AGENDA
BASIC SCHOOL FOR MAGISTRATES: WEEK II
AUGUST 20-AUGUST 24, 2012
CHAPEL HILL, N.C.

MONDAY, August 20

9:00	**Introductory Lecture on Elements of Crimes** John Rubin, School of Government	**Room 2401**
10:00	**Elements of Crimes (Assaults)** John Rubin	**Room 2401**
10:45	**Break**	
11:00	**Elements of Crimes (Assaults), cont'd** John Rubin	**Room 2401**
12:25	**Lunch at School of Government**	**Dining Room**
1:15	**Elements (Larceny and Robbery)** Jeff Welty, School of Government	**Room 2401**
2:50	**Break**	
3:05	**Elements (Sexual Assaults)** John Rubin	**Room 2401**
4:55	**Adjourn**	

TUESDAY, August 21

9:00	**Selecting Process** Jessie Smith	**Room 2401**
10:30	**Break**	
10:45	**Selecting Process, Cont'd** Jessie Smith	**Room 2401**
12:05	**Lunch at School of Government**	**Dining Room**
12:55	**Selecting Process, Cont'd** Jessie Smith	**Room 2401**
2:05	**Break**	
2:20	**Elements of Crimes (Trespass)** Jamie Markham	**Room 2401**
3:50	**Elements (Drunk, Weapons, Resisting)** Jeff Welty	**Room 2401**
4:50	**Adjourn**	

WEDNESDAY, August 22

9:00	**Search Warrants** Jeff Welty	**Room 2401**
10:30	**Break**	
10:45	**Search Warrants, Cont'd** Jeff Welty	**Room 2401**
12:05	**Lunch at School of Government**	**Dining Room**
12:55	**Search Warrants, Cont'd** Jeff Welty	**Room 2401**
2:05	**Break**	
2:20	**Elements (Burglary)** Jessie Smith	**Room 2401**
3:35	**Break**	
3:50	**Elements (Homicide)** Jeff Welty	**Room 2401**
5:15	**Adjourn**	

THURSDAY, August 23

9:00	**Initial Appearance** John Rubin	**Room 2401**
10:30	**Break**	
10:40	**Initial Appearance, Cont'd** John Rubin	**Room 2401**
12:00	**Lunch at School of Government**	**Dining Room**
12:50	**Initial Appearance, cont'd** John Rubin	**Room 2401**
2:00	**Elements (Drugs)** Jessie Smith, School of Government	**Room 2401**
3:15	**Break**	
3:30	**Drugs, cont'd** Jessie Smith	**Room 2401**
4:30	**Elements (Worthless Checks and False Pretenses)** Jamie Markham	**Room 2401**
5:15	**Adjourn**	

FRIDAY, August 24

9:00	**Elements of Crimes (Motor Vehicle Law)** Shea Denning, School of Government	**Room 2401**
10:30	**Break**	
10:45	**Implied Consent Procedures** Shea Denning	**Room 2401**
12:15	**Lunch at the School of Government**	**Dining Room**
1:00	**Complete Evaluations**	**Room 2401**
1:15	**Test on Week 2 Material**	**Room 2401 & 2321**

Total available CLEs: 12 hours for two weeks
Week II General CLE hours: 1810 min = 30.17 hours

SOG FACULTY BIOGRAPHIES

Mark Botts
(919) 962-8204 **botts@sog.unc.edu**

Mark Botts joined the School of Government in 1992. Prior to that, he served judicial clerkships with the US Court of Appeals for the Sixth Circuit and the US District Court for the Western District of Michigan. Botts' publications include *A Legal Manual for Area Mental Health, Developmental Disabilities, and Substance Abuse Boards in North Carolina*. Mark holds a B.A. from Albion College and a J.D. from the University of Michigan, School of Law.

Areas of Interest: Mental health law, including involuntary commitment procedures; legal responsibilities of area boards; client rights (especially confidentiality)

Shea Riggsbee Denning
(919) 843-5120 **denning@sog.unc.edu**

Shea Denning joined the School of Government in 2003. Prior to that, she was an assistant federal public defender for the Eastern District of North Carolina and practiced law with the firm of King and Spalding in Atlanta, Georgia. Denning began her career as a law clerk to the Honorable Malcolm J. Howard, U.S. District Judge for the Eastern District of North Carolina. She is a member of the North Carolina State Bar. Denning earned an AB in journalism and mass communication and a J.D. with high honors, Order of the Coif, from the University of North Carolina at Chapel Hill.

Areas of interest: Motor vehicle law; district court judge education

Dona Lewandowski
(919) 966-7288 **lewandowski@sog.unc.edu**

Dona Lewandowski joined the faculty of the Institute of Government in 1985 and spent the next five year 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 holds a B.S. and an M.A. from Middle Tennessee State University and a J.D. 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, and magistrate personnel matters, including appointment and removal.

Jamie Markham
(919) 843-3914 **markham@sog.unc.edu**

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. 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: Criminal law and procedure, especially community corrections and sentencing law

John Rubin
(919) 962-2498 **rubin@sog.unc.edu**

John Rubin joined the School of Government in 1991. Prior to that, he practiced law in Washington, D.C., 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, including the *North Carolina Defender Manual*, and he designs and teaches in numerous training programs each year for indigent defenders. He is a frequent consultant to the Office of Indigent Services, which is responsible for overseeing and enhancing legal representation for indigent defendants and others entitled to counsel under North Carolina law. He is the 2008 recipient of the Albert and Gladys Coates Term Professorship for Faculty Achievement. Rubin earned a B.A. from the University of California at Berkeley and a J.D. from the University of North Carolina at Chapel Hill.

Areas of Interest: Criminal law and procedure; public defender training; evidence; indigent defense; domestic violence; subpoenas.

Jessica Smith
(919) 966-4105 **smithj@sog.unc.edu**

Jessie Smith joined the SOG in 2000. Before that, she practiced law at Covington & Burling in Washington, D.C. She also clerked for the U.S. District Judge W. Earl Britt in the U.S. District Court for the Eastern District of N.C and for Senior U.S. Circuit Judge J. Dickson Phillips Jr. in the U.S. Court of Appeals for the 4th Circuit. At the SOG, Jessica teaches and consults with judges and other public employees involved in the criminal justice system. Jessica earned a B.A., cum laude, from the University of Pennsylvania and a J.D., magna cum laude, Order of the Coif, from the University of Pennsylvania Law School, where she was managing editor of the Law Review. She was the 2006 recipient of the Albert & Gladys Hall Coates Term Professorship for Teaching Excellence.

Areas of Interest: Criminal law and procedure; evidence

Jeff Welty
(919) 843-8474 **welty@sog.unc.edu**

Jeff Welty specializes in criminal law and procedure, including search and seizure issues and prosecutor assistance. Prior to joining the School of Government, he practiced law in Durham and was a Lecturing Fellow at Duke Law School. He earned his JD, with highest honors, at Duke, where he served as executive editor of the *Duke Law Journal*.

Areas of Interest: Criminal law and procedure; evidence; prosecutor training; police attorneys

Contact Information Form

Please return any contact information updates to Susan Jensen by the end of the week.

Full Name:	
Preferred Name:	
Preferred Mailing Address:	
Billing Address (if different from above):	
County:	
District:	
State Bar Number (if applicable):	
Work Phone & Fax:	
Home & Cell Phone:	
Work & Preferred Email:	
Date Appointed As Magistrate:	
Any Special Needs (explain):	
Educational Background:	
Previous Work Experience:	

Tab:

Criminal Procedure

CRIMINAL PROCEDURE (AUGUST, 2012)

UNC
SCHOOL OF GOVERNMENT
THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

ADMINISTRATION OF JUSTICE BULLETIN 2009/08 | DECEMBER 2009

Criminal Procedure for Magistrates

Jessica Smith

CONTENTS

Jessica Smith is a School of Government faculty member who specializes in criminal law and procedure.

This bulletin summarizes criminal procedure for North Carolina magistrates. Coverage includes criminal process and pleadings, initial appearance, pretrial release, fugitives, and search warrants. It replaces Administration of Justice Bulletin 2007/06 and serves as the new criminal procedure text for the School of Government's Basic School for Magistrates.

Criminal Process and Pleadings

Types of Criminal Process and Pleadings

You will issue and encounter five different types of criminal process and pleadings in your daily work: citation, criminal summons, warrant for arrest, order for arrest (OFA), and magistrate's order. Other types of pleadings, including statement of charges, information, and indictment, will not be a part of your daily work, and thus they are not discussed in this bulletin.

The purpose of criminal process is to require a person to come to court. Official Commentary to Article 17 of the North Carolina General Statutes (hereinafter G.S.), Chapter 15A. When a warrant for arrest or OFA is issued, this is accomplished by taking the person into custody. When a citation or criminal summons is used, it is accomplished by ordering the person to appear in court. Most forms of criminal process also can serve as the criminal pleading (the OFA, discussed later, is the only type of criminal process that cannot serve as a pleading). Criminal pleadings have three main functions: to give the court jurisdiction to enter judgment on the offense charged, to give the defendant notice of the charges, and to allow the defendant to raise a double jeopardy defense. 238 N.C. 325.

Issuing Criminal Process and Pleadings

Required Determinations

Before issuing criminal process and pleadings, you must determine

- that probable cause exists,
- which crime(s) to charge,
- what charging language to use, and
- which type of process or pleading to issue.

This bulletin focuses on all but the second of these inquiries. New magistrates will learn more about which crime(s) to charge in their Basic School sessions on the elements of the crimes. The School of Government publication Jessica Smith, North Carolina Crimes: A Guidebook on the Elements of Crime (School of Government, UNC Chapel Hill, 6th ed. 2007) (hereinafter North Carolina Crimes), describes the more commonly charged North Carolina crimes.

Independent Determination

You are an independent judicial official, not an agent of law enforcement. Thus, when you determine whether to issue criminal process and pleadings, your determinations must be neutral and independent.

Requirements of Criminal Pleadings

Because the requirements for a sufficient pleading are more stringent than those for simply taking a person into custody, criminal pleadings always should be drafted to satisfy the special pleading requirements discussed below.

Probable Cause

Generally

Criminal process and pleadings require a finding of probable cause. With a citation, a law enforcement officer determines whether probable cause exists. For all of the other forms of criminal process and pleadings discussed in this bulletin, a judicial official determines whether probable cause exists.

Meaning of Probable Cause

To issue any of the forms of criminal process or pleadings discussed in this section, you must determine that there is probable cause to believe that a crime has been committed and that the person who has been arrested or who will be arrested or summoned committed that crime. Probable cause means a fair probability; the standard is not proof beyond a reasonable doubt. Robert Farb, Arrest, Search, and Investigation in North Carolina 26 (3d ed. 2003) (hereinafter Arrest, Search, and Investigation). Thus the probable cause determination is whether there is a fair probability that: (1) a crime was committed, and (2) the person arrested or to be arrested or summoned committed the crime. In order to find probable cause that an offense was committed, you must find probable cause for each element of the offense.

The Probable Cause Determination

Forms of evidence. The information establishing probable cause must be shown by one or more of the following:

- Affidavit
- Oral testimony under oath or affirmation (e.g., by a law enforcement officer or a complaining witness) before you
- Oral testimony under oath or affirmation presented by a law enforcement officer to you by means of an audio and video transmission in which both parties can see and hear each other. The procedure and equipment must be approved by the Administrative Office of the Courts (AOC), based on a submission to the AOC by the senior resident superior court judge and the chief district court judge. G.S. 15A-303(c); -304(d); -511(c). A 2009 law, S.L. 2009-270, provides for a pilot program that would allow videoconferencing for these determinations under specified conditions for individuals in the custody of the Department of Correction (DOC) or a local confinement facility. However, due to a lack of funding, the pilot program has not yet been initiated. In any event, videoconferencing already is permitted for probable cause determinations pursuant to the statutory provisions cited above.

Rules of evidence not applicable. When making a probable cause determination, you are not bound by the rules of evidence. Thus hearsay that might be inadmissible at trial may be considered, N.C. R. Evid. 1101(b), provided it is reliable.

Factors that should not be considered. When making the probable cause determination, you should not be influenced by the fact that the defendant already is in custody. Nor should you consider, as a general rule, application of the exclusionary rule (such as the legality of an arrest or search). Finally, you should not consider defenses, such as self-defense, unless all of the evidence presented clearly establishes that the defense applies.

Relevant factors. When making the probable cause determination, factors that may indicate guilt include

- eyewitness observations and other reports, including scientific evidence;
- furtive movements or attempts to hide evidence;
- resistance to officers;
- evasive and untruthful answers to questions; and
- flight by the defendant.

Credibility. *Assessing Credibility.* As a general rule, when assessing credibility, a witness's story is more likely to be true if he or she has no motive to lie, provides a detailed statement, and is consistent.

Citizen Witnesses. Citizen witnesses are regular people who witness crime. For example, a person who saw robbers flee from a crime scene is a citizen witness. Absent some reason to doubt the credibility of a citizen witness, such as a dispute between the witness and the alleged perpetrator, you may presume that he or she is truthful.

Anonymous Tipsters. An anonymous tip is a lead from someone whose identity is unknown. Such a tip cannot, standing alone, constitute probable cause. However, it can contribute to probable cause, if there is adequate corroboration by officers.

Sometimes people make face-to-face reports to officers, but the officer fails to obtain the person's name. In these situations, case law suggests that because the person has put his or her identity at risk, he or she should be treated more like a citizen witness than an anonymous tipster. 362 N.C. 614.

Confidential Informants. A confidential informant is one whose identity is known to officers but not revealed to you when the statement of probable cause is provided. So that information from a confidential informant will establish probable cause, an officer typically will provide you with facts indicating (1) the basis for the informant's information (e.g., that the informant personally observed the defendant doing the illegal act) and (2) the informant's credibility or the reliability of the information. Arrest, Search, and Investigation at 137–38. The second showing typically is made by facts indicating the officer's track record with the informant or that the officer corroborated the informant's information. Arrest, Search, and Investigation at 138.

Charging Language

Generally

Once you have identified the relevant criminal offense and that there is probable cause to charge, you must prepare the appropriate criminal process or pleading. Except for an OFA, all criminal process and pleadings issued by a magistrate—criminal summons, warrant for arrest, and magistrate's order—must include charging language.

Finding Charging Language

You can find the appropriate charging language in one of two places. When issuing criminal process through the AOC Magistrate System or NCAWARE, the charging language will appear automatically when the offense is entered on the criminal form in the computer. For magistrates who are not yet on either the AOC Magistrate System or NCAWARE and for times when the computer system is not operating, charging language can be found in the School of Government publication, Robert Farb, Arrest Warrant and Indictment Forms (5th ed. 2005) (hereinafter Warrant and Indictment Forms). That book indicates whether there is an AOC form for the crime; forms may be obtained through the clerk's office or on the AOC website, www.nccourts.org/Forms/FormSearch.asp. Warrant and Indictment Forms does not

include all North Carolina offenses that might be charged. If the facts presented do not fit into the charging language for the included offenses, do not force the form language to fit. Instead, modify the form language to fit the facts or draft new language. For offenses that Warrant and Indictment Forms does not cover, you will need to draft charging language based on the relevant statute. See pages 13–14 for general guidelines on drafting charging language. For a quick listing of most of the criminal offenses in North Carolina, you can consult the contents at the beginning of Chapter 14 in North Carolina Criminal Law and Procedure (LexisNexis 2009) (the "red book" provided annually to all magistrates by the AOC; the books are shipped to the clerk's office; check there if you have not received your book) or the table of contents in North Carolina Crimes, which the AOC provides to all magistrates.

Citation

Statute and Forms

G.S. 15A-302; AOC-CR-500 (standard citation form used by Highway Patrol, included in Appendix A); AOC-CR-501 (standard citation form used by all other law enforcement agencies); AOC-CR-502 (alcohol beverage control offenses); AOC-CR-503 (wildlife and forestry offenses); and AOC-CR-504 (railroad offenses). For all citation forms, one copy goes to each of the following: the clerk, the defendant, the Department of Motor Vehicles in traffic cases, the officer's agency, and the officer.

Defined

A citation is a directive that a person appear in court to answer a charge. G.S. 15A-302(a).

Who May Issue

A citation is issued by a law enforcement officer or other person authorized by statute who has probable cause to believe that a person has committed a misdemeanor or infraction. G.S. 15A-302(a), (b). Magistrates do not have the authority to issue citations.

Used Only for Misdemeanors and Infractions

A citation may be used for any misdemeanor or infraction, though it is used most often for traffic cases. G.S. 15A-302(b). Legally, the citation is not limited to on-the-scene situations, and it may be issued any time a citizen provides a law enforcement officer with probable cause to believe that a defendant committed a misdemeanor or infraction. For example, an officer could use a citation to charge a person with shoplifting instead of arresting the person.

Contents

The citation must

- identify the crime charged, including the date, and where material, the property and other persons involved;
- list the name and address of the person cited, or provide other identification if that cannot be determined;
- identify the officer issuing the citation; and
- direct the person to whom the citation is issued to appear in a designated court, at a designated time and date.

G.S. 15A-302(c).

If a defendant refuses to sign a citation, it is still effective. G.S. 15A-302(d). When this happens, the officer may write "defendant refused to sign" in the space for the defendant's signature.

If there are two charges, the officer should use the lower portion of the citation to write out the second charge (the officer should not charge two offenses on the top half of the form). If there are more than two charges, the officer should use a separate citation for every two charges. This procedure is required because each charge against a defendant must be pleaded in a separate count, G.S. 15A-924(a)(2), and the AOC uniform citation form is drafted for only two counts per form.

Failure to Appear

Because a citation is not issued by a judicial official, it is not criminal contempt under Section 5A-11(a)(3) of the North Carolina General Statutes (hereinafter G.S.) if the defendant fails to appear in court. If the defendant fails to appear in court on a citation for a misdemeanor, an OFA may be issued. G.S. 15A-302(f); -305(b)(3). If the defendant fails to appear in court on a citation for an infraction, a criminal summons may be issued. G.S. 15A-1116(b). An arrest warrant cannot be used for a failure to appear (FTA) on an infraction. If the defendant fails to appear in court when charged with an infraction in a criminal summons, then an order to show cause for contempt may be issued [but not an OFA—unless it is issued with the order to show cause under G.S. 5A-16(b)].

Processing a Citation

If an officer brings a citation to you without having arrested the person charged, there is nothing for you to do other than forward it to the clerk's office. If the person charged has been arrested, you may want to convert the citation into a magistrate's order as a part of the initial appearance, as discussed on page 17.

Issuing a Summons or Warrant

The fact that a citation has been issued for a misdemeanor does not prevent the later issuance of a summons or warrant for that offense. G.S. 15A-302(f). For example, suppose an officer cites a defendant for a misdemeanor and later wants to arrest the defendant. The citation cannot be used to take the defendant into custody. If the defendant is not already in the officer's custody, an arrest warrant is needed. If the officer appears before you for an arrest warrant, the officer must swear to the facts and you should proceed under the procedures set forth below for issuing an arrest warrant. If the officer has issued a citation and has the defendant in custody, the proper process is a magistrate's order, discussed below.

Criminal Summons

Statute and Forms

G.S. 15A-303; AOC-CR-113 (standard misdemeanor criminal summons; included in Appendix A); AOC-CR-114 (abandonment and nonsupport of spouse and nonsupport of children); AOC-CR-115 (misdemeanor worthless check); AOC-CR-140 (communicating threats); AOC-CR-144 (failure to return rental property); AOC-CR-145 (misdemeanor assault); AOC-CR-147 (injury to personal or real property); AOC-CR-916M (employment security law violation). For all criminal summons forms, one copy goes to the officer to be filed with the clerk after execution, one copy is for the clerk, and one copy is for the defendant.

Defined

A criminal summons consists of a statement of the crime or infraction charged and an order directing that the accused appear and answer the charges; it does not order a law enforcement officer to take the defendant into custody. G.S. 15A-303(a). It is based on a showing of probable cause supported by oath or affirmation. G.S. 15A-303(a).

Who May Issue

A criminal summons is issued by any person authorized to issue a warrant for arrest. G.S. 15A-303(f). Those individuals include a justice, judge, clerk, or magistrate. G.S. 15A-304(f).

Used for Any Crime or Infraction

A criminal summons legally may be used for any felony, misdemeanor, or infraction. G.S. 15A-303(a). However, because of how it is drafted, the AOC criminal summons form may not be used to charge a felony.

Contents

A criminal summons must contain a statement of the crime or infraction charged. Using the appropriate charging language, see page 6, and following the guidelines for criminal pleadings, see pages 13–14, will ensure that the summons contains a proper statement. The summons must order the defendant to appear in a designated court at a designated time and date to answer to the charges. G.S. 15A-303(d). Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the date the summons is issued. G.S. 15A-303(d). The summons must advise the defendant that he or she may be held in contempt of court for failure to appear as directed. G.S. 15A-303(d).

Warrant for Arrest May Issue

G.S. 15A-303(e)(1) provides that the issuance of a criminal summons does not bar the later issuance of a warrant for arrest.

Failure to Appear

A defendant who fails to appear as ordered in a criminal summons may be held in contempt of court. G.S. 15A-303(e)(3). Additionally, an OFA may be issued if the offense charged is a crime (misdemeanor or felony). G.S. 15A-303(e)(2).

Warrant for Arrest

Statute and Forms

G.S. 15A-304; AOC-CR-100 (generic warrant form; included in Appendix A); AOC-CR-102 (misdemeanor assault); AOC-CR-103 (felony breaking or entering, larceny, or possession); AOC-CR-105 (communicating threats); AOC-CR-107 (misdemeanor worthless checks); AOC-CR-108 (misdemeanor motor vehicle offenses); AOC-CR-109 (forgery and uttering); AOC-CR-110 (shoplifting); AOC-CR-111 (drug offenses). For all warrant forms, one copy is for the officer to be filed with the clerk after execution, one copy is for the clerk, and one copy is for the defendant.

Defined

A warrant for arrest consists of a statement of the crime charged and an order directing that the accused be arrested and held to answer the charges. Thus, unlike the citation and criminal summons, which merely direct an individual to appear in court to answer charges, the warrant for arrest directs law enforcement officers to arrest the accused. The warrant must be based on a showing of probable cause on oath or affirmation. G.S. 15A-304(a).

Who May Issue

A warrant for arrest may be issued by a justice, judge, clerk, or magistrate. G.S. 15A-304(f).

Used for Any Crime

A warrant for arrest may be used for any crime, whether a misdemeanor or felony. It may not be used for an infraction.

Contents

A warrant for arrest must contain a statement of the crime charged. G.S. 15A-304(c). Using the appropriate charging language, see page 6, and following the guidelines for criminal pleadings, see pages 13–14, will ensure that the warrant contains a proper statement. The warrant must direct that a law enforcement officer take the defendant into custody and bring the defendant, without unnecessary delay, before a judicial official. G.S. 15A-304(e).

When Issued: Warrant versus Summons

G.S. 15A-304(b) provides that a warrant may be used instead of or after a summons has been issued when the person needs to be taken into custody. If the person already has been taken into custody under a warrantless arrest, the proper procedure is to complete a magistrate's order, not a warrant. See the discussion of magistrate's orders below.

G.S. 15A-304(b) directs that the circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, the following:

- Failure to appear when previously summoned
- Facts making it apparent that a person summoned will fail to appear
- Danger that the accused will escape
- Danger that there may be injury to a person or property
- Seriousness of the offense

Another factor sometimes considered is that under G.S. 15A-502, a person charged with a misdemeanor or felony may be fingerprinted upon arrest, if allowed by your local fingerprint plan adopted pursuant to G.S. 15A-1383. Issuance of a warrant will lead to an arrest; issuance of a summons will not.

Follow the local policy issued by your senior resident superior court judge or chief district court judge on whether a summons or warrant is appropriate. In the absence of a specific policy, many magistrates apply the following two guidelines:

1. A criminal summons should be used instead of an arrest warrant when the magistrate believes that the accused will appear in court without being jailed or placed under conditions of pretrial release.
2. A criminal summons should be used for most minor misdemeanors (unless the defendant might flee) and an arrest warrant should be used for all felonies.

Note that the arrest warrant provisions in G.S. 15A-304(b) state that the criminal summons is the process of first choice and that an arrest warrant only should be used when a criminal summons specifically has been ruled out. Also, note that officers often ask for a warrant when in fact they would settle for a criminal summons.

Cross Warrants

G.S. 15A-304(d) provides that a judicial official may not refuse to issue a warrant solely because a prior warrant has been issued for the arrest of another person involved in the same matter. A judicial official retains discretion to issue a criminal summons instead of an arrest warrant in these instances.

Magistrate's Order

Statute and Forms

G.S. 15A-511(c); AOC-CR-116 (generic magistrate's order form; included in Appendix A); AOC-CR-117 (shoplifting); AOC-CR-118 (felony or misdemeanor larceny or possession). For all magistrate's order forms, one copy of the form is for the clerk, and one copy is for the defendant.

When Used

A magistrate's order is used only when a defendant has been arrested without a warrant. G.S. 15A-511(c). As described in the section "Conducting the Initial Appearance and Setting Conditions of Pretrial Release," below, when a defendant is arrested without a warrant, he or she must be brought, without unnecessary delay, to a magistrate for an initial appearance. If the magistrate finds that there is probable cause to charge the defendant with a crime, the magistrate must issue a magistrate's order.

Used for Any Crime

The magistrate's order may be used for any crime, both felonies and misdemeanors. G.S. 15A-511(c).

Contents

A magistrate's order must contain a statement of the crime, as required for a warrant for arrest, and a finding that the defendant has been arrested without a warrant and that there is probable cause for his or her detention. G.S. 15A-511(c)(3).

Conversion of Citation

A citation may be converted into a magistrate's order. See page 17 for instruction.

Magistrate's Order for Fugitive

AOC-CR-909M (included in Appendix A) is the form for a magistrate's order for a fugitive. It has a different purpose than the magistrate's order discussed in this section. The magistrate's order for a fugitive form is discussed in the section "Fugitives," below.

Order for Arrest

Statute and Forms

G.S. 15A-305; AOC-CR-217 (included in Appendix A). One copy of the OFA form is filed with clerk, and one copy is for the defendant.

Defined

An OFA is an order that a law enforcement officer take a person into custody. G.S. 15A-305(a).

Who May Issue

An OFA may be issued by a justice, judge, clerk, or magistrate. G.S. 15A-305(a) and (d).

When Issued

G.S. 15A-305(b) lists all of the circumstances in which an OFA may be issued. For example, an OFA may be issued when a defendant fails to appear after being released on conditions of pretrial release, or if he or she fails to appear as directed in a criminal summons. However, a magistrate is likely to issue an OFA only in one circumstance: when a defendant is released subject to conditions, violates those conditions, and needs to be brought back before the magistrate—but only if this happens *before* the first appearance in district court. G.S. 15A-305(b)(5); -534(e).

Contents

When a magistrate issues an OFA, the order must state why it is being issued and order an officer to take the defendant into custody. G.S. 15A-305(c).

Special Problems with Issuing Process and Pleadings

Statute of Limitations

Misdemeanors. There is a two-year statute of limitations for misdemeanors. G.S. 15-1. This means that valid process must be issued within two years of the completion of the misdemeanor.

Felonies. There is no statute of limitations for felonies. 275 N.C. 264. This means that there is no outer limit on the time when process may be issued for a felony.

Venue

Generally. When you issue a criminal summons, arrest warrant, or OFA, it is valid throughout the state. For good reasons, however, arrest warrants (and other process) usually are issued only for crimes committed in the magistrate's own county. The reason for this informal rule is that a person will be tried (venue) in the county where the charged offense occurred. G.S. 15A-131. Thus, if a magistrate from County X issues arrest warrants for crimes committed in County Y, then the defendant and all the paperwork will need to be transferred to County Y for the trial.

Concurrent venue. G.S. 15A-131(e) states that an offense "occurs" in a county if any act constituting part of the offense occurs within the territorial limits of the county. If acts constituting part of the offense occur in more than one county (for example, worthless check, when the check is written in one county and mailed to another county), then each county has venue to conduct the trial. G.S. 15A-132(a). Put another way, the two counties have concurrent venue. If counties have concurrent venue, then the first county in which a criminal process is issued has exclusive venue. G.S. 15A-132(c).

Venue for rape or sexual offenses. G.S. 15A-136 is a special venue statute that applies when a defendant transports a person for the purpose of committing a rape, sexual offense, or sexual battery and commits one of those offenses. Under G.S. 15A-136, venue is in any county where the transportation began, continued, or ended.

Venue for initial appearance and first appearance. Although venue for initial appearance before a magistrate may be anywhere, venue for first appearance before a district court judge must be in a judicial district embracing the county where the felony occurred. G.S. 15A-131(b) and (f).

Transmittal of Out-of-County Process

As noted in the section on venue above, if a crime has been committed in your county and the defendant lives in another county, you may issue criminal process. Original process is no longer required for service in the other county; see "Initial appearance for paperless arrests" on pages 18–19. However, there may be circumstances in which you want a paper copy of the process delivered to the other county, with recommendations for conditions of release, when the initial appearance will be held there. In this case, form AOC-CR-236 (included in Appendix A) should be used. The form has a space where you may recommend conditions for release. However, this is only a recommendation, and it does not have to be followed. Be sure to include the court date in your county because the magistrate in the arresting county may not know your county's court dates.

Service of Criminal Process

As noted on page 18, law enforcement officers are authorized to make an arrest without having the actual warrant or OFA in hand ("paperless arrests"), provided that they have knowledge that it has been issued and not executed (such as a DCI-PIN message). G.S. 15A-401(a)(2). Although the warrant or OFA—like all criminal process—must be served on the defendant, the arrest itself is valid without service. See pages 18–19 for a discussion of service of process and paperless arrests.

Requirements for Criminal Pleadings

Generally

The citation, criminal summons, warrant for arrest, and magistrate's order serve as the state's pleading in certain criminal cases. The requirements for valid pleadings, set out in G.S. 15A-924, are specific and technical. It is important that you follow all of these requirements, which are discussed below, along with other helpful pleading rules.

Name of Defendant

A criminal pleading must contain the name or other identification of the defendant. G.S. 15A-924(a)(1). If the defendant's name is unknown, you do not have to use "John Doe" as a substitute. Instead, give a detailed physical description of the defendant and his or her address, if known. If the defendant's aliases are known, you may use them in the warrant, if done in good faith. 61 N.C. App. 589.

Witnesses

Complaining witnesses are witnesses who give testimony under oath. People who give statements that are not under oath should be listed as witnesses but not as complaining witnesses. A complaining witness can be a victim, an officer, a friend or relative of a victim, or any other person who has information about the alleged crime and gives testimony under oath.

Separate Counts

A pleading must contain a separate count for each charged offense, although allegations in one count may be incorporated by reference in another count. G.S. 15A-924(a)(2). The general rule is that a separate warrant should be used for each offense charged by a magistrate (except that some computer and preprinted AOC forms allow charging more than one offense). If all offenses occurred as part of a single, continuous transaction, they may be joined for trial in one pleading.

G.S. 15A-926(a). However, even in that situation, you should use a separate process for each offense. This procedure makes things much simpler if, for example, the defendant is convicted of two offenses in district court and appeals only one to superior court. On this issue, follow local practice.

County

Each count of the pleading must contain a statement or cross reference indicating the county in which the charged offense was committed. G.S. 15A-924(a)(3).

Offense Date

Each count of the pleading must contain a statement or cross reference indicating on or on or about what date the offense occurred. G.S. 15A-924(a)(4). The phrase "on or about" appears on all AOC forms. An error regarding a date in a pleading will not provide grounds for dismissal, as long as time is not of the essence to the offense charged and the error or omission did not mislead the defendant to his or her prejudice. G.S. 15A-924(a)(4).

Factual Statement

Each count must contain a plain and concise statement asserting facts supporting every element of the offense and the charge that the defendant committed the offense. G.S. 15A-924(a)(5). The offense must be charged with sufficient certainty so that the defendant may prepare a defense. G.S. 15A-924(a)(5). The standard charging language serves as this factual statement. See page 6 for a discussion on charging language.

Law Violated

Each count must cite the statute, rule, regulation, ordinance, or other provision of law alleged to have been violated. G.S. 15A-924(a)(6). The pleading will not be subject to dismissal simply because the cited statute is erroneous or even missing. G.S. 15A-924(a)(6). If a city or county ordinance violation is alleged, the pleading must cite the section number and caption (e.g., "Sec. 5-20, Letting chickens run loose prohibited"). If the ordinance is not codified, the caption must be pleaded. The last form in Warrant and Indictment Forms provides an example of charging language to use in this situation.

Miscellaneous Issues

Abbreviations (such as a/d/w with IK or ccw) should never be used in the charging language of the criminal pleading. The abbreviation might be clear to you, but it might not be clear to others.

If you must prepare process for an offense for which there is no standard charging language, avoid the use of the word "or." Courts have ruled that use of this word in charging some offenses may not adequately inform a defendant of the charge.

The word "feloniously" must appear in a pleading that charges the defendant with a felony or the pleading will be defective. However, use of that word in a misdemeanor pleading will be considered harmless surplusage.

When naming businesses in criminal pleadings, refer to the formal name of the business, not its common name, that is, be sure to include inc., corp., ltd., and so forth (e.g., "Roses Stores, Inc.," not "Roses Store"). If you have a question about the name of a North Carolina corporation, you can search for information regarding the proper name on the North Carolina Secretary of State's website (www.secretary.state.nc.us/corporations/csearch.aspx).

For information on charging fugitives from other states, see "Fugitives," below.

Recall of Process

Sometimes it becomes necessary to recall process, such as when you learn that the wrong person was identified as a perpetrator. Recall of process is governed by G.S. 15A-301(g). The relevant rules are summarized in Table 1, below. Unless specifically directed to do so, never recall process issued by a judge.

When you recall process, you must enter the recall into the AOC Magistrate System or NCAWARE, if the process was created in those systems, and promptly communicate the recall to each law enforcement agency that has an original or copy of the process. G.S. 15A-301(g). You do not need to communicate with those agencies if the process was created in the AOC Magistrate System or NCAWARE and the agencies have remote electronic access to those systems. G.S. 15A-301(g).

Conducting the Initial Appearance and Setting Conditions of Pretrial Release

Initial Appearance Procedure

The initial appearance is a defendant's first contact with the judicial system. Every person who is arrested must appear before a judicial official for an initial appearance. This section describes the procedure for conducting an initial appearance. This procedure applies in all cases except those in which you are authorized to dispose of the matter under G.S. 7A-273 (magistrate can accept guilty pleas for certain infractions and misdemeanors). G.S. 15A-511(a)(2). In most cases the procedure for conducting the initial appearance is to hold it without delay, make a probable cause determination and, if you find probable cause, inform the defendant of his or her rights and set conditions of pretrial release. The next section, starting on page 21, discusses the exceptions to the procedure discussed here.

Timing of the Initial Appearance

A law enforcement officer must take a person arrested (with or without a warrant) before a judicial official *without unnecessary delay.* G.S. 15A-501(2); -511(a)(1).

Defendant's Presence

The defendant must be present for his or her initial appearance.

Audio and Video Transmission and Videoconferencing

An initial appearance for noncapital offenses may be conducted by an audio and video transmission between the magistrate (or other judicial official) and the defendant, in which both people may see and hear each other. G.S. 15A-511(a1). If the defendant has counsel, the defendant must be allowed to communicate fully and confidentially with counsel during the proceeding. G.S. 15A-511(a1). The procedure and equipment must be approved by the AOC, based on a submission to the AOC by the senior regular resident superior court judge and the chief district court judge. G.S. 15A-511(a1).

A 2009 law (S.L. 2009-270) authorizes a pilot program for the use of videoconferencing or similar technology to conduct proceedings, including an initial appearance, for defendants in the custody of the DOC or local confinement facilities. At the time of publication, funding

Table 1. Magistrate's Recall of Process

Type of Process	Recall Allowed/ Required?	By Whom?	When?
Citation	No	No one	Never
Warrant	Required	Issuing official or person authorized to act for such official	(1) Before defendant has been served and (2) No probable cause for issuance
Summons	Required	Issuing official or person authorized to act for such official	(1) Before defendant has been served and (2) No probable cause for issuance
Order for Arrest (OFA)	Allowed	Judicial official in trial division where issued or person authorized to act for that official	(1) Before defendant has been served and (2) Good cause is shown, including that • a copy of the process has been served on the defendant; • all relevant charges have been disposed of; • the defendant did not commit the charged offense; or • grounds for issuing the OFA did not exist, no longer exist, or have been satisfied.

Source: G.S. 15A-301(g)

issues prevented the start of this pilot project. In any event, audio and video transmission already is authorized, as discussed above.

Federal Offenses

You may hold an initial appearance for a person arrested for a federal offense. 18 U.S.C. § 3041. Conditions of pretrial release are determined according to federal law.

Appointing Counsel

Effective July 1, 2009, magistrates who are licensed attorneys may be designated by their chief district court judge to appoint counsel pursuant to G.S. Ch. 7A, Art. 36. S.L. 2009-419. However, such magistrates may not appoint counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense Services, or accept waivers of counsel. S.L. 2009-419. Any magistrate who has been so designated should get guidance from his or her chief district court judge on when the counsel appointment should be made, the procedure to be followed, and how to determine indigency.

Non-English-Speaking Defendants

When a non-English-speaking defendant is brought before you for an initial appearance, you should use the telephone interpreting services, installed by the AOC's Court Services Division, to ensure that the defendant understands the proceedings and his or her rights. At the time of publication, the Court Services Division had implemented telephone interpreting services in almost all magistrates' offices. If you need information about or training on this system, contact Brooke Bogue, Manager, Interpreting Services, AOC Court Programs and Management Services Division (tel: 919.890.1213; e-mail: brooke.a.bogue@nccourts.org).

Initial Appearance Procedure—Generally

Initial appearance for warrantless arrests. The procedure for conducting an initial appearance after a warrantless arrest is as follows:

1. Determine whether there is probable cause to believe that a crime has been committed and that the arrestee committed it. G.S. 15A-511(c)(1). The probable cause determination is discussed on pages 5–6.
2. If you find no probable cause, release the arrestee. G.S. 15A-511(c)(2). No paperwork is required for such a release, but it is a good idea to make a written record of your action.
3. If you find probable cause, issue a magistrate's order. G.S. 15A-511(c)(3).
4. To prepare the magistrate's order, use AOC-CR-116, one of the other AOC forms for specific offenses noted on page 11, or convert the citation into a magistrate's order following the procedure below. Because the magistrate's order also may be used as the criminal pleading, it must satisfy all of the requirements for a criminal pleading specified by G.S. 15A-924. See pages 13–14 for more detail regarding the contents of a magistrate's order and the requirements of G.S. 15A-924.
5. If a law enforcement officer arrests a person for a misdemeanor, brings that person to you with a completed citation, swears to facts establishing probable cause, and you find probable cause to believe that the person committed the crime charged, you may convert the citation into a magistrate's order by signing the citation in the appropriate location. This saves you from having to complete a separate magistrate's order form. Once a citation is converted into a magistrate's order, it becomes your form, and you are responsible for ensuring that the charge is made properly. You must make sure that the defendant gets a copy of the order.
6. Inform the defendant of
   - the charges,
   - the defendant's right to communicate with counsel and friends, and
   - the circumstances under which the defendant may obtain pretrial release.

   G.S. 15A-511(b).
7. If you find probable cause, the defendant must be released under G.S. Ch. 15A, Art. 26 (Bail) or committed under G.S. Ch. 15A, Art. 25 (Commitment). G.S. 15A-511(e). Pages 28–31 discuss the situations when the defendant is not entitled to release; pages 33–38 discuss how to set conditions of pretrial release.
8. Regardless of whether the defendant is released on bail, when you are conducting an initial appearance you need to set a court date on the release order (the relevant form is discussed in more detail in "Determining the Conditions of Pretrial Release," below). When setting court dates, keep in mind the timing rules for first appearances discussed in the next step.
9. Every defendant charged with a felony (or one of the accompanying misdemeanors described in G.S. 7A-271) is entitled to a first appearance. G.S. 15A-601(a). A first appearance usually is held before a district court judge. G.S. 15A-601(a). If the defendant is not released, first appearance before a district court judge must be held within ninety-six hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. G.S. 15A-601(c). If the defendant is not taken into custody or is released within ninety-six hours of being taken into custody, first appearance must be held at the next session of district court held in

the county. G.S. 15A-601(c). However, these timing rules do not apply to a defendant whose first appearance before a district court judge has been set by criminal summons. G.S. 15A-601(c). It is important that you set an appropriate court date, in light of these requirements.

Initial appearance for arrests with warrants. You do not need to make a finding of probable cause during an initial appearance for an arrest with a warrant because probable cause already was found when the process was issued. Except for this difference, conduct an initial appearance for an arrest with a warrant just like an initial appearance for a warrantless arrest: notify the defendant of his or her rights, and release the defendant on conditions of pretrial release or, if the defendant is not entitled to conditions of pretrial release, order the defendant to be held in jail.

Initial appearance for paperless arrests. Law enforcement officers may make arrests without having the actual warrant or OFA in hand, provided that they have knowledge that it has been issued and not executed (such as a DCI-PIN message). G.S. 15A-401(a)(2). This bulletin refers to such arrests as "paperless arrests." When an officer brings a defendant before you on a paperless arrest, do not release the defendant simply because the officer cannot provide the paperwork. Paperless arrests are valid in North Carolina, even for out-of-county process. Also, do not delay the initial appearance until the officer can serve the paperwork on the defendant. You have no authority to delay the initial appearance for this purpose. Note that a faxed copy of criminal process constitutes an original. G.S. 15A-101.1(9)a. Thus an officer can convert a paperless arrest into an arrest with a warrant by obtaining a faxed copy of the original process and serving it on the defendant. Also, note that a printed copy of a document that was created in the AOC Magistrate System or in NCAWARE constitutes an original, and electronic signatures are valid. G.S. 15A-101.1(5) and (9)b; G.S. 15A-301.1(f). Thus, when the warrant was originally created in the AOC Magistrate System or in NCAWARE, a second way to convert a paperless arrest into an arrest with a warrant is to print a signed copy of the warrant from the computer and have it served on the defendant. The following procedure should be followed for an initial appearance following a paperless arrest:

1. Determine whether the warrant or OFA is still outstanding. To do this, you can
   - check with the relevant clerk's office or law enforcement agency;
   - ask the law enforcement officer to contact DCI (available twenty-four hours a day, seven days a week); or
   - check the AOC Magistrate System, which includes warrants (but not OFAs) from ninety-seven counties, or NCAWARE.
2. If the warrant or OFA is no longer outstanding (e.g., because it has been recalled), let the person go without holding an initial appearance or setting release conditions. Also, notify, or have the law enforcement officer notify, authorities of the erroneous information so that the person will not be rearrested.
3. If the warrant or OFA is valid, investigate appropriate pretrial release conditions and obtain a copy of the original paperwork, if possible, to determine whether any pretrial release conditions were set. Although the initial appearance must be conducted without unnecessary delay, the law allows you time to make a reasonable investigation regarding pretrial release conditions. If the warrant or OFA is from another county, contact the other county to get any pertinent information about the defendant and to get the officer's and county's court schedule. Two other ways of getting the officer's court schedule are to do an Automated Criminal/Infraction System (ACIS) witness search for pending cases or

by using the AOC's Web search, "Officer Court Appearance Query," located in the Court Calendars section of the website, www1.aoc.state.nc.us/www/calendars/OfficerQuery.html. Also, notify the officers in that county that processing is underway because they may want to arrange for service of process on the defendant or to pick up the defendant.

4. Do not delay holding the initial appearance because the officers from the other county say they will be coming at some time to get the defendant. Remember that the initial appearance must be held without unnecessary delay. Proceed with the initial appearance unless the officers are from a nearby county and can pick the defendant up *quickly* for an initial appearance in the originating county.
5. As noted above, you have no authority to hold a defendant for service of criminal process. Also as noted above, a law enforcement officer may validly serve a defendant with a faxed copy of the criminal process or with process created in and printed from the AOC Magistrate System or NCAWARE, provided the process contains an electronic signature. The only time you are authorized to hold a defendant in these circumstances is when a hold has been specifically authorized by a judge. A DCI-PIN message to hold the defendant is insufficient if there is no way to verify that a judge ordered the hold.
6. After completing a reasonable investigation, conduct an initial appearance and set conditions of pretrial release as for an arrest with a warrant. Conditions of pretrial release should be set based on available information. If you have no information about the amount of a bond in an OFA for a FTA, follow the requirements of G.S. 15A-534(d1), discussed on pages 36–37. If the case involves a warrant in the AOC Magistrate System or NCAWARE, generate a release order in that system. As discussed above on pages 17–18, when a defendant is charged with a felony, he or she has right to a first appearance, which sometimes must be held within ninety-six hours. Thus, when handling an out of county warrant, you must obtain accurate court date information from the county in which the charges are pending and assign an appropriate court date, based on the rules for scheduling a first appearance. As noted above, when an officer is the complainant, you can obtain a court date by doing an ACIS witness search for pending cases or by using the AOC's Web search, "Officer Court Appearance Query," located in the Court Calendars section of the website, www1.aoc.state.nc.us/www/calendars/OfficerQuery.html.
7. After concluding the initial appearance for an arrest made pursuant to a warrant or OFA from another county, notify the appropriate authorities of the action, including sending the paperwork to the other county's clerk, and ask the law enforcement officer to provide the information to Division of Criminal Information (DCI). This is particularly important in paperless arrest situations to prevent the person from being rearrested.

Initial Appearance—Implied Consent Cases

G.S. 15A-511 sets out the basic procedure for initial appearances in criminal cases, and its provisions are discussed above. In 2006 the General Assembly enacted several additional statutes that apply to initial appearances for implied consent offenses. S.L. 2006-253, sec. 5. Implied consent offenses are listed in Table 2.

The first of the 2006 statutes, G.S. 20-38.3, provides, in part, that a law enforcement officer must take a person arrested for an implied consent offense to a judicial official for an initial appearance after completing all investigatory procedures, crash reports, chemical analyses, and related procedures specified in the new provision. G.S. 20-38.3. Before this provision was enacted, there was some question as to whether completing these tasks before the initial appear-

ance violated the rule that the initial appearance must be held without unnecessary delay. This statute makes it clear that the officer must complete these tasks before the initial appearance.

The 2006 legislation also enacted G.S. 20-38.4, pertaining to initial appearances in implied consent cases. That statute has four primary provisions. First, it provides that a magistrate may hold an initial appearance anywhere in the county and that a magistrate "shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance." G.S. 20-38.4(a)(1). This provision authorizes you to hold initial appearances at a location other than your office, such as on location when officers are conducting an impaired driving checkpoint operation with a mobile testing unit (sometimes referred to as a "Batmobile"). Of course, the statute only requires magistrates to conduct initial appearances outside of their offices "to the extent practicable." Some practical issues that might arise include: lack of access to computer systems and records; the ability of the defendant's witnesses to find and gain access to the remote location (the defendant's rights in this regard are discussed below); and when the magistrate and law enforcement officers share a space, whether that close proximity unduly undermines the magistrate's role as a neutral and independent judicial official.

Second, the statute provides that when determining whether there is probable cause to believe a person is impaired, a 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." G.S. 20-38.4(a)(2). This provision appears to simply have codified existing practice. However, prior to 2006, the results of an alcohol screening test could be considered at the probable cause stage. The 2006 legislation changed that, amending G.S. 20-16.3(d) to provide that although a positive or negative result on an alcohol screening test can be considered when determining probable cause, the results of the alcohol screening test (e.g., 0.09) cannot be used for that purpose.

Third, the statute states that if you find probable cause, you *must* consider whether an impaired driving hold is required. G.S. 20-38.4(a)(3). Before enactment of this provision, some magistrates were not consistently considering impaired driving detentions, out of concern about *Knoll* motions, or for other reasons. This statute makes clear that you have no choice but to consider such a detention. The procedure for impaired driving detentions and the *Knoll* case are discussed on pages 25–28.

Fourth, the new statute requires you to (1) inform the defendant in writing of the established procedure to have people appear at the jail to observe the defendant's condition or to administer an additional chemical analysis if the defendant is unable to make bond and (2) require a defendant unable to make bond to list everyone he or she wishes to contact, along with their telephone numbers, on a form setting forth the procedure for contacting the persons listed; a copy of the form must be filed with the case file. G.S. 20-38.2(a)(4). The 2006 legislation also required each chief district court judge, along with others, to adopt procedures, by December 1, 2006, indicating how family, friends, and specified others can gain access to a defendant who has been arrested for an implied consent offense and is unable to obtain pretrial release from jail. G.S. 20-38.5. New magistrates will need to obtain these written procedures so that they can provide the required notice to implied consent offense defendants as required by the statute. The AOC form on which you certify that the new procedures have been complied with and on which the defendant lists those people who the defendant wishes to contact or appear at jail is AOC-CR-271 (included in Appendix A).

Table 2. Implied Consent Offenses

1. Impaired driving under G.S. 20-138.1
2. Impaired driving in a commercial vehicle under G.S. 20-138.2
3. Habitual impaired driving under G.S. 20-138.5
4. Any death by vehicle or serious injury by vehicle offense under G.S. 20-141.4, when based on impaired driving or a substantially similar offense under previous law
5. First- or second-degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18, when based on impaired driving
6. Driving by person under twenty-one after consuming under G.S. 20-138.3
7. Violating no-alcohol condition of limited privilege under G.S. 20-179.3
8. Impaired instruction under G.S. 20-12.1
9. Operating commercial motor vehicle after consuming alcohol under G.S. 20-138.2A
10. Operating school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B
11. Transporting open container of alcoholic beverage under G.S. 20-138.7(a)
12. Driving in violation of restriction requiring ignition interlock under G.S. 20-17.8(f)

Source: G.S. 20-16.2(a1); -4.01(24a).

Initial Appearance Procedure—Exceptions

Generally

As noted above, in most cases, you conduct the initial appearance without delay and make a probable cause determination. If probable cause is found, you then inform the defendant of his or her rights and set conditions of pretrial release. This section discusses the exceptions to that general procedure. Unless the case before you fits within one of the exceptions discussed below, you should follow the general procedure, outlined above, for conducting the initial appearance.

Delaying the Initial Appearance

In some situations it is necessary to delay the initial appearance. This section discusses when such a delay is permissible.

Reasonable delay to determine conditions. As noted, the initial appearance must be held without unnecessary delay. Of course, the time it takes you to do a timely and reasonable investigation into the facts relevant to your pretrial release decision is a necessary delay.

Defendants Who Refuse to Identify Themselves. Sometimes defendants brought before you for an initial appearance will refuse to identify themselves. Without knowing a defendant's identity, it is almost impossible to determine what conditions of pretrial release should be imposed. You will not be able to determine, among other things, whether the defendant has a record, has previously failed to appear, or what connections the defendant has with the community that are relevant to a risk of flight. When this happens, and there is no written local procedure that applies, you have a couple of options. (Note that if this issue consistently arises in your county and you do not have a written policy addressing it, you may want to ask your chief district court judge for a written policy or other formal advice so that all magistrates respond to this problem in a consistent manner.)

First, it seems reasonable to delay the initial appearance while a law enforcement officer completes an investigation into the defendant's identity. Such an investigation may not be feasible in

all cases, particularly when the crime is not a serious one. Note, however, that if a person (1) is charged with an offense involving impaired driving, as defined in G.S. 20-4.01(24a), or driving while license revoked when the revocation is for an impaired driving revocation, as defined in G.S. 20-28.2, and (2) the person cannot be identified by a valid form of identification, then the arresting officer must have the person fingerprinted and photographed. G.S. 15A-502(a2). This requirement does not necessarily result in an identification of the person, but it does impose additional duties on law enforcement. If you delay the initial appearance to allow the officer to investigate and the officer's investigation is unsuccessful or cannot be done quickly, you should consider the other option set out below; you should not allow an indefinite delay of the initial appearance.

A second option for dealing with a defendant who refuses to identify himself or herself is to hold the initial appearance, set conditions in light of the potential flight risk associated with a person who will not identify himself or herself, and include as a condition of pretrial release that either the defendant adequately identify himself or herself or that there is an adequate identification of the defendant. In counties without a written policy or formal advice addressing this procedure, consider contacting a judge before using it.

Note that regardless of which procedure is used, it is probably not permissible and it is not advisable to require a defendant to produce a U.S. government-issued picture identification. Also, any reasonable form of identification may be satisfactory even if the defendant does not have any written form of identification—for example, when a responsible member of the community vouches for the defendant's identity.

Statutory authorization to delay because defendant is unruly, intoxicated, etc. Under G.S. 15A-511(a)(3), you may delay the initial appearance and order a defendant confined without bond for a "reasonable time" if the defendant, when brought before you,

- is so unruly that the defendant disrupts and impedes the proceedings,
- becomes unconscious,
- is grossly intoxicated, or
- is otherwise unable to understand his or her procedural rights (for example, the defendant needs a sign language interpreter).

The purpose of this delay is not to punish the defendant but simply to postpone the process until the defendant can understand his or her rights. The procedure for delaying the initial appearance in these circumstances is as follows:

1. Decide whether to delay before beginning the initial appearance and determining conditions. In some circumstances, however, you might not realize that one of the statutory reasons for delay is at issue until the initial appearance has begun. For example, the defendant may not get unruly until you start the initial appearance. In this situation, stop the proceeding and continue as outlined below in the steps that follow.
2. If the defendant simply is being disruptive and needs to cool off, you can order an officer to place the defendant in a holding cell for a short period of time, such as twenty minutes, or have the officer supervise the defendant on a bench in the magistrate's office, if there is no holding cell.
3. If you order the defendant confined to jail, you must use the Release Order, AOC-CR-200 (included in Appendix A), to do so. Never commit a defendant to jail without a written order.

4. When using the Release Order to commit the defendant to jail, only complete the "Order of Commitment" portion of form. Check only the second box ("hold him/her for the following purpose"). The purpose listed will vary according to the reason that the defendant is confined. If the defendant is simply disruptive, you may direct the jailer to "hold defendant until defendant is calm and agrees not to disrupt the proceedings." Check regularly with the jailer about the defendant's condition. If the defendant is grossly intoxicated, direct the jailer to "hold defendant until sober enough to understand rights." Again, check regularly with the jailer about the defendant's condition. Do not leave complete discretion with a jailer. Also, put an outer time limit on the confinement. It is your responsibility—not the jailer's—to determine whether the defendant is ready for his or her initial appearance. Do not complete the upper portion of the Release Order concerning conditions of release. Because the initial appearance is being delayed, conditions should not be determined at this time. If the upper portion of the Release Order is completed, the defendant must be released if he or she satisfies the conditions. G.S. 15A-537. That is true regardless of what directions are given under the Order of Commitment (except for impaired driving detentions under G.S. 15A-534.2, discussed below).
5. A defendant may be brought back before a different magistrate for the initial appearance. The second magistrate is not modifying the first magistrate's release order, but rather is changing the order of commitment, which is expressly allowed by G.S. 15A-521(b) (order of commitment may be modified "by the same or another judicial official"). Conditions should never have been set, and therefore they are being determined for the first time.
6. After the defendant is returned, conduct the initial appearance and set conditions as usual.

Finally, do not confuse the statutory authorization to delay discussed above—for example, when the defendant is too intoxicated to understand his or her rights—with an impaired driving hold. In the situations addressed in this section, you are delaying the initial appearance because of the defendant's condition. The impaired driving hold, discussed below, only comes into play once the defendant is sober enough so that you can conduct the initial appearance.

Delaying the Setting of Conditions

As noted above, the general procedure for initial appearances is to conduct the initial appearance without delay, make a probable cause determination and if probable cause is found, inform the defendant of his or her rights and set conditions of pretrial release. This section discusses a second exception to the general procedure: when you hold the initial appearance but delay setting conditions of release. Currently, domestic violence cases are the only situations that fall into this exception. However, effective December 1, 2009, certain probationers also will fall within this exception. Both situations are discussed below.

Forty-eight-hour rule for domestic violence cases. G.S. 15A-534.1 provides that in all cases in which the defendant is charged with an assault on, stalking, communicating a threat to, or committing a felony as provided in G.S. Ch. 14, Art. 7A, 8, 10, or 15 upon a current or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with a violation of a 50B order, only a judge can set conditions of pretrial release in the forty-eight-hour period after an arrest. Thus, when a defendant is brought before you for an offense covered by this provision, hold an initial appearance and order the defendant held for

the next available session of district or superior court, to have conditions of release determined by a judge. To do this, use the release order form, AOC-CR-200 (included in Appendix A), and check the third box in the Order of Commitment portion of the form that states "Check in all domestic violence cases covered by G.S. 15A-534.1(b)." Then, enter an appropriate date and time as instructed on the form. If a judge does not act within forty-eight hours, the magistrate sets conditions. G.S. 15A-534.1(b). For a helpful chart that lists all offenses covered by the forty-eight-hour rule and clarifies the required relationship between the parties, go to the School of Government's Web page for magistrates, www.sog.unc.edu/programs/ncmagistrates/index.html, and click on "Domestic Violence: 48-Hour Rule Offense Chart."

Other domestic violence holds. G.S. 15A-534.1(a)(1) provides another domestic violence hold for defendants who are charged with an assault on, stalking, communicating a threat to, or committing a felony as provided in G.S. Ch. 14, Art. 7A, 8, 10, or 15 upon a current or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with a violation of a 50B order. The statute provides that upon a determination that the defendant's immediate release will pose a danger of injury to the alleged victim or another person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond will not reasonably assure that such injury will not occur, a judicial official may retain the defendant in custody for a reasonable period of time while determining conditions of pretrial release. It is unlikely that you will have an opportunity to apply this provision. Only a judge can set conditions of pretrial release within the first forty-eight hours of the defendant's arrest; once forty-eight hours has expired, it is unlikely that the circumstances would warrant application of this exception.

Probation cases. *Defendant Charged with a Felony While on Probation for Another Offense.* Effective December 1, 2009, S.L. 2009-412, as amended by S.L. 2009-547, amended G.S. 15A-534 to add a new subsection (d2) providing that when conditions of pretrial release are being determined for a defendant who is charged with a felony while on probation for an earlier offense, you must determine whether the defendant poses a danger to the public (and make a written record of that determination) before imposing conditions of pretrial release. If the defendant does not pose such a danger, he or she is entitled to release as in all cases. If the defendant poses such a danger, you must impose a secured bond or a secured bond with electronic house arrest. However, if there is insufficient information to determine whether the defendant poses a danger, then you must keep the defendant in custody until that determination can be made. If you detain the defendant for this reason, you must make a written record, at the time you detain the defendant, of the following: (1) the fact that the defendant is being held pursuant to G.S. 15A-534(d2); (2) the basis for the decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information; and (3) a date, within ninety-six hours of the time of arrest, when the defendant will be brought before a judge for a first appearance. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official must set the conditions of pretrial release. One consequence of this statute is that effective December 1, 2009, every time a defendant is brought before you on a felony charge, you must determine whether the defendant is on probation for an earlier offense. If so, the new statutory procedure must be followed. At the time of publication, the AOC Forms Committee was considering changes to the Release Order, AOC-CR-200, and a new form to accommodate these statutory changes.

Probation Violator Who Has a Pending Felony or Is a Sex Offender Required to Register. Effective December 1, 2009, G.S. 15A-1345(b1) provides that if a probationer is arrested for violating probation

and either (1) has a pending felony charge or (2) has been convicted of an offense that requires registration under the sex offender registration statutes or that would have required registration but for the effective date of the registration program, you must determine whether the probationer poses a danger to the public (and make a written record of that determination) before imposing conditions of release. If the probationer does not pose such a danger, determine the conditions of release as in any other case. If the probationer poses such a danger, he or she must be denied release. If there is insufficient information to determine whether the defendant poses such a danger, then you must detain the defendant in custody for no more than seven days from the date of the arrest to obtain sufficient information to make that determination. If the defendant has been held seven days from the date of arrest and the court has been unable to obtain sufficient information to determine whether the defendant poses a danger to the public, then the defendant must be brought before any judicial official, who must record that fact in writing and must impose conditions of pretrial release. One consequence of this statute is that effective December 1, 2009, every time a person is brought before you for a probation violation, you will need to determine whether he or she has a pending felony charge and whether he or she is or could be subject to the sex offender registration program. If so, the new statutory procedure must be followed. For a list of offenses requiring reporting under the sex offender registration statute, see Table 3. At the time of publication, the AOC Forms Committee was considering changes to the Release Order, AOC-CR-200, and a new form to accommodate these statutory changes.

Delaying Release

As noted above, the general procedure for initial appearances is to conduct the initial appearance without delay, make a probable cause determination and if probable cause is found, inform the defendant of his or her rights, and set conditions of pretrial release. The sections above discussed several exceptions to this general rule. This section discusses another exception: when you hold the initial appearance, set conditions of pretrial release but delay the defendant's release. Only two situations fall within this exception; both are discussed below.

Communicable disease holds. Under G.S. 15A-534.3, if you find probable cause to believe that a person was exposed to the defendant in a manner that poses a significant risk, through a nonsexual contact, of transmission of the AIDS virus or Hepatitis B infection, you must order the defendant detained for a reasonable period, not to exceed twenty-four hours, for investigation by public health officials and testing, if required by those officials under G.S. 130A-144 and -148. To order a hold in these circumstances, use form AOC-CR-270, side two (included in Appendix A).

You can contact a public health official for advice on whether the person was in fact exposed to the defendant in a manner posing a significant risk of transmission when deciding whether probable cause exists to justify detaining the defendant.

Although G.S. 15A-534.3 does not address whether you should set pretrial release conditions that would be applicable after the defendant has been examined by public health officials, it would appear wise to do so. That way, once the public health officials have completed their investigation and testing, the defendant will not have to be brought back again before a magistrate for the setting of pretrial release conditions.

Impaired driving holds. Impaired driving detentions under G.S. 15A-534.2 cause more confusion among magistrates than almost any other area of criminal procedure.

Table 3. Offenses Requiring Sex Offender Reporting

1. First-Degree Rape (14-27.2)
2. Second-Degree Rape (14-27.3)
3. First-Degree Sex Offense (14-27.4)
4. Second-Degree Sex Offense (14-27.5)
5. Sexual Battery (14-27.5A)
6. Attempted Rape or Sex Offense (14-27.6)
7. Intercourse/Sex Offense With Certain Victims (14-27.7)
8. Statutory Rape (13-15 Year Old by Certain Defendants) [14-27.7A(a)]
9. Sexual Servitude (14-43.13)
10. Incest (14-178)
11. Minor Assisting in Public Morality Offense (14-190.6)
12. Felony Indecent Exposure [14-190.9(a1)]
13. First-Degree Sexual Exploitation of Minor (14-190.16)
14. Second-Degree Sexual Exploitation of Minor (14-190.17)
15. Third-Degree Sexual Exploitation of Minor (14-190.17A)
16. Promoting Prostitution of Minor (14-190.18)
17. Participating in Prostitution of Minor (14-190.19)
18. Indecent Liberties With Children (14-202.1)
19. Computer Solicitation of Child (14-202.3)
20. Indecent Liberties with Student [14-202.4(a)]
21. Rape of Child by Adult Offender (14-27.2A)
22. Sex Offense w/Child by Adult Offender (14-27.4A)
23. Parent/Caretaker Prostitution [14-318.4(a1)]
24. Parent Commit/Allow Sexual Act [14-318.4(a2)]
25. Kidnapping When Victim is a Minor (14-39)
26. Felonious Restraint When Victim is a Minor (14-43.3)
27. Abduction of Child (14-41)
28. Attempt to commit an offense listed above
29. Solicitation to commit an offense listed above
30. Conspiracy to commit an offense listed above
31. Conviction in federal jurisdiction (including court martial) for offense substantially similar to offense listed above
32. Conviction from another state substantially similar to offense listed above
33. Any conviction from another state that requires registration in that state

"Triggering" Offenses. G.S. 15A-534.2 contains a special detention provision that applies when a magistrate finds probable cause to charge the defendant with one or more of offenses listed in Table 4.

Relevant Determination. An impaired driving detention must be imposed when you find probable cause to charge the defendant with one of the offenses listed in Table 4 and you find, by clear and convincing evidence, that impairment of the defendant's physical or mental faculties

Table 4. Offenses That Can Trigger an Impaired Driving Hold

1. Impaired driving under G.S. 20-138.1
2. Impaired driving in a commercial vehicle under G.S. 20-138.2
3. Habitual impaired driving under G.S. 20-138.5
4. Any death by vehicle or serious injury by vehicle offense under G.S. 20-141.4, when based on impaired driving or a substantially similar offense under previous law
5. First- or second-degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18, when based on impaired driving

presents a danger, if the defendant is released, of physical injury to himself or herself or others or damage to property. If so, you must order the defendant detained until one of the following events occurs:

- The defendant's impairment no longer presents a danger of physical injury to himself or herself or others or damage to property; or
- A sober, responsible adult (eighteen years old or older) is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

Required Determination. The determination under G.S. 15A-534.2 is not optional. G.S. 20-38.4, enacted in 2006, makes clear that once there is a finding of probable cause that the defendant committed a "triggering" offense, you must determine whether an impaired driving detention must be imposed. Before enactment of G.S. 20-38.4, some magistrates reported that impaired driving detentions were not done in their counties out of concern that the underlying criminal case would have to be dismissed on a "*Knoll* motion." This concern stemmed from a belief that the North Carolina Supreme Court's decision in *State v. Knoll*, 322 N.C. 535 (1988), invalidates a magistrate's authority to order a detention of impaired drivers under G.S. 15A-534.2. This suggestion, however, is incorrect. *Knoll* involved situations in which magistrates failed to follow statutory procedures, including failing to advise defendants of their rights and declining to release them to appropriate adults. Cases since *Knoll* suggest that if you comply with G.S. 15A-534.2, no *Knoll* violation will be found. In any event G.S. 20-38.4 now makes it clear that you are required to make the impaired driving detention determination. For more information about *Knoll* and later cases on point, see Shea Riggsbee Denning, "Knoll Motions and Implied Consent Cases," posted online at www.sog.unc.edu/programs/crimlaw/faculty.htm

Notification of Rights and Listing of Persons to Contact. As discussed on pages 19–20, in implied consent cases (note that as indicated by the list of implied consent offenses in Table 2 on page 21, this category of cases includes offenses involving impaired driving subject to G.S. 15A-534.2, as well as other offenses), G.S. 20-38.4 requires you to (1) inform the person in writing of the established procedure to have others appear at the jail to observe the person's condition or to administer an additional chemical analysis if the person is unable to make bond and (2) require anyone unable to make bond to list everyone he or she wishes to contact, along with their telephone numbers, on a form setting forth the procedure for contacting the persons listed; a copy of the form must be filed with the case file. G.S. 20-38.4(a)(4). Also as noted on page 20, 2006 legislation required each chief district court judge, along with others, to adopt procedures, by December 1, 2006, indicating how family, friends, and specified others can gain access to a defendant who has been arrested for an implied consent offense and is unable to obtain pretrial

release from jail. New magistrates will need to obtain these written procedures so that they can provide the required notice to defendants as required by the statute. The AOC form on which you certify that the new procedures have been complied with and on which the defendant lists those people whom the defendant wishes to contact or appear at jail is AOC-CR-271 (included in Appendix A). Use this form any time a defendant charged with an implied consent offense is confined to jail, even if only for a short time.

Effect of the Detention. Once the defendant meets one of the two conditions above (impairment no longer a danger or release to sober, responsible adult), the defendant still must satisfy the conditions of pretrial release (for example, $500 secured bond) before the defendant can be released.

Written Findings Required. Whenever you order a defendant detained under G.S. 15A-534.2, you must make written findings to support the detention. 188 N.C. App. 120. Use form AOC-CR-270, side one, (included in Appendix A) to make these findings.

Timing of the Detention Decision. Decide whether or not to detain the defendant under G.S. 15A-534.2 at the time of the initial appearance. If you detain a defendant under G.S. 15A-534.2, you still must determine the conditions of pretrial release.

Maximum Period of the Detention. A defendant may not be detained under G.S. 15A-534.2 for longer than twenty-four hours, even if he or she never meets one of the two conditions. However, at the end of the twenty-four-hour period, the defendant still must satisfy the conditions of pretrial release before being released. G.S. 15A-534.2(c).

Alcohol Testing. When making the determination whether or not a detained defendant remains impaired, you may request that the defendant take periodic tests to determine his or her alcohol concentration. G.S. 15A-534.2(d). The testing instrument may be an Intoxilyzer or other alcohol testing instrument; it also may be an alcohol screening unit used for roadside checks. G.S. 15A-534.2(d). If the defendant takes a test and the results indicate that his or her alcohol concentration is less than 0.05, unless there is evidence that the defendant is still impaired from a combination of alcohol and drugs, you must determine that the defendant is no longer impaired. G.S. 15A-534.2(d).

