>128,085</b>
Male Inmates	32,681
Female Inmates	2,870

17



18

## Post-Release Supervision

- Class F-I felons: 9 months
- Class B1-E felons: 12 months
- Sex offenders: 5 years

19

## Post-Release Supervision

- G.S. 15A-1368.6
  - (b1) Notwithstanding subsection (b) of this section, if the releasee has been convicted of an offense that requires registration under Article 27A of Chapter 14 of the General Statutes and is arrested for a violation in accordance with this section, the releasee shall be detained without bond until the preliminary hearing is conducted.

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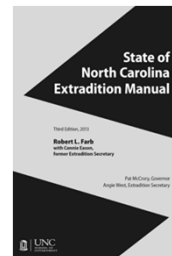
## Parolees

- No release for parole violators

27 March 1975	
Subject:	Parole; Parole Commission; Bond
Requested by:	Mr. James E. Cline Parole Commissioner
Question:	May a parolee who is in custody by virtue of a warrant issued by the Parole Commission pursuant to G.S. 148-61.1 be released on bond?
Conclusion:	No.

21

## Extradition



22

## Fugitives

- Charged with a crime and fled from justice
- Escaped from incarceration
- Violated probation/parole by leaving the state

23

## Extradition

- Two possible scenarios:
  - Fugitive from another state found in NC (NC is “asylum state”)
  - Fugitive from NC found in another state (NC is “demanding state”)

24

## Fugitive Found in NC

Officer goes to magistrate, obtains arrest warrant for fugitive

Officer decides to arrest without a warrant

25

## Fugitive Found in NC

Officer goes to magistrate, obtains arrest warrant for fugitive

AOC-CR-910M

- Magistrate determines proper grounds for issuance
- **Based on reliable information that person has been charged in the other state**
- DO NOT evaluate probable cause for the underlying offense
- Complete fugitive warrant and fugitive affidavit

26

- DCI message
- Email
- Phone call
- Copy of charging document

27

28

## Fugitive Found in NC

Officer goes to magistrate, obtains arrest warrant for fugitive

Officer decides to arrest without a warrant

29

## Fugitive Found in NC

- Permissible only when crime punishable by death or more than one year in prison
- **Determine whether there is reliable information that person has been charged in the other state**
- DO NOT evaluate probable cause for the underlying offense
- Complete magistrate's order for fugitive and fugitive affidavit

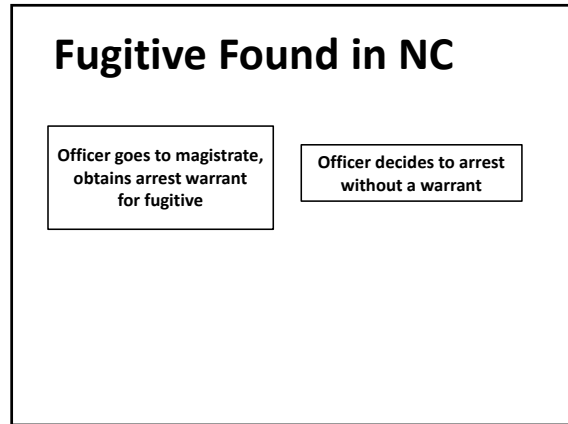
Officer decides to arrest without a warrant

AOC-CR-909M

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STATE OF NORTH CAROLINA	
County	In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
STATE VERDICT	FUGITIVE AFFIDAVIT
County & District Court	G.S. 15A-723, 15A-724
County & District Court	State & District Court
County & District Court	State & District Court
I, the undersigned, state that this Affidavit is based upon: <input type="checkbox"/> 1. criminal process issued by a judicial official of the demanding state, a copy of which is attached. <input type="checkbox"/> 2. the affidavit of the contact person named above, a copy of which is attached. <input type="checkbox"/> 3. a NCDC 602 message from the contact person named above, a copy of which is attached. <input type="checkbox"/> 4. a telephone message from the contact person named above. <input type="checkbox"/> 5. Other:	
On or about the date of offense shown and in the demanding state and county named above the crime named above was committed and the defendant named above is now in the State of North Carolina and has: <input type="checkbox"/> 1. been charged with the commission of that crime and has fled from justice. <input type="checkbox"/> 2. been convicted of that crime and has escaped from confinement. <input type="checkbox"/> 3. broken the terms of bail, probation or parole.	
SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature of Officer
Signature	Notary Public/Judge or Clerk
<input type="checkbox"/> Magistrate <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge	Notary Public/Sign

31

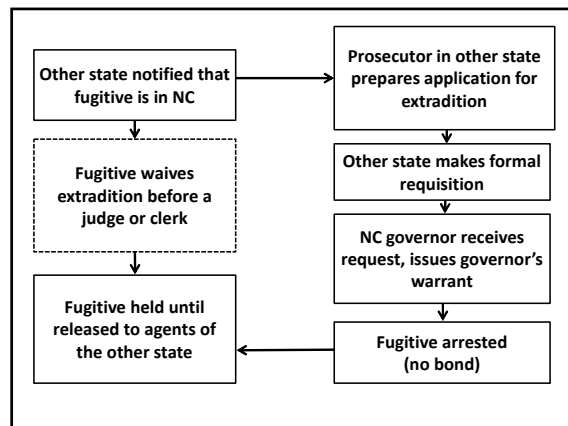


32

## Appearance Procedure

- Set release conditions
  - Bail allowed except for crimes punishable by death or life in prison
  - Must be "by bond, with sufficient sureties"
  - Check and follow local policy
- Order district court appearance
  - A magistrate cannot accept a waiver of extradition

33

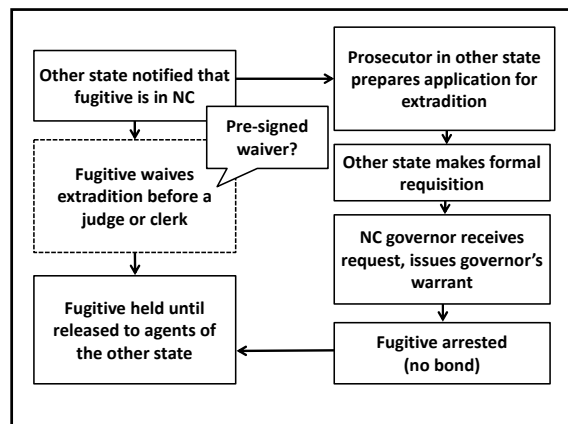


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## Arrest on a governor's warrant

- Inform of rights
- No bond authorized
- Order district court appearance
  - Habeas corpus hearing possible

35



36

## Fugitive Found in NC Before Being Charged in Other State

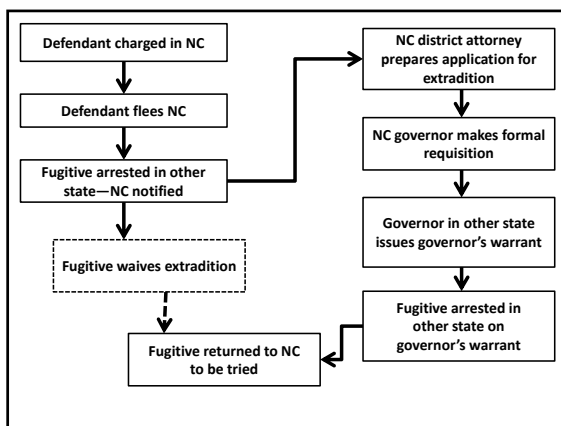
- NC officer may arrest, with warrant
- Magistrate should use regular NC arrest warrant (not fugitive warrant)
- Magistrate *does* evaluate probable cause for the out-of-state crime

37

## Extradition

- Two possible scenarios:
  - Fugitive from another state found in NC (NC is “asylum state”)
  - Fugitive from NC found in another state (NC is “demanding state”)

38



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## NC Fugitive in Other State

- Magistrate’s role limited
- May be asked to issue new warrant and affidavit
- Certify documents with Form GOV-1-A

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## Interstate Compact for Adult Offender Supervision

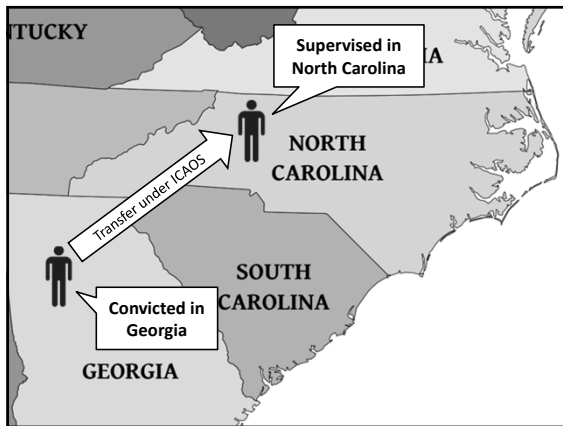


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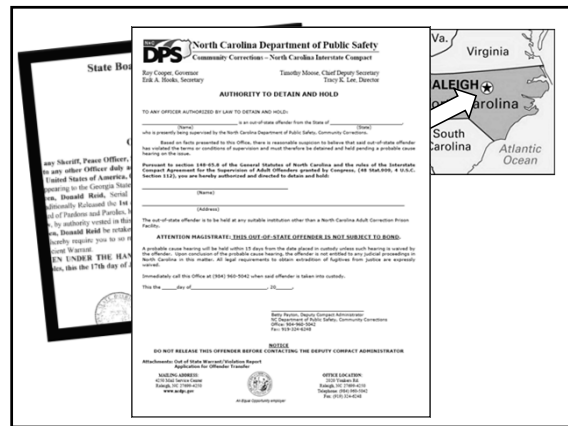
## Interstate Compact

- Allows offenders to transfer supervision
- Must abide by both “sending state” and “receiving state” rules
- Sending state retains legal jurisdiction
- Offenders must waive extradition in advance

42



43



44

## Interstate Compact

- When a Compact offender is before you:
  - Inform of alleged violation and rights
  - Under ICAOS rules and state law, NO RELEASE
    - G.S. 148-65.8
  - Commit the offender to the jail
- NC Compact Administrator will schedule a probable cause hearing
  - Should occur within 15 days

45

## Interstate Compact

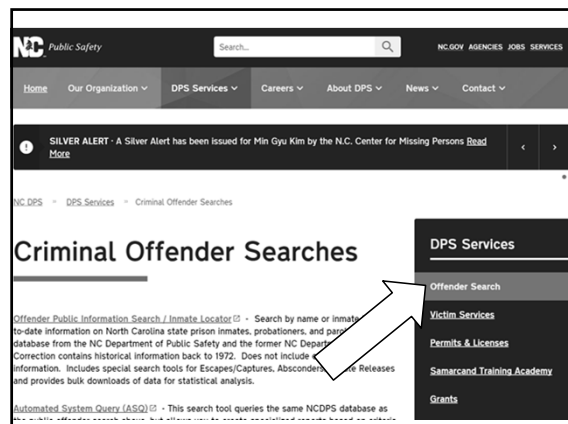
- Distinguishing Compact offenders from fugitives

46

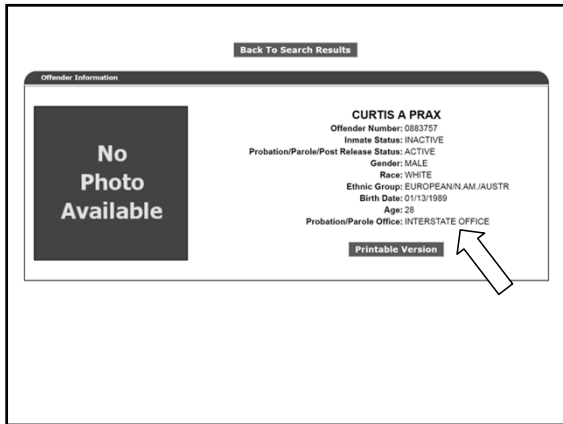
## Interstate Compact

- Distinguishing Compact offenders from fugitives
  - Authority to Detain and Hold form
  - Arrested by NC probation officer
- If unsure:
  - Contact local probation office
  - Contact Compact Administrator in Raleigh
  - Search online

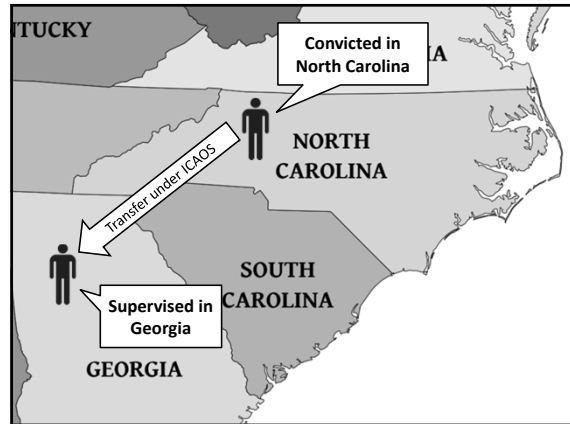
47



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## NORTH CAROLINA INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION GUIDE

Tracy K. Lee, Director of Division Of Community Corrections - (919) 324-1112 or [tracy.lee@ncdps.gov](mailto:tracy.lee@ncdps.gov)  
Betty Payton, Deputy Compact Administrator - (919) 324-1135 or [betty.payton@ncdps.gov](mailto:betty.payton@ncdps.gov)

***This guide is intended to assist jail administrators and magistrates in the management of interstate compact offenders detained and held in North Carolina for another state.***

The Interstate Commission for Adult Offender Supervision (ICAOS) rules were created to promote public safety and facilitate the movement of 250,000 offenders nationally. ICAOS rules are federal law and do not impact the judicial sentencing of an offender, only how the offender is supervised over state lines and returned to the sending state.

Compacts such as ICAOS have the authority of federal law and supersede any state law to the contrary. The ICAOS allows for enforcement of compact member states for noncompliance by: imposing fines and fees, remedial training and technical assistance, legal enforcement, and suspension or termination of membership in the compact. All fifty states, the District of Columbia, Puerto Rico and the Virgin Islands are members of this interstate agreement. NC became a member state in October 2002, N.C.G.S. 148-65.

### **Division of Community Corrections staff will assist local authorities with the identification of any offender in NC from another state.**

Below are frequently asked questions by jail administrators and magistrates regarding detaining and retaking procedures of an interstate compact offender and the supporting federal rule.

**If an out of state compact offender has pending charges in NC, should we also process the out of state violation warrant and detain for the other state?**

Yes. The offender cannot be returned to the other state unless the District Attorney in both states agree to release the offender to the other state prior to disposing of the pending NC charges.

#### ***Retaking by the sending state (Rule 5.101)***

(b) If the offender has been charged with a subsequent criminal offense in the receiving state, the offender shall not be retaken without consent of the receiving state, or until criminal charges have been dismissed or the offender has been released to supervision from the subsequent offense.

**What happens if the offender can make bond on the NC pending charges, but is being detained for the sending state?**

The offender will have to remain in the jail unless the other state has BOTH permission from the local District Attorney AND agrees to retake prior to the NC charges being disposed.

**How long does NC have to hold the interstate compact offender after the probable cause hearing?**

It depends on if the offender has pending charges in NC or not. If there are no pending charges, the other state must retake the offender within 30 calendar days. If the offender has pending charges the other state can not retake without prior permission from the DA, or until the pending charges have been dismissed or the offender has been released to supervision.

\*\*\*If the offender HAS NOT been picked up by the other state within the 30 days, **DO NOT RELEASE THE OFFENDER.** Call the Interstate Compact office for assistance (919-716-3100, option 3) and we will immediately contact the other state's compact office to determine the problem and the pick up date and get back with the jail as soon as possible.

#### ***Time allowed for retaking (Rule 5.105)***

The sending state has 30 calendar days to retake the offender following the probable cause hearing or once the offender is being held solely on the sending state's warrant.

**Why can't the offender be given a bond on the interstate compact violation warrant?**

NC's role is to assist in detaining compact offenders, conduct a probable cause hearing when requested and notify the other state when the offender is in custody. This is similar to our NC parole process in that, NC parolees when arrested are not entitled to bond or release conditions either. The offender will be allowed bail when returned to the sending state.

#### ***Denial of Bail (Rule 5.111)***

An interstate compact offender subject to retaking, shall not be allowed bail or any release conditions by any authority in a state other than the original state.

**Who is responsible for any costs incurred while the interstate compact offender is being detained in the local jail?**

NC is responsible for the cost of detaining out of state compact offenders until the other state retakes the offender into their custody.

#### ***Cost of Incarceration in North Carolina (Rule 5.106)***

A receiving state shall be responsible for the cost of detaining the offender in the receiving state pending the offender's retaking by the sending state.

**Can an interstate compact offender being held in a NC jail for alleged violations of probation on another state's case, admit the violations before a NC judge?**

**NEVER!** Interstate compact offenders subject to retaking should never be taken before a NC judge. These offenders are being supervised by the State of NC; however, the original conviction occurred in another state and ONLY that state's Court has jurisdiction in a revocation proceeding. NC's only two obligations in this case are to (1) detain the offender and (2) conduct a probable cause hearing if requested by the state of conviction. Upon completion of the PC Hearing (conducted by DCC) and having sent the results of said hearing to the state of conviction, the offender will either be released to supervision or remain in custody until the sending state picks up the offender.

## NORTH CAROLINA INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION GUIDE

Tracy K. Lee, Director of Division Of Community Corrections - (919) 324-1112 or [tracy.lee@ncdps.gov](mailto:tracy.lee@ncdps.gov)  
Betty Payton, Deputy Compact Administrator - (919) 324-1135 or [betty.payton@ncdps.gov](mailto:betty.payton@ncdps.gov)

### Retaking Procedures

There is a difference between the retaking procedures of an out of state offender under the interstate compact agreement and the extradition of a fugitive from justice. Out of state warrants with reference to probation violation(s) usually indicate an interstate compact offender. All paperwork concerning interstate offenders is required to go through each state's compact office. However due to local practices nationwide, not all states send interstate probation violation warrants through the compact offices. This creates confusion among NC magistrates because some out of state warrants have no North Carolina ISC paperwork attached to assist local authorities in identifying the offender as an interstate compact violator. If there is a question about the offender's status as a compact violator subject to retaking or a fugitive from justice entitled to extradition proceedings, the local probation office can be contacted for clarification before proceeding.

### Interstate Compact offenders are NOT entitled to bond (Rule 5.111).

Courts or paroling authorities in any state are prohibited from admitting an offender to bail pending completion of the retaking process.

### Role of the Magistrate to interstate compact matters is similar to in-state matters.

Immediately upon arrest, the magistrate must determine that a valid warrant exists and ensure that the offender understands:

1. Why they are being detained
2. The right to retain counsel or consult with friends
3. Due to interstate compact, no bond is allowed in North Carolina

### Interstate Compact offenders are ONLY entitled to a probable cause hearing while being detained in North Carolina (Rule 5.108).

The probable cause hearing will be scheduled by the Division of Community Corrections immediately upon notification that the offender has been detained and will be conducted by Community Corrections Hearing Officers within 15 days following appearance before the magistrate.

### Interstate Compact offenders waive all rights to extradition PRIOR to transfer of supervision to the other state (Rule 3.109).

Extradition proceedings are not applicable to violators under the interstate compact agreement.

### Why the changes to establish rules and guidelines for EVERY member state to follow?

Stephanie Peyton Tuthill is the face of the compact. Peyton, a 24 year old graduate student and resident of Florida, was attending college in Colorado at the time she was murdered by Dante Terrous Paige. In college, she was the president of her sorority, an environmentalist, a volunteer for the American Cancer Society and Habitat for Humanity. She volunteered at a shelter for abused women. Dante Terrous Paige served 22 months of a 20-year sentence in Maryland for the violent crime of assault and armed robbery at the time he was released and transferred to Colorado. Paige had no family or other contacts in Colorado, but Maryland transferred him there to participate in a halfway house program. The transfer occurred without any notice to Colorado authorities. Paige walked away from his program. Peyton died after returning from a job interview to find her apartment being burglarized by Paige who proceeded to rape and murder her. The state of Maryland settled a civil suit brought by the family for \$700,000.

### Purposes of the Compact (Article I):

- provide the framework for the promotion of public safety;
- protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;
- to provide for effective tracking, supervision and rehabilitation of offenders by the sending and receiving state;
- to equitably distribute the costs, benefits and obligations of the compact among the compacting states.



# North Carolina Department of Public Safety

## Community Corrections – North Carolina Interstate Compact

Roy Cooper, Governor  
Erik A. Hooks, Secretary

Timothy Moose, Chief Deputy Secretary  
Tracy K. Lee, Director

### AUTHORITY TO DETAIN AND HOLD

TO ANY OFFICER AUTHORIZED BY LAW TO DETAIN AND HOLD:

\_\_\_\_\_ is an out-of-state offender from the State of \_\_\_\_\_,  
(Name) (State)  
who is presently being supervised by the North Carolina Department of Public Safety, Community Corrections.

Based on facts presented to this Office, there is reasonable suspicion to believe that said out-of-state offender has violated the terms or conditions of supervision and must therefore be detained and held pending a probable cause hearing on the issue.

**Pursuant to section 148-65.8 of the General Statutes of North Carolina and the rules of the Interstate Compact Agreement for the Supervision of Adult Offenders granted by Congress, (48 Stat.909, 4 U.S.C. Section 112), you are hereby authorized and directed to detain and hold:**

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

The out-of-state offender is to be held at any suitable institution other than a North Carolina Adult Correction Prison Facility.

### **ATTENTION MAGISTRATE: THIS OUT-OF-STATE OFFENDER IS NOT SUBJECT TO BOND.**

A probable cause hearing will be held within 15 days from the date placed in custody unless such hearing is waived by the offender. Upon conclusion of the probable cause hearing, the offender is not entitled to any judicial proceedings in North Carolina in this matter. All legal requirements to obtain extradition of fugitives from justice are expressly waived.

Immediately call this Office at (984) 960-5042 when said offender is taken into custody.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Betty Payton, Deputy Compact Administrator  
NC Department of Public Safety, Community Corrections  
Office: 984-960-5042  
Fax: 919-324-6248

### **NOTICE**

**DO NOT RELEASE THIS OFFENDER BEFORE CONTACTING THE DEPUTY COMPACT ADMINISTRATOR**

**Attachments: Out of State Warrant/Violation Report  
Application for Offender Transfer**

**MAILING ADDRESS:**  
4250 Mail Service Center  
Raleigh, NC 27699-4250  
[www.ncdps.gov](http://www.ncdps.gov)



*An Equal Opportunity employer*

**OFFICE LOCATION:**  
2020 Yonkers Rd.  
Raleigh, NC 27699-4250  
Telephone: (984) 960-5042  
Fax: (919) 324-6248



# North Carolina Department of Public Safety

## Community Corrections – North Carolina Interstate Compact

Roy Cooper, Governor  
Erik A. Hooks, Secretary

Timothy Moose, Chief Deputy Secretary  
Tracy Lee, Director

### WAIVER of PROBABLE CAUSE HEARING

I do hereby waive my right to appear at a probable cause hearing before a hearing officer of the North Carolina Department of Public Safety, Community Corrections. I understand that this hearing, would have been to determine probable cause that I violated the terms or conditions of supervision. I further understand that this information will be provided to the Sending State.