Release from Detention. You must release a defendant from the impaired driving detention if (1) the maximum twenty-four-hour period for the detention has expired (but remember that the defendant still must satisfy any conditions of pretrial release that have been ordered before he or she can be released); (2) the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property; or (3) if a sober, responsible adult appears and is willing and able to take custody of the defendant until the defendant's physical and mental faculties are no longer impaired so as to present a danger of physical injury to the defendant or others or of damage to property. To release for one of these reasons, use form AOC-CR-270, checking the appropriate box under the section entitled "Release from Detention Order." Note that if the release is to a sober, responsible adult, that person's name should be listed on the form and he or she should sign where indicated. Also note that a release to a sober, responsible adult for this purpose is not the same as a custody release, discussed below.

Denying Release

As noted above, the general procedure for initial appearances is to conduct the initial appearance without delay, make a probable cause determination and if probable cause is found, inform the defendant of his or her rights and set conditions of pretrial release. The sections above

discussed various exceptions to this general rule. This section discusses a final exception: when you must deny release and commit the defendant to jail.

Capital offenses. It is within the discretion of a judge (and only a judge) as to whether a defendant charged with a capital offense will be released before trial. G.S. 15A-533(c). Thus, if you find probable cause to charge a defendant with first-degree murder—the only capital offense in North Carolina—you should commit the person to jail for a judge to determine the conditions of release at the first appearance.

Certain fugitives. A fugitive defendant charged in another state with an offense punishable by death or life imprisonment has no right to pretrial release. G.S. 15A-736. Also, a fugitive arrested on a Governor's Warrant has no right to pretrial release. These defendants should be committed to jail without conditions of release being set. For more information on handling fugitives, see "Fugitives," below.

Involuntarily committed defendants charged with crimes. There is no right to pretrial release for a defendant who is alleged to have committed a crime while involuntarily committed or while an escapee from commitment. Such a defendant should be returned to the treatment facility in which he or she was residing at the time of the alleged crime or from which he or she escaped. G.S. 15A-533(a).

Certain drug trafficking offenses. G.S. 15A-533(d) provides that it is presumed (subject to rebuttal by the defendant) that there is no condition of release that will reasonably assure the appearance of the defendant as required and the safety of the community if a judicial official finds

- reasonable cause to believe that the defendant committed a drug-trafficking offense;
- the drug-trafficking offense was committed while the defendant was on pretrial release for another offense; and
- the defendant has been convicted of a Class A through Class E felony or a drug-trafficking offense and not more than five years has passed since the date of conviction or the defendant's release from prison, whichever is later.

If all of these criteria are found, only a district or superior court judge may set pretrial release conditions after finding that there is a reasonable assurance that the defendant will appear and that the release does not pose an unreasonable risk of harm to the community. G.S. 15A-532(d).

Certain gang offenses. G.S. 15A-533(e) provides that it is presumed (subject to rebuttal by the defendant) that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds

- reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
- the offense was committed while the person was on pretrial release for another offense; and
- the defendant has a previous conviction for a gang offense under G.S. 14-50.16 through -50.20 and not more than five years have passed since the date of conviction or the defendant's release for the offense, whichever is later.

If all of these criteria are found, only a district or superior court judge may set pretrial release conditions after finding that there is a reasonable assurance that the defendant will appear and that the release does not pose an unreasonable risk of harm to the community. G.S. 15A-532(e).

Violators of certain health control measures. G.S. 15A-534.5 provides that if a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violating an order limiting freedom of movement or access issued pursuant to G.S. 130A-475

(incident involving nuclear, biological, or chemical agents) or G.S. 130A-145 (quarantine and isolation authority) poses a threat to the health and safety of others, the judicial official must deny pretrial release. The judicial official must order that the person be confined in a designated area or facility. This pretrial confinement ends when a judicial official determines that the confined person does not pose a threat to the health and safety of others. The statute requires that these determinations be made in conjunction with recommendation by the state health director or local health director.

Certain methamphetamine offenses. G.S. 15A-534.6 authorizes judicial officials to deny pretrial release for specified methamphetamine offenses under certain conditions. The statute provides that a rebuttable presumption arises that no conditions of release would assure the safety of the community if the State shows, by clear and convincing evidence, that

- the defendant was arrested for a violation of G.S. 90-95(b)(1a) (manufacture of methamphetamine) or G.S. 90-95(d1)(2)b (possession of precursor chemical knowing that it will be used to manufacture methamphetamine), and
- the defendant is dependent on or has a pattern of regular illegal use of methamphetamine and the violation was committed or attempted to maintain or facilitate the defendant's dependence or use.

Military deserters. A military deserter is not entitled to have conditions of pretrial release set by a magistrate. 149 Ga. 139, 99 S.E. 307. The deserter should be committed to the local detention facility without setting conditions of pretrial release. Military authorities should be contacted as soon as possible to take custody of the deserter.

Parole violators. A person taken into custody for a violation of parole or post-release supervision under structured sentencing is not subject to the provisions on pretrial release. G.S. 15A-1368.6 (post-release supervision); G.S. 15A-1376 (parole).

Certain probation violators. As a general rule, when a defendant has been convicted in North Carolina, put on probation, and later arrested for a probation violation that occurs in North Carolina, he or she is entitled to conditions of release. G.S. 15A-1345(b). There are two exceptions to this rule. New G.S. 15A-1345(b1) provides that if a probationer is arrested for violating probation and either (1) has a pending felony charge or (2) has been convicted of an offense that requires registration under the sex offender registration statutes or that would have required registration but for the effective date of the registration program, the judicial official must determine whether the probationer poses a danger to the public before imposing conditions of release and must record that determination in writing. If the judicial official determines that the probationer poses such a danger, the judicial official must deny the probationer release pending the revocation hearing. If the judicial official finds that the defendant does not pose such a danger, the judicial official determines conditions as usual. The procedure for handling the situation where there is insufficient information to make the required determination is discussed above on pages 24–25. The provision in G.S. 15A-1345(b) regarding no release for probation violators subject to sex offender registration who pose a danger is not new. However, it was amended by a 2009 law that enacted the provision regarding no release for probation violators who have a pending felony and pose a danger. S.L. 2009-412. The 2009 legislation is effective December 1, 2009, and applies to offenses committed on or after that date. One consequence of this new provision is that every time a person is brought before you on an arrest for a probation violation, you will need to know whether person has a pending felony charge and whether he or she is or could be subject to the sex offender registration program. To determine whether a probation violator has

a pending felony charge, you will have to do a statewide record search. To determine whether a defendant is subject to the sex offender registration program or could be subject to that program but for its effective date, you should:

1. Search the on-line North Carolina Sex Offender Registry, http://sexoffender.ncdoj.gov/ and click on "Search the Registry." If the probation violator's name appears, he or she is subject to G.S. 15A-1345(b1), as discussed above. If the person's name does not appear, go to step (2).
2. Determine the probation violator's prior convictions. If any one of those prior convictions is included in Table 3 on page 26, apply the provisions on G.S. 15A-1345(b1), as discussed above.

Out-of-state probation violators covered by the Interstate Compact. The general rule that probation violators are entitled to conditions of release does not apply to defendants who are arrested on out-of-state warrants for probation violations when the state that imposed the probation and is now seeking to violate the defendant has a supervision agreement in place with the State of North Carolina pursuant to the Interstate Compact for Adult Offender Supervision. G.S. Chapter 148, Article 4B. Unlike other out-of-state offenders, out-of-state probation violators covered by Interstate Compact supervision agreements are not dealt with through extradition (discussed in "Fugitives," below); rather, the Interstate Compact statutes govern. One of those statutes, G.S. 148-65.8(a) provides that such a defendant may be detained for up to fifteen days and is not entitled to bail pending the required hearing.

Out-of-state warrants for probation violators covered by the Interstate Compact are supposed to go through the North Carolina Compact Administrator, which is part of the DOC Division of Community Corrections. If Interstate Compact offenders are processed in this way, the warrant will come to you with an "Authority to Detain and Hold" form, notifying you that the offender is not entitled to pretrial release. Sometimes, however, the other state fails to go through North Carolina's Compact Administrator. In these instances, it can be difficult for you to determine whether the person is covered by the Interstate Compact. When this happens, you can obtain the relevant information from a probation officer. Another alternative is to go to the DOC website, www.doc.state.nc.us. From there, click on "Offender Search," then click on "Offender Search—Public Information," and then "Search For An Offender." Enter the offender information and the search should indicate, below probation and parole status, whether the offender is subject to the Interstate Compact. If so, immediately contact a local probation officer or the Compact Administrator (Anne Precythe at 919.716.3139 or pal02@doc.state.nc.us).

Other Cases

Magistrates sometimes are asked to deviate from the general procedure for initial appearance—for example, delay the initial appearance or hold the defendant—for reasons other than those listed above. Unless your situation falls within one of the exceptions discussed above, you have no authority to deviate from the general procedure for initial appearances. Some common scenarios that arise are discussed below.

Out-of-county paperwork. As noted on page 18, there is no authority to delay an initial appearance "for out-of-county paperwork."

Arrest without paperwork. As discussed on page 18, paperless arrests are valid and are no impediment to holding the initial appearance and proceeding as usual.

Noncitizens. In recent years a number of issues have arisen about magistrates' authority to hold defendants for a variety of immigration related issues. You have no authority to hold an arrestee simply because he or she is not a United States citizen. Effective January 1, 2008, G.S. 162-62 provides that whenever a person charged with a felony or an impaired driving offense is confined to a jail or a local confinement facility, the person in charge of the facility must attempt to determine if the prisoner is a legal resident of the United States by questioning the person and/or examining documents. If the prisoner's status cannot be determined, the person in charge must, if possible, make an inquiry through the DCI system to the Law Enforcement Support Center of Immigration and Customs Enforcement of the United States Department of Homeland Security. However, the new law imposing these requirements expressly states that it cannot be construed to deny bond to a prisoner or prevent the prisoner from being released from confinement when the prisoner is otherwise eligible for release.

Of course, citizenship status may be relevant in determining conditions of pretrial release, such as when the arrestee has no contacts in the community and was planning on returning to his or her home country shortly, thus creating a flight risk. How such factors play into your determination of the conditions of pretrial release is discussed in the section that follows.

Another immigration issue sometimes arises when the arresting officers tells you that there is an ICE detainer or that ICE is "interested" in the defendant. ICE refers to United States Immigration and Customs Enforcement, a component of the Department of Homeland Security. Although ICE has many functions, one of its responsibilities is detaining and removing noncitizens who are not legally in the country. An ICE detainer refers to a document issued by ICE, frequently to a local jail, asking the jailer to hold a person for up to forty-eight hours so that ICE can take custody of that person. For example, suppose a defendant is in jail on a $5,000 secured bond. Normally, when the defendant is able to make that bond, he or she must be released. However, if an ICE detainer is in place, the jailer will hold the defendant, for up to forty-eight hours after the defendant makes bond so that ICE can take custody.

When an officer brings a defendant to you and an ICE detainer is in place, follow your normal procedure for conducting the initial appearance and setting conditions of pretrial release. There is no special hold to implement, and you are not authorized to hold the defendant. The detainer is in place, and if the defendant meets his or her conditions of pretrial release, the jail will hold the defendant per the detainer. However, the fact that a detainer is in place may affect your decision about appropriate conditions, for example, if the defendant is facing deportation, there may be a flight risk.

Likewise, when an officer brings a defendant to you and informs you that ICE is "interested" or is "investigating whether a detainer should issue," follow your normal procedure for conducting an initial appearance and setting conditions of pretrial release. There is no special hold to implement, and you are not authorized to hold the defendant for this purpose. However, in this situation you may learn of facts that will be relevant to your determination regarding the appropriate conditions of pretrial release.

DCI "No Bond" Message. As discussed on page 19, the fact that a DCI-PIN message says "no bond" is not a basis for denying pretrial release conditions, unless you can verify that it was ordered by a judge.

Probation violation by in-state probationer or "absconder." As discussed on pages 30–31, when a defendant is sentenced to probation by a North Carolina court and is arrested for violating the conditions of probation, the defendant is entitled to condition of release, unless subject to new G.S. 15A-1345(b1), discussed above.

Determining the Conditions of Pretrial Release

Right to Conditions

Unless the defendant falls within one of the categories listed in the section above requiring that you deny conditions, the defendant is entitled to pretrial release.

Pretrial Release Options

G.S. 15A-534 provides that in determining conditions of pretrial release, a judicial official must impose at least one of the following five conditions:

1. *Release on written promise to appear.* This release involves no money. The defendant simply is released on his or her written promise to appear in court.
2. *Custody release.* A custody release is a release to a designated person or organization that agrees to supervise the defendant. Like a release on a written promise to appear, no money is involved. Note that G.S. 15A-534(a) provides that if this condition is imposed, the defendant may elect to execute a secured appearance bond instead.
3. *Release on unsecured appearance bond.* An unsecured bond is one that is backed only by the integrity of the defendant; it is not backed by assets or collateral.
4. *Release on secured appearance bond.* A secured appearance bond is one that is backed by a cash deposit in the full amount of the bond, by a mortgage, or by at least one solvent surety.
5. *House arrest with electronic monitoring.* This condition may be imposed effective December 1, 2009, for offenses committed on or after that date. S.L. 2009-547. If this condition is imposed, you also must impose a secured appearance bond. S.L. 2009-547. It is not yet clear how this condition will be implemented or which jurisdictions are equipped to implement it. Because imposing this condition in the absence of available equipment will result in a hold, if your county lacks the available equipment or does not have a device immediately available for the defendant involved, you should check with your chief district court judge before imposing this condition.

Deciding Which Pretrial Release Options to Impose

Local procedure. When setting conditions of pretrial release, you need to know and follow the written pretrial release policy issued by your senior resident superior court judge. Note that G.S. 15A-535 provides that the senior resident superior court judge must create and issue recommended pretrial release policies. If you have not seen your local policy, ask for it.

Purpose of conditions of pretrial release. The purpose of conditions of pretrial release is to make sure that the defendant appears in court when required and does no harm while on release. Keep these purposes in mind when deciding which conditions to impose.

Special considerations regarding secured bonds and house arrest with electronic monitoring. *Impose a Secured Bond Only after Rejecting Other Options.* G.S. 15A-534(b) provides that you must impose a release on written promise to appear, a release on an unsecured appearance bond, or a custody release unless you determine that

- those forms of release will not reasonably assure the defendant's appearance;
- release under those conditions will pose danger of injury to any person; or
- release under those conditions is likely to result in the destruction of evidence, intimidation of witnesses, or subornation of perjury.

Make Written Findings If Required by Local Policy. G.S. 15A-534(b) provides that when imposing a secured bond or house arrest with electronic monitoring, you must record, in writing, the reasons for doing so if required by your local policy on pretrial release issued by your senior resident superior court judge.

Specifying "Cash" or "Green Money Only" Secured Bond. G.S. 15A-534 suggests that when you designate a secured bond as the condition of release, you may not also dictate which type of secured bond a defendant may post. Therefore, even if you see that a judge has set a cash bond or a "green money only" bond on one or more occasions, do not assume that you have authority to specify a cash bond. On this issue you should consult the written bond policy issued by your senior resident superior court judge. If no written policy is available or if the policy does not address this issue, seek advice from your senior resident superior court judge or chief district court judge before setting a cash bond. Cash bonds are discussed on pages 39–40. As discussed there, even if a cash bond is set, G.S. 15A-531(4) provides that a cash bond may be satisfied by the posting of a secured bond by a "bail agent" (also known as a surety bondsman) in all cases except child support contempt proceedings.

Factors to consider. G.S. 15A-534(c) provides that in determining which conditions of release to impose, you must take into account

- the nature and circumstances of the offense charged;
- the weight of the evidence against the defendant;
- the defendant's family ties, employment, financial resources, character, and mental condition;
- whether the defendant is intoxicated to such a degree that he or she would be endangered by being released without supervision;
- the length of the defendant's residence in the community;
- the defendant's record of convictions;
- the defendant's history of flight to avoid prosecution or failure to appear at court proceedings; and
- any other evidence relevant to the issue of pretrial release.

Evidence to consider. G.S. 15A-534(g) provides that when imposing conditions of pretrial release, you must take into account all available evidence that you consider reliable. You are not bound by the rules of evidence when making this determination. G.S. 15A-534(g).

Restrictions

G.S. 15A-534(a) authorizes magistrates to impose restrictions on travel, association, conduct, or place of abode. You are allowed to impose these restrictions no matter what type of pretrial release condition you set. Any restrictions imposed should be reasonable and related to the purpose of pretrial release. Restrictions should not be used as punishment. The restrictions should relate to reasons listed under G.S. 15A-534(b):

- Assurance of defendant's appearance (travel)
- Danger of injury (conduct/association)
- Destruction of evidence (conduct/travel/association)
- Intimidation of witnesses (conduct/association)

Special Cases

As a general rule, and subject to your local bond policy, the law gives magistrates a great deal of discretion to determine the appropriate conditions of pretrial release. In some situations, however, the law or a judge requires you to impose certain conditions, forbids you from imposing certain conditions, or allows you to consider special conditions. This section discusses those special cases.

Infractions. As a general rule, any person who is not a North Carolina resident and who is charged with an infraction may be required to post a bond to secure his or her appearance in court. G.S. 15A-1113. The charging officer may require the person to accompany the officer to the magistrate's office to determine if a bond is necessary to secure the person's court appearance, and if so, what kind of bond is to be used. G.S. 15A-1113(c). However, if you find that the person is unable to post a secured bond, you *must* allow the person to be released by executing an unsecured bond. G.S. 15A-1113(c).

There are several exceptions to this rule. First, as suggested by the rule itself, a North Carolina resident who is charged with an infraction cannot be required to post bond. Second, a person charged with an infraction cannot be required to post an appearance bond if the person is licensed to drive by a state that is a member of the motor vehicle nonresident violator compact, the charged infraction is subject to the compact, and the person executes a personal recognizance required by the compact. G.S. 15A-1113. Third, certain individuals charged with infractions that are subject to the Wildlife Violator Compact cannot be required to post a bond. G.S. 113-300.6.

Probationer charged with a felony. Effective December 1, 2009, S.L. 2009-412 amended G.S. 15A-534 to add a new subsection (d2) providing that when you are determining conditions of pretrial release for a defendant who is charged with a felony while he or she was on probation for an earlier offense, you must determine whether the defendant poses a danger to the public before imposing conditions of pretrial release and must record that determination in writing. If you determine that the defendant poses a danger to the public, the new law requires you to impose a secured bond. As noted above, if you find that the defendant does not pose a danger to the public, impose conditions as usual. The procedure for handling these defendants when the information is insufficient to make the required determination is discussed above in the section on delaying setting conditions.

Domestic violence cases. G.S. 15A-534.1(a)(2) sets out special restrictions that may be imposed on a defendant who is charged with specified crimes of domestic violence or with a violation of a civil domestic protective order. They include that the defendant

- stay away from the home, school, business, or place of employment of the alleged victim;
- refrain from assaulting, beating, molesting, or wounding the alleged victim;
- refrain from removing, damaging, or injuring specifically identified property;
- may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

Use form AOC-CR-630 (included in Appendix A) to impose these restrictions.

G.S. 15A-401(b)(2)f provides that a law enforcement officer may arrest a person without an arrest warrant if the person has violated pretrial release conditions imposed under G.S. 15A-534.1(a)(2). Upon making such an arrest, the law enforcement officer must take the person without unnecessary delay to a magistrate and the magistrate has the responsibility of setting new

Table 5. Child Abuse Crimes Triggering G.S. 15A-534.4

1. Felonious or misdemeanor child abuse
2. Taking indecent liberties with a minor in violation of G.S. 14-202.1
3. Rape or any other sex offense in violation of G.S. Ch. 14, Art. 7A against a minor victim
4. Incest with a minor in violation of G.S. 14-178
5. Kidnapping, abduction, or felonious restraint involving a minor
6. Transporting a child outside the state with intent to violate a custody order, as prohibited by G.S. 14-320.1
7. Assault or any other crime of violence against a minor
8. Communicating a threat against a minor

pretrial release conditions. If the defendant also is charged with a new domestic violence offense subject to G.S. 15A-534.1, the forty-eight-hour rule applies to the new offense.

Certain cases involving child victims. G.S. 15A-534.4 sets out specific conditions that must be imposed on a defendant who is charged with certain sex offenses or crimes of violence against child victims listed in Table 5. If the defendant is charged with one of those crimes, you must impose conditions that the defendant (1) stay away from the victim's home, temporary residence, school, business, or place of employment; (2) refrain from communicating or attempting to communicate with the victim, except as specified in an order entered by a judge with knowledge of the pending charges; and (3) refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim. However, upon request of the defendant, you may waive one or both of conditions (1) and (2), if you make written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed. Use form AOC-CR-631 (included in Appendix A) for these cases.

Prior failures to appear and bond doubling. Special provisions apply when a defendant has been surrendered by a surety after a FTA or arrested on an OFA after a FTA.

Arrest on an OFA after a FTA. When a defendant is arrested on an OFA after a FTA, follow these steps:

1. *Check for prior surrender.* Determine whether the defendant already has been surrendered by a surety for the same FTA. If so, and a new release order has been entered and a new bond set, re-release the defendant on the bond already posted and attempt to have the OFA recalled. If the defendant has not already been surrendered by a surety for the same FTA, set conditions of release as described directly below.
2. *Setting conditions of release.* Begin by examining the OFA. If the OFA recommends any conditions, impose them. G.S. 15A-534(d1). If the OFA says nothing about the conditions of release, find out what conditions were set in the prior release order. If a secured or unsecured bond was set in the prior release order, require a secured bond in at least twice that amount. G.S. 15A-534(d1). If a written promise to appear or custody release was set in the prior release order, require a secured bond of at least $500.00. G.S. 15A-534(d1). You also must impose restrictions on the defendant's travel, associations, conduct, or place of abode to assure that the defendant will not fail to appear again. G.S. 15A-534(d1). Be sure to check the box on the release order indicating that the defendant was arrested after failing to appear as required by a prior release order. If it is the defendant's second

or subsequent FTA in the case, you must check the box indicating that on the release order. S.L. 2009-437, sec. 2.

Surrender after a FTA. When a defendant is surrendered by a surety after a FTA, follow these steps:

1. *Check for prior arrest.* Determine whether the defendant already has been arrested by a law enforcement officer for the same FTA. If so, and a new release order has been entered and new bond posted, simply re-release the defendant on the bond already posted. If the defendant has not already been arrested, try to recall any outstanding OFA so that the defendant will not be rearrested for the same FTA. Then, set conditions of release as described in step 2.
2. *Setting conditions of release.* Obtain the certified copy of the bond that was provided to the jailer by the surety when the defendant was surrendered. Require a secured bond in at least twice that amount. G.S. 15A-534(d1). Be sure to check the box on the release order indicating that the defendant surrendered after failing to appear as required by a prior release order. If it is the defendant's second or subsequent FTA in the case, you must check the box indicating that on the release order. S.L. 2009-437, sec. 2.

Order of a judge. If the judge has ordered that certain conditions of pretrial release be imposed—for example in an OFA—impose those conditions as ordered.

Modification of Conditions

G.S. 15A-534(e) permits a magistrate to modify his or her pretrial release order at any time before the first appearance before a district court judge. If you believe that there are compelling reasons to modify another magistrate's pretrial release order, consult with the other magistrate before making the modification, if possible.

Term of the Bond

A defendant is covered by a bond until judgment is entered in district court from which no appeal is taken, or until judgment is entered in superior court. G.S. 15A-534(h). However, the bond ends earlier if: (1) a judge releases the obligor from the bond; (2) the defendant is properly surrendered by a surety; (3) the proceeding is terminated by voluntary dismissal by the state before forfeiture is ordered; or (4) an indefinite prayer for judgment continued has been entered in district court. G.S. 15A-534(h).

AOC Forms

Form AOC-CR-200 (included in Appendix A) must be completed every time you determine whether conditions of release are warranted and what conditions will be imposed. This section discusses how to use that form.

Upper portion of form. In the upper portion of the form, fill in basic information such as the file number, county, and name and address of the defendant. If a bond is imposed, list the amount of the bond there as well.

Defendant not entitled to release. If the defendant's release is not authorized (for example, in a capital case), check the box that says "Your release is not authorized," order the person's commitment on the appropriate portion of the form, and sign and date the form.

Custody release or written promise to appear. When ordering a custody release or a release on a written promise to appear, check the box for "Custody Release" or "Written Promise," ensure that the relevant information in the section of the form entitled "Written Promise to Appear or Custody Release," is completed, and sign and date the form. Note that a release of a defendant held on an impaired driving detention to a sober, responsible adult, see pages 25–28, is not a custody release.

Unsecured or secured bond. When ordering an unsecured or secured bond, check the appropriate box for "Secured Bond" or "Unsecured Bond" and sign and date the form. To take a bond, form AOC-CR-201 (included in Appendix A) also must be completed. To take an unsecured bond, check the box on AOC-CR-201 for "Unsecured Appearance Bond," sign and date the form, and make sure the defendant signs the form. Instructions for taking a secured bond are provided below.

FTA boxes. When a defendant has been arrested by a law enforcement officer or surrendered by a surety after a FTA, check the box on form AOC-CR-200 that states, "The defendant was arrested after failing to appear as required under a prior release order." G.S. 15A-534(d1). If the defendant has had any other FTAs in the case, check the box noting that this was the defendant's second or subsequent FTA. G.S. 15A-534(d1). Be sure to follow the bond doubling procedures described above on pages 36–37.

Impaired driving or communicable disease detention. Impaired driving and communicable disease detentions are discussed above on pages 25–28. If such a detention has been imposed, check the box that says that the defendant's release is not authorized until the detention is complete. Checking this box will help to ensure that a defendant is not mistakenly released when he or she satisfies a condition of release (for example, by putting down cash on a bond) and a detention is not yet complete.

Restrictions. Any restrictions that are imposed should be listed in the space designated on the form.

Additional information. The form contains a box for additional information. Most commonly, this box is used to specify that a secured bond must be satisfied by cash only. Your authority to set a cash bond is discussed on page 34. If you have been authorized to impose a cash bond and deem a cash bond appropriate, check the box for "Secured Bond" and write "Cash Bond" in the additional information box.

Taking Bonds

Generally

When you have set a written promise to appear or a custody release as the condition of pretrial release, the only paperwork needed to effect the release is the Conditions of Release and Release Order (AOC-CR-200, included in Appendix A). However, when a bond is set—whether secured or unsecured—an appearance bond is required. This section discusses how to take bonds and ensure that an appearance bond is properly executed. For more information on all of the topics discussed below, see the paper, "Taking Bail Bonds," at www.sog.unc.edu/programs/ncmagistrates/2009AdvCrimProcedure_001.html, by Troy Page of the AOC.

Local Procedure

Many of the legal issues discussed in this section have not been decided by the North Carolina appellate courts. You should follow local procedures adopted by your senior resident superior court judge and the advice of your chief district court judge or senior resident superior court judge when those procedures and advice differ from statements in this section.

AOC Form

The form for taking bonds is AOC-CR-201. Form AOC-CR-201A is used when more space is needed to list multiple sureties. Both forms are included in Appendix A.

Unsecured Bonds—Described

An unsecured bond essentially is a promise by the defendant to forfeit the amount of the bond if the defendant fails to appear as required. In an unsecured bond, the defendant's promise is not backed by money or property. Although a defendant does not appear to have to satisfy any requirements regarding solvency for an unsecured appearance bond, the defendant does have to sign the appearance bond form to make it a valid contract.

Secured Bonds—Described

A secured bond essentially is a promise by the defendant or a surety to forfeit the amount of the bond if the defendant fails to appear as required. Unlike an unsecured bond, a secured bond is backed by money or other property. Because taking a secured bond is more complicated than taking an unsecured bond, the rest of this section focuses on taking secured bonds.

Types of Secured Bonds

G.S. 15A-534(a)(4) provides that there are three ways to secure a bond:

- A cash deposit in the full amount of the bond
- A mortgage pursuant to G.S. 58-74-5
- At least one solvent surety

Each of these ways of securing a bond is discussed below.

When Cash Secures the Bond

Full amount of the bond. G.S. 15A-534(a)(4) provides that a bond may be secured by a cash deposit in the "full amount of the bond." Thus, when cash is provided, it must be for the total amount of the bond.

When "cash" means cash. G.S. 15A-531(4) provides that a cash bond may be satisfied by the posting of a secured bond by a "bail agent" (also known as a surety bondsman) in all cases except child support contempt proceedings. A bail agent is a surety bondsman acting as an agent for an insurance company. A "professional bondsman" is not a bail agent (surety bondsman), and therefore a professional bondsman may not post a secured bond when a cash bond is required.

Taking a cash bond. The procedure for taking a cash bond varies, depending on who is providing the cash. To take a cash bond when the defendant tenders the cash, form AOC-CR-201 should be completed as follows:

- Fill in the top portion of the form.
- Check the box for "Cash Appearance Bond."
- Swear the defendant, have the defendant sign the bond, and complete the section entitled "Sworn and Subscribed Before Me."
- Complete the section entitled "Complete if Cash Deposited."
- Issue a receipt to the defendant.

When another person tenders cash to satisfy the bond, clarify that person's intentions about the use of the cash upon disposition of the charges. Specifically, determine whether the person intends the cash to be available to satisfy the defendant's obligations (for example, fine and

costs) if the defendant is convicted or found in contempt. If the person intends the cash to be available to satisfy the defendant's obligations (or to be given to the defendant if there are no obligations to be satisfied), it is as if the person has given the cash to the defendant. Thus AOC-CR-201 should be completed as if the defendant personally tendered the cash. If the person expects to get the cash back even if the defendant is convicted or found in contempt (that is, the person is offering his or her cash for the limited purpose of securing the bond), AOC-CR-201 should be completed as follows:

- Fill in the top portion of the form.
- Have the defendant sign the bond.
- Check the box for "Surety Appearance Bond" and check the box below that option for "Cash Deposited by Surety."
- Under "Accommodation Bondsman" enter the information about the person tendering the cash and have that person sign as an accommodation bondsman.
- Swear that person and complete the section entitled "Sworn and Subscribed Before Me."
- Complete the section entitled "Complete if Cash Deposited."
- Issue a receipt to the person depositing the cash.

Cash bonds greater than $10,000. Special reporting requirements apply when you receive cash in excess of $10,000 to satisfy an appearance bond. Willful failure to file the required reporting form for a qualifying transaction is a felony. 26 U.S.C. § 7203. For more information on these reporting requirements, see the AOC paper, "Taking Bail Bonds," at www.sog.unc.edu/programs/ncmagistrates/2009AdvCrimProcedure_001.html.

Accepting cash. Although many sheriffs and chief jailers may have a policy against it, G.S. 15A-537 permits jailers to release a defendant if a judicial official is not available. This statute can be interpreted to mean that jailers may accept cash. However, the "Notes on Cash Bonds" on form AOC-CR-201, side two, indicates that jailers may not take cash bonds. Any cash collected by sheriffs and jailers should be deposited with the clerk's office.

When a Mortgage Secures the Bond

Generally. As noted above, a bond may be secured with a mortgage pursuant to G.S. 58-74-5. Specifically, a person can secure a bond by executing a mortgage on real or personal property that has a value that can cover the bond, payable to the state of N.C., conditioned with power of sale to be executed by the clerk upon a breach. G.S. 58-74-5. For more detailed information about taking mortgage bonds, see the AOC paper, "Taking Bail Bonds," noted above.

When a Surety Secures a Bond

Types of sureties. There are four types of sureties:

- An accommodation bondsman
- A professional bondsman or his or her runner
- An insurance company, acting through a bail agent (surety bondsman)
- A motor club

Each surety is discussed in more detail in the sections that follow.

Persons prohibited from serving as surety. G.S. 15A-541(a) prohibits the following types of people (or their spouses) from serving as a surety for anyone other than an immediate family member: sheriff, deputy sheriff, law enforcement officer, judicial official, attorney, parole officer, probation

officer, jailer, assistant jailer, employee of the General Court of Justice, or other public employee assigned to duties relating to the administration of criminal justice. These people also are prohibited from having an interest in the financial affairs of any firm or corporation whose principal business is acting as bondsman. G.S. 15A-541(a). Violation of these provisions is a Class 2 misdemeanor. G.S. 15A-541(b).

Accommodation or "property" bonds. *Local Policies.* Some counties have specific accommodation bond policies that magistrates must follow (for example, no accommodation bonds in the amount of $5,000 or more may be accepted without a deed of trust). Make sure that you know your local policy.

Accommodation Bondsman Defined. An accommodation bondsman must

- be a natural person;
- be eighteen-years-old or older;
- be a resident of North Carolina;
- receive no consideration (for example, money or other valuables) for acting as a surety;
- endorse the bond; and
- provide satisfactory evidence of ownership, value, and marketability of real or personal property that is sufficient to fully satisfy the bond in the event of breach.

G.S. 15A-531; G.S. 58-71-1(1).

Taking an Accommodation Bond. To take an accommodation bond, complete form AOC-CR-201 as follows:

- Fill in the top portion of the form.
- Check the box for "Surety Appearance Bond."
- Have the defendant sign the bond.
- Complete the sections under "Accommodation Bondsman."
- Swear the person and complete the section entitled "Sworn and Subscribed Before Me."

If there are more than two accommodation bondsmen, use form AOC-CR-201A to list the additional names. When using this form, remember to check the box on AOC-CR-201, indicating that there are additional accommodation bondsmen. If the property pledged is owned by spouses as tenants in the entirety, both spouses must sign the bond.

The person wanting to be a surety must be placed under oath and you must determine that the person satisfies the requirements for an accommodation bondsman, including that the person has sufficient assets (real or personal) to cover the bond above liabilities and exemptions. The amount of assets must be over and above the homestead exemption in land of $1,000 in real property and the personal property exemption of $500. N.C. Const. Art. X, sec. 1–2.

Sources that may be consulted in determining whether to accept real property for the bond include the following:

- Tax office (ownership of real property and appraised value of real property)
- Register of deeds office (deeds of trust and mortgages on real property)
- Clerk's office (outstanding judgments docketed against the person who wants to be a surety)
- Surety (ask the person who wants to be a surety about outstanding debts)
- Third person (third party you trust vouches that the surety has sufficient assets)

The misdemeanor of false qualification occurs if the surety signs and knows or reasonably should know that there is insufficient property over and above his or her exemption. G.S. 15A-542.

Special Issues Regarding Accommodation Bonds. Some special rules apply to accommodation bonds. First, a defendant may not sign his or her own accommodation bond. The surety must be someone who is liable in addition to a defendant (although a defendant can post his or her own cash for a cash bond or execute a mortgage on his or her property under G.S. 58-74-5 for a mortgage bond). The definition of "surety" in G.S. 58-71-1(10) states that a surety is one, who with the defendant, is liable for the amount of the bail bond when it is forfeited.

Second, a defendant's spouse may be a surety only if the property is in the spouse's own name (and not jointly owned). The reason is that G.S. 58-71-1(1) requires that the surety be personally solvent for the amount of the bond. The bond should be separate from and in addition to the defendant's obligation. It is intended as an additional security.

Professional bondsman. *Defined.* A professional bondsman is a person who

- is approved and licensed by the Commissioner of Insurance;
- pledges cash or approved securities with the Commissioner as security for bail bonds; and
- receives or is promised money or other things of value for writing the bond.

G.S. 15A-531(7); G.S. 58-71-1(8).

Runners. A professional bondsman may employ "runners" who are agents of the bondsman for purposes of executing bail bonds and other functions. G.S. 58-71-1(9).

Taking a Professional Bondsman Bond. When taking a bond that is secured by a professional bondsman, begin by checking the Surety Report (available online at www.nccourts.org/Courts/OCO/Magistrates/Bondsman/) to confirm that the surety is authorized to execute bonds in the charging county. If so, complete form AOC-CR-201 as follows:

- Fill in the top portion of the form.
- Check the box for "Surety Appearance Bond."
- Check the next box, which indicates that the affidavit is complete and true.
- Have the defendant sign the bond.
- Make sure the name and license of the professional bondsman or runner is provided under the section entitled "Professional Bondsman" on the front of the form.
- Make sure that the professional bondsman or the runner completes the affidavit on the back of the bond.
- Verify that the professional bondsman or his or her runner attach a stamp to the back of bond.
- Swear the bondsman or his or her runner regarding the truth of the statements in the bond, have the person sign the bond, then complete the portion designated "Sworn and Subscribed Before Me."

Insurance company acting through a bail agent (surety bondsman). *Defined.* A bail agent (surety bondsman) is a person who

- is licensed by the Commissioner of Insurance as a surety bondsman;
- is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer; and
- receives or is promised money or other things of value for writing the bond.

G.S. 15A-531(3); G.S. 58-71-1(11).

Insurance Company Is Surety. The bail agent (surety bondsman) is an agent for the insurance company, which is the surety.

Runners Cannot Sign. Although a runner may sign a bond for a professional bondsman, only a bail agent (surety bondsman) may sign for the insurance company. The bail agent (surety bondsman) cannot have a runner sign the bond.

> Example: A professional bondsman has a runner. The bondsman is also a bail agent (surety bondsman). The bondsman wants to post a $10,000 appearance bond. If the bond is executed on behalf of the insurance company, the runner cannot sign the bond. If the bond is executed on behalf of the professional bondsman, the runner can sign the bond.

Taking a Bail Agent (Surety Bondsman) Bond. To take a bond secured by a bail agent (surety bondsman) begin by checking the Surety Report (available online at www.nccourts.org/Courts/OCO/Magistrates/Bondsman/) to confirm that the surety is authorized to execute bonds in the charging county. If so, complete form AOC-CR-201 as follows:

- Fill in the top portion of the form.
- Check the box for "Surety Appearance Bond."
- Check the next box, which indicates that the affidavit is complete and true.
- Have the defendant sign the bond.
- Make sure the portion of the form designated "Insurance Company" on the front of the form is completed.
- Make sure that the bail agent (surety bondsman) completes the affidavit on the back of the bond.
- Verify that the bail agent (surety bondsman) has affixed to the bond one of the individual powers of attorney given to him or her by the insurer.
- Swear the bail agent (surety bondsman) regarding the truth of the statements in the bond, have the bail agent (surety bondsman) sign the bond, and then complete the portion designated "Sworn and Subscribed to Before Me."

Note on Powers of Attorney. The insurance company gives the bail agent (surety bondsman) two different kinds of powers of attorney. One power is the authorization for the bail agent (surety bondsman) to act as surety for the company and gives the total amount of money for which the agent (surety bondsman) is entitled to bind the insurance company. This power of attorney is registered with the license. The insurance company also gives the bail agent (surety bondsman) several individual powers of attorney, usually sequentially numbered. One of the individual powers of attorney must be attached to a bond signed by the bail agent (surety bondsman) on behalf of the insurance company. These powers are usually for less than the total amount of bonds that can be written and constitute the maximum amount for which one bond can be written.

Many powers of attorney provide that a bail agent (surety bondsman) may not stack powers of attorney.

> Example: An insurance company gives a bail agent (surety bondsman) a power of attorney to write bonds for a total amount of $100,000 and gives the bail agent (surety bondsman) separately numbered powers of attorney to attach to each bond written with a face amount of $20,000, each providing that the power of attorney is "void if used with other powers." The defendant is placed under a $60,000 bond. The bail agent (surety bondsman) may not attach three powers of attorney and write a $60,000 bond (called "stacking") for one defendant because the insurance company has limited the authority of the agent in one bond to the amount in the individual, numbered power of attorney. A bail agent (surety bondsman) who is the agent for three different insurance companies may not put up $20,000 from each company.

Motor club bail bond. *Defined.* Some motor clubs provide bonds guaranteed by a surety for motor vehicle offenses. G.S. 58-69-2(3).

Must Be Accepted. Subject to exceptions, you must accept a guaranteed arrest bond certificate in place of cash bail or other bond in an amount not exceeding $1,500 for any motor vehicle offense. G.S. 58-69-55. The two exceptions are that the arrest bond certificate cannot be accepted for an impaired driving offense or a felony offense. G.S. 58-69-55.

Variations in Coverage. When taking a motor club bail bond, read the motor club card carefully and check the expiration date. Some cards require that the court appearance rather than the date of taking the bond must occur before the expiration. The card must indicate that a surety company guarantees the defendant's appearance. Also, the card sometimes specifies offenses to which it will or will not apply and will indicate the maximum amount of a bond that will be guaranteed, which may be less than $1,500.

> Example: A card may specify: "The General Insurance Co. of America (GICA) guarantees the appearance of the AAA member named on this card in any court up to the card's expiration date. The card can be accepted against an arrest bond up to $1,000 or to secure a bail bond up to $5,000 from GICA for any motor vehicle law violation except violations involving driving while under the influence of intoxicating liquors, drugs or narcotics, failure to appear for violations, driving on a suspended/revoked driver's license, hit and run, failure to present evidence of insurance, illegal use or falsification of license or registration, engaging in a felony, attempting to elude/eluding police, or while driving a vehicle used for commercial purposes."

Taking a Motor Club Bail Bond. For instructions on taking a motor club bail bond, see the AOC paper, "Taking Bail Bonds," at www.sog.unc.edu/programs/ncmagistrates/2009AdvCrimProcedure_001.html.

Wrapping

Some counties allow wrapping of bonds—that is, the bundling of multiple offenses into one bond. Consult the written bond policies in your county to determine whether wrapping is allowed in your jurisdiction.

Splitting

The general rule is that when multiple sureties sign a bond, they are jointly and severally liable on the bond. G.S. 15A-544.3(a); -544.7(a). That means that the full amount of the bond can be collected from each surety. Splitting of the bond refers to a practice where multiple sureties divide up the bond, agreeing to be liable for only a portion of it; for example, for a $1,000 bond, sureties A and B agree to be liable for $500 each. It is not clear whether splitting of a bond is permissible. Therefore, you should allow splitting only if permitted by the written bond policy issued by your senior resident superior court judge.

Surrender of Defendant by Surety

Surety's Authority to Arrest

A surety (and a runner for a bail bondsman) may arrest a defendant for purpose of surrender. G.S. 15A-540; G.S. 58-71-30.

Although G.S. 58-71-30 permits you to issue an OFA for a defendant when a surety makes a written request on a certified copy of the bond, do not do so without consulting with your chief district court judge or senior resident superior court judge. It ordinarily would not be a good practice to issue an OFA under such circumstances; this is additionally true as G.S. 58-

71-30 may conflict with G.S. 15A-305, which only authorizes the issuance of an OFA on certain grounds. Note that G.S. 58-71-195 provides that if there is a conflict between the provisions of G.S. Ch. 58 and G.S. Ch. 15A, the provisions of G.S. Ch. 15A govern.

Surrender

Surrender after breach. After a breach of conditions of a bail bond, a surety (and a runner for a bail bondsman) may surrender the defendant to the sheriff of the county where the defendant is bonded to appear for trial or to the sheriff of the county where the defendant was bonded. G.S. 15A-540(b). Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff in the state by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. G.S. 15A-540(b). Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. G.S. 15A-540(b). Upon surrender of the defendant, the sheriff must provide the surety with a receipt. G.S. 15A-540(b).

When a defendant is surrendered after a breach, the sheriff must take the defendant, without unnecessary delay, before a judicial official for new conditions of pretrial release. G.S. 15A-540(c).

Surrender before breach. Before a breach of conditions of a bail bond, a surety may surrender a defendant to the sheriff of the county where the defendant is bonded to appear or to the sheriff where the defendant was bonded. G.S. 15A-540(a); G.S. 58-71-20. When the surrender is made before a breach, new conditions of pretrial release should not be set. In this case, the defendant remains in custody until the conditions of the original release order are satisfied.

AOC Form

The form to be used when the surety surrenders the defendant is AOC-CR-214 (included in Appendix A).

Fugitives

Extradition is the procedure by which a person who has committed a crime in one state, escaped from prison in one state, or violated probation or parole imposed by one state and has fled to another state is returned to the first state. For more information about extradition, see State of North Carolina Extradition Manual (2d ed. 1987), from which most of the text in this section is drawn directly. Note that separate procedures apply to defendants who violate probation imposed by another state and are in North Carolina pursuant to a supervision agreement under the Interstate Compact for Adult Supervision (Interstate Compact). In those cases, the Interstate Compact rules, discussed on page 31, apply. When a defendant has violated probation imposed by another state and is found in North Carolina with no Interstate Compact supervision agreement in place, extradition rules govern the process for returning the defendant to the other state.

Most commonly, magistrates will deal with fugitives from other states who are found in North Carolina. Consider the case of a person who committed a crime—say, armed robbery—in Ohio and fled to North Carolina. Probably the person already has been charged formally in Ohio, either by indictment or by an arrest warrant. When he or she is discovered in North Carolina, the person may be arrested by a North Carolina officer, either with or without an arrest warrant from a North Carolina magistrate. The sections below discuss the procedures that apply

in these circumstances. See page 49 for a discussion of your involvement when a fugitive from North Carolina is found in another state.

Fugitive from Another State Before Magistrate after Warrantless Arrest

When a fugitive from another state is found in North Carolina, an officer may arrest the fugitive without a warrant only if the person has been charged with a crime in the other state that is punishable there by death or more than one year's imprisonment. After arresting without a warrant, the officer must take the fugitive before a North Carolina magistrate as soon as possible. When an officer brings a fugitive to you after making a warrantless arrest, you should:

1. *Determine whether the officer had adequate grounds for the arrest.* Place the officer under oath and ask the officer the reasons for the arrest. An officer may arrest without a warrant only when the person has been charged with a crime in another state and that crime is punishable by death or by imprisonment for more than one year. The person might have been charged in the other state by the issuance of an arrest warrant, indictment, or information. You determine only whether the person has been charged in the other state, not whether there was probable cause for the charge. The officer's information that the person has been charged must be reliable. Usually it will be a DCI-PIN message, but it could be a letter, facsimile, or telephone call from an officer in the other state. Sometimes the officer will have a copy of the warrant or indictment from the other state. If the information is a DCI-PIN message, ask the officer whether he or she has telephoned the other state to verify that the charge is still outstanding and that the other state wishes to extradite. This verification is not essential—the DCI-PIN message is sufficient justification for arresting the fugitive—but it is a highly recommended practice. Of course, you also must determine that the person arrested is the person charged in the other state.
2. *Complete a magistrate's order for fugitive.* Make sure the Fugitive Affidavit (AOC-CR-911M) is completed and complete the Magistrate's Order for Fugitive (AOC-CR-909M), following the usual procedure on the number of copies to be completed. Both forms are included in Appendix A. Send the original to the clerk's office and attach to the original the DCI-PIN message or other written document used to establish that the person is a fugitive. Next, remind the officer to obtain a copy of the other state's warrant or indictment as soon as possible and attach it to the original copy of the magistrate's order in the clerk's office.
3. *Inform the fugitive of the charge.* Inform the fugitive of the charge, the right to communicate with counsel and friends, and whether he or she is entitled to pretrial release.
4. *Determine appropriate conditions.* G.S. 15A-736 allows a fugitive to be given bail unless the offense with which the defendant is charged in the other state is punishable by death or life imprisonment. See page 29. Apparently the only form of pretrial release that may be used is a bail bond with sureties. Your local bail bond schedule may include instructions on what bond to set for fugitives. Sometimes the same amount is required as for a similar North Carolina crime; sometimes that amount is doubled or otherwise multiplied. If bail is not allowed, or if the fugitive cannot meet the bail, he or she should be committed to the county jail.
5. *Order the fugitive to appear in district court.* Whether the fugitive is released on bond, cannot make bond, or is ineligible for bail, the release or commitment order should direct

the fugitive to appear before a district court judge at the earliest possible time. Although the statute does not require an immediate district court appearance for a fugitive who is released on bond, such an appearance will give the district judge an early opportunity to review the fugitive's bond, explain the extradition process, and appoint counsel if necessary. Fugitives often waive formal extradition once they are told about the process and have talked to a lawyer. If your chief district judge prefers not to deal with the fugitive at this point, release is on condition that the person either (a) return for a district court appearance at a specific time within thirty days or (b) surrender when a Governor's Warrant, discussed below, is issued.

Fugitive Warrant

More commonly, the officer will come to you to obtain a North Carolina arrest warrant, called a fugitive warrant, AOC-CR-910M (included in Appendix A), before arresting a fugitive from another state. When this happens, you should:

1. *Determine whether there are grounds for an arrest.* Place the officer under oath and ask about the reasons for making an arrest. The three grounds that justify an arrest are that the person (1) is charged with a crime in another state and fled, (2) was convicted of a crime in another state and has escaped from imprisonment there, or (3) was convicted of a crime in another state and violated the conditions of probation or parole by fleeing. The officer's information must be reliable. Usually it will consist of a DCI-PIN message, but it could be a letter, facsimile, telephone call from an officer in the other state, or even a copy of the warrant or indictment from the other state. You do not determine whether there is probable cause to believe the person committed the crime. You only determine that one of the three grounds for arrest exist and that this is the person who is wanted by the other state.
2. *Complete the affidavit and arrest warrant.* Both the Fugitive Affidavit (AOC-CR-911M) and the Warrant for Arrest for Fugitive (AOC-CR-910M) must be completed and attached to each other. Follow the usual procedure on the number of copies to be completed and send the original to the clerk's office. Also, attach to the original the DCI-PIN message or any other document used to establish that the person is a fugitive. It is good practice to remind the officer to obtain a copy of the arrest warrant or indictment in the other state as soon as possible and attach it to the original copy of the warrant in the clerk's office.

Fugitive from Another State Before Magistrate after Arrest on a Warrant

Once the fugitive warrant is issued, the officer makes the arrest and takes the defendant before a magistrate as soon as possible for the setting of pretrial conditions, just as would be done for a North Carolina crime. When an officer arrests a fugitive on the basis of a warrant and brings the fugitive before you, inform the fugitive of the charges, determine whether to allow bail, and order the fugitive to appear in district court, as described in "Fugitive from Another State Before Magistrate after Warrantless Arrest," above.

Fugitive from Another State Who Has Not Been Charged

Another possibility, though unusual, is that the person has not yet been formally charged in the other state. For example, a person may have robbed a convenience store in Virginia late at night and fled to North Carolina but no warrant was issued because no judicial official was on duty in Virginia.

The extradition statutes allow a fugitive to be arrested in North Carolina even though the fugitive has not yet been formally charged in the other state. However, the officer only may do so with an arrest warrant. The procedure for issuing such a warrant is the same as that for charging someone with a North Carolina crime; that is, the officer must be placed under oath and must state facts from which you can independently determine that there is probable cause to believe that the person committed the crime in another state. You cannot simply accept the word of the officers from the other state that the person committed the crime; you must be told the reasons for reaching that conclusion. (This is different from other situations involving a fugitive in which you need only establish that the person has been charged in the other state.)

If you determine that there is probable cause, complete an arrest warrant. The standard arrest warrant form will need to be modified to indicate that the crime is one committed against the law of another state. You need not spell out the elements of the offense but simply can state the name of the other state's crime. The name of the crime given by the officers from that state should be used, even if it is different from the name used in North Carolina (for example, "second degree robbery"). After the warrant is issued, the case proceeds like any other one involving a fugitive.

Governor's Warrant

Once arrested, a fugitive is held until formal extradition procedures can take place. If he or she wishes to do so, the fugitive may waive extradition before a clerk of court or a judge and be immediately released to the state from which the fugitive fled. Many fugitives choose to do this, knowing that they will be extradited and not wishing to spend the time required for formal extradition.

If the fugitive does not waive extradition, the state from which the fugitive fled then must formally request the governor of North Carolina to extradite. If the governor decides to extradite, a Governor's Warrant will be issued. A Governor's Warrant authorizes the taking of the fugitive into custody—in fact, the fugitive already may be in custody if he or she was not allowed bail or could not make bail—to be turned over to an agent of the other state.

When a fugitive is brought before you on a Governor's Warrant, you should:

1. *Inform the fugitive of the charges.* Tell the fugitive what crime he or she is charged with in the other state and that the governor of North Carolina has issued a warrant to take him or her into custody and be returned to the state from which he or she fled. The fugitive also should be informed of the right to communicate with counsel and friends. The Governor's Warrant requires that the fugitive be held without bond.
2. *Commit the fugitive to jail.* Commit the fugitive to jail to await his or her appearance before a district court judge.
3. *Order the fugitive returned to district court at the earliest possible date.* The order of commitment should specify the time and date that the fugitive is to appear before a district court judge, which should be as soon as possible.

Fugitives from North Carolina

If a person who committed a crime in North Carolina flees to another state and is found there, a similar procedure takes place. Once the fugitive is arrested in the other state, the North Carolina district attorney of the county where the fugitive is charged is notified and must put together the documents that the North Carolina governor's office will need in requesting extradition (assuming that the fugitive does not waive extradition).

Magistrates only are involved in the process of extraditing a fugitive from North Carolina who has fled to another state if an arrest warrant is used as the charging document. In that case, the warrant must be accompanied by an affidavit (usually by the investigating officer or the victim) that states the grounds for charging the defendant. This affidavit must be sworn to before a magistrate or judge and should have the same date as the warrant (or earlier). Some states will not extradite if the date of the affidavit (for example, January 25, 2009) is later than the date of the arrest warrant (for example, January 20, 2009). Therefore, when a warrant is issued without an accompanying affidavit (oral sworn testimony is sufficient to support an arrest warrant in North Carolina), a new arrest warrant must be issued when the affidavit is prepared so that the dates of the arrest warrant and the affidavit will be the same. Also, if a warrant and affidavit are submitted, they must be accompanied by a certification of the magistrate or judge who issued the warrant or took the affidavit. A clerk of court may certify copies of documents when he or she is the keeper of the original. Each copy must be certified. When a judge or magistrate certifies a document, the clerk of court must certify that person's official character. Then a district court or superior court judge must certify the official character of the clerk. And, in turn, the clerk must certify the official character of the judge who certified the clerk.

Search Warrants

Generally

A search warrant directs a law enforcement officer to search premises, vehicles, persons, or other places in order to seize specified items or persons. G.S. 15A-241. Any item is subject to seizure under a search warrant if there is probable cause to believe it is stolen or embezzled, is contraband or otherwise unlawfully possessed, has been used or is possessed for the purpose of being used to commit or conceal the commission of a crime, or is evidence of an offense or the identity of a person participating in an offense. G.S. 15A-242. Typically, officers will need a search warrant to seize items. Sometimes, however, they will need a search warrant to seize a person—for example, when the officers have a warrant for arrest of a person but that person is inside a friend's house and the friend will not allow the officers to enter.

This section focuses on a magistrate's role in issuing search warrants. For an extensive discussion of search warrants, including among other issues, the advantages of using them and the consequences of unlawful searches, see Arrest, Search, and Investigation.

Forms

Two basic documents are used for search warrants: the application for the warrant and the warrant itself. Form AOC-CR-119 (included in Appendix A) contains a generic application (on one side) and a generic warrant (on the other side). A special form, AOC-CR-155 (included in Appendix A), is used for search warrants to seize blood or urine in impaired driving cases.

Authority to Issue

Only judicial officials may issue search warrants. G.S. 15A-243. Appellate justices and judges and superior court judges may issue search warrants to search throughout North Carolina. G.S. 15A-243(a). District court judges are limited to searches within their respective judicial districts. G.S. 15A-243(b)(1). Clerks and magistrates are limited to searches within their counties. G.S. 15A-243(b)(2)-(3). One magistrate can issue a search warrant even if another magistrate has refused to do so under the same factual circumstances. However, the second magistrate should view the first magistrate's refusal as a cautionary signal.

Modification

Once a search warrant has been issued and changes need to be made to it, it is a better practice to issue a new warrant and have the first warrant returned unexecuted.

The Application

Generally

An application for a search warrant must be in writing, on oath or affirmation. G.S. 15A-244. It is best to use the standard AOC forms noted above. All applications must contain: (1) the name and title of the applicant; (2) a statement that there is probable cause to believe that the items subject to seizure may be found in or upon a designated or described place, vehicle, or person; (3) allegations of fact supporting the statement, and the statement must be supported by one or more affidavits setting forth the facts and circumstances establishing probable cause to believe that the items are in the places or in the possession of the individuals to be searched; and (4) a request that the court issue a search warrant directing a search for and seizure of the items in question. G.S. 15A-244.

It does not matter who fills out the application for the search warrant, as long as it accurately represents what the applying officer knows. Thus an officer may fill out most of the application before bringing it to you, provided that you swear the officer, see G.S. 11-11 regarding oaths, and carefully examine the officer about the information contained in the application.

AOC Form

This section walks you through the contents of the application for a search warrant. You might find it helpful to have a copy of form AOC-CR-119 in front of you as you review this material.

Name of applicant. The first item on the application form is the name and address of the person applying for the warrant, or if an officer, the officer's name, rank, and agency. Most commonly, an officer will apply for the search warrant.

Description of property to be seized/person to be arrested. The next part of the application form provides space for a listing of the property to be seized or the person to be arrested. The officer who executes a search warrant need not be the officer who applies for the warrant. Therefore, the description of the property to be seized must be sufficiently detailed so that an officer executing the search warrant does not seize the wrong property. The subsections below provide more detail on how the property or person to be seized should be described.

Property. The more common the property, the more detailed the description must be to avoid seizure of the wrong thing. Thus "stolen gun" and "refrigerator" are not sufficient. When dealing with common items, including the serial number, brand, model, and visual description of an item to be seized would be helpful identifying information. A detailed description is less important for obvious contraband, such as a machine gun or nontaxpaid liquor. Moreover,

an officer may seize obvious contraband not described in the affidavit, if seen in plain view or seized incident to arrest. Not much detail is needed if the property is drugs, which ordinarily may not be possessed lawfully. Although it is best to state the name of the drug, the generic name is adequate. Thus "marijuana" is sufficient. It is not necessary to state the amount of illegal drugs being sought.

Person. As noted above, there are situations when an officer will be required to obtain a search warrant to enter premises to make an arrest with an arrest warrant or an OFA. In such a case, the officer must describe the person to be seized by giving that person's name and description. If the person's name is known, only the name is required; a physical description can be helpful or can be a substitute for the name if the name is unknown (e.g., "white male, 6'5", long blond hair and mustache").

Crime that was committed. The next item on the application is the crime at issue. It is useful to give a short phrase describing the crime, such as "possession of marijuana," "armed robbery," or "felonious breaking or entering." It is also better practice to refer to the date and location of the crime and the crime's statutory citation. Avoid abbreviations such as "A/R" or "FB/E."

The description of the crime need not be as detailed as in criminal process, because a person is not being charged with a crime by this document. After all, it is possible that a person whose home is being searched may have nothing to do with the crime under investigation.

What is to be searched. The next section on the application form requires that the applicant specify and describe where the person or item sought is located. The options on the form include "premises," "person(s)," "vehicle(s)," and "other places or items." The application may specify any combination of these locations, if justified by the facts. As noted above, the officer who executes a search warrant need not be the officer who applies for the warrant. Therefore, the descriptions of the premises, persons, vehicles, or other places or items to be searched must be sufficiently detailed so that an officer executing the search warrant does not search the wrong person or property.

Premises. If the premises is a house, the street number is sufficient, however, it is best to include a physical description in case the street number is wrong. If the street number is wrong but the officer searches the correct house based on the physical description, the search warrant still would be valid. If the house and street numbers are incorrect and the application contains no description, the warrant will be invalid. If the premises is an apartment, give the apartment number or description of its location in the apartment complex. Remember that an officer unfamiliar with the investigation must be able to find the premises based on the description in the application.

A search warrant to search premises does not give authority to search persons on the premises at the time of the search, except as provided in G.S. 15A-256. Thus, if particular suspects are involved and evidence may be hidden on them, the search warrant should authorize a search of them under the "person(s)" block. If a search of such persons is not authorized, then officers only can detain them (and frisk them for weapons, if appropriate) while the officers search the premises. If the search of the premises fails to uncover items being searched for, then the officers can conduct a full search of such persons.

If a search warrant only authorizes a search of premises, courts have ruled in certain circumstances that officers may search a vehicle on the premises (if the vehicles might contain evidence described in the application) when the officer knows the vehicle belongs to the suspect whose premises is being searched. However, to avoid any question of lawfulness, and also to authorize search of the vehicle if it is found away from the premises, a search warrant should authorize

search of vehicles under "vehicle(s)" block, if there is probable cause that the items sought might be in the vehicle.

Although usually not legally required, it is best to describe outbuildings on the premises that the officer wants to search or simply state "outbuildings on the premises."

If there are more than one premises to be searched, separate warrants should be issued for each to help officers comply with the forty-eight-hour rule, discussed below, and to avoid infecting the search of one premises with a problem in the affidavit regarding the search of the other premises.

Persons. When listing persons, the application should include person's name, age, height, weight, race, distinguishing marks, and so forth.

Vehicles. When listing vehicles, the application should include model, make, year, color, license tag, and anything else that distinguishes it from other similar vehicles, such as its vehicle identification number, if known.

Other Places or Items to Be Searched. This category may be used when the place or item to be searched is not in premises or vehicles or on a person. For example, an officer may need a search warrant to search luggage that the officer has seized in a situation when a warrantless search cannot be made.

Statement of facts establishing probable cause. The next part of the application provides space to list the facts that establish probable cause for the issuance of the search warrant. This portion of the form is where the applicant provides the required supporting affidavit.

When Additional Space Is Needed. If all of the facts establishing probable cause do not fit on the form, additional sheets may be attached. At the very bottom of the application form, there is a note that says: "If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying 'see attachment.' Date the continuation and include on it the signatures of applicant and issuing official." It is important to follow this procedure so that there is no question later as to whether the attachments were part of the original application. It is also a good idea to include a name on the attachment, such as "In the Matter of Murder of Steve Jones," and to staple the additional sheets to the form.

Additional Affidavits. In some cases, affidavits by people other than the officer applying for the warrant may be submitted to support the warrant. For example, the officer may provide affidavits by other officers or by an informant. When this happens, check the box on the form that says "In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____" and should fill in the person's name and address or if a law enforcement officer, name, rank, and agency. The additional affidavits should be dated and clearly marked as attachments to the application.

Additional Testimony Establishing Probable Cause. In some cases, in addition to the affidavit, a person will provide sworn testimony setting out the facts establishing probable cause. When this happens, check the box on the form that says "In addition to the affidavit included above, this application is supported by sworn testimony, given by _____" and fill in the person's name and address. When testimony is given in this way, it either should be reduced to writing or tape-recorded and filed with the clerk. Check the appropriate box on the form to indicate whether the testimony has been reduced to writing or tape-recorded.

If the officer believes that it is important to exclude some supporting information from the suspect's copy of the application (e.g., to keep information from a suspect that might reveal an informant's identity), the officer may wish to have the informant's testimony tape-recorded and filed with the clerk.

General Rules for the Affidavit. The most common problem with search warrants is that the application fails to contain enough of what the officer knows. When preparing the statement of facts establishing probable cause, usually it is best to write a statement telling a story with a clear plot in chronological order. The officer should tell what led to the conclusion that the evidence sought is related to a crime and why the officer believes it is where he or she wants to search.

There are no set rules about what needs to be in the statement. A good statement need not have an informant's report. On the other hand, a good statement could consist solely of an informant's report, although it is better if the officer corroborates some of the informant's information. What is important is whether all the facts stated together establish a *fair probability* that the evidence is where the officer wants to search. Reliable hearsay is permitted, such as information obtained from another officer or an informant.

If a confidential informant is used, it is helpful if the confidential informant's report shows how the informant got his or her information (e.g., the informant was there or someone told the informant) and why the informant should be believed (has given good information before, for example; the report should provide details regarding the information previously provided such as when the information was provided, how often, and whether it resulted in arrests or convictions). An officer's corroboration (through personal knowledge or reliable hearsay) of a confidential informant's report adds weight to the informant's report. It is not necessary to establish that an identified, reliable citizen informant has previously given good information to the police.

Personal observations should be stated in a way that makes it clear that the officer was the person making the observation. Including truthful phrases such as "I saw . . ." or "Affiant saw . . ." are helpful ways to do this.

Signatures. The officer applying for a search warrant must sign the application under oath or affirmation. G.S. 15A-245(a). There is a place on the application form for the officer's signature and for you to sign and date the form indicating that the officer's statement was sworn.

Issuance of a Search Warrant

Examination of the Applicant

When an officer applies for a search warrant, you may examine the officer and/or other witnesses under oath or affirmation to determine that probable cause exists to issue the warrant. G.S. 15A-245. Information supporting the issuance of a search warrant may be offered by oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing judicial official by means of an audio and video transmission in which both parties can see and hear each other. Before using this method, the procedures and type of equipment for audio and video transmission must be submitted to the AOC by the senior resident superior court judge and the chief district court judge for a judicial district and approved by the AOC. G.S. 15A-245(a)(3). The statute does not say how such testimony is to be memorialized or served.

Probable Cause Determination

Independent determination. You must make an independent judgment as to the existence of probable cause. You must be told the facts that support the officer's conclusion that probable cause exists; for example, simply stating the officer's or informant's conclusion that drugs are in the apartment is not sufficient. You must determine that there is probable cause—a fair probability—that the items or persons sought are in the places to be searched.

Materials considered. As described above, sometimes the applicant will offer additional affidavits or additional sworn testimony. These additional materials may be considered if they have

been properly attached to the affidavit, reduced to writing, or tape-recorded. At a hearing to suppress evidence seized pursuant to a search warrant, only affidavits attached to the application or sworn testimony reduced to writing or tape-recorded and filed with the clerk may be considered. Other information told or given to the magistrate is inadmissible at the hearing.

Completing the Form

The search warrant side of form AOC-CR-119 is largely self-explanatory.

In the matter of. There are no hard and fast rules for completing the "In the Matter of" portion of the form, and practices vary. One option is to list the crime, for example, "Murder of Mary Smith."

Signature and date. It is a good practice to put original signatures on all copies of the warrant. Additionally, you should list the time and date of issuance of the warrant. This is important because of the forty-eight-hour rule, described below.

Copies. Three copies must be completed: the original, one copy to be filed in the clerk's office, and one copy to be served on the suspect by the executing officer.

Execution of a Warrant

Forty-Eight-Hour Rule

An officer must execute a search warrant within forty-eight hours of its issuance. G.S. 15A-248. Any warrant not executed within forty-eight hours is void, must be marked "not executed," and returned without unnecessary delay to the clerk. G.S. 15A-248.

Jurisdiction

Officers may execute a search warrant only within their territorial jurisdiction and if their investigative authority encompasses the crime or crimes involved. G.S. 15A-247. Thus city officers usually cannot go more than one mile outside city limits.

Stating Identity and Purpose

When executing a search warrant and before entering premises, officers must identify themselves and their purpose. G.S. 15A-249.

Breaking and Entering

An officer may break and enter any premises or vehicle to execute a search warrant if: (1) after identifying himself or herself and purpose, the officer reasonably believes that the officer's admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or (2) the officer has probable cause to believe that giving notice would endanger the officer's life or the safety of any person. G.S. 15A-251.

Notice

The officer must read the search warrant (but not the application) and give a copy of the application and affidavit to the person to be searched or in apparent control of the premises or vehicle to be searched. G.S. 15A-252. If no one in apparent and responsible control is there, the officer must leave a copy of the warrant attached to the premises or vehicle. G.S. 15A-252.

Scope of Search

The search may include any area within the premises large enough to contain the evidence being sought. G.S. 15A-253. During the search, evidence related to any crime seen in plain view also may be seized. G.S. 15A-253. No particular time limit is set on the length of the search.

Paperwork

If items are seized, the officer must leave an inventory receipt with a person or attached to the premises if no one is home. G.S. 15A-254.

An officer who has executed a search warrant must, without unnecessary delay, return the warrant and inventory of items seized to the clerk. G.S. 15A-257. The inventory, if any, and return must be signed and sworn to by the officer who executes the warrant. G.S. 15A-257.

File No.	Law Enforcement Case No.	LID No.	SID No.	FBI No.

WARRANT FOR ARREST

Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

Race	Sex	Date Of Birth	Age

Social Security No.	Drivers License No. & State

Name Of Defendant's Employer

Offense Code(s)	Offense In Violation Of G.S.

Date Of Offense

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Complainant (Name, Address Or Department)

Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)

☐ **Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan**

Date Issued

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below:

I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.

Signature	Location Of Court	Court Date
☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court		Court Time ☐ AM ☐ PM

AOC-CR-100, Rev. 3/09 (Structured Sentencing)

AOC-CR-100 *(continued)*

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to execute the Warrant and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Warrant was received and served as follows:

Date Received	Date Served	Time Served ☐ AM ☐ PM	Date Returned

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (Type Or Print)

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date	Signature	
		☐ Dep. CSC ☐ Assist. CSC ☐ CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Warrant was received and served as follows:

Date Received	Date Served	Time Served ☐ AM ☐ PM	Date Returned

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (Type Or Print)

Department Or Agency Of Officer

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the Superior Court.