I admit that I have violated at least one of the terms or conditions of my supervision as set out in the attached warrant or violation report from the State of: \_\_\_\_\_

*\*Please initial beside each violation to which you are admitting guilt\**

\_\_\_\_\_  
Offender Name (Printed)

\_\_\_\_\_  
Offender Signature / Date

Witness Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

- **When the Waiver is signed, please notify the Interstate Compact Office, and advise of the offender's availability to be retaken by the Sending State.**

### Attachment: Out of State Warrant/Violation Report

**MAILING ADDRESS:**  
4250 Mail Service Center  
Raleigh, NC 27699-4250  
[www.ncdps.gov](http://www.ncdps.gov)



[www.ncdps.gov](http://www.ncdps.gov)  
An Equal Opportunity employer

**OFFICE LOCATION:**  
2020 Yonkers Road  
Raleigh, NC 27699-4250  
Telephone: (984) 960-5042  
Fax: (919) 324-6248

# Procedural Fairness: How to Do It and Why It Matters

Author : Shea Denning

Categories : [Procedure](#)

Tagged as : [bench card](#), [district court judges](#), [fair](#), [judge burke](#), [judge leben](#), [multitasking](#), [procedural fairness](#), [tom tyler](#)

Date : October 9, 2018



More than 200 district court judges from districts across North Carolina convened last week for their semiannual conference. Much of the continuing education agenda was dedicated to informing judges about the controlling law for the types of cases over which they preside—criminal, family and juvenile. But one session had a different focus. Instead of teaching judges how to “get outcomes right,” Judges [Kevin Burke](#) and [Steve Leben](#) talked to the group about how to handle procedural matters in a “way that enhances perceptions of fair treatment.” Kevin Burke & Steve Leben, *The Evolution of the Trial Judge from Counting Case Dispositions to a Commitment to Fairness*, 18 Widener L. J. 397, 403-04 (2009) [hereinafter *Evolution*]. The presenters made the case that institutionalizing principles and practices of procedural fairness can increase public support for and confidence in the courts, leading to greater acceptance of court decisions, greater public approval of the court system and increased compliance with court orders.

**What is procedural fairness?** Procedural fairness, sometimes called procedural justice, is just what the name suggests – the “perceived fairness of court proceedings.” See *Procedural Fairness/Procedural Justice: A Bench Card for Trial Judges* (American Judges Association et al.).

**What the research shows.** Burke and Leben described decades of research demonstrating that people’s evaluation of their experiences in the court system are influenced more by how they are treated and their cases are handled than by the outcome. See [Tom R. Tyler, Procedural Justice and the Courts, 44 Court Review 26 \(2007-08\)](#) [hereinafter *Procedural Justice*]. In other words, “most people care more about procedural fairness . . . than they do about winning or losing the particular case.” *Evolution* at 404. People value fair procedures because they are perceived to produce

fair outcomes. *Id.* at 405. Yale Law Professor [Tom Tyler](#), a leading researcher in this area, states that “an especially important finding of studies on procedural justice is that people are more likely to continue to abide by a decision if that decision is made through a fair procedure.” *Procedural Justice*, at 28. Tyler explains that the fair process “legitimizes the decision and creates commitment to obeying it that is found to persist in to the future.” *Id.* In addition, Tyler notes that “studies find that people’s general commitment to obeying the law is heightened when they experience fair procedures in legal settings.” *Id.*

**What makes a procedure fair?** Judges Burke and Leben described four key components of procedural fairness identified by Professor Tyler: Voice, Neutrality, Respect, and Trustworthy Authorities. Here’s what they entail:

**Voice** is the ability of litigants to participate in the case by expressing their own viewpoints.

**Neutrality** is the consistent application of legal principles by an unbiased decision maker who is transparent about how he or she made the decision.

**Respect** is treating individuals with dignity while protecting their rights.

**Trustworthy Authorities** relates to the character of the decision maker. Is he or she sincere and caring?

**Practical suggestions.** Judges Burke and Leben made numerous suggestions about how judges could improve the public’s perception of procedural fairness, including explaining procedures and rulings in plain language without legal jargon, avoiding “multi-tasking” (a practice that, in addition to being off-putting, also results in [diminished performance](#)), and video-taping themselves—both to personally observe and to seek objective feedback about—their demeanor and conduct.

**There’s a bench card for that.** The American Judges Association, the Center for Court Innovation, the National Center for State Courts, and the National Judicial College have created a [Procedural Fairness/Procedural Justice bench card](#) for trial judges that memorializes these and other suggestions.

**Want to know more?** Judges Burke and Leben, Professor Tom Tyler and the National Center for State Courts teamed up to create a [Procedural Fairness website](#) and [blog](#) to promote procedural fairness in courtrooms and courthouses and to bridge the gap between academic research and practice. There you can find information regarding the research underlying their recommendations and specifics on how state courts have assessed their own procedural fairness and how they have implemented practices to improve their performance.

# Search Warrants: Sources, Staleness, and Scope

Jeff Welty  
UNC School of Government

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## Sources

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## Sources: Kinds of Sources

- Citizen witness
- Confidential informants
- Anonymous tipsters

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## Sources: Classification

- “[I]n providing the tip through a face-to-face encounter with the sheriff’s deputies, the [source] was not a completely anonymous informant [even though she did not provide her name or any identification]. Not knowing whether the officers had already noted her tag number or if they would detain her for further questioning . . . [the source] willingly placed her anonymity at risk. This circumstance weighs in favor of deeming her tip reliable.”
  - State v. Maready, 362 N.C. 614 (2008)

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## Sources: How Much Can You Trust ‘Em?

- Whether a source of information is sufficiently credible to support a finding of probable cause is determined using a “totality of the circumstances analysis.”
  - Illinois v. Gates, 462 U.S. 213 (1983)
- Citizen witnesses: presumptively reliable
- Confidential informants: need to show reliability
- Anonymous tipsters: unreliable without corroboration



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## Sources: Establishing Reliability of Informants

- Track record
- Corroboration
- Statements against interest
- Amount of detail
- Personal appearance before judicial official

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### Sources: Problem 1

- An experienced officer applies for a search warrant, stating that he “has received information from a confidential and reliable informant” that a suspect is selling drugs from his home. The officer has known the informant, who is familiar with drugs, for two weeks. During that time, the informant has “provided information on other persons.” The informant has “purchased cocaine from [the suspect] under the direct supervision of [the officer].” The informant has seen drugs in the suspect’s home in the last 48 hours. Does the affidavit provide probable cause?

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### Sources Problem 1: Does the affidavit provide probable cause?

Yes

No

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### Sources: Problem 2

- An officer applies for a search warrant after receiving an anonymous call. The caller reported that a suspect was on probation in NY, and that the caller had heard the suspect talking about coming to NC to stay with his parents at a specific address in Clinton. According to the caller, the suspect’s nickname was “Poppy”; he was bringing a “kilo” of drugs; his father had “killed someone”; and the caller saw the suspect wrapping four handguns in brown paper. After the call, the officer confirmed the suspect’s nickname, the parents’ address, the suspect’s presence there, the suspect’s status as a probationer, and the father’s murder conviction. Does the affidavit provide probable cause to search the parents’ home?

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**Sources Problem 2: Does the affidavit provide probable cause to search the parents' home?**

Yes

No

Start the presentation to see the content. Add on the content! Refresh the app or get help at [PHILLIPS.com/app](#)

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**Sources: Problem 3**

- An officer in a rural area applies for a search warrant for a residence. The application states that: (1) within the last week, a "confidential and reliable source of information . . . told [another officer that] an indoor marijuana growing operation was located at" the residence. (2) "Kilowatt usage [at the residence was] indicative of a marijuana grow operation based on the extreme high and low . . . usage." (3) Officers saw items in the yard "indicative of [a] marijuana growing operation," including "potting soil, starter fertilizer, seed starting trays" and pump sprayers, even though the house had no visible gardens or potted plants. Does the affidavit provide probable cause?

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**Sources Problem 3: Does the affidavit provide probable cause?**

Yes

No

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### Sources: Problem 4

- An officer applies for a search warrant for a residence. The application states that: (1) An officer conducted a knock-and-talk with a suspected drug offender that the officer had not met before. The officer told the suspected offender that she could face criminal charges for possession of marijuana. (2) The suspected offender agreed to tell the officer about her source. She said that she bought marijuana from a man she named and described, most recently two days ago. She said that the sales took place at his home and she described the home's location. (3) The officers confirmed through records that the suspect lives at the location the informant described and matches the description she gave. Does the affidavit provide probable cause?

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### Sources Problem 4: Does the affidavit provide probable cause?

Yes

No

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Staleness

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## Staleness: Generally

- “The test for staleness of information on which a search warrant is based is whether the facts indicate that probable cause exists at the time the warrant is issued.”
  - State v. Lindsey, 58 N.C. App. 564 (1982)

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## Staleness: Rule of Thumb

- “As a general rule, an interval of two or more months between the alleged criminal activity and the affidavit has been held to be such an unreasonably long delay as to vitiate the search warrant.”
  - State v. Lindsey, 58 N.C. App. 564 (1982)
- Staleness “is a function not simply of watch and calendar but of variables that do not punch a clock.”
  - Id. (quoting Andresen v. Maryland, 331 A.2d 78 (1975))

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## Staleness: Factors

- How old is the information supporting probable cause?
- What type of crime is under investigation, i.e., is it a type of conduct that is normally ongoing and continuous?
- Is the suspect “nomadic or entrenched”?
- Is the evidence perishable?
- Is the evidence consumable?
- Is the evidence easy to move?
- Is the evidence easy to sell?
- Is the evidence likely to leave recoverable traces behind?
- Is the evidence inherently incriminating?
- Is the evidence of enduring utility to the suspect?

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## Staleness: Importance of the Affidavit

- Evidence that the defendant, a convicted felon, had possessed firearms was not stale even though some of the evidence was years old. The officer's affidavit stated that, "based on his professional experience, survivalists and other firearm enthusiasts such as [the defendant] tended to hold onto their firearms for long periods of time."
  - United States v. Maxim, 55 F.3d 394 (8<sup>th</sup> Cir. 1995)
- Evidence that the defendant had downloaded child pornography four months earlier was not stale where the officer's affidavit stated that "individuals who view child pornography typically maintain their collections for many years." The issuing official "was entitled to rely on the [officer's] experience [as] an expert in the field of enforcing child pornography laws."
  - United States v. Watzman, 486 F.3d 1004 (7<sup>th</sup> Cir. 2007)

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## Staleness Problem 1: When an officer applies for a search warrant for a residence based on the fact that a CI made a controlled purchase of drugs at the residence, how long after the buy does probable cause go stale?

24 hours  
48 hours  
2 weeks  
2 months  
1 year

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## Staleness: Problem 2

- An officer applies for a search warrant for a suspect's residence. The application states:
  1. The suspect is on probation because of a drug conviction.
  2. An informant with a documented history of reliability reported seeing a pound of marijuana at the suspect's residence a week ago.
  3. Another informant reported purchasing marijuana on the day of the application.
- Is the probable cause stale?

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Is the probable cause stale?

Yes

No

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Staleness: Problem 3

- An officer applies for a search warrant for a residence. The application states that within the past 48 hours, the officer spoke with a confidential, reliable source of information. The application further states that “[the source] has been in contact with [a suspect], and [the source] provided [the officer] with a counterfeit \$100 bill that came from [the suspect’s home].” The suspect was involved in another counterfeiting case six years earlier, and the suspect’s nephew was caught with a similar counterfeit \$100 bill two years earlier. Is the probable cause stale?

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Staleness Problem 3: Is the probable cause stale?

Yes

No

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## Scope

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## Outbuildings

- If within the curtilage, normally may be searched under a warrant for the premises even if not specifically mentioned therein.
  - State v. Hagin, 203 N.C. App 561 (2010) ("The search of an outbuilding within the curtilage of the home does not exceed the scope of a warrant permitting the search of a suspect's property.")
- If outside the curtilage, a warrant for the premises does not authorize a search unless the outbuildings are specifically mentioned.

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## Vehicles

- If within the curtilage, normally may be searched under a warrant for the premises even if not specifically mentioned therein.
  - State v. Lowe, 369 N.C. 360 (2016) ("Because the rental car was within the curtilage of the residence targeted by the search warrant . . . we conclude that the search of the rental car was authorized by the warrant.")
- If outside the curtilage, a warrant for the premises does not authorize a search unless the vehicles are specifically mentioned.

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## People

- If a warrant is for a public place, the warrant doesn't provide authority for detaining or searching people not named in the warrant.
- If a warrant is for a non-public place, the warrant provides authority to *detain* people not named in the warrant. If there is reason to believe that a detainee is armed and dangerous, he or she may be *frisked*. If the search of the place comes up empty and the evidence is small enough to conceal on a person, the person may be *searched*.

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## Electronic Devices

- Whether a search warrant for a residence, office, or vehicle that does not contain specific language about electronic devices authorizes a search of electronic devices found therein is not clear.
  - United States v. Giberson, 527 F.3d 882 (9th Cir. 2008) (warrant authorizing search of identity theft suspect's residence for certain records and documents allowed seizure of computers in the residence as they were likely "repositories" for such information)
  - United States v. Payton, 573 F.3d 859 (9th Cir. 2009) (warrant authorizing search of drug suspect's residence for evidence including ledgers and pay-owe sheets did not authorize search of computers in the residence even though they were possible repositories for such information; searches of computers are extremely intrusive and normally require specific authorization in a warrant)

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## Scope: Problem 1

- An officer obtains a search warrant for a drug suspect and the suspect's residence. Neither the application nor the warrant mention any outbuildings. When the officer arrives at the residence, he notices a storage shed in the backyard. A high privacy fence encloses the yard, including the shed. Does the warrant provide authority for searching the shed?

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### Scope Problem 1: Does the warrant provide authority for searching the shed?

Yes

No

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### Scope: Problem 2

- An officer obtains a search warrant for a mobile home, a specific occupant of the home, and a nearby shack after learning that the occupant is selling drugs from the premises. Officers execute the warrant and find six people there, including “Steve.” Steve is a visitor, not an occupant. One officer searches Steve, finding crack and a crack pipe, while other officers search the mobile home and the shack, finding more drugs and paraphernalia. Does the warrant provide authority for searching Steve?

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### Scope Problem 2: Does the warrant provide authority for searching Steve?

Yes

No

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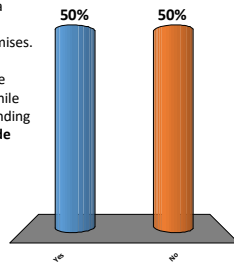
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### Scope: Problem 2

An officer obtains a search warrant for a mobile home, a specific occupant of the home, and a nearby shack after learning that the occupant is selling drugs from the premises. Officers execute the warrant and find six people there, including "Steve." Steve is a visitor, not an occupant. One officer searches Steve, finding crack and a crack pipe, while other officers search the mobile home and the shack, finding more drugs and paraphernalia. **Does the warrant provide authority for searching Steve?**

- A. Yes
- B. No



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### Questions



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## Search Warrants: Sources, Staleness, and Scope

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UNC School of Government

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## **Bond Policy**

The following bonds are recommended but not required. Use your professional judgment in setting release conditions for each defendant.

<b>Offense Class</b>	<b>Recommended Bond</b>
<i>Felonies</i>	
A	None (to be set by judge only)
B1	100K-250K
B2	60K-150K
C	50K-125K
D	40K-100K
E	20K-50K
F	10K-25K
G	5K-15K
H	3K-7K
I	2K-5K
<i>Misdemeanors</i>	
A1	250-1000
1	0-500
2	0-250
3	0-250

## Problems for Discussion

### *Setting Bond*

Advanced Criminal Procedure for Magistrates 2019



What conditions of release would you impose in the following cases? Consider the bond policy on the other side of this sheet.

**Situation 1:** The defendant is Robert Reddick, a 36-year-old white male. He has been charged with AWDWISI (a Class E felony) as a result of an incident at a bar. He was at the bar with friends, celebrating a birthday. He had been drinking, though by the time of his initial appearance, he is fairly sober. He and another patron had an argument about who was next in line to use the pool table at the bar. The argument became heated, and Reddick grabbed a pool cue and struck the victim repeatedly with it, causing lacerations and a broken arm. Reddick has a DWI that is six years old and a shoplifting conviction that is ten years old. He doesn't have any FTAs or probation violations. He's lived in town since he was 22, and for the past three years, has been a forklift operator at a warehouse. He's single and lives with a cousin who was also at the bar, but who was not involved in the beating. Reddick owns a pickup truck but doesn't own any real estate or have any other substantial assets. His local family members are also working class and without substantial assets.

**Situation 2:** The defendant is Cassandra Jones, a 22-year-old black female. She has been charged with second degree burglary (a Class G felony) and larceny pursuant to burglary (a Class H felony), after breaking into a house in the well-to-do section of town one evening while the residents were away at the beach. She made off with a computer, a digital camera, and some jewelry, but a neighbor saw her driving away and called the police, so she was quickly apprehended. Jones has lived in town since her parents moved to the area four years ago. She lives in a rented house with her boyfriend. Neither one has a steady job, and her boyfriend has several drug-related convictions. Jones has two prior convictions for burglary or breaking or entering and two for misdemeanor larceny, all in the past four years. She also has some dismissed property crime charges, as well as a conviction for possession of drug paraphernalia. She has one FTA, from two years ago, but she explains that her car broke down that morning and that she quickly obtained a new court date. She has a pending charge of possession of stolen goods for which she was released on an unsecured bond. Neither she nor her family has any appreciable assets.

**Situation 3:** The defendant is Jose Hernandez, a 44-year-old United States citizen of Mexican ancestry. He has been charged with DWI after being stopped at a checkpoint on a road connecting a commercial strip with several bars to a residential area where he lives. He weaved as he approached the checkpoint, and officers noticed an odor of alcohol and bloodshot eyes when he stopped. He admitted having had six beers at a bar, and he was arrested and blew a .11. He's reasonably sober now. He has a prior DWI, nine years earlier. He works sporadically as a painter. He's lived in town for five years, having moved from Kentucky to live with a woman he met online. They have since broken up, and he lives alone. Other than his work van, he owns nothing of value. The local MADD chapter is aware of the checkpoint and you expect a MADD member to obtain a copy of all release orders signed in connection with drivers apprehended at the checkpoint.

**Situation 4:** The defendant is Carl Williams, a 40-year-old white male. He has been charged with third-degree sexual exploitation of a minor (a Class H felony) after an ex-girlfriend told law enforcement that he had child pornography on his laptop. Police obtained a search warrant and found several hundred images and videos on the computer. He has no prior criminal record. He has lived in town for fifteen years, and has been single since he and his wife divorced a few years ago. He is a dentist with his own practice. Tax records show that his home is worth \$600,000, and he drives a late-model Jaguar. He owns a vacation home in the Virginia mountains and frequently vacations abroad.



## CONSIDERATIONS IN SETTING BOND

Jeff Welty · School of Government · Nov. 2019

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## Rave Reviews!

"Very dry."

"Not relevant. . . .  
Magistrates already  
know all this.."

"Stick with your blog."

"[A]lmost an insult."

"Mr. Welty . . . has  
NO Knowledge on  
what really happens ."

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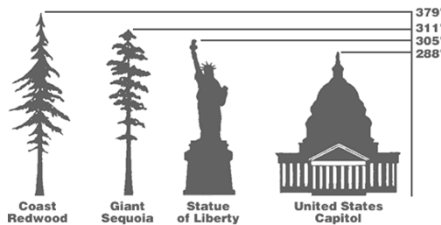
## Why This Matters

- Your decisions are important to the community
  - Community safety
  - Victims
  - Cost of detention
- Your decisions are important to defendants
  - Cost of bond premiums
  - Job loss
  - Impact on case outcomes

4

## Why This Matters

- Your decisions "anchor" any future decisions by judges



5

## The Law Favors Release

- "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."
  - United States v. Salerno, 481 U.S. 739 (1987)

6

## Purposes of Release

- “This traditional right to freedom before conviction permits unhindered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail is preserved, the presumption of innocence secured only through centuries of struggle, would lose its meaning.”
  - Stack v. Boyle, 342 U.S. 1 (1951)

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## Purposes of Conditions of Release

- “[T]he foremost goal of the bond system is the production of the defendant in court.”
  - State v. Gonzalez-Fernandez, 170 N.C. App. 45 (2005)
- “There is no doubt that preventing danger to the community is a legitimate regulatory goal” that may be considered in the pretrial release process.
  - United States v. Salerno, 481 U.S. 739 (1987)


8

## Statutory Right to Release

- Subject to a few exceptions, “[a] defendant charged with a noncapital offense must have conditions of pretrial release determined.”
  - G.S. 15A-533(b)

9

## Exceptions

- Capital cases (release is discretionary, only judge may release, 15A-534(c))
- Certain drug trafficking defendants (rebuttable presumption of no release, 15A-534(d), only judge may release)
- Certain defendants charged with gang offenses (rebuttable presumption of no release, 15A-534(e), only judge may release)
- Certain defendants charged with gun offenses (rebuttable presumption of no release, 15A-534(f), only judge may release)
- Meth users charged with meth offenses, 15A-534.6 (rebuttable presumption of no release)
- DV cases, 15A-534.1 (only judge may determine release for first 48 hours)
- Certain threats of mass violence, 15A-534.7 (same) 
- Impaired driving holds, 15A-534.2 (impaired drivers ~~may~~ <sup>are</sup> denied release for up to 24 hours if release would pose a danger, unless a sober, responsible adult assumes responsibility)

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## Change to 48 Hour Rule

- When “the defendant is charged with assault [or another covered offense] upon a spouse or former ~~spouse or spouse~~, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of [a 50B] order . . . the judicial official who determines the conditions of pretrial release shall be a judge” unless no judge acts within 48 hours.
- S.L. 2015-62 (effective for crimes committed on or after 12/1/15).