☐ The current pretrial release order is modified as follows:

Date	Signature Of District Court Judge

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived	Signature Of Defendant
	Signature Of Attorney

District Attorney	☐ *Waived* ☐ *Not Indigent*	*Attorney For Defendant*	☐ *Appointed* ☐ *Retained*

PRIOR CONVICTIONS: No./Level: 0 ☐ I (0) ___ ☐ II (1-4) ___ ☐ III (5+)

PLEA: ☐ guilty ☐ no contest _____ **VERDICT:** ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ not guilty _____ ☐ not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: ☐ pay costs and a fine of $ _____ .

☐ be imprisoned for a term of _____ days in the custody of ☐ the sheriff. ☐ DOC.* Pretrial credit _____ days served.

☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]

☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.A. 15A-1343.2(d) is necessary.

☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	*Restitution**	*Attorney's Fee*	*Community Service Fee*	*Other*
$	$	$	$	$

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-262.4(b) within _____ days.

☐ 7. not be found in or on the premises of the complainant or _____ .

☐ 8. not assault, communicate with or be in the presence of the complainant or _____ .

☐ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)

☐ 10. Other: _____

It is ORDERED that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____ .
☐ sentence is to run at the expiration of the sentence in _____ .

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver <u>two</u> certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE: ☐ Probable cause is found as to all Counts except _____ , and the defendant is bound over to Superior Court for action by the grand jury. ☐ No probable cause is found as to Count(s)_____ of this Warrant, and the Count(s) is dismissed.

Date	*Name Of District Court Judge (Type Or Print)*	*Signature Of District Court Judge*

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	*Date Delivered To Sheriff*	*Signature*	
			☐ *Deputy CSC* ☐ *Assist. CSC* ☐ *CSC*

***NOTE:** *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

AOC-CR-113

File No.	Law Enforcement Case No.	LID No.	SID No.	FBI No.

MISDEMEANOR CRIMINAL SUMMONS

Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

County Of Residence	*Telephone No.*

Race	*Sex*	*Date Of Birth*	*Age*

Social Security No.	*Drivers License No. & State*

Name Of Defendant's Employer

Offense Code(s)	*Offense In Violation Of G.S.*
	Date Of Offense

Complainant (Name, Address Or Department)

County of Residence	*Telephone No.*

Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

To the defendant:

I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully and willfully did

This act was in violation of the law referred to in this Criminal Summons. This Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge. If you fail to appear, an order for your arrest may be issued and you may be held in CONTEMPT OF COURT and imprisoned for up to thirty (30) days or fined up to $500.00 or both. This penalty for failure to appear is in addition to any sentence which may be imposed for the crime charged.

Signature	*Location Of Court*		
☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*	*Court Date*	*Court Time*	☐ AM ☐ PM

☐ **Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan**

Date Issued

AOC-CR-113, Rev. 12/03 (Structured Sentencing)

(Over)

If this Criminal Summons is not served within ninety (90) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to serve the Summons and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Date Returned

☐ By personally serving this Criminal Summons on the defendant.

☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date	Signature	
		☐ Dep. CSC ☐ Assist. CSC ☐ CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Date Returned

☐ By personally serving this Criminal Summons on the defendant.

☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return

Department Or Agency Of Officer

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the Superior Court.

☐ The current pretrial release order is modified as follows:

Date	Signature Of District Court Judge

District Attorney	☐ *Waived* ☐ *Not Indigent*	*Attorney For Defendant*	☐ *Appointed* ☐ *Retained*	**PRIOR CONVICTIONS:** No./Level: 0 ☐ I (0) ☐ II (1-4) ☐ III (5+)

PLEA: ☐ guilty ☐ no contest _____ **VERDICT:** ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3

☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3

☐ not guilty _____ ☐ not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict it is **ORDERED** that the defendant: ☐ pay costs and a fine of $ _____ .

☐ be imprisoned for a term of _____ days in the custody of the ☐ sheriff. ☐ DOC.* Pretrial credit _____ days served.

☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]

☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary.

☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	*Restitution**	*Attorney's Fee*	*Community Service Fee*	*Other*
$	$	$	$	$

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-475.1(b) within _____ days.

☐ 7. not be found in or on the premises of the complainant or _____ .

☐ 8. not assault, communicate with or be in the presence of the complainant or _____ .

☐ 9. Other: _____

It is ORDERED that this: ☐ Judgment is continued upon payment of costs.

☐ case be consolidated for judgment with _____ .

☐ sentence is to run at the expiration of the sentence in _____ .

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

Date	Name Of District Court Judge (Type Or Print)	Signature Of District Court Judge

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	Date Delivered To Sheriff	Signature	
			☐ Deputy CSC ☐ Assist. CSC ☐ CSC

***NOTE:** *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

File No.	Law Enforcement Case No.	LID No.	SID No.	FBI No.

MAGISTRATE'S ORDER

Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

County Of Residence		Telephone No.	
Race	Sex	Date Of Birth	Age
Social Security No.		Drivers License No. & State	

Name Of Defendant's Employer

Offense Code(s)	Offense In Violation Of G.S.
	Date Of Offense

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Arresting Officer (Name, Address Or Department)

Name & Address Of Witnesses (Including Counties & Telephone Nos.)

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

This act was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.

Signature	Location Of Court		
☐ Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan — Date Issued	☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court	Court Date	Court Time ☐ AM ☐ PM

(Over)

District Attorney	*Attorney For Defendant At Time Of Trial Or Plea*	☐ *Appointed* ☐ *Retained* ☐ *Waived*	**PRIOR CONVICTIONS:** No./Level: 0 ☐ I (0) ☐ II (1-4) ☐ III (5+)

PLEA: ☐ guilty ☐ no contest _____ ☐ guilty ☐ no contest _____ ☐ not guilty _____

VERDICT: ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3 ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3 ☐ not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict it is **ORDERED** that the defendant: ☐ pay costs and a fine of $_____ .

☐ be imprisoned for a term of _____ days in the custody of the sheriff. ☐ DOC. Pretrial Credit _____ days served.

☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]

☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary.

☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	*Restitution**	*Attorney's Fee*	*Community Service Fee*	*Other*
$	$	$	$	$

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the service coordinator, and pay the fee prescribed by G.S. 143B-475.1(b) within _____ days.

☐ 7. not be found in or on the premises of the complainant or _____ .

☐ 8. not assault, communicate with or be in the presence of the complainant or _____ .

☐ 9. Other: _____

It is ORDERED that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____ .
☐ sentence is to run at the expiration of the sentence in _____ .

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE: ☐ Probable cause is found as to all Counts except _____ , and the defendant is bound over to Superior for action by the grand jury. ☐ No probable cause is found as to Count(s) _____ of this Warrant, and the Count(s) is dismissed.

Date	*Name Of District Court Judge Or Magistrate (Type Or Print)*	*Signature Of District Court Judge Or Magistrate*

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the ☐ District ☐ Superior Court.

☐ The current pretrial release order is modified as follows:

Date	*Signature Of District Court Judge Or Magistrate*

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived	*Signature Of Defendant*
	Signature Of Attorney

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	*Date Delivered To Sheriff*	*Signature*	☐ *Deputy CSC* ☐ *Assist. CSC* ☐ *CSC*

NOTE: *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

AOC-CR-119

File No.

SEARCH WARRANT

IN THE MATTER OF

Date Issued	Time Issued
	☐ AM ☐ PM

Name Of Applicant

Name Of Additional Affiant

Name Of Additional Affiant

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

Date Received	Time Received
	☐ AM ☐ PM
Date Executed	**Time Executed**
	☐ AM ☐ PM

☐ I made a search of _____

_____

_____

_____

_____

_____ as commanded.

☐ I seized the items listed on the attached inventory.

☐ I did not seize any items.

☐ This Warrant WAS NOT executed within forty-eight (48) hours of the date of issuance and I hereby return it not executed.

Signature Of Officer Making Return

Department Or Agency Of Officer	Incident Number

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District/Superior Court Division

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath by the person(s) shown.

Date	Signature	
		☐ Deputy CSC ☐ Assistant CSC ☐ CSC ☐ Magistrate ☐ District Ct. Judge ☐ Superior Ct. Judge

This Search Warrant was returned to me on the date and time shown below.

Date	Time		Signature	
		☐ AM ☐ PM		☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

AOC-CR-119, Rev. 9/02

(Over)

APPLICATION FOR SEARCH WARRANT

I, _____,
(Insert name and address; or if law enforcement officer, name, rank and agency)

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that *(Describe property to be seized; or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)*

_____

constitutes evidence of a crime and the identity of a person participating in a crime, *(Name crime)* _____,

and is located *(Check appropriate box(es) and fill-in specified information)*

☐ in the following premises *(Give address and, if useful, describe premises)*

_____

(and)

☐ on the following person(s) *(Give name(s) and, if useful, describe person(s))*

_____

(and)

☐ in the following vehicle(s) *(Describe vehicle(s))*

_____

(and)

☐ *(Name and/or describe other places or items to be searched, if applicable)*

_____ .

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant:

_____

SWORN AND SUBSCRIBED TO BEFORE ME

Date	*Date*
Signature	*Signature of Applicant*

☐ *Magistrate* ☐ *Dep. CSC* ☐ *Asst. CSC* ☐ *Clerk of Superior Court* ☐ *Judge*

☐ In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____

☐ In addition to the affidavit included above, this application is supported by sworn testimony, given by _____

This testimony has been *(check appropriate box)* ☐ reduced to writing ☐ tape recorded and I have filed each with the clerk.

NOTE: *If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.*

AOC-CR-119, Rev. 9/02

AOC-CR-155

File No.

SEARCH WARRANT FOR BLOOD OR URINE IN DWI CASES

IN THE MATTER OF

Name

Date Issued	Time Issued
	☐ AM ☐ PM

Name Of Applicant

Name Of Additional Affiant

Name Of Additional Affiant

RETURN OF SERVICE

I certify that this Search WARRANT was received and served as follows:

Date Received	Time Received
	☐ AM ☐ PM
Date Executed	**Time Executed**
	☐ AM ☐ PM

☐ I made a search of _____

_____

_____

_____

_____

_____ as commanded.

☐ I seized the items listed on the attached inventory.

☐ I did not seize any items.

☐ This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.

Signature Of Officer Making Return

Department Or Agency Of Officer

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and on the attached sheets and related to the commission of a crime is located as described in the application.

You are commanded to take the person named in the application to a physician, registered nurse, emergency medical technician or other qualified person to obtain sample(s) of blood and/or urine described in the application from the person named in the application. You are to seize the sample(s), have the sample(s) tested for one or more impairing substances and keep the unconsumed sample(s) subject to court order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the issuing court.

This Search Warrant is issued upon information furnished under oath by the person or persons shown.

Date	Signature	
		☐ Deputy CSC ☐ Assistant CSC ☐ CSC ☐ Magistrate ☐ District Ct. Judge ☐ Superior Ct. Judge

This Search Warrant was returned to me on the date and time shown below.

Date	Time	Signature	
	☐ AM ☐ PM		☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

(Over)

APPLICATION FOR SEARCH WARRANT FOR BODILY FLUIDS

(Attach additional sheets if necessary.)

Name Of Law Enforcement Officer (Applicant)	Rank	☐ N.C. Patrol ☐ _____ Police/Sheriff
Name Of Individual To Be Searched	Race	☐ Male ☐ Female
Location Of Individual To Be Searched		Fluid to be seized ☐ Blood ☐ Urine

Crime(s) Charged

☐ DWI. G.S. 20-138.1.
☐ Habitual DWI. G.S. 20-138.5.
☐ Commercial DWI. G.S. 20-138.2.
☐ Felony Death By Vehicle. G.S. 20-141.4.
☐ Other *(specify)* _____

I, the law enforcement officer named above, being duly sworn, request that the Court issue a warrant to search the person of the individual named above, who may be found at the location described above, and to seize sample(s) of the above specified bodily fluid(s) of that individual.

I swear to the following facts to establish probable cause for the issuance of a search warrant.

I am a sworn law enforcement officer of the above named agency. As such I am empowered to search for and seize evidence described in N. C. General Statutes Chapter 14, Criminal Law, Chapter 20, Motor Vehicle Law, and Chapter 90, Controlled Substances. I have received training in the detection and apprehension of impaired drivers and the investigation of motor vehicle collisions. I have been a sworn law enforcement officer for over _____ years and during that time I have investigated over _____ incidents of offenses related to impaired driving.

☐ 1. I rely on the facts stated in the following report(s), of which a copy or copies is/are attached and incorporated by reference: *(Attach a copy of the report(s) checked below if available and if either contains relevant facts.)*
- ☐ Affidavit and Revocation Report (AOC-CVR-1A/DHHS 3907).
- ☐ Driving While Impaired Report Form/Alcohol Influence Report Form.

☐ 2. The following facts establish on or about the _____ day of _____, _____, at _____ ☐ AM ☐ PM, the individual named above was operating a (☐ commercial motor) vehicle to wit: *(type, make and year)* _____ _____ on _____ a ☐ highway/street ☐ public vehicular area in _____ County at or near the city/town of _____ in violation of the statute(s) specified above:

Check all that apply.

☐ a. At the time and place stated above:
- ☐ I observed the above named individual operating the above-described vehicle.
- ☐ I observed the above-described vehicle being operated in the following manner: _____ _____.

☐ b. On or about the date stated above, at _____ ☐ AM ☐ PM, I responded to a report of a vehicle crash and, after arriving at the scene, I ascertained that the above named individual was operating the described vehicle at the time and place stated from the following facts:

☐ c. The above named individual admitted to me operating the described vehicle at the time and place indicated.

☐ d. On or about the date stated above, at _____ ☐ AM ☐ PM
- ☐ I detected a ☐ strong ☐ moderate ☐ faint odor of alcohol coming from the breath of the above named person:
  - ☐ at the scene.
  - ☐ at the following hospital _____.
  - ☐ at other location _____.
- ☐ I observed the following behaviors of the individual named above, which evidence impairment of the person's mental and/or physical faculties as follows:

☐ e. The above named individual stated to me that before or while operating the described vehicle he/she:
- ☐ had consumed alcohol.
- ☐ was consuming alcohol.
- ☐ had consumed controlled substance, to wit: _____.
- ☐ had consumed other impairing substance, to wit: _____.

☐ f. The above named individual refused to submit to a chemical analysis.

☐ g. I observed the following facts:

☐ h. Other reliable persons stated to me the following facts: (**Note:** *Name officer or witness(es) and list facts related to impairment, vehicle operation, etc.*)

☐ 3. The above named individual has previously been convicted of one or more offenses involving impaired driving.

Based on all the foregoing, and on my training in detecting impaired driving violations and my experience as a law enforcement officer, I have formed an opinion satisfactory to myself that the above named person had consumed a sufficient quantity of some impairing substance(s) to appreciably impair that person's physical or mental faculties or both, and that the person drove the above described vehicle on the above described highway or public vehicular area while under the influence of impairing substance(s). It is my further opinion that evidence of impairing substance(s) is at this time present in the body or bodily fluids of the above named person, and that unless a warrant is issued and executed without delay, the evidence may dissipate and be lost.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME	Date	Signature of Applicant
Signature	Date My Commission Expires	County Where Notarized

☐ Magistrate ☐ Dep. CSC ☐ Asst. CSC ☐ CSC ☐ Judge ☐ Notary Public **SEAL**

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name And Address Of Defendant

CONDITIONS OF RELEASE AND RELEASE ORDER

G.S. Chapter 15A, Art. 25, 26

Amount Of Bond

$

Offenses And Additional File Numbers

☐ See Attachment

Location Of Court	☐ *District* ☐ *Superior*	*Date*	*Time* ☐ AM ☐ PM

To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear.

The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel and friends.

☐ Your release is authorized upon execution of your:

☐ WRITTEN PROMISE to appear
☐ CUSTODY RELEASE
☐ UNSECURED BOND in the amount shown above
☐ SECURED BOND in the amount shown above

You will be arrested if you violate the following restrictions:

☐ Your release is not authorized.
☐ The defendant was arrested or surrendered after failing to appear as required under a prior release order.
☐ This was the defendant's second or subsequent failure to appear in this case.
☐ Your release is subject to the conditions as shown on the attached ☐ AOC-CR-270. ☐ Other: _____.

Additional Information

Date	*Signature Of Judicial Official*

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

ORDER OF COMMITMENT

To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: ☐ produce him/her in Court as provided above.

☐ hold him/her for the following purpose: _____

☐ *[Check in all domestic violence and stalking cases covered by G.S. 15A-534.1(b)]* produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before *(enter date and time 48 hours after time of arrest)* _____ , _____

☐ AM ☐ PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.

Name Of Detention Facility	*Date*	*Signature Of Judicial Official*

WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above.

I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.

Date	*Signature Of Defendant*	*Signature Of Person Agreeing To Supervise Defendant*

Name Of Person Agreeing To Supervise Defendant (Type or Print)	*Address Of Person Agreeing To Supervise Defendant*

DEFENDANT RELEASED ON BAIL

Date	*Time* ☐ AM ☐ PM	*Signature Of Jailer*

AOC-CR-200

AOC-CR-200, Rev. 3/09

CONDITIONS OF RELEASE MODIFICATIONS

The Conditions of Release on the reverse are modified as follows:

Modification	Date	Signature Of Judicial Official

SUPPLEMENTAL ORDERS FOR COMMITMENT

The defendant is next Ordered produced in Court as follows:

Date	Time	Place	Purpose	Signature Of Judicial Official

DEFENDANT RECEIVED BY DETENTION FACILITY

Date	Time	Signature Of Jailer

DEFENDANT RELEASED FOR COURT APPEARANCE

Date	Time	Signature Of Jailer

NOTE TO CUSTODIAN: *This form shall accompany the defendant to court for all appearances.*

AOC-CR-200, Side Two, Rev. 3/09

AOC-CR-200 *(continued)*

STATE OF NORTH CAROLINA

_____ County

File No.

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

Name And Mailing Address Of Defendant

Social Security No. | Telephone No. Of Defendant

Total Bond Required $ | Amount Of This Bond $

APPEARANCE BOND FOR PRETRIAL RELEASE

G.S. 15A-531, 15A-534, 15A-544.2

Offenses And Additional File Numbers

☐ See Attachment

☐ **Unsecured Appearance Bond** - I, the undersigned defendant, acknowledge that my personal representatives and I are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.

☐ **Cash Appearance Bond** ***(See note on reverse side.)*** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.

☐ **Defendant's Property Appearance Bond** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side, and as security for said Bond have executed a mortgage or deed of trust to real or personal property, payable to the State of North Carolina and with power of sale conditioned upon the breach of any condition of this Bond.

☐ **Surety Appearance Bond** - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.

☐ ***(Professional bondsman, Bail Agent and Runners)*** - The "Affidavit" on the reverse side of this Bond is complete and true.

☐ **Cash Deposited By Surety** ***(See note on reverse side.)*** - We have deposited the cash identified below to secure our obligations as sureties on this bond with the understanding that the deposit will be returned to us upon the Court's determination that the conditions of pretrial release have been performed, and that it will NOT be available to satisfy defendant's obligations.

Date Of Execution Of Bond | Signature Of Defendant

ACCOMMODATION BONDSMAN

☐ See Page Two for additional accommodation bondsman executing this bond.

Name And Address Of Accommodation Bondsman | Social Security No. | Telephone No.

Name And Address Of Accommodation Bondsman | Social Security No. | Telephone No.

PROFESSIONAL BONDSMAN

Name Of Bondsman | License No. Of Bondsman

Name Of Runner, If Applicable | License No. Of Runner

INSURANCE COMPANY

Name Of Insurance Company | Power Of Appointment No. Of Bail Agent

Name Of Bail Agent | License No. Of Bail Agent

SIGNATURE

Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME

Date | Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME

Date | Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

COMPLETE IF CASH DEPOSITED

Signature Of Official Accepting Cash | Name Of Official Accepting Cash (Type Or Print) | Receipt No.

NOTE: If cash deposited, see note on reverse side.

AOC-CR-201, Rev. 3/09

(see CR-238 if release after judgment in superior court)

Original-File
(Over)

AOC-CR-201

CONDITIONS

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required and will at all times remain amenable to the orders and processes of the Court. It is agreed and understood that this Bond is effective and binding upon the defendant and each surety throughout all stages of the proceedings in the trial divisions of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or until the entry of judgment in the superior court. If the defendant appears as ordered and otherwise performs the foregoing conditions of the bond, then the bond is to be void, but if the defendant fails to obey any of these conditions, the Court will forfeit the bond pursuant to Part 2 of Article 26 of Chapter 15A of the General Statutes.

Each accommodation bondsman, by signing on the reverse or on Page Two, states: "I have reached the age of 18 years and am a bona fide resident of North Carolina. Aside from love and affection and release of the above named defendant, I have received no consideration for acting as surety. I own sufficient property over and above all liabilities, homestead and other exemptions allowed me by law to enable me to pay this Bond should it be ordered forfeited. I understand that if I sign this Bond without sufficient property, I am guilty of a crime."

AFFIDAVIT

NOTE: *"Professional bondsmen, surety bondsmen [bail agent], and runners must file with the clerk of court having jurisdiction over the principal, an affidavit on a form furnished by the Administrative Office of the Courts." G.S. 58-71-140(d). Check all options that apply.*

☐ 1. I have not, nor has anyone for my use, been promised or received any collateral, security or premium for executing this Bond.

☐ 2. I have been promised a premium in the amount shown below, which is due on the date shown below.

☐ 3. I have received a premium in the amount shown below.

☐ 4. I have been given collateral security by the person named below, of the nature and in the amount shown below.

Amount Of Premium Promised	*Date Due*	*Amount Of Premium Received*
$		$

Name Of Person From Whom Collateral Received	*Nature Of Collateral*	*Value*

AFFIX STAMP OR
POWER OF ATTORNEY
HERE

RETURN OF CUSTODIAN OF DETENTION FACILITY

The defendant named on the reverse was released from my custody on the date shown below upon the execution of this Appearance Bond.

Date Defendant Released	*Signature Of Custodian*	☐ *Sheriff* ☐ *Deputy Sheriff* ☐ *Other* _____

NOTES ON CASH BONDS:

(1) ***To Official Taking The Bond.*** *Use this form for all cash bonds. Only magistrate or clerk may take cash bond. Jailer may not take cash bond. Complete this form as follows:*

When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations*. Enter defendant's name, address and SS# at the top of Side One. Check "Cash Appearance Bond." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.*

When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and SS# at the top of Side One. Check "Surety Appearance Bond." Also check "Cash Deposited By Surety." Have defendant sign. Enter name, address and SS# of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.*

(2) ***To Bookkeeper.*** *When case disposed, disburse cash as follows: (1) If "Cash Appearance Bond" checked on Side One, disburse to Defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" and "Cash Deposited by Surety" are checked on Side One, disburse only to person named under "Accommodation Bondsman."*

(3) ***Bond With Insurance Company As Surety Same As Cash Except In Child Support.*** *G.S. 15A-531(4) provides that an appearance bond executed by a bail agent acting on behalf of an insurance company is the same as a cash bond, except in child support contempt proceedings where only cash may satisfy a cash bond requirement.*

AOC-CR-201, Side Two, Rev. 3/09

AOC-CR-201 *(continued)*

STATE VERSUS File No.

Name Of Defendant

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.	Telephone No.	Social Security No.	Telephone No.

SIGNATURE

Signature Of Surety	Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature
☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court ☐ Custodian Of Detention Facility [G.S. 15A-537(c)]		☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court ☐ Custodian Of Detention Facility [G.S. 15A-537(c)]	

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.	Telephone No.	Social Security No.	Telephone No.

SIGNATURE

Signature Of Surety	Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature
☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court ☐ Custodian Of Detention Facility [G.S. 15A-537(c)]		☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court ☐ Custodian Of Detention Facility [G.S. 15A-537(c)]	

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.	Telephone No.	Social Security No.	Telephone No.

SIGNATURE

Signature Of Surety	Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature
☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court ☐ Custodian Of Detention Facility [G.S. 15A-537(c)]		☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court ☐ Custodian Of Detention Facility [G.S. 15A-537(c)]	

AOC-CR-201A, Rev. 9/03

AOC-CR-201A

STATE OF NORTH CAROLINA

File No.

_____ County

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

STATE VERSUS

Name Of Defendant

Name Of Surety(ies)

SURRENDER OF DEFENDANT BY SURETY

G.S. 15A-540, -534

Date Of Appearance Bond	*Amount Of Bond*	*County Where Defendant To Appear If Different*
	$	

All File Nos. And Offenses

I, the undersigned surety for the named defendant, request that the Court release me from the defendant's Appearance Bond which I signed as indicated above. A certified copy of the bail bond is attached.

(You must complete both I. and II. below.)

I. Form Of Surrender *(check only one)*

☐ (a) I arrested the defendant and now surrender the defendant to the jail in this county where the defendant
☐ is to appear on these charges. ☐ was bonded on these charges.

☐ (b) I surrender the defendant who is currently in the jail in this county where the defendant
☐ is to appear on these charges. ☐ was bonded on these charges. ☐ Other: _____ .

II. Status Of Order Of Forfeiture *(check only one)*

☐ (a) The surrender of the defendant has occurred **after** an Order of Forfeiture was entered for the appearance bond for the offense(s) listed above, and after an order for arrest was issued.

☐ (b) The surrender of the defendant has occurred **before** an Order of Forfeiture was entered for the appearance bond for the offense(s) listed above.

I understand that this Surrender does not relieve me from my responsibility if an Order of Forfeiture has been entered before this Surrender. I also understand that I must apply to the Court for relief in that matter.

Date	*Name Of Surety (Type Or Print)*	*Signature Of Surety*

RECEIPT OR ACKNOWLEDGMENT OF CUSTODIAN

I, the undersigned custodian, acknowledge that the defendant is in custody as indicated.

Date	*Name Of Custodian/Jailer (Type Or Print)*	*Signature Of Custodian/Jailer*

NOTES TO CUSTODIAN:

(1) Only an actual surety may surrender the defendant. If the person offering the defendant for surrender presents an appearance bond form (AOC-CR-201) with the box checked for a "Cash Appearance Bond," then the person is not the surety for the defendant's appearance. Do not accept the surrender of the defendant. If the boxes for "Surety Appearance Bond" and "Cash Deposited By Surety" are checked, and the person attempting to surrender the defendant is the same person who signed the bond as surety, then that person is the surety and you may accept the surrender.

(2) G.S. 15A-540(b) requires that a defendant surrendered by a surety must have an immediate hearing on whether the defendant is again entitled to release and, if so, upon what conditions. Take the defendant, with this form, to a judicial official for this hearing. When the above Receipt is completed, provide surety with a copy of this form.

(See **NOTES TO MAGISTRATE** on reverse)

Original-Clerk Copy-Surety Copy-Custodian

AOC-CR-214

AOC-CR-214, Rev. 6/08

NOTES TO MAGISTRATE:

*(1) If the defendant was surrendered **before** a breach of the conditions of release, the original conditions of release should be reentered. The defendant remains in custody until conditions of original release order are again satisfied. The court date remains the same.*

*(2) If the defendant was surrendered **after** a breach of the conditions of release, G.S. 15A-540(c) requires that a judicial official determine whether the defendant is again entitled to pretrial release and, if so, upon what conditions. If the breach was a failure to appear for any charge(s) covered by the appearance bond provided at the time of surrender, G.S. 15A-534(d1) provides that the official shall at a minimum impose the conditions of release recommended in an order for arrest issued for that failure to appear. If no conditions were recommended, the judicial official shall require a secured bond at least double the amount of the most recent secured or unsecured bond, or at least $500 if there was no monetary bond previously required. On the new release order, check the appropriate box(es) indicating the failure to appear.*

(3) If an order for arrest was issued for the defendant's failure to appear, the court date in the new release order should be the same as the court date, if any, in the order for arrest. The order for arrest should be served on the defendant, if possible, without detaining the defendant beyond the time when he or she should be released under the new release order. If the order for arrest cannot be served in that time, use the court's records to learn the court date in the order for arrest, and arrange to have order for arrest recalled.

(4) If the defendant was surrendered in a county other than the county where the defendant is to appear, return original order for arrest, if any, with return of service completed, along with this form and a copy of the new release order, to the county where the defendant is to appear. When conditions of pretrial release are satisfied, return original of the new release order with any custodian's entries completed, together with the original appearance bond, if any, to the county where the defendant is to appear.

AOC-CR-214 *(continued)*

AOC-CR-214, Side Two, Rev. 6/08

AOC-CR-217

File No.	Law Enforcement Case No.	LID No.	SID No.	FBI No.

ORDER FOR ARREST

#

Offense

THE STATE OF NORTH CAROLINA VS.

Name, Address & Telephone No. Of Defendant

Race	Sex	Date Of Birth	Age

Social Security No.	Drivers License No. & State

Name And Address Of Defendant's Employer

Date Defendant Failed To Appear

Amount Of Bond	Type Of Bond
$	

TRUE BILL OF INDICTMENT ONLY

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Offense Code	Offense In Violation Of G.S.

Date Of Offense	Date Issued

STATE OF NORTH CAROLINA

_____ County

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

To any officer with authority and jurisdiction to serve an Order For Arrest:
The Court finds that:

☐ 1. FTA - RELEASE ORDER [G.S. 15A-305(b)(2)]
the defendant has been arrested and released from custody and has failed on the date shown to appear as required by the Release Order. ☐ The defendant has failed to appear on these charges on two or more prior occasions.

☐ 2. FTA - CRIMINAL SUMMONS OR CITATION (Do not use for infraction.) [G.S. 15A-305(b)(3)]
the defendant has failed on the date shown to appear as required by a duly executed Criminal Summons or by a Citation that charged the defendant with a misdemeanor.

☐ 3. TRUE BILL OF INDICTMENT [G.S. 15A-305(b)(1)]
a Grand Jury has returned a true bill of indictment against the defendant, a copy of which is attached.
[**Note To Arresting Officer:** *If this option is checked, defendant must be fingerprinted. G.S. 15A-502(a)*]

☐ 4. FTA - SHOW CAUSE AFTER FTC [G.S. 15A-305(b)(8)]
the defendant has failed on the date shown to appear as required in a Show Cause Order entered in this criminal proceeding.

☐ 5. FTA - SHOW CAUSE ORDER IN ORIGINAL CRIMINAL JUDGMENT
[G.S. 15A-305(b)(8); -1362(c); -1364(a)]
the defendant has failed by the date shown to pay a fine or costs or both as required by a judgment entered in this case and has also failed, as required upon such failure, to appear on that date and show cause why the defendant should not be imprisoned.

☐ 6. PROBABLE CAUSE THAT DEFENDANT MAY FAIL TO APPEAR - CRIMINAL CONTEMPT
[G.S. 15A-305(b)(9); 5A-16]
this Court has initiated plenary proceedings for contempt against the defendant under G.S. 5A-16, has issued a show cause order and finds probable cause to believe that the defendant will not appear as required in response to that order.

☐ 7. PROBATION VIOLATION [G.S. 15A-305(b)(4); -1345(a)]
the probation officer has provided the court with a written statement, signed by the probation officer, alleging that the defendant has violated specified conditions of the defendant's probation and a copy of the written statement is attached.

☐ 8. Other: *(specify)*

You are DIRECTED to take the defendant into custody and bring the defendant before a judicial official for the purpose of:

☐ determining conditions of release, and for commitment if the defendant is unable to comply.
☐ commitment since release of the defendant is not authorized.

Signature	Location Of Court	Court Date
☐ Magistrate ☐ Deputy CSC ☐ DC Judge ☐ Asst. CSC ☐ Clerk Of Superior Court ☐ SC Judge		Court Time ☐ AM ☐ PM

(Over)

AOC-CR-217 *(continued)*

If this Order For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by his/her department in attempting to serve the order and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Order was received and served as follows:

Date Received	*Date Served*	*Date Returned*

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Order WAS NOT served for the following reason:

Signature Of Officer Making Return

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date	*Signature*	☐ *Dep. CSC* ☐ *Asst. CSC* ☐ *CSC*

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Order was received and served as follows:

Date Received	*Date Served*	*Date Returned*

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Order WAS NOT served for the following reason:

Signature Of Officer Making Return

Department Or Agency Of Officer

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the Superior Court.

☐ The current pretrial release order is modified as follows:

Date	*Signature Of District Court Judge*

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived	*Signature Of Defendant*
	Signature Of Attorney

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name Of Defendant

Name And Address Of Law Enforcement Agency

TRANSMITTAL OF OUT-OF-COUNTY PROCESS

TO THE LAW ENFORCEMENT AGENCY NAMED ABOVE:

Attached please find an ☐ Order For Arrest ☐ Criminal Summons ☐ Warrant For Arrest for execution in your county or city.

The judicial official who issued the process has made the following recommendations for conditions of release:

The judicial official in your county before whom the defendant is brought should set the trial or hearing at the date, time and location shown below.

Date Of Hearing	*Time Of Hearing* ☐ AM ☐ PM	*Location of Hearing*

If the defendant is committed to jail, the person or agency listed below should be contacted for return to this county.

Name Of Person Or Agency	*Date*
Telephone No.	*Signature*

☐ *Superior Court Judge* ☐ *District Court Judge* ☐ *CSC*
☐ *Assistant CSC* ☐ *Deputy CSC* ☐ *Magistrate*

NOTE TO EXECUTING OFFICER: *Following execution of the attached process, deliver this form to the judicial official before whom defendant is brought.*

AOC-CR-236

AOC-CR-236, Rev. 4/01

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name Of Defendant

Date Of Birth

DETENTION OF IMPAIRED DRIVER

G.S. 15A-534.2

FINDINGS

The undersigned judicial official conducting an initial appearance for the defendant named above finds the following by clear and convincing evidence:

1. The defendant has been charged with an offense involving impaired driving as defined in G.S. 20-4.01(24a).
2. At the time of the defendant's initial appearance, the impairment of the defendant's physical or mental faculties presents a danger, if the defendant is released, of physical injury to the defendant or others or damage to property in that *(specify reasons)*:

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff until an appropriate judicial official determines that

1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released or
2. a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

The period of detention under this Order shall not exceed twenty-four (24) hours.

Date | *Time* ☐ AM ☐ PM

Signature Of Judicial Official

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

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

☐ 1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released.

☐ 2. _____ *(name)*, a sober, responsible adult, has indicated by signing below that he/she is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

☐ 3. the period of detention has reached twenty-four (24) hours.

By signing immediately below, I certify that I am a sober, responsible person, age 18 or older, who is willing and able to assume responsibility for the defendant until the defendant's physical or mental faculties are no longer impaired.

Date | *Signature Of Sober Responsible Adult*

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date | *Time* ☐ AM ☐ PM

Signature Of Judicial Official

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

NOTE: *"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." G.S. 20-38.4(a)(3).*

AOC-CR-270

AOC-CR-270, Rev. 12/06

STATE OF NORTH CAROLINA

File No.

_____ County

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

STATE VERSUS

Name Of Defendant

Date Of Birth

DETENTION FOR COMMUNICABLE DISEASE TESTING

G.S. 15A-534.3

FINDINGS

The undersigned judicial official conducting an initial appearance or first appearance for the defendant named above finds probable cause that an individual was exposed to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by the defendant to the individual in that *(specify reasons)*:

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff to allow for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148.

The period of detention under this Order shall not exceed twenty-four (24) hours.

Date	*Time* ☐ AM ☐ PM	☐ *Magistrate*	☐ *Clerk Of Superior Court*
Signature Of Judicial Official		☐ *Deputy CSC*	☐ *District Court Judge*
		☐ *Assistant CSC*	☐ *Superior Court Judge*

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

☐ 1. public health officials have completed their investigation and testing, if any, under G.S. 130A-144 and G.S. 130A-148.

☐ 2. the period of detention has reached twenty-four (24) hours.

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date	*Time* ☐ AM ☐ PM	☐ *Magistrate*	☐ *Clerk Of Superior Court*
Signature Of Judicial Official		☐ *Deputy CSC*	☐ *District Court Judge*
		☐ *Assistant CSC*	☐ *Superior Court Judge*

AOC-CR-270 *(continued)*

AOC-CR-270, Side Two, Rev. 12/06

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
Before The Magistrate

STATE VERSUS

Name Of Defendant

IMPLIED CONSENT OFFENSE NOTICE

G.S. 20-38.4

OBSERVATION PROCEDURE

TO THE DEFENDANT:

The established local procedure to contact other persons and have other persons appear at the jail to observe your condition or administer an additional chemical analysis to you is provided in writing with this form and incorporated into this form by reference. You are hereby notified of this procedure.

CONTACT PERSONS

TO THE DEFENDANT:

Pursuant to G.S. 20-38.4(a)(4), you are required to list all persons you wish to contact and their telephone numbers: *(attach additional sheets if necessary)*

	Name	**Telephone Number**
1.		
2.		
3.		

☐ I do not wish to contact anyone.

SIGNATURE

By signing below, the defendant indicates that he/she has received notice of the contact and observation procedure and has listed all persons that he/she wishes to contact.

Date	*Signature Of Defendant*

MAGISTRATE'S CERTIFICATION

The undersigned magistrate certifies that pursuant to Article 24 of Chap. 15A and G.S. 20-38.4 that

1. An initial appearance was held and the undersigned found probable cause to believe the defendant committed an implied consent offense.
2. The undersigned reviewed all alcohol screening tests, chemical analyses and testimony from law enforcement officers concerning impairment and the circumstances of the arrest, and observed the defendant.
3. The undersigned considered whether the defendant was impaired to the extent that the provisions of G.S. 15A-534.2 should have been imposed.
4. The undersigned informed the defendant in writing of the established procedure to have others appear at the jail to observe the 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*	*Signature Of Magistrate*
	☐ AM ☐ PM	

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

Date	*Time*	*Signature*	
	☐ AM ☐ PM		☐ *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).*

AOC-CR-271

AOC-CR-271, New 12/06

NOTE: *(If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.)* ☐ DOC

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

Date | *Signature Of Magistrate/Deputy/Assistant/CSC*

COURT USE ONLY

District Attorney | *Attorney For Defendant At Time Of Trial Or Plea* | ☐ Appointed ☐ Retained ☐ Waived

PRIOR CONVICTIONS: No./Level: 0 ☐ I (0) ☐ II (1-4) ☐ III (5+)

PLEA: ☐ guilty/resp. ☐ no contest ☐ guilty/resp. ☐ no contest ☐ not guilty/resp.

VERDICT/FINDING: ☐ guilty/resp. ☐ guilty/resp. ☐ not guilty/resp.

MISD. CLASS: ☐ A1 ☐ 1 ☐ 2 ☐ 3 **MISD. CLASS:** ☐ A1 ☐ 1 ☐ 2 ☐ 3 ☐ V/D

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: ☐ pay costs and a fine/penalty of $ _____ ☐ be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. ☐ The Court finds that a ☐ longer ☐ shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. ☐ Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: ☐ (1) pay costs and a fine/penalty of $ _____; ☐ (2) not operate a motor vehicle until properly licensed by DMV; ☐ (3) complete _____ hours of community service within _____ days and pay the fee; ☐ (4) Other: _____

☐ It is ORDERED that this: ☐ Judgment is continued upon payment of costs. ☐ case be consolidated for judgment with _____ sentence is to run at the expiration of the sentence in _____

☐ COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

☐ The defendant in open court, gives notice of appeal to the Superior Court. ☐ The current pretrial release order is modified as follows: _____

Date | *Signature Of District Court Judge* | I certify that this Judgment is a true copy. | *Date* | *Signature Of Deputy/Assistant/CSC*

In The General Court Of Justice District Court Division

AOC-CR-500, Rev. 12/08 (Structured Sentencing). © 2008 Administrative Office of the Courts

C

File No.

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court | *Day Of Week* | *Month* | *Day* | *Year* | *Time* | N.C. ☐ AM ☐ PM

☐ D.L. ☐ D.C.I. ☐ Other | No. Of Charges

THE STATE OF NORTH CAROLINA VS.

Name Of Defendant

Address | *City* | *State* | *Zip*

Drivers License No. | *State* | *CDL* | *Class*

Race | *Sex* | *Date Of Birth* | *Age*

Social Security No. Of Defendant | *Telephone No.*

Vehicle License No. | *State*

Vehicle Type | *Trailer Type* | *CMV* | *Haz. Mat.* | *Make* | *Year*

Name And Telephone No. Of Defendant's Employer

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE

I acknowledge receipt of this Citation ☐ and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.

Date | *Signature Of Defendant*

DEPARTMENTAL USE ONLY

Officer | *No.* | *Troop* | *District*

SHP Code ☐ N.C. Patrol ☐ _____ Police/Sheriff

Area | *Wea.* | *Vis.* | *Traffic* | *Accident* | *Speed*

On Highway No./Street | ☐ *Injury Or Serious Injury* ☐ *Passenger(s) Under 16*

In Vicinity/City Of | *At/Near Intersection*

Wit. | *Chemical Analyst* | ☐ _____ AC ☐ *Refused*

ORIGINAL-COURT COPY

STATE OF NORTH CAROLINA _____ **County**

The undersigned officer has probable cause to believe that on or about _____, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area) (a) (p.) m., the _____ day of _____, _____, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

☐ ☐ **1.** At a speed of _____ MPH in a _____ MPH ☐ work zone. G.S. 20-141(j2). **88.** ☐ school zone. G.S. 20-141.1. **77.** ☐ zone. G.S. 20-141.

☐ **2.** In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

☐ **3.** By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1.

☐ **4.** By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1).

☐ **5.** While subject to an impairing substance. G.S. 20-138.1.

☐ **6.** Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

☐ **7.** While the defendant's drivers license was revoked. G.S. 20-28.

☐ **8.** While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

☐ **9.** Without (displaying thereon a current approved inspection certificate) (having a current electronic inspection authorization for the vehicle), such vehicle requiring inspection in North Carolina. G.S. 20-183.8. Month Expired: _____

☐ **10.** By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

☐ **11.** By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

☐ **12.** By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

☐ **13.** Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

☐ **14.** (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). [**NOTE:** *Strike "operate a (motor) vehicle" and "(public vehicular area)" above.*]

☐ **15.** Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

☐ ☐ **16.** _____

☐ ☐ **17.** And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

Date | *Signature Of Officer*

AOC-CR-500

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name Of Defendant

CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE

G.S. 15A-534.1

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

FINDINGS

The undersigned judicial official finds that the defendant named above is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:

☐ 1. The defendant shall stay away from the home, school, business or place of employment of the alleged victim.

☐ 2. The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.

☐ 3. The defendant shall refrain from removing, damaging or injuring the property listed below:

☐ 4. The defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

☐ 5. Other restrictions:
- ☐ a. The defendant shall have no contact with the alleged victim.
- ☐ b. The defendant shall comply with any valid domestic violence protective order in effect.
- ☐ c. Other:

Date	*Signature Of Judicial Official*	☐ *Magistrate* ☐ *District Court Judge* ☐ *Superior Court Judge*

AOC-CR-630

AOC-CR-630, New 6/08

STATE OF NORTH CAROLINA

File No.

_____ County

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

STATE VERSUS

Name Of Defendant

CONDITIONS OF RELEASE FOR PERSON CHARGED WITH SEX OFFENSE OR CRIME OF VIOLENCE AGAINST CHILD VICTIM

G.S. 15A-534.4

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

FINDINGS

The undersigned judicial official finds that the defendant named above is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of G.S 14-202.1, with rape or any other sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim, with incest with a minor in violation of G.S. 14-178, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of G.S. 14-320.1, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim.

☐ The undersigned judicial official, upon request of the defendant, has waived one or more of the conditions required by No. 2 or No. 3 below based on the following findings that imposing the condition(s) on the defendant would not be in the best interest of the alleged victim: *(specify reasons)*

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:

1. The defendant shall refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

☐ 2. The defendant shall stay away from the home, temporary residence, school, business, or place of employment of the alleged victim. *(Strike through and initial any waived conditions if block is checked, but not all conditions apply.)*

☐ 3. The defendant shall refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges. *(Strike through and initial any waived conditions if block is checked, but not all conditions apply.)*

Date	*Signature Of Judicial Official*	☐ *Magistrate* ☐ *Clerk Of Superior Court* ☐ *Deputy CSC* ☐ *District Court Judge* ☐ *Assistant CSC* ☐ *Superior Court Judge*

AOC-CR-631

AOC-CR-631, New 6/08

AOC-CR-909M

File No.

MAGISTRATE'S ORDER FOR FUGITIVE

Crime(s) In Demanding State

Date Of Offense

Name Of Demanding State And County Of Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

County Of Residence		Telephone No.	
Race	Sex	Date Of Birth	Age
Social Security No.		Drivers License No. & State	

Name Of Defendant's Employer

Offense Code(s)	Arrest Under G.S.
9901	15A-734

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Arresting Officer (Name, Department, Phone No.)

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because the crime named above is punishable by death or imprisonment for a term exceeding one year and there is probable cause to believe that 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 has been charged with the commission of that crime and has fled from justice.

This Magistrate's Order is issued pursuant to Section 15A-734 of the North Carolina General Statutes upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.

Date Issued	Signature	Location Of Court	
	☐ Magistrate ☐ District Court Judge ☐ Superior Court Judge	Court Date	Court Time ☐ AM ☐ PM

AOC-CR-909M, Rev. 10/97

AOC-CR-910M

File No.

WARRANT FOR ARREST FOR FUGITIVE

Crime(s) In Demanding State

Date Of Offense

Name Of Demanding State And County Of Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

County Of Residence		Telephone No.	
Race	Sex	Date Of Birth	Age
Social Security No.		Drivers License No. & State	

Name Of Defendant's Employer

Offense Code(s)	Arrest Under G.S.
9901	**15A-733**

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Complainant (Name, Address Or Department, Phone No.)

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

To and officer with authority and jurisdiction to execute a warrant for arrest:

I, the undersigned, find that there is probable cause to believe that 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 been charged with the commission of that crime and has fled from justice.
- ☐ has been convicted of that crime and has escaped from confinement.
- ☐ has broken the terms of his/her bail, probation and parole.

This Warrant is issued pursuant to Section 15A-733 of the North Carolina General Statutes upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge above.

Date Issued	Signature	Location Of Court	
	☐ Magistrate ☐ District Court Judge ☐ Superior Court Judge	Court Date	Court Time ☐ AM ☐ PM

AOC-CR-910M, Rev. 10/97

(Over)

AOC-CR-910M *(continued)*

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to execute the Warrant and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Warrant was received and served as follows:

Date Received	*Date Served*	*Date Returned*

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return

Department Or Agency Of Officer

RETURN FOLLOWING REDELIVERY

I certify that this Warrant was received and served as follows:

Date Received	*Date Served*	*Date Returned*

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return

Department Or Agency Of Officer

AOC-CR-910M, Side Two, Rev. 10/97

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS	
Name Of Defendant	FUGITIVE AFFIDAVIT G.S. 15A-733, 15A-734
Crime(s) In Demanding State	*Name, Address And Telephone No. Of Contact Person In Demanding State*
Date Of Crime	
Name Of Demanding State And County Of Crime	*Title*

I, the undersigned, state that this Affidavit is based upon

☐ 1. criminal process issued by a judicial official of the demanding state, a copy of which is attached.

☐ 2. the affidavit of the contact person named above, a copy of which is attached.

☐ 3. a NCIC-DCI message from the contact person named above, a copy of which is attached.

☐ 4. a telephone message from the contact person named above.

☐ 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

☐ 1. been charged with the commission of that crime and has fled from justice.

☐ 2. been convicted of that crime and has escaped from confinement.

☐ 3. broken the terms of bail, probation or parole.

SWORN AND SUBSCRIBED TO BEFORE ME	*Date*
Date	*Signature Of Affiant*
Signature	*Name Of Affiant (Type Or Print)*
☐ *Magistrate* ☐ *District Court Judge* ☐ *Superior Court Judge*	*Title Of Person Signing*

AOC-CR-911M

AOC-CR-911M, Rev. 9/98

2011 Legislation Affecting Criminal Law and Procedure (Aug. 2011)

John Rubin, © UNC School of Government

available at http://dailybulletin.unc.edu/summaries11/category05.html

Each ratified act discussed here is identified by its chapter number in the session laws and by the number of the original bill. When an act creates new sections in the North Carolina General Statutes (hereinafter G.S.), the section number is given; however, the codifier of statutes may change that number later. Copies of the bills may be viewed on the General Assembly's website at http://www.ncleg.net/.

1. **S.L. 2011-2 (H 18): Clarification of effective date of law authorizing restoration of firearms rights.** The act amends the effective date of S.L. 2010-108 (H 126), which allows people convicted of nonviolent felonies to apply for restoration of the right to possess firearms and creates an exception from firearms restrictions for white collar felony convictions. *See* John Rubin & Jim Drennan, *2010 Legislation Affecting Criminal Law and Procedure* (Aug. 2010). The 2010 act contained a standard effective-date clause used in criminal law legislation—that is, the act applied to offenses committed on or after a particular date, in this instance February 1, 2011. This wording created some question about whether the restoration procedure and exception applied to a person who committed an offense before that date. The 2011 amendment clarifies that the restoration procedure and exception takes effect February 1, 2011. Thus, whether the offense date is before or after February 1, a person is eligible for restoration of firearm rights if he or she was convicted of a nonviolent felony as defined in G.S. 14-415.4, completed his or her sentence at least twenty years ago, and otherwise meets the requirements for restoration. The act is effective March 5, 2011.

2. **S.L. 2011-6 (H 3): Good faith exception to exclusionary rule for violations of state law.** Effective for trials and hearings commencing on or after July 1, 2011, the act amends G.S. 15A-974 to provide a good-faith exception to the exclusionary rule for violations of Chapter 15A of the North Carolina General Statutes. G.S. 15A-974 has provided that evidence must be suppressed if it is obtained as result of a substantial violation of Chapter 15A. The amended statute states that evidence shall not be suppressed for such a violation if the person committing the violation acted under the "objectively reasonable, good faith belief" that the actions were lawful. Amended G.S. 15A-974 requires the court, in determining whether evidence must be suppressed for a violation of the U.S. Constitution, N.C. Constitution, or Chapter 15A, to make findings of fact and conclusions of law.

   In a section of the act not incorporated into the General Statutes, the General Assembly also requested that the N.C. Supreme Court reconsider and overrule its decision in *State v. Carter,* 322 N.C. 709 (1988). In that decision, our court held that the good faith exception to the exclusionary rule adopted by the U.S. Supreme Court for certain constitutional violations does not exist under our state constitution.

   For a more detailed analysis of both the act's application to violations of G.S. Chapter 15A and the scope of the good-faith exception to the exclusionary rule for constitutional violations, see Bob Farb, *New North Carolina Legislation on Good Faith Exception to Exclusionary Rules,* posting to North

Carolina Criminal Law: UNC School of Government Blog (Mar. 23, 2011).

3. **S.L. 2011-12 (S 7): New controlled substance offenses**. Effective for offenses committed on or after June 1, 2011 (note that the effective date is earlier than the customary December 1 effective date for new offenses), the act adds four substances to the controlled substance schedules and creates new controlled substance offenses based on those substances, including trafficking offenses.

Additional controlled substances. Amended G.S. 90-89(5) includes three new substances as Schedule I controlled substances, which generally carry the most serious criminal penalties: 4-methylmethcathinone (also known as mephedrone): 3,4-Methylenedioxypyrovalerone (also known as MDPV); and a compound, other than buproprion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in one of the specified ways. Amended G.S. 90-94 adds synthetic cannabinoids (as defined in new subsection (3) of G.S. 90-94) as a Schedule VI controlled substance.

New controlled substance offenses. Possession of any Schedule I controlled substance, including the above-described controlled substances, remains a Class I felony under G.S. 90-95(a)(3) and 90-95(d)(1), except that possession of one gram or less of MDPV is a Class 1 misdemeanor. Possession of synthetic cannabinoids *or* any mixture containing that substance are classified as follows under G.S. 90-95(a)(3) and 90-95(d)(4): a Class 3 misdemeanor for seven grams or less; a Class 1 misdemeanor for more than seven and up to 21 grams or less; and a Class I felony for more than 21 grams. Under G.S. 90-95(a)(1) and 90-95(b)(2), sale of synthetic cannabinoids is a Class H felony, and manufacture, delivery, or possession with intent to manufacture, sell, or deliver synthetic cannabinoids is a Class I felony, except the transfer of less than 2.5 grams of that substance *or* any mixture containing that substance for no remuneration does not constitute delivery.

New trafficking offenses. New G.S. 90-95(h)(3d) creates the offense of trafficking in MDPV, classified and punishable as follows: for 28 or more and less than 200 grams, a Class F felony with a mandatory prison term of 70 to 84 months and a minimum $50,000 fine; for 200 or more and less than 400 grams, a Class E felony with a mandatory prison term of 90 to 117 months and a minimum $100,000 fine; and for 400 grams or more, a Class C felony with a mandatory prison term of 225 to 279 months and a minimum $250,000 fine. New G.S. 90-95(h)(3e) creates the offense of trafficking in mephedrone, with the same classes and punishments for the same quantities as for MDPV. New G.S. 90-95(h)(1a) creates the offense of trafficking in synthetic cannabinoids, classified and punishable as follows based on dosage units (defined as three grams of the substance *or* any mixture of the substance): for more than 50 and less than 250 dosage units, a Class H felony with a mandatory prison term of 25 to 30 months and a minimum $5,000 fine; for 250 or more and less than 1250 dosage units, a Class G felony with a mandatory prison term of 35 to 42 months and a minimum $25,000 fine; for 1250 or more dosage units and less than 3750 dosage units, a Class F felony with a mandatory prison term of 70 to 84 months and a minimum $50,000 fine; and for more than 3750 dosage units, a Class D felony with a mandatory prison term of 175 to 219 months and a minimum $200,000 fine.

4. **S.L. 2011-19 (H 27), as amended by S.L. 2011-307 (S 684): SBI crime lab and related changes.** Effective March 31, 2011 except as noted below, the act adds and modifies several statutes

regarding the State Bureau of Investigation (SBI) Laboratory and forensic testing. The laboratory remains a part of the SBI, but it is renamed the State Crime Laboratory (State Crime Lab) and G.S. 114-16 is revised to direct the SBI to employ a sufficient number of skilled people to render a reasonable service to the "public and criminal justice system" (was, "prosecuting officers of the State").

Advisory board. New G.S. 114-16.1 establishes a sixteen-member North Carolina Forensic Science Advisory Board within the Department of Justice, which consists of the State Crime Lab Director and fifteen members appointed by the Attorney General. The appointments must conform to the requirements in the new statute—for example, one member must be the Chief Medical Examiner, another must be a scientist with an advanced degree and experience in forensic chemistry, and the like. The new advisory board may review State Crime Lab operations, make recommendations and, on request of the Lab Director, review analytical work, reports, and conclusions of scientists employed by the Lab. This last category of review is confidential as provided in new G.S. 114-16.1(f).

Studies and protocols on bias and error. An uncodified section of the act (that is, a provision that will not appear in the General Statutes but still has the force of law) directs the SBI to seek collaborative opportunities and grant funds for research programs on human observer bias and sources of human error in forensic examinations and directs the State Crime Lab to develop standard operating procedures to minimize potential bias and human error.

Professional certification. An uncodified section of the act requires forensic science professionals at the State Crime Lab to obtain individual certification consistent with international and ISO standards within 18 months of the date the analyst become eligible to seek certification according to the standards of the certifying entity or by June 1, 2012, whichever occurs later, unless no certification is available. (The 18-month alternative was added by S.L. 2011-307.)

Ombudsman. An uncodified section of the act, effective July 11, 2011, creates the position of ombudsman in the State Crime Lab within the North Carolina Department of Justice. The act states that the primary purpose of the position is to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officers, and the general public to ensure that State Crime Lab practices and procedures are consistent with state and federal law, best forensic practices, and the interests of justice. The ombudsman must mediate complaints between the SBI and others and regularly attend meetings of the district attorneys, district and superior court judges, public defenders, Advocates for Justice, and Bar criminal law sections.

Admissibility of forensic analysis and chemical analysis of blood or urine. G.S. 8-58.20 has allowed a lab report of a written forensic analysis to be admitted without the testimony of the analyst if certain procedures are followed. The act amends the statute to add that for a forensic analysis to be admissible under that statute, it must be performed by a lab that is accredited as specified in the amended statute. The act makes similar changes to G.S. 20-139.1(c2) on the admissibility of a chemical analysis of blood or urine without the testimony of the analyst. As amended by S.L. 2011-307, these requirements apply only to the State Crime Lab beginning March 31, 2011, and to other laboratories conducting forensic or chemical analysis beginning October 1, 2012.

Discovery. Amended G.S. 15A-903(a)(1), which requires the State to make available to the

defendant its complete files as defined in the statute, states that "[w]hen any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including, but not limited to, preliminary test or screening results and bench notes." Amended G.S. 15A-903(c) requires all public and private entities that obtain information related to the investigation of the crimes committed or the prosecution of the defendant to disclose such information to the referring prosecutorial agency for disclosure to the defendant. New G.S. 15A-903(d) makes it a Class H felony for a person to willfully omit or misrepresent evidence or information required to be disclosed under G.S. 15A-903(a)(1) or required to be provided to the State under G.S. 15A-903(c); and makes it a Class 1 misdemeanor to willfully omit or misrepresent evidence or information required to be disclosed pursuant to any other provision of "this section" (meaning G.S. 15A-903).

5. **S.L. 2011-21 (S 20): Proprietary schools.** Effective July 1, 2011, the act amends several provisions regulating proprietary schools, including the definition of proprietary schools in G.S. 115D-87. Amended G.S. 115D-96 continues to make it a Class 3 misdemeanor to operate a proprietary school, under the amended definition, without a license or bond.

6. **S.L. 2011-22 (H 29): Retrieval of killed or wounded big game animal.** Effective October 1, 2011, the act amends G.S. 113-291.1, which regulates the taking of wild animals and birds, to permit the retrieval of a killed or wounded big animal if done with (1) a portable light source, (2) a single dog on a leash, (3) a .22 caliber rimfire pistol, archery equipment, or handgun otherwise lawful for that hunting season, (4) from one-half hour after sunset until 11 p.m. if necessary, and (5) without use of a motorized vehicle.

7. **S.L. 2011-29 (S 248): Update of archaic disability language.** Effective April 7, 2011, the act updates several provisions to update language describing disabilities (for example, the term "incompetent person" replaces "lunatic," a person "unable to speak" replaces "dumb," and "physically disabled" replaces "physically defective"). Affected provisions that involve criminal law and procedure are North Carolina Rule of Evidence 601 (competency of witnesses) and G.S. 14-113 (obtaining money by false representation of physical disability).

8. **S.L. 2011-37 (H 59): No EMS credentials for sex offenders.** Effective April 12, 2011, the act adds G.S. 131E-159(h) providing that a person who is required to register as a sex offender under G.S. Chapter 14, Article 27A, may not be granted emergency medical services (EMS) credentials. The new statute does not require revocation of credentials for a person who currently has them, but it prohibits renewal of credentials. The new statute states that it applies to a person required to register and to a person "who was convicted of an offense which would have required registration if committed at a time when such registration would have been required by law."

9. **S.L. 2011-42 (H 234): Prospective jurors who are hearing-impaired or have other disabilities.** Effective July 1, 2011, the act revises G.S. 9-3, which describes the qualifications of prospective jurors, to delete the requirement that a juror must be able to hear the English language; the statute continues to require that a juror understand English. The act also adds G.S. 9-6.1(b) to allow a

person summoned as a juror who has a disability and wishes to be excused, deferred, or exempted to make the request without appearing in person by filing a signed statement of the ground for the request. The request must be submitted to the chief district court judge of the district, or the district court judge or trial court administrator designated by the chief district court judge, at least five business days before the date on which the person has been summoned to appear. Revised G.S. 9.6.1(a), which allows a person who is 72 years or older to make a similar request, requires submission of the request at least five business days, instead of five days, before the person's scheduled appearance.

10. **S.L. 2011-56 (S 406): Repeal of requirement of permit for crossbow.** Effective April 28, 2011, the act revises G.S. 14-402 to eliminate the prohibition on selling, giving away, transferring, purchasing, or receiving a crossbow without a permit. The act also repeals G.S. 14-406.1, which set forth the procedure for manufacturers, wholesale dealers, and retailers to obtain a permit for the purchase and receipt of crossbows. The act does not change the permit requirements and procedures for pistols, contained in Article 52A of G.S. Ch. 14.

11. **S.L. 2011-60 (H 215): "The Unborn Victims of Violence Act/Ethen's Law."** Effective for offenses committed on or after December 1, 2011, the act adds a new Article 6A, "Unborn Victims" (G.S. 14-23.1 through 14-23.8) to G.S. Chapter 14, creating several new criminal offenses. The act repeals G.S. 14-18.2 (injury to pregnant woman). An "unborn child" is defined in new G.S. 14-23.1 as "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

    New G.S. 14-23.2 creates the offense of "murder of an unborn child," which can be committed in three ways. A person who unlawfully causes the death of an unborn child is guilty of a Class A felony, punishable by life without parole, if the person willfully and maliciously commits an act with the intent to cause the death of the unborn child or causes the death of the unborn child in the perpetration or attempted perpetration of any criminal offense in G.S. 14-17. A person who unlawfully causes the death of an unborn child is guilty of an offense subject to the same punishment as second-degree murder if the person commits an act causing the death of the unborn child that is inherently dangerous to human life and is done so recklessly and wantonly that it reflects disregard of life. Under new G.S. 14-23.3, a person commits the offense of "voluntary manslaughter of an unborn child," a Class D felony, if the person unlawfully causes the death of an unborn child by an act that would be voluntary manslaughter if it resulted in the death of the mother. Under new G.S. 14-23.4, a person commits the offense of "involuntary manslaughter of an unborn child," a Class F felony, if the person unlawfully causes the death of an unborn child by an act that would be involuntary manslaughter if it resulted in the death of the mother. Under new G.S. 14-23.5, a person commits the offense of "assault inflicting serious bodily injury on an unborn child," a Class F felony, if the person commits a battery on the mother of the unborn child and the child is subsequently born alive and, as a result of the battery, suffered serious bodily injury as defined in new G.S. 14-23.5(b). Under new G.S. 14-23.6, a person commits the offense of "battery on an unborn child," a Class A1 misdemeanor and a lesser-included offense of G.S. 14-23.5, if the person commits a battery on a pregnant woman.

    The above statutes state that each of these offenses is a separate offense. An uncodified

provision in the act states that a prosecution for or conviction under the act is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct. New G.S. 14-23.8 states that except for an offense under G.S. 14-23.2(a)(1), which requires an intent to cause the death of the unborn child, an offense under the new article does not require proof that the defendant knew or should have known "that the victim of the underlying offense was pregnant" or that the defendant intended to cause "the death of, or bodily injury, to the unborn child."

New G.S. 14-23.7, "Exceptions," states that the new article shall not be construed to permit prosecution of: a lawful abortion pursuant to G.S. 14-45.1; diagnostic testing or therapeutic treatment pursuant to usual and customary standards of medical practice; and acts by a pregnant woman, including acts resulting in a miscarriage or stillbirth as defined in new G.S. 14-23.7(3)a. and b. An uncodified provision in the act states that it shall not be construed to impose criminal liability on an expectant mother who is the victim of acts of domestic violence, as defined in G.S. Chapter 50B, that cause injury or death to her unborn child.

The act contains a severability clause, providing that a finding of invalidity of any provision in the act does not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

For additional discussion of this act, see Jessica Smith, *New Crimes Protecting Unborn Children*, posting to North Carolina Criminal Law: UNC School of Government Blog (July 18, 2011).

12. S.L. 2011-61 (H 219): Name change by sex offender; venue for petition to terminate registration. The act amends several statutes to track name changes by people required to register as sex offenders. On the initial registration form, a registrant must indicate his or her name and any aliases at the time of conviction. *See* G.S. 14-208.7(b)(1a). A registrant who changes his or her name must report the change to the registering sheriff within three business days of the change. *See* G.S. 14-208.9. And, when periodically re-verifying his or her registration information, a registrant must indicate any name change. *See* G.S. 14-208.9A(a)(3)c. New G.S. 14-208.14(4a) requires the Division of Criminal Statistics to maintain its public database so as to allow access to a registrant's name, any aliases, and any legal name changes. These provisions apply to any person who continues to be required to register on or after December 1, 2011, whether the person's registration obligation begins before or after that date; however, a registrant is not in violation of the new requirements if the person provides the required information at the first required verification on or after December 1, 2011. Effective May 3, 2011, the act also revises G.S. 101-5 to state explicitly that the clerk of court may not grant a name change to a person required to register as a sex offender. (In 2008, the General Assembly enacted G.S. 14-202.6 and G.S. 101.6(c) to prohibit a person required to register as a sex offender from obtaining a name change under G.S. Chapter 101. *See* G.S. 14-202.6, 101-6(c); *see also* John Rubin, *2008 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/06, at p. 10 (Nov. 2008).)

Effective for petitions filed on or after December 1, 2011, the act revises G.S. 14-208.12A(a) on the venue for the filing of a petition to terminate registration requirements. If the reportable conviction is for an offense that occurred in North Carolina, the petition is to be filed in the district where the person was convicted of the offense. If the reportable conviction is for an offense that

occurred in another state, the petition is to be filed in the district where the person resides; for out-of-state convictions, the petitioner also must notify the sheriff of the county of conviction of the petition and include an affidavit attesting to such notice and containing the mailing address and contact information of the sheriff.

13. **S.L. 2011-62 (H 270): Changes to conditions of probation and repeal of tolling provision.** Effective for people placed on probation on or after December 1, 2011, the act makes the following changes to regular conditions of probation under G.S. 15A-1343(b):

- It deletes the requirement in G.S. 15A-1343(b)(1) that the probationer remain within the jurisdiction of the court and replaces it with a requirement that the probationer remain accessible to the probation officer by making his or her whereabouts known to the officer and not leaving the county of residence or the State of North Carolina without written permission by the court or probation officer.
- It repeals G.S. 15A-1343(b)(11), which provided that "[a]t a time to be designated by the probation officer, visit with his probation officer [at] a facility maintained by the Division of Prisons."
- It revises G.S. 15A-1343(b)(13), which deals with warrantless searches, to eliminate reference to drug testing, and adds G.S. 15A-1343(b)(16), which requires the probationer to supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when requested by his or her probation officer for purposes directly related to the probation supervision. The new subdivision also provides that the probationer may be required to reimburse the Department of Correction for the costs of a positive test.

The act also authorizes additional special conditions of probation. New G.S. 15A-1343(b1)(9b) authorizes conditions that prohibit street gang activity; new G.S. 15A-1343(b1)(9c) authorizes a condition allowing the probation officer to require the probationer to participate in Project Safe Neighborhood activities.

Last, the act repeals G.S. 15A-1344(g), which was enacted in 2009 and addressed the tolling of probation if a probationer is charged with new crimes. *See* Jamie Markham, *Summary and Analysis of Session Law 2009-373 (S 920): Probation Reform* at p. 8 (Aug. 4, 2009). With the repeal of G.S. 15A-1344(g) this legislative session, and the deletion in 2009 of any reference to tolling in G.S. 15A-1344(d), the probation statutes no longer contain any tolling provision for probationers charged with new crimes. Thus, the period of probation continues to run during the pendency of new criminal charges. Because the act applies to people placed on probation on or after December 1, 2011, people placed on probation before then would appear to be subject to the current tolling procedures in G.S. 15A-1344(g) for any new criminal charges during the period of their probation.

For a further discussion of this act, see Jamie Markham, *Probation Tolling Repealed*, posting to North Carolina Criminal Law: UNC School of Government Blog (May 31, 2011).

14. **S.L. 2011-63 (H 316): Jurisdiction of General Assembly special police.** Effective May 3, 2011, the act amends G.S. 120-32.2 to give General Assembly special police additional statewide powers. For example, the amended statute authorizes them to conduct a criminal investigation throughout the

state of a threat of physical violence against the General Assembly, a member or staff of the General Assembly, or their immediate family. The amended statute, along with amended G.S. 120-19.2(d), also gives General Assembly special police statewide jurisdiction to serve a subpoena issued by the General Assembly or committee of the General Assembly.

15. **S.L. 2011-64 (S 49): Increased penalty for speeding in school zone.** Effective for offenses committed on or after August 25, 2011, the act increases the penalty to $250 (was, a minimum of $25) for the infraction of speeding in a school zone under G.S. 20-141.1 and 20-141(e1).