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## Basic Conditions of Release

- Written promise
- Unsecured
- Custody
- Secured
- House arrest with electronic monitoring (requires secured bond also)

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## Choosing a Basic Condition

- Prefer written promise, unsecured bond, or custody release. Impose secured bond or house arrest only if lesser conditions are inadequate. G.S. 15A-534(b).
- When secured bond or house arrest is imposed, reasons must be recorded in writing. Id.

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## Factors to Consider

- Nature of offense charged
- Weight of evidence
- Family ties
- Employment
- Financial resources
- Character
- Mental condition
- Intoxication
- Length of residence
- Prior convictions
- Prior FTA
- "[A]ny other evidence relevant to the issue of pretrial release"

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## Bond Doubling

- Defendants rearrested after FTA
  - Impose the conditions recommended in OFA
  - If none, impose a secured bond of at least double the previous bond
  - If no previous bond, impose a secured bond of at least \$1000
    - G.S. 15A-534(d1)
- Defendants arrested for new offense while on pretrial release for another offense
  - Impose secured bond of at least double previous bond
  - If none, impose secured bond of at least \$1000
    - G.S. 15A-534(d3) – optional as of 12/1/15

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## Special Rules for Probationers

- Defendants charged with felonies while on probation, or defendants charged with probation violations who have pending felony charges (or are sex offenders)
  - Determine whether "the defendant poses a danger to the public," and if so, impose a secured bond or house arrest
    - G.S. 15A-534(d2); G.S. 15A-1345(b1)

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## Additional Conditions

- A "judicial official may also place restrictions on the travel, associations, conduct, or place or abode of the defendant as conditions of pretrial release."
  - G.S. 15A-534(a)
- Additional conditions are required when a defendant is charged with a sex crime against a child or a violent crimes against a child.
  - G.S. 15A-534.4
- Additional conditions likely must be "reasonably related" to a "legitimate governmental purpose."
  - Bell v. Wolfish, 441 U.S. 520 (1979)

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## Rates of Release and Success

- Release rates vary widely
  - In some places, less than 30% of felony defendants are released pending trial. In others, more than 80% are released.
- Most defendants are successful on release
  - In a Mecklenburg County study, about 19% of defendants FTA and about 25% were charged with a new crime

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## Risk Assessments

		Release Recommendation Decision-Making Matrix					
		New Criminal Activity (NCA) Score					
		NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
Risk of Failure to Appear (FTA) Score	FTA 1	WPA or Unsecured	WPA or Unsecured				
	FTA 2	WPA or Unsecured	WPA or Unsecured	Unsecured or Administrative CDPO	Secured/Standard CDPO	Secured/Intensive CDPO	
	FTA 3		Unsecured or Administrative CDPO	Secured/Standard CDPO	Secured/Standard CDPO	Secured/Intensive CDPO	Secured/Detain
	FTA 4		Secured/Standard CDPO	Secured/Standard CDPO	Secured/Intensive CDPO	Secured/Detain	Secured/Detain
	FTA 5		Secured/Standard CDPO	Secured/Intensive CDPO	Secured/Intensive CDPO	Secured/Detain	Secured/Detain
	FTA 6				Secured/Detain	Secured/Detain	Secured/Detain

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## Is Your County Using a Risk Assessment?

- ☐ Yes, for magistrates
- ☐ Yes, for judges
- ☐ No

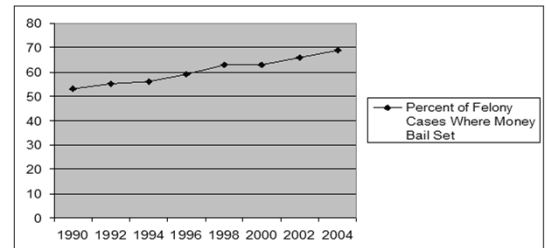
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## Risk Assessments

- ☐ "There has recently been significant debate in the academic and popular press regarding the potential for actuarial risk assessment to perpetuate racial disparities, based on correlations between common risk factors (e.g., unemployment, lack of education, criminal history) and race."
  - ☐ Center for Court Innovation (2017)

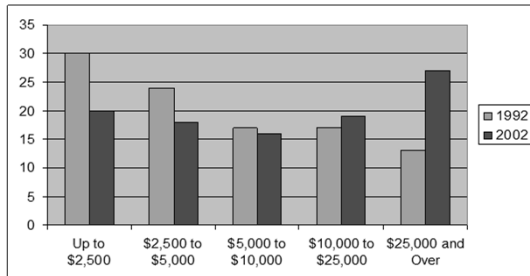
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## Rise in Use of Financial Bail



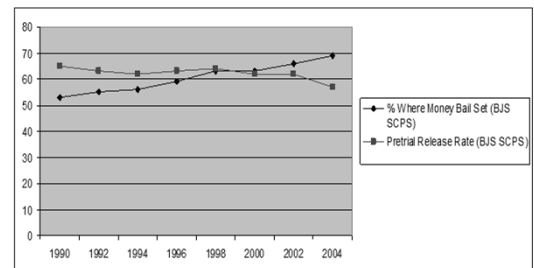
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## Average Bail Amounts Rising

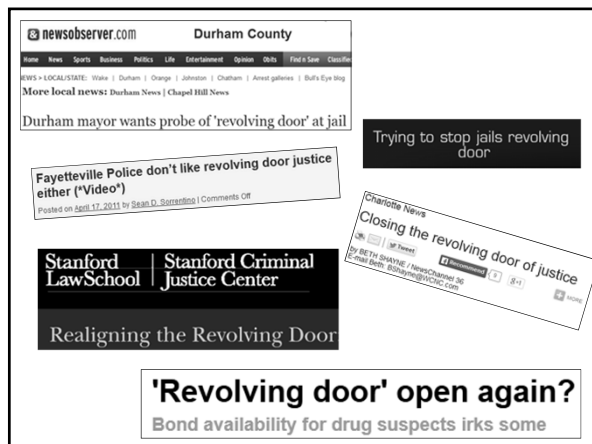


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## Relationship Between Setting Money Bail and Pretrial Release Rates



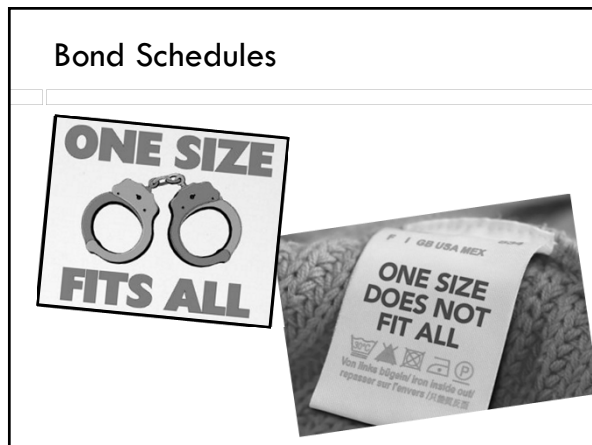
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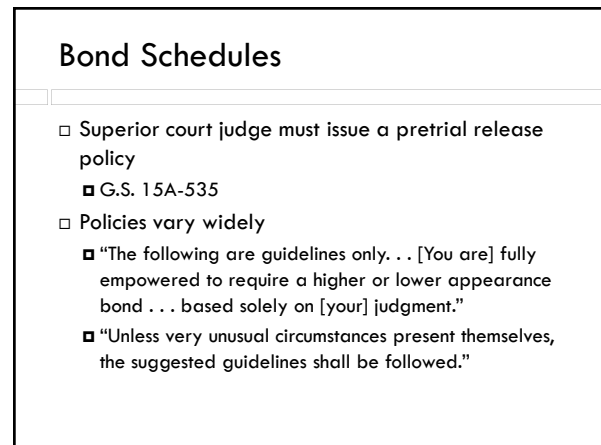
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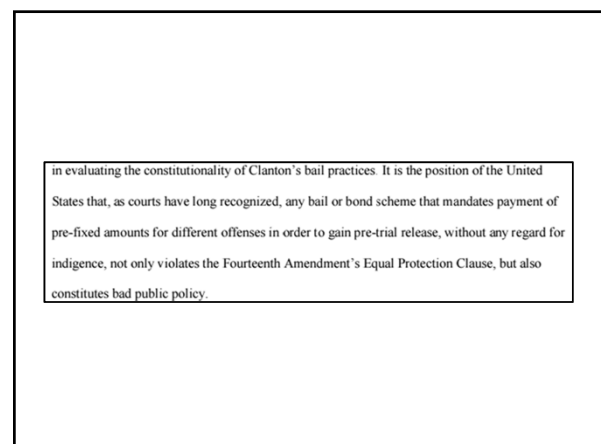


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**Bond Schedules**

	A	B	C	D	E	F	G	H	I	J	K	L
C	500K	75K	100K	50K	40K-100K	15K-250K	100K-200K	25K-75K	15K-50K	20K-30K	10K-50K	15K-50K
H	25	10K	15K	5K	5K-25K	0-10K	2500-5K	1K-5K	0-2500	300	5	1500-5K
I	1	300	1000	2	100-400	0-1000	100-500	0-1000	0	300-400	0-1000	0-1000

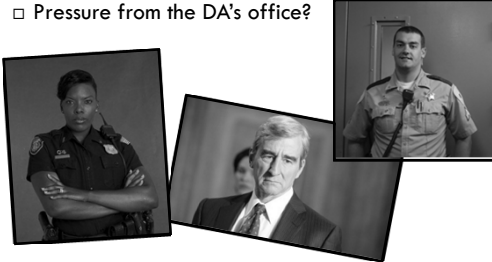
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## Other Considerations

- Pressure from officers?
- Pressure from the jail?
- Pressure from the DA's office?



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## Current Practice

Offense	Class	Written Promise	Unsecured Bond	Secured Bond
Simple Assault	2	28%	29%	43%
PDP	1	13%	13%	74%
OPFP	H (or C)	8%	21%	71%
Felon in Possession of Firearm	G	4%	9%	87%
Armed Robbery	D	1%	2%	97%

38

## Current Practice: Simple Assault

- Average bond, selected counties with >10 charges
  - Northampton: \$418
  - New Hanover: \$830
  - Hertford: \$1,811
  - Moore: \$1,895

39

## Current Practice: PDP

- Average bond, selected counties with >10 charges
  - Guilford: \$213
  - Pitt: \$757
  - Forsyth: \$5,364

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## Current Practice: OPFP

- Average bond, selected counties with >10 charges
  - Carteret: \$1,045
  - Wayne: \$3,882
  - Edgecombe: \$119,800

41

## Current Practice: Felon in Possession

- Average bond, selected counties with >10 charges
  - Nash: \$7,063
  - Lenoir: \$21,607
  - Guilford: \$48,152
  - [Martin: \$316,667, only 6 charges]

42

## Current Practice: Armed Robbery

- Average bond, selected counties with >10 charges
  - Cumberland: \$20,846
  - Forsyth: \$60,381
  - Durham: \$277,391

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## Problems for Discussion



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## CONSIDERATIONS IN SETTING BOND

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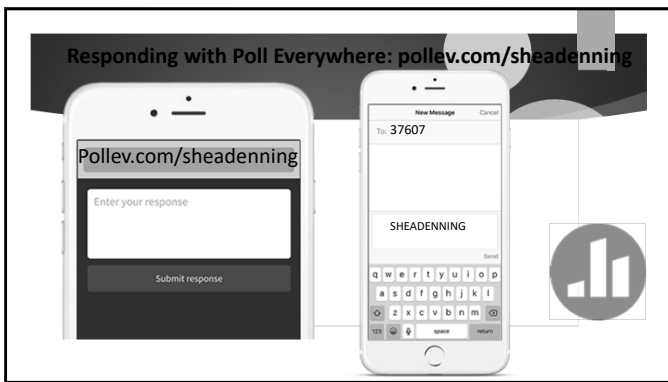
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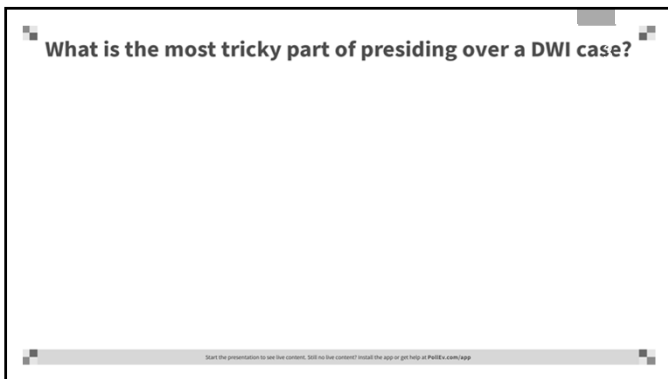
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### Five Step Protocol

- ▶ 1. Determine probable cause.
- ▶ 2. Set conditions of release.
- ▶ 3. Does person's impairment pose a danger?
- ▶ 4. Is the motor vehicle subject to seizure?
- ▶ 5. Must person's license be revoked?

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### 1. Determine probable cause.

- ▶ Elements of Impaired Driving:
  - Drive
  - Vehicle
  - On a street, highway, or public vehicular area
  - While Impaired
- ▶ Got probable cause?

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**Defendant is in a one-car wreck that appears to have resulted from swerving off the road at a high rate of speed. Officer smells an odor of alcohol on her person. Probable cause for DWI?**

Yes **A**No **B**
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Steinkrause v. Tatum, 201 N.C. App. 289 (2005)

- Probable cause based on odor of alcohol from driver and her involvement in a one-car wreck that extensively damaged her car.

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**D drank three alcoholic drinks in 4 hours and has odor of alcohol on person. He is involved in a collision that was not his fault. Probable cause?**

Yes

No

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State v. Overocker, 236 N.C. App. 423 (2014)

- Light odor of alcohol from defendant, consumption of three alcoholic drinks in a four-hour period, and his involvement in a car accident that was *not* his fault \_\_\_\_\_

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**D stopped at checkpoint. Red, glassy eyes. Odor of alcohol. Admits to drinking 3 beers. Multiple clues on SFSTs. No slurred speech. No bad driving. Steady on feet. Probable cause?**

Yes

No

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State v. Parisi, \_\_\_ N.C. \_\_\_\_ (2019)

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Got probable cause?

► \_\_\_\_\_ + \_\_\_\_\_

► \_\_\_\_\_ + \_\_\_\_\_

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## 2. Set conditions of release.

1. Written promise
2. Unsecured bond
3. Custody release
4. Secured bond
5. House arrest with electronic monitoring

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## Factors to consider:

- ▶ Nature and circumstances of offense
- ▶ Weight of the evidence
- ▶ Family ties, employment, financial resources, character, and mental condition
- ▶ Whether D is impaired to extent he would be endangered by being released without supervision
- ▶ Length of residence in community
- ▶ Record of convictions
- ▶ History of flight or failure to appear
- ▶ Any other relevant evidence

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## Play Video 1

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What conditions of pretrial release do you impose?

Written promise

Unsecured bond

Custody release

Secured bond of \$1,000 or more

Secured bond of \$500 - \$1,000

Secured bond of less than \$500

Electronic House arrest

Start the presentation to activate live content

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Play Video 2

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Video 2: What conditions of pretrial release do you impose?

Written promise

Unsecured bond

Custody release

Secured bond of \$1,000 or more

Secured bond of \$500 - \$1,000

Secured bond of less than \$500

Electronic house arrest

Start the presentation to activate live content

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### 3. Is person's impairment a danger?

Offense involving  
impaired driving

#### § 15A-534.2. Detention of impaired drivers.

(a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede a defendant's right to communicate with counsel and friends.

(b) If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection (c) is met; provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

Clear and convincing  
evidence that the impairment  
presents a danger

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### Offenses involving impaired driving

- Impaired driving under G.S. 20-138.1
- Habitual impaired driving under G.S. 20-138.5
- Impaired driving in commercial vehicle under G.S. 20-138.2
- Any offense under G.S. 20-141.4 (felony and misdemeanor death by vehicle and serious injury by vehicle) based on impaired driving
- First- or second-degree murder under G.S. 14-17 based on impaired driving
- Involuntary manslaughter under G.S. 14-18 based on impaired driving
- Substantially similar offenses committed in another state or jurisdiction

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### Impaired Driving Holds

#### § 20-38.4. Initial appearance.

(a) Appearance Before a Magistrate. - Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

whether  
15A-534.2

to have  
others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond, and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)

21

## Impaired Driving Holds

§ 20-38.4. Initial appearance.

(a) Appearance Before a Magistrate. — Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

- (1) A magistrate may hold an initial appearance at any place within the jurisdiction of the court, but the appearance shall be held at a place convenient to the defendant and the prosecutor and shall be held at the courthouse when it will expedite the initial appearance.
  - (2) In determining whether there is probable cause to believe a person committed the offense, the magistrate shall, based on all existing facts, chemical analyses, receive testimony from any law enforcement officer concerning the arrest and the circumstances of the arrest, and observe the person arrested.
  - (3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of §§. 115-152-153 should be imposed.
  - (4) The magistrate shall also:
    - (a) Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer any additional chemical analysis if the person is unable to make a decision and
    - (b) Require the person who is unable to make a bond to list all persons he wishes to contact and to select one of them to be contacted by the court procedure for contacting the persons listed. A copy of this form shall be filed with the case file.
  - (5) The Administrative Office of the Courts shall adopt rules to implement this Article.
- (2006-253, 5, 5)

AOC shall adopt forms

22

## AOC-CR-270: Detention of Impaired Driver

[illegible]

### Reasons why impairment presents danger

23

When is a defendant impaired to extent he or she presents a danger?

24

State v. Bumgarner,  
97 N.C. App. 567 (1990)

- ▶ Hold warranted based on
  - ▶ Trooper's testimony
  - ▶ Magistrate's personal observations
  - ▶ 0.14 alcohol concentration

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State v. Labinski,  
188 N.C. App. 120 (2008)

~~Because I think anyone charged with DWI who blows 0.08 or more on the breath test would possibly hurt himself or someone else, I'm imposing a hold.~~

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Do you impose an impaired driving hold on the defendant in Video 2?

Yes

No

Start the presentation to activate live content  
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When does hold end?

No longer impaired to extent that he presents danger

(c) A defendant subject to detention under this section has the right to pretrial release under G.S. 15A-534 when the judicial official determines either that:

(1) The defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or others or of damage to property if he is released; or

(2) A sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the defendant is released to the custody of another, the judicial official may impose any other condition of pretrial release authorized by G.S. 15A-534, including a requirement that the defendant execute a secured appearance bond.

The defendant may be denied pretrial release under this section for a period no longer than 24 hours, and after such detention may be released only upon meeting the conditions of pretrial release set in accordance with G.S. 15A-534. If the defendant is detained for 24 hours, a judicial official must immediately determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

Sober, responsible adult willing and able to assume responsibility for defendant until no longer impaired

No longer than 24 hours

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How does a magistrate determine that a defendant is no longer impaired to the extent that he/she presents a danger?

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May request periodic breath tests



- ▶ Less than 0.05, no longer impaired
- ▶ Unless evidence that defendant still impaired from combination of alcohol and some other impairing substance or condition

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How do you determine when to end a hold in an alcohol impairment case?

I estimate when the defendant's alcohol concentration will reach a .05 and release the defendant then.

I use a breath test performed in the jail.

I ask someone in the jail to let me know when the defendant sobers up.

I do something else.

**Start the presentation to activate live content**  
If you see this message in presentation mode, install the add-in or get help at PollTV.com/app

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► Let's review how to impose an impaired driving hold in NCAWARE.

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Who is a sober, responsible adult willing and able to assume responsibility for the defendant?

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- ▶ *State v. Haas*, 131 N.C. App. 113 (1998): Magistrate had no duty to release defendant to custody of an adult who was a passenger in the car driven by defendant when officer informed magistrate that the adult was extremely intoxicated 80 minutes earlier
- ▶ *State v. Daniel*, 208 N.C. App. 364 (2010): No statutory violation when magistrate refused at 11 p.m. to release defendant to adult who earlier in evening had odor of alcohol and who said he had beer with dinner

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## Implied Consent Offense Notice

(4) *Appearance Before a Magistrate.* - Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouses when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is

- (4) The magistrate shall also:
- a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and
  - b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

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## Procedures for Access

Procedures for the Observation of Prisoners  
Charged with Implied Consent Offenses  
Pursuant to N.C.G.S. 20-38.5

- Any person seeking to observe jail or incarcerated impaired drivers shall first check in with the Staff Duty Officer or Detention staff on-duty at the Guilford County Sheriff's Office. Observations are limited to the first twenty-four hours following the defendant's admission into the jail.
- The Staff Duty or Detention Officer shall immediately notify the arresting officer and Booking Officer that a witness is present to observe the defendant. The time of this notification is documented by Booking to ensure the Booking log book and by the dispatcher on the attached witness observation form.
- Booking will inform the jail supervisor on-duty of the witness's presence in the facility. The supervisor shall send a detention officer to escort the witness to the jail or appropriate viewing area. The escorting officer shall obtain the form and complete the information concerning the name of the witness, the date to be observed, the time and date when the observation was requested, the date and time of the observation, the time and date when the witness was escorted to the jail and the time and date of the completion of the observation.

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## AOC-CR-271: Implied Consent Offense Notice

Defendant must list  
contacts and phone  
numbers

Magistrate: I  
informed  
defendant in  
writing of access  
procedures

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## Implied Consent Offense Notice

- (4) The magistrate shall also:
- Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and
  - Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

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## Implied Consent Offense Notice

Defendant's condition or to administer an additional chemical analysis.

5. The undersigned required the defendant to list all persons the defendant wishes to contact and telephone numbers on a copy of this form.

☐ The defendant returned this form to the undersigned at the initial appearance.

☐ The defendant failed to return this form at the initial appearance.

Date \_\_\_\_\_ Time ☐ AM ☐ PM Signature Of Magistrate \_\_\_\_\_

The defendant returned this form to the undersigned after the initial appearance.

Date \_\_\_\_\_ Time ☐ AM ☐ PM Signature \_\_\_\_\_

☐ Magistrate ☐ Assistant CSC  
☐ Deputy CSC ☐ Clerk Of Superior Court

**NOTE:** If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).

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► Let's look at where you find the AOC-CR-271 in NCAWARE

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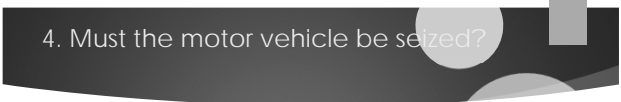
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#### 4. Must the motor vehicle be seized?