16. **S.L. 2011-68 (H 407): Elimination of safety helmet requirement for off-road ATV use.** In 2005, the General Assembly adopted various safety measures for the operation of all-terrain vehicles (ATVs), including a requirement that riders wear safety helmets and eye protection. *See* S.L. 2005-282 (S 189). Effective for offenses committed on or after October 1, 2011, the act revises G.S. 20-171.19 to require the wearing of a helmet and eye protection on public streets and highways and public vehicular areas only. The act adds a new subsection (a1) to G.S. 20-171.19 requiring a rider under age 18 to wear a helmet and eye protection while operating an ATV off a public street or highway or public vehicular area. Thus, riders 18 years of age or older are not required to wear this safety equipment during off-road use. G.S. 20-171.22(c) continues to allow riders 16 years of age or older to operate ATVs without wearing helmets or eye protection on ocean beach areas where ATVs are permitted.

17. **S.L. 2011-95 (H 222): Electric vehicles in carpool lanes.** Effective May 26, 2011, the act amends G.S. 20-146.2 to allow a plug-in electric vehicle, as defined in new G.S. 20-4.01(28a), to travel in a high occupancy vehicle lane regardless of the number of passengers in the vehicle as long as the vehicle is able to travel at the posted speed limit.

18. **S.L. 2011-100 (H 280): County law enforcement service district.** Effective May 31, 2011, the act amends G.S. 153A-301(a)(10) to authorize a board of county commissioners to establish a law enforcement service district if the population of the county is 900,000 or more (was, 500,000), less than 10% of the population of the county is in an unincorporated area, and the county has interlocal agreements with the municipalities in the county for the provision of law enforcement services in the unincorporated areas of the county. This statute has allowed for a single police department in Mecklenburg County to cover the county and the city of Charlotte. The changes in the population requirements continue to limit application of the statute to Mecklenburg County.

19. **S.L. 2011-119 (S 16): Misdemeanor death by vehicle made an implied consent offense; mandatory blood tests in certain circumstances.** Effective for offenses committed on or after December 1, 2011, the act amends G.S. 20-16.2(a1) to designate as an "implied-consent offense" a violation of G.S. 20-141.4(a2). This offense is misdemeanor death by vehicle, which involves the unintentional causing of the death of another person by the commission of a traffic violation *other* than impaired driving.

    The act also amends G.S. 20-139.1(b5), which deals with subsequent tests for an impairing substance when a person is charged with an implied-consent offense. The statute has given officers

the discretion to request a test of a person's blood (or other bodily fluid or substance) in addition to or in lieu of a test of the person's breath. The amended statute requires officers to request a blood sample in addition to or in lieu of a breath test if the person is charged with a violation of G.S. 20-141.4, which involves various offenses involving death and serious injury by vehicle; however, the officer retains the discretion not to request a blood sample if the breath sample shows an alcohol concentration of .08 or more. Amended G.S. 20-139.1(b5) also provides that an officer must seek a warrant for a blood sample if the person willfully refuses to provide a blood sample, the person is charged with a violation of G.S. 20-141.4, and the officer has probable cause to believe that the offense involved impaired driving or was an alcohol-related offense subject to the implied-consent procedures in G.S. 20-16.2; the amended statute states, however, that the failure to obtain a blood sample is not grounds for dismissal and is not an appealable issue.

For a further discussion of this act, see Shea Denning, *Requests for Blood in Death by Vehicle Cases,* posting to North Carolina Criminal Law: UNC School of Government Blog (June 22, 2011).

20. S.L. 2011-145 (H 200), as amended by S.L. 2011-192 (H 642) and S.L 2011-391 (H 22): 2011 Appropriations Act. The 2011 Appropriations Act addresses several financial and organizational matters for law enforcement, the court system, and corrections. Below is a brief rundown. All references are to S.L. 2011-145 and sections within it unless otherwise noted. The discussion below does not review the funding and personnel cuts made by the General Assembly. For a breakdown of the cuts, see Justice and Public Safety, Section I, of the Report on the Continuation, Expansion and Capital Budgets (Senate Appropriations Committee (June 16, 2011).

Crimes

- *Removal of signs about water quality in coastal recreation waters.* Effective for offenses committed on or after July 1, 2011, amended G.S. 113-221.3(c) makes it a Class 1 misdemeanor to remove, destroy, damage, deface, mutilate, or otherwise interfere with any sign posted by the Department of Environment and Natural Resources pursuant to subsection (b) of G.S. 113-221.3 (relating to information about water quality of coastal recreation waters) or for a person to have in his or her possession such a sign without just cause or excuse. *See* Section 13.3(sss).
- *Parks and forestry violations.* Effective for offenses committed on or after July 1, 2011, new G.S. 106-847 makes it a Class 3 misdemeanor to violate rules adopted by the Department of Agriculture and Consumer Services for use by the public of forests, lands, and waters under the Department's charge (formerly, under the charge of the Department of Environment and Natural Resources). *See* Section 13.25(o).

Courts (effective July 1, 2011, unless otherwise noted)

- The Administrative Office of the Courts (AOC) must contract with the National Center for State Courts to develop a workload formula for superior court judges. Amended G.S. 7A-109 requires the minutes of the clerk to reflect the date and time of each convening of court as well as the date and time of each recess or adjournment with no further business by the court. Each month

the AOC must provide this information to the National Center for State Courts, the Fiscal Research Division of the General Assembly, and the Study Committee on Consolidation of Judicial and Prosecutorial Districts (discussed below). *See* Section 15.6.

- The UNC School of Government must study the feasibility and cost of creating an Office of Prosecutorial Services and must submit its report to the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2012. *See* Section 15.7.
- Amended G.S. 7A-102(a) requires that each office of the clerk of superior court must have no fewer than five total staff positions in addition to the elected clerk of superior court. *See* Section 15.8.
- The Revenue Laws Study Committee must study the penalties and fines for infractions and waivable offenses and determine whether the current amounts are appropriate. The committee must makes its report to the General Assembly on the convening of the 2012 regular session. *See* Section 15.9.
- Amended G.S. 7A-304(a) requires the assessment of costs in all criminal cases in which a defendant is convicted, including cases in which a person receives an active prison sentence (previously, in such cases the judgment had to specifically require costs), which may not be waived unless the judge makes a written finding of just cause to grant a waiver. *See* Section 15.10.
- The act creates the Study Committee on Consolidation of Judicial and Prosecutorial Districts to study the number and structure of judicial and prosecutorial districts and make recommendations to reduce and consolidate those districts. The committee may submit its report to the General Assembly when it convenes for its 2012 regular session. The committee terminates on the filing of the report or convening of the 2012 regular session, whichever is earlier. *See* Section 15.11.
- The AOC must develop protocols to offer regular administrative court sessions in each district court district to hear motor vehicle infractions. Each district must offer such sessions regularly by October 1, 2011. The AOC must report to the Joint Legislative Commission on Governmental Operations by February 1, 2012. *See* Section 15.11A.
- Amended G.S. 7A-498.7(b) gives the Commission on Indigent Defense Services the authority to appoint the chief public defender in districts with public defender offices (was, senior resident superior court judge in the district). The amended statute continues to require the local bar to nominate two to three candidates, from which the Commission will make its selection. *See* Section 15.16(b).
- The Office of Indigent Defense Services must issue requests for proposals from private law firms or not-for-profit legal representation organizations for the provision of legal services to indigent clients. The Office must use private assigned counsel funds to enter into contracts when the contracts provide representation services more efficiently than current costs and ensure quality representation consistent with constitutional and statutory requirements. The Office must report on its progress to the Joint Legislative Commission on Governmental Operations by October 1, 2011. *See* Section 15.16(c), as amended by Section 39 of S.L. 2011-391.
- Amended G.S. 7A-498.5(f) requires that the Commission on Indigent Defense Services set

compensation rates for expert witnesses at a rate no greater than the rate set by the Administrative Office of the Courts under G.S. 7A-314(f). *See* Section 15.20.

- The act maintains a trial court administrator position in the following judicial districts: 4, 5, 7B/7C, 10, 12, 14, 18, 21, 26, and 28. *See* Section 15.21.
- The Department of Health and Human Services (DHHS), Division of State Operated Facilities, must issue a request for proposals for the consolidation of forensic hospital care. DHHS must report to the Joint Appropriations Subcommittee for Health and Human Services by October 30, 2011, with cost details and savings identified from the proposals. *See* Section 10.12.

Costs (effective July 1, 2011, unless otherwise noted)

- For a detailed discussion of cost changes, see the following AOC memos:
    - Court Costs and Fee Chart
    - Legislative Increases in Court Costs and Fees, July 2011
    - Additional Legislative Increases in Court Costs and Fees, August 2011
    - 2011 Costs and Fees Changes—Frequently Asked Questions)
- The act amends G.S. 7A-304(a)(4) to increase court costs in criminal cases from $100.50 to $129.50 in district court and from $102.50 to $154.50 in superior court. *See* Section 31.23(a).
- New G.S. 14-107.2 allows community mediation centers (also known as dispute resolution centers) to establish and charge fees for its services in worthless check programs, and amended G.S. 7A-38.7 provides that the $60 fee assessed when a criminal case is resolved through a community mediation center will be remitted by the clerk to the Mediation Network (was, to the State Treasurer), which may retain up to $3 for administrative expenses and must remand the remainder to the community mediation center that mediated the case. *See* Section 31.24.
- Amended G.S. 148-65.7(a) increases from $150 to $250 the transfer application fee for a parolee or probationer convicted in this state who requests supervision in another state under the Interstate Compact for Adult Offender Supervision. *See* Section 31.25.
- The act imposes the following additional fees, effective August 1, 2011. *See* Section 31.26, as amended by Section 7(n) of S.L. 2011-192. For a further discussion of these fees, see Additional Legislative Increases in Court Costs and Fees, August 2011 at p. 3–4.
    - New G.S. 7A-304(a)(2b) imposes an $18 fee in district court for the maintenance in county jails of people convicted of misdemeanors.
    - New G.S. 7A-304(a)(4b) imposes a cost of $50 "for all offenses arising under Chapter 20 of the General Statutes and resulting in a conviction of an improper equipment offense."
    - Amended G.S. 7A-313 increases from $5 to $10 the fee for each 24 hours of pretrial confinement.
- New G.S. 7A-304(g) provides that changes to costs or fees in G.S. 7A-304 apply to costs or fees collected on or after the effective date of the change except in "waiver" cases, in which case the amount of the costs or fees is the lesser of the new amount of costs or fees and the amount specified in the notice portion of the citation or other criminal process. *See* Section 63(b) of S.L. 2011-391.

Department of Justice

- The Department of Justice must issue a request for information to determine the cost of having a private company maintain the software required for criminal information databases managed by the Criminal Information Division. The Department must report the results to the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division by March 1, 2012. *See* Section 16.6.

Juvenile Justice

- Amended G.S. 115D-5(b) deletes the authority of the State Board of Community Colleges to provide for the waiver of tuition and registration fees for juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention (DJJDP). *See* Section 8.12(a)
- The act states that it is the General Assembly's intent to increase the use of community-based alternatives whenever possible and reduce reliance on detention and youth development center commitments. The act directs DJJDP and the Department of Correction to work together to increase the use of in-home monitoring as an alternative to detention for juveniles. The departments must assess monitoring needs in both the adult and juvenile systems and report their findings and recommendations to the House and Senate Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Fiscal Research Division by September 1, 2011. *See* Section 17.6.

Corrections

- The Post-Release Supervision and Parole Commission, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, must continue to analyze the amount of time each parole-eligible inmate has served compared to the time served by offenders under structured sentencing for comparable crimes and must determine whether the person has served more time in custody than the person would have served had he or she received the maximum sentence under structured sentencing. *See* Section 18.7.
- The Department of Correction must study probation and parole officer workloads, analyzing the types of offenders supervised, distribution of officers' time by type of activity, caseload carried by officers, and comparison to practices in other states. The Department must report the results of the study and recommendations for any adjustments to caseload goals to the House and Senate Subcommittees on Justice and Public Safety by January 1, 2013. *See* Section 18.13.

Department of Crime Control and Public Safety

- Effective January 1, 2012, the act establishes the Department of Public Safety as a new executive department and transfers to that Department the powers and functions of the Department of Correction, Department of Crime Control and Public Safety, and Department of Juvenile Justice and Delinquency Prevention. New Article 5A of G.S. Chapter 143 (G.S. 143B-259 through 143B-259.2) describes the organization of the Department of Public Safety, the divisions within it, and the powers and duties of the Department. The act makes numerous conforming

changes to existing statutes to reflect the reorganization. *See* Section 19.1.

21. **S.L. 2011-146 (S 513): Raffles by credit unions.** Effective October 1, 2011, the act adds G.S. 14-308.1(h) to permit credit unions to conduct "savings promotion raffles" under new G.S. 54-109.64. The latter statute describes the circumstances in which credit unions may conduct such raffles.

22. **S.L. 2011-189 (S 449): Study of fraud against older adults.** Effective June 23, 2011, the act requires the Consumer Protection Division of the Department of Justice to coordinate a task force to examine fraud against older adults. The task force includes representatives from that division, the Division of Aging and Adult Services of the Department of Health and Human Services, the North Carolina Senior Consumer Fraud Task Force, the North Carolina Association of County Directors of Social Services, the Banking Commission, the Senior Tar Heel Legislature, and other associations. The task force must make an interim report by November 1, 2011, and a final report with draft legislation by October 1, 2012, to the North Carolina Study Commission on Aging.

23. **S.L. 2011-190 (S 268): Intimidating witnesses.** Effective for offenses committed on or after December 1, 2011, the act amends G.S. 14-226(a) to increase the punishment for intimidating a witness, or attempting to intimidate a witness, from a Class H to a Class G felony.

24. **S.L. 2011-191 (H 49): Increased punishment for DWI.** Effective for offenses committed on or after December 1, 2011, the act creates a new, higher level of punishment for impaired driving—aggravated level one—and changes some punishment provisions for existing punishment levels. The act is known as "Laura's Law"; this title is not a part of the enacted legislation, but it was the short title of the bill that ultimately was enacted.

    Amended G.S. 20-179(c) requires the judge to impose an aggravated level one punishment if three or more grossly aggravating factors apply. New G.S. 20-179(f3) describes the punishment requirements for aggravated level one: (1) a fine of up to $10,000; (2) a sentence of imprisonment of a minimum of 12 months and a maximum of 36 months; and (3) ineligibility for parole. Defendants who receive an active sentence of imprisonment must be released four months before the end of the "maximum imposed term of imprisonment." For a discussion of the availability of good-time credits in addition to this four-month reduction, as well as other aspects of the legislation, see Jamie Markham, *Post-Release Supervision for Aggravated Level One DWI Offenders*, posting to North Carolina Criminal Law: UNC School of Government Blog (July 28, 2011); Shea Denning, *Laura's Law*, posting to North Carolina Criminal Law: UNC School of Government Blog (July 13, 2011). Once released, defendants must be placed on post-release supervision with a requirement that they abstain from alcohol during this four-month period as verified by a continuous alcohol monitoring system. The term of imprisonment also may be suspended if: (1) a condition of special probation is imposed requiring a term of imprisonment of at least 120 days; (2) the defendant is required to abstain from alcohol for a minimum of 120 days to a maximum of the term of probation as verified by a continuous alcohol monitoring system; and (3) the defendant obtains a substance abuse assessment and education or treatment. Amended G.S. 20-19(e) provides for a permanent license revocation for a person sentenced in new aggravated level one, and amended G.S. 20-17.8 requires an ignition interlock if the person's license is restored.

For defendants sentenced to a level one or two punishment for impaired driving, amended G.S. 20-179(h1) provides that the period a defendant may be required to abstain from alcohol as verified by a continuous alcohol monitoring system may be for a minimum of 30 days to a maximum of the term of probation (was, 60 days). The act also amends G.S. 20-179(h1) by eliminating the $1,000 limit on the amount chargeable to a defendant for a continuous alcohol monitoring system imposed as a condition of probation for level one or two punishments; and it repeals G.S. 20-179(h2), which prohibited the imposition of a continuous alcohol monitoring system if the court determined that the defendant should not be required to pay the costs and the local government entity responsible for incarcerating the defendant was unwilling to pay.

For defendants charged with an offense involving impaired driving and who have a prior conviction for such an offense within seven years of the current offense, new G.S. 15A-534(i) authorizes as a condition of pretrial release abstinence from alcohol as verified by a continuous alcohol monitoring system.

New G.S. 7A-304(a)(10) imposes an additional $100 in costs against a defendant for a conviction under G.S. 20-138.1 or 20-138.2 or for a second or subsequent conviction under G.S. 20-138.2A or 20-138.2B.

25. S.L. 2011-192 (H 642), as amended by S.L 2011-391 (H 22): Justice Reinvestment Act. The following is based in large part on a summary of the act by School of Government faculty member Jamie Markham. *See The Justice Reinvestment Act: An Overview,* posting to North Carolina Criminal Law: UNC School of Government Blog (June 30, 2011). The effective dates are noted in connection with each provision.

Narrowing of distinction between community and intermediate punishment. The act retains the community/intermediate/active ("C/I/A") framework in the sentencing grids under structured sentencing, but it redefines the meaning of community and intermediate punishments. A community punishment will be one that includes supervised or unsupervised probation and any condition of probation except drug treatment court or special probation. The only requirement for a punishment to be intermediate will be that it include supervised probation; no longer will the court be required to impose one of the six intermediate conditions (such as special probation or house arrest with electronic monitoring) to make a sentence intermediate. These changes appear in amended G.S. 15A-1340.11(2) (definition of community punishment); amended G.S. 1340.11(6) (definition of intermediate punishment); and new G.S. 15A-1343(a1) (conditions a court may impose as part of a community or intermediate punishment). They apply to people placed on probation based on offenses that occur on or after December 1, 2011.

Authority delegated to probation officers, including authority to impose jail time. Through delegated authority, probation officers will be empowered to impose new conditions of probation in both community and intermediate cases, including jail confinement. The jail confinement condition is limited to two- to three-day periods that total no more than six days per month, and the jail time may be imposed only during any three separate months of the period of probation. (Thus, the most jail time an officer could impose through the condition in a single probation case would be 18 days.) The officer can impose the jail time only if the offender waives his or her right to a hearing and counsel by signing a waiver of rights, with the probation officer and a supervisor as witnesses; the

act does not require the taking of the waiver by a judicial official. If the offender executes a waiver, he or she has no statutory right to have the officer's action reviewed by a court. These changes appear in amended G.S. 15A-1343.2(e) (delegated authority in community punishment cases) and amended G.S. 15A-1343.2(f) (delegated authority in intermediate punishment cases). They apply to people placed on probation based on offenses occurring on or after December 1, 2011. For a further discussion of these delegated authority provisions, see Jamie Markham, *Delegated Authority in Probation Cases*, posting to North Carolina Criminal Law: UNC School of Government Blog (July 14, 2011).

Repeal of intensive supervision and other intermediate conditions. The act repeals the definition of intensive supervision and the statutory special condition referring to intensive supervision. The law also repeals the definitions of "day-reporting center" and "residential program." The repealed provisions are G.S. 15A-1343(b1)(3b) and 15A-1340.11(3), (5), and (8). The repeal applies to people placed on probation based on offenses occurring on or after December 1, 2011.

Addition of "absconding" condition. The act adds G.S. 15A-1343(b)(3a) to make it a regular condition of supervision for all probationers that they not "abscond, by willfully avoiding supervision or by willfully making [their] whereabouts unknown to the supervising probation officer." Effective for offenses committed on or after December 1, 2011, a similar provision is added in new G.S. 15A-1368.4(e)(7a) for post-release supervisees. The act states that it is effective for probation violations on or after December 1, 2011.

Limitations on judge's authority to revoke probation. Effective for probation violations on or after December 1, 2011, the act amends G.S. 15A-1344(e) to provide that a court may revoke probation (that is, activate the entirety of a suspended sentence) for two specific types of violations only: committing a new criminal offense and absconding. For other violations, the court will be limited to other existing non-revocation options (such as imposition of a split sentence) or a new response option allowing 90 days of confinement (or up to 90 days for misdemeanors) under new G.S. 15A-1344(d2). The court is not allowed to revoke probation for a violation that does not involve absconding or a new crime unless a defendant has previously received two periods of confinement under the new 90-day confinement provision; however, if the time remaining on a defendant's sentence (felony or misdemeanor) is less than 90 days, then any term of confinement ordered under new G.S. 15A-1344(d2) must be for the remaining period of the sentence.

Expansion of post-release supervision for all felonies and increase in post-release supervision for Class B1 through E felonies. Under current law, post-release supervision applies to Class B1 through E felonies only. Effective for offenses committed on or after December 1, 2011, amended G.S. 15A-1368.2(a) and (c) increase the period of post-release supervision from 9 to 12 months for Class B1 through E felonies (except for Class B1 through E felonies subject to sex offender registration, which require a five-year supervision period) and impose a new nine-month period of post-release supervision for Class F through I felonies. The act also amends G.S. 15A-1340.17(d) and (e) to add time to all the maximum sentences on the sentencing grids—an additional 3 months for the Class B1 through Class E felonies (other than those subject to sex offender registration, which are subject to an additional 60 months as provided in S.L. 2011-307 (S 684)) and an additional 9 months for the lesser felonies—to account for the release of inmates 12 and 9 months, respectively, before they attain their maximum. The act does not make any changes to the minimum sentences in the

sentencing grid. For a further discussion of these changes, see Jamie Markham, *Changes to Post-Release Supervision on the Way*, posting to North Carolina Criminal Law: UNC School of Government Blog (July 19, 2011).

Limitations on the Post-Release Supervision and Parole Commission's authority to revoke post-release supervision. In much the same way that the act limits a court's authority to revoke probation, it amends G.S. 15A-1368.3(c)(1), effective for offenses committed on or after December 1, 2011, to limit the Commission's authority to revoke post-release supervision to supervisees who abscond or commit a new criminal offense or who are subject to sex offender registration. Other supervisees may be returned to prison for only three months at a time, after which they must be released back onto post-release supervision unless they have completed service of the time remaining on their maximum imposed term.

Changes to habitual felon law. Amended G.S. 14-7.6 provides that habitualized felonies will be sentenced four classes higher than the principal felony for which the person was convicted and never higher than Class C. The act specifies that this change applies if the principal felony is committed on or after December 1, 2011.

New habitual breaking and entering offense. New Article 2D of G.S. Chapter 14 (G.S. 14-7.25 through 14-7.31) creates a new habitual breaking and entering "status offense" that a prosecutor may charge if a person has a prior felony breaking and entering conviction and is charged with a new felony breaking and entering offense (defined in the new statutes as first- or second-degree burglary, breaking out of a dwelling house burglary, breaking or entering buildings generally, breaking or entering a place of worship, or any substantially similar crime from another jurisdiction). If so charged, the second conviction is punished as a Class E felony. The act specifies that this change applies if the principal felony is committed on or after December 1, 2011.

Mandatory application of G.S. 90-96(a) probation for eligible defendants and other changes to discharges, dismissals, and expunctions for drug offenses. The act changes the eligibility criteria for discharge and dismissal of certain drug offenses under G.S. 90-96(a). On the one hand, it limits eligibility by excluding defendants with prior felony convictions of any kind. On the other hand, it expands eligibility by allowing discharge and dismissal of any felony drug possession crime under G.S. 90-95(a)(3), regardless of substance or amount. Amended G.S. 90-96(a) provides further that the court "shall" (was, "may") place any eligible defendant on probation without entering judgment of guilt. The act also amends G.S. 90-96(a1) to allow but not require the court to place a person on probation as specified in that subsection if the current offense satisfies the criteria in that subsection and subsection (a) of G.S. 90-96. In contrast to subsection (a), subsection (a1) provides that no prior offense occurring more than seven years before the date of the current offense is considered; thus, subsection (a1) appears to provide a basis for discretionary relief for people who have older convictions that otherwise would disqualify them from obtaining mandatory relief under subsection (a). As under subsection (a), a person is entitled to a discharge and dismissal on completion of probation under subsection (a1). A person who obtains a discharge and dismissal under subsections (a) or (a1) under G.S. 90-96 may obtain an expunction of the matter if he or she satisfies the criteria in G.S. 15A-145.2(a). The act also amends the expunction provisions in G.S. 90-96(d) and the corresponding procedure in G.S. 15A-145.2(b) to allow an expunction of any felony possession offense under G.S. 90-95(a)(3) if the charges were dismissed or the person was found not

guilty; and it amends the expunction provisions in G.S. 90-96(e) and the corresponding procedure in 15A-145.2(c) to allow an expunction of a conviction of a felony possession offense if the person has no prior convictions specified in those statutes. The act states that these provisions become effective January 1, 2012, and apply to people who enter a plea or who are found guilty of an offense on or after that date. That language is relatively easy to apply to the discharge and dismissal procedures in revised G.S. 90-96(a) and (a1) and the advanced supervised release provisions, discussed next, but it is unclear how it applies to the revised expunction provisions. In cases in which a person seeks expunction of a dismissal, the person may have entered no plea. The General Assembly also may not have intended to distinguish the right to obtain an expunction for a conviction based on when the person entered a plea or was found guilty. For a further discussion of the basic requirements for expunction, see John Rubin, *Expunction Guide: Types, Requirements, and Impact of 2009 Legislation*, ADMINISTRATION OF JUSTICE BULLETIN No. 2009/10 (Dec. 2009).

Creation of advanced supervised release. Effective for pleas or findings of guilt on or after January 1, 2012, people who are convicted of Class D through H offenses and who are in certain prior record levels will be eligible for early release from prison under "advanced supervised release" (or ASR) in new G.S. 15A-1340.18. Regardless of the actual sentence imposed, the person will have an opportunity to be released from prison after serving the shortest possible mitigated sentence he or she could have received for the offense or 80 percent of the imposed minimum if the defendant received a sentence in the mitigated range. To obtain release at the ASR date, the inmate must complete risk reduction incentives created by the Department of Correction, such as treatment, education, and rehabilitation programs (or be unable to complete such incentives through no fault of his or her own). The statute provides that the court, in its discretion and without objection from the prosecutor, may include these risk reduction incentives when sentencing an eligible defendant.

Elimination of the Criminal Justice Partnership Program (CJPP). The act repeals CJPP in Article 6A of G.S. Chapter 143B and replaces it with the Treatment for Effective Community Supervision program in new Article 6B, G.S. Chapter 143B (G.S. 143B-274.1 through 143B-274.11). The repeal of CJPP eliminates the statutory requirement for a county to have a criminal justice partnership advisory board. Advisory boards typically included judges, prosecutors, defense lawyers, sheriffs, and others who advised county commissioners on the need for local community corrections programming and helped manage program implementation and evaluation. Under the new law, funding of local community corrections programs will be managed centrally by the Department of Correction. New G.S. 143B-274.8 creates a 23-member State Community Corrections Advisory Board, made up of members of the court system, service providers, and others, to advise the Department of Correction.

Service of misdemeanors in jail. The act amends G.S. 148-32.1 and other statutes to require that all felony sentences and all misdemeanor sentences requiring confinement of more than 180 days be served in the Department of Correction. The law retains the rule that sentences of 90 days or less should be served in the local jail and establishes a new program for people convicted of misdemeanors other than impaired driving with sentences of confinement of 91 to 180 days. Those inmates will be ordered to confinement pursuant to a new "Statewide Misdemeanant Confinement Program" administered by the North Carolina Sheriffs' Association. The Sheriffs' Association will place covered inmates in jails that have volunteered space for the program. The costs of housing

and caring for covered inmates will be paid by a statewide fund pursuant to the terms of a contract between the Department of Correction and the Sheriffs' Association. The rules for service of an impaired driving sentence continue unchanged. Under G.S. 20-176(c1), an impaired driving sentence must be served in the jail unless the defendant has previously been jailed for a Chapter 20 violation or unless it is for a second or subsequent impaired driving conviction. The sentencing provisions become effective January 1, 2012, but people serving sentences for misdemeanors before that date may be reassigned to a county jail to the extent the county is prepared to accept transfers.

Evaluation and report. The Sentencing and Policy Advisory Commission and Department of Correction must jointly conduct evaluations on the implementation of the Justice Reinvestment Act. The first report must be submitted by April 15, 2012, and annually thereafter on April 15, to the Joint Legislative Correction, Crime Control, and Juvenile Justice Oversight Committee and the Senate and House Appropriations Subcommittees on Justice and Public Safety.

26. S.L. 2011-193 (H 227): Disturbing human remains. Effective for offenses committed on or after December 1, 2011, the act amends G.S. 14-401.22 to add several new offenses:

- willfully disturbing, vandalizing, or desecrating human remains (subject to certain exceptions, such as acts by a first responder or licensed funeral director), a Class I felony;
- willfully committing or attempting to commit on any human remains any act of sexual penetration (subject to the same exceptions for the above offense), a Class I felony;
- attempting to conceal evidence of the death of another by knowingly and willfully dismembering or destroying human remains, a Class H felony; and
- committing the offense immediately above, knowing or having reason to know the human remains are of a person who did not die of natural causes, a Class D felony.

27. S.L. 2011-194 (S 31): Unauthorized practice of medicine. Effective for offenses committed on or after December 1, 2011, the act amends G.S. 90-18 to distinguish among different acts of practicing medicine without a license and to provide for different penalties. Practicing medicine without a license is a Class 1 misdemeanor; practicing without a license and representing oneself as being licensed is a Class I felony; practicing without a license by an out-of-state practitioner is a Class I felony; and practicing without a license due to the failure to complete timely annual registration or practicing while licensed under another article of Chapter 90 is a Class 1 misdemeanor.

28. S.L. 2011-199 (H 380): Subpoenas for electronically stored information. Effective for actions filed on or after October 1, 2011, the act amends several rules of civil procedure, applicable to civil cases; among the amended rules, however, is Rule 45 of the North Carolina Rules of Civil Procedure, applicable to criminal cases by virtue of G.S. 15A-802, which provides that Rule 45 applies to criminal cases with limited exceptions. Amended Rule 45(a)(2) provides that a subpoena to produce documents and other tangible evidence (a subpoena duces tecum) may require the production of electronically stored information and may specify the form in which the electronically stored information is to be produced. Amended Rule 45(d) elaborates on the ways in which a responding party must produce electronically stored information. The act also amends Rule 45(c) to add as a ground for objecting to a subpoena duces tecum that it subjects the person to undue expense.

29. **S.L. 2011-216 (H 381): Stopping patterns at vehicle checkpoints.** G.S. 20-16.3A(a) requires law enforcement agencies to designate in advance a pattern for stopping vehicles at checkpoints under G.S. Chapter 20. Effective for offenses committed on or after December 1, 2011, the act adds G.S. 20-16.3A(a1) to prohibit a law enforcement agency from basing a stopping pattern on a particular vehicle type other than a commercial motor vehicle.

30. **S.L. 2011-217 (H 386): Collateral consequences for real estate brokers.** Effective January 1, 2012, amended G.S. 93A-6(b) provides that the North Carolina Real Estate Commission may suspend or revoke the license of any person or entity licensed under G.S. Chapter 93A, or reprimand or censure any licensee for any misdemeanor or felony that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, forgery, larceny, misappropriation of funds or property, perjury, or any other offense showing professional unfitness or involving moral turpitude that would reasonably affect the licensee's performance in the real estate business. This provision replaces a narrower list of offenses. The act also amends G.S. 93A-4 to provide that criminal record reports obtained in connection with an application for licensure are not public records.

31. **S.L. 2011-231 (H 762): Hunting on or taking pine straw from another's land without consent.** G.S. 14-159.6 has made it a Class 2 misdemeanor for a person to hunt, fish, or trap on or remove pine straw from another's land in certain circumstances. Effective for offenses committed on or after October 1, 2011, the act revises this and related statutes. Amended G.S. 14-159.6(a) makes it a Class 2 misdemeanor to hunt, fish, or trap on another's land without the written permission of the owner, lessee, or agent if the property has been posted in accordance with G.S. 14-159.7(1) or (2), discussed below. The act deletes the provision, applicable to Halifax and Warren counties only, that prohibited arrests without the consent of the landowner or agent. The amended statute requires that the written permission be carried on one's person, be dated within the past twelve months, and be displayed on request to law enforcement. A valid written permission includes permission to a club of which the person is a member.

    Amended G.S. 14-159.6(b) makes it a Class 1 misdemeanor to remove pine needles or pine straw from property posted in accordance with G.S. 14-159.7(1) without the written consent of the owner or agent.

    New G.S. 14-159.6(c) states that it is an affirmative defense to a violation of G.S. 14-159.6(a) or (b) to have permission from the owner, lessee, or agent even though the person did not have a written permission with him or her at the time of citation or arrest.

    Amended G.S. 14-159.7 allows two ways of posting property. Subsection (1) continues the current posting specifications, such as the required size and spacing of the posted notices, and applies to both the hunting and pine straw offenses. Subsection (2) allows an owner to post property against hunting, fishing, or trapping by purple marks on trees or posts as provided in that subsection.

    Amended G.S. 14-159.10 authorizes enforcement of G.S. Chapter 14, Article 22A, which includes the above statutes, by sheriffs, deputy sheriffs, law enforcement officers of the Wildlife Resources Commission, and other peace officers with general subject matter jurisdiction.

32. S.L. 2011-232 **(H 927): Improper receipt of decedent's retirement allowance.** Effective for acts committed on or after December 1, 2011, new G.S. 135-18.11, 128-38.5, 135.75.2, and 120-4.34 make it a Class 1 misdemeanor for a person, with intent to defraud, to receive money as a result of cashing, depositing, or receiving a direct deposit of a decedent's retirement allowance under the circumstances described in the new statutes. These statutes all relate to public employee retirement systems (teachers and state employees, county and city employees, and the like).

33. S.L. 2011-240 **(H 12): Restrictions on retail sales of pseudoephedrine products.** Effective January 1, 2012, new G.S. 90-113.52A requires retailers, before completing a sale of a pseudoephedrine product, to electronically submit certain information to the National Precursor Log Exchange (NPLEx) if the NPLEx system is available to North Carolina retailers without charge and the retailer has Internet access. The seller may not complete the sale if the system generates a stop alert. If the seller is unable to comply with the electronic sales tracking requirements because of a mechanical or electronic failure of the electronic sales tracking system, the seller must record that the sale was made without submission to the NPLEx system. For offenses committed on or after January 1, 2012, amended G.S. 90-113.56(a) makes it a Class A1 misdemeanor for a retailer to knowingly and willfully violate G.S. 90-113.52A; a second or subsequent offense is a Class I felony. Amended G.S. 90-113.56(b) makes it a Class 1 misdemeanor for a purchaser or employee to knowingly and willfully violate G.S. 90-113.52A; a second offense is a Class A1 misdemeanor; a third or subsequent offense is a Class I felony. The act also directs the Legislative Commission on Methamphetamine Abuse to study the implementation of the provisions of the act and the potential cost of making pseudoephedrine products a Schedule III controlled substance; an interim report is due by the 2012 Regular Session of the 2011 General Assembly, and a final report is due by the convening of the 2013 General Assembly.

34. S.L. 2011-241 **(S 125): Violations related to regional schools.** Effective June 23, 2011, new Part 10 of Article 16 of Chapter 115C (G.S. 115C-238.56A through 115C-238.56N) authorizes local boards of education to jointly establish regional schools. New G.S. 115C-238.56G(3) makes it a Class 1 misdemeanor for a person to aid or abet a student's unlawful absence from a regional school. New G.S. 115C-238.56N requires the board of directors of a regional school to adopt policies on conducting criminal history checks of school personnel as defined in the statute, and subsection (h) of the statute makes it a Class A1 misdemeanor for an applicant for employment to willfully provide false information on an employment application that is the basis for a criminal history check.

35. S.L. 2011-243 **(H 271): Carrying of concealed weapon by off-duty probation and parole officers.** Effective December 1, 2011, new G.S. 14-269(b)(6) excludes certified state probation and parole officers while off duty from the ban on carrying a concealed weapon in G.S. 14-269(a) as long as the officer is not consuming alcohol or an unlawful controlled substance and the officer does not have alcohol or an unlawful controlled substance in his or her body.

36. S.L. 2011-244 **(H 311): Household goods carriers.** Effective October 1, 2011, new G.S. 20-398 makes it a Class 3 misdemeanor, punishable by a fine only of not more than $500 for a first offense and of not more than $2,000 for a subsequent offense, for any person to violate the provisions of new G.S.

20-398. Subject to certain exceptions, the new statute requires household goods carriers for compensation to display their name and the North Carolina number assigned to them by the North Carolina Utilities Commission. New G.S. 62-380 authorizes the Utilities Commission to assess a civil penalty for violations of G.S. 20-398. New G.S. 62-380.1 makes it a Class 3 misdemeanor, punishable by a fine only of not more than $500 for a first offense and of not more than $2,000 for a subsequent offense, for any person not issued a certificate to operate as a household goods carrier to represent that the person holds a certificate or is otherwise authorized to operate as a household goods carrier; the Utilities Commission also may assess civil penalties for a violation.

37. **S.L. 2011-245 (S 311): Authorization for warrantless arrests for pretrial release violations; electronic monitoring of sex offenders and others.** G.S. 15A-401(b) has authorized officers to arrest a person without a warrant for a violation of a pretrial release order entered under G.S. 15A-534.1(a)(2), which concerns pretrial release conditions in domestic violence cases. Effective for violations of pretrial release conditions occurring on or after December 1, 2011, amended G.S. 15A-401(b) authorizes officers to make a warrantless arrest for any violation of a pretrial release order entered under G.S. 15A-534, which is the general provision on pretrial release. Officers may make a warrantless arrest whether the violation occurs in or out of their presence.

    The act also amends provisions related to electronic monitoring, effective October 1, 2011. The act adds a definition of electronic and satellite-based monitoring in G.S. 15A-101.1, the statute that addresses electronic technology generally in criminal cases. It also revises G.S. 14-208.18, which prohibits a person who is required to register as a sex offender from being on certain premises, including schools intended primarily for the use of minors. New G.S. 14-208.18(g1) provides that a person who is required to register as a sex offender and who is subject to satellite-based monitoring must wear an electronic monitoring device that provides exclusion zones around the premises of elementary and secondary schools in North Carolina. Presumably, these exclusion zones will correspond to the locations where a person may not lawfully be present. Thus, G.S. 14-208.18 prohibits people covered by the statute from being on the premises of a school intended primarily for the use of minors but does not exclude them being present beyond school premises.

38. **S.L. 2011-247 (H 379): Interstate Depositions and Discovery Act and potential applicability to criminal cases.** Effective for cases pending on or after December 1, 2011, the act creates new G.S. Chapter 1F, the North Carolina Interstate Depositions and Discovery Act. Its principal purpose is to simplify the procedure for parties in a civil case in one state to take depositions of witnesses in another state. The act also may affect criminal cases because, in addition to creating new G.S. Chapter 1F, it amends North Carolina Rule of Civil Procedure 45, which is applicable to criminal cases by virtue of G.S. 15A-801 and 15A-802 except as otherwise specified. New Rule 45(f) sets forth the procedure for obtaining discovery, including obtaining a deposition, from a person residing in a state or U.S. territory outside North Carolina. The new provisions do not appear to exclude criminal cases. *See also* Uniform Interstate Depositions and Discovery Act (National Conference of Commissioners on Uniform State Laws, 2007). If the new provisions apply to criminal cases, a party in a North Carolina case would be able to obtain a deposition or other discovery in another state only if the other state allows such discovery. Thus, if another state allows depositions in criminal cases, as in

Florida, a party in a North Carolina criminal case may be able to use amended Rule 45 to depose a witness residing there; if the other state does not allow depositions, the amended provisions would not give a party in North Carolina that right. Rule 45(f) provides that if required by the other state's procedures, a party first must obtain a commission (an order) from a North Carolina court before seeking the discovery in the other state.

39. **S.L. 2011-248 (S 394): Principal's duty to report certain offenses to law enforcement.** G.S. 115C-288(g) has required a school principal to make a report to law enforcement if the principal has personal knowledge or actual notice from school personnel that one of the offenses listed in the statute has occurred on school property. The act rewrites the subsection to (i) expand the duty to include instances in which a principal has "a reasonable belief" that such an act has occurred; (ii) delete the provision that made violation of the duty a Class 3 misdemeanor; (iii) provide that a principal who willfully fails to make a required report to law enforcement may be subject to demotion or dismissal pursuant to G.S. 115C-325; (iv) prohibit the State Board of Education from requiring that principals report to law enforcement acts in addition to those listed in the subsection; and (v) state that nothing in the subsection may be interpreted to interfere with school employees' due process rights or students' privacy rights. The act is effective June 23, 2011, and applies beginning with the 2011-2012 school year.

40. **S.L. 2011-250 (H 408): Changes to criminal discovery.** Effective for cases pending on or after December 1, 2011, the act makes modest changes to North Carolina's criminal discovery laws. These changes are in addition to those made in S.L. 2011-19, which primarily made changes to the SBI crime lab but also explicitly required production of lab notes and data and made discovery violations a crime in some instances. Amended G.S. 15A-903(a)(1) distinguishes between a prosecutor's office, defined as the office of the prosecuting attorney, and an investigatory agency, defined as any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor's office. The change helps clarify the obligations of the different entities—law enforcement agencies, investigatory agencies, and prosecutors' offices—that must provide information for disclosure to the defense. The change does not alter the obligation of the State as a whole to provide the defense with the complete files of all law enforcement agencies, investigatory agencies, and prosecutors' offices involved in the investigation of the crimes allegedly committed or the prosecution of the defendant.

    Amended G.S. 15A-903(c) provides that law enforcement and investigatory agencies must make the required files available to the prosecutor's office on a timely basis (was, on request by the prosecutor).

    New G.S. 15A-904(a3) provides that the State is not required to disclose the identity of any person who provides information about a crime to a Crime Stoppers organization under assurance of anonymity unless ordered by the court. The new subsection includes a definition of a Crime Stoppers organization.

    New G.S. 15A-904(a4) provides that the State is not required to disclose the Victim Impact Statement in a case—defined as the document submitted by the victim or family to the State pursuant to the Victims' Rights Amendment—unless otherwise required by law.

New G.S. 15A-910(c) provides that for purposes of determining whether to impose personal sanctions for untimely disclosure of law enforcement and investigatory agency files, it is presumed that prosecuting attorneys and their staffs acted in good faith if they made a reasonably diligent inquiry of those agencies and disclosed the responsive materials. This presumption does not appear to apply to the untimely disclosure of prosecutor office files. New G.S. 15A-910(d) provides that if the court imposes any sanction, it must make specific findings justifying the sanction.

Amended G.S. 15A-903(a)(2), which addresses disclosure by the prosecutor of expert witnesses, and amended G.S. 15A-905(c)(2), which addresses disclosure by the defense of expert witnesses, require the Administrative Office of the Courts and Office of Indigent Defense Services to develop standard fee scales for expert witnesses and private investigators paid with state funds.

41. **S.L. 2011-254 (H 629): Substance abuse and other treatment.** Effective for sentences imposed on or after December 1, 2011, the act amends G.S. 15A-1343(b1), which deals with special conditions of probation during the period of probation and authorizes undergoing medical or psychiatric treatment and remaining in a specified institution if required for that purpose. As amended, G.S. 15A-1343(b1)(1) provides that, notwithstanding G.S. 15A-1344(e), which limits the period of special probation, a defendant may be required "to participate in such treatment for its duration regardless of the length of the suspended sentence imposed."

    Effective June 23, 2011, the act amends G.S. 15A-1343(b3) to provide that a defendant ordered to submit to a period of residential treatment at Black Mountain Substance Abuse Treatment Center for Women must undergo a screening to determine chemical dependency. This requirement continues to apply to the Drug Alcohol Recovery Treatment program (DART) as well. Also effective June 23, 2011, amended G.S. 90-113.33(9) authorizes the North Carolina Substance Abuse Professional Practice Board to adopt rules related to the approval of a substance abuse specialty curriculum adopted by a school, college, or university.

42. **S.L. 2011-263 (H 36): False complaint about failure of employer to use E-Verify system.** Effective October 1, 2012, January 1, 2013, and July 1, 2013, depending on the number of the employer's employees, the act adds a new Article 2, Verification of Work Authorization, in G.S. Chapter 64 (G.S. 64-25 through 64-38). New G.S. 64-28(a) prescribes a procedure for filing a complaint with the North Carolina Commissioner of Labor that an employer is violating its E-Verify obligations under the new article. New G.S. 64-28(b) makes it a Class 2 misdemeanor to knowingly file a false and frivolous complaint against an employer. An employer's violation of the new E-Verify requirements is subject to administrative penalties by the Commissioner of Labor.

43. **S.L. 2011-265 (H 641): Certificate of relief from collateral consequences.** In 2010, the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws) adopted the Uniform Collateral Consequence of Conviction Act to assist states in developing strategies for addressing the collateral consequences of a criminal conviction. Collateral consequences are effects that generally are not imposed as part of a criminal sentence but arise as a result of the criminal conviction and in many instances continue long after the person completes his or her sentence. North Carolina and other states impose a wide range of collateral consequences, such as licensing and employment bars and benefit disqualifications, for criminal convictions.

In the uniform act, the Uniform Law Commission recommended that states allow ex-offenders to apply for relief, according to specified criteria, from collateral consequences that could impede their ability to reintegrate into society. Effective December 1, 2011, the North Carolina General Assembly enacted such a procedure in new Article 6 of G.S. Chapter 15A (G.S. 15A-173.1 through 15A-173.6), allowing certain ex-offenders to apply to the court for a certificate of relief from collateral consequences. The North Carolina act is more limited than the uniform act, but it allows ex-offenders convicted of lower level felonies and misdemeanors to obtain some relief. Because the act does not contain any limiting language on the effective date of December 1, 2011, the procedure is available to ex-offenders who meet the requirements for relief whether their offenses or convictions occurred before or after that date.

The basic requirements for relief, contained in new G.S. 15A-173.2, are as follows:

1. The person must have been convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court and have no other convictions for a felony or misdemeanor other than a traffic violation.
2. The person must petition the court in which the convictions occurred—specifically, the senior resident superior court judge if the convictions were in superior court and the chief district court judge if the convictions were in district court. These judges may delegate their authority to hold hearings and issue, modify, or revoke certificates of relief to other judges or to clerks or magistrates in their district. The procedure for the filing and hearing of the petition, such as the giving of notice to the district attorney's office, is described in new G.S. 15A-173.4. *See also* G.S. 15A-173.6 (requiring the victim witness coordinator in the district attorney's office to give notice of the petition to the victim).
3. The person must establish certain matters by a preponderance of the evidence, including that twelve months have passed since the person completed his or her sentence, that the person is engaged in or is seeking to engage in a lawful occupation or activity, and that the person has no criminal charges pending.

If granted, a certificate of relief applies to two types of collateral consequences: "collateral sanctions," defined as a penalty, disability, or disqualification imposed by operation of law, such as a mandatory bar on obtaining a license for a particular occupation; and "disqualifications," defined as a penalty that an agency, official, or court may impose based on the conviction, such as a discretionary bar on an occupational license. A certificate of relief relieves the person of all automatic "collateral sanctions" except for those listed in new G.S. 15A-173.3 (for example, sex offender registration requirements and firearm disqualifications); those imposed by the North Carolina Constitution or federal law (for example, the state constitutional ban on holding the office of sheriff if previously convicted of a felony and the federal bans on federally-assisted housing and food stamp benefits for certain convictions); and those specifically excluded in the certificate**.** A certificate of relief does not bar an entity from imposing a discretionary "disqualification" based on the conviction, but the entity may consider the certificate favorably in deciding whether to impose the disqualification. A certificate of relief also does not result in an expunction or pardon of the conviction; a person must use other mechanisms, if available for the conviction in question, to

obtain those forms of relief.

Through a grant from the Z. Smith Reynolds Foundation, the indigent defense education group at the UNC School of Government is developing a searchable, electronic database, specific to North Carolina, of the collateral consequences of criminal convictions. This collateral consequences assessment tool (C-CAT) will be available in early 2012. The database will assist people in identifying the collateral consequences that apply to different offenses and the potential relief available under the new certificate-of-relief procedure. For additional information about C-CAT, contact Whitney Fairbanks, Civil Defender Educator at the School of Government.

44. **S.L. 2011-267 (S 272): Crime victims compensation.** Effective for claims submitted on or after July 1, 2011, the act amends G.S. 15B-2(3), which defines "collateral source," to add a charitable gift or donation by a third party, including a charity care write-off of expenses by a medical provider. (Recoveries from collateral sources reduce the amount of compensation a crime victim may receive under the Crime Victim's Compensation Act.) Amended G.S. 15B-2(7) limits compensation for a "dependent's economic loss" (as defined in that subsection) to a maximum of $300 per week for 26 weeks commencing from the date of the injury. Amended G.S. 15B-8.1(b) provides that all personal information, as defined in 18 U.S. C. 2725(3), of victims and claimants and all information concerning the disposition of claims for compensation, except for the total amount of the award, must be kept confidential by the Crime Victims Compensation Commission and Director. Amended G.S. 15B-14(b) provides that, on request of the Attorney General, the proceedings on a claim for compensation shall (was, may) be suspended pending disposition of a criminal prosecution that has been commenced or is imminent.

45. **S.L. 2011-268 (H 650): Self-defense and guns.** Effective for offenses committed on or after December 1, 2011, the act expands the circumstances in which a person may use defensive force and own, possess, and carry a firearm.

Self-defense and other uses of defensive force. North Carolina law recognizes various circumstances in which a person may lawfully use force against the threat of harm. Through decades of decisions, the North Carolina appellate courts have recognized the right to defend oneself, other people, and one's home and property, among other interests, and have developed rules on when those rights apply and amount to a defense to criminal charges. New G.S. 14-51.2, 14-51.3, and 14-51.4 address several of the circumstances in which a person may use defensive force. The statutes restate the law in some respects and broaden it in others. The courts will have to examine their procedures closely to give effect to the new statutory language.

For example, the new defensive-force statutes recognize the right to use deadly force against a forcible, unlawful intrusion into a motor vehicle. The courts therefore will need to develop new jury instructions to reflect this right. If faced with such a threat, a person often would have the right to use deadly force under existing doctrines as well—namely, the right to defend oneself and any other vehicle occupants and also to prevent the commission of a dangerous felony. A person would have the right to raise these defenses and have the jury instructed on them, in addition to the new defense of motor vehicle right, in light of the general principle that a person may rely on multiple defenses that arise from the evidence and on the statement in new G.S. 14-51.2(g) that the statute

"is not intended to repeal or limit any other defense that may exist under the common law."

To take another example, the courts will have to incorporate into their procedures the new statutory presumption of lawfulness, applicable to the use of deadly force against a forcible intrusion into a home, motor vehicle, or workplace. The law has allowed a person to use deadly force against such intrusions, but the courts will have to consider the new presumption in evaluating whether the State has offered sufficient evidence to withstand a motion to dismiss by the defendant and, in cases that go to the jury, will have to give appropriate instructions explaining the presumption. The following summary highlights the key provisions of the new statutes; it does not attempt to address all of the issues the courts will need to consider, which will be covered in a later bulletin on the effect of the law.

New G.S. 14-51.2 modifies defense of habitation, called defense of home in the statute; explicitly recognizes a comparable defense for the workplace; and adopts a new defense involving motor vehicles. All involve defending against forcible intrusions into those areas under the circumstances described in the statute. Most important, the statute creates a presumption of lawfulness in the sense that if a lawful occupant of a home, motor vehicle, or workplace uses deadly force against an intruder and meets the other conditions in the statute, the occupant is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself, herself, or another. The statute states that the new presumption is rebuttable and does not apply in five detailed instances, as when "the person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person." The act repeals G.S. 14-51.1, which modified the common law version of defense of home to allow deadly force to terminate as well as prevent entry by an intruder. Repealed G.S. 14-51.1 also stated that a person has no duty to retreat from an intruder into the home. New G.S. 14-51.2 restates these principles for defense of home, motor vehicle, and workplace cases.

New G.S. 14-51.3 addresses the right to use deadly and nondeadly force to defend oneself and others. The statute appears to track the courts' approach to these rights in most respects, but it may introduce new principles or at least clarify existing ones. For example, the statute states that a person is justified in using deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if the person reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself, herself, or others. The statute does not limit this principle to cases involving a home, motor vehicle, or workplace. Under current law, a person has no duty to retreat in comparable circumstances (that is, when a person is faced with a felonious assault), but the statute's express statement of the principle may require the court to instruct the jury about it in all cases.

New G.S. 14-51.4 describes the circumstances in which a person is not entitled to rely on the defenses in new G.S. 14-51.2 and G.S. 14-51.3—for example, when a person is the aggressor by initially provoking the use of force against himself or herself. Again, these circumstances are similar in many respects to those recognized under current law, but differences exist, requiring close comparison of the statute to existing doctrines.

Changes to gun statutes. In addition to the changes to the right to use defensive force, the act

makes the following changes to gun rights:

- Amended G.S. 14-269(b) exempts additional personnel from the prohibition on carrying a concealed weapon. It adds exemptions for district attorneys, assistant district attorneys, and investigators with a district attorney's office who have concealed carry permits (except for when they are in a courtroom or are drinking) and qualified retired law enforcement officers with concealed carry permits. It also allows detention and corrections officers to keep firearms locked in their vehicles at work. Amended G.S. 14-415.27 exempts district attorneys, assistant district attorneys, and investigators from the prohibitions on areas in which a person may not carry a concealed handgun.
- Amended G.S. 14-269.2(b) requires that a person "knowingly" possess or carry a firearm on school property to be charged with a Class I felony under that subsection.
- New G.S. 14-269.4(6) and G.S. 14-415.11(c)(2) allow a person with a concealed carry permit to have a firearm in a locked vehicle while on the state property specified in that statute, such as the grounds of the State Capitol Building.
- Amended G.S. 14-268.7(a) requires that a minor "willfully and intentionally" possess or carry a handgun to violate that subsection and increases the punishment from a Class 2 to Class 1 misdemeanor.
- Amended G.S. 14-269.8(a) and amended G.S. 50B-3.1(d) allow people who are subject to the firearms prohibition upon issuance of a domestic violence protective order to own a firearm. They still may not possess, purchase, or receive a firearm if subject to the firearms prohibition.
- Amended G.S. 14-288.8(b) and 14-409(b) exempt from the prohibition on weapons of mass destruction—for example, machine guns—people who lawfully may possess or own such weapons under federal law.
- New G.S. 14-408.1 makes it a Class F felony to solicit a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would be illegal; or provide a licensed dealer or private seller with information the person knows to be materially false with the intent to deceive the dealer or seller about the legality of the transfer.
- Amended G.S. 14-415.1 provides that a person is not subject to the prohibition on possession of a firearm by a felon if, pursuant to the law of the jurisdiction in which the conviction occurred, the person has been pardoned or has had his or her firearms rights restored if the restoration could have been granted under North Carolina law.
- New G.S. 14-415.11(c1) allows a person with a concealed carry permit to carry a concealed handgun on the grounds or waters of a park within the State Parks System.
- Amended G.S. 14-415.15 reduces from 90 to 45 days the time for the sheriff to issue or deny an application for a concealed carry permit and likewise reduces from 90 to 45 days the maximum period for a temporary, emergency permit.
- Amended G.S. 14-415.23 allows local governments to adopt an ordinance prohibiting the carrying of concealed weapons in local government buildings, their appurtenant premises, and recreational facilities (was, local buildings, their appurtenant premises, and parks). The amended statute defines recreational facilities as including only playgrounds, athletic fields,

swimming pools and athletic facilities. If a local government adopts an ordinance for recreational facilities, a permittee may secure the handgun in a locked vehicle in an enclosed area of the vehicle.

- Amended G.S. 14-415.24 provides that a valid concealed carry permit issued by another state is valid in North Carolina (was, if the other state grants the same right to North Carolina residents who have valid concealed carry permits).
- New G.S. 120-32.1(c1) prohibits the Legislative Services Commission from adopting rules prohibiting the transportation or storage of a firearm in a closed compartment or container within a locked vehicle on state legislative buildings or grounds. The new provision also allows a legislator or legislative employee to have a firearm in a locked vehicle in a state-owned parking space leased or assigned to that person.

46. S.L. 2011-270 (S 498); S.L. 2011-282 (H 736): Parental choice about corporal punishment of student. G.S. 115C-391(a)(5) has prohibited corporal punishment of a student with a disability as defined in that subsection if the student's parent or guardian stated in writing that corporal punishment may not be administered on the student. S.L. 2011-270 amended G.S. 115C-391(a)(5) to prohibit corporal punishment of *any* student whose parent or guardian stated in writing that corporal punishment may not be administered on the student. S.L. 2011-282, a much larger act addressing school discipline, repeals G.S. 115C-391 in its entirety but adds new G.S. 115C-390.4 containing the same provision on corporal punishment, effective beginning with the 2011-12 school year.

47. S.L. 2011-271 (H 427): Seizure of motor vehicles in felony speeding to elude arrest cases. Effective for offenses committed on or after December 1, 2011, the act amends G.S. 20-141.5 to provide for the seizure and forfeiture of motor vehicles used in the commission of felony speeding to elude arrest offenses under that statute. New G.S. 20-141.5(g) provides that if a person is arrested for a felony, the law enforcement agency must seize the motor vehicle and deliver it to the sheriff of the county in which the offense is committed, who must hold it until trial. The vehicle must be released before trial if: (i) the defendant executes a bond, with sufficient sureties, in an amount twice the value of the vehicle and conditioned on the vehicle's return on the day of trial as provided in G.S. 20-141.5(g)(1); (ii) the felony charge is dismissed (or, at trial, the defendant is acquitted) as specified in the same subsection; (iii) the clerk determines (as provided in G.S. 20-141.5(h)(4)) that a nondefendant motor vehicle owner is an "innocent owner" (the term is not defined); or (iv) the court, in its discretion, orders reclamation of the vehicle by the lienholder (before trial or after conviction) pursuant to the requirements of G.S. 20-141.5(g)(2).

New G.S. 20-141.5(h) provides for sale of the vehicle on conviction of a felony offense pursuant to the procedures in that subsection and in new G.S. 20-141.5(i) (addressing notice of the sale) and (j) (addressing removal of any special equipment increasing the speed of the vehicle). G.S. 20-141.5(h)(3) prohibits sale of the vehicle following conviction if the owner shows: (i) the defendant was an immediate family member of the owner's family; (ii) the defendant had no previous felony or misdemeanor convictions at the time of the offense and no previous or pending violations of G.S. Chapter 20 for the three years before the time of the offense; and (iii) the defendant was under age

19 at the time of the offense. Although this provision appears in G.S. 20-141.5(h), which deals with the procedures following conviction, the owner may be able to pursue this relief before trial, as G.S. 20-141.5(h)(3) authorizes the court to release the vehicle "at the time of hearing, or other proceeding in which the matter is considered." The subsection also states that the owner is entitled to a jury trial.

48. S.L. 2011-277 (S 135): Use of juvenile record for bond and plea decisions. G.S. 7B-3000(e) has permitted a criminal defendant's juvenile record of a delinquency adjudication for a felony or a Class A1 misdemeanor to be used by law enforcement, magistrates, the court, and the prosecutor for decisions about pretrial release, plea negotiations, and plea acceptance. Effective for pretrial release, plea negotiations, and plea acceptance on or after December 1, 2011, the act rewrites that statute to permit use of a juvenile record for those purposes if (i) the criminal case involves a felony or a Class A1 misdemeanor committed before the defendant's 21st birthday (unchanged from the previous version of the statute); and (ii) the delinquency adjudication for a felony or a Class A1 misdemeanor occurred after the defendant reached age 13 (was, an adjudication for such an offense within 18 months before the defendant reached age 16 or after the defendant reached age 16).

49. S.L. 2011-278 (S 397): Expunction of nonviolent felonies for offenders under age 18. Effective December 1, 2011, the act adds G.S. 15A-145.4 to create a new expunction for criminal convictions. Because the effective-date clause does not contain limiting language, the new expunction procedures appear to be available to any person who meets the requirements, regardless of whether the offense or conviction occurred before or after December 1, 2011.

- The offense must be a "nonviolent felony," defined in subsection (a) as any felony that does not fall into one of nine categories, including a Class A through G felony, a felony that includes assault as an essential element, and a felony for which the convicted offender must register as a sex offender. Subsection (b) allows the expunction of multiple nonviolent felonies for which a person is convicted at the same session of court if none of the offenses occurred after the person had already been charged and arrested for the commission of a nonviolent felony.
- Subsections (c), (d), and (e) contain the requirements for expunction. Subsection (c) describes the requirements for the petition, and subsections (d) and (e) describe the responsibilities of the court in rendering a decision. Together they require the following:
    - The person must have been less than age 18 at the time of the commission of the nonviolent felony.
    - The petition may not be filed earlier than four years after the date of conviction or the completion of any active sentence, probation, or post-release supervision, whichever occurs later.
    - The person must not have been previously convicted of a felony or misdemeanor other than a traffic violation (required by subsections (c) and (e)), must have been free of any such conviction for the above four-year period (required by subsection (e)), and must have no outstanding warrants or pending criminal cases (required by subsection (e)).
    - The person must have performed 100 hours of community service since the conviction,

"preferably related to the conviction" according to subsection (c).
    - The person must have no outstanding restitution requirements and must possess a high school diploma, high school graduation equivalency certificate, or general education development degree.
    - The person must not have a previous expunction (required by subsection (e)).
- Under subsection (c), the petition must be served on the district attorney, who has thirty days in which to file an objection. The district attorney must make his or her best efforts to contact the victim before the hearing.
- Before rendering a decision on the petition, the court must take the steps required by subsection (d), including calling on a probation officer for additional investigation or verification of the person's conduct during the four years since the conviction in question. Subsection (e) provides that if the court finds that the petitioner has met all of the requirements, the court "may" grant the petition. Subsections (f) through (h) describe the legal effect of the granting of an expunction petition and the responsibilities of agencies affected by the order. Subsection (i) requires the probation officer assigned to the person and, if none, the court at the time of the conviction to advise the person of the potential eligibility for expunction.

The act also amends G.S. 15A-151 to allow the Administrative Office of the Courts to disclose, for employment and certification purposes only, information about the expunction to state and local law enforcement agencies, the North Carolina Criminal Justice Education and Training Standards Commission, and the North Carolina Sheriffs' Education and Training Standards Commission. (New G.S. 15A-145.4(f) requires a person pursuing certification from either of those commissions to disclose expunged felony convictions.) The act likewise amends G.S. 17C-13 and 17E-12 to allow these commissions access to the information and to authorize them to deny, suspend, or revoke a person's certification based solely on conviction of a felony, whether or not expunged.

50. **S.L. 2011-283 (H 542): Limits on expert testimony.** As part of new limits in civil tort actions, the General Assembly revised North Carolina Evidence Rule 702(a) in G.S. Chapter 8C, which is applicable to criminal and civil cases. As amended, the rule allows an expert witness to give an opinion only if the testimony is based on sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case. The amended rule is effective for actions commenced on or after October 1, 2011.

51. **S.L. 2011-285 (H 243): No fee for certificates under seal for appointed counsel.** Effective July 1, 2011, amended G.S. 7A-308(b1) provides that fees are not chargeable by the clerk of court for certificates under seal when requested by an attorney appointed or under contract with the Office of Indigent Defense Services to represent an indigent person at state expense in connection with the appointed case or contract.

52. **S.L. 2011-291 (H 595): Reorganization of legislative oversight committees.** Effective June 24, 2011, the act reorganizes and consolidates several legislative committees and commissions, some involving courts and criminal justice issues. Section 1.4 of the act renames the Joint Legislative

Corrections, Crime Control, and Juvenile Justice Oversight Committee, under G.S. 120-70.93 through 120-70.95, as the Joint Legislative Oversight Committee on Justice and Public Safety, adds three members, transfers the duties of the Joint Legislative Committee on Domestic Violence to that Committee, and specifies additional matters related to juveniles for the Committee to examine. The act makes conforming changes to various statutes to provide for the submission of reports to the renamed oversight committee, such as reports by the State Bureau of Investigation on the DNA database required by G.S. 15A-266.5 and reports by the North Carolina Innocence Inquiry Commission on its activities as required by G.S. 15A-1475.

53. **S.L. 2011-303 (H 805): Criminal record check as condition of obtaining name change.** Effective June 24, 2011, the act amends G.S. 101-5 to require a person who desires to obtain a name change from the clerk of superior court to provide certain information in the application for the name change, including the certified results of an official state and national criminal history record check. The amended statute directs the clerk to instruct applicants on the process for having fingerprints taken and submitted for the criminal history record check. On granting a name change, the clerk must forward the order to the Division of Criminal Information of the State Bureau of Investigation, which must update its records.

54. **S.L. 2011-307 (S 684): Changes in maximum sentence and post-release supervision for offenses requiring registration as a sex offender.** Effective for offenses committed on or after December 1, 2011, new G.S. 15A-1340.17(f) adds sixty months to the maximum term of imprisonment for Class B1 through E felonies requiring registration as a sex offender. This sixty-month increase corresponds to the sixty-month period of post-release supervision for Class B1 through E felonies requiring registration as a sex offender. The additional sixty months is in lieu of the nine months added to the maximum term of imprisonment under current law for all Class B1 through E felonies and the additional twelve months required for all Class B1 through E felonies under the Justice Reinvestment Act (S.L. 2011-192 (H 642), applicable to offenses committed on or after December 1, 2011). Amended G.S. 15A-1368.2(a) provides that a person whose maximum sentence is increased by sixty months pursuant to new G.S. 15A-1340.17(f) must be released for post-release supervision sixty months before the end of his or her sentence. As a result of these changes, if a person violates post-release supervision, he or she may be returned to prison for an additional sixty months. Amended G.S. 15A-1354(b) and 15A-1368(a)(5) provide that if a defendant is convicted of more than one offense, the sixty-month increase does not apply to the additional offenses. For a discussion of the potential *Blakely* implications of this change (that is, whether a jury must make findings to allow increase of the sentence beyond its maximum), as well as other aspects of this act, see Jamie Markham, *Changes to Post-Release Supervision for Sex Offenders*, posting to North Carolina Criminal Law: UNC School of Government Blog (July 21, 2011).

Effective June 27, 2011, amended G.S. 15A-1368.2(b) provides that "a willful refusal to accept post-release supervision or to comply with the terms of post-release supervision," as defined in the amended statute, is punishable as a contempt of court under G.S. 5A-11 and may result in imprisonment for up to thirty days under G.S. 5A-12. The change applies to all offenses requiring registration as a sex offender, not just Class B1 through E felonies, and also appears to apply to

offenses committed before or after the stated effective date as long as the person is still on post-release supervision and commits the violation on or after the effective date. The amended statute states that a person who is imprisoned for this contempt is not entitled to credit for time served against the sentence for which the person is subject to post-release supervision. The amended statute also states that if a person refuses post-release supervision and is not released for that reason, post-release supervision is tolled—that is, the person is still subject to the applicable period of post-release supervision. Amended G.S. 143B-266(a) gives the Post-Release Supervision and Parole Commission authority to conduct contempt proceedings for such a violation in accordance with the requirements for plenary contempt proceedings under G.S. 5A-15. In plenary contempt proceedings, an indigent respondent is entitled to appointed counsel. *See* G.S. 7A-451(a)(1) (providing for the right to appointed counsel if imprisonment is likely to be imposed); *Hammock v. Bencini,* 98 N.C. App. 510 (1990) (recognizing the right to appointed counsel for criminal contempt if imprisonment is likely to be imposed); *McBride v. McBride,* 334 N.C. 124 (1993) (recognizing the same right for civil contempt).

55. **S.L. 2011-313 (S 602): Allowing fowl to run at large.** Effective for offenses committed on or after December 1, 2011, the act amends G.S. 68-25 to expand the circumstances in which allowing fowl to run at large is a Class 3 misdemeanor.

56. **S.L. 2011-321 (S 98): Restriction on availability of information revealing natural voice of 911 caller.** G.S. 132-1.4(c)(4) provides that the contents of 911 calls are public records except for contents that reveal information that may identify the caller, victim, or witness (such as the caller's name). Effective June 27, 2011, amended G.S. 132-4.1(c) protects the natural voice of the caller, victim, or witness and allows release of a written transcript or altered voice reproduction to do so; however, the amended statute provides that "the original call shall be provided under process to be used as evidence in any relevant civil or criminal proceeding."

57. **S.L. 2011-323 (S 131): Collection fees for unpaid fines, fees, costs, and restitution.** Effective for cases adjudicated on or after July 1, 2011, amended G.S. 7A-321 includes city and county governments among the agencies with which the Administrative Office of the Courts may contract to collect unpaid fines and fees and allows such contracts to provide that the collecting agency may keep the collection assistance fee. The amended statute also allows collection contracts to be used for collecting restitution.

58. **S.L. 2011-324 (S 143): Restrictions on access by offenders to public employees' personnel information.** G.S. 126-23 has provided that agencies having custody of the personnel information identified in that statute for public employees—such as the name of the employee, current position, office or station to which the employee is assigned, and disciplinary action against the employee—must permit examination of the records of that information. Effective June 27, 2011, new G.S. 126-23(d) provides that people in the custody or under the supervision of the Department of Correction or a local confinement facility are not entitled to access to and are prohibited from obtaining such records unless authorized by a court order. New G.S. 126-23(e) gives an attorney investigating unlawful misconduct or abuse by a Department of Correction employee the right to obtain

information sufficient to identify the full name of the employee and current position with the Department (or the last position and date of employment of the employee); however, the attorney may not give the offender copies of departmental records or official documents unless authorized by a court order.

59. **S.L. 2011-325 (S 144): Regulation of cash converter businesses.** Effective for purchases by cash converters on or after December 1, 2011, the act amends G.S. Chapter 91A, which regulates pawnbrokers, to add cash converter businesses as defined in amended G.S. 91A-3, to require such businesses to keep the records described in new G.S. 91A-7.1, to make such businesses subject to the prohibitions in G.S. 91A-10, and to make violations a Class 2 misdemeanor under G.S. 91A-11 (except for violations of G.S. 91A-10(a)(6) or (b), which involve the taking or purchasing of an item known to be stolen and are subject to prosecution under North Carolina's criminal statutes).

60. **S.L. 2011-326 (S 148): Technical corrections to appointment of counsel and changes to controlled substance schedules.** Effective June 27, 2011, the act makes technical corrections to numerous statutes, including the following to specify, consistent with other statutes, that the appointment of counsel for a person entitled to counsel at state expense must be made in accordance with rules adopted by the Office of Indigent Defense Services: G.S. 7B-602(a) and 7B-1101.1(a) (provisional counsel for parent in abuse, neglect, or dependency cases and termination of parental rights cases); G.S. 15A-1345(e) (counsel for probationer for revocation proceedings); and G.S. 15A-269(c) and 15A-270.1 (counsel for motion for postconviction DNA testing and for appeal of denial of motion).

    The act also adds the following substances to the controlled substances schedules: in Schedule I, alpha-methyltryptamine and 5-methoxy-n-diisopropyltryptamine in G.S. 90-89(3) and n-benzylpiperazine and 2.5-dimethoxy-4-(n)-propylthiophenethylamine in G.S. 90-89(5); in Schedule II, lisdexamfetamine, including its salts, isomers, and salts of isomers in G.S. 90-90(3) and tapentatol in G.S. 90-90(2); and in Schedule III, nandrolone decanoate (was, nandrolone deconoate) in G.S 90-91(k)5. These substances are not new. The Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services previously added them (other than the last, which involves a spelling correction) to the controlled substance schedules by administrative rule pursuant to its authority under G.S. 90-88, which authorizes the Commission to add, delete, or reschedule controlled substances. *See* 10 N.C. ADMIN CODE 26F.0102, .0103.

61. **S.L. 2011-329 (S 241): Level one DWI sentence if minor or disabled person is in vehicle.** Effective for offenses committed on or after December 1, 2011, amended G.S. 20-179(c) requires that a person convicted of impaired driving be sentenced to a level one punishment if the grossly aggravating factor in amended G.S. 20-179(c)(4) applies. That subsection, as amended, makes it a grossly aggravating factor for a person to drive while impaired with (i) a child under age 18; (ii) a person with the mental development of a child under age 18; or (iii) a person with a physical disability preventing unaided exit from the vehicle. Previously, this grossly aggravating factor applied only to driving while impaired with a child under age 16 in the vehicle and, for a person to be sentenced at level one, at least two grossly aggravating factors had to be present.

62. **S.L. 2011-329 (S 241): Recording of custodial interrogations for certain crimes and in cases**

involving juveniles. In addition to the above changes involving DWI sentencing, the act revises G.S. 15A-211, which was part of several innocence initiatives that were enacted in 2007 and required electronic recording of custodial interrogations in homicide investigations at any place of detention. *See* John Rubin, *2007 Legislation Affecting Criminal Law and Procedure,* ADMINISTRATION OF JUSTICE BULLETIN No. 2008/01, at pp. 5–6 (Jan. 2008). Effective for offenses committed on or after December 1, 2011, amended G.S. 15A-211 requires electronic recording of custodial interrogations at any place of detention for investigations related to any Class A, B1, or B2 felony and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury. The amended statute also requires electronic recording of all custodial interrogations of juveniles in criminal investigations conducted at any place of detention; this provision is not limited to specific offenses. The act does not define the term "juvenile." The act may apply to custodial interrogations for all offenses committed by juveniles under age 16—that is, to delinquency cases. It also may apply to custodial interrogations for all offenses committed by juveniles under age 18 because the term "juvenile" is defined, at least for purposes of G.S. Chapter 7B, as a person who has not reached his or her 18th birthday. G.S. 7B-101(14); *see also State v. Fincher,* 309 N.C. 1 (1983) (applying statutory juvenile warning requirements to defendant under age 18). Amended G.S. 15A-211(c) also provides that for all interrogations subject to the statute a visual and audio recording must be simultaneously made when reasonably feasible, but the defendant may not raise the failure to do so as grounds for suppression under the statute.

63. **S.L. 2011-333 (S 324): Cherokee ABC Commission.** Effective June 27, 2011, the act authorizes the Eastern Band of Cherokee Indians, subject to the approval of the Secretary of the U.S. Department of the Interior, to establish its own Alcoholic Beverage Control (ABC) Commission. For a further discussion of the act, see Michael Crowell, *2011 North Carolina Legislation Affecting Alcoholic Beverage Control,* at p. 2 (July 2011).

64. **S.L. 2011-336 (S 349): Collateral consequences for optometrists.** Effective June 27, 2011, the act adds a number of new provisions regulating optometrists, including in new G.S. 90-121.5(b4) that licensees must self-report to the State Board of Examiners in Optometry an arrest or indictment for a felony, driving while impaired, or possession, use, or sale of any controlled substance.

65. **S.L. 2011-349 (474): Photo identification required for dispensing of certain controlled substances.** Effective March 1, 2012, new G.S. 90-106.1 provides that pharmacies must require a person who is seeking dispensation of a Schedule II controlled substance or a Schedule III controlled substance listed in subdivision 1 through 8 of G.S. 90-91(d) to present a valid, unexpired government-issued photographic identification in one of the following forms: a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport. The new statute does not apply to the dispensation of these controlled substances to employees of health care facilities, as defined in G.S. 131E-256(b), for the benefit of their patients.

66. **S.L. 2011-355 (S 743): Violations of limited volunteer license for doctors and physician assistants.** Effective June 27, 2011, new and amended G.S. 90-12.1A, 90-12.1B, 90-12.4A, and 90-12.4B make it a Class 3 misdemeanor, punishable by a fine from $25 to $50, for a holder of a limited or retired

limited volunteer license to practice medicine and surgery or as a physician assistant in violation of the limitations of the license.

67. **S.L. 2011-356 (S 762): Assault inflicting physical injury on law enforcement officers and others.** Effective for offenses committed on or after December 1, 2011, the act creates new offenses with enhanced punishments for assaults inflicting physical injury on certain personnel.

New G.S. 14-34.7(c) makes it a Class I felony to assault a law enforcement, probation, or parole officer or detention facility employee in the discharge or attempted discharge of his or her duties if the assault inflicts "physical injury." The new statute states that physical injury includes "cuts, scrapes, bruises, or other physical injury which does not constitute serious injury." Assault on one of the listed officers that does not inflict physical injury remains a Class A1 misdemeanor under G.S. 14-33(c)(4), which covers assaults on state and local government officers and employees.

Amended G.S. 14-34.6(a), which has made an assault on a firefighter, emergency medical technician, medical responder, or emergency department personnel a Class A1 misdemeanor, creates the offense of assault inflicting physical injury on such personnel and makes the offense a Class I felony. An assault on these personnel that does not inflict physical injury is no longer covered by that statute; therefore, unless these personnel are state or local government employees, an assault that does not inflict physical injury appears to be a simple assault, a Class 2 misdemeanor under G.S. 14-33(a). Amended G.S. 14-34.6(b), which has made it a Class I felony to assault any of the personnel identified in subsection (a) if the assault inflicts serious bodily injury or is with a deadly weapon, makes a violation of amended subsection (a) a Class H felony if it inflicts serious bodily injury or is with a deadly weapon. As a result of this change, an assault on these personnel that does not inflict physical injury but is with a deadly weapon appears to be a Class A1 misdemeanor under G.S. 14-33(c)(1) and no longer a felony. Amended G.S. 14-34.6 does not contain its own definition of physical injury.

Amended G.S. 14-288.9, which has made it a Class 1 misdemeanor to assault emergency personnel as defined in that statute, creates the offense of assault causing physical injury to such personnel, a Class I felony. An assault on these personnel that does not inflict physical injury is no longer covered by that statute; therefore, unless they are state or local government employees, an assault that does not inflict physical injury appears to be a simple assault, a Class 2 misdemeanor under G.S. 14-33(a). Amended G.S. 14-288.9 does not contain its own definition of physical injury.

68. **S.L. 2011-361 (H 113): Increased penalty for unsafe movement affecting motorcyclist.** G.S. 20-154(a) requires a driver, before starting, stopping, or turning from a direct line, to see that the movement can be made safely. When such a movement may affect another driver, the moving driver must provide the appropriate signal. Violation of this provision, commonly referred to as "unsafe movement," is an infraction punishable by a penalty up to $100 under G.S. 20-176. Effective for offenses committed on or after December 1, 2011, new G.S. 20-154(a1) makes a violation of G.S. 20-154(a) an infraction with a penalty of at least $200 if it causes a motorcyclist to change travel lanes or to leave the portion of the street or highway designated as a travel lane; and it makes a violation of G.S. 20-154(a) an infraction with a penalty of at least $500 if the violation results in a crash causing property damage or personal injury to a motorcyclist or passenger.

69. **S.L. 2011-369 (H 432): Taking of feral swine.** Effective for acts on or after October 1, 2011, new G.S. 113-29.12 makes it unlawful to remove feral swine from a trap while the swine is still alive or to transport the live swine after that removal, and new G.S. 113-294(s) makes it a Class 2 misdemeanor to violate new G.S. 113-291.12, designating the acts of removal and transport as separate offenses.

70. **S.L. 2011-377 (H 649): Bail bondsmen regulations and bond forfeiture.** The act makes two sets of changes, one involving miscellaneous regulations of bail bondsmen and the other on the procedure for setting aside a bond forfeiture.

Effective June 27, 2011, the act makes the following amendments to G.S. Chapter 58: (1) new G.S. 58-17-16 provides that a surety is not required to return any portion of a premium to the defendant if, after entering into an agreement, the defendant's bond is reduced; (2) amended G.S. 58-71-80(a) lists additional grounds for denying, suspending, and imposing other adverse license consequences against a bondsman, including convictions involving dishonesty and breach of trust; (3) amended G.S. 58-71-82 allows a person to hold simultaneously a professional bondsman's and runner's license; and (4) new G.S. 58-71-122 allows a licensed professional bondsman to transfer the bondsman's business to another licensed professional bondsman subject to the condition, among others, that the transferor remain responsible for all outstanding bond obligations until relieved as provided in the new statute.

Effective December 1, 2011, amended G.S. 15A-544.5(d)(1) allows a defendant, surety, professional bondsman or runner, or bail agent acting on behalf of an insurance company to move to set aside a forfeiture (was, defendant or surety generally); amended G.S. 15A-544.5(d)(2) specifies that the moving party must serve a copy of the motion on the district attorney and attorney for the county board of education and that the clerk of superior court also must provide a copy, by mail or personal delivery, to those attorneys; and amended G.S. 15A-544.5(d)(4) provides that the district attorney and attorney for the board of education have twenty days to object from the date a copy of the motion is provided by the clerk of superior court. The act makes the first two of these changes to the procedure for moving for relief from a judgment of forfeiture in G.S. 15A-544.8.

The act's preamble also refers to the North Carolina Court of Appeals unpublished decision of *State v. Cortez* (April 19, 2011), in which the clerk of court granted a motion to set aside a forfeiture when the district attorney and county board of education did not file a timely objection. Consistent with earlier published decisions, the Court of Appeals held that the clerk did not have the authority to grant the motion because it did not specify any of the required grounds for setting aside a forfeiture. The act's preamble states that it was not the intent of the General Assembly that the description of the content of motions in G.S. 15A-544.5(d)(1) would constitute a jurisdictional limitation on the clerk's authority to grant such motions. The body of the act, however, makes no changes to the required grounds for setting aside forfeitures. The third edition of the bill would have amended G.S. 15A-544.5(d)(4) to require the clerk to enter an order setting aside a forfeiture order "regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either" if a timely objection was not filed, but this language was not part of the enacted legislation.

71. **S.L. 2011-378 (H 662): Fee for electronic monitoring as a condition of pretrial release.** Effective July

1, 2011, the act adds G.S. 7A-313.1 to allow a county that provides the personnel, equipment, and other costs of electronic monitoring as a condition of pretrial release to collect a fee from the offender that is the lesser of the amount of the jail fee allowed by G.S. 7A-313 ($10 for each 24 hours of confinement beginning August 1, 2011) or the actual cost of providing the electronic monitoring. The new statute states that a county may not collect a fee from an offender who is determined to be indigent and entitled to court-appointed counsel. This fee is not collected by the clerk of court.

72. **S.L. 2011-381 (H 761): Tampering with ignition interlock system; false special identification cards; criminal history checks of applicants for restoration of a revoked driver's license.** Effective for offenses committed on or after December 1, 2011, new G.S. 20-17.8A makes it a Class 1 misdemeanor to

- tamper with, circumvent, or attempt to circumvent
- an ignition interlock device required to be installed on a motor vehicle by judicial order, statute, or condition for an individual to operate a motor vehicle
- for the purpose of
  - avoiding or altering testing on the ignition interlock device in the operation or attempted operation of a vehicle, or
  - altering the testing results received or results in the process of being received on the ignition interlock device.

The new statute makes each act a separate violation.

Also effective for offenses committed on or after December 1, 2011, amended G.S. 20-30 prohibits falsehoods related to special identification cards in the same manner as for driver's licenses and learner's permits.

Effective December 1, 2011, new G.S. 114-19.31 authorizes the Department of Justice (DOJ) to provide the Division of Motor Vehicles (DMV) with a criminal history record of any application for restoration of a revoked driver's license. DMV must submit the applicant's fingerprints and signed consent to DOJ and must keep the information it obtains confidential. DOJ may charge a fee for the criminal history record check, and DMV may charge the applicant with its expenses.

73. **S.L. 2011-385 (S 636): Provisional driver's licenses.** Effective for limited learner's permits and provisional licenses issued on or after October 1, 2011, the act places additional restrictions and requirements on such permits and licenses. Effective for offenses committed on or after October 1, 2011, new G.S. 20-13.3 provides for a civil revocation of a limited learner's permit or provisional license of a person under age 18 if the person is charged with a "criminal moving violation" as defined in the new statute. For a complete discussion of these changes, see Shea Denning, *S.L. 2011-385 Targets Unsafe Driving by Teenagers*, posting to North Carolina Criminal Law: UNC School of Government Blog (August 3, 2011).

74. **S.L. 2011-389 (H 678): Pilot program for release of inmates to adult care homes.** Effective June 28, 2011, the act directs the Department of Health and Human Services (DHHS), in collaboration with

the Department of Correction, to establish a pilot program to allow inmates in need of personal care services and medication management to be placed in an adult care home. The act requires DHHS to select one adult care home for the pilot and to report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than 18 months after the home admits its first resident.

75. **S.L. 2011-394 (H 119): Recycling violations by ABC permittees.** Effective July 1, 2011, new G.S. 130A-309.10 prohibits certain ABC permittees from knowingly disposing of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or incinerators.

76. **S.L. 2011-408 (S 315): Campaign signs in highway rights-of-way.** G.S. 136-32 has made it a Class 1 misdemeanor to place an unauthorized sign on a highway. Effective for elections held on or after October 1, 2011, amended G.S 136-32 applies this prohibition to political signs but exempts political signs of a certain size in designated areas during periods before and after elections. New G.S. 136-32(e) makes it a Class 3 misdemeanor for a person to steal, deface, vandalize, or unlawfully remove a lawful political sign.

2011 LEGISLATION OF INTEREST TO MAGISTRATES:
CIVIL, JUVENILE, MOTOR VEHICLE, JUDICIAL AUTHORITY AND ADMINISTRATION

Ann Anderson (civil procedure, estates & special proceedings)
Michael Crowell (judicial authority & administration)
Shea Denning (motor vehicle law)
Janet Mason (juvenile)

UNC School of Government
August 15, 2011

A copy of any bill can be viewed, downloaded or printed from the General Assembly Web site at www.ncga.state.nc.us. An expanded electronic version of this document containing criminal law summaries and hyperlinks to legislation, reports, and other documents referenced therein is available at http://dailybulletin.unc.edu/summaries11/category04.html.

Contents

Civil Procedure, Estates, and Special Proceedings

1. S.L. 2011-199 (H 380): Discovery of electronic information.

Amends G.S. 1A-1, Rules 26, 33, and 34 of the Rules of Civil Procedure to include "electronically-stored information" among the items parties may obtain in the course of discovery. Further amends Rule 34 to govern the manner of production of electronically-stored information, and to provide that a party may object to a request for such information on the basis that it is not reasonably accessible because of undue burden or cost, or for reasons related to the requested manner of production. Adds provisions placing the burden in Rules 26 and 37 on the objecting party to show the basis for the objection, and providing that a court may nevertheless (with certain limitations) order the discovery for good cause shown. Amends Rule 37 to provide that a court generally may not sanction a party for failing to produce electronically-stored information lost as the result of routine, good-faith operation of an electronic information system.

Also amends Rules 16 to provide that a judge must (was, "may") make an order that includes the matters dealt with in a pre-trial conference held at the judge's discretion. Further adds new provisions to Rule 26 requiring a party withholding information on grounds of privilege or protection to claim the basis expressly and reasonably describe the items withheld. Also provides a procedure for resolving inadvertent disclosure of privileged or protected information.

Revamps the procedure for a discovery conference pursuant to Rule 26(f). Most notably, the procedure is now structured to provide that, upon any party's request, the parties shall hold a meeting among themselves to resolve discovery issues and formulate a plan (with specific requirements set forth in the statute) to present to the court. If they are unable to agree on a plan, upon motion of a party the parties must report to and have a discovery conference before the court, at which the court shall enter a discovery plan. The court may initiate a discovery meeting or conference at any time if the parties do not do so.

Finally, amends Rule 45 to include electronically-stored information among the items subject to subpoena, and provides general requirements for the method and manner of requesting and producing such information and for objecting to its production. Effective October 1, 2011.

2. **S.L. 2011-247 (H 379): Uniform Interstate Depositions and Discovery Act**
Enacts new G.S. Chapter 1F. Provides a procedure by which discovery in North Carolina relevant to an action in a foreign jurisdiction (another state) can be ordered by a North Carolina court. Requires a person requesting issuance of a subpoena in a North Carolina court to submit a subpoena of a foreign jurisdiction to a clerk of superior court in the North Carolina county where discovery is sought. The clerk must promptly issue a subpoena (with specific content requirements) for service upon the person to which the foreign subpoena is directed, open an appropriate court file, assign a file number, and collect the applicable filing fee pursuant to G.S. 7A-305(a)(2). A request for issuance of a subpoena under this act does not constitute an appearance in the North Carolina court. Sets forth provisions concerning service of the subpoena, applicable Rules of Civil Procedure, and applications for protective orders. Amends Rule 28(d) of the Rules of Civil Procedure to specify that the rule now applies only to depositions to be used in foreign countries (was, "outside this state").

   Also creates new subsection (f) to Rule 45 of the Rules of Civil Procedure to allow a party to a North Carolina action to request discovery from persons outside North Carolina in the form of oral deposition, deposition on written questions, or request for production of documents and tangible things. The party must follow any procedures under the laws applicable to the area where discovery is sought, including obtaining a commission from the North Carolina court if required. If a commission is required, the party must make a motion in the court where the action is pending following the procedures sets forth in the rule, and the court shall hear and grant or deny the commission as set forth in the rule. Also directs the revisor of statutes to print all relevant portions of the official comments to the Uniform Interstate Depositions and Discovery Act. Effective December 1, 2011 and applies to all cases then pending or filed on or after that date.

3. **S.L. 2011-299 (H 687): Attorney fees in actions against cities and counties.**
Creates G.S. 6-21.6 to provide an award of attorney fees and costs to successful challengers to city or county actions. If the court finds the city or county acted outside the scope of its authority, the court has discretion to award fees and costs. If the court further finds that the city or county's action was an abuse of discretion, the court "shall" award fees and costs. Effective October 1, 2011 and applies to claims for relief brought or defended on or after that date.

4. **S.L. 2011-303 (H 805): Additional requirements on name change applications.**

Amends G.S. 101-5 to require that applicants to the clerk for name changes submit with their applications the certified results of an official state and national criminal history record check and a sworn statement regarding county of domicile and outstanding tax and child support obligations. Clerk must provide certain instructions regarding obtaining the criminal history record check. Clerk is also required, in an order of name change, to summarize the information reviewed. Clerk must forward the order to the SBI Division of Criminal Information which shall update its records accordingly. Clerks are required to deny an order of name change where the clerk finds good and sufficient reason for doing so, and the clerk must state in the order the reasons for denial. Appeal of a denial is to the chief [senior] resident superior court judge within 30 days of the date of the denial order, and the judge's decision is final. There is a twelve-month waiting period for re-applications after denial. A clerk may set aside an order of name change in the event of fraud or material misrepresentation to the court. Effective June 24, 2011.

5. **S.L. 2011-317 (S 586): Motions in multicounty districts.**
Amends G.S. 1A-1, Rule 7(b)(4) of the North Carolina Rules of Civil Procedure to provide that a civil motion in a case filed in a multicounty district may be heard in another county within that district with permission of a district's senior resident superior court judge or judge's designee. The motion shall be heard in a civil session except in an emergency as determined by the senior resident superior court judge or designee. Effective October 1, 2011 and applies to actions arising on or after that date.

6. **S.L. 2011-332 (S 300): Service of process and other service amendments.**
Amends various statutes and Rules of Civil Procedure regarding service. Amends G.S. 7A-217 to allow service by signature confirmation or designated delivery service in small claims actions assigned to magistrates. Amends G.S. 150B-23(c), G.S. 150B-36(b3), G.S. 150B-38(c), and G.S. 150B-42(a) to provide for service in administrative cases in accordance with relevant provisions of Rules 4 and 5 of the Rules of Civil Procedure. Amends Rule 4(c) of the Rules of Civil Procedure to clarify that the sixty-day time frame for serving a summons applies to all summons under Rule 4(j) and (j1) (was, Rule 4(j)(1) a and b). Amends G.S. 7B-1102 to require that a copy of a motion to terminate parental rights that is served on a parent be sent to that parent's attorney of record, if any. Amends Rule 5(b) of the Rules of Civil Procedure to require that Rule 5(b) service be made upon a party's attorney of record, if any; that service upon an attorney may be made by mail; and that service upon a party (if permitted) may be made by handing a copy to the party, mailing a copy to the party, or, if the address is not known, by filing with the clerk of court. Effective October 1, 2011 and applies to actions as set forth in Section 5.

7. **S.L. 2011-341 (S 414): Reciprocal attorney fee provisions in business contracts.**
Creates G.S. 6-21.6, which provides that reciprocal attorney fee provisions in business contracts are valid and enforceable where the contract is signed by hand. "Business contracts" does not include consumer or employment contracts or contracts with the State of North Carolina or one of its agencies. The court "may" award reasonable fees in accordance with the contract's terms, considering all relevant facts and circumstances including thirteen factors listed in the statute. The amount of the fee is not governed by any stated percentage in the contract. Regarding the limit on fees in actions primarily for the recovery of monetary damages: G.S. 6-21.6(b) states that the award of reasonable attorney fees "may not exceed the monetary damages awarded," while G.S. 6-21.6(f) states that the

award "may not exceed the amount in controversy." The statute is not intended to conflict with G.S. 6-21.2, and parties whose contracts fall within the coverage of both statutes may elect to recover under either. Effective October 1, 2011 and applies to business contracts entered into on or after that date.

8. S.L. 2011-344 (S 432): Probate amendments and related changes.
[Note: S.L. 2011-344 is an extensive act that includes amendments to many areas of estate law. This summary is an overview of the substantive provisions of the act and not a comprehensive listing of its amendments.]

- **Appeals and Costs.** Amends G.S. 1-301.3 to provide that: (1) this section applies to the administration of trusts (was, testamentary trusts) and of estates of decedents, incompetents and minors; the notice of appeal of a clerk's order or judgment must contain a short and plain statement of the basis for the appeal (was, shall "specify" the basis); the notice of appeal must be filed within 10 days of entry of the clerk's order; and that in an appeal to superior court, if the record is insufficient, the judge may receive additional evidence on the "factual" (was "evidentiary") issue in question.

  Amends G.S. 7A-307 to add estate proceedings under new G.S. 28A-2-4 to the list of matters in which costs are assessed under this section. States that the cost assessed for the filing of a caveat to a will is $200, and that the only cost assessed with reopening an estate administration under G.S. 28A-23-5 is forty cents per $100, or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened. Caps the total cost assessed, including the total cost assessed in all previous administrations of the estate, at $6,000.

- **General Provisions for Estate Proceedings.** Creates new G.S. 28A-2-4 providing that the clerks of superior court have original jurisdiction of estate proceedings, and lists certain types of matters as estate matters. (Also amends G.S. 28A-1-1 to define "estate proceeding.") States examples of estate proceedings under the subject matter jurisdiction of the clerk. Provides criteria regarding the transfer of an estate proceeding to superior court. Declares that the clerk does not have jurisdiction of (1) actions by or against creditors or debtors of an estate except as provided in Article 19 of G.S. Chapter 28A; (2) actions involving claims for monetary damages; (3) caveats, except as provide under G.S. 31-36; (4) proceedings to determine venue; and (5) recovery of property transferred or conveyed by a decedent with the intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).

  Creates G.S. 28-2-5 to provide that the clerk has jurisdiction over special proceedings and that nothing in the statute is to be construed as limiting the jurisdiction of the clerk in special proceedings.

  Creates G.S. 28A-2-6 through G.S. 28A-2-10 to make provisions for commencement of contested and uncontested estate proceedings as well as for pleadings, extensions of time, consolidation of an estate proceeding with a civil action, joinder of claims, and notice of transfer. Provides that certain Rules of Civil Procedure apply to estate proceedings, unless the clerk directs otherwise, and that the clerk may direct that any or all of the remaining Rules apply. Makes additional provisions governing representation

of parties and waiver of notice of appeal. Gives the clerk authority to consider and approve certain settlements (not including caveats).

- **Probate of Will.** Amends G.S. Chapter 28A, recodifying Article 5 of G.S. Chapter 31 (G.S. 31-12 through G.S. 31-31.2) as Article 2A of G.S. Chapter 28A. Authorizes the clerk to shorten the initial 60-day period during which the executor may apply to have the will proved, if good cause is shown. Enacts new G.S. 28A-2A-7 to allow a person entitled to apply for probate of a will under G.S. 28-2A-1 or G.S. 28A-2A-2 to file a petition for probate of the will in solemn form, and to provide that the matter will proceed as an estate proceeding governed by G.S. Chapter 28A, Article 2. Makes directives regarding probate of a will in solemn form and contesting the validity of a will by an interested party.

- **Administration of Decedents' Estates.** Amends G.S. 28A-3-2 to provide that any interested person may file a petition to determine the proper venue for administration of the estate, and that the issue is to be heard by a judge. Amends G.S. 28A-4-1 to provide that any interested person may file a petition alleging that a person is disqualified to serve as administrator of the estate pursuant to G.S. 28A-4-2.

  Amends the procedures in G.S. 28A-5-1 should a person named or designated as an executor fail to timely qualify or renounce the office of executor. Amends the procedures in G.S. 28A-5-2 should a person entitled to apply for letters of administration fail to timely apply for those letters.

  Creates G.S. 28A-6-1(c) to provide that the clerk may rely on the following as evidence of death: (1) a certified or authenticated copy of a death certificate purported to be issued by an official or agency of the place where the death purportedly occurred, (2) a certified or authenticated copy of any record or report of a domestic or foreign governmental agency evidencing the date of death, (3) a certificate or authenticated copy of medical records evidencing the date of death, or (4) any other evidence that clerk deems sufficient to confirm the date of death.

  Amends G.S. 28A-6-2 to provide that all persons entitled to an equal or higher preference for appointment as personal representative than an applicant who is not entitled to a priority of appointment are to be given 15 days' prior written notice of the application (unless the persons with an equal or higher preference have renounced).

  Amends G.S. 28A-6-4 to clarify the procedure by which any interested person may by written petition (was, objection) contest the issuance of letters of administration or letters testamentary to a person who is otherwise entitled to apply. Provides that an appeal from the clerk's order is as in an estate proceeding under G.S. 1-301.3 (was, as in a special proceeding).

  Amends G.S. 28A-8-1 to provide that no bond is required for a personal representative who is a trust institution licensed under G.S. 53-159 (was, a national banking association having its principal place of business in this state or a state bank acting under G.S. 53-159).

Amends G.S. 28A-8-3 to provide that upon receipt of a verified petition by an interested party requesting modification of bond requirements, the clerk is to conduct a hearing in accordance with Article 2 (was, required the clerk to issue a citation requiring the personal representative to show cause why the bond should not be modified).

Amends G.S. 28A-8-5 to direct the clerk to conduct a hearing under Article 2 of G.S. Chapter 28A upon verified petition from any surety, on the bond of a personal representative, who is in danger of loss of the surety's suretyship. Amends subsection (b) of G.S. 28A-9-1 to allow the clerk to conduct a hearing, on the clerk's own motion or upon the verified petition of any person interested in the estate, in accordance with Article 2 of G.S. Chapter 28A to determine if any of the grounds for revocation of letters of administration, letters testamentary, or letters of collection as indicated in subsection (a) of this section exist. Provides that notice of the hearing is to be provided in accordance with Article 2. Amends G.S. 28A-9-4 and G.S. 28A-10-6 to clarify that (1) an appeal from the order of the clerk granting or denying revocation and (2) an appeal from an order of the clerk denying or allowing the resignation of a personal representative are special proceedings pursuant to G.S. 28A-2-9(b). Authorizes the clerk to issue a stay of an order of revocation or of an order allowing resignation upon the appellant posting an appropriate bond set by the clerk until such time as the cause is heard and determined upon appeal.

Current law requires a personal representative to petition the clerk to obtain an order authorizing the personal representative's custody, control, or possession over real property of the estate. Amendments to G.S. 28A-13-3 make an exception for real property that is given to the personal representative in the deceased person's will, or real property to which the personal representative acquires title during the administration of the estate, providing that the personal representative is immediately entitled to custody, possession, and control of real property meeting this exception and may institute an estate proceeding under subsection (d) to enforce those rights. Also provides that if the real property is occupied by a tenant or lessee, the personal representative may seek ejectment only through the summary ejectment provisions of G.S. Chapter 42.

Amends G.S. 28A-15-12, deleting subsection (a) and replacing it with subsection (a1), providing that a personal representative or collector has the right to sue in superior court to recover any property of any kind that belongs to the estate of the decedent and is entitled to certain provisional remedies under G.S. Chapter 1. Also deletes subsection (b) and replaces it with subsection (b1) providing a personal representative, collector, or any interested person has the right to file a verified petition to institute an estate proceeding for examination of any persons reasonably believed to be in possession of property of any kind belonging to the decedent's estate and to make a demand for the recovery of that property.

Amends G.S. 28A-19-1 to provide that in a pending legal action against the decedent at the time of the decedent's death, which survives the decedent's death, the court may order, on motion, the substitution of the personal representative or collector for the decedent and that motion will constitute the presentation of a claim providing that the

substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3.

Amends G.S. 28A-19-3 to clarify that, except as otherwise specifically provided in this section, the limitations on presentation of claims set out in this section apply to claims by the State of North Carolina, its subdivisions, and its agencies.

Amends G.S. 28A-19-5 to clarify that a claimant to a contingent or unliquidated claim may, within the prescribed three-month period, file a petition for an order of the clerk, provided that nothing in the statute requires the clerk to hear and determine the validity, priority, or amount of a contingent or unliquidated claim that has yet to become absolute.

Amends G.S. 28A-19-8 to provide that funeral expenses of a decedent advanced by a health care agent exercising authority described in G.S. 32A-19(b) are to be considered as an obligation of the estate regardless of whether or not a personal representative of the estate has been appointed at the time the expenses are incurred. Amends G.S. 28A-19-9 to authorize a decedent's health care agent duly appointed under G.S. Chapter 32A to purchase a gravestone and provide a suitable burial place and receive reimbursement for the expenses incurred subject to monetary limitations and procedures. Amends G.S. 28A-19-16 to provide that a claimant must begin an action for recovery with regards to a claim that is presented and rejected within three months of receiving written notice of the rejection (was, after due notice in writing or after some part of claim becomes due). In the case of a contingent or unliquidated claim, provides that the claimant must file a petition for an order from the clerk pursuant to G.S. 23A-19-5(b).

Amends G.S. 28A-21-2 to provide that absent an extension by the clerk of the time for filing the final account the personal representative or collector must file the final account for settlement within one year after qualifying or within six months after receiving a state estate or inheritance tax release, or in the time period for filing an annual account under G.S. 28A-21-1, whichever is later.

Creates new G.S. 28A-21-6 to provide that the personal representative or collector may give written notice (but is not required to do so) of a proposed final account under Rule 4 of the Rules of Civil Procedure to all devisees of the estate in the case of a will, and to all heirs of the estate when the decedent was without a will, indicating the date and place of the filing of the final account. Makes guidelines regarding permissive notice of final accounts. Amends G.S. 28A-23-1 to direct the clerk, upon reviewing and approving the personal representative's or collector's final account, to enter an order discharging the personal representative or collector from further duties and liabilities (was, liabilities). Prohibits the discharge order from including a release or discharge of liability for any breach of duty as set forth in G.S. 28A-13-10(c).

Amends G.S. 28A-25-1 to provide that when the person collecting property by affidavit is the surviving spouse and only heir of the decedent, and is not disqualified under G.S. 28A-4-2, the property that may be collected under this section may be more than $20,000 in value but may not exceed $30,000 in value after reduction for any spousal allowance paid to the surviving spouse under G.S. 30-15.

- **Intestate Succession.** Enacts new G.S. 29-12.1 to provide that controversies arising under G.S. Chapter 29 are to be determined as estate proceedings under Article 2 of G.S. Chapter 28A, except for controversies arising under Article 8 of G.S. Chapter 29 (election to take life interest in lieu of intestate share), which are to be determined as set out in G.S. Chapter 29. Amends G.S. 29-30 to provide that when a surviving spouse of an intestate decedent elects to take a life estate in the dwelling house, and the value of that life estate is less than one-third in value of all the real estate, the surviving spouse may elect to take a life estate in other real estate of the intestate decedent so as to make the aggregate life estate of the surviving spouse equal to a life estate that is one-third in value of all the real estate. The election of the surviving spouse to take a life estate in one-third value of all the real estate of the decedent is to be made by a petition (was, a notice) in accordance with Article 2 of G.S. Chapter 28A. Also lists time periods for making the election and requires that the election be made before the shorter of the time periods. Directs that no provisions in subsection (c) of G.S. 29-30 extend the time period for a surviving spouse to petition for an elective share under Article 1A of G.S. Chapter 30. Provides for service of the petition in accordance with G.S. 1A-1, Rule 4. Provides that the rules of procedure relating to partition proceedings under G.S. Chapter 46 apply to the election and procedure to allot and set apart the life estate, except to the extent they would be inconsistent with this section. Provides that a determination of the life estate under this section may be appealed in accordance with G.S. 1-301.3 (appeals of estate proceedings). Amends G.S. 30-3.4 to provide that an elective share proceeding is an estate proceeding to be conducted under the procedures of Article 2 of G.S. Chapter 28A.

- **Year's Allowance**. Amends G.S. 30-17 regarding surviving children who are entitled to an allowance to delete reference to the term "next friend." Amends G.S. 30-23 to provide for right of appeal from an assignment of a year's allowance by filing a copy of the assignment and notice of appeal, and directs that the appeal is to be heard as provided in G.S. 1-301.2 (as in a special proceeding). Repeals the provisions of G.S. 30-24 and 30-26. Amends G.S. 30-27 to provide that a surviving spouse or child may apply to superior court after the date specified in the general notice to creditors for assignment of an amount other than prescribed in G.S. 30-15 (when spouse entitled to allowance) and G.S. 30-17 (when children entitled to an allowance). Amends G.S. 30-28 to require the application be by petition in a special proceeding before the clerk and specifies persons to be made parties to the special proceeding, including all known creditors, heirs, and devisees. Amends G.S. 30-30 to provide that the clerk is to hear the matter and determine if the petitioner is entitled to the relief sought, and that any judgment rendered in favor of the petitioner is subject to the same priority over other debts and claims against the estate as an allowance assigned under G.S. 30-15 or G.S. 30-17. Creates G.S. 30-31.1 requiring petitioner to serve the clerk's judgment on all other parties and requiring the judgment be filed in the estate file. Provides that any aggrieved party may appeal the judgment under G.S. 1-301.2 (as in a special proceeding). Creates G.S. 30-31.2 to provide that if the judgment is not appealed, it is to be executed as under G.S. Chapter 1.

- **Will Caveats.** Recodifies G.S. 31-12 through G.S. 31-31.2 as Article 2A of G.S. Chapter 28A. Amends G.S. 31-32 to declares that if any person who is entitled to file a caveat is

less than 18 years, or incompetent as defined in G.S. 35A-1101(7) or (8) (was, insane or imprisoned), that person may file a caveat within three years after removal of the disability. Requires the caveat to be placed in the decedent's estate file and directs the clerk to give notice of the filing by making an entry on the page of the will book where the will is recorded that includes the date of the filing. Provides that if a will has been probated in solemn form under G.S. 28A-2A-7, any party that was properly served in that proceeding is prohibited from filing a caveat.

Amends G.S. 31-33 as follows: Directs the clerk to transfer the cause to superior court upon the filing of a caveat. Requires service of the caveat on all interested parties in accordance with Rule 4 of the Rules of Civil Procedure, after which the caveator is responsible for causing notice of hearing to be served on all parties in accordance with Rule 5 of the Rules. Provides that at the alignment hearing, all of the interested parties who wish to be aligned are to appear in court and be aligned by the court as parties with the caveator or parties with the propounders of the will. Directs the judge to dismiss from the proceeding an interested party who does not appear to be aligned or chooses not to be aligned. Deletes provisions requiring that the caveator and all interested parties who wish to be aligned by the court as parties in the action to file bond as directed by the court. Provides that the court, upon motion of an aligned party, may require a caveator to provide security in an amount determined by the court. Provides that the court is to consider relevant facts related to the need for a bond and the amount of any bond. Permits any interested party who was aligned to file a responsive pleading to caveat within 30 days following the entry of an order aligning the parties, and specifies that failure to respond to any claim or averment of the caveat is not deemed to be an admission. States that an extension of time to file a responsive pleading may be granted as provided by Rule 6 of the Rules.

Amends G.S. 31-36 to provide that decisions of the clerk regarding the use, location, and disposition of assets that cannot be resolved by the parties may be appealed to superior court pursuant to G.S. 1-301.3 (appeal of an estate proceeding).

Amends G.S. 31-37.1 to clarify that a settlement agreement entered into by the parties must be approved by the superior court and the judgment entered by the court. Provides that the consent of parties that are not aligned as prescribed in G.S. 31-33 is not necessary for a settlement agreement under this section. Requires the clerk to file a copy of the judgment entered by the superior court in a caveat proceeding in the estate file and to make an entry on the page of the will book where the will is recorded declaring that the final judgment has been entered either sustaining or setting aside the will. (This provision was previously codified in G.S. 31-37.)

- **Wills.** Amends G.S. 31B-1.2 to provide that if the fiduciary is a trustee, a proceeding for review of renunciation is governed by G.S. Chapter 36C; and, if the fiduciary is a personal representative, the proceeding is governed by G.S. Chapter 28A. Amends G.S. 32A-20(a) to provide that a health care power of attorney is effective following the death of the person granting the authority (principal) without regard to the principal's understanding or capacity when the principal was living for the purpose of exercising the authority described in G.S. 32A-19(b) (which provides that a health care power of attorney may authorize the health care agent to exercise any and all rights the principal

may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains). Further states that the statute does not prevent a principal from revoking a health care power of attorney.

- **Trusts.** Amends G.S. 36C-2-205(d) to delete restriction that extensions of time not be granted more than once under Article 2 (Judicial Proceedings) of G.S. Chapter 36C and to provide that the court may enlarge an extension of time beyond 10 days if the court finds that justice requires that the time be extended beyond that time. Amends G.S. 36C-2-205(e) to add Rules 4, 56, and 65 to the list of Rules of Civil Procedure that apply to trust proceedings. unless the clerk directs otherwise. Provides that the clerk may direct that any or all of the remaining Rules of Civil Procedure apply, including discovery rules. Amends G.S. 36C-6-604 to provide that the notice informing a person of the existence of a trust must be written notice pursuant to Rule 14 of the Rules of Civil Procedure.

Effective January 1, 2012, and applies to estates of decedents dying on or after that date.

9. S.L. 2011-350 (S 487): Attorneys authorized to deposit disputed funds.

Amends G.S. 93A-12 to provide that attorneys licensed to practice law in North Carolina are permitted to deposit with the clerk of court disputed monies they receive while acting in a fiduciary capacity. The statute formerly applied only to real estate brokers. Effective October 1, 2011.

10. S.L. 2011-400 (S 33): Medical malpractice and other tort changes

Amends the specific pleading requirement of Rule 9(j) of the Rules of Civil Procedure to require that complaints alleging medical malpractice (as defined by statute) shall be dismissed unless the pleading specifically asserts that the medical care and all medical records pertaining to the alleged negligence that are available to the plaintiff after reasonable inquiry have been reviewed as set forth in that rule.

Also amends Rule 42 of the Rules of Civil Procedure to require the court, upon motion of any party, to order separate trials of the issue of liability and the issue of damages in tort actions in which the plaintiff seeks damages exceeding $150,000. Court may, for good cause shown, order a single trial. Evidence related solely to compensatory damages shall not be admissible until the trier of fact has determined liability. The same trier of fact must determine liability and damages.

Amends G.S. 90-21.11 to alter the definitions of “health care provider” and “medical malpractice action.”

Amends G.S. 90-21.12, regarding the standard of health care. States that in medical malpractice actions the defendant health care provider shall not be liable for damages unless the trier of fact finds (was, “is satisfied”) by the greater weight of the evidence that the provider did not meet the standard of practice among members of the same health care profession with similar training and experience situated in the same or similar communities under the same or similar circumstances at the time of the alleged act; or in the case of a medical malpractice action under the new definition in G.S. 90-21.11(2)(b), that the action or inaction of such provider was not in accordance with the standards of practice among

similar health care providers situated in the same or similar communities under the same or similar circumstances at the time of the alleged act. Further provides that in any medical malpractice action arising out the furnishing or failure to furnish professional services in the treatment of an "emergency medical condition" (as defined), the claimant must prove a violation of the standards of practice by clear and convincing evidence.

Creates G.S. 90-21.19 to set out a limit on noneconomic damages in medical malpractice actions (damages for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary compensatory damage). In any such action in which the plaintiff is entitled to a noneconomic damages award, the total judgment amount for noneconomic damages against all defendants shall not exceed $500,000. Judgment shall not be entered against any defendant for noneconomic damages in excess of $500,000 for all claims brought by all parties arising out of the same professional services. If a verdict exceeds these limits, the court shall modify the judgment accordingly. The jury shall not be instructed as to these limits. These limits do not apply if the trier of fact finds both that the plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death; and that defendant's acts or failures, which are the proximate cause of plaintiff's injuries, were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional, or with malice. Further creates G.S. 90-21.19B to provide that a verdict or award of damages in a malpractice action shall indicate specifically what amount, if any, is awarded for noneconomic damages and provides for a jury instruction as to noneconomic damages.

Creates subsection (c) of G.S. 1-17 to make exceptions to the statute of limitations period of G.S. 1-15(c) for certain minors. Amends G.S. 1-289 to require the court to specify, after notice and hearing, the amount of an undertaking in a judgment execution. Sets forth factors for the court to consider in setting an amount that is reasonable for the security of the rights of the adverse party.

Sections 5, 6, and 9 of the act become effective October 1, 2011 and apply to causes of action arising on or after that date. The remainder of the act becomes effective October 1, 2011 and applies to actions commenced on or after that date.

Juvenile Law

Abuse, Neglect, Dependency, and Termination of Parental Right

1. S.L. 2011-295 (Makes changes to numerous provisions of Juvenile Code governing abuse, neglect and dependency)

The act makes substantial changes to Subchapter I of the Juvenile Code, applicable to actions filed or pending on or after October 1, 2011. Among the provisions are:

- **Consent orders**. Section 5 adds new G.S. 7B-801(b1), providing that the court may enter a consent adjudication, disposition, review, or permanency planning order in an abuse, neglect, or dependency proceeding when

  - all parties are present or represented by counsel who is present and authorized to consent;

- the juvenile is represented by counsel; and

- the court makes sufficient findings of fact.

Section 8 of the act repeals G.S. 7B-902, the current provision regarding consent orders.

- **Adjudication.** Section 6 rewrites G.S. 7B-807(a) to make clear that stipulations by a party may constitute evidence at adjudication and to require that a record of specific stipulated adjudicatory facts be made by either (i) submitting them to the court in writing, signed by each party who is stipulating; or (ii) reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them.

- **Disposition hearing.** Section 7 rewrites G.S. 7B-901 to require the court, at the disposition hearing, to inquire about the identity and location of any missing parent and whether paternity is at issue. The court must make findings about efforts to locate and serve any missing parent and to establish paternity if paternity is in issue. The court may provide in its order for specific efforts aimed at identifying and locating a missing parent or at establishing paternity. The court also must inquire about efforts made to identify and notify relatives as potential resources for placement or support.

- **Disposition order**. Section 9 rewrites G.S. 7B-905(a) to require the clerk to schedule a hearing at the first session of juvenile court if a disposition order is not entered within 30 days after completion of the disposition hearing.

- **Placement responsibility**. G.S. 7B-507(a)(4) requires that any order providing for a child to remain or be placed in DSS custody specify that the child's placement and care are DSS's responsibility and that DSS provide or arrange for the placement. Section 3 of S.L. 2011-295 adds a provision that the court, after considering DSS's recommendations, may order a specific placement the court finds to be in the child's best interest.

- **Permanency planning hearing**. Section 3 rewrites G.S. 7B-507(c) to clarify the scheduling of permanency planning hearings after a court determines that reunification efforts are not required. If the determination to cease reunification efforts is made at a hearing that was properly noticed as a permanency planning hearing, the court may proceed in that hearing to consider the criteria in G.S. 7B-907, make findings of fact, and order a permanent plan for the child. If the determination to cease reunification efforts is made at any other hearing, the court must schedule a subsequent hearing within 30 days to address the permanent plan pursuant to G.S. 7B-907.

- **Termination of guardianship**. Section 4 amends G.S. 7B-600(b), so that the restrictive criteria for terminating a guardianship when the court has made guardianship the permanent plan for the child apply only if the guardian is a party to the proceeding.

- **Petitioner to send notice of termination hearings.** Section 13 amends G.S. 7B-1106(b)(5), relating to the contents of the summons in a termination of parental rights

case, to provide that the petitioner, not the clerk, will mail notice of the date, time, and place of any pretrial hearing and of the hearing on the petition.

- **Extension of time to file answer or response.** Section 14 amends G.S. 7B-1108(a) to provide that only a district court judge may grant an extension of time to file an answer or response to a termination of parental rights petition or motion.

- **Unknown parent.** Section 12 rewrites G.S. 7B-1105(b) to (i) provide that the court may order the petitioner in a termination of parental rights case to conduct a diligent search for an unknown parent, and (ii) delete the provision authorizing the court to appoint a guardian ad litem to conduct a search for the unknown parent.

- **Evidence at adjudication in termination of parental rights proceeding.** Section 15 adds to G.S. 7B-1109(f) a statement that the rules of evidence in civil cases apply at the adjudicatory hearing in a termination of parental rights proceeding.

- **Evidence and findings at disposition in termination of parental rights proceeding.** Section 16 rewrites G.S. 7B-1110(a) to authorize the court at disposition in a termination proceeding to consider any evidence, including hearsay, that the court finds to be relevant, reliable, and necessary to determine the child's best interests. It also requires the court, in addition to considering statutory criteria that are relevant, to make written findings about those criteria.

- **Post-termination review.** Section 10 rewrites G.S. 7B-908 relating to post-termination of parent rights review hearings, to

  - require the court to make findings about relevant factors the court is required to consider under G.S. 7B-908(c);

  - add a requirement that the court consider whether the current placement is in the child's best interest; and

  - authorize the court to order a different placement or plan if the child is not placed with prospective adoptive parents and the court has considered DSS's recommendations.

- **Selection of adoptive parents.** Section 10 deletes G.S. 7B-908(f), relating to the selection of adoptive parents, and section 18 adds new G.S. 7B-1112.1 addressing that subject. It requires DSS to notify the child's guardian ad litem of the selection of prospective adoptive parents within ten days of the selection and before an adoption petition is filed. A guardian ad litem who disagrees with the selection then has ten days to file a motion for a hearing in juvenile court. DSS may not change the child's placement to that of the prospective adoptive parents unless the time for the guardian ad litem to file a motion has passed without a motion's being filed. After a hearing and consideration of DSS's and the guardian ad litem's recommendations, the court must determine whether the proposed adoptive placement is in the child's best interest.

- **Reinstatement of parental rights.** Section 18 adds new G.S. 7B-1114 establishing for the first time a juvenile court proceeding in which the court may reinstate the parental rights of a parent whose rights have been terminated. Previously, a parent whose rights had been terminated could regain parental rights only by adopting the child. Circumstances in which the new procedure is available, beginning October 1, 2011, are narrow.

  - A motion to reinstate parental rights may be filed only by the child's guardian ad litem attorney or a DSS that has custody of the child.

  - The child must be at least 12 years old or, if the child is younger than 12, the motion must allege extraordinary circumstances requiring consideration of the motion.

  - The juvenile must not have a legal parent, must not be in an adoptive placement, and must not be likely to be adopted within a reasonable time.

  - The order terminating parental rights must have been entered at least three years before the motion is filed, unless the juvenile's attorney advocate and the DSS with custody stipulate that the child's permanent plan is no longer adoption.

  - If a motion could be filed and a parent contacts DSS or the child's guardian ad litem about reinstatement of the parent's rights, DSS or the guardian ad litem must notify the child that the child has a right to file a motion for reinstatement of parental rights. If the child does not have a guardian ad litem when a motion is filed, the court must appoint one.

  - The party filing the motion must serve it on each of the following that is not the movant: the child, the child's guardian ad litem or guardian ad litem attorney, the DSS with custody of the child, and the former parent whose rights the motion seeks to have reinstated. Although the former parent must be served, the former parent is not a party and is not entitled to appointed counsel if indigent.

  - The party filing the motion must ask the clerk to calendar it for a preliminary hearing within 60 days of the filing and must give at least 15 days notice to those who were required to be served and to the child's placement provider. (The placement provider is not made a party by virtue of receiving notice). At least seven days before the preliminary hearing, DSS and the child's guardian ad litem must provide the court, the other parties, and the former parent with reports that address a list of factors specified in the new statute. At the preliminary hearing the court must consider those criteria and make findings about those that are relevant. At the conclusion of the hearing, the court must either dismiss the motion or order that the child's permanent plan become reinstatement of parental rights.

  - If the motion is not dismissed at the preliminary hearing, the court must conduct hearings at least every six months until the petition is granted or dismissed, which must occur within12 months from the date the motion was filed unless the court makes written findings about why that cannot occur and specifies a time frame for entering a final order. At any hearing under the new section the court may enter an

order for visitation under G.S. 7B-905(c) or order that the child be placed in the former parent's home and supervised by DSS. If the court orders placement in the former parent's home, the child's placement and care remain the responsibility of the DSS with custody.

- After entry of an order reinstating parental rights, the court is not required to conduct further reviews. A parent whose rights are reinstated is not liable for child support or the cost of services provided to the child after the termination order and before the reinstatement order.

2. **S.L. 2011-332 (Service of motion in termination of parental rights cases)**
Section 4.1 rewrites G.S. 7B-1102 to require that when a motion to terminate parental rights is served on a parent pursuant to G.S. 1A-1, Rule 4, a copy of the motion and notice be sent to the parent's attorney if the parent has an attorney of record. This change applies to motions filed on or after October 1, 2011. (Note that section 4.2 of the act rewrites Rule 5(b) of the Rules of Civil Procedure, pursuant to which a motion to terminate parental rights may be served in some cases.)

3. **S.L. 2011-326 (Appointment of provisional counsel in juvenile cases)**
Sections 12(a) and 12(b) amend G.S. 7B-602(a) and 7B-1110.1(a) to specify that the appointment of provisional counsel shall be pursuant to rules adopted by the Office of Indigent Defense Services (IDS). (Note also that section 15.20 of **S.L. 2011-145** amends G.S. 7A-498.5(f) to require IDS, in setting compensation rates for expert witnesses, not to exceed the rate set by the AOC under G.S. 7A-314(d).)

Delinquent Juveniles

4. **S.L. 2011-329 (Recording of custodial interrogations of juveniles)**
Section 2 rewrites G.S. 15A-211, which addresses the required electronic recording of interrogations in certain criminal cases. In addition to expanding the categories of criminal cases in which custodial interrogations must be recorded, the act makes the recording requirements applicable to "all custodial interrogations of juveniles in criminal investigations conducted at any place of detention." The act does not define the term "juvenile." The intent probably was to make the recording of custodial interrogations mandatory when an investigation involves an offense committed by a juvenile younger than 16 – that is, to delinquency cases. Ordinarily such a provision would be placed in G.S. Chapter 7B, which addresses other aspects of the interrogation of juveniles. It is also possible that the intent was to make the section applicable to all custodial interrogations, not just those in cases involving specified offenses, when a criminal defendant or suspect is under the age of 18. However, statutes in G.S. Chapter 15A generally do not use the term "juvenile," and instead refer to an age or an age range when referring to someone in the criminal system who is younger than 18. The act is effective December 1, 2011, and applies to offenses committed on or after that date.

5. **S.L. 2011-277 (Use of juvenile record in later criminal proceeding)**
In some criminal cases, G.S. 7B-3000(e) permits the defendant's juvenile record of a delinquency adjudication for a felony or a Class A1 misdemeanor to be used by law enforcement, the magistrate, the court, and the prosecutor for decisions about pretrial

release, plea negotiating, and plea acceptance. As rewritten by S.L. 2011-277, those uses of the juvenile record are permitted if (i) the criminal case involves a felony or a Class A1 misdemeanor committed before the defendant's 21st birthday, and (ii) the delinquency adjudication for a felony or a Class A1 misdemeanor occurred after the defendant reached age 13 (previously, within 18 months before the defendant reached age 16 or after the defendant reached age 16). The act is effective December 1, 2011, and applies to pretrial release, plea negotiating decisions, and plea acceptance decisions on or after that date.

6. **S.L. 2011-278 (Consideration of juvenile record in expunction of criminal conviction)**
Section 1 adds new G.S. 15A-145.4, setting out conditions and procedures for the expunction of criminal convictions for nonviolent felonies committed before age 18. It requires the court, in considering a petition for expunction of a nonviolent felony conviction, to review the petitioner's juvenile record and to ensure that it remains separate from adult records and is withheld from public inspection. The act is effective December 1, 2011.

7. **S.L. 2011-248 (Principal's duty to report certain offenses to law enforcement)**
G.S. 115C-288(g) requires a school principal to make a report to law enforcement if the principal has personal knowledge or actual notice from school personnel that one of the offenses listed in the statute has occurred on school property. The act rewrites the subsection to (i) expand the duty to include instances in which a principal has "a reasonable belief" that such an act has occurred; (ii) delete the provision that made violation of the duty a Class 3 misdemeanor; (iii) provide that a principal who willfully fails to make a required report to law enforcement may be subject to demotion or dismissal pursuant to G.S. 115C-325; (iv) prohibit the State Board of Education from requiring that principals report to law enforcement acts in addition to those listed in the subsection; and (v) state that nothing in the subsection shall be interpreted to interfere with school employees' due process rights or students' privacy rights. The act became effective June 23, 2011, and applies beginning with the 2011-2012 school year.

8. **S.L. 2011-145 (Departmental consolidation)**
Section 19.1, effective January 1, 2012, creates a new Department of Public Safety by consolidating the existing Department of Juvenile Justice and Delinquency Prevention, Department of Correction, and Department of Crime Control and Public Safety. New Article 5A of G.S. Chapter 143B establishes the new department, and numerous other statutes are amended or recodified to conform to the change.

9. **S.L. 2011-145 (Community college tuition waiver)**
Section 8.12(a) rewrites G.S. 115D-5(b) to delete the authority of the State Board of Community Colleges to provide for the waiver of tuition and registration fees for juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention (DJJDP).

10. **S.L. 2011-145 (Alternatives to detention encouraged)**
Section 17.6 expresses the General Assembly's intent to increase the use of community-based alternatives whenever possible and reduce reliance on detention and youth development center commitments. It directs the Department of Juvenile Justice and Delinquency Prevention and the Department of Correction to work together to increase the use of in-home monitoring as an alternative to detention for juveniles. The departments

must assess monitoring needs in both the adult and juvenile systems and report their findings and recommendations by September 1, 2011.

Bills Not Enacted but Still Eligible for Consideration

- **Confidentiality of abuse/neglect reporter's identity.** H 387 would add new G.S. 7B-302(a1)(1a) to provide that DSS must disclose confidential information about the identity of a reporter to any federal, state, or local government entity or its agent with a court order and may do so without a court order only if the entity or its agent demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.

- **Intake procedures in delinquency/undisciplined cases.** H 853 would delete from G.S. 7B-1803(a) the requirement that each chief district court judge issue an administrative order establishing procedures for receiving delinquency and undisciplined complaints and drawing petitions.

- **Detention and holdover facility responsibilities.** H 853 would rewrite G.S. 153A-221.1 to transfer from the Secretary of Health and Human Services and the Social Services Commission, to the Secretary of Juvenile Justice and Delinquency Prevention, the responsibility for (i) state services to county juvenile detention homes (including the development of state standards, inspection, consultation, technical assistance, and training); and (ii) the development of standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending a juvenile's placement in a juvenile detention home that meets state standards.

Motor Vehicle Law

1. **S.L. 2011-35 (H 159), as amended by S.L. 2011-326 (S 148), s. 28 (DMV authorized to note military veteran status on driver's license)**
   New G.S. 20-7(q1) requires DMV to develop a military designation for driver's licenses and identification cards for North Carolina residents who are honorably discharged from military service in the U.S. Armed Forces. This designation is available upon request by a military veteran, who must produce a Form DD-214 showing that he or she was honorably discharged from the U.S. Armed Forces. Effective when DMV completes implementation of the Next Generation Secure License System or July 1, 2012, whichever occurs first, for licenses issued on or after that date.

2. **S.L. 2011-64 (S 49) (Imposes $250 fine for speeding in school zone or on school property)**
   Amends G.S. 20-141.1 and G.S. 20-141(e1) to require that persons found responsible for the infraction of speeding in a school zone or on school property pay a penalty of $250. Effective for offenses committed on or after August 25, 2011. Previously, persons found responsible for such infractions were required to pay a penalty of not less than $25.

3. **S.L. 2011-68 (H 407) (Permits persons 18 and older to drive ATVs off-road without a helmet)**
   Amends G.S. 20-171.19 to permit persons who are at least eighteen years old to drive an all-terrain vehicle (ATV) off-road (that is, in an area that is not a public street or public vehicular

area) without eye protection or a helmet. G.S. 20-171.19(a) continues to require that all persons (regardless of age) who operate an ATV on a public street or public vehicular area must wear eye protection and a safety helmet. Recodifies former subsection (a1) as (a2) and makes conforming amendments to reflect that differing head protection equipment requirements apply to persons under 18 years of age who are employed by a supplier of retail electric service. Also makes conforming amendments to G.S. 20-171.22(c). Effective October 1, 2011 for offenses committed on or after that date.

4. **S.L. 2011-95 (H 222) (Plug-in electric vehicles defined and exempted from HOV lane restrictions and emissions inspections)**
Enacts G.S. 20-4.01(28a), defining a "plug-in electric vehicle." Amends G.S. 20-146.2 to provide that high occupancy vehicle (HOV) lane restrictions (which generally are reserved or vehicles with a specified number of passengers) do not apply to plug-in electric vehicles, regardless of the number of passengers in the vehicle provided that those vehicles are able to travel at the posted speed limit while operating in the HOV lane. Enacts G.S. 20-183.2(b)(9) exempting plug-in electric vehicles from emissions inspections. Effective May 26, 2011.

5. **S.L. 2011-119 (S 16) (Misdemeanor death by vehicle rendered an implied consent offense)**
Broadens the definition of "implied-consent offense" in G.S. 20-16.2(a1) to include the offense of misdemeanor death by vehicle in violation of G.S. 20-141.4(a2). Amends the subsequent testing provision in G.S. 20-139.1(b5) to provide that a person charged with any of the death or injury by vehicle offenses set forth in G.S. 20-141.4 "shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath." Specifies that the request for a blood sample is not required if the breath sample shows an alcohol concentration of 0.08 or more. Amended G.S. 20-139.1(b5) further requires a law enforcement officer to seek a warrant to obtain a blood sample if a person willfully refuses to provide a blood sample under this subsection, the person is charged with a violation of G.S. 20-141.4, and the officer has probable cause to believe that the offense involved impaired driving or was an alcohol-related offenses made subject to the implied consent procedures. Effective December 1, 2011 for offenses committed on or after that date. For further discussion of this act, see Shea Denning, Requests for Blood in Death by Vehicle Cases, posting to North Carolina Criminal Law: UNC School of Government Blog (June 22, 2011).

6. **S.L. 2011-145 (H 200), as amended by section 7(a) of S.L. 2011-192 (H 642) (Directs study of fines for infractions and waivable offenses, amends requirements for giving license holders notice of a violation charged by DMV as a result of an audit, amends provisions governing driver education courses in public high schools, enacts $50 curt costs for improper equipment convictions, and authorizes DMV to disclose data for non-official uses)**
Section 15.9 of S.L. 2011-145 (the Appropriations Act of 2011) directs the Revenue Laws Study Committee to study the penalties and fines for infractions and waivable offenses and determine whether the current amounts are appropriate. The committee must report its findings and any recommended legislation to the General Assembly upon the convening of the 2012 session.

Section 28.23B of S.L. 2011-145 (the Appropriations Act) amends G.S. 20-183.8F to eliminate requirement that a DMV auditor inform license holders upon finding a violation that could be charged by DMV. Requires notice only upon DMV's issuance of charges. Amends G.S. 20-183.8F(d) to permit DMV to deliver notice by certified mail or hand delivery. Amends G.S. 20-183.8G to require that DMV hold a requested hearing on such charges within 30 days (was, 10 business days) of receiving a request.

Section 28.24 requires DMV to lead a study examining exempting from emissions inspections two categories of vehicles: (1) vehicles in the three newest model years; and (2) all vehicles. Requires the Department of Environment and Natural Resources, Division of Air Quality, in coordination with DMV to evaluate the impact of such exemptions on emissions level and air quality. Requires a report on the results of the study and recommendations to designated committees of the General Assembly by March 1, 2012.

Section 28.37 amends provisions governing driver education courses offered by public high schools. High schools must use the standardized curriculum for such courses provided by the Department of Public Instruction (DPI). Prohibits use of state funds for the 2011-12 school year for any driver education programs that do not use the standard DPI curriculum. Eliminates provisions of G.S. 20-88.1(a), which formerly set forth curriculum requirements for driver education courses. Makes conforming changes to G.S. 20-11 and G.S. 20-322. Requires the State Board of Education to establish a pilot program to deliver driver education by electronic means and to report on the implementation of the program and the most cost-effective method of delivering driver education by June 15, 2012.

Section 31.26(c) enacts new G.S. 7A-304(a)(4b) imposing a cost of $50 "for all offenses arising under Chapter 20 of the General Statutes and resulting in a conviction of an improper equipment offense." The cost, which is imposed to provide for contractual services to reduce county jail populations, is effective for convictions on or after August 1, 2011 and must be remitted to the Statewide Misdemeanor Confinement Fund in the Department of Correction.

Section 31.29 enacts new G.S. 20-43.1(e) authorizing DMV to disclose specified data for non-official use upon payment of 3 cents per record.

7. S.L. 2011-191 (H 49) (Creates new Level A1 DWI, punishable by up to 3 years imprisonment)

This act, frequently referred to as "Laura's Law"—the short title of the bill that ultimately was enacted, increases the maximum punishment for impaired driving, increases the maximum punishment for impaired driving, increases the length of time that continuous alcohol monitoring may be required as a condition of probation, and makes other changes applicable to defendants charged with and sentenced for impaired driving. The act is effective for offenses committed on or after December 1, 2011. S.L. 2011-191 requires Aggravated Level One punishment when there are at least three grossly aggravating factors in an impaired driving case sentenced under G.S. 20-179. An impaired driving conviction punished at Aggravated Level One (Level A1 DWI) requires a minimum term of 12 months imprisonment up to a maximum term of 36 months. The maximum fine is $10,000. A defendant sentenced for a Level A1 DWI is not eligible for parole. Level A1 defendants must,

however, be released from imprisonment four months before the end of the "maximum imposed term of imprisonment" and must be placed on post-release supervision with a requirement that they abstain from alcohol during this four-month period as verified by a continuous alcohol monitoring system.

The term of imprisonment for a Level A1 DWI may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. Note that this term of special probation imprisonment is significantly shorter than the mandatory minimum active term of 12 months. In this respect, Level A1 punishment departs from the sentencing requirements for other levels of impaired driving for which the mandatory minimum term of imprisonment matches the minimum term of imprisonment required as a condition of special probation. If a Level A1 defendant is placed on probation, the judge must require the defendant to abstain from alcohol for at least 120 days up to the entire term of probation as verified by CAM. As is the case for probationary sentences imposed for other levels of DWI, the judge must require as a condition of probation for a Level A1 sentence that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6. Upon conviction of Level A1 impaired driving, the defendant's driver's license is permanently revoked pursuant to amended G.S. 20-19(e). Though a license permanently revoked under G.S. 20-19(e) may, under certain circumstances, be conditionally restored after it has been revoked for three years, a person whose license was revoked for conviction of Level A1 DWI must, in addition to meeting other conditions, have ignition interlock in order to have his or her license restored.

S.L. 2011-191 affects other types of DWI sentencing as well. Amended G.S. 20-179(h1) increases from 60 days to the term of probation the maximum period for which abstinence and CAM may be required of defendants sentenced for Level 1 or Level 2 DWIs. It also eliminates the provision in G.S. 20-179(h1) that formerly capped a defendant's total CAM costs at $1,000, and repeals G.S. 20-179(h2), which formerly prohibited a court from requiring CAM if it determined the defendant "should not be required to pay the costs" of CAM and the local government entity responsible for the incarceration of the defendant was unwilling to pay for CAM.

Amended G.S. 15A-534(i) authorizes abstinence from alcohol and CAM as a pretrial release condition for a defendant charged with an offense involving impaired driving who has been convicted of an offense involving impaired driving within seven years of the offense for which the defendant is being placed on pretrial release.

New G.S. 7A-304(a)(10)requires that a defendant sentenced pursuant to G.S. 20-179 (applicable to convictions under G.S. 20-138.1, 20-138.2 and second or subsequent convictions under G.S. 20-138.2A and 20-138.2B) pay, in addition to other applicable costs, a fee of $100.

8. **S.L. 2011-216 (H 381) (Patterns for checkpoint stops may not be based on type of vehicle, with exception of commercial motor vehicles)**
G.S. 20-16.3A requires that checkpoints established to determine compliance with the state's motor vehicle laws be carried out pursuant to a written policy that provides guidelines for the pattern for stopping vehicles and for requesting stopped drivers to

produce driver's license, registration or insurance information. The pattern must be designated in advance but does not itself have to be in writing. S.L. 2011-216 enacts new G.S. 20-16.3A(a1), which provides that the pattern must not be based on a particular vehicle type, except that the pattern may designate any type of commercial motor vehicle as defined in G.S. 20-4.01(3d). Subsection (a1) specifies that this subsection applies only to checkpoints established to determined compliance with the state's motor vehicle laws. Effective December 1, 2011 for offenses committed on or after that date.