- A motor vehicle driven by a person charged with ***an offense involving impaired driving*** is subject to seizure if
  - At the time of the violation, the person's license was revoked as a result of a ***prior impaired driving license revocation***, or
  - At the time of the violation, the person was driving without a valid drivers license and was not covered by an automobile insurance policy

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Affidavit for Seizure and Impoundment - DWI

AOC-CR-323A

Side One



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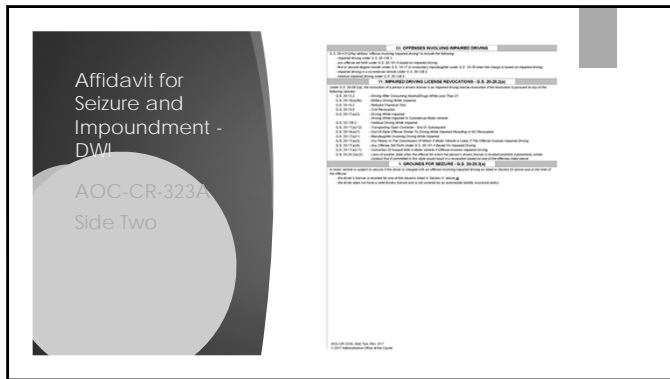
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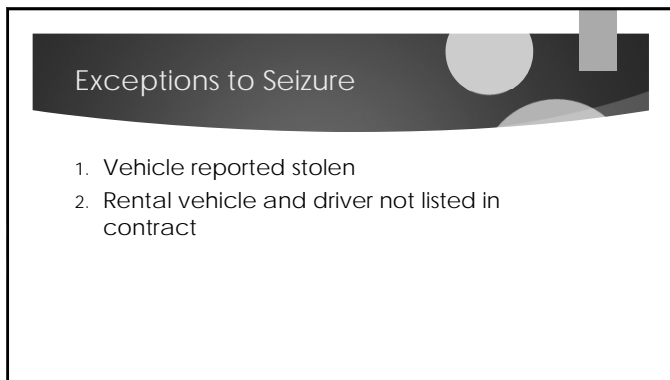
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### Purpose?

- ▶ "[K]eeping impaired drivers and their cars off the roads"

*State v. Chisholm*, 135 N.C. App. 578, 584 (1999)

- ▶ Vehicle impoundment for DWI offenders "reduces recidivism while the vehicle is in custody and to a lesser extent after the vehicle has been released."  
NHTSA, 2011 Highway Safety Countermeasure Guide at 1-34.

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### DWI Seizure and Impoundment

- ▶ No waiver of towing and storage fees!
- ▶ G.S. 20-28.3(c): if requirements for seizure not met, the magistrate must order motor vehicle released to owner "upon payment of towing and storage fees"

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### 5. Must the person's license be revoked?

1. Did LEO have reasonable grounds to believe person committed implied consent offense?
2. Is person charged with implied consent offense?
3. Did LEO and CA comply with implied consent procedures re chemical analysis?
4. Did person
  - a. Willfully refuse?
  - b. Have A/C of 0.08 or more?
  - c. Have A/C of 0.04 or more if driving CMV? or
  - d. Have any A/C if person <21?

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[illegible][illegible][illegible]

## G.S. 20-16.5

3. Did the law enforcement officer and chemical analyst comply with G.S. 20-16.2 and G.S. 20-139.1 in requiring person's submission to or procuring a chemical analysis?

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## Compliance with procedures

- ☐ 5. After the driver was charged, I took the driver before \_\_\_\_\_, a chemical analyst authorized to administer a test of the driver's breath.
- ☐ 6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to conduct chemical analyses of the breath utilizing the Intox ECIR II.
- ☐ 7. I informed the driver, orally and also gave notice in writing of the rights specified in G.S. 20-16.2(a). I completed informing the driver of the rights as indicated on the attached DHHS-4081.
- ☐ 8. I began observing the driver for the purpose of complying with the observation period requirements for a breath analysis in accordance with the methods/rules approved by the Department of Health and Human Services at \_\_\_\_\_ (a.)p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.
- ☐ 9. On the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ (a.)p.m., I requested the driver to submit to a chemical analysis of his/her breath or blood or urine. For blood or urine, I directed the taking of a blood or urine sample by a person qualified under G.S. 20-139.1.
- ☐ 10. The driver was unconscious or otherwise incapable of refusal and therefore the notification of rights and request to submit to a chemical analysis were not made. I directed the taking of a blood sample by a person qualified under G.S. 20-139.1.
- ☐ 11. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methods/rules approved by the Department of Health and Human Services using an Intox ECIR II, and I printed the results of the driver's chemical analysis on the attached test record, DHHS-4082, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intox ECIR II on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_, and shown on the preventive maintenance record. I provided the driver with a copy of the attached test record before any trial or proceeding in which the results of the chemical analysis may be used.

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North Carolina Department of Health and Human Services  
**Rights of Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration or Presence of an Impairing Substance Under N.C.G.S. 20-16.2(a)**

Last \_\_\_\_\_ First \_\_\_\_\_ MI \_\_\_\_\_  
 Driver's License Number/State \_\_\_\_\_ Date of Birth \_\_\_\_\_ Citation Number \_\_\_\_\_

☐ Breath ☐ Blood ☐ Subsequent Test

1. You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your driver's license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.
2. The test results, or the fact of your refusal, will be admissible in evidence at trial.
3. Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is 0.08 or more, 0.10 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
4. After you are released, you may seek your own test in addition to this test.
5. You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for more than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

Date \_\_\_\_\_ Time \_\_\_\_\_ [ a.m. ] p.m. Signature of Person Charged \_\_\_\_\_

Did defendant call an attorney and/or witness? [ ] NO [ ] YES Time \_\_\_\_\_ [ a.m. ] p.m.

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## G.S. 20-139.1

- ▶ (b): Chemical analysis of breath admissible if done pursuant to DHHS rules by person with permit
- ▶ (b2): preventative maintenance
- ▶ (b3): at least duplicate sequential breath samples
  - ▶ results may not differ by more than 0.02
  - ▶ refusal to give second sample makes first result admissible
- ▶ (b5): may be asked for blood or urine too

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## Exception: G.S. 20-16.5(n)

- ▶ Currently revoked DL
- ▶ No LDP
- ▶ Not eligible for restoration during period of CVR
- ▶ Then not required to issue CVR
- ▶ If exception applies, and no CVR issued, must file copy of documentary evidence and set out in writing other evidence

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## AOC-CVR-02: Revocation Order



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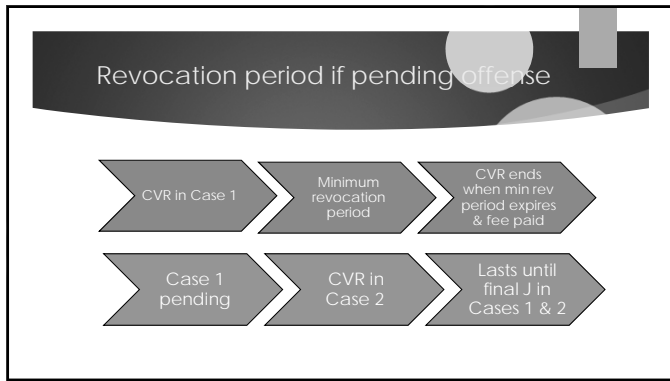
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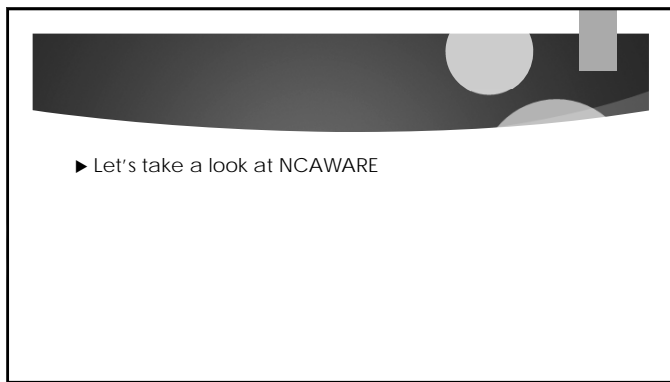
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# Procedural Justice for Magistrates

Jeff Welty  
UNC School of Government  
November 2019

## What's Procedural Justice?



## Experiences Matter

- Court proceedings involve a lot of people
- Their experiences matter
  - Influence likelihood of compliance with court orders
  - Influence likelihood of compliance with the law
  - Influence likelihood of complaints
  - Influence trust in the court system

## Promising Studies



- A Nebraska study found that defendants “who appeared for [court] perceived greater levels of procedural justice in their overall experience with the criminal justice system” than defendants who FTA.
- An Australian study found that DWI defendants “who experienced their hearing as fairer, and therefore viewed the law as more legitimate two years later, reoffended at around 25% the rate of those who viewed the law as less legitimate.”

## How Do We Create the Experience of Justice?



## 4 Pillars (Principles) of Procedural Justice



### Voice



### Neutrality



### Respect



### Trust



### Barriers to Procedural Justice

- Time constraints
- Need to maintain control
- Distractions/multi-tasking
- \_\_\_\_\_
- \_\_\_\_\_



### What Can You Do?

# Procedural Justice for Magistrates

Jeff Welty  
UNC School of Government  
November 2019

**Ethics for Magistrates**  
**James Drennan**  
**UNC School of Government**  
**November 2019**

- 1) Magistrate is public officer—not a regular employee
  - a) Distinction between officer and employee. As a public officer, magistrates:
    - i) Take oath of office
    - ii) Have terms of office to promote independence
    - iii) Exercise sovereign power of the state
    - iv) Are subject to limited removal procedure
      - (1) Discipline is by judicial proceeding, not by hiring authority
        - (a) Grounds are statutory
- 2) Disciplinary procedure
  - a) Impeachment—very, very rare
  - b) Removal procedure GS 7A-173
    - i) Complaint reviewed by chief district judge
      - (1) Probable cause standard
      - (2) May order suspension pending hearing, with pay
    - ii) Hearing by superior court judge
      - (1) “Grounds for removal are the same as for a judge” GS 7A-173, 7A-376, *State v. Greer*, 308 NC 515; *In Re Kiser*, 126 NC App. 206
        - (a) Willful misconduct in office
          - (i) Improper and wrong conduct acting in official capacity;
          - (ii) Done intentionally and knowingly (or with gross unconcern for the conduct);  
and
          - (iii) In bad faith.
          - (iv) Examples—dishonesty, corruption, or knowing misuse of office, or to accomplish purpose beyond the legitimate exercise of his or her authority. *In Re Edens*, 290 NC 299; *In Re Stuhl*, 292 NC 239; *In Re Nowell*, 293 NC 235
            1. Not limited to time in court
            2. Improper sexual activity between judge and defendant included
            3. Generally criminal charges against judge will also constitute willful misconduct
        - (b) Willful and persistent failure to perform his duties
        - (c) Habitual intemperance
        - (d) Conviction of crime involving moral turpitude
        - (e) Conduct prejudicial to administration of justice
          - (i) Less serious than willful misconduct