9. **S.L. 2011-244 (H 311) (Motor carriers of household goods must mark vehicles with name and carrier number)**
Enacts new G.S. 20-398 prohibiting a carrier from operating a motor vehicle upon a highway, public street, or public vehicular area in the transportation of household goods for compensation unless the name or trade name and the North Carolina number assigned to the carrier by the state Utilities Commission appear in designated places on the vehicle in letters and numbers at least three inches high. Exempts carriers involved only in interstate commerce and requires that a carrier involved in interstate and intrastate commerce print his or her North Carolina number in a conspicuous place near his or her name in letters and figures corresponding in size with Federal Motor Carrier Safety Administration regulations.

Provides that violation of G.S. 20-398 is a Class 3 misdemeanor punishable by a fine only of not more than $500 for the first offense and not more than $2,000 for any subsequent offense.

Enacts new G.S. 62-280 prohibiting a carrier from violating the provisions of G.S. 20-398 and permitting the Utilities Commission to assess a civil penalty of up to $5,000 for a violation. Requires that clear proceeds of any civil penalties collected be remitted to Civil Penalty and Forfeiture Fund. Also enacts G.S. 62-280.1 making it unlawful for a person to falsely represent that he or she holds a certificate or otherwise is authorized to operate as a carrier of household goods. Violation is a Class 3 misdemeanor punishable by a fine only of not more than $500 for the first offense and not more than $2,000 for any subsequent offense. Permits the Utilities Commission to assess a civil penalty of up to $5,000 for a violation. Provides that clear proceeds of any civil penalties are payable to the civil penalty and forfeiture fund. Effective October 1, 2011.

10. **S.L. 2011-271 (H 427) (Seizure and forfeiture of motor vehicles used in the commission of felony speeding to elude**)
Enacts new G.S. 20-141.5(g)-(j) requiring, upon arrest of a defendant for felony speeding to elude, that the law enforcement agency seize the motor vehicle and deliver it to the sheriff of the county in which the offense is committed. Provides for constructive possession by sheriff if delivery of actual possession is impracticable. Requires that sheriff hold vehicle pending trial of operator(s) charged with the felony offense. Sheriff must restore seized motor vehicle to owner upon execution of satisfactory bond in double the value of the property and conditioned upon owner's return of motor vehicle on day of trial. Upon acquittal or dismissal of any felony charge, the sheriff must return the motor vehicle to the owner. If the operator is convicted, the court must order the motor vehicle sold at public auction. Liens are paid from net proceeds of sale, after deducting towing and storage expenses, seizure fee, and sale costs. The balance of the proceeds are payable to the county schools.

On petition by lienholder, the court in its discretion may allow the vehicle to be reclaimed by the lienholder. The lienholder must file with the court an accounting of the proceeds of any subsequent sale of the vehicle and must pay in to the court any proceeds received in excess of the lien.

Certain other owners also may prevent the motor vehicle from being sold. A court must restore a motor vehicle to its owner if the owner demonstrates the following three factors: (1) the defendant was an immediate member of the owner's family at the time of the offense; (2) the defendant had no previous convictions or previous or pending violations of any provision in Chapter 20 of the General Statutes for the three years before the offense; and (3) the defendant was under the age of 19 at the time of the offense. The owner is entitled to trial by jury on these issues.

The owner of a motor vehicle driven by someone else in the commission of felony speeding to elude also may seek release of the motor vehicle by filing a petition with the clerk of court seeking a pretrial determination that he or she is an innocent owner. While the term "innocent owner" is defined in G.S. 20-28.2(a1)(2) for purposes of motor vehicles seized from impaired drivers, the term is not separately defined for purposes of felony speeding to elude seizures. Moreover, the requirements for an innocent owner under G.S. 20-28.2(a1)(2) correspond to the statutory bases for seizure under the impaired driving laws, which differ from those for felony speeding to elude. Thus, it is unclear how a motor vehicle owner establishes his or her status as an innocent owner pursuant to G.S. 20-141.5(h)(4). The clerk determines only whether the petitioner is an innocent owner, not whether the vehicle is subject to forfeiture. If the clerk determines that the petitioner is an innocent owner, then the clerk must release the vehicle to the petitioner. A determination by the clerk that the petitioner failed to establish that he or she is an innocent owner may be reconsidered by the court as part of the forfeiture hearing.

When a seized motor vehicle has been specially equipped or modified to increase its speed, the court must, before its sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. If the court finds that the equipment and modifications are so extensive that restoration of the vehicle to its original manufactured condition would be impractical, it may order that the vehicle be turned over to a governmental agency or public official within the territorial jurisdiction of the court to be used in the performance of official duties only. Effective December 1, 2011 for offenses committed on or after that date.

11. S.L. 2011-329 (S 241) (Requires Level One DWI sentence if a minor or disabled person was in vehicle at time of offense)

This act amends G.S. 20-179 to require, effective for offenses committed December 1, 2011 or later, that persons convicted of covered impaired driving offenses be sentenced to Level One punishment if the grossly aggravating factor in G.S. 20-179(g)(4) exists. Before these amendments, a person could be sentenced at Level One upon a finding of at least two grossly aggravating factors. This factor formerly applied if the defendant drove while a child under the age of sixteen was in the car. The act also amends the factor itself for offenses committed December 1, 2011 or later. The amended factor applies if the defendant drives while impaired with any of the following types of persons in the car: a child under the age

of 18 (was, 16), a person with the mental development of a child under the age of 18, or a person with a physical disability that prevents the person from getting out of the vehicle without assistance.

12. S.L. 2011-361 (H 113) (Increases penalty for unsafe movement affecting motorcycle drivers)

G.S. 20-154(a) requires a driver, before starting, stopping, or turning from a direct line to first see that the movement can be safely made. When another driver may be affected by such a movement, the moving driver must provide the appropriate signal. Violation of this provision, commonly referred to as "unsafe movement," is an infraction punishable by a penalty of up to $100. *See* G.S. 20-176. S.L. 2011-361 enacts new G.S. 20-154(a1), increasing the penalty for a violation of G.S. 20-154(a) that "causes a motorcycle operator to change travel lanes or leave that portion of a public street or highway designated as travel lanes." Unsafe movement that so affects a motorcycle driver remains an infraction, but the fine imposed must be least $200. If the unsafe movement in violation of G.S. 20-154(a) results in a crash causing property damage or personal injury to a motorcycle driver or passenger, the offense is an infraction requiring a fine of at least $500. Effective December 1, 2011 for offenses committed on or after that date.

13. S.L. 2011-381 (H 761) (Renders tampering with an ignition interlock system a misdemeanor offense; removes colored border requirements for licenses; specifies that violations for false documents apply to special identification cards; authorizes DMV to obtain criminal history record of applicant for a restoration of a revoked driver's license)

Enacts new G.S. 20-17.8A, which makes it a Class 1 misdemeanor to tamper with, circumvent, or attempt to circumvent an ignition interlock device required to be installed on a motor vehicle pursuant to judicial order, statute, or as may be otherwise required as a condition for a person to operate a motor vehicle for the purpose of avoiding or altering testing on the ignition interlock device in the operation or attempted operation of a vehicle, or altering the testing results on the ignition interlock device. Each act of tampering, circumvention or attempted circumvention is a separate violation. Effective December 1, 2011 for offenses committed on or after that date.

Amends G.S. 20-7(n) to eliminate requirement that driver's licenses for persons under 21 years old and those over 21 years old have a different color background or border. Licenses and special identification cards issued to persons under 21 years of age still must be printed in a vertical format that distinguishes them from licenses and cards issued to applicants 21 and older, which are printed in a horizontal format. Also amends G.S. 20-11(a) to remove requirement that learner's permits and provisional licenses have a color background or border that indicates the level of driving privileges granted. Permit or license still must indicate level of driving privileges granted. Effective December 1, 2011 for licenses issued on or after that date.

Amends G.S. 20-30 to prohibit falsehoods related to special identification cards in the same manner as for driver's licenses and learner's permits. Effective December 1, 2011 for offenses committed on or after that date.

Enacts new G.S. 114-19.31 authorizing the Department of Justice (DOJ) to provide to DMV the criminal history record of any applicant for a restoration of revoked driver's license.

Requires DMV to submit a request to DOJ accompanied by the applicant's fingerprints and a signed consent. Requires DMV to keep criminal history information obtained pursuant to this section confidential. Permits DOJ to charge a fee to offset its cost for the record check, and permits fees and costs incurred by DMV in obtaining the record to be charged to the applicant. Effective December 1, 2011.

14. **S.L. 2011-385 (S 636) (Driving logs required for provisional license; immediate civil license revocations required for provisional licensees who commit criminal moving violations)** Under current law, a person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if he or she meets the following four requirements: (1) has held a limited learner's permit issued by DMV for at least 12 months, (2) has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 (unlawful use of a mobile phone by a person under 18) in the previous six months, (3) passes a road test administered by DMV, and (4) has a driving eligibility certificate or a high school diploma or its equivalent. For licenses issued on or after October 1, 2011, amendments to G.S. 20-11(d) create a fifth requirement. To obtain a limited provisional license, a person must complete a driving log, on a form approved by DMV, detailing a minimum of 60 hours as the operator of a motor vehicle of the class for which the driver has been issued a limited learner's permit. The log must show at least 10 hours of the required driving occurred during nighttime hours. No more than 10 hours of driving per week may be counted. The driving log must be signed by the supervising driver and be submitted to DMV when the applicant seeks the limited provisional license. If DMV has cause to believe that a driving log has been falsified, the limited learner's permit holder must complete a new driving log and is not eligible to obtain a limited provisional license for six months.

    A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under certain conditions. Among those conditions is that the driver may drive without supervision only from 5:00 a.m. to 9:00 p.m. or when driving to or from work or to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization. See G.S. 20-11(e)(2). S.L. 2011-385 amends G.S. 20-11(e)(2), effective October 1, 2011, to allow unsupervised driving after 9 p.m. and before 5 a.m. only when driving "directly" to one of the aforementioned excepted activities.

    Amendments to G.S. 20-11(f), effective for licenses issued on or after October 1, 2011, also require a driving log to obtain a full provisional license. The log must detail a minimum of 12 hours as the operator of a motor vehicle of a class for which the driver is licensed. The log must show at least six hours of the required driving occurred during nighttime hours. The driving log must be signed by the supervising driver for any hours driven outside of the provisions in G.S. 20-11(e)(2)(allowing unsupervised driving without supervision from 5 a.m. to 9 p.m., subject to certain work-related exceptions) and must be submitted to DMV when the applicant seeks his or her full provisional license. If DMV has cause to believe the log is false, the limited provisional licensee must complete a new log and is ineligible for a full provisional license for six months.

    Effective October 1, 2011 for offenses committed on or after that date, new G.S. 13-3 provides for the immediate revocation of the license of a provisional licensee charged with a misdemeanor or felony motor vehicle offense that is defined as a criminal moving violation.

If a law enforcement officer has reasonable grounds to believe that a person under the age of 18 who has a limited learner's permit or a provisional license has committed a criminal moving violation, the person is charged with that violation, and the person's license is not subject to civil revocation for a violation of the implied consent laws, the law enforcement officer must execute a revocation report and take the provisional licensee before a judicial official for an initial appearance. The revocation report must be filed with the judicial official (typically, a magistrate) conducting the initial appearance on the underlying criminal moving violation. If a properly executed report is filed with a judicial official when the person is present before the judicial official, the judicial official must, after completing any other proceedings, determine whether there is probable cause to believe the conditions requiring civil license revocation pursuant to G.S. 20-13.3(b) are met. If the judicial official finds probable cause, he or she must enter an order revoking the provisional licensee's permit or license for 30 days. The provisional licensee is not required to surrender his or her permit or license card. The clerk must notify DMV of the issuance of a G.S. 20-13.3 revocation order within two business days. A person whose license is revoked under G.S. 20-13.3 is not eligible for a limited driving privilege.

DMV is directed to study the issue of teen driving and the effectiveness of the provisions of SL 2011-385. DMV specifically must determine whether, beginning October 1, 2011, there has been a decrease in any of the following types of incidents involving provisional licensees: property damage crashes, personal injury crashes, fatal crashes, moving violations, and seat belt violations. DMV must report its findings to the Joint Legislative Transportation Oversight Committee by February 1, 2014.

15. **S.L. 2011-392 (H 289) (Authorizes DMV to issue various special registration plates, directs DMV to develop standard format for special plates, orders study of how special plates impact effective law enforcement)**
Amends G.S. 20-63(b) and denominates new subsection (b1) authorizing DMV to issue several new types of special registration plates that are not required to be "First in Flight" registration plates. Enacts new G.S. 20-79.4(a3) requiring DMV to develop, in consultation with the State Highway Patrol and Department of Correction, a standardized format for special license plates that allows "the license plate number to be easily read by the human eye and by cameras installed along roadways as part of tolling and speed enforcement." The new provision requires that an area of the plate be designated for the unique designs of the various groups and interests represented. Existing special plates will not be recalled pursuant to new G.S. 20-79.4(a3), but special plates issued by DMV on or after July 1, 2015 must be in a standardized format. Amends G.S. 20-81.12 and 20-79.4 to require DMV, upon receipt of designated number of applications to develop and issue additional types of special registration plates and amends G.S. 20-79.7(a) to set forth schedules for fees charged for those plates. Enacts new G.S. 20-79.8, effective July 1, 2011, providing that a special registration plate authorized pursuant to G.S. 20-79.4 expires on July 1 of the second calendar year in which it was authorized if the number of required applications for the authorized special plate has not been received by DMV. Also provides for expiration of special plates authorized in G.S. 20-79.7 if insufficient applications to produce plate are received by July 1, 2013. Directs Department of Crime Control and Public Safety and the Department of Transportation to study whether, for purposes of effective law enforcement, full-color special license plates should continued to be authorized or be phased out with all special license plates being on the First in Flight background. Department must report their

findings and recommendations to the Joint Legislative Transportation Oversight Committee on or before the convening of the 2012 Regular Session of the 2011 General Assembly.

Judicial Authority & Administration

1. **S.L. 2011-28 (High Point bar councilor; court vacancies in District 18)**
   G.S. 84-19 is amended to provide that superior court district 18B, consisting primarily of High Point precincts, is a separate judicial district for selection of State Bar councilors. Also amended is G.S. 7A-142, the statute concerning district court vacancies, to specify that all bar members in district court district 18 (Guilford County) are to participate in nominating a replacement. Effective April 7, 2011.

2. **S.L. 2011-42 (Juror qualifications, exemption for disability)**
   G.S. 9-3 is amended to (a) eliminate the requirement that a person must hear English language to qualify for jury service, leaving the requirement that the person must understand English; (b) specify that request for jury exemption by someone 72 or older must be filed five business days in advance of the jury summons date; and (c) add new provisions for a person with a disability to request exemption from jury service, by submitting a written request five business days before jury summons date. The court may require medical documentation of the disability. Effective July 1, 2011.

3. **S.L. 2011-145 (State budget) and S.L. 2011-391 (State budget corrections)**
   In addition to the reduction in court funding the 2011 state budget bill included various other provisions affecting the operation of the courts. Among the provisions are:
   - A new Study Committee on Consolidation of Judicial and Prosecutorial Districts is to study the number and structure of judicial and prosecutorial districts and recommend reductions in the number of districts to increase efficiency and improve the quality of justice. The recommendations to the 2012 session are to provide for identical judicial and prosecutorial districts where feasible. The committee is to consist of four senators appointed by the President Pro Tem, four representative appointed by the Speaker, and two others who are knowledgeable about operation of district attorneys' office, one each appointed by the President Pro Tem and Speaker.
   - The School of Government is to study the feasibility and cost of creating an Office of Prosecutorial Services as an independent agency within the judicial branch. The report is to be made to the appropriations subcommittees on Justice and Public Safety by April 1, 2012.
   - The AOC is to contract with the National Center for State Courts to develop a workload formula for superior court judges. The results of the formula are to be submitted to the appropriations subcommittees on Justice and Public Safety by December 1, 2011. Meanwhile, G.S. 7A-109 is amended to require the clerk's minutes to record the opening and closing time of each session of court, plus the times of recesses. Those time records are to be provided monthly by the AOC to the National Center for State Courts, the legislature's Fiscal Research Division, and the new Study Committee on Consolidation of Judicial and Prosecutorial Districts.

- The Revenue Laws Study Committee is to study whether the current penalties for infractions and waivable offenses are at an appropriate level, with a report to the 2012 session.
- The AOC is to develop protocols to offer regular administrative court sessions in each district court district to hear motor vehicle infractions, and each district is to offer such sessions by October 1, 2011.
- G.S. 7A-304(a) is amended to prohibit waiver of costs in criminal cases unless the judge finds in writing just cause for the waiver. The AOC is to report on waivers to the Joint Legislative Commission on Governmental Operations each October 1st.
- G.S. 7A-102(a) is amended to provide that each clerk's office shall have a minimum of five staff positions in addition to the elected clerk.
- The AOC is allowed to set a lower per-mile travel reimbursement rate during the fiscal 2011-13 biennium than the standard mileage rate set by the Internal Revenue Service.
- Judicial department salaries remain frozen for the biennium. The elected clerk of court's salary is not to increase even if the county moves up from one population category to another.
- Numerous court fees were increased significantly, including the General Court of Justice fee. That fee goes from $100.50 to $129.50 in district court and from $102.50 to $154.50 in superior court for criminal actions. For civil cases the fee goes from $55 to $80 in small claim actions, from $80 to $130 in district court, and $125 to $180 in superior court . Filing fees are made applicable to counter-claims and cross-claims in civil actions, and a $20 fee is added for filing a motion, with various exceptions. General Court of Justice fees increase also for special proceedings and estates matters, with other increases applying to a variety of miscellaneous fees such as, for example, a doubling of the previous $150 foreclosure fee.
- Community mediation centers will no longer receive funding through the AOC but now may charge for their services. Generally those charges will be paid directly to the mediation center and not go through the clerk's office. Under G.S. 7A-38.7, though, when a criminal case is resolved through a community mediation center there has been a $60 fee assessed and collected by the court; instead of going to court support that fee now will be paid to the center that mediated the case via the Mediation Network which itself will get to keep up to three dollars for its administrative expenses.
- Fees related to local jail confinement under the Justice Reinvestment Act are discussed in the summary of S.L. 2011-192 under the Criminal Law and Procedure section of this summary.

4. S.L. 2011-203 (Wake superior court districts)

In response to the decision in *Blankenship v. Bartlett*, 363 NC 518 (2009), that the populations of the superior court election districts in Wake County were so far out of balance as to violate equal protection, the General Assembly redrew the districts effective January 1, 2013, with the new lines applicable to the 2012 election. The legislation specifies six single-judge districts and assigns the incumbent judges to those districts.

5. S.L. 2011-283 (Medical expenses, expert testimony, attorneys fees, trespasser responsibility)

Labeled "An Act to Provide Tort Reform for North Carolina Citizens and Businesses," the bill makes several changes in the handling of civil cases, applicable to actions arising on or after October 1, 2011 (see S.L. 2011-317 for the final version of the effective date):

- The bill rewrites Rule 414 of the Rules of Evidence to specify that evidence of medical expenses is to be the actual amount paid or actual amount needed to satisfy the bill. It also amends G.S. 8-58.1 to allow use of a provider's testimony to rebut the presumption that the amount billed is that actual amount to be paid.
- G.S. 8C-702 is rewritten to specify that an expert's testimony must be based on sufficient facts or data and must be the product of reliable principles and methods applied reliably by the expert.
- G.S. 6-21.1 is amended to say that attorney's fees may be awarded when the defendant unreasonably refuses to negotiate or pay the claim; the damages recovered are $20,000 or less (was $10,000 or less); and the damages exceed the highest offer made by defendant in the last 90 days before trial. The attorney's fees are limited to $10,000 and the judge is require to make written findings of fact to support the award.
- The bill adds a new Chapter 38B entitled "Trespasser Responsibility." The new chapter states the general rule that an landowner or occupant owes no duty to and is not liable for injury to a trespasser. A variety of exceptions are then described, allowing liability, for example, when the occupant intentionally harms the trespasser or when the trespasser is a child under 14 who is harmed by an artificial condition, the occupant should have known children were likely to trespass, the occupant should have known of the likely harm to a child, and so forth.

6. S.L. 2011-285 (No sealing fee for indigent)

Effective July 1, 2011, G.S. 7A-308(b1) is amended to add certificates under seal to the fees from which lawyers representing indigents are exempted.

7. S.L. 2011-323 (AOC collection fees)

Effective July 1, 2011, and applicable to cases adjudicated on or after that date, G.S. 7A-321 is amended to include city and county governments in the agencies with which the AOC may contract to collect unpaid fines and fees, and to provide that such contracts may allow the collecting agency to keep the add-on collection assistance fee. The bill also allows such collection contracts to be used for collecting restitution.

8. S.L. 2011-398 (Administrative appeals, rulemaking)

For judicial officials, the most significant of the numerous changes to Chapter 150B (Administrative Procedure Act) and related statutes is to give administrative law judges (ALJ) authority to make final decisions in contested cases rather than sending a recommended decision back to the agency. Judicial review of final decisions will become simpler, therefore, in that the court will be reviewing only the ALJ's decision and will not have to go through the more complicated analysis that was required when the agency rejected the ALJ's recommended decision. The provisions on ALJs making final decisions apply to contested cases begun January 1, 2012, or later.

Most of the other changes concern the rulemaking process to be followed by agencies, starting October 1, 2011. Among the changes are new admonitions about avoiding unnecessary and duplicative rules; a requirement that each agency review its rules annually; more stringent requirements on estimating the costs and benefits of proposed rules, including a requirement that the agency consider at least two alternatives if a proposed rule would have an economic impact of $500,000 a year or more; and directions to put proposed

rules, fiscal notes, etc. on the agency website. The act also amends various statutes to generally prohibit environmental rules that are stricter than federal requirements.

2012 LEGISLATION OF INTEREST TO COURT OFFICIALS

UNC School of Government
August 2012

Ann Anderson (estates & special proceedings)
Michael Crowell (judicial authority & administration)
Shea Denning (motor vehicle law)
Cheryl Howell (domestic)
Dona Lewandowski (landlord-tenant)
Janet Mason (juvenile)
John Rubin (criminal law & procedure)

A copy of any bill can be viewed, downloaded or printed from the General Assembly Web site at www.ncga.state.nc.us.

Contents

Criminal Law & Procedure

1. **S.L. 2012-6 (S 582): Gaming on Indian lands.** Effective June 6, 2012, this act adds G.S. 14-292.2 to provide that Class III games may lawfully be conducted on Indian lands as specified in the new statute. Class III games include gaming machines, live table games, raffles, and video games as defined in the act and in statutes to which the act refers. The act repeals G.S. 14-306.1A(e), which previously addressed Class III gaming on Indian lands.

2. **S.L. 2012-7 (H 778): Innocence Commission procedures and preservation of biological evidence.** Effective June 7, 2012, and applicable to pending claims and to claims filed on or after that date, this act amends several statutes on preserving biological evidence. Amended G.S. 15A-268(a1) requires the agency that has custody of physical evidence (referred to as the custodial agency) to preserve the evidence, regardless of the date of collection, for as long as required by the preservation statutes. Amended G.S. 15A-268(a7) requires the custodial agency, if requested, to provide the defendant with an inventory of biological evidence in the agency's custody and, if evidence was destroyed based on a court order or other written directive, to provide the defendant a copy of the order or directive. Amended G.S. 15A-268(b) allows the custodial agency to dispose of evidence sooner than required by G.S. 15A-268(a6) if all of the listed conditions are met, including that the custodial agency

has determined that it has no duty to preserve the evidence under new G.S. 15A-1471, a section within G.S. Chapter 15A, Article 92, North Carolina Innocence Inquiry Commission (the Commission). New G.S. 15A-1471 provides that on receiving notice from the Commission, the State must preserve all files and evidence subject to disclosure under G.S. 15A-903, the principal statute governing the defendant's right to discovery in criminal cases. The duty to preserve ceases under the new statute (although a duty to preserve may still exist under other laws) once the Commission provides notice to the State that it has completed its inquiry. The new statute gives the Commission the right to a copy of all preserved records and to inspect, examine, and test physical evidence.

The act makes the following additional changes to Commission procedures. It adds a definition of claimant in G.S. 15A-1460 (essentially, a person who asserts complete innocence to a felony for which the person was convicted); specifies in G.S. 15A-1467(a) the people who may refer a claim of innocence to the Commission (namely, a state or local agency, claimant, or claimant's counsel); deletes from G.S. 15A-1468(b) the provision allowing the Commission to close portions of the proceedings to the victim; and revises G.S. 15A-1479 to authorize the Commission Chair to request the Attorney General (was, Director of the Administrative Office of the Courts) to appoint a special prosecutor to represent the State at Commission proceedings if there is credible evidence (was, allegation or evidence) of prosecutorial misconduct and precludes appointment as a special prosecutor a prosecutor from the district where the convicted person was tried. The act also amends G.S. 148-82(b), the provision on compensating people who have been convicted of a felony and been imprisoned and who thereafter have had their cases dismissed through Innocence Commission proceedings, to apply only to people who pled not guilty or no contest to the charges; the act does not add this plea restriction to G.S. 148-82(a), which provides for compensation for people who have been convicted of a felony and been imprisoned and who have received a pardon of innocence from the Governor.

3. **S.L. 2012-9 (H 340): Criminal history check for certificate to transport household goods and discretionary disqualification for criminal convictions.** Effective June 7, 2012, this act adds G.S. 62-273.1 to require criminal history checks of applicants for and current holders of a certificate to transport household goods. The act adds G.S. 114-19.31 to authorize the North Carolina Department of Justice to provide the North Carolina Utilities Commission with criminal history information. New G.S. 62-273.1 also provides that if the criminal history check reveals a criminal conviction, the Commission may, although is not required to, deny an application for a certificate or revoke a certificate. The new statute lists factors such as the seriousness and date of the crime for the Commission to consider in determining the action to take.

4. **S.L. 2012-12 (H 843): Emergency management.** As part of a rewrite of North Carolina's emergency management provisions, repealing Article 1 of G.S. Chapter 166A and adding new Article 1A, this act makes the following changes affecting criminal law, effective October 1, 2012. New G.S. 166A-19.30(d) and new G.S. 166A-19.31(h) make it a Class 2

misdemeanor to violate a declaration or executive order issued by the Governor or ordinance issued by a municipality or county during a state of emergency. The act adds new G.S. 14-288.20A repeating these provisions and adding that it is a Class 2 misdemeanor to willfully refuse to leave a public building as directed in a Governor's order under G.S. 166A-19.78. The act makes additional nonsubstantive, conforming changes to G.S. Chapter 14, Article 36A, renamed as Riots, Civil Disorders, and Emergencies. The act also revises G.S. 14-415.4(e)(6) and G.S. 14-415.12(b)(8) to require denial of a petition to restore firearm rights after a felony conviction and denial of an application for a concealed handgun permit for a conviction under new G.S. 14-288.20A or former G.S. 14-288.12, 14-288.13, and 14-288.14, which are repealed by the act.

5. **S.L. 2012-14 (H 345): Move-over law.** G.S. 20-157(f) has required drivers to move over or slow their vehicles when an emergency or public service vehicle is parked or standing within twelve feet of a roadway and is giving a warning signal. Effective for offenses committed on or after October 1, 2012, this act amends G.S. 20-157(f) to expand the definition of "public service vehicle" to include utility service vehicles, including electric, cable, telephone, communications and gas vehicles, and highway maintenance vehicles with amber-colored flashing lights authorized by G.S. 20-130.2.

6. **S.L. 2012-18 (H 707): Jury lists.** Included in a lengthy revision of statutes on registers of deeds is a rewrite of G.S. 9-4 about the preparation of jury lists, effective July 1, 2012. The changes provide for the jury list to be filed with the clerk of court rather than with the register of deeds and eliminate the requirement that the name of each person on the list be written on a separate card. These changes are incorporated in and superseded by the more extensive changes made in jury list procedures by S.L. 2012-180, summarized below.

7. **S.L. 2012-28 (H 673): Nuisance injunction for street gang activity.** Effective for offenses committed and abatement actions commenced on or after October 1, 2012, this act creates a new Article 13B (G.S. 14-50.31 through G.S. 14-50.33), the North Carolina Street Gang Nuisance Abatement Act, declaring as a public nuisance a street gang that regularly engages in criminal street gang activities (as defined in G.S. 14-50.16) and real property used by a street gang for the purpose of criminal street gang activities. The new article allows for a civil action, under Article 1 of G.S. Chapter 19, to abate the nuisance. The court may enter an order enjoining individuals named as defendants in the suit from engaging in criminal street gang activities. Such an order expires one year after entry unless earlier modified or revoked by the court. The act repeals G.S. 14-50.24, the current street gang nuisance statute.

8. **S.L. 2012-35 (H 941), as amended by S.L. 2012-194 (S 847): Pseudoephedrine transactions.** Effective June 20, 2012, this act amends G.S. 90-113.53 to limit retail sales of pseudoephedrine products to 3.6 grams per day (was, two packages containing a total of 3.6 grams) and 9 grams (was, three packages containing a total of 9 grams) within any thirty-day period. The act also amends G.S. 90-113.52(c) to require every retail purchaser of a

pseudoephedrine product to furnish a valid, unexpired, government-issued photo identification (was, photo identification) and to provide, in writing or orally, a valid personal residential address. The act deletes the requirement in that subsection that the retailer provide the purchaser with a written form with a statement of the limits on pseudoephedrine transactions. G.S. 90-113.54 continues to require the retailer to post a sign with that information.

9. **S.L. 2012-38 (H 149): Terrorism offense.** Effective for offenses committed on or after December 1, 2012, this act adds a new Article 3A (G.S. 14-10.1), Terrorism, creating a new terrorism offense. A person is guilty of the offense if he or she:
   - commits an act of violence
   - with the intent either to
     - intimidate the civilian population at large or an identifiable group of the civilian population, or
     - influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

   G.S. 14-10.1(a) defines an "act of violence" as one of several different crimes, including, among others, murder, manslaughter, and felonies involving assault or the use of force against another person. The offense is a separate offense from and is punishable one class higher than the underlying act of violence, except the offense is punishable as a Class B1 felony if the underlying act of violence is a Class A or B1 felony. Real and personal property used in or derived from the offense are subject to seizure and forfeiture as provided in G.S. 14-10.1(b). The act also amends G.S. 14-7.20 to make the offense of engaging in a continuing criminal enterprise a Class D felony if the underlying felony is a violation of new G.S. 14-10.1. For a further discussion of this act, see Jessica Smith, *The New Terrorism Offense*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 5, 2012).

10. **S.L. 2012-39 (H 176): Domestic violence changes.** G.S. 15A-1343(b)(12) has authorized the court to order as a regular condition of probation attendance at and completion of an abuser treatment program if the court finds the defendant responsible for acts of domestic violence and a program approved by the North Carolina Domestic Violence Commission is reasonably available to the defendant. Effective for defendants placed on probation on or after December 1, 2012, this act revises G.S. 15A-1343(b)(12) to require that if the defendant is discharged from the program for failing to comply, such noncompliance must be reported to the court. Revised G.S. 15A-1343(b) also provides that if a defendant is required to participate in an abuser treatment program as a condition of unsupervised probation, the court must schedule a compliance review within sixty days of the entry of judgment and every sixty days thereafter until the defendant completes the program.

    The act also amends G.S. 15A-1382.1(a), which provides that if the case involved an offense described in that subsection and the defendant and victim had a personal relationship as defined in G.S. 50B-1(b), the court must enter on the judgment of conviction that the case involved domestic violence. Revised G.S. 15A-1382.1(a) imposes this

requirement if the defendant is convicted of an offense involving any of the acts in G.S. 50B-1(a). The act repeals G.S. 15A-1382.1(b), which addressed the authority of the court to impose special conditions of probation in domestic violence cases when the court imposed a community punishment; these provisions were made moot by the General Assembly's passage of the Justice Reinvestment Act in 2011, which significantly narrowed the differences between community and intermediate punishments.

11. **S.L. 2012-40 (H 235): Criminal conviction of sexually-related offense as ground for termination of parental rights.** Effective October 1, 2012, this act amends G.S. 7B-1111(a) to add as a ground for terminating a parent's rights to a child a conviction of the parent of a sexually-related offense under G.S. Chapter 14 resulting in conception of the child.

12. **S.L. 2012-46 (H 199): Metal theft.** Effective for offenses committed on or after October 1, 2012, this act makes several changes to the regulation of metal purchases and sales. It adds a new Article 45, Pawnbrokers, Metal Dealers, and Scrap Dealers, to G.S. Chapter 66. It recodifies and renames G.S. Chapter 91A, Pawnbrokers and Cash Converters Modernization Act, as Part 1 of G.S. Chapter 66, Article 45 (G.S. 66-385 through G.S. 66-399), Pawnbrokers and Cash Converters; and recodifies and renames G.S. Chapter 66, Article 25, Regulation of Precious Metal Businesses, as Part 2 of G.S. Chapter 66, Article 45 (G.S. 66-405 through G.S. 66-414), Precious Metal Businesses. The substance of those provisions did not change.

    The act adds a new Part 3 to Article 45 (G.S. 66-415 through 66-425), Regulation of Sales and Purchases of Metals, with permitting and record-keeping requirements, purchasing and transportation restrictions, and other regulations involving covered transactions. New G.S. 66-417 gives law enforcement officers the right to inspect records kept by and purchased metals in the possession of secondary metals recyclers (as defined in new G.S. 66-415). New G.S. 66-418 gives law enforcement officers the right to issue a "hold notice" if the officer has reasonable suspicion to believe nonferrous metals in the possession of a nonferrous metals purchaser (as defined in new G.S. 66-415) have been stolen. The hold notice bars a nonferrous metals purchaser from processing or removing the items from a secondary metal recycler's fixed site for fifteen days. The officer may renew the notice for an additional thirty days. New G.S. 66-418 requires any secondary metals recycler owner convicted of certain felonies to retain nonferrous metals for seven days from the date of purchase before disposing or altering the items. New G.S. 66-424 makes a violation of any provision in new Part 3 of Article 45 a Class 1 misdemeanor for a first offense and a Class I felony for a subsequent offense; it also requires the revocation of a permit for a fixed site for six months if the owner or employees are convicted of a total of three or more violations of Part 3 within a ten-year period.

    New G.S. 14-159.4 creates the new offense of:

    - willfully and wantonly
    - cutting, mutilating, defacing, or otherwise injuring
    - any personal or real property, including any fixtures or improvements
    - of another

- for the purpose of obtaining nonferrous metals.

The new statute creates five different punishment levels, from Class 1 misdemeanor to Class D felony, depending on the damage from the unlawful act. Thus, if the damage to property is less than $1,000, the offense is a Class 1 misdemeanor; if the offense results in the death of another person, the offense is a Class D felony.

13. **S.L. 2012-56 (S 816): Banking law changes.** Effective October 1, 2012, this act rewrites North Carolina's banking laws. Among the changes, the act adds the following offenses (specified in greater detail in the indicated statutes):
    - New G.S. 53C-8-7 makes it a Class H felony for a bank examiner to make a false report about the condition of a bank that the examiner has examined.
    - New G.S. 53C-8-8 makes it a Class 1 misdemeanor for an examiner or other employee of the Office of the Commissioner of Banks to fail to keep secret the information obtained in an examination of a bank except as otherwise provided in G.S. Chapter 53C.
    - New G.S. 53C-8-9 makes it a Class 1 misdemeanor, subject to certain exceptions, for a bank or officer, director, or employee to make an extension of credit or grant a gratuity to the Commissioner of Banks, a deputy commissioner, or a bank examiner, or for them to accept an extension of credit or gratuity. A person violating this provision may be a fined a sum equal to the amount of the extension made or gratuity given.
    - New G.S. 53C-8-10 makes it a Class 1 misdemeanor to willfully and maliciously make a false and derogatory statement about the financial condition of a bank.
    - New G.S. 53C-8-11 creates five bank fraud offenses, including an embezzlement offense. An offense under this section involving funds of $100,000 or more is a Class C felony, and an offense involving less than $100,000 is a Class H felony.

    The act repeals Article 10 of G.S. Chapter 53 containing similar crimes and other articles within that chapter containing other bank-related crimes.

14. **S.L. 2012-72 (H 1081): Practice as a clinical addictions specialist without a license.** Effective June 26, 2012, this act revises G.S. 90-113.31A(22a) and G.S. 90-113.43 to rename a provisional licensed clinical addictions specialist as a licensed clinical addictions specialist associate and, as under prior law, make it a Class 1 misdemeanor to practice in that capacity without a license.

15. **S.L. 2012-83 (S 881): Department of Public Safety.** Effective June 26, 2012, this act makes several technical and organizational changes to the statutes governing the North Carolina Department of Public Safety. Among the changes, the act revises G.S. 14-202(m) to exempt personnel of the Division of Juvenile Justice from peeping laws when they act for security purposes or during the investigation of alleged misconduct by a person in the custody of that division; amends G.S. 143B-704(d) to rename the Division of Adult Correction's substance abuse program as the alcoholism and chemical dependency treatment program and to revise the description of the program; and revises G.S. 143B-600(a)(7) and G.S. 143B-601 to place operation of the evidence warehouse under the Office of External Affairs in the

Department of Public Safety, to rename the warehouse as the "Victim Services Warehouse," and to require the Department to do the following: provide central storage and management of evidence according to G.S. Chapter 15A, Article 13 (DNA Database and Databank, G.S. 15A-266 through 15A-270.1), create a databank of statewide storage locations of postconviction evidence, provide central storage and management of rape kits according to the federal Violence against Women and Department of Justice Reauthorization Act of 2005, and provide for the storage and management of evidence.

16. **S.L. 2012-127 (H 512): Waste kitchen grease.** Effective for offenses committed on or after January 1, 2013, this act adds G.S. 14-79.2 to create the following three new offenses:
    - Taking and carrying away a waste kitchen grease container or waste kitchen grease contained therein bearing a notice that unauthorized removal is prohibited without the written consent of the owner of the container.
    - Intentionally contaminating or purposely damaging any waste kitchen grease container or grease therein.
    - Placing a label on a waste kitchen grease container knowing that it is owned by another person in order to claim ownership of the container.

    If the value of the container or grease is $1,000 or less, the offense is a Class 1 misdemeanor; if the value is more than $1,000, the offense is a Class H felony.

17. **S.L. 2012-134 (S 828): Unemployment insurance fraud and disqualification from receiving benefits.** Two aspects of this act relate to criminal law. First, effective for offenses committed on or after December 1, 2012, Section 4(a) of the act amends G.S. 96-18(a) to divide unemployment insurance fraud into two offense classes: a Class I felony if the value of the benefit wrongfully obtained is more than $400, and a Class 1 misdemeanor if the value of the benefit is $400 or less. Second, effective November 1, 2012, Section 2(b) of the act amends G.S. 96-14 to redefine misconduct that disqualifies a person from receiving unemployment insurance benefits. The amended statute provides that the listed disqualifying acts constitute prima facie evidence of misconduct, which may be rebutted by the claimant; and, the convictions listed as acts of misconduct must be related to or connected with an employee's work or in violation of a reasonable rule or policy. For further information about disqualification from unemployment benefits and other collateral consequences of a criminal conviction, see Collateral Consequences Assessment Tool (C-CAT), an online research tool from the School of Government.

18. **S.L. 2012-136 (S 416): Racial Justice Act amendments.** This act primarily addresses the North Carolina Racial Justice Act, enacted in 2009 as S.L. 2009-464 (S 461). *See generally* John Rubin, 2009 Legislation Affecting Criminal Law and Procedure, ADMINISTRATION OF JUSTICE BULLETIN No. 2009/09, at pp. 32–33 (Dec. 2009). The Governor vetoed the new act, and the General Assembly overrode her veto. This summary briefly describes the changes.

    Sections 1 and 2 address two statutes that are not part of the Racial Justice Act. Effective for executions scheduled after July 2, 2012, amended G.S. 15-188 provides that the

superintendent of the State penitentiary must provide, in conformity with G.S. Ch. 15, Article 19 (Execution) (was, in conformity with that Article and approved by the Governor and Council of State), the necessary appliances for infliction of death and qualified personnel to perform the procedure. Effective for Rule 24 hearings scheduled on or after July 2, 2012, amended G.S. 15A-2004(b) adds the following provisions: a court may discipline or sanction the State for failing to comply with the time requirements in Rule 24 of the General Rules of Practice for the Superior and District Courts but may not declare a case as noncapital for such a failure; and, in addition to any discipline or sanctions the court may impose, the court must continue the case for sufficient time so that the defendant is not prejudiced by any delays in the holding of the Rule 24 hearing.

Sections 3 and 4 of the act address statutes previously enacted by the Racial Justice Act. Section 3 amends G.S. 15A-2011, as described below; Section 4 repeals G.S. 15A-2012, which contained the hearing procedures for Racial Justice Act claims.

Amended G.S. 15A-2011(a) provides that a finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor at the time the death sentence was sought or imposed. The amended provision states that "at the time the death sentence was sought or imposed" means the "period from 10 years prior to the commission of the offense to the date that is two years after the imposition of the death sentence."

New G.S. 15A-2011(a1) provides that a defendant who makes a motion for relief from a death sentence under the Racial Justice Act must waive, as provided in the new subsection, any objection to the imposition of life imprisonment without parole.

G.S. 15A-2011(b), which described evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death, is deleted.

Amended G.S. 15A-2011(c) states that the defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county or prosecutorial district (was, the county, prosecutorial district, judicial division, or state).

New G.S. 15A-2011(d) describes evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose a sentence of death. It states that evidence may include statistical evidence derived from the county or prosecutorial district where the defendant was sentenced to death, or other evidence, that the race of the defendant was a significant factor or that race was a significant factor in decisions to exercise peremptory challenges during jury selection. It also states that evidence may include sworn testimony of personnel involved in the criminal justice system, including attorneys, prosecutors, law enforcement officers, judicial officials, and jurors.

New G.S. 15A-2011(e) states that statistical evidence alone is insufficient to establish that race was a significant factor under the Racial Justice Act article and that the State may offer evidence in rebuttal of claims or evidence of the defendant, including statistical evidence.

New G.S. 15A-2011(f) describes procedures for raising and hearing a claim that race was a significant factor in decisions to seek or impose a sentence of death in the defendant's

case.

New G.S. 15A-2011(g) states that if the court finds that race was a significant factor in decisions to seek or impose a death sentence in the defendant's case, the court shall order that a death sentence not be sought or that a death sentence be vacated and the defendant resentenced to life imprisonment without parole.

The act states it is effective when it becomes law (July 2,2012, when the General Assembly overrode the Governor's veto) and applies to all capital trials held before, on, or after the effective date of the act and to all capital defendants sentenced to the death penalty before, on, or after the effective date of the act. The act contains additional uncodified provisions on the applicability of the act to motions filed, hearings commenced, and decisions issued pursuant to S.L. 2009-464—for example, the act states that it applies to postconviction motions filed before the effective date of the new act but does not apply to such motions if the court, before the effective date of the new act, made findings of fact and conclusions of law after an evidentiary hearing on the motion unless the court's order is vacated or overturned on appellate review.

19. **S.L. 2012-142 (H 950): Budget bill.** This act modifies the 2011 Appropriations Act. The Governor vetoed the act, and the General Assembly overrode her veto. Unless otherwise noted, the provisions discussed below are effective July 1, 2012.

- Section 8.9 of the act amends G.S. 115D-21(c) to authorize community colleges to increase the maximum permissible penalty for a parking violation from $5 to $25 and adds G.S. 115D-21(d) to provide that the clear proceeds of civil penalties collected under G.S. 115D-21 must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- Section 15.3A establishes the North Carolina Human Trafficking Commission in the Department of Justice with the powers enumerated in that section, including the power to research the occurrence of human trafficking in North Carolina, suggest policies, procedures, and legislation to eradicate human trafficking, and provide assistance to law enforcement. The Commission terminates December 31, 2014.
- Section 16.3 repeals G.S. 7A-314(f), which addressed foreign language interpreters, and states in an uncodified provision of Section 16.3 that the Judicial Department may use funds appropriated and available to the Judicial Department to provide assistance to limited English proficient (LEP) individuals, assist the courts in the fair, efficient, and accurate transaction of business, and provide more meaningful access to the courts.
- Effective for fees waived on or after July 1, 2012, Section 16.6(b) amends G.S. 7A-304(a) to provide that the court may waive costs under that section and may waive or reduce costs under subdivisions (7) or (8) of that section (which deal with state and local crime lab costs) only if the court enters a written order, supported by findings of fact and conclusions of law, determining that there is just cause for the order. Section 16.6(a) amends G.S. 7A-38.7(a) to impose a similar requirement for waiver or reduction of dispute resolution fees in criminal cases.

20. **S.L. 2012-143 (S 820): Hydraulic fracturing.** This act authorizes hydraulic fracturing, known as fracking, in North Carolina. The Governor vetoed the act, and the General Assembly overrode her veto. As part of numerous changes and additions to the North Carolina General Statutes, Section 2(a) of the act revises G.S. 113-380, effective August 1, 2012, to provide that a violation of G.S. Ch. 113, Article 27 (Oil and Gas Conservation) is a Class 1 misdemeanor except as otherwise provided.

21. **S.L. 2012-146 (H 494), as amended by S.L. 2012-194 (S 847): Expanded authorization for continuous alcohol monitoring.** Effective for offenses committed on or after December 1, 2012, this act amends several statutes to authorize the imposition of continuous alcohol monitoring in a range of circumstances. Those circumstances are as follows.

Pretrial release. Amended G.S. 15A-534(a) authorizes a judicial official to include as a condition of pretrial release for any criminal offense that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring (CAM) system of a type approved by the Division of Adult Correction of the Department of Public Safety. The amended subsection requires that any violation of an abstinence/CAM condition be reported by the monitoring provider to the district attorney. The act likewise amends G.S. 15A-534.1, which prescribes special pretrial release procedures for domestic violence offenses, to authorize a judge to impose the same conditions. The act repeals G.S. 15A-534(i), which authorized for CAM as a pretrial release condition for certain impaired driving offenses only.

Conditions of probation. New G.S. 15A-1343(a1)(4a) allows as a condition of community or intermediate punishment that the defendant "abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment." New G.S. 15A-1343(b1)(2c) allows this requirement to be imposed as a special condition of probation. Amended G.S. 15A-1343.2(f) expands a probation officer's delegated authority when a person has received an intermediate punishment to include requiring that the person submit to continuous alcohol monitoring when abstinence from alcohol consumption has been specified as a condition of probation.

Eliminated from G.S. 15A-1343(b) is language that barred requiring a defendant to pay the costs of a substance abuse monitoring program or other special condition of probation in lieu of, or prior to, the payments required by G.S. 15A-1343(b), which specifies the regular conditions of probation. New G.S. 15A-1343.3(b) requires that probationers pay fees for CAM directly to the monitoring provider and prohibits the provider from terminating CAM for nonpayment of fees without court authorization.

Impaired driving offenses. Amendments to G.S. 20-28(a) permit a court, in sentencing a defendant convicted of driving while license revoked, to order abstinence from alcohol and CAM for a minimum period of 90 days as a condition of probation if the person's license was originally revoked for an impaired driving revocation.

New G.S. 20-179(k2) allows a judge to order "as a condition of special probation" for any level of punishment under G.S. 20-179, which governs sentencing for DWI and related

offenses, that "the defendant abstain from alcohol consumption, as verified by a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety." New G.S. 20-179(k3) permits the court to authorize a probation officer to require a defendant to submit to CAM for assessment purposes if the defendant is required as a condition of probation to abstain from alcohol consumption and the probation officer believes the defendant is consuming alcohol. If the probation officer orders the defendant to submit to CAM pursuant to this provision, the defendant must bear the costs of CAM.

The act also amends the mandatory punishment provisions for Level One sentencing in G.S. 20-179(g). That subsection currently requires a minimum term of imprisonment of not less than 30 days and provides that the term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. Amended G.S. 20-179(g) permits a judge to reduce the minimum term of imprisonment to a term of not less than ten days if the judge imposes as a condition of special probation that the defendant abstain from alcohol consumption for at least 120 days and be monitored by a continuous alcohol monitoring system of a type approved by the Division of Adult Correction of the Department of Public Safety. The amended subsection provides that if a defendant is monitored on an approved CAM system before trial, up to 60 days of pretrial monitoring may be credited against the 120-day monitoring requirement for probation.

The act likewise amends the mandatory punishment for Level Two sentencing in G.S. 20-179(h). That subsection currently requires a minimum term of imprisonment of not less than seven days and provides that the term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. Amended G.S. 20-179(h) permits a judge to suspend the term of imprisonment if the judge imposes as a condition of special probation that the defendant abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system of a type approved by the Division of Adult Correction of the Department of Public Safety. If the defendant is monitored on an approved CAM system before trial, up to 60 days of pretrial monitoring may be credited against the 90-day monitoring requirement for probation.

New G.S. 20-179(k4) provides that the judge may not impose CAM under subsections (g), (h), (k2), and (k3), the new and amended subsections discussed above, if he or she finds good cause for not requiring the defendant to pay the costs of CAM except if "the local governmental entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system." The act repeals G.S. 20-179(h3), which required that fees and costs ordered for CAM imposed under G.S. 20-179(h1) (authorizing CAM as a condition of probation for a Level One or Two punishment) be paid to the clerk of court, who then transmitted the fees to the monitoring entity.

Custody cases. Effective for custody orders issued on or after December 1, 2012, new G.S. 50-13.2(b2) provides that any order for custody, including visitation, may require either or both parents to abstain from consuming alcohol and to submit to CAM to verify

compliance. The new subsection provides that failure to comply with the abstinence/CAM condition is grounds for civil or criminal contempt.

Additional resources. For a further discussion of this act, see Shea Denning, *Authorization for Continuous Alcohol Monitoring Expanded by S.L. 2012-146*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 17, 2012).

22. S.L. 2012-148 (S 635): Sentencing of juveniles to life imprisonment. North Carolina law authorizes a juvenile's case to be transferred to superior court and the juvenile to be tried as an adult for a felony allegedly committed when the juvenile was 13, 14, or 15. If convicted, the juvenile is sentenced in the same way that an adult would be sentenced for the same offense, with few exceptions. The U.S. Supreme Court held in *Roper v. Simmons*, 543 U.S. 551 (2005), that imposing the death penalty on someone who was younger than eighteen when he or she committed a capital offense violates the Eighth Amendment. Five years later, in *Graham v. Florida*, ___ U.S. ___, 130 S. Ct. 2011 (2010), the Court held that a sentence of life without the possibility of parole violates the Eight Amendment when imposed on someone who committed a non-homicide offense when younger than age eighteen. Consistent with those cases, in North Carolina the death penalty can never be imposed on someone for an offense committed before age eighteen, and a sentence of life without the possibility of parole can be imposed only in cases of first-degree murder. *See* G.S. 14-17.

On June 25, 2012, in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012), the Supreme Court extended its holding in *Graham* and held in a capital murder case involving a juvenile defendant that an automatic sentence of life without the possibility of parole violates the Eighth Amendment. Because North Carolina required such a sentence on a juvenile's conviction for first degree murder, legislative changes were needed. The General Assembly made those changes in S.L. 2012-148, effective July 12, 2012. This act creates a new Article 93, Sentencing for Minors Subject to Life Imprisonment without Parole, in G.S. Chapter 15A. The new article authorizes a sentence of life imprisonment with the possibility of parole after 25 years for juvenile defendants convicted of first-degree murder. If the murder conviction is based solely on the felony murder rule, the court must impose this sentence. In other cases involving first-degree murder, the court must conduct a hearing, pursuant to new G.S. 15A-1477, to determine whether the defendant should be sentenced to life imprisonment with the possibility of parole or without parole. The new statute identifies mitigating factors that the defendant may submit to the judge in making this decision. New G.S. 15A-1479 describes the conditions and procedures for parole for juvenile defendants sentenced to life imprisonment with the possibility of parole.

The act applies to sentencing hearings held on or after July 12, 2012. It also applies to resentencing hearings for juvenile defendants who were younger than 18 at the time of their offense and who were sentenced to life imprisonment without parole. New G.S. 15A-1478 establishes procedures for motions for appropriate relief seeking resentencing in such cases. The act also directs the North Carolina Sentencing and Policy Advisory Commission, in consultation with the Office of the Juvenile Defender, the Conference of District Attorneys,

and other organizations and agencies identified by the Sentencing Commission, to study and report to the General Assembly by January 31, 2013, on sentencing of juveniles convicted of first-degree murder.

23. **S.L. 2012-149 (S 707): School offenses and procedures, cyberbullying, magistrate charging procedures, and prayers for judgment continued for Class B1 through E felonies.** This act deals primarily with offenses involving schools. The school-related changes are as follows:
    - Effective July 12, 2012, new G.S. 14-33(c1) provides that school personnel who take reasonable action in good faith to end a fight or altercation between students incur no civil or criminal liability as a result of their actions; effective with the beginning of the 2012–13 school year, new G.S. 115-390.3(d) provides that no school employee may be reprimanded or dismissed for acting or failing to act to stop or intervene in an altercation between students if the employee's actions are consistent with local education board policies.
    - Effective for offenses committed on or after December 1, 2012, new G.S. 14-458.2 creates the offense of cyberbullying of a school employee by a student, a Class 2 misdemeanor. G.S. 14-458.2(a) defines school employees and students as those at primary and secondary schools. G.S. 14-458.2(b) lists several ways in which the offense is committed, such as building a fake profile or website with the intent to intimidate or torment a school employee. G.S. 14-458.2(d) allows for discharge and dismissal of the case on completion of probation and, if the person qualifies, expunction under G.S. 15A-146, the statute on expunctions of dismissals. In addition, if a student is convicted of cyberbullying under G.S. 14-458.2, new G.S. 115C-366.4 requires transfer of the student to another school in the local administrative unit or, if there is not an appropriate school, another class or teacher.

    The act also makes changes to the statutes on cyberbullying generally. Effective July 12, 2012, G.S. 14-453(7c) is amended to expand the definition of "profile," on which a cyberbullying offense may be based; effective for offenses committed on or after December 1, 2012, amendments to G.S. 14-458.1(a)(3), (5), and (6), which describe the ways in which a cyberbullying offense may be committed, require proof of an improper intent as described in those subsections.

    The act adds and revises additional school statutes in G.S. Chapter 115C, effective with the beginning of the 2012–13 school year.
    - New G.S. 115C-46.2 regulates probation officer visits at schools.
    - Amended G.S. 115C-288(g) requires the principal to report to law enforcement the occurrence of certain offenses on school property when the principal has knowledge or actual notice of the occurrence (was, knowledge, reasonable belief, or actual notice). The subsection also is amended to delete the provision on demotion or dismissal of a principal who fails to make such a report.
    - New G.S. 115C-289.1 requires a supervisor of a school employee to report to the principal an assault by a student against the employee resulting in physical injury when the supervisor has actual notice of the assault.

The act adds new G.S. 15A-301(b1) and (b2) to modify charging procedures by magistrates for offenses allegedly committed by school employees while discharging their duties of employment. New subsection (b1) provides that a magistrate may not issue an arrest warrant or other criminal process in such a case without the prior written approval of the district attorney or designee. This requirement does not apply to traffic offenses or offenses that occur in the presence of a law enforcement officer. New subsection (b2) allows a district attorney to decline the authority under new subsection (b1), in which case the chief district judge must appoint a magistrate or magistrates to review any application for an arrest warrant or other criminal process against a school employee for a misdemeanor allegedly committed during the discharge of employment duties. Subsection (b2) explicitly lifts this requirement if the offense is a traffic offense, the offense occurred in the presence of a law enforcement officer, or there is no appointed magistrate available to review the application; the new subsection implicitly exempts felony cases from the requirement because it applies to misdemeanors only. Subsection (b2) states that the failure to comply with the requirement does not affect the validity of any arrest warrant or other criminal process. The changes are effective on or after the date a magistrate is appointed by the chief district court judge to perform these functions.

In a change unrelated to schools, the act adds new G.S. 15A-1331B to prohibit a court from disposing of a Class B1 through E felony by a prayer for judgment continued (PJC) that exceeds 12 months. It provides further that if the court imposes a PJC in such a case, it must impose as a condition that the State pray judgment within a specific period of time not to exceed 12 months. If the State does not pray judgment within 12 months, the court must enter final judgment unless it finds that the interests of justice warrant continuing the PJC for an additional 12 months. The change applies to offenses committed on or after December 1, 2012.

24. **S.L. 2012-150 (H 203): False liens.** Effective for offenses committed on or after December 1, 2012, this act amends and enacts several statutes on the filing of false liens and similar claims. The amended statutes are as follows:

- The punishment for violation of G.S. 14-118.1, which prohibits the simulation of court process in connection with the collection of a claim, demand, or account, is increased from a Class 2 misdemeanor to Class I felony.
- The grounds for a violation of G.S. 14-118.12, which prohibits residential mortgage fraud, are expanded to prohibit knowingly filing in a public or a private record generally available to the public a document falsely claiming that a mortgage loan has been satisfied, discharged, released, revoked, or terminated or is invalid.
- The punishment for a violation of G.S. 14-401.19, which prohibits filing a false security agreement, is increased from a Class 2 misdemeanor to Class I felony.
- The punishment for a violation of G.S. 44A-12.1(c), which prohibits the filing of a claim of lien that is not authorized by statute, is for an improper purpose, or wrongfully interferes with another person, is increased from a Class 1 misdemeanor to Class I felony.

New G.S. 14-118.6 creates a new offense of filing a false lien or encumbrance, a Class I felony. A violation is also an unfair and deceptive trade practice under G.S. 75-1.1. A person is guilty of this offense if he or she:

- presents for filing
- in a public record or a private record generally available to the public
- a false lien or encumbrance
- against the real or personal property
- of a public officer or public employee
- on account of the performance of the officer or employee's official duties
- knowing or having reason to know
- that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation.

The new statute authorizes the register of deeds to refuse to file the lien on reasonable suspicion that it is false. If the filing is denied, the person may commence a special proceeding to determine whether the filing is appropriate as provided in new G.S. 14-118.6(b).

25. S.L. 2012-153 (S 910): Unlawful sale, surrender, or purchase of a minor. Effective for offenses committed on or after December 1, 2012, this act adds G.S. 14-43.14 to make the unlawful sale, surrender, or purchase of a minor a Class F felony. A person commits the new offense if he or she

- acting with willful or reckless disregard for the life or safety of a child
- participates
- in the acceptance, solicitation, offer, payment, or transfer of any compensation
- in connection with the unlawful acquisition or transfer of the physical custody of a minor.

The new prohibition does not apply to actions that are ordered by a court, authorized by statute, or otherwise lawful. An amendment to G.S. 14-322.3 also makes the prohibition inapplicable to a parent who voluntarily surrenders an infant less than seven days of age as provided in G.S. 7B-500.

The new statute provides for a minimum fine of $5,000 for a first offense and $10,000 for a subsequent offense. It also provides that a child whose parent, guardian, or custodian has sold or attempted to sell the child in violation of the new statute is an "abused juvenile" as defined by G.S. 7B-101(1) and the court may place the child in the custody of a county department of social services or any person as the court finds to be in the child's best interest. The sentencing court also must consider whether the defendant is a danger to the community and whether requiring him or her to register as a sex offender under Article 27A of G.S. Chapter 14 would further the purpose of the sex offender registration law. If the court so finds, it may enter an order requiring the person to register. The act amends G.S. 14-208.6(4) to make a conviction under the new statute a "reportable conviction" under the sex offender registration law if the sentencing court orders the person to register. Attempts,

conspiracies, and solicitations to sell, surrender, or purchase a child apparently are not reportable because not specified in the revised statute. *Compare, e.g.,* G.S. 14-208.6(4)a. (specifying that an attempt to commit a sexually violent offense is reportable); G.S. 14-208.6(5) (specifying that a conspiracy or solicitation to commit a sexually violent offense is reportable).

The act requires the N.C. Conference of District Attorneys to study additional measures that may be taken to stop criminal activities involving the sale of children and to submit a final report of its findings and recommendations to the General Assembly by January 30, 2013.

26. S.L. 2012-154 (H 54): Habitual misdemeanor larceny. Effective for offenses committed on or after December 1, 2012, this act amends G.S. 14-72(b), which lists various circumstances in which a larceny is a Class H felony, to make a larceny a Class H felony if committed after the defendant has previously been convicted four times of a larceny as defined in new G.S. 14-72(b)(6). The new subdivision describes in detail when a prior larceny conviction counts for the new offense. Thus, a prior conviction counts if it is a conviction in North Carolina or another jurisdiction for any larceny offense under "this section" (that is, G.S. 14-72), any offense deemed or punishable as a larceny under "this section," or any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors or felonies. A prior conviction may be counted only if the defendant was represented by counsel or waived counsel. If a person was convicted of more than one misdemeanor larceny in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions count; however, convictions based on offenses that occurred in separate counties count as separate convictions.

27. S.L. 2012-160 (H 737): Criminal history checks and disqualifications for child care providers. Effective January 1, 2013, this act expands the scope of criminal record checks required of people who care for children in child care facilities and adds additional restrictions on who may be a child care provider in a licensed or regulated child care facility. Amended G.S. 110-90.2(a) contains a broader definition of child care providers who are subject to a criminal history check and an expanded list of offenses to be included in the record check. Amended G.S. 110-90.2(b) requires a check every three years after a person's employment starts. New G.S. 110-90.2(a1) imposes a mandatory disqualification on being a child care provider if the person is convicted of a misdemeanor or felony involving child neglect or abuse or of an offense that is a reportable conviction for sex offender registration purposes. New G.S. 110-90.2(b) imposes a discretionary disqualification from being a child care provider if the person is a habitually excessive user of alcohol, illegally uses narcotic or other impairing drugs, or is mentally or emotionally impaired to an extent that may be injurious to children.

28. S.L. 2012-165 (S 105): Punishment for second-degree murder and deaths caused by DWI. Second-degree murder has been classified as a Class B2 felony under G.S. 14-17. Effective

for offenses committed on or after December 1, 2012, this act adds G.S. 14-17(b) to make second-degree murder a Class B1 felony except if the "malice" necessary to prove second-degree murder is based on recklessness as described in new G.S. 14-17(b)(1) or the murder is caused by the unlawful distribution of certain drugs, such as opium, in which case the offense remains a Class B2 felony. The opening sentence of new G.S. 14-17(b) states that second-degree murder as provided in the new subsection does not include a violation of G.S. 14-23.2 ("Murder of an unborn child; penalty"). The latter statute was not revised by the act and continues to state that a violation of G.S. 14-23.2(a)(3) based on recklessness is punishable in the same manner as for second-degree murder under G.S. 14-17; because second-degree murder based on recklessness remains a Class B2 felony under new G.S. 14-17(b), a violation of G.S. 14-23.2(a)(3) based on recklessness appears to remain a Class B2 felony as well. For a further discussion of the change in punishment for second-degree murder, see Jeff Welty, *Change in Punishment for Second-Degree Murder,* N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 10, 2012).

The act also revises G.S. 20-141.4(b) to state that the punishment for repeat felony death by vehicle remains a Class B2 felony (was, the same as for second-degree murder); to provide that the court must sentence a defendant convicted of aggravated death by vehicle, which remains a Class D felony, to a sentence in the aggravated range; and to increase from a Class E to Class D felony the classification for felony death by vehicle and to authorize an intermediate punishment for a defendant in prior record level I.

29. S.L. 2012-168 (S 141): Trespass, motions for appropriate relief, license revocation procedures for provisional licensees, Department of Public Safety, and extension of time for forensic accreditation and certification. This act makes several changes, as follows.

Trespass. Effective for offenses committed on or after September 1, 2012, this act creates new Class A1 misdemeanor and new Class H felony trespass offenses.

It is a Class A1 misdemeanor under new G.S. 14-159.12(c) for a person to:

- commit a first-degree trespass in violation of G.S. 14-159.12(a)
- on the premises of an electric, water, or natural gas utility facility as described in new G.S. 14-159.12(c) by
  - actually entering a building, or
  - climbing, going over, or otherwise surmounting a fence or other barrier to reach the facility.

It is a Class H felony under new G.S. 14-159.12(d) for a person to:

- violate new G.S. 14-159.12(c) if
  - the offense is committed with the intent to disrupt the normal operation of an electrical facility as described in G.S. 14-159.12(c)(1), or
  - the offense involves an act that places either the offender or others on the premises at risk of serious bodily injury.

Motions for appropriate relief. Effective for motions for appropriate relief filed on or after December 1, 2012, and for motions that are pending and for which no answer has been filed on or after that date, the act revises the procedures for hearing motions for appropriate

relief, primarily in noncapital cases.

Revised G.S. 15A-1413 requires that motions for appropriate relief be referred to the senior resident superior court judge or chief district court judge, depending on which level of court the motion is filed, for assignment to a judge for review, hearing, and other appropriate actions. G.S. 15A-1413(b) continues to allow a judge who presided at the trial to be assigned the motion, but the motion is not required to be assigned to the presiding judge. Revised G.S. 15A-1413(b) provides that if the presiding judge is unavailable the senior resident superior court or chief district court judge may assign the case to another judge; and G.S. 15A-1413(e) provides that the assignment of the case is in the discretion of the senior resident superior court or chief district court judge. (In the third edition of the act, proposed G.S. 15A-1413(e) stated that when practicable a motion for appropriate relief shall be assigned to the judge who presided at the trial, accepted the guilty plea, or imposed sentence; that language was omitted from later editions of the act.) G.S. 15A-1413 does not distinguish between capital and noncapital cases, but it does not appear to change the procedure for assignment of motions for appropriate relief in capital cases, which have been governed by similar assignment requirements under Rule 25 of the General Rules of Practice for the Superior and District Courts.

The act also adds new G.S. 15A-1420(b2) establishing time frames for reviewing, hearing, and ruling on motions for appropriate relief. These requirements apply specifically to noncapital cases. Thus, the new subsection requires that the case be assigned to a judge within 30 days of filing of a motion for appropriate relief, that the assigned judge take initial action within 30 days after assignment, and that the parties and judge meet other time limits. The new subsection allows for extensions of time on a proper showing. If the court does not comply with the required deadlines, a party may petition the senior resident superior court or chief district court judge to assign the motion to a different judge or may seek a writ of mandamus to obtain compliance with the deadlines. The new subsection states that the failure to meet a deadline is not ground for the summary granting of a motion for appropriate relief.

New G.S. 15A-1420(e) states that nothing in G.S. 15A-1420 precludes the parties from entering into an agreement for appropriate relief, including an agreement as to any aspect, procedural or otherwise, of a motion for appropriate relief. Presumably, agreements requiring judicial action remain subject to approval by the judge assigned to the case.

License revocations for provisional licensees. In 2011, the General Assembly enacted G.S. 20-13.3, providing for an immediate 30-day revocation of the permit or license of a provisional licensee charged with a misdemeanor or felony motor vehicle offense that is a criminal moving violation. Effective for offenses committed on or after October 1, 2012, amendments to G.S. 20-13.3 eliminate the requirement that a provisional licensee charged with a criminal moving violation be arrested and be brought before a judicial official for an initial appearance at which the revocation is issued. Instead, a law enforcement officer may issue a citation charging a provisional licensee with a misdemeanor criminal moving violation without arresting the person. When this happens, the officer must notify the provisional licensee that his or her license is subject to revocation and must expeditiously

file a revocation report with the clerk of superior court. On determining that the conditions requiring revocation under G.S. 20-13.3 are satisfied, the clerk must issue a revocation order and mail it to the provisional licensee. The ensuing 30-day revocation becomes effective on the fourth day after the order is mailed.

The act also creates a procedure for challenging the lawfulness of a revocation order entered pursuant to G.S. 20-13.3. New G.S. 20-13.3(d2) permits a provisional licensee to request a hearing to contest the validity of the revocation. These review provisions are modeled on those in G.S. 20-16.5(g) for review of license revocations issued by a magistrate or clerk in connection with implied consent charges.

For a further discussion of this aspect of S.L. 2012-168, see Shea Denning, *2012 Amendments to Teenage License Revocation Law,* N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 26, 2012); Shea Denning, *G.S. 20-13.3: Civil License Revocations for Provisional Licensees: Some Questions and Answers* (July 25, 2012).

Department of Public Safety. Effective July 12, 2012, the act amends G.S. 143B-600(a)(6) to establish a Research and Planning Section in the Division of Administration of the Department of Public Safety, with the responsibility for statistics, research, and planning. The amended statute states that the Research and Planning Section is the single state agency responsible for the coordination and implementation of ex-offender reentry initiatives. The act directs the Research and Planning Section to work with local communities to form from three to ten local reentry councils to develop local reentry plans and to form a state-level advisory group with broad representation of agency leaders, service providers, and program recipients.