- (ii) Often taken in good faith, but still appears to objective observer that conduct is un-judicial and lowers public esteem for the office
  - (iii) Motive doesn't matter; conduct does
  - (iv) Personal benefit not required
  - (v) Can't use inexperience or lack of training
  - (vi) Private matters also covered
  - (vii) *Edens, Stuhl, Nowell, supra; In Re Crutchfield, 289 NC 597; In Re Peoples, 296 NC 109; In Re Martin, 295 NC 292*
- (2) Remedy for violation
  - (a) Judges may be censured, and may lose retirement benefits if removed
  - (b) Removal is only remedy for magistrates and is mandatory if grounds found to exist  
*GS 7A-173; Kiser*
    - (i) *Does not involve retirement forfeiture*
- 3) Relationship of Code of Judicial Conduct to magistrate discipline
  - a) Code is only applicable directly to judges
  - b) "A violation of the Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office in disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings . . . No other code or proposed code shall be relied upon in the interpretation and application of this Code of Judicial Conduct."  
*Preamble to Code of Judicial Conduct*
  - c) Since magistrates subject to same standard of conduct in removal hearing, standards of the Code apply to magistrates
- 4) Code of Judicial Conduct
  - a) Purpose is to provide certainty, accountability and professional identity ; can be aspirational or prohibitive or both
  - b) Also provides safe harbors in difficult areas
  - c) Newly amended to make less aspirational and more like a code
  - d) Divided into "Canons"; most directly relevant are:
    - i) Canon 1—Uphold integrity and independence of the judiciary
    - ii) Canon 2—Avoid impropriety in all activities
      - (1) No longer the appearance of impropriety
      - (2) Use of prestige of office; personal references; character evidence; membership in organizations
    - iii) Canon 3—Impartiality and diligence
      - (1) Order, dignity, courtesy
      - (2) Ex parte communications
        - (a) Prohibited in pending cases, unless authorized by law
      - (3) Promptness
      - (4) Comments on merits of pending cases
      - (5) Administrative duties and duty to report violations
      - (6) Recusal
    - iv) Canons 4 and 5—Outside activities to improve the system or the community

- (1) Don't do it if it casts doubt on your ability to be impartial
- (2) Community activities, but no fundraising
  - (a) Organization can't be frequent litigator
- (3) Financial activities
  - (a) Business dealings
    - (i) Don't do if interferes with duties as magistrate, or exploit judicial position or frequently involves interaction with litigants or lawyers who appear in court
  - (b) Gifts
    - (i) Ordinary social hospitality
    - (ii) Not from parties to a proceeding
    - (iii) Reports of gifts over \$500
  - (c) Estates of relatives—may serve
- (4) Service on commissions and committees
  - (a) Limited to justice system, cultural, historical or educational activities
- 5) Ethics is also a matter of personal integrity. Aim high in matters of personal and professional ethics

## Magistrate Ethics and Professionalism In Criminal Cases

James Drennan  
NC Judicial College  
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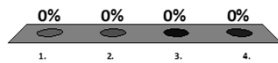
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A magistrate is a cousin to a police officer. Should the magistrate

1. Preside over a criminal case involving the cousin
2. Work out schedules so they are never on duty at the same time
3. Never hear a matter involving a cousin
4. 4. Other



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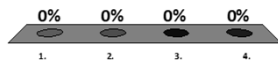
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You are at a Rotary Club. A person you know is involved with MADD. They comment on how mad they are at the number of impaired driving charges against Hispanics. You should

1. Politely change the subject
2. Tell them you think they are right
3. Tell them you think they are wrong
4. Treat this as a teachable moment about the role of the courts to be neutral



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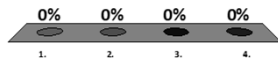
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### Should you participate in BatMobile operations?

1. Always
2. Never
3. Usually, unless there are special circumstances
4. Usually not, unless there are special circumstances



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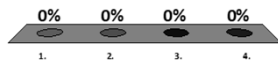
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### I believe law enforcement officers

1. Always tell the truth
2. Don't always tell the truth, but I believe them until they don't tell the truth
3. Are no different than anyone else in their credibility
4. Deserve to be given the benefit of the doubt



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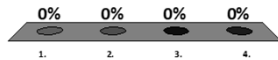
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### A local bondsman gives you a ham every year. You should

1. Give the ham to the local homeless shelter
2. Refuse to accept it
3. Take it and enjoy it
4. Tell the bondsman that any gifts should be something that can be eaten in the office



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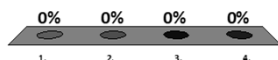
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A local defense firm gives a barbeque dinner to each office in the courthouse. You should

1. Oink
2. Tell him your office can't accept it
3. Take the food, and remind him that you shouldn't be getting gifts in the future
4. Take the food and invite the prosecutors to the meal



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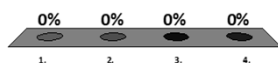
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You get an invitation to the local Sheriff's Christmas Party. You should

1. Go and enjoy their hospitality
2. Decline the invitation, graciously
3. Decline the invitation and tell them it is not ethical for you to go
4. Go every other year



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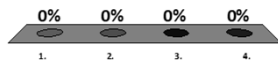
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You are invited to the criminal defense lawyers' annual picnic.

1. Go, have fun
2. Decline, graciously
3. Decline because it's improper, and say so
4. Go every other year



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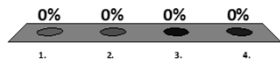
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You are invited to Local Domestic Violence Shelter/Advocacy group's Picnic. You should

1. Go
2. Decline, graciously
3. Decline, and say it's improper
4. Go just once



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### Magistrates and Ethics

- Magistrate is public officer—not a regular employee
- Discipline is by judicial proceeding, not by hiring authority
- Grounds are statutory

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### Magistrate as a Public Officer—The First Step

- Take oath of office
- Exercise sovereign power of the state
- Term of office
- Limited removal procedure

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## Removal Procedure

- Impeachment
- Statutory removal authority, by superior court judge
- “Grounds for removal are the same as for a judge” GS 7A-173, *State v. Greer*, 308 NC 515; *In Re Kiser*, 126 NC App. 206

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## Grounds for Removal

- Judge may be removed or censured for
  - Willful misconduct in office
  - Willful and persistent failure to perform his duties
  - Habitual intemperance
  - Conviction of crime involving moral turpitude
  - Conduct prejudicial to administration of justice
    - Generally not a basis for removal unless done more than once

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## Willful Misconduct

- Improper and wrong conduct acting in official capacity
- Done intentionally and knowingly (or with gross unconcern for the conduct)
- In bad faith
- Examples—dishonesty, corruption, or knowing misuse of office, or to accomplish purpose beyond the legitimate exercise of his or her authority
- *In Re Edens*, 290 NC 299; *In Re Stuhl*, 292 NC 239; *In Re Nowell*, 293 NC 235

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## Willful Misconduct

- Not limited to time in court
- Improper sexual activity between judge and defendant included
- Generally criminal charges against judge will also constitute willful misconduct

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## Conduct Prejudicial to Administration of Justice

- Less serious than willful misconduct
- Often taken in good faith, but still appears to objective observer that conduct is un-judicial and lowers public esteem for the office
- Motive doesn't matter; conduct does
- Personal benefit not required
- Can't use inexperience or lack of training
- Private matters also covered
- *Edens, Stuhl, Nowell, supra; In Re Crutchfield, 289 NC 597; In Re Peoples, 296 NC 109; In Re Martin, 295 NC 292*

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## Removal of Magistrate

- While grounds are the same, procedures are different
  - Judges subject to Judicial Standards Commission
  - Magistrate subject to hearing before superior court
- Remedies also different
  - Judges may be censured, and may lose retirement benefits if removed
  - Removal is only remedy for magistrates and is mandatory if grounds found to exist (*Kiser*)

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### Code of Judicial Conduct—Why Should You Care?

- “A violation of the Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office in disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings . . . No other code or proposed code shall be relied upon in the interpretation and application of this Code of Judicial Conduct.” *Preamble to Code of Judicial Conduct*

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### Code of Judicial Conduct

- Purpose is to provide certainty, accountability and professional identity
- Can be aspirational or prohibitive or both
- Also provides safe harbors in difficult areas
- Newly amended; now emphasis more on CODE than ETHICS
  - Ethics is a code of values which guide our choices and actions and determine the purpose and course of our lives. Ayn Rand

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### Canons of Ethics

- Canon—noun, an accepted principle or rule; a criterion or standard of judgment; a body of principles, rules, standards, or norms
- Canon 1—Uphold integrity and independence of the judiciary
- Canon 2—Avoid impropriety in all activities
  - No longer the appearance of impropriety
  - Use of prestige of office; personal references; character evidence; membership in organizations

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### Canon 3

- Canon 3—Impartiality and diligence
  - Order, dignity, courtesy
  - Ex parte communications
  - Promptness
  - Comments on merits of pending cases
  - Administrative duties and duty to report violations
  - Recusal

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### Canons

- Canons 4 and 5—Outside activities to improve the system or the community
  - Don't do it if it casts doubt on your ability to be impartial
  - Community activities, but no fundraising
  - Financial activities
  - Gifts
  - Estates of relatives
  - Service on commissions and committees

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- A magistrate is a cousin to a police officer. What should you do?
- **Canon 2A., B. A judge should . . . conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. . . . A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment.**
- **Canon 3C.(1). A judge should disqualify himself in a proceeding in which his impartiality may reasonably be questioned, including but not limited to instances where:**
  - (a) **He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;**

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- You are at a Rotary Club. A person you know is involved with MADD. They comment on how mad they are at the number of impaired driving charges against Hispanics.
- *A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment. . . nor should he convey or permit others to convey the impression that they are in a special position to influence him.*
- *Canon 3A.(1). A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending [or impending] proceeding.*

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### Canon 3.A.(6)

- (6) A judge should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law and should encourage similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties; from explaining for public information the proceedings of the Court; . . . or from addressing educational, religious, charitable, fraternal, political, or civic organizations.

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- Should you participate in BatMobile operations?
- *Canon 3A.(1). A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.*
- *A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment. . . nor should he convey or permit others to convey the impression that they are in a special position to influence him.*
- GS 20-38.4

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**§ 20-38.4. Initial appearance.**

- (a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.
- (1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.
- (2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.
- (3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.
- (4) The magistrate shall also:
- a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and
- b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

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## Officers and Testimony

**Canon 2**

**A judge should avoid impropriety in all the judge's activities.**

- A. A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow the judge's family, social or other relationships to influence the judge's judicial conduct or judgment.

**Canon 3**

**A judge should perform the duties of the office impartially and diligently.**

- A. Adjudicative responsibilities.
- (4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, . . .

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## Gifts and Social Functions

**Canon 5**

**A judge should regulate the judge's extra-judicial activities to ensure that they do not prevent the judge from carrying out the judge's judicial duties.**

- (4) Neither a judge nor a member of the judge's family residing in the judge's household should accept a gift from anyone except as follows:
- (a) A judge may accept a gift incident to a public testimonial to the judge; an invitation to the judge or the judge's spouse to attend a bar-related function, a cultural or historical activity, or an event related to the economic, educational, legal, or governmental system, or the administration of justice;

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## Gifts and Social Functions

### Canon 5

**A judge should regulate the judge's extra-judicial activities to ensure that they do not prevent the judge from carrying out the judge's judicial duties.**

- (b) A judge or a member of the judge's family residing in the judge's household may accept ordinary social hospitality; a gift, favor or loan from a friend or relative; a wedding, engagement or other special occasion gift;
- (c) Other than as permitted under subsection C.(4)(b) of this Canon, a judge or a member of the judge's family residing in the judge's household may accept any other gift only if the donor is not a party presently before the judge and, if its value exceeds \$500, the judge reports it in the same manner as the judge reports compensation in Canon 6C.

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## More Than Ethics?

- Do unto others as you would have them do unto you.
- Always do right—this will gratify some and astonish the rest. Mark Twain
- Aim above morality. Be not simply good; be good for something. Henry David Thoreau
- Remember, people will judge you by your actions, not your intentions. You may have a heart of gold — but so does a hard-boiled egg. Anon.

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