Extension of time for forensic accreditation and certification. The act amends S.L. 2011-19, as amended by S.L. 2011-307, to extend from October 1, 2012, to July 1, 2013, the time for local forensic laboratories to obtain accreditation pursuant to the requirements of G.S. 8-58.20 and G.S. 20-139.1(c2), which govern the admissibility of certain forensic evidence. The act also amends the indicated 2011 legislation to provide that Scientists I, II, and III, forensic science supervisors, and forensic scientist managers (was, forensic science professionals) at the State Crime Laboratory must obtain certification, if certification is available, within 18 months of the date the scientist becomes eligible to seek certification, by January 1, 2013 (was, June 1, 2012), or as soon as practicable after that date (this language is new).

30. **S.L. 2012-170 (H 1173): Forfeiture of public assistance benefits for probation violators who avoid arrest.** Effective October 1, 2012, this act adds new G.S. 15A-1345(a1) to allow the court to order the suspension of public assistance benefits that are being received by a probationer for whom the court has issued an order for arrest for violation of the conditions of probation but who is absconding or otherwise willfully avoiding arrest. The suspension continues until the probationer surrenders or is otherwise brought under the court's jurisdiction. The subsection states that it does not affect the eligibility for public assistance benefits being received by or for the benefit of a family member of a probation violator.

31. S.L. 2012-172 (H 853): Juvenile procedures. This act makes the following changes to juvenile procedures, effective on the dates indicated.

Intake procedures. The act rewrites G.S. 7B-1803(a), effective July 12, 2012, to delete language providing that procedures for receiving complaints and drawing petitions must be established by administrative order of the chief district court judge in each district.

Local detention facilities. The act rewrites G.S. 153A-221.1, effective July 12, 2012, to make the Chief Deputy Secretary of Juvenile Justice in the Department of Public Safety responsible for state services to county juvenile detention homes. That responsibility previously belonged to the Secretary of Health and Human Services and the Social Services Commission. Effective January 1, 2013, the act amends G.S. 7B-1905(b) to make it unlawful for a county to operate a juvenile detention facility that does not meet the standards and rules adopted by the Department of Public Safety (previously, Department of Health and Human Services). The act also modifies the duty of the Secretary of Health and Human Services to develop standards for the use of a jail as a holdover facility by requiring that the standards be developed in consultation with the Chief Deputy Secretary of Juvenile Justice in the Department of Public Safety.

Secure custody of undisciplined juvenile. The act rewrites G.S. 7B-1903(b)(7) and (8), which describe when a juvenile who is alleged to be undisciplined may be held in secure custody, to limit the time the juvenile may spend in secure custody to 24 hours, excluding Saturdays, Sundays, and state holidays. Previously, that period could be extended to 72 hours "where circumstances require[d]." The change is effective October 1, 2012.

No contempt for undisciplined juvenile. The act rewrites G.S. 7B-2505, which describes procedures and consequences for finding a juvenile in contempt for violating the terms of protective supervision. Effective October 1, 2012, the section no longer refers to contempt and no longer permits any period of detention as a consequence of violating the terms of protective supervision. Instead, after notice and a hearing and a finding that the juvenile violated those terms, the court may (i) continue or modify the terms of protective supervision, (ii) order any disposition authorized for undisciplined juveniles under G.S. 7B-2503, or (iii) extend the period of protective supervision for up to three months.

32. S.L. 2012-175 (H 1052): Mechanics liens. This act modifies several statutes on mechanics liens, including one relevant to criminal law, G.S. 44A-24, which has made it a Class 1 misdemeanor for a contractor or other person receiving payment for an improvement to real property to furnish a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such property. The changes make the statute applicable to improvements subject to Article 2 or 3 of G.S. Chapter 44A and revise the elements of the offense to clarify that receipt of payment pursuant to a false written statement may be by the person signing the document, a person directing another to sign the document, or a person or entity for whom the document was signed. The revised statute also provides that, in addition to the criminal punishment for a violation of the statute, conduct constituting the offense and causing actual harm to any person by any licensed contractor or qualifying person constitutes deceit and misconduct subject to

disciplinary action under G.S. Chapter 87. The changes become effective January 1, 2013, and apply to improvements to real property for which the first permit required to be obtained is obtained on or after that date or, with respect to projects for which no permit is required, to improvements to real property commenced on or after that date.

33. **S.L. 2012-180 (S 133): Jury list procedures.** Effective July 12, 2012, this act makes various changes in the jury list procedures for the purpose of conforming old statutes to current practices and technology. The revised statutes, in G.S. Chapter 9, provide for the clerk of court rather than the register of deeds to maintain the master jury list; eliminate the requirement that each name be written on a separate card; require jury list preparation procedures to be in writing and available for public inspection; allow a one-time random sorting of names from the alphabetized master list, with jury panel pools then selected sequentially from that random list except to the extent otherwise required by G.S. 15A-1214 on criminal cases; and allow the clerk to serve jury summonses by mail or give them to the sheriff to serve personally, by mail, by telephone or by leaving at the address. With agreement of the clerk and the senior resident superior court judge, the clerk's functions can be given to the trial court administrator. The changes specify that only the alphabetized master list is available for public inspection; that jurors' addresses are confidential and may be disclosed only pursuant to court order; that the record of excuses is to be kept separate from the master list; and that privileged health information is to be kept confidential. G.S. 7A-312 is also amended to exempt jurors from ferry tolls. This act incorporates and supersedes the changes made by S.L. 2012-18, discussed above.

34. **S.L. 2012-182 (S 699): Division of Criminal Information.** Effective July 12, 2012, this act revises several statutes in G.S. Chapter 114 to change the name of the Division of Criminal Statistics to the Division of Criminal Information (still within the North Carolina Department of Justice) and to allow, in amended G.S. 114-10.1, the Division of Criminal Information (was, Attorney General) to adopt rules and regulations regarding its operations and charge fees for setup and access to the Division of Criminal Information Network.

35. **S.L. 2012-183 (S 738): Required education for bail bondsmen.** Effective October 1, 2012, this act amends G.S. 58-71-71 to require as a condition of becoming and remaining licensed that bail bondsmen and runners obtain their required education hours from the North Carolina Bail Agents' Association.

36. **S.L. 2012-185 (H 1074): Fraudulent receipt of decedent's disability benefit.** Effective for acts committed on or after December 1, 2012, this act revises G.S. 135-18.11, which has made it a Class 1 misdemeanor to fraudulently receive a decedent's retirement allowance, to apply that prohibition to the fraudulent receipt of a decedent's monthly benefit under the Disability Income Plan of North Carolina.

37. **S.L. 2012-188 (H 1021): Justice Reinvestment Act changes.** This act (referred to here as the Clarifications Act) revises the Justice Reinvestment Act (JRA), S.L. 2011-192, as amended by

S.L 2011-391 and S.L. 2011-412. The Clarifications Act makes the following changes, some of which took effect immediately upon the act becoming law on July 16, 2012. For a fuller discussion of these changes, see Jamie Markham, *Justice Reinvestment Clarifications Become Law,* N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 18, 2012).

"Quick dip" procedures by probation officers. Under the JRA, probation officers may, in certain cases, impose a short term of jail confinement in response to a probation violation. That confinement has been referred to as a "quick dip." Before imposing a quick dip, a probation officer must advise the probationer of his or her right to a lawyer and hearing on the violation. If the probationer signs a written waiver of those rights, the officer can impose the quick dip. As the JRA was originally written, the waiver had to be witnessed by the probation officer and "a supervisor." The Clarifications Act deletes the requirement for a supervisor to act as a witness and allows another officer (designated by the chief of the Community Corrections Section) to do it instead. The change to the witness requirement was made in both G.S. 15A-1343.2(e) (for community cases) and (f) (for intermediate cases), effective July 16, 2012.

Confinement in response to violation for misdemeanors. As originally written, the JRA stated that the period of confinement in response to a violation (a "CRV," sometimes referred to as a "dunk") for a misdemeanor was "up to 90 days." G.S. 15A-1344(d2). The law also stated that if 90 days or less remained on the defendant's suspended sentence the CRV period had to be for the length of that remaining time. Because most misdemeanor sentences were 90 days or less to begin with, the rule almost always trumped the court's authority to order a shorter CRV period; it was unclear from the language of the original statute whether that was the General Assembly's intent. The Clarifications Act expressly excludes misdemeanors from the 90-days-or-less-remaining rule. In other words, the judge may impose a shorter CRV period in any misdemeanor case, up to the time remaining on the defendant's sentence. The change took effect July 16, 2012, meaning it applies to any CRV-eligible violation heard on or after that date.

Community service fee. The "perform community service" condition added by the JRA as a "community and intermediate" condition of probation under G.S. 15A-1343(a1)(2) did not expressly require payment of the $250 community service fee described in G.S. 143B-708. The Clarifications Act amends the condition to require the fee. The change is effective July 16, 2012, and applies to any community service ordered as a community and intermediate condition on or after that date.

Post-release supervision changes. The Clarifications Act made the following changes to post-release supervision.

First, amended G.S. 15A-1368.3(c) states that when a person is reimprisoned for a violation of post-release supervision, his or her period of supervised release is tolled. (There is not a parallel provision tolling a probationer's period of probation during a CRV period.) The amended law also adds that a supervisee is not to be rereleased onto post-release supervision once the supervisee has served all the time remaining on his or her maximum imposed term. That change applies to all supervisees, including sex offenders, effective for violations on or after July 16, 2012.

Second, the act amends G.S. 143B-720 to allow the Post-Release Supervision and Parole Commission to hold post-release supervision and parole hearings for all supervisees and parolees and contempt hearings for sex offenders by videoconference. The change is effective December 1, 2012.

Third, the act amends G.S. 15A-1368.1 to make clear that the post-release supervision law applies to drug trafficking sentences. The act also adds time to the maximum sentences for drug trafficking in G.S. 90-95(h) to cover defendants' early release onto post-release supervision. The act adds three months to the maximum sentences for Class C, D, and E trafficking (so that maximum sentences in those cases are 120 percent of the minimum plus 12 months) and nine months to the maximum sentences for Class F, G, and H trafficking (so that maximums in those cases are 120 percent of the minimum plus 9 months). The changes are effective for offenses committed on or after December 1, 2012. For a discussion of how to handle drug trafficking sentences for offenses committed between December 1, 2011 and November 30, 2012, see Jamie Markham, *Revised Drug Trafficking Chart*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 1, 2012).

38. S.L. 2012-190 (S 821): Improper taking of menhaden or thread herring. Effective for offenses committed on or after January 1, 2013, this act adds G.S. 113-187(e) to make it a Class A1 misdemeanor to take menhaden or Atlantic thread herring by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters.

39. S.L. 2012-191 (H 1023): Expunction of nonviolent offenses. Effective for petitions filed on or after December 1, 2012, this act creates a new type of expunction, repeals a type of expunction that is effectively covered by the new expunction procedure, and revises two existing types of expunctions.

New G.S. 15A-145.5 authorizes expunction of "nonviolent" misdemeanors and felonies, defined by the offenses that are not considered to be "nonviolent." Excluded from the "nonviolent" category are Class A through Class G felonies and Class A1 misdemeanors, offenses that include assault as an essential element, offenses requiring registration as a sex offender, certain drug offenses, and other listed offenses in new G.S. 15A-145.5(a). A person may obtain expunction of multiple nonviolent felony and nonviolent misdemeanor convictions if they are disposed of in the same session of court and none occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor. To be eligible for an expunction, the person must not have any other misdemeanor or felony convictions other than a traffic violation; must not have previously obtained an expunction under the new statute or under G.S. 15A-145 through G.S. 15A-145.4; and must wait at least fifteen years from completion of the sentence of the conviction to be expunged. The petition for expunction must be served on the district attorney where the case was tried; the district attorney then has 30 days in which to file an objection and must make best efforts before the hearing to contact the victim, if any, to notify the victim of the expunction request. If granted, the expunction restores the person to the status the person occupied before the criminal proceedings, and

agencies must reverse any administrative actions taken against the person as a result of the conviction that has been expunged. However, a person must disclose the expunged convictions to the applicable certifying commission if he or she is seeking certification as a law-enforcement officer under G.S. Chapters 17C or 17E. The act revises G.S. 15A-151 and pertinent statutes in G.S. Chapters 17C and 17E to allow disclosure of expunged convictions under the new statute to state and local law enforcement agencies for employment purposes and to the pertinent certifying commissions.

The act repeals G.S. 15A-145(d1), which authorized expunction of misdemeanor larceny convictions after 15 years. Expunctions obtained under that statute before December 1, 2012, remain effective and are not abated.

Amendments to G.S. 15A-145.4, which authorizes expunction of "nonviolent" felonies committed when a person was under age 18, modify the offenses excluded from the definition of "nonviolent" felony. For example, a felony conviction for an offense involving methamphetamine, heroin, or sale, delivery, or possession with intent to sell or deliver cocaine remains excluded from the definition of a "nonviolent" felony that may be expunged, but a prayer for judgment continued for such an offense is subject to expunction if the offense is a Class G, H, or I felony. A person still may obtain an expunction of multiple nonviolent felony convictions disposed of at the same session of court if none of the offenses occurred after the person had already been served with criminal process (was, charged and arrested) for a nonviolent felony.

Last, amended G.S. 15A-146, which authorizes expunction of charges that have been dismissed or for which the person has been found not guilty or not responsible, adds prior expunctions under G.S. 15A-145.4 and G.S. 15A-145.5 as bars to obtaining an expunction under G.S. 15A-146. The expanded bar does not apply to petitions filed before December 1, 2012.

40. **S.L. 2012-193 (H 153): Forfeiture of public retirement benefits for certain felonies and revised aggravating factor in support of forfeiture.** Statutes governing public employment retirement benefits have provided for forfeiture of benefits on conviction of certain offenses, such as buying and selling one's office, if the person was in an elected position, the person committed the offense while serving in that position, and the offense was directly related to the member's service in that position. *See, e.g.,* G.S. 135-75.1 (judicial officials); G.S. 135-18.10 (teachers and state employees). Effective for offenses committed on or after December 1, 2012, this act adds several new statutes expanding the offenses that trigger forfeiture and making the forfeiture provisions applicable to all employees in the retirement systems covered by those statutes. Thus, new G.S. 135-18.10A prohibits the payment of retirement benefits or allowances, except for return of an employee's own contributions plus interest, to an employee in the Teachers' and State Employees' Retirement System who is convicted of any felony under federal law or the laws of this State if (1) the offense was committed while the employee was in service and (2) the conduct resulting in the conviction was directly related to the employee's office or employment. The new statute states that the direct relationship in (2) applies to felony convictions where the court finds the

aggravating factor in new G.S. 15A-1340.16(d)(9), described below, or under other applicable state or federal procedures. The forfeiture applies to employees whose benefits have not vested as of December 1, 2012; for employees whose benefits have vested by then, the employees are not entitled to any creditable service accruing on or after December 1, 2012. The act makes similar changes in G.S. 128.38.4A and G.S. 128.26 (Local Government Employees' Retirement System); G.S. 135-75.1A and G.S. 135-56 (judicial retirement); and G.S. 120-4.33A and G.S. 120-4.12 (General Assembly member retirement). The act also directs The University of North Carolina and North Carolina Community College System, in revised G.S. 135-5.1 and G.S. 135-5.4, to adopt equivalent forfeiture provisions for employees who have elected to participate in the Optional Retirement Program and provides, in revised G.S. 143-166.30 and G.S. 143-166.50, for forfeiture of contributions to the Supplemental Retirement Income Plans for State and Local Law-Enforcement Officers if the officers' benefits are forfeited under the new statutes.

The act also amends G.S. 15A-1340.16(d)(9), one of the statutory aggravating factors in felony sentencing, to make the factor applicable to a defendant who held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment. New G.S. 15A-1340.16(f) states that if the court determines that this aggravating factor has been proven, the court must notify the State Treasurer of the conviction and aggravating factor. The new subsection requires the State to include notice in the indictment that it intends to prove this factor.

41. **S.L. 2012-194 (S 847): Technical corrections, citizen-initiated arrests, designation of senior resident superior court judge, and bar from practice of funeral service for conviction of offense of sexual nature against a minor.** Almost all of this act consists of technical corrections, but there are a few substantive changes in the law. Included in the technical changes are revisions of the statutory charts on the authorized number of magistrates and assistant district attorneys to reflect the reductions made in recent years.

One substantive change is an amendment to G.S. 7A-38.5 to require the chief district judge and District Attorney to refer any citizen-initiated misdemeanor charge, defined as a warrant issued by a magistrate or other judicial official based on information supplied through oath or affirmation by a private citizen, to the local mediation center unless there is no mediation center available, the case involves domestic violence, or the judge or District Attorney determines that mediation is not appropriate. The mediation center will have 30 days to resolve the matter; otherwise, it goes back on the criminal docket. A District Attorney may elect to have the prosecutorial district opt out of the mediation requirement.

Another substantive change is the method of selecting the senior resident superior court judge. Revised G.S. 7A-41.1 returns to the automatic designation of the judge with the longest continuous time on the superior court bench, with one exception. The exception is the senior resident of any superior court district that consists of a set of districts "wholly contained in one county that is specified in law as the sole proper venue for certain actions." It appears that the one district that meets this test is the Tenth Judicial District, Wake County. For that district, the senior resident is to be designated by and serve at the pleasure

of the chief justice.

New G.S. 90-210.25B prohibits the Board of Funeral Service from issuing or renewing a license to engage in funeral services to a person who has been convicted of a sexual offense against a minor as defined in the new statute. The Board must impose an equivalent sanction if a person holding a funeral services license in another jurisdiction has had the license revoked or suspended for other felony convictions or because of conduct related to fitness to practice.

42. **S.L. 2012-200 (S 229): Ginseng, galax, and Venus flytrap.** As part of lengthy amendments to the state's environmental laws, this act amends G.S. 106-202.19, effective for offenses committed on or after October 1, 2012, to prohibit: uprooting, digging, taking, or otherwise disturbing from another person's land ginseng, galax, or Venus flytrap without a written permit from the owner; buying galax and Venus flytrap outside of buying season; and buying more than five pounds of galax or 50 Venus flytrap plants for resale or trade except in accordance with the requirements of the statute. A violation is a Class 2 misdemeanor and subject to the civil penalties provided in the statute.

Estates & Special Proceedings

1. **S.L. 2012-17 (H 493): Removal by landlord of deceased tenant's personal property.** Creates a new section G.S. 28A-25-1.2 to provide a landlord a new method of disposing of a deceased tenant's personal property under certain circumstances. When a person who is the sole occupant of a dwelling unit dies leaving tangible personal property in the unit, the landlord may take possession of the property upon filing an affidavit if all of the following conditions have been met: At least 10 days have passed from the date the paid rental period has expired; no personal representative, collector, or receiver has been appointed for the decedent's estate in the county of the dwelling unit; and no proceeding for "collection by affidavit" has been filed in the county of the dwelling unit.

   The affidavit must be on an AOC form and must include all of the information specifically set forth in the statute. The landlord must file the affidavit in the county of the dwelling unit, and the clerk must file the affidavit as an estate file. There is a $30.00 fee for filing the affidavit. The landlord must mail a copy of the affidavit to the tenant's emergency contact on file. Upon proper filing of the affidavit, the property is transferred to the landlord, and the landlord may remove the property and store it within the same county. The landlord is then in possession of the unit and may let the unit.

   If, after 90 days, no personal representative, collector, or receiver has been appointed for the decedent's estate and no proceeding for "collection by affidavit" has been filed in that county, the landlord may sell the property per the procedures set forth in the statute or may deliver it to certain non-profit organizations. Proceeds from a sale of the property may be applied to unpaid rent, damages, packing and storage fees, filing fees, and sale costs. Surplus is paid to the clerk to be administered as set forth in the statute.

   If the property is under $500 in value, the landlord may, without filing the affidavit described above, deliver the property to certain non-profit organizations. There is no requirement that the landlord notify or account to the clerk when exercising this option. Effective October 1, 2012, and applies to personal property owned by a tenant who dies on or after that date.

2. **S.L. 2012-18 (H 707)**: **Collection by affidavit; surviving spouse; valuation in testate estates.** Prior to 2011, G.S. 28A-25-1 and 28A-25-1.1 provided that, in both intestate and testate estates, if the affiant is the surviving spouse and sole heir or devisee of the decedent, the property that may be collected pursuant to affidavit could exceed $20,000 in value but could not exceed $30,000 in value.

   In 2011, G.S. 28A-25-1 was amended to provide that, in *intestate estates*, the $30,000 valuation was to be made "after reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15." (Effectively allowing use of collection by affidavit in estates with personal property valued up to $50,000.) This amendment was not made with respect to *testate* estates, an omission that appeared to be inadvertent. Accordingly, S.L. 2012-18,

amending G.S. 28A-25-1.1, adds language to provide that in both *intestate and testate estates*, the $30,000 valuation is to be made "after reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15." Effective June 11, 2012.

3. S.L. 2012-69 **(H 1067)**: **Simultaneous Death Act changes; Survivor interests upon joint tenant death.** Amends G.S. 28A-24-3 to provide that where there *is not* clear and convincing evidence that at least one property co-owner (with right of survivorship) survived the other(s) by at least 120 hours, each co-owner's pro rata interest passes as if that co-owner has survived all the other co-owners by at least 120 hours. If there *is* clear and convincing evidence that at least one co-owner survived the other(s) by at least 120 hours, the pro rata interest of the other deceased owner (or owners) passes to (1) the remaining owner if only one or (ii) if more than one, to those owners pro rata. (If the governing instrument provides otherwise, that instrument controls.)

   Also amends G.S. 41-2(b) to provide that interests among two or more joint tenants with right of survivorship are subject to G.S. 28A-24-3 upon the death of one or more joint tenant. Effective October 1, 2012.

4. S.L. 2012-71 **(H 1069)**: **Surviving spouse's share of intestate personal property; Increase in child's allowance; "Next friend".** Amends G.S. 29-14(b) to increase the surviving spouse's share of an intestate decedent's personal property. The base value to which a surviving spouse is entitled where the decedent has surviving children or lineal descendants of deceased children has been increased to $60,000 (was $30,000). Where the deceased has no surviving children or their lineal descendants, but leaves at least one surviving parent, the base value to which the surviving spouse is entitled has been increased to $100,000 (was $50,000). Effective January 1, 2013.

   Amends G.S. 30-17 to increase to $5,000 (was $2,000) the amount to be assigned as a year's allowance to a surviving child upon death of a parent. Effective January 1, 2013.

   Also amends G.S. 30-17 to clarify that a payment of a child's allowance to the child's surviving parent shall be made regardless of whether the decedent's surviving spouse petitioned for an elective share under G.S. Chapter 30. Also provides that, in addition to a guardian, a child's "next friend" may apply for the child's year's allowance under G.S. 30-20; may receive the clerk's property list under G.S. 30-21; may appeal an assignment under G.S. 30-23; and may apply to superior court for a different allowance as provided in G.S. 30-27. Effective June 26, 2012.

5. S.L. 2012-151 **(S 191)**: **Disinterested public agents as guardians.** Amends the definition of "disinterested public agent" in G.S. 35A-1202 to include only the director or assistant directors of a county department of social services.

   Also adds a new subsection (f) to G.S. 35A-1213 to provide that an individual who contracts with (or is employed by an entity that contracts with) a local management entity (LME) for delivery of mental health, developmental disabilities, and substance abuse services may not serve as guardian of a ward for whom these services are provided (unless

the individual is the parent). This prohibition does not apply to a member of the ward's immediate family who is under such a contract and is serving as guardian as of January 1, 2013.

Amends G.S. 35A-1213(c) to require a corporation wishing to serve as a guardian to meet the requirements of G.S. Chapters 55 and 55D and to provide a copy of its charter to the clerk. A corporation contracting with a public agency to serve as guardian is also required to attend guardianship training and provide verification of attendance to the contracting agency.

Amends G.S. 35A-1292 to provide that a guardian wishing to resign must do so by filing a motion with the clerk (was "apply in writing to the clerk"). Further provides that a guardian discharged by the clerk must continue to ensure the ward's needs are met until the clerk appoints a successor, and that the discharged guardian shall attend the hearing to modify the guardianship, if physically able. Effective July 12, 2012.

Juvenile Law

Child Protection

1. **S.L. 2012-153 (S 910): Confidentiality of reporter's name.** Ordinarily a county department of social services must hold "in strictest confidence" the identity of a person who makes a report of suspected child abuse, neglect, or dependency. Section 6 of this act creates an exception, in new G.S. 7B-302(a1)(1a), requiring a department to disclose the reporter's identity to any federal, state, or local government entity (i) pursuant to a court order or (ii) without a court order if the entity demonstrates a need for the reporter's name in order to carry out its mandated responsibilities. These changes are effective October 1, 2012.

2. **S.L. 2012-153 (S 910): Foster home register.** Section 7 of the act rewrites G.S. 131D-10.6C to provide for the Division of Social Services, in the Department of Health and Human Services, to maintain a public register of foster homes licensed by the division (was, foster home applicants). It adds authority for the division to withhold specific information about a foster parent if releasing the information would likely pose a threat to the health or safety of the foster parent or a foster child. Anyone who is denied access to information based on this provision may seek a court order compelling disclosure in accordance with the Public Records law, in particular G.S. 132-9(a). These changes are effective October 1, 2012.

3. **S.L. 2012-40 (H 235): Termination of parental rights ground.** Effective October 1, 2012, this act adds to G.S. 7B-1111(a) a new ground for termination of parental rights – "The parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in the conception of the juvenile." As with other grounds, the court must determine whether termination of the parent's rights is in the child's best interest before terminating a parent's rights on this basis.

4. **S.L. 2012-16 (H 637): Adoption law changes.** Effective October 1, 2012, this act makes the following changes to the adoption laws:
   - Repeals G.S. 48-2-302(a), which requires that an adoption petition be filed within 30 days after the child's placement with the petitioner or the state's acquisition of jurisdiction, whichever is later. [Because subsection (b) addresses failure to comply with subsection (a), it should have been repealed as well.]
   - Amends G.S. 48-2-304(a)(6) to provide that an adoption petition must include a description and estimate of the value of any property belonging to the adoptee only if the adoptee is a minor or an adult who has been adjudicated incompetent.
   - Amends G.S. 48-2-401(a), to provide that the petitioner must initiate service of notice (rather than actually serve notice) of an adoption petition no later than 30 days after the petition is filed.

- Amends G.S. 48-3-205(d) to permit the substitution of forms reasonably equivalent to those provided by the Division of Social Services to collect background information for submission to the prospective adoptive parent.
- Amends G.S. 48-3-303(c)(12) to add the prospective adoptive parent's social security number and income to information that may be redacted from the preplacement assessment provided to a placing parent or guardian.
- Amends G.S. 48-3-602, which requires the appointment of a guardian ad litem for a parent who has been adjudicated incompetent, to provide that if the court determines that proceeding with an adoption is in the child's best interest, the court is to order the parent's guardian ad litem to execute a consent or a relinquishment (was, a consent) for the parent.
- Amends G.S. 48-3-608(b) to require that a preplacement assessment that is prepared after placement occurs in a direct placement adoption be prepared substantially in conformity with the requirements of G.S. 48-3-303.
- Amends G.S. 48-3-707(a) to add the following manner in which a relinquishment will become void: after placement but before entry of the adoption decree, the agency, the person relinquishing the child, and the prospective adoptive parent all agree to rescind the relinquishment.

These changes apply to adoption proceedings filed on or after October 1, 2012.

5. **S.L. 2012-153 (S 910): Unlawful sale, surrender, or purchase of a child.** Effective December 1, 2012, this act creates a new criminal offense, in G.S. 14-43.14, making it a Class F felony for a person, when acting with willful or reckless disregard for the life or safety of a child, to participate in the acceptance, solicitation, offer, payment, or transfer of any form of compensation in connection with the unlawful acquisition or transfer of physical custody of a child. The offense does not apply to actions that are ordered by a court, authorized by statute, or otherwise lawful. An amendment to G.S. 14-322.3 also makes the new offense inapplicable to a parent who voluntarily surrenders an infant less than seven days of age as provided in G.S. 7B-500.

   For an initial violation a minimum fine of $5,000 must be imposed, and for any subsequent violation a minimum fine of $10,000 is required. In sentencing someone who is convicted under this section the court must consider whether the person is a danger to the community and whether requiring the person to register as a sex offender under Article 27A of G.S. Chapter 14 would further the purpose of the sex offender registration law, and the court may enter an order requiring the person to register. The act amends G.S. 14-208.6(4) to make a conviction under the new section a "reportable conviction" for purposes of the sex offender registration law, but only if the sentencing court specifically orders the person to register.

   A child whose parent, guardian, or custodian has sold or attempted to sell the child in violation of the section is an *abused juvenile* for purposes of the Juvenile Code [G.S. 7B-101(1)] and the court may place the child in the custody of a county department of social services or any person, as the court finds to be in the child's best interest. The act makes a

conforming amendment to the definition of "abused juvenile" in G.S. 7B-101(1). The act requires the N.C. Conference of District Attorneys to study additional measures that may be taken to stop criminal activities involving the sale of children and to submit a final report of its findings and recommendations to the 2013 General Assembly by January 30, 2013.

6. **S.L. 2012-160 (H 737): Child care facilities.** Effective January 1, 2013, the act amends G.S. 110-90.2 to expand the scope of criminal record checks required of persons who care for children in child care facilities and add additional restrictions on who may be a child care provider in a licensed or regulated child care facility.

Undisciplined and Delinquent Juveniles

7. **S.L. 2012-172 (H 853): Limit secure custody for undisciplined juvenile.** The act rewrites G.S. 7B-1903(b)(7) and (8), which describe when a juvenile who is alleged to be undisciplined may be held in secure custody, to limit the time the juvenile may spend in secure custody in all instances to 24 hours, excluding Saturdays, Sundays, and state holidays. Previously, that period could be extended to 72 hours "where circumstances require[d]." The change is effective October 1, 2012.

8. **S.L. 2012-172 (H 853): No contempt for undisciplined juvenile.** The act rewrites G.S. 7B-2505, which describes procedures and consequences for finding a juvenile in contempt for violating the terms of protective supervision. Effective October 1, 2012, the section no longer refers to contempt and no longer authorizes the court to order any period of detention as a consequence of a juvenile's violating the terms of protective supervision. Instead, after notice and a hearing and a finding that the juvenile violated those terms, the court may (i) continue or modify the terms of protective supervision, (ii) order any disposition authorized for undisciplined juveniles under G.S. 7B-2503, or (iii) extend the period of protective supervision for up to three months.

9. **S.L. 2012-83 (S 881): Appointment of chief court counselor.** Section 12 of the act amends G.S. 143B-806 to make a Chief Deputy Secretary (formerly the Secretary) of the Department of Public Safety the head of the Division of Juvenile Justice. The duties of the Chief Deputy Secretary include appointing the chief court counselor in each district. The act omits language that provided for the appointment of a chief court counselor to be made upon recommendation of the chief district court judge in the district. (The omitted language involving the chief district judge in the selection of the chief court counselor dates back to the pre-1999 organization of juvenile services, in which court counselors were employees of the Administrative Office of the Courts in the judicial branch, rather than an executive agency.) The act, effective June 26, 2012, also makes various technical changes relating to the Department of Public Safety and the Division of Juvenile Justice in that department.

10. **S.L. 2012-172 (H 853): Intake procedures.** The act rewrites G.S. 7B-1803(a), effective July 12, 2012, to delete language providing that procedures for receiving complaints and drawing petitions must be established by administrative order of the chief district court judge in each district.

11. **S.L. 2012-172 (H 853): Local detention facilities.** The act rewrites G.S. 153A-221.1, effective July 12, 2012, to make the Chief Deputy Secretary of Juvenile Justice in the Department of Public Safety responsible for state services to county juvenile detention homes. That responsibility previously belonged to the Secretary of Health and Human Services and the Social Services Commission. Effective January 1, 2013, the act amends G.S. 7B-1905(b), to make it unlawful for a county to operate a juvenile detention facility that does not meet the standards and rules adopted by the Department of Public Safety (previously, Department of Health and Human Services).The act also modifies the duty of the Secretary of Health and Human Services to develop standards for the use of a jail as a holdover facility, to require that the standards be developed in consultation with the Chief Deputy Secretary of Juvenile Justice in the Department of Public Safety.

12. **S.L. 2012-149 (S 707): Cyber-bullying of school employee.** The act creates a new offense in G.S. 14-458.2, cyber-bullying of a school employee by a student, a Class 2 misdemeanor. The new section provides that if a juvenile court counselor receives a complaint based on a student's violation of the section, upon a finding of legal sufficiency the juvenile may enter into a diversion contract pursuant to G.S. 7B-1706. The section applies to offenses committed on or after December 1, 2012.

13. **S.L. 2012-149 (S 707): Principal's duty to report criminal/delinquent acts.** The act amends G.S. 115C-288(g), which specifies a school principal's duty to report to law enforcement certain criminal or delinquent acts that occur on school property. The amendments apply with the beginning of the 2012 –2013 school year. As amended, the subsection
    1. requires a principal to report to law enforcement when he or she has personal knowledge or actual notice from school personnel (but no longer when the principal has only a "reasonable belief") that one of the acts specified in the statute has occurred on school property. [The "reasonable belief" provision deleted by this act was added to the statute, effective for the 2011 – 2012 school year, by S.L. 2011-248 (S 394).]
    2. no longer provides that a principal who willfully fails to comply with the reporting requirement may be subject to demotion or dismissal pursuant to G.S. 115C-325. [This deleted provision was added to the statute, effective for the 2011 – 2012 school year, by S.L. 2011-248 (S 394), which deleted a provision making a principal's violation of the reporting duty a Class 3 misdemeanor.] Now the statute is silent with respect to consequences for a principal's failure to make a required report.

Juveniles Tried as Adults

14. S.L. 2012-148 (S 635): Sentencing of juveniles to life imprisonment. North Carolina law authorizes a juvenile's case to be transferred to superior court and the juvenile to be tried as an adult for a felony allegedly committed when the juvenile was 13, 14, or 15. (If the juvenile court finds probable cause for first degree murder, the transfer is mandatory.) If convicted in superior court, the juvenile is sentenced in the same way that an adult would be sentenced for the same offense, with few exceptions. The U.S. Supreme Court held in *Roper v. Simmons*, 543 U.S. 551 (2005), that imposing the death penalty on someone who was younger than eighteen when he or she committed a capital offense violates the Eighth Amendment. Five years later, in *Graham v. Florida*, ___ U.S. ___, 130 S. Ct. 2011 (2010), the Court held that a sentence of life without the possibility of parole also violates the Eight Amendment when imposed on someone who committed a non-homicide offense when younger than age eighteen. Consistent with those cases, in North Carolina the death penalty can never be imposed on someone for an offense committed before age eighteen, and a sentence of life without the possibility of parole can be imposed only in cases of first-degree murder. *See* G.S. 14-17.

On June 25, 2012, in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455, the Supreme Court extended its holding in *Graham* and held in a capital murder case involving a juvenile defendant that an automatic sentence of life without the possibility of parole violates the Eighth Amendment when the defendant was a juvenile when the offense was committed. Because North Carolina required such a sentence on a juvenile's conviction for first degree murder, legislative changes were needed. The General Assembly made those changes in S.L. 2012-148, effective July 12, 2012. This act creates a new Article 93, Sentencing for Minors Subject to Life Imprisonment without Parole, in G.S. Chapter 15A. The new article authorizes a sentence of life imprisonment *with* the possibility of parole after 25 years for juvenile defendants convicted of first-degree murder. If the murder conviction is based solely on the felony murder rule, the court must impose this sentence. In other cases involving first-degree murder committed by juveniles, the court must conduct a hearing, pursuant to new G.S. 15A-1477, to determine whether the defendant should be sentenced to life imprisonment with parole or without parole. The new statute identifies mitigating factors the court may consider in making this decision. New G.S. 15A-1479 describes the conditions and procedures for parole for juvenile defendants who receive a sentence of life imprisonment with the possibility of parole.

The act applies to sentencing hearings held on or after July 12, 2012. It also applies to resentencing hearings for defendants who were younger than eighteen at the time of their offense and who were sentenced to life imprisonment without parole. New G.S. 15A-1478 establishes procedures for motions for appropriate relief seeking resentencing in such cases. The act also directs the North Carolina Sentencing and Policy Advisory Commission, in consultation with the Office of the Juvenile Defender, the Conference of District Attorneys, and other organizations and agencies identified by the Sentencing Commission, to study and report to the General Assembly by January 31, 2013, on sentencing of juveniles convicted of

first-degree murder.

Domestic Law

1. **S.L. 2012-19 (H 660): Civil No-Contact Orders.** Amends G.S. 50C-9 to provide that, if a defendant is not present in court when a civil no-contact order is entered, the order may be served upon the defendant through any method authorized by Rule 4 of the Rules of Civil Procedure. Until this amendment, the statute required that the order be served only by the sheriff. The act was effective June 7, 2012.

2. **S.L. 2012-20, sec. 1. (H 589): Domestic Violence Civil Protective Orders.** Amends G.S. 50B-2(c) to provide that a continuance of a hearing following the issuance of an ex parte domestic violence protective order shall be limited to one extension of no more than 10 days unless all parties consent or good cause is shown. In addition, the amendment provides that the hearing on the return of the ex parte order shall have priority on the court calendar. The amendment also makes organizational changes to the statute. The act applies to actions or motions filed on or after October 1, 2012.

3. **S.L. 2012-20, sec. 2. (H 589): Child Support**. Amends G.S. 50-13.4(c) to provide that payments ordered for the support of a child enrolled in a cooperative innovative high school program authorized under Part 9 of Article 16 of G.S. Chapter 115C shall terminate when the child completes his or her fourth year of enrollment or when the child reaches the age of 18, whichever occurs later. Amendment applies to actions or motions filed on or after October 1, 2012.

4. **S.L. 2012-146, sec. 10 (H 494): Child Custody.** For child custody and visitation orders entered on or after December 1, 2012, the act amends G.S. 50-13.2 to add new subsection (b2) to specify that a court entering an order for child custody or visitation may include in that order a requirement that either or both parents, or any other person seeking custody or visitation of a child, abstain from consuming alcohol. In addition, the amendment allows the court to require a party to submit to a continuous alcohol monitoring system as a method of ensuring compliance with the order to abstain from alcohol use. The monitoring system must be of a type approved by the Division of Adult Correction of the Department of Public Safety, and the custody or visitation order must require the monitoring company to report any violation of the court order to the court and to the parties. The amendment makes no provision for the payment of the costs associated with the monitoring system.

Landlord-Tenant Law

1. **S.L. 2012-17 (H 493): Changes in landlord-tenant law.** Clarifies that the existing procedure for staying enforcement of a judgment awarding possession of rental property applies during the thirty-day "appeal period" following a judgment for the landlord in district court. The result is that, despite Rule 62's provisions to the contrary in other cases, a district court judgment awarding possession to the landlord in a summary ejectment action will be immediately enforceable if the tenant fails to stay enforcement by following the procedure set out in G.S. 42-34 and -34.1.

   Adds new section G.S. 28A-25-1.2 establishing a detailed procedure for disposition of a deceased tenant's property. The new law provides that in the situation in which (1) no legal representative of the tenant's estate has been appointed, (2) no affidavit related to the decedent's estate has been filed as specified, and (3) at least ten days have passed since the end of the paid rental period, the landlord may file an affidavit to that effect in the office of the clerk of superior court. In this affidavit the landlord must include a good faith estimate of the property's value as well as an inventory of the property. The law requires the landlord to take certain steps to make others aware of this affidavit, including indexing it in the index of estates. Upon filing the affidavit and paying a $30 fee, the landlord is authorized to remove and store the property and relet the premises. Ninety days after filing this affidavit, assuming the circumstances remain essentially unchanged, the landlord is authorized to dispose of the property, either by selling it or donating it, in accordance with the detailed procedure set out in the statute. If the landlord wishes, the landlord may elect instead to file an action for summary ejectment and proceed with disposal of the tenant's property in accordance with the legal requirements applicable to that procedure. A lessor who assumes possession of a deceased tenant's property in a manner not authorized by law is liable to the tenant's estate for damages and return, or reimbursement for the value of, the property. The new procedure applies to the property of tenants who die on or after October 1, 2012.

   G.S. 42-25.9(d) authorizes a lessor to donate tenant's property left behind to a nonprofit organization under certain circumstances. S.L. 2012-17 increases the maximum value of property subject to this method of disposal from $500 to $750.

   G.S. 42-25.9(h) authorizes a lessor to dispose of property of little value if the tenant fails to recover the property within five days after the writ of possession is enforced. The new law extends this provision to the situation in which the total value of property left behind is less than $500 (previously, less than $100).

   An issue of great concern to both landlords and tenants concerns the effect of partial payment on a landlord's right to summary ejectment. Waiver is an equitable doctrine, and judicial officials often struggle in discerning whether it applies in particular fact situations. S.L. 2012-17 brings relief through an amendment to G.S. 42-26; the new law states that a landlord does not waive the right to pursue ejectment by accepting partial payment if two conditions are present: first, this "non-waiver" provision must be contained in the lease

agreement and, second, the ground for eviction must be breach of a lease condition which triggers a forfeiture clause. The amendment specifically states that it applies to partial housing subsidy payments as well as traditional rent payments.

G.S. 42-51 sets out the list of expenses that a landlord is authorized to deduct from a security deposit. The 2012 General Assembly made several changes in this list. Effective October 1, 2012, a tenant's security deposit may be used for unpaid late fees or administrative fees under G.S. 42-26, as well as reimbursement for damages caused by the tenant to smoke or carbon monoxide detectors. Also new is authorization for fees paid to a real estate broker in order to re-rent the premises following the tenant's breach. The new law continues to allow use of the security deposit to pay court costs, and removes the limiting language of the statute specifying that these costs must have been incurred in connection with terminating a tenancy. Finally, the amendment clarifies that a security deposit may not be used to pay damages for premature termination of the rental period when the termination is specifically authorized by law (i.e., in certain cases involving termination by crime victims and members of the military, and when the tenant vacates because of the landlord's violation of the Residential Rental Agreements Act.)

G.S. Chapter 42A, the Vacation Rental Agreements Act, was amended by S.L. 2012-17 to authorize landlords to include a reasonable cleaning fee in their lease agreements.

2. **S.L. 2012-64 (H 971): Termination of lease when military service member dies while on active duty.** Amends G.S. 42-45 to provide that an immediate family member or estate representative of a deceased service member may terminate the service member's lease by giving designated notice. Termination of the lease will be effective as well for family members who are cotenants. The law applies only when the service member was on active duty at the time of death, and the service member's estate may be responsible for liquidated damages as set out in the statute. The act was effective June 26, 2012.

3. **S.L. 2012-92 (S 77): Tamper-resistant 10-year lithium battery smoke alarm in rental property.** This new law, effective December 31, 2012, requires landlords replacing or installing a smoke alarm in residential rental property to use a tamper-resistant alarm with a ten-year lithium battery. Failure to do so is a violation of the Residential Rental Agreement Act as well as an infraction pursuant to G.S. 42-44(a1). The requirement does not apply to property equipped with a hardwired alarm with a battery back-up, nor to property equipped with a combination smoke alarm/carbon monoxide alarm.

Motor Vehicle Law

1. **S.L. 2012-14 (H 345): Amends move-over law to include all highway maintenance and utility vehicles. See Criminal Law & Procedure, above.**

2. **S.L. 2012-33 (H 741): Increases maximum length for law enforcement and emergency management vehicles.** To be operated on North Carolina's public streets and highways, a single vehicle with two or more axles generally may not exceed 40 feet in length. S.L. 2012-33, effective upon enactment, amends G.S. 20-116(d), adding new subdivision (4), to permit vehicles up to 45 feet long that are owned or leased by the state, local or federal government to be operated on public roads when used for official law enforcement or emergency management purposes.

3. **S.L. 2012-41 (H 261): Requires intrastate motor carrier markings.** Federal regulations in 49 C.F.R. Part 390 govern the operation of commercial motor vehicles in interstate commerce. G.S. 20-101 sets forth rules requiring the marking of certain commercial motor vehicles that are not subject to 49 C.F.R. Part 390. S.L. 2012-41 amends G.S. 20-101(b) to require that a motor vehicle with a gross vehicle weight rating of more than 26,000 pounds (was, more than 10,000 pounds) that is used in intrastate commerce and is not subject to the aforementioned federal regulations and not specifically exempted from them by federal rule have printed on each side of the vehicle, in letters at least three inches tall, the name of the owner and the motor carrier's identification number preceded by the letters USDOT and followed by the letters NC. The act amends G.S. 20-101(d) to require that a motor vehicle equipped to tow or transport another motor vehicle and hired for that purpose must have the name and address of the registered owner of the vehicle and the name of the business or person being hired, if different, printed on ***each*** (was, ***the***) side of the vehicle in letters at least three inches tall. The act is effective December 1, 2012, and applies to offenses committed on or after that date. From December 1, 2012 until November 30, 2013, an operator of a motor vehicle who violates the act must be given a warning of violation only. Once this grace period expires, violation of these statutory requirements is a Class 2 misdemeanor.

4. **S.L. 2012-78 (S 749): Makes various transportation-related amendments.** Generally speaking, a person must provide a valid Social Security number, in addition to meeting other requirements, to obtain an original North Carolina driver's license. An exception to this general requirement permits DMV to issue a driver's license of limited duration to an applicant who produces documentation from the United States government proving his or her lawful presence in the United States. Licenses issued to noncitizens without social security cards (subject to certain exceptions) have the wording "Legal Presence Expiration Date [xx/xx/xxxx]" printed on the back.

   S.L. 2012-78 (S 749) amends G.S. 20-7(s), effective for driver's licenses issued on or after January 1, 2013, to require that a driver's license of limited duration bear a distinguishing

mark or other designation on the face of the license clearly denoting the limited duration of the license.

In other changes, the act enacts new G.S. 136-28.5(c), effective July 1, 2012, providing that notwithstanding the public records law provisions of G.S. 132-1, bids and documents submitted in response to an advertisement or request for proposal under Chapter 136 are not public record until the Department of Transportation issues a decision to award or not to award the contract.

Effective December 1, 2012 and applicable to offenses committed on or after that date, the act enacts new G.S. 20-127(b1) to require that, notwithstanding the window tinting restrictions in G.S. 20-127(b), the windows of a vehicle that is operated on a public street and that is subject to the provisions of 49 C.F.R. Part 393 (applicable to commercial motor vehicles used in interstate commerce) comply with the provisions of that Part. The act repeals the window tinting exceptions in G.S. 20-127(c)(2), (3) that formerly applied to for-hire passenger vehicles and common carriers of passengers. The act also enacts new G.S. 20-137.4A(a1) rendering it unlawful for any person to operate a commercial motor vehicle subject to 49 C.F.R. Parts 390 or 392 (applicable to commercial motor vehicles used in interstate commerce) on a public street or public vehicular area while using a mobile telephone or other electronic device in violation of those Parts. The new subsection provides that it must not be construed to prohibit the use of hands-free technology.

Effective upon enactment, the act also does the following.

- The act broadens the permissible uses rendering certain trailers used in farming operations exempt from registration under G.S. 20-51(6).
- The act enacts new G.S. 20-51(17) exempting header trailers from registration in certain circumstances.
- The act enacts new G.S. 20-88(m) requiring that any vehicle weighing greater than the weight limits in G.S. 20-118(b), as authorized by G.S. 20-118(c)(12), (c)(14), and (c)(15), be registered for the maximum weight allowed for the vehicle configuration as listed in G.S. 20-118(b) and specifies applicable penalties for noncompliance. The act also makes conforming and substantive amendments to exceptions to weight limits codified in G.S. 20-118(c)(5), (12), (14), and (15) and amends the weight limit exceptions in G.S. 20-118(c)(16).
- The act amends G.S. 20-116(j) to create a process for authorizing operation of self-propelled farm equipment that is more than 25 feet wide on highways where such operation previously was prohibited and to provide that equipment may be equipped with a flashing warning light in lieu of red flags on the front and rear ends.
- The act amends G.S. 20-118.4 to exempt from size and weight restrictions fire-fighting equipment used for emergency preparedness and fire prevention as well as in an emergency.
- The act amends G.S. 20-383 to provide that personnel of the Department of Public Safety share enforcement authority formerly granted only to inspectors and officers.

- The act amends G.S. 136-89.213(a) to permit the NC Turnpike Authority to exchange confidential information obtained for purposes of collecting tolls with providers performing the collection function. The act amends G.S. 136-89.213(a1) to require that the Turnpike Authority maintain the confidentiality of information required to be kept confidential under 18 U.S.C. Section 2721 (Driver's Privacy Protection Act) as well as financial information, transaction history and information related to the collection of a toll or user fee from a person, including photographs or other recorded images or automatic vehicle identification or driver account information generated by radio-frequency identification or other electronic means. The amendments provide that an account holder may examine his or her own account information and permit examination of confidential account information with a court order.
- The act amends G.S. 147-86.23 to provide that the Turnpike Authority is not subject to that statute's provisions governing the rate of interest and late payment penalties.
- The act provides that the Department of Transportation may permit sealed ship containers as nondivisible loads as allowed by Federal Highway Administration policy.
- The act requires conforming changes to North Carolina Administrative Code.
- The act renders provisions of S.L. 2009-345 (prohibiting discharge of sewage into coastal waters and setting forth requirements for certain marina pumpout facilities) as they apply to ferry vessels operated by the Department of Transportation effective June 30, 2013.

5. S.L. 2012-85 **(S 895): Amends statutory requirements for obtaining a motorcycle license; delays the implementation of certain driver's license notations pending an information technology system upgrade; replaces the term State Highway Administrator in Chapter 136 with the term Chief Engineer; authorizes reciprocity agreements for toll payments between the North Carolina Turnpike Authority and other toll agencies.** Effective July 1, 2012, the act amends G.S. 20-7(a1) to permit a person at least 18 years of age to obtain a motorcycle endorsement on his or her driver's license by (1) passing a knowledge test and by passing a road test or (2) by providing proof of his or her successful completion of (a) The North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course or (b) any course approved by the DMV commissioner that is consistent with the instruction provided through the motorcycle safety instruction program established under G.S. 115D-72. The act provides that a person under 18 years of age may obtain a motorcycle endorsement by passing a knowledge test and by providing proof of successful completion of one of the aforementioned motorcycle operation courses. The requirements for obtaining a motorcycle learner's permit under G.S. 20-7(a2) similarly are amended to require successful completion of The North Carolina Motorcycle Safety Education Program Basic Rider Course or any course approved by the DMV commissioner that is consistent with

the instruction provided through the motorcycle safety instruction program established under G.S. 115D-72.

Effective upon enactment, the act also does the following:

- The act postpones effective date of S.L. 2011-35 (requiring DMV to develop a veteran military designation for driver's licenses) and S.L. 2011-228 (requiring, among other things, that a hazardous materials endorsement on a commercial driver's license expire when the commercial driver's license expires). The effective date of those 2011 acts now is (1) January 1, 2013 or (2) the first day of a month that is 30 days after the DMV Commissioner certifies that DMV has implemented its Next Generation Secure Driver License System, whichever is later.
- The act substitutes the term "Chief Engineer" for "State Highway Administrator" in various provisions of G.S. Chapter 136.
- The act authorizes the NC Turnpike Authority to enter into reciprocal toll enforcement agreements with other toll agencies to enforce toll violations. New G.S. 136-89.220 provides that any such agreement must require that when another toll agency certifies that the owner of a vehicle registered in North Carolina has failed to pay a toll fee or civil penalty, the unpaid amount may be enforced by placing a registration renewal block as if the penalty was owed to North Carolina. The new provision requires that certain procedural protections and other agreements be in place before a reciprocity agreement may be enforced.

6. **S.L. 2012-146 (H 494), as amended by S.L. 2012-194 (S 847): Authorization for Continuous Alcohol Monitoring Expanded.** See Criminal Law & Procedure, above.

7. **S.L. 2012-147 (S 227): Limits disclosure of name and address of minor involved in school bus crash.** Effective October 1, 2012, the act amends G.S. 20-166.1(h)(3), which requires that accident reports identify the persons and vehicles involved in the accident. The amended provision provides that the name and address of a minor child involved in a school bus crash who is a passenger on a school bus may only be disclosed to (i) the local board of education, (ii) the State Board of Education, (iii) the parent or guardian of the child, (iv) an insurance company investigating a claim arising out of the crash, (v) an attorney representing a person involved in the crash, and (vi) law enforcement officials investigating the crash.

8. **S.L. 2012-159 (H 989): Limits eligibility for permanent registration plates to governmental entities and amends process for issuance.** Effective July 1, 2012, the act repeals provisions of G.S. 20-84(a) that allowed issuance of permanent registration plates to orphanages, churches, certain nonprofit organizations and other non-governmental entities. The act requires DMV to cancel all permanent registration plates issued to non-State entities and reissue permanent registration plates with a new design to eligible non-State entities by

January 15, 2013. Amendments to G.S. 20-84(a) require that an eligible entity that receives a permanent registration plate ensure that the plate is registered under the entity's full legal name. New G.S. 20-84(d) permits DMV to revoke all permanent registration plates issued to eligible entities for vehicles that are 90 days or more past due for a vehicle inspection, as required by G.S. 20-183.4C.

9. **S.L. 2012-165 (S 105): Increases the penalty for certain second degree murders to Class B1 felonies and creates graduated scale of penalties for felony death by vehicle.** See Criminal Law & Procedure, above.

10. **S.L. 2012-168 (S 141): Amendments to civil license revocation procedures for provisional licensees.** See Criminal Law & Procedure, above.

11. **S.L. 2012-199 (H 585): Exempts newer vehicles from emissions inspections subject to EPA approval.** The act amends G.S. 20-183.2(b)(3) to exempt from emissions inspection requirements vehicles that are of the three newest model years and have less than 70,000 miles. The act requires the Department of Environment and Natural Resources to submit the emissions change to U.S. EPA for approval. The change is effective for vehicles inspected or due to be inspected on the later of the following dates: (1) January 1, 2014; or (2) The first day of a month that is 30 days after EPA approval is certified and the Commissioner of DMV certifies that the Motor Vehicle Inspection and Law Enforcement System has been replaced.

Judicial Authority & Administration

1. **S.L. 2012-18 (H 707): Jury lists.** Included in a lengthy rewrite of various statutes concerning registers of deeds is a revision of GS 9-4 about the preparation of jury lists. The changes provide for the jury list to be filed with the clerk of court rather than the register of deeds and eliminate the requirement that the name of each person on the list be written on a separate card. These changes are incorporated in and superseded by the more extensive changes made in jury list procedures by SL 2012-180 below.

2. **S.L. 2012-76 (S 518): Landlord notify State Bar of lawyer's default.** This act adds a new GS 42-14.4 and amends GS 44A-2 to require a landlord who knows that a tenant is a lawyer to notify the State Bar at least 15 days before destroying or discarding any potentially confidential materials left behind when the tenant vacates the premises or is ejected. The State Bar may take possession of the materials within that 15-day period without a court order. The new provisions also apply to storage spaces. Effective October 1, 2012.

3. **S.L. 2012-108 (H 1090): Orange/Alamance border and pending cases.** For some time the county commissioners in Orange and Alamance counties have been working to clarify the boundary between the two counties. The 2011 General Assembly adopted the new line for most of the boundary and left it to the two counties to resolve the remaining portion. The 2012 act provides for the new boundary to take effect July 1, 2013, and specifies the consequences for property taxes, voter rolls, school attendance and various other issues. One section declares that no legal action pending on that date, including criminal charges, involving people or property in the area being moved from one county to the other, is to be abated, and that the action "shall continue in the appropriate adjoining county."

4. **S.L. 2012-142 (H 950) and S.L. 2012-145 (S 187): 2012 budget bill and modifications.** The budget picture was somewhat improved for all of state government this year, including the courts. There were limited changes this session to the fiscal year 2012-13 budget that was enacted in 2011 as part of the two-year budget. On the downside, the Administrative Office of the Courts was directed to reduce overall spending by an additional five million dollars. It appears that the reductions can be accomplished through the elimination of vacant positions. On the upside, funding was restored for family courts and all 44 positions in that program; the 1.2 percent pay increase for all state employees applies to the judicial department; and employees get an additional five days' vacation leave to be used by June 30, 2013. Funding for the District Attorneys Conference was reduced by $200,000, but the conference also was given nearly seven million dollars from a mortgage litigation settlement with Bank of America, to be used for training in prosecution of lending and financial crimes.

   Other budget bill provisions include:

   - The AOC is to study magistrate scheduling and recommend methods for a more efficient method, with a report to legislative committees by March 1, 2013.

- The AOC is to provide "direction and oversight" to the family court programs to assure best practices. A report on these efforts is to be made by March 1, 2013.
- Statutory restrictions on the use of interpreters have been removed to allow the AOC more flexibility in addressing the pending federal complaint.
- The requirement of a written order, supported by findings of fact and conclusions of law, has been added for waiver of the criminal case mediation fee or waiver or reduction of criminal costs.
- The statutes governing facilities fees and the Court Information Technology Fund are revised to specify that proceeds may be used for upgrading, maintaining and operating state judicial facilities as well as county facilities.

5. **S.L. 2012-150 (H 203): Rejection of false lien filings.** — Although it only affects the courts indirectly, this legislation should be of interest to all court officials who have experienced difficulties with "sovereign citizens" who have clogged court files with nonsensical filings and have attempted to place liens on people who do not share their views about the validity of the government. Included in this act is the creation of a new GS 14-118.6 making it a Class I felony to attempt to file a false lien against a public official or employee because of that person's performance of official duties. The statute authorizes the register of deeds to refuse to file the lien on reasonable suspicion that it is false, giving the person an opportunity to commence a special proceeding to determine whether the filing is appropriate. If the proceeding results in an order that the lien is false, the register of deeds is to mark the original document to indicate that determination. The new statute also makes the false filing an unfair and deceptive trade practice in addition to the criminal penalties. Effective December 1, 2012, and applies to offenses committed on or after that date.

6. **S.L. 2012-180 (S 133): Jury list procedures.** This act makes various changes in the jury list procedures generally for the purpose of conforming old statutes to current practices and technology. The new statutes provide for the clerk of court rather than register of deeds to maintain the master jury list; eliminate the requirement that each name be written on a separate card; and allow the clerk to serve jury summons by mail or give them to the sheriff to serve personally, by mail, by telephone or by leaving at the address. The new law makes applicable to all counties the provisions that previously were in GS 9-2.1 for counties using electronic data processing. That is, all counties now will be required to have written jury list preparation procedures and to make them available for public inspection, and all counties will perform a one-time random sorting of names from the alphabetized master list, with jury panel pools then selected sequentially from that random-order list. At the request of the clerk and with the agreement of the senior resident superior court judge, the clerk's functions can be given to the trial court administrator. Only the alphabetized master list is to be available for public inspection, not the randomized list; and jurors' addresses are to be confidential and may be disclosed only pursuant to court order. The record of excuses is to

be kept separate from the master list, and privileged health information about jurors is to be kept confidential. And GS 7A-312 is amended to exempt jurors from ferry tolls.

7. **S.L. 2012-194 (S 847): Technical corrections (plus designation of the senior resident and referral of citizen-initiated arrests).** Technical corrections make up almost all of this 35-page bill, but there are a few substantive changes in the law as well. Included in the technical changes are revisions of the statutory charts on the authorized number of magistrates and assistant district attorneys to reflect the reductions made in the recent budget-cutting years. One substantive change is an amendment to GS 7A-38.5 to require the chief district judge and DA to refer any citizen-initiated misdemeanor charge to the local mediation center unless there is no mediation center available, the case involves domestic violence, or the judge or DA determines that mediation is not appropriate. The mediation center will have 30 days to resolve the matter, otherwise it goes back on the docket. An elected DA can elect to have the prosecutorial district opt out of the mediation requirement.

   Another substantive change is the method of selecting the senior resident superior court judge. Backtracking on the change that was made in 2011 to have the chief justice choose the senior resident, the new version of GS 7A-41.1 returns to the automatic designation of the judge with the longest continuous time on the superior court bench. There is one exception, however. The exception is the senior resident of any superior court district which consists of a set of districts "wholly contained in one county that is specified in law as the sole proper venue for certain actions." It appears that the one district that meets this test is the Tenth Judicial District, Wake County. For that district, the senior resident is to be designated by and serve at the pleasure of the chief justice.

   The technical corrections act also included a provision authorizing superior court judges to perform marriages between July 26 and 30, 2012. We do not know whose wedding was being accommodated.

Tab:

Selecting Process

SELECTING PROCESS (AUGUST, 2012)

PROBLEMS IN SELECTING THE PROPER CHARGE AND ISSUING PROCESS

Instructions: For each of the following sets of facts, assume that what is written is reliable information, then decide whether a criminal offense has been committed. If there is a crime, decide what kind of process should be issued. Each magistrate should select the proper AOC form and complete the form for one of the problems. In some of the situations you may be required simply to give advice to another person rather than issue process. If that is the case, be prepared to state in class exactly what you would say to that other person. For this set of problems, do not set conditions of pretrial release.

1. Mrs. Lorean Warren comes in with her 11 year-old son, Tommy. Tommy went to the Running Brook Golf Club yesterday morning to make some money caddying. When he approached Raymond G. Mallory and asked if Mallory wanted a caddy, Mallory said, “Get out of here, you damn little beggar" and pushed Warren to the ground with his arm. Warren fell on gravel and scraped his right arm. Mallory is a 45 year-old real estate broker who lives at 1011 Whitworth Street.

2. Patrolman Robert Lucas of the Franklin Police Department comes in and says that when he stopped Francis Smith about half an hour ago to give him a ticket for speeding 55 mph in a 45 mph zone, Smith called Lucas “a stupid flat-footed pig bastard.” Smith's license indicated he was 24 years old and lives at 300 Oakwood Street.

3. Officer Thomas Burgess comes in and says that while Abraham Waverly was driving his 1991 Ford Taurus on Highway 73 near Andrews, N.C., yesterday, Charles T. Lloyd, 34, Apt. 3B, 2100 Brookside Drive, Franklin, drove alongside Waverly and fired a shotgun towards him. The shot shattered the back window and caused Waverly to drive off the side of the road, but no other damage or injury was sustained.

4. Lawrence T. Russell, a local merchant, appears saying that at 11:00 o'clock this morning he saw a 1990 red Chevrolet, N.C. license TRT442, driven by Thomas Sudland, run a red light at the corner of 8th Street and Mud Avenue.

5. Detective Roland Garland comes in with Lewis Wells who says that last night at 11:30 p.m. Bobby Hanners jumped on him, Wells, in Joe's Roadside Bar on Hopewell Boulevard. Hanners pulled a hunting knife with an 8" blade and cut Wells several times. Only one of the cuts required stitches, 5 stitches on the left hand. Wells doesn't know Hanners but got his name from the bartender, who thinks Hanners, a 6'3", 200 lb., white male, 25 years old, lives at Good-View Trailer Park.

6. Merchant Sally Kessler comes and tells you that Peter Kirkman wrote a worthless check in the amount of $79.95 when he bought some tools last week. Kirkman, white male, 27 years old, lives in an adjoining county at 22 Westover Drive, Smithville.

7. About 20 minutes ago officer Robert Lucas of the Franklin Police Department stopped Alice Lodge to give her a ticket for running a stop sign. Lodge's boyfriend, Fred Chambers, jumped out of the passenger's seat, ran around the car, called Lucas a “fat ignorant jerk” and shoved him to the ground while Lucas was trying to complete the citation. Lucas has placed Chambers under arrest for obstructing an officer and has now brought him before you. Chambers is white, 27 years old, and lives at 1414 Lockwood Circle.

8. Louise Day Hill, a sales clerk at Ivey's in Downtown Mall, Franklin, caught Ira Davis with a Wilson's Originals blouse, size 9, in her shopping bag while she was in the store. The blouse still had the Ivey's tag on it, indicating a price of $17.99. Davis is 19, white, lives at Apt. 13C, Old Towne Apartments, Kensington Drive. She is a local college student. Hill wants you to issue an arrest warrant.

9. Douglas Feldon, a security guard at Downtown Mall, Franklin, appears and explains that earlier today he caught Rita Davis in the parking lot of the mall with a pair of Brobeggo women's shoes, size 8 narrow. Feldon chased Davis after being told by Louise Day Hill, a sales clerk at Ivey's, that Davis had taken the shoes without paying. The shoes were in a box held in Davis's hand and the price tag had been torn off. Hill said the shoes sell for $28.95. Feldon checked Davis' driver's license which said that she lives at Apt. 13C, Old Towne Apartments, Kensington Drive, and is 26 years old. She is white. Feldon took the shoes back and let Davis go; he wants a warrant against her for shoplifting.

10. Detective Albert Simmons appears and says that John “The Breadman” Harding broke the kitchen window and entered Diana Stallings' house at 451 Mason Court at 1 a.m. last night. A house guest, Levine Kelley, caught Harding while he was in the living room and before anything had been disturbed by Harding. Harding has no known local address presently. He is about 30, black, about 6', 180 pounds.

11. Detective Ross Davidson appears and says that Eddie Fern entered Ross and Casey's Fine Appliances, 5660 Stanley Drive, through the unlocked back door at some time between 9 p.m., last Friday and 8 a.m., Saturday. Fern took a 13" Sony color television, serial #ART890034, and a Mr. Coffee coffee maker, DiMaggio special, model 53B. The television set is valued at $359.95 and the coffee maker at $27.50. Fern is 29, white, lives at 452 Jefferson Court.

12. Patrolman Robert Evans arrests Gilbert Sullivan and takes him to the magistrate's office. At 10:00 p.m. tonight Sullivan walked into Ken's Quickie Mart, Highway 430, about two miles out of town, pulled a pistol, pointed it at the manager, Kenneth Evans, and said, “Give me all your cash or I'll blow your damn head off." Evans complied, handing Sullivan about $450 in cash. The only customer in the store at the time was Rayline Corley, a 50-year-old housewife buying some bread and eggs.
13. Tom Martin and Mumford Ford have been feuding about a girl for about three months. Ford comes in and tells you that this morning Martin broke into Ford's apartment, #45B Old Towne Apartments, and painted “pig,” “queer,” and “toad” on the living room and bedroom walls in letters about two feet high. Martin is white, 24, and lives at #237 Village East, Westwood.

14. Detective Mason Gruder appears and says that last Saturday morning Haywood Goodman went into Larry Oldman's unlocked 1994 Pontiac while it was parked in the parking lot of Lynwood's Funeral Home, 1220 Patton Avenue, and took a tan sports coat worth about $45. He also tore out and took Aldham's Motorola KZR12 cassette tape recorder worth about $180. Goodman is 32, black, and works at Franklin Auto Repair, 1200 Fuquay Road; Gruder does not know his home address.

15. Manning Brandon and Susan Stewart come in and say that about 11 p.m. tonight that John Black was in the Frog's Kiss bar and had been drinking several beers. He walked up to a table at which Stewart and Brandon were sitting and said to Stewart, “Hey, you're quite some honey. Why don't you drop this queer turkey and come with me. I'd really like to give it to you in bed.” Stewart was quite embarrassed and Brandon became angry. Brandon told Black to leave, to which Black replied, “Buzz off, you stringy pimp fairy.” At that, Brandon leaped to his feet ready to strike Black, but several people intervened and no blows were actually inflicted by either party. Lloyd Crane, the bartender at the time, has come in also and says the story is true. Crane knows that Black, about 25, 6', 175 pounds, lives at the Hot Springs Trailer Park on Old Canton Road. Brandon and Stewart ask for a warrant for verbal assault.

16. Janice Monroe appears and says Charlie Davis was dating her until they had a violent argument last week. Monroe told Davis she never wanted to see him again. Saturday morning Davis went to Monroe's house at 213 Corbin Lane. Monroe ordered him to leave, but he refused and then picked up a lawn chair from the front yard and threw it through her front window. It will cost about $25 to have the window replaced; the lawn chair, worth about $6, was broken. Davis is 37, white, and lives at 340 Greenwich Road.

17. Tom Martin and Mumford Ford have been feuding over a girl for several months. Ford comes in and says that yesterday, Martin came up to him on the street, shook his fist at him, and said, “I've lost my patience with you. You keep away from Tricia from now on or I'll beat the hell out of you.” Ford is afraid of Martin because Martin is about six inches taller and weighs 50 pounds more than him. Martin's age, address, etc. is given in #13 above.

	Citation	Summons	Warrant for Arrest	Magistrate Order	Order for Arrest
Who Issues?	Officer	Judicial Official	Judicial Official	Judicial Official	Judicial Official
What Can It Charge?	Misd. or infraction	Any crime or infraction	Any crime	Any crime	N/A
What Does It Do?	Directs person to appear	Directs person to appear	Orders officer to arrest person	Finds officer's warrantless arrest was proper	Orders officer to arrest person

Tab:

Initial Appearance

INITIAL APPEARANCE (AUGUST, 2012)

John Rubin, revised Aug. 2011

EXCEPTIONS TO PRETRIAL RELEASE PROCEDURES: A GUIDE FOR MAGISTRATES

THE GENERAL RULE: On arrest, the defendant must be taken without unnecessary delay before a magistrate, who **MUST** hold an initial appearance and set pretrial release (PTR) conditions. G.S. 15A-511. There are **LIMITED** exceptions to this rule.*

Category	Specific Situation	Response	Statutory Basis	Form to Use
Delay initial appearance altogether	Person is unable to understand rights (ex., person is unconscious, grossly intoxicated, does not understand English)	Delay initial appearance for reasonable time without setting PTR conditions. If you commit person to jail until able to understand rights, set reasonable outer time limit and check regularly with jail. To avoid delay of initial appearance if person does not speak English, use telephone interpreting service when possible.	15A-511(a)(3)	AOC-CR-200 Fill out commitment portion of form only. Check the box to hold person "for the following purpose" and write purpose. Do not set PTR conditions in upper portion of form.
Conduct initial appearance, BUT delay setting pretrial release conditions	Person is charged with domestic violence offense under "48-hour" law	Conduct initial appearance, but do not set PTR conditions. Order that person be returned to magistrate if judge does not set PTR conditions within 48 hours. After 48 hours, magistrate has authority to delay setting of PTR conditions for reasonable time if person continues to pose danger, but authority should rarely be used.	15A-534.1	AOC-CR-200 Fill out commitment portion of form only. Check the domestic violence box and indicate when defendant should be returned to magistrate if judge has not acted.
	Felony by person on probation if insufficient information about danger to public[1]	Conduct initial appearance, but do not set PTR conditions. Order that person be brought for first appearance before judge no later than 96 hours. If sufficient information before then, set PTR conditions.	15A-534(d2)	AOC-CR-200, AOC-CR-272 (side one) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side one)
	Violation of probation by person who has pending felony charge or who is subject to sex offender registration if insufficient information about danger to public[2]	Conduct initial appearance, but do not set PTR conditions. If defendant has been held for 7 days without PTR conditions, defendant must be brought before any judicial official to set PTR conditions. If sufficient information before then that not a danger, set PTR conditions.	15A-1345(b1)	AOC-CR-200, AOC-CR-272 (side two) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side two)

*For more information about conducting initial appearances, *see* Jessica Smith, *Criminal Procedure for Magistrates,* ADMINISTRATION OF JUSTICE BULLETIN No. 2009/08 (Dec. 2009), *available at* www.sog.unc.edu/pubs/electronicversions/pdfs/aojb0908.pdf.

1. Effective for offenses committed on or after Dec. 1, 2009.

2. Effective for offenses committed on or after Dec. 1, 2009. Also applies if probationer would be subject to sex offender registration but for the effective date of NC's sex offender registration program.

Category	Specific Situation	Response	Statutory Basis	Form to Use
Conduct initial appearance, set pretrial release conditions, ***BUT*** ***delay release***	Probable cause of impaired driving offense and clear and convincing evidence that person is so impaired as to present danger to self or others if released	Set pretrial release conditions (ex., unsecured or secured bond) and order defendant into custody, up to 24 hours, until he or she is no longer impaired to dangerous extent or sober responsible adult agrees to take custody.	15A-534.2	AOC-CR-200, AOC-CR-270 Make special findings in AOC-CR-270 (side one). Use AOC-CR-200 for PTR conditions; check the box that release is subject to AOC-CR-270.
	Probable cause that individual was exposed to defendant in a nonsexual manner that poses significant risk of transmission of AIDS or Hepatitis B	Contact public health official to determine risk of transmission. If risk exists, order defendant detained for up to 24 hours for testing. Set PTR conditions, to go into effect once testing is completed.	15A-534.3	AOC-CR-200, AOC-CR-270 (side two) See immediately above.
Conduct initial appearance, ***BUT*** ***deny any pretrial release conditions if criteria met***	• Capital offense • Fugitive from another state charged with offense punishable by life in prison or death, or fugitive charged with any offense after arrest on Governor's warrant • Out-of-state probationer arrested for violation of probation if subject to Interstate Compact for Adult Supervision • Offense while person was involuntarily committed or on escape from involuntary commitment if person is still subject to commitment • Certain drug trafficking offenses if certain findings • Certain gang offenses if certain findings • Violation of certain health control measures if person poses health and safety threat • Certain methamphetamine offenses if certain findings • Military deserter • Violation of post-release supervision or parole • Violation of probation by person who has pending felony charge or is subject to sex offender registration if danger to public[3]	In all of these situations, deny release if criteria are met. Make findings if required. If offense is while person was involuntarily committed or on escape from involuntary commitment, and person is still subject to commitment, person should be returned to treatment facility. If offense is violation of health control measure (under 130A-145 or 130A-475), pretrial confinement terminates when judicial official finds, based on recommendation of state or local health director, that person no longer poses health and safety threat.	• 15A-533(c) • 15A-736 • Ch. 148, Art. 4B (Interstate Compact) • 15A-533(a) • 15A-533(d) • 15A-533(e) • 15A-534.5 • 15A-534.6 • Case law • 15A-1368.6, 15A-1376 • 15A-1345(b1)	AOC-CR-200 In upper portion of form, check the box that states "Your release is not authorized." In additional information section, write any findings or instructions. If a violation of probation by a person who has a pending felony charge or is subject to sex offender registration, also check appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side two)

3. Effective for offenses committed on or after Dec. 1, 2009. Also applies if probationer would be subject to sex offender registration but for the effective date of NC's sex offender registration program.

Category	Specific Situation	Response	Statutory Basis	Form to Use
Conduct initial appearance, BUT set certain pretrial release conditions	Arrested on order for arrest (OFA) after failure to appear (FTA)	If OFA requires certain PTR conditions, set those conditions. If OFA does not require PTR conditions, set secured bond in at least twice the amount of previous bond. If OFA does not require conditions and there was no previous bond, set secured bond of at least $500. If defendant was already surrendered by surety for this FTA and made new bond, release defendant without setting new bond.	15A-534(d1)	AOC-CR-200 Set pretrial release conditions. Check the box in upper portion of form that defendant was arrested or surrendered for FTA. Also check the box if this is defendant's second or subsequent FTA.
	Surrendered by surety following FTA	Require secured bond in at least twice the amount of previous bond. If defendant was already arrested for this FTA and made new bond, release defendant without setting new bond. If defendant has not been arrested for this FTA, attempt to get OFA recalled.	15A-534(d1)	AOC-CR-200 See immediately above. See also AOC-CR-214 (surrender of defendant by surety)
	Felony by person on probation if danger to public[4]	Set secured bond, with or without electronic house arrest.	15A-534(d2)	AOC-CR-200, AOC-CR-272 (side one) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side one)
	Electronic house arrest[5]	If you require house arrest with electronic monitoring, set secured bond.	15A-534(a)	AOC-CR-200
	Order of judge	Follow judge's order.		AOC-CR-200
	Domestic violence offense	If authorized to set PTR conditions, magistrate may impose conditions that defendant stay away from victim, not assault victim, not damage specified property, and may visit defendant's children at times specified in court order	15A-534.1(a)(2)	AOC-CR-200, AOC-CR-630 In space for restrictions in AOC-CR-200, refer to AOC-CR-630 if additional conditions included there.
	Certain offenses against a minor	In addition to any other PTR conditions, require that defendant stay away from, not communicate with, and not assault, threaten, or harm alleged victim; stay away and non-communication conditions may be waived on proper findings.	15A-534.4	AOC-CR-200, AOC-CR-631 In space for restrictions in AOC-CR-200, refer to AOC-CR-631 if additional conditions included there.

4. Effective for offenses committed on or after Dec. 1, 2009.
5. Effective for offenses committed on or after Dec. 1, 2009.

Category	Specific Situation	Response	Statutory Basis	Form to Use
Set certain pretrial release conditions *(cont'd)*	When fingerprints or DNA sample have not been collected as required by certain statutes[6]	In addition to any other PTR conditions, require the collection of fingerprints or DNA sample as condition of release.	15A-534(a)	AOC-CR-200 In space for restrictions, write condition.
Reasons that initial appearance and/or pretrial release conditions may NOT be delayed or denied	Noncitizens	No authority to delay or deny PTR conditions. If ICE has filed detainer, defendant may be detained by jail for additional 48 hours (excluding weekends and holidays) after defendant makes PTR conditions.	8 C.F.R. 287.7 (ICE detainer)	AOC-CR-200 Fill out release order as in other cases.
	Out-of-county offenses or violations	No authority to delay or deny PTR conditions. See pp. 18–19 of AOJB No. 2009/08 for steps to take.		AOC-CR-200, AOC-CR-241 (out-of-county process verification recall and transmission)
	Arrest without paperwork	No authority to delay or deny PTR conditions. See pp. 18–19 of AOJB No. 2009/08.	15A-401(a)(2) (arrest authority when warrant not in possession of officer)	AOC-CR-200
	DCI hit states "no bond"	No authority to delay or deny PTR conditions.		AOC-CR-200
	Probation violation by in-state probationer or "absconder"	No authority to delay or deny PTR conditions except in the circumstances in 15A-1345(b1), described above.	15A-1345(b) (bail following arrest for probation violation)	AOC-CR-200

6. Effective February 1, 2011, meaning effective for pretrial release conditions set on or after that date.

Jeff Welty
School of Government
March 2012

DOMESTIC VIOLENCE CRIMES[1]

Crime Charged	Relationship Between Defendant and Victim	Only Judge May Set Bond for First 48 Hours After Arrest	Crime Victims' Rights Act (VRA) Applies
Simple assault [G.S 14-33(a)]	• Current or former spouses. •Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes [Magistrate must indicate VRA Case on the criminal process]
Assault on a female [G.S. 14-33(c)(2)]	• Current or former spouses. • Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes [Magistrate must indicate VRA Case on the criminal process]
Assault with a deadly weapon [G.S. 14-33(c)(1)]	• Current or former spouses. •Persons who live or have lived together as if married. • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes No	Yes [Magistrate must indicate VRA Case on the criminal process]

[1] This chart lists the most common offenses to which the special 48-hour pretrial release rule applies, but it does not list every felony to which it applies. The rule covers any felony in Articles 7A (Rape and Sexual Offenses), 8 (Assaults), 10 (Kidnapping and Abduction), or 15 (Arson and Other Burnings) of the General Statutes if the relationship between the defendant and the victim is current or former spouse or persons who are living together or have lived together as if married.

Crime Charged	Relationship Between Defendant and Victim	Only Judge May Set Bond for First 48 Hours After Arrest	Crime Victims' Rights Act (VRA) Applies
Assault inflicting serious injury [G.S.14-33(c)(1)]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes [Magistrate must indicate VRA Case on the criminal process]
Assault by pointing a gun [G.S. 14-34]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes [Magistrate must indicate VRA Case on the criminal process]
Assault with a deadly weapon with intent to kill [G.S. 14-32(c)]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes; because VRA felony no matter what relationship.
Assault with a deadly weapon inflicting serious injury [G.S. 14-32(b)]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes; because VRA felony no matter what relationship.

Crime Charged	Relationship Between Defendant and Victim	Only Judge May Set Bond for First 48 Hours After Arrest	Crime Victims' Rights Act (VRA) Applies
Assault with a deadly weapon with intent to kill inflicting serious injury [GS 14-32(a)]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members..	Yes _____ No	Yes; because VRA felony no matter what relationship.
Assault inflicting serious bodily injury [G.S. 14-32.4(a)]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes; because VRA felony no matter what relationship.
Assault by strangulation [G.S. 14-32.4(b)]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	No
Habitual misdemeanor assault [G.S. 14-33.2]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes; because VRA felony no matter what relationship.
Communicating a threat [G.S. 14-277.1]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	No

Crime Charged	**Relationship Between Defendant and Victim**	**Only Judge May Set Bond for First 48 Hours After Arrest**	**Crime Victims' Rights Act (VRA) Applies**
Domestic criminal trespass [G.S. 14-134.3]	• Current or former spouses. • Persons who live or have lived together as if married. (having one of these relationships is an element of this offense)	Yes	Yes [Magistrate must indicate VRA Case on the criminal process]
Violating a protective order [G.S. 50B-4.1]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes	Yes [Magistrate must indicate VRA Case on the criminal process]
Stalking [G.S. 14-277.3A]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes [Magistrate must indicate VRA Case on the criminal process]
Rape or sexual offense [G.S. 14-27.2 to –27.8]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes; because VRA felony no matter what relationship.

Crime Charged	Relationship Between Defendant and Victim	Only Judge May Set Bond for First 48 Hours After Arrest	Crime Victims' Rights Act (VRA) Applies
Kidnapping [GS. 14-39]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes because VRA felony no matter what relationship.
Harassing telephone calls [G.S. 14-196]	• Current or former spouses. •Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	No	No
Arson	• Current or former spouses. • Persons who live or have lived together as if married. _____ • Child in common. • Persons of the opposite sex in a dating relationship. • Parent and child or grandparent and grandchild. • Current or former household members.	Yes _____ No	Yes because VRA felony no matter what relationship.

Robert L. Farb
Jessica Smith
Institute of Government
December 2002

PROBLEMS IN DETERMINING THE CONDITIONS OF PRETRIAL RELEASE

[Choose best answer(s) for each problem]

1. Frank Furrillo is arrested and brought before you for communicating threats to Joyce Davenport. Furrillo has been living as if married with Davenport for the past 18 months. Furrillo appears to be very upset at being arrested, but he cooperates with you and makes no threats. What action should you take?

    a. Set release conditions as usual.
    b. Set release conditions and commit him to jail for a reasonable time.
    c. Do not set release conditions and commit him to jail for a reasonable time.
    d. Place him in a holding cell for about 30 minutes.
    e. Commit him to jail because only a judge may set release conditions for the period of 48 hours from Furrillo's arrest.

2. Rex “High Ball” Lincoln has been arrested and charged with driving while impaired. Lincoln is able to understand his procedural rights, but there is clear and convincing evidence that he presents a danger, if he is released, of physical injury to himself or others. What action should you take?

    a. Order him detained until he is no longer impaired, up to 24 hours.
    b. Set a high secured bond that he won't be able to meet for a while.
    c. Set conditions of pretrial release, and order him detained for a while.
    d. Set conditions of pretrial release, and order him detained until his mental and physical faculties are no longer impaired, up to 24 hours or a specified time less than 24 hours, or until a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant is no longer impaired.

3. Charles Manson was arrested and was charged with being drunk and disruptive. After you have found probable cause he starts screaming obscenities in a loud voice. You ask him to be quiet and he yells louder. This continues for several minutes and then he quiets down. Every few minutes he continues to mumble obscenities. What action should you take?

    a. Place him in a holding cell for about 30 minutes.
    b. Set release conditions as usual.
    c. Set release conditions and commit him to jail for a reasonable time.
    d. Do not set release conditions and commit him to jail for a reasonable time.

4. Amy Ames, a local prostitute, is arrested and charged with assault on a government officer. She walked up to his patrol car, leaned in the open window, yelled “buzz off,” and slapped him in the face. You have placed her under a $500 secured bond. May you specify that the bond is to be satisfied with “cash only”?

    a. Yes
    b. No, unless authorized by a judge in local pretrial release policy

5. It is near the end of your shift and you have just conducted an initial appearance for Wilson Snipes. You have placed him under a $2,000 secured bond. Snipes is resting uncomfortably in the jail because he cannot make bond. On the next shift (you are asleep at home) another magistrate, without consulting you, modifies Mr. Snipes' bond and places him under an unsecured bond. Snipes is released. Was the second magistrate's modification legally authorized based on these facts?

a. Yes b. No

6. Joan Smith, age 19, is arrested for impaired driving. You set a $500 secured bond and also determine by clear and convincing evidence that her impairment, if she is released, presents a danger of physical injury to herself or others. However, her live-in boyfriend, age 20, appears in your office (he is sober) and tells you he will take care of her until she sobers up. He also has money to pay a professional bondsman to post a secured bond. What do you do?

    a. Commit her to jail because a live-in boyfriend may not qualify as a responsible adult under G.S. 15A-534.2.
    b. Release her into the boyfriend's custody until she is no longer impaired and allow the boyfriend to pay the bondsman to post the secured bond.
    c. Commit her to jail because the live-in boyfriend is too young to qualify as a responsible adult.

7. Willis Souse has been charged with disorderly conduct. He is grossly intoxicated and you have decided to delay the initial appearance pursuant to G.S. 15A-511(a)(3). You have checked the second box ("hold him for the following purpose") on the commitment order. What is the best choice for completing that part of the order?

    a. "Hold until sober."
    b. "Hold a maximum of 8 hours."
    c. "Hold until sober or a maximum of 24 hours."
    d. "Hold until sober or a maximum of 8 hours."

8. Ruby Jones tells you that her husband, Will Jones, beat her and she asks you to issue an assault warrant against him. Ruby is badly bruised and her husband has a history of hitting her. You issue a warrant for his arrest. When Will Jones is brought before you he mumbles "that bitch will pay for this when I hit the street tonight." What action should you take?

    a. Set release conditions as usual.
    b. Set release conditions and commit him to jail for a reasonable time.
    c. Do not set release conditions and commit him to jail for a specified reasonable period of time.
    d. Commit him to jail for 12 hours.
    e. Commit him to jail because only a judge may set release conditions for the period of 48 hours from Will Jones' arrest.

9. Pierre "Happy Feet" Jones has been arrested and charged with criminal trespass. This is the fifth time that he has been arrested for trespass after being forbidden. On each occasion he has trespassed on the property of Joan Arke. You have placed him under a $500 secured bond and have attached a condition that he refrain from going on her property. Is that a legally authorized condition?

    a. Yes b. No

10. Otis, the town drunk, is arrested and charged with misdemeanor breaking and entering. He has a bottle of Thunderbird stuffed into his coat pocket and he reeks of alcohol. Otis falls asleep on the floor while you are talking with the officer. He wakes up when prodded, but each time he goes back to sleep. Otis does not appear to recognize you, though you have known him for years. What action should you take?

    a. Set release conditions as usual.
    b. Set release conditions and commit him to jail for a reasonable time until he is sufficiently sober to appear before you for an initial appearance.
    c. Do not set release conditions and commit him to jail for a reasonable time until he is sufficiently sober to appear before you for an initial appearance.

11. Peter “The Rabbit” Martin has been arrested and charged with misdemeanor breaking and entering. You have known Peter for years and believe that basically he is a good kid. He does not have a criminal record. Recently you have heard that he is being influenced by a group of thugs (who have been charged with break-ins) who hang out at the local pool hall, the Corner Pocket. You release Peter on his written promise to appear and attach a condition that he stay away from the Corner Pocket. Is this condition legally authorized?

    a. Yes b. No

    Are you required to change his pretrial release conditions if Peter gets mad and demands a secured bond without conditions?

    a. Yes b. No

12. L. Winston Vanderbilt has been arrested and charged with second-degree forcible rape. You have placed him under a $10,000 secured bond. Vanderbilt has lived in the community all his life and certainly will appear for trial. However, he has no friends, is not married, and has no relatives in North Carolina. He is a millionaire, but his assets are frozen in numerous investments. May Vanderbilt be released if he agrees to sign his own secured bond by posting his own cash?

    a. Yes b. No

13. Walt Crowell has been arrested and charged with assaulting his wife, Wanda Crowell. Walt Crowell is brought before you after 48 hours have elapsed because a judge was not available to set conditions of pretrial release. You place him under a $500 secured bond. You also have attached a condition that Walt stay away from Wanda at home and at work. In addition, you have attached a condition that he not harass or assault her. Are these conditions legally authorized?

    a. Yes b. No

14. You order a secured cash bond of $500 and defendant has the cash on him. Aside from the standard boxes on the AOC forms, which sections do you need to complete to set the cash bond?

    Now, defendant is released, fails to appear, and is arrested pursuant to an order for arrest. The order for arrest is silent as to conditions. What do you do?

    After the failure to appear, you set a $2,000 secured bond. Now defendant doesn’t have the cash on him but his mother comes in with $2,000. What do you need to know? How do you fill out the forms?

Now, defendant's mother only has $500 but she brings in three other relatives who have $500 each. They do not intend to make the cash available to satisfy the defendant's obligations and want to split the bond. What do you do? If your county allows splitting, how do you fill out the forms?

15. Defendant was arrested by law enforcement officers on a DCI hit on a warrant from another county. The officers do not have the warrant when they bring the defendant to you. What should you do?

16. You have set a $500 secured bond. A runner arrives to sign the bond for a bail agent (surety bondsman). What do you do?

John Rubin
UNC School of Government
August 2011

PROBLEMS IN SETTING PRETRIAL RELEASE CONDITIONS

Instructions: For the following problems set the conditions of pretrial release as you would do so in your county.

To assist in doing these problems, the following is a list of each class of felonies and the minimum and maximum punishment for each, with the minimum based on a mitigated sentence in Prior Record Level 1 and the maximum based on an aggravated sentence in Prior Record Level VI:

Class A……. life without parole or death
Class B1…….. 144 months to life without parole
Class B2...…… 94 to 481 months
Class C……. 44 to 228 months
Class D……. 38 to 201 months
Class E……. 15 to 85 months
Class F……. 10 to 50 months
Class G……. 8 to 38 months
Class H……. 4 to 30 months
Class I.…….…. 3 to 15 months

1. Detective Steve Roman arrests without a warrant and brings in Allen Watts Ewing, age 26, of 1150 Brookside Drive. Earlier this evening—in the course of a search of Ewing's home with a search warrant—ten pounds of marijuana were found in his bedroom. He also had a .38 caliber pistol under his jacket in his belt. Ewing has two previous arrests and convictions for misdemeanor assault and has been employed as a cook at the same place for the past two years.

   The charges are maintaining a dwelling and possession with intent to sell or deliver (Class I felony)

2. Officer Kerry Davis arrests without a warrant Jerry Dennis Lawrence, age 17, of 1407 Roosevelt Drive, and brings him to you. Early this afternoon, Lawrence saw the keys in the ignition of Marsha Williams' 1982 Volkswagen, license TRG 887, when the car was parked on Kennedy Street. Lawrence got in the car, drove it to Frame Street on the other side of town, and abandoned it, just before being apprehended by Davis. Lawrence lives with his parents and is a high school student. He has a previous conviction for reckless driving.

   The charge is unauthorized use of conveyance (Class 1 misdemeanor)

3. SBI agent Felix Katz brings in Troy K. Cake, age 24, arrested under an arrest warrant for selling heroin and possessing heroin with intent to sell and deliver. The arrest warrant was issued in a county located 200 miles from your county. Cake has no prior arrests. Cake has $1,500 cash and says he would be willing to post a cash bond.

   The charges are Sale of heroin (Class G felony) and Possession with Intent (Class H felony)

4. A Highway Patrol Officer arrest K.T. Rowse, age 19, of 65 Roosevelt Drive, for DWI. Rowse's alcohol concentration is 0.27. Rowse is cooperative but appears to be extremely intoxicated. There is no sober adult willing and able to take care of him.

   The charge is DWI

5. A new .45 caliber Smith & Wesson revolver, serial #RR456J77, fair market value of $345, was stolen from Smithville Gun and Hobby Shop during a nighttime break-in two days ago. An undercover officer bought it this morning for $30 from Fred Lloyd, age 30, and then arrested him without a warrant and brings him to you. Lloyd is a resident of the county and has one prior conviction for felonious breaking and entering.

   The charges are Felony breaking and entering and felony larceny (Class H felonies) and possession of firearm by a felon (Class G felony)

6. Detective Nancy Stone arrests Wayne Buchanan without a warrant and brings him to you and explains: Last night Wayne Buchanan poured gasoline inside and set fire to Donald Bell's 1991 Ford Mustang. The entire back seat was burned before the fire was extinguished. Buchanan is 16 years old and lives with his parents in town. He refuses to be released to the custody of his parents and he has previously failed to appear in court for a reckless driving charge.

   The charges are Burning personal property (Class H felony) and Malicious use of an incendiary device (Class G felony)

7. Deputy Sheriff Samuel Burden arrests Steve Wiles, age 18, with an order for arrest for Wiles for failing to appear in court for the charge of accessory after the fact of armed robbery. The order for arrest was issued by a district court judge in your county and bears the notation "$25,000 secured bond."

   No new charge

8. A city police officer arrests Susan T. Jones, age 35, of 66 E. Main Street, for DWI. Jones's alcohol concentration is 0.20. Jones is uncooperative and extremely intoxicated. Her husband, age 37, was a passenger in the car that Jones was driving. He is sober, has a valid driver's license, and states that he will take care of her until she becomes sober.

   The charge is DWI

9. Officer Jesse Wilson appears at your office with Ron Z. Bloat, age 31. The officer has arrested Bloat based on an outstanding arrest warrant for a $55 worthless check. It is Saturday night. Bloat has a long history of mental trouble. Shortly after his appearance a worker from the Franklin Mental Health Clinic appears and says the Clinic would be happy to see to it that Bloat appears in court.

   No new charge

Tab:

Search Warrants

SEARCH WARRANTS (AUGUST, 2012)

Self-instructional Materials for Magistrates and Law Enforcement Officers in Applying the Law of Search Warrants

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Revised July 1993

APPLYING THE LAW OF SEARCH WARRANTS

PREFACE

These materials are intended to help you learn how to apply the law of search warrants in making decisions that a magistrate might be required to make when dealing with search warrants. Although they are directed toward teaching a magistrate how to determine probable cause and how to fill-out a search warrant, they also are applicable to teaching these duties to a law enforcement officer. These materials are intended to guide you toward learning skills in applying the law of search and seizure. When you have successfully learned a skill, you should be able to make a correct decision in a situation that calls for the skill. Following is a list of the skills that you should learn from these materials.

A. To determine whether a given set of facts justifies the issuance of a search warrant.

B. To draw out from a law enforcement officer the information that is necessary to establish probable cause.

C. To write an adequate description of the property to be searched for.

D. To write an adequate description of the place to be searched.

E. To follow the proper procedure in issuing a search warrant.

The materials are divided into an introduction and five sections. Each section is directed toward one of the skills listed above. The material in these sections is largely presented in the form of "programmed" instruction. This means that you will be asked to fill in blanks and supply the answers to questions using information that has appeared in the material. When you come to one of these blanks or questions, you may certainly read back over the material to find the answer. The answer itself appears below the question, in single-spaced type enclosed between two lines. You should keep that answer covered, however, until you have answered the question yourself. Proceeding in this way helps you to master the material more easily. *Read each answer all the way through*. Take your time and reread any preceding material if you do not understand an answer. If you still have questions you will be provided an opportunity to ask them later. Remember, you are *teaching yourself* a subject basic to the proper performance of your duties.

INTRODUCTION

Americans traditionally have resented the invasion of individual privacy by government officials for the purpose of search. Yet they have recognized the necessity of invading individual privacy in order to detect and to prevent crime. The law of search and seizure has grown in response to the need to balance these two interests.

The Fourth Amendment to the Constitution of the United States responds to this conflict by prohibiting "unreasonable" searches and seizures. This command is directed to both federal and state governments. In addition, the Constitution of North Carolina, which prohibits the general warrant (authorizing arbitrary searches) as "dangerous to liberty," has been expanded by judicial interpretation to encompass a general prohibition against unreasonable searches and seizures.

Origin of the Law of Search and Seizure

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

The laws of search and seizure has developed largely in response to the _____ Amendment to the United States _____. This amendment requires that searches be _____ and sets out requirements for search warrants.

The law of search and seizure has developed largely in response to the <u>Fourth</u> Amendment to the <u>Constitution</u> of the United States and requires that searches be <u>reasonable</u>.

Article I, Section 20 of the Constitution of North Carolina provides: "General warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted."

The North Carolina Constitution prohibits _____ warrants.

The North Carolina Constitution prohibits <u>general</u> warrants and encompasses a general prohibition against unreasonable searches and seizures.

In recent years, court cases and a fairly small number of statutes have put additional flesh on the bones of these _____ requirements to protect people's privacy.

The constitutional requirements have been clarified in recent years.

The law of search and seizure are aimed at protecting for everyone a basic American right--the right to be left alone. The law helps to p_____ this r_____ by restricting government officials' power to interfere with people's _____.

The law of search and seizure helps to protect this right to be left alone by restricting official action in interfering with people's privacy.

If an officer wants to search an individual's person or property, the officer may do so as long as the officer does not illegally _____ with the individual's privacy.

An officer may not illegally interfere with a person's privacy.

The law of search and seizure attempt to balance the need to enforce laws against the need to _____ people's _____ to be _____ alone.

To protect people's right to be left alone is a major purpose of the laws of search and seizure.

One of the traditional means of protecting the right to privacy has been to require law enforcement officers to obtain a search warrant from a neutral judicial officer. Decisions of both the United States Supreme Court and the North Carolina Supreme Court make clear the importance of the role of the magistrate as a check on the power of the state to interfere with a person's privacy. These decisions have required that the judicial officer be neutral, that the person applying for the warrant demonstrate probable cause to make a search, and that the warrant and its supporting affidavit specify the justification for the search.

Your principal function as a magistrate then is to exercise your independent judgment in evaluating facts presented to you by a law enforcement officer to see if they establish p_____ c_____ and therefore _____ the issuance of a search warrant.

In issuing search warrants, the magistrate's primary function is to use neutral and independent judgment to determine if the facts described by the officer establish probable cause to justify the issuance of the warrant.

Failure to comply with the constitutional requirements can result in adverse effects on both the state and the officer executing the search warrant. The courts refuse to admit into evidence information and objects obtained from a search based on an invalid search warrant. The result is that the state is unable to convict some offenders because the constitutional requirements for a valid search were not satisfied. The warrant may in some cases be so defective as to subject the officer executing it to civil and criminal penalties and disciplinary action by the officer's employing agency.

Two practical consequences of an invalid search warrant are the real possibilities that the state may find that information critical to a conviction is in_____ in evidence or that the officer executing the invalid warrant faces _____ and _____ sanctions for doing so.

The invalid search warrant presents real problems for the prosecution because essential evidence may be inadmissible and may subject the law enforcement officer to criminal and civil sanctions.

Of course the most serious result is a weakness in our system of criminal justice that comes from the failure of the judicial officer to exercise independent judgment as a _____ on the power of the state to invade the _____ of its citizens.

The most serious consequence of the magistrate's failure to observe constitutional requirements in issuing a search warrant is the harm that is done to our system of criminal justice because the magistrate does not act as a check on the state's power to interfere with a person's privacy.

Section A

The purpose of this section is to develop the skill to determine whether a given set of facts justifies the issuance of a search warrant.

As discussed in the introduction, a basic constitutional requirement for any search is probable cause. One of the judicial officer's most difficult problems is determining whether the facts related by an officer establish probable cause to support the issuance of a valid search warrant. This determination, however, is one of the most valuable contributions that a magistrate makes. An independent evaluation of

the facts when an officer applies for a search warrant can prevent an illegal search, the results of which may be excluded from evidence at trial. Probable cause for a search requires enough knowledge to lead a reasonable person to believe that there is a fair probability that the object of the search is in the place to be searched. Probable cause, then, is based on the use of judgment by a _____ person. It is (more/less) than reasonable suspicion but (more/less) than proof beyond a reasonable doubt.

Probable cause is based on the judgment of a <u>reasonable</u> person. It must be <u>more</u> than reasonable suspicion but <u>less</u> than proof beyond a reasonable doubt.

<u>CASE</u>: Several residents living near a bank which had just been robbed described to police a car (including license number) which had been at the bank before the robbery and left immediately after the robbery occurred. They saw a man with a satchel run from the bank into the car at the time of robbery. Is this information sufficient to establish probable cause that the fruits of the robbery are in the suspect's car?

The evidence provided by the residents was sufficient to show probable cause for a warrant. A reasonable man would believe that it was likely that the stolen money would be in the car, even though it is not certain.

<u>CASE</u>: A woman called the police that The Cove, a local night club, was selling crack cocaine. Her son had come home apparently having just used cocaine , and she said that it was common knowledge that The Cove was the only place her son could obtain cocaine in her small rural community. Does probable cause exist to indicate that cocaine is present at The Cove?

Probable cause does not exist. The only indication that cocaine were there was the woman's vague belief that her son obtained cocaine at The Cove. She did not see anyone sell cocaine to her son, nor did she claim that her son had ever told her that he purchased cocaine from The Cove. This information would not convince a reasonable person of the likelihood of finding cocaine for sale at The Cove.

<u>CASE</u>: A city law enforcement officer comes into your office and says that the officer has just received an anonymous telephone call which said that a noted drug dealer had heroin in his house. The officer wants you to issue a warrant to search the house for heroin. What should you do?

The facts given by the officer, based solely on an anonymous telephone call, are no more than speculation about what is in the house. You should refuse to issue the warrant unless the officer can swear to specific facts that would lead a reasonable person to believe there is a fair probability that heroin in the house. The next section contains instruction about obtaining those specific facts.

One of the most difficult situations in which you will have to determine if probable cause exists is the case when an officer wants a search warrant based on a confidential informant's report. The officer naturally wishes to protect the informant's identity as much as possible, but must show enough facts to indicate probable cause for the search. Specific information must be included in the search warrant application when an informant's report is being used. The officer should state specifically why the informant is probably telling the truth and give enough information to convince a reasonable person that the informant is indeed telling the truth. In other words, the informant should be shown to be reliable (or the informant's information should be shown to be reliable). However, the informant's name does not have to be revealed to the magistrate or appear in the application.

An informant's _____ or the _____ of the informant's information should be established when a search warrant is based on an informant's report.

It is important to establish an informant's <u>reliability</u> or the <u>reliability</u> of the informant's information when an informant's report is used in a search warrant application.

Just exactly what information will be sufficient to establish an informant's reliability in any given case is unclear. But it helps if the officer can state how often the officer has relied on the informant's information and how often this information has led to an arrest and/or conviction.

Determine whether the following statement is adequate to establish the informant's reliability: "A reliable and confidential informant who has in the past given me, Detective Don Smith, information that has resulted in arrests and convictions in court on drug charges six times."

This is a fairly common way of stating an informant's record of reliability and is sufficient. But the statement can be strengthened considerably if the officer states how often the informant has volunteered information and that the information has generally been accurate.

The informant's good track record is not the only factor to be considered. Especially when the informant is used for the first time, you should consider the informant's relationship to the suspect, the likelihood of that informant having the particular information, and any other factor the officer would know that would increase the likelihood that the informant was not an irresponsible person giving false information.

Another way to show that the informant's report is reliable is for the officer requesting the warrant to offer evidence of independent personal information about the suspect that supports or corroborates the informant's report. This knowledge must be shown in the affidavit by specific facts and not by the mere assertion that the officer has such information. Determine whether the following statement is adequate: "This officer has personal knowledge that the person named in the warrant is a user of narcotics."

The officer may indeed have such information, but has not said what it is. This statement establishes no more than a mere assertion that such information exists. The court will want to know (and so should you) just exactly what the officer knows to support a belief that the suspect is a narcotics user.

The informant should be able to supply enough information to convince a reasonable person that the suspect is indeed engaging in an illegal activity and that the informant is not merely passing on a rumor. Consider the following statement: "The informant states that his roommate told him that a man, whose name he thinks is John Doe, was on Main Street last night selling amphetamine pills." Is this informant's report sufficient probable cause to issue a warrant?

It is evident from the statement that the informant has no firsthand knowledge of the alleged offense. Further, assuming as a court will, that the statement contains all the information that the informant has, the informant is unable to accurately identify the suspect or give enough facts about the alleged offense to be sure that a violation of law actually took place. A warrant based on this information would be invalid, and evidence obtained in a search in executing the warrant would be inadmissible in court.

In other words, even though the informant is reliable, there should be an indication of the basis of the informant's conclusion and not just the conclusion itself.

In short, an application for a search warrant based on an informant's report should contain enough facts to indicate the source of the informant's conclusion and that the information is not a mere r_____. And it should establish the informant's r_____, including, when possible, the officer's p_____ k_____ that supports the informant's report.

Before an informant's information may be used as a basis for a valid warrant, the application should indicate enough to establish that the information is not a mere rumor. The informant's reliability should also be shown, and it's especially helpful if the officer's personal knowledge corroborates the informant's report.

Is the following affidavit adequate under the guidelines discussed above?

"A reliable informant, who has in the past volunteered information on three occasions that resulted in an arrest and conviction each time, within the past 24 hours told me, Detective Jane Miller, that Henry Smith has in his house located at 24 Main St., Dunn, N.C., a quantity of the controlled substance, amphetamine. The informant told me he saw the a large quantity of amphetamines in the house within the past 72 hours, and at that time he received several amphetamine pills that came from Henry Smith while he was in the kitchen. I have suspected Henry Smith of possessing amphetamines since three months ago when I arrested him during a raid at a party at which amphetamines and other narcotics were being used. I have seen Henry Smith since that time in the company of other confirmed users of narcotic drugs on several occasions."

This is a good example of the type of information that an affidavit should contain when based on an informant's report. The basis of his conclusion is stated (he saw the drugs) and his reliability is shown by his track record and by the officer's information which corroborates the informant's report. In addition, the report gives the time when the informant saw the drugs in the house as well as the time the informant gave his information to Detective Jane Miller.

Sometimes information is supplied by informants who are not merely confidential—they are anonymous. Even the officer does not know the identity of the person who has given the information. Anonymous information by itself is insufficient to establish probable cause. In some cases, however, anonymous information may help to establish probable cause if the officer provides other corroborating and reliable information so that the totality of circumstances establish a fair probability that the object of the search is in the place to be searched.

Anonymous information by itself is _____ to establish probable cause. However, anonymous information along with other corroborating and reliable information may establish probable cause when the t_____ of the circumstances establish a f_____ p_____ that the object of the search is in the place to be searched.

Anonymous information by itself is <u>insufficient</u> to establish probable cause. However, when the <u>totality</u> of circumstances presented, including the anonymous information, establishes a <u>fair probability</u> that the object of the search can be found in the place to be searched, then probable cause exists to issue a search warrant.

Section B

The purpose of this section is to develop the ability to draw out information from an officer which will support probable cause.

In the previous section we took a look at what facts constitute probable cause. As you have probably guessed, probable cause is a fairly ambiguous concept. Often an officer will actually have good reason to believe that contraband may be found in a certain place but fail to articulate reasons adequately to establish probable cause for issuance of the warrant. In these situations you will need to be able to spot weaknesses in the officer's statement of facts and then question the officer to see if the information is sufficient to justify the issuance of a warrant. In this section you will practice picking out the weak spots in various statements of facts.

As we have seen before, probable cause is information which would lead a _____ person to believe that the object of the search is in the place to be searched.

The information should be sufficient to cause a <u>reasonable</u> person to believe that the object of the search is really in the place to be searched.

From the list that follows, choose the items which would lead a reasonable person to believe that contraband could be found in a certain house:

A. A detailed report from a confidential informant whose previous reports had been accurate and which showed that he had seen a suspect selling drugs in his house, confirming what the police already had suspected.

B. A tip from a Department of Social Services caseworker who during a house call had seen marijuana growing behind the house.

C. A complaint from an irate woman that her neighbors were car thieves because they had several cars in their yard which they were apparently "stripping."

D. A report by an officer that she saw and smelled what appeared to be several gallon jugs of whiskey partially covered by a sheet in the kitchen of a house when called to the house concerning a possible domestic dispute.

Answers "A" and "D" are fairly clearly facts that would cause a reasonable person to believe that contraband could indeed be found at the location described by the officer or informant. Answer "B" could be very strong evidence that marijuana could be found behind the house, but what additional information would you want to know? Wouldn't it be reasonable to first satisfy yourself that the caseworker was capable of identify growing marijuana? Answer "C" pretty clearly could not stand by itself. A reasonable person could think of several explanations for the presence of the automobiles which would be at least as reasonable as the possibility that they were stolen. If an officer had come to you with the woman's complaint and asked for a warrant, what additional information would you want? At the very least the officer should drive by the house to see if any of the cars resemble those reported stolen, and to make other inquiries regarding the activities of the occupants of the house.

Consider the case situations which follow and write in the space provided the kind of additional information that would be required to establish probable cause.

CASE: An officer comes to you and says that the officer has been watching a suspect who previously has been convicted of possessing stolen goods. This man has been meeting another man who has also been convicted of possessing stolen goods in the latter's house at regular intervals. The officer states that the officer has personally seen the suspect enter the house several times with VCR's, stereo equipment, and television sets, and that the suspect's wife has also been seen at the house.

_____

_____

_____

The facts that the officer gave simply do not establish illegal activity any more than legal activity. The facts that will constitute probable cause are (1) facts that are inconsistent with lawful activity (or if the facts by themselves are consistent with lawful activity, what makes those facts collectively appear to be indicators of illegal activity, based on the officer's training or experience), or (2) the presence of evidence of illegal activity. The facts in the stolen goods case described above can be explained just as easily by legal as illegal conduct, so there is not yet probable cause. You might try to find out whether the officer has evidence of whether the goods being brought to the house are stolen, whether there have been recent break-ins in the community which these kind of goods have been stolen, whether a reliable informant had passed on information indicating that the suspect is currently dealing in these kind of stolen goods, etc.

CASE: An officer comes to you and says that the officer has a report from an informant that there is going to be a drug party at a certain house tonight in which marijuana, LSD, and possibly cocaine will be distributed to the guests. The officer has a list of names, including the occupant of the house and several of the guests. The officer knows what time it is going to be held and how much of each drug will be available. The officer knows that several of the persons listed have been convicted of possessing drugs and that almost all have been suspected of being drug users.

_____

_____

_____

The officer has information indicating that there will indeed be contraband at the place to be searched, but the officer has neglected to give any information concerning the reliability of the informant and how the informant knew that the party is going to be held there (that is, the informant's basis of knowledge). You will want to know what the officer's experience has been with this informant and any other information that would tend to show that the informant knew what he was talking about.

CASE: An officer asks for a warrant to search a house based on an informant's report. This informant has cooperated with the department several times. Most of the informant's reports have resulted in convictions and all have resulted in arrests. The informant states that yesterday he was playing poker in a regularly held game out in a house in the country when one of the players, who lived in the house, put a quart of nontaxpaid whiskey on the table. When the other players questioned him about where he had gotten it, he jokingly said that he was "picking up a little extra money between Asheville and Morganton on Friday nights." The informant also stated that he had seen in the kitchen two

cardboard cartons of quart jars identical to the one on the table that looked like they had white liquor in them. He also said that the man's name was Harry James and provided the exact location of the house. The officer said that the officer has had Harry James under surveillance off and on for several months.

_____

_____

_____

_____

Although this information might be sufficient to establish probable cause (especially if something was said about the informant's ability to recognize nontaxpaid liquor), it would be helped by providing more specific information about the officer's own personal knowledge of Harry James's involvement with nontaxpaid liquor that would support the informant's report. A statement that the officer "suspected" or had "been watching" the suspect for some time is not particularly useful. What had the officer seen while having James under surveillance?

_____

CASE: An officer requests a warrant to search a house based on an informant's report. The informant has volunteered information about drug cases on six separate occasions, and all have resulted in convictions. The informant stated that the informant thinks that the occupant of a house (giving its address) is selling crack cocaine. The basis of his conclusion is the fact that he has seen several young people stop briefly at the house, talk to the occupant, and then leave. The informant knows one of the young people to be a user of cocaine. This person is also known to the officer as having been convicted of possession of cocaine and is now on probation.

_____

_____

_____

_____

The facts given by the informant do not establish probable cause. There are just as many legitimate reasons for the people to be going to the house as illegal, and there is no specific information about selling cocaine. Don't be fooled by the proven reliability of the informant. The facts given in each case must be considered independently. In this case the officer will have to get more specific information, if possible, from the informant or from other sources to support a belief that cocaine is being sold from the house. You probably noticed that the officer's personal corroboration of the informant's report concerned only one of the people going to the house.

_____

Section C

The purpose of this section is to develop the skill to write an adequate description of the property to be searched for.

The search warrant must describe as accurately as possible what the officer is to look for, so that it will not appear to authorize the officer to grab everything in the place and so that the officer can identify the property to be seized. The warrant must describe _____ the officer is looking for and the description must be detailed enough that the officer can _____ the property if the officer finds it.

The officer must know as accurately as possible <u>what</u> to be looking for and to be able to <u>recognize</u>/<u>identify</u> the property if the officer sees it.

If the officer is searching for a stolen refrigerator, the officer needs a clear idea of what this stolen refrigerator looks like (identifying marks, model number, serial number, etc.) so that the officer will be unlikely to take one that is legally owned.

Below are three descriptions of property to be searched for. In each case indicate whether you think the description was precise enough to be considered valid.

Description 1: ". . . certain evidence of the crime (possession of stolen goods) was to be found on the defendant's person and his residence . . . ." (valid/invalid) Why?

Invalid. Not specific in any way.

Description 2: The warrant directed the officers to seize any property ". . . being used and/or possessed in violation of . . ." the obscenity statute. (valid/invalid) Why?

Invalid. The court ruled that the warrant was too general in that it gave no guidelines to the officers as to what is obscene and what is not.

Description 3: The warrant described ". . . a set of Wilson Staff golf clubs with rubber grips, in fairly worn condition . . ." to be searched for in the defendant's house. (valid/invalid) Why?

Valid. The description indicates the item which should be seized with enough precision so that it would be unlikely that legally owned property would be taken by mistake.

When the kind of property the officer is searching for can never be possessed legally, the description need not be as detailed as when the property the officer is searching for can be confused with something that can be legally possessed.

If the warrant says only to seize "heroin" then it (can/cannot) be interpreted to permit the officer to take something that the owner is entitled to have. This is because the owner can (sometimes/never/always) have heroin.

Describing "heroin" as the property to be seized cannot be interpreted as permitting the officer to take away something the owner is entitled to have, because the owner can never legally possess heroin.

Section D

The purpose of this section is to develop the skill to write an adequate description of the place to be searched.

The search warrant must accurately describe the place to be searched so that the officer may reasonably be expected to find the place to be searched; otherwise it would not be clear that the warrant authorized the search actually made by the officer. The description of the place must be complete enough so that the officer _____ reasonably make a mistake and search the _____ place.

An officer cannot reasonably make a mistake and search the wrong place if the description of the place to be searched is detailed enough.

This rule ensures that the search covers only the place for which _____ _____ to search has been shown. It is also a good idea, whenever possible, to state in the warrant the name of the person who possesses the place to be searched.

A full description of the place to be searched ensures that the search covers only the place for which probable cause to search has been demonstrated.

CASE: The affidavit reads "to search an apartment located at Colonial Arms Apts. located at 714 W. Henderson Street, Monroe, N.C." Is this description is adequate?

The affidavit is inadequate since there is more than one apartment at the given address. An adequate description would include the apartment number and the tenant's name, if available.

CASE: The affidavit reads, "to search apartments occupied by John Doe at 413 W. Franklin Street (Apt. 22B), Chapel Hill, N.C. and at 117 Canal Street (Apt. 6), Chapel Hill, N.C. for appliances stolen from Hill Office Supply: two IBM computers model 118, serial numbers 473-Z11368 and 356-X4629." Is this affidavit is adequate?

This affidavit is adequate. There's not much chance of using the warrant at the wrong place. Although not discussed before, it is better to issue a separate warrant for each of two separate places to be searched, even if they belong to the same person.

Section E

The purpose of this section is to develop the ability to follow the proper steps in issuing a search warrant.

In the preceding sections you have learned that p_____ c_____ consists of facts that would lead a _____ person to believe that the object of a search can be found in the place to be searched; that an adequate description of the _____ to be searched is one that would not lead the officer to make a _____ and to search the wrong place; that an adequate description of the _____ of the search is one that would prevent an officer from making a _____ and from taking property which should not be taken.

Probable cause is a factual situation that would lead a reasonable person to believe that the object of the search can be found in the place to be searched. An adequate description of the place to be searched is one that would prevent an officer from making a mistake about the place to be searched, and an adequate description of the object of the search is one that would prevent the officer from making a mistake about what to take.

If you can do what has been taught so far, you have the most important aspects of the law's requirements. Meeting these requirements is part of the general warrant-issuing procedure, which must be followed to make sure that the validity of the warrant cannot be successfully attacked.

The steps you as a magistrate must be sure to follow in issuing a search warrant are these:

1. Make sure there is a completed application for a search warrant. Either the applicant or you may complete the application (other than where signatures are required).
2. Place the applicant under oath or affirmation and swear the applicant to the truth of facts stated in application.

3. Examine the officer about the facts stated in the application.
4. If applicant tells you facts that are not stated in application, they must be added in writing to the application OR you may tape-record the testimony OR reduce it to writing on separate paper, provided you file the tape-recording or separate paper with clerk when you file the copy of the search warrant and application.
5. You may take affidavits from persons other than applicant, provided you attach them to application.
6. Determine whether descriptions of the premises and property are adequate.
7. Make sure the applicant has signed the application. Sign and date the application.
8. If a tape-recording or separate paper writing of oral testimony has been made or additional affidavits have been attached, indicate that at bottom of application and sign your name.
9. Complete the search warrant, including date and hour, signature, names of applicant and others giving information.
10. Give original (white copy) and one copy (pink copy) of warrant and application to officer.
11. File a copy (green copy) of warrant and application and tape-recording or separate writing or oral testimony, if any, with clerk.

Using these steps means, for example, that immediately after getting a completed search warrant application, you would _____ the applicant to the truth of facts in the application, and _____ the applicant about those facts.

_____

You would swear the applicant to the truth of facts stated in the application, and examine the applicant concerning those facts.

_____

If the applicant tells you facts that are not stated in the _____, they must be _____ to the application OR _____ or _____ AND you must file them with the clerk when you file the _____.

_____

If the applicant testifies about facts not stated in the application, they must be added in writing to the application OR tape-recorded or reduced in writing on a separate paper AND you must file them with the clerk when you file the application and warrant.

_____

It is important to tape-record or reduce oral testimony to writing in the application or on separate paper because the failure to do so will mean that the testimony cannot be considered in court when the validity of the search warrant is challenged.

In summary, carefully see that all the information provided for in the application and search warrant form is filled in. Remember to:

—place the applicant under oath or affirmation;

—examine the applicant about the facts stated in the application;

—if the applicant gives oral testimony about facts not stated in the application, either add facts in writing to the application or tape-record or write on a separate paper and file with the clerk;

—determine probable cause;

—check to make sure the application and the search warrant are properly signed and completed;

—file a copy (green copy) of the search warrant and application with clerk;

—give the original (white copy) and a copy (pink copy) to the officer.

Briefly these seven requirements are:

(1) _____.

(2) _____.

(3) _____.

(4) _____.

(5) _____.

(6) _____.

(7) _____.

Briefly these seven requirements are:
(1) swear the applicant.
(2) examine the applicant.
(3) write or record oral testimony about facts not in application.
(4) determine probable cause.
(5) make sure application and warrant complete.
(6) file copy (green copy) of warrant and application with clerk.
(7) give original (white copy) and copy (pink copy) to officer.

These are the steps that make up the whole search warrant procedure. Follow these steps, make sure probable cause has been shown, see that the descriptions are adequate . . . and you have done your job.

Robert Farb
Institute of Government
January 2003

STATEMENTS OF PROBABLE CAUSE FOR SEARCH WARRANTS

1. The applicant states that yesterday , he purchased two ounces of cocaine. The cocaine was delivered to the applicant by Gene Orendorff, Jeff Manning, and Kenny Woods, who were arrested when they delivered the cocaine. The applicant further states that he paid $1650.00 in marked U.S. currency (listed above) for the cocaine. During the time spent on the purchase of cocaine, the applicant and the suspects were under surveillance by other officers. The applicant states that from the movement of the suspects during and before the purchase and information received from two confidential sources of information after the purchase, the applicant has reason to believe the U.S. currency (listed above) and other controlled substances are at this time located in the above described location.

   Good/Bad

   Why?

   See *State v. Hyleman*, 324 N.C. 506 (1989).

2. The information contained in this application is based upon my personal knowledge and upon factual information I have received from others. A reliable informant who had provided information in the past and whose information in the past had led to arrest and conviction under the N.C. Controlled Substances Act has told the undersigned that approximately one week ago the informant saw Lilly Ann Beam with approximately one pound of marijuana at her home on Ridge Road. Another informant told the undersigned that Lilly Ann Beam sold marijuana to them today. Lilly Ann Beam is on probation for a violation of the Controlled Substances Act.

   Good/Bad

   Why?

   See *State v. Beam*, 325 N.C. 217 (1989).

3. We have been informed by a reliable confidential informant that he has been inside the above address within the past 48 hours and has seen cocaine inside the residence and cocaine is being sold at this time by the above occupants. The informant is familiar with how cocaine is packaged and sold on the streets, and he has used cocaine in the past. We have known this informant for three weeks and information provided by this informant has resulted in the seizure of controlled substances included in the N.C. Controlled Substances Act and led to the arrest of at least six individuals for violations of the N.C. Controlled Substances Act.

   Good/Bad

   Why?

   See *State v. Graham*, 90 N.C. App. 564 (1988).

4. I, the undersigned applicant, have been a law enforcement officer for more than three years with the Smith County Sheriff's Department. During this time I have received extensive training including Basic Law Enforcement Officer's Certification and Advanced Criminal Investigation courses presented through the North Carolina Justice Academy. During the last year I have been involved in several investigations concerning drug offenses in Smith County. Within the past five days, the person who I will refer to as “He,” regardless of the person's sex, contacted me. This person offered his assistance to the city/county vice unit in the investigation of drug sales in the city and county. This person told me that he had been inside the residence described above where he observed a room filled with marijuana plants. He stated that the suspect Charles Wayne Newcomb was maintaining the plants. This applicant confirmed the identity of the suspect to be Charles Wayne Newcomb. This information was obtained through D.M.V. records through vehicle registration. This applicant further checked with Duke Power Company and found this residence to have Charles Wayne Newcomb listed as the current occupant.

   Good/Bad

   Why?

   See *State v. Newcomb*, 84 N.C. App. 92 (1987).

5. Sometime between one and five days ago, the Fairchild Christian School in the City of Livingston was broken into and two microscopes (described above) were stolen. That sometime before the date of this application a reliable and confidential informant personally contacted the applicant with the information that the stolen microscopes are in the above described residence of Mark Timothy Roark.

   Good/Bad

   Why?

   See *State v. Roark*, 83 N.C. App. 425 (1986).

6. I and other officers have received information from a confidential and reliable informant that the Bo King is residing at 1509 Luther Street and is possessing cocaine for the purpose of sale at 1509 Luther Street. This informant has been to 1509 Luther Street within the past 48 hours and has observed Bo King possessing cocaine. This informant is familiar with cocaine and how it is packaged for street use. We officers have known this informant for approximately one year and during this time this informant's information has led to the arrests and convictions of many people for violations of the North Carolina Controlled Substances Act.

   Good/Bad

   Why?

   See *State v. King*, 92 N.C. App. 75 (1988).

7. I have received information from a confidential and reliable informant that occupants of the dwelling described above have in their possession and are selling a large quantity of cocaine. I have known this informant only one week, but during that time he has given me information that I know from police intelligence files is true. He has also introduced me to two individuals (while I was in an undercover capacity) from whom I have bought controlled substances. He has also given me information that has allowed me to buy cocaine from two other individuals. Based upon the proven reliability of this informant, I request a warrant to search the above described premises for cocaine.

   Good/Bad

   Why?

8. A confidential and reliable informant has given me information that occupants of the above described premises are selling large quantities of cocaine. This informant has been inside the dwelling within the past 48 hours and has seen large quantities of cocaine. Within the past 48 hours, this informant has, at my direction and while under my control, purchased a small quantity of cocaine from the dwelling occupants. The informant was searched prior to entering the dwelling. At that time he had no cocaine in his possession. I then gave the informant $200 in Department funds. I maintained constant observation while the informant entered the dwelling and until he exited the building. All other exits were observed by other officers. After the informant exited, he was again searched. A small quantity of cocaine and $75 was found on his person.

   Good/Bad

   Why:

9. Three days ago, an armed robbery occurred at the 7/11 Store on Main Street. Cash in the amount of $78 and a derringer pistol (pearl handles; owner applied number of 237-72-8451 on barrel) were stolen by the robber. A customer who identified himself as David Kiser stated to this affiant that he recognized the robber. He states that robber sells newspapers (the Daily Gazette) on the corner of Main Street and Elm Street. I have personally observed the subject described above selling newspapers on this corner. Employees of the Gazette confirm that this is the only subject that has sold papers on the corner of Main and Elm for the past year. The city telephone directory indicates that the suspect resides in the above described dwelling, and I have observed an automobile registered to the suspect in the driveway of the dwelling. I met my informant, Mr. Kiser, only as a result of investigating this crime. I have never before received information from Mr. Kiser. Based on this information, I request a search warrant for the above described dwelling to search for the above described derringer pistol.

Good/Bad

Why?

10. A search warrant issued on the basis of information supplied by a person named in an affidavit is usually valid if there is no reason to believe the named person's information is unreliable.

True/False

11. A search warrant issued on the basis of information supplied by a person whose identity must remain confidential is usually valid even if no other basis for reliability appears in the affidavit.

True/False

12. A magistrate may not issue a search warrant based upon hearsay.

True/False

13. Which of the following are adequate descriptions of things to be seized?

    a. “quantity of marijuana”

    b. “quantity of stolen TV's”

    c. “cocaine”

    d. “stolen property”

    e. “evidence of any crime”

    f. “obscene magazines”

    g. “RCA XL 100 Color TV set with a broken antenna”

    h. “journals, registers, ledgers, canceled checks, and similar records and documents that constitute evidence of the embezzlement described in the affidavit”

    i. “Smith & Wesson .38 Cal. revolver (4 inch barrel)”

14. Which of the following describe the place to be searched adequately?

    a. single family dwelling at 1132 Yale Place, Durham, N.C.

    b. an apartment in the building at 198 West Cameron Avenue, Chapel Hill, N.C.

    c. single family dwelling at 1818 Jameston Drive, Greensboro, N.C. and a 1990 Oldsmobile Delta 88, N.C. license number SFL 298, located in the driveway there

    d. John Smith's apartment at the Oaks Apartments, Chapel Hill, N.C.

    e. yellow 2 story stucco, Dutch colonial dwelling, located on Arrow Wood Drive (street number unknown), exactly 1 mile north of the intersection of US 15, on the east side of the road, Bahama, N.C. The dwelling has a green roof, green shutters, and a driveway with an oak tree on either side.

15. If you have a street address, there is no reason to include a physical description of the building.

    True/False

16. Failure to include a physical description of the building will render a search warrant invalid even if the address (street and number) is given and is correct.

    True/False

17. If the officer who applies for a search warrant gives the magistrate information other than that in the affidavit, the magistrate

    a. may not consider this information under any circumstances.

    b. may always consider this information.

    c. may consider this information only if the affidavit is amended or a new affidavit is submitted.

    d. may consider this information only if the affidavit is amended or a new affidavit is submitted or if magistrate reduces the information to writing and files it with clerk, or if magistrate prepares a tape recording of the oral testimony.

(Circle letter for the best answer)

File No.

SEARCH WARRANT

IN THE MATTER OF

Date Issued	Time Issued
	☐ AM ☐ PM

Name Of Applicant

Name Of Additional Affiant

Name Of Additional Affiant

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

Date Received	Time Received
	☐ AM ☐ PM
Date Executed	**Time Executed**
	☐ AM ☐ PM

☐ I made a search of _____

_____

_____

_____

_____

_____ as commanded.

☐ I seized the items listed on the attached inventory.

☐ I did not seize any items.

☐ This Warrant WAS NOT executed within forty-eight (48) hours of the date of issuance and I hereby return it not executed.

Name Of Officer Making Return (Type Or Print)

Signature Of Officer Making Return

Department Or Agency Of Officer	Incident Number

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District/Superior Court Division

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Date	Name (Type Or Print)	Signature

☐ Deputy CSC ☐ Assistant CSC ☐ CSC ☐ Magistrate ☐ District Ct. Judge ☐ Superior Ct. Judge

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date	Time		Name Of Magistrate (Type Or Print)	Signature Of Magistrate
		☐ AM ☐ PM		

This Search Warrant was returned to the undersigned clerk on the date and time shown below.

Date	Time		Name Of Clerk (Type Or Print)	Signature Of Clerk	
		☐ AM ☐ PM			☐ Dep CSC ☐ Asst CSC ☐ CSC

AOC-CR-119, Rev. 6/12

(Over)

APPLICATION FOR SEARCH WARRANT

I, _____,
(Insert name and address; or if law enforcement officer, name, rank and agency)

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that *(Describe property to be seized; or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)*

_____

_____

_____

_____

_____

constitutes evidence of a crime and the identity of a person participating in a crime, *(Name crime)* _____

_____,

and is located *(Check appropriate box(es) and fill-in specified information)*

☐ in the following premises *(Give address and, if useful, describe premises)*

_____

_____

_____

(and)

☐ on the following person(s) *(Give name(s) and, if useful, describe person(s))*

_____

_____

_____

(and)

☐ in the following vehicle(s) *(Describe vehicle(s))*

_____

_____

_____

(and)

☐ *(Name and/or describe other places or items to be searched, if applicable)*

_____

_____

_____

_____.

The applicant swears or affirms to the following facts to establish probable cause for the issuance of a search warrant:

_____

_____

_____

_____

_____

_____

SWORN/AFFIRMED AND SUSCRIBED TO BEFORE ME	*Date*
Date	*Name Of Applicant (Type Or Print)*
Signature	*Signature Of Applicant*

☐ *Magistrate* ☐ *Dep. CSC* ☐ *Asst. CSC* ☐ *Clerk Of Superior Court* ☐ *Judge*

☐ In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____

_____

☐ In addition to the affidavit included above, this application is supported by sworn testimony, given by _____

_____

This testimony has been *(check appropriate box)* ☐ reduced to writing

☐ tape recorded and I have filed each with the clrek.

NOTE: *If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.*

File No.

SEARCH WARRANT

IN THE MATTER OF

Date Issued	Time Issued
	☐ AM ☐ PM

Name Of Applicant

Name Of Additional Affiant

Name Of Additional Affiant

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

Date Received	Time Received
	☐ AM ☐ PM
Date Executed	**Time Executed**
	☐ AM ☐ PM

☐ I made a search of _____

_____

_____

_____

_____

_____ as commanded.

☐ I seized the items listed on the attached inventory.

☐ I did not seize any items.

☐ This Warrant WAS NOT executed within forty-eight (48) hours of the date of issuance and I hereby return it not executed.

Name Of Officer Making Return (Type Or Print)

Signature Of Officer Making Return

Department Or Agency Of Officer	Incident Number

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District/Superior Court Division

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Date	Name (Type Or Print)	Signature

☐ Deputy CSC ☐ Assistant CSC ☐ CSC ☐ Magistrate ☐ District Ct. Judge ☐ Superior Ct. Judge

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date	Time		Name Of Magistrate (Type Or Print)	Signature Of Magistrate
		☐ AM ☐ PM		

This Search Warrant was returned to the undersigned clerk on the date and time shown below.

Date	Time		Name Of Clerk (Type Or Print)	Signature Of Clerk	
		☐ AM ☐ PM			☐ Dep CSC ☐ Asst CSC ☐ CSC

AOC-CR-119, Rev. 6/12

(Over)

APPLICATION FOR SEARCH WARRANT

I, _____,
(Insert name and address; or if law enforcement officer, name, rank and agency)

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that *(Describe property to be seized; or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)*

_____

_____

_____

_____

_____

constitutes evidence of a crime and the identity of a person participating in a crime, *(Name crime)* _____

_____,

and is located *(Check appropriate box(es) and fill-in specified information)*

☐ in the following premises *(Give address and, if useful, describe premises)*

_____

_____

_____

(and)

☐ on the following person(s) *(Give name(s) and, if useful, describe person(s))*

_____

_____

_____

(and)

☐ in the following vehicle(s) *(Describe vehicle(s))*

_____

_____

_____

(and)

☐ *(Name and/or describe other places or items to be searched, if applicable)*

_____

_____

_____

_____.

The applicant swears or affirms to the following facts to establish probable cause for the issuance of a search warrant:

_____

_____

_____

_____

_____

_____

SWORN/AFFIRMED AND SUSCRIBED TO BEFORE ME	*Date*
Date	*Name Of Applicant (Type Or Print)*
Signature	*Signature Of Applicant*

☐ *Magistrate* ☐ *Dep. CSC* ☐ *Asst. CSC* ☐ *Clerk Of Superior Court* ☐ *Judge*

☐ In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____

_____

☐ In addition to the affidavit included above, this application is supported by sworn testimony, given by _____

_____

This testimony has been *(check appropriate box)* ☐ reduced to writing

☐ tape recorded and I have filed each with the clrek.

NOTE: *If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.*

AOC-CR-119, Rev. 6/12

Evaluation of Search Warrant Applications

Application 1

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

_____

If so, do you have any reservations or concerns about it? Be specific. _____

_____

Application 2

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

_____

If so, do you have any reservations or concerns about it? Be specific. _____

_____

Application 3

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

_____

If so, do you have any reservations or concerns about it? Be specific. _____

_____

ATTACHMENT
CONTINUATION OF A SEARCH WARRANT 000005

IN THE MATTER: TIMOTHY WEAVER 1/26/1960 AND KENNETH WAYNE BARTLETT 12/27/1961 507 PARK AVENUE DURHAM NC

Description of Premises to be Searched

In the following premises: 507 PARK AVENUE. 507 PARK AVENUE IS A WHITE FRAME HOUSE WITH THE NUMBERS 507 DISPLAYED ON THE FRONT OF THE HOUSE. THERE ARE BRICK PILLARS ON THE FRONT OF THE HOUSE AND THERE IS ALSO A PORCH THAT EXTENDS THE LENGTH OF THE FRONT OF THE HOUSE. THERE IS A WHITE SHED IN THE BACK OF THE HOUSE USED AS A RESIDENCE BY KENNETH WAYNE BARTLETT AND KIMBERLY GRAY.

In the following vehicles: A BLUE PINTO STATION WAGON POSSESSED BY MR. TIMOTHY WEAVER AND MR. KENNETH WAYNE BARTLETT. A WHITE VOLVO POSSESSED BY MR. TIMOTHY WEAVER AND MR. KENNETH WAYNE BARTLETT. ANY OTHER VEHICLE THAT IS POSSESSED OR OCCUPIED BY TIMOTHY WEAVER, KENNETH WAYNE BARTLETT, OR ANY OTHER PERSONS INVOLVED IN ILLEGAL ACTIVITY AT 507 PARK AVENUE DURHAM NC.

Directions from Police Station 1, 2400 Holloway Street Durham N.C. – TURN LEFT ONTO HOLLOWAY STREET. TRAVEL WEST ON HOLLOWAY STREET FOR APPROXIMATELY 1 MILE UNTIL YOU GET TO NORTH GUTHRIE AVENUE. TURN LEFT ONTO NORTH GUTHRIE AVENUE. MAKE A RIGHT ONTO SOUTHGATE STREET AND THEN ANOTHER RIGHT ONTO PARK AVENUE, ENDING AT 507 PARK AVENUE.

Probable Cause Affidavit

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant: I BEING THE AFFIANT, INVESTIGATOR A.M. CRISTALDI, AM CURRENTLY EMPLOYED AS A POLICE OFFICER WITH THE DURHAM POLICE DEPARTMENT. MY JOB DUTIES INCLUDE INVESTIGATING AND ENFORCING THE CRIMINAL LAWS ENACTED BY THE STATE OF NORTH CAROLINA. I HAVE RECEIVED OVER 900 HOURS OF FORMAL TRAINING FROM THE DURHAM POLICE DEPARTMENT IN VARIOUS TOPICAL AREAS INCLUDING POLICE LAW INSTITUTE, CRIMINAL INVESTIGATIONS, AND INTERVIEW & INTERROGATION. I HAVE BEEN EMPLOYED BY THE DURHAM POLICE DEPARTMENT FOR OVER 6 YEARSAND HAVE CONDUCTED OR BEEN INVOLVED IN EXCESS OF 100 INVESTIGATIONS AND AM CURRENTLY ASSIGNED TO THE DISTRICT 1 INVESTIGATIONS DIVISION WHERE I INVESTIGATE PROPERTY AND VIOLENT CRIMES TO INCLUDE ROBBERIES, RAPES, KIDNAPPINGS, ASSAULTS, AND BURLGARIES.

ON 3/25/07 I SPOKE WITH TWO INDEPENDENT WITNESSES THAT TOLD ME TIMOTHY WEAVER HAS BEEN PAYING KENNETH WAYNE BARTLETT AND

Affiant: A.M. Cristaldi Magistrate: [illegible]

Date: 4/26/07

APPLICATION 1: BARTLETT

IN THE MATTER: TIMOTHY WEAVER 1/26/1960 AND KENNETH WAYNE BARTLETT 12/27/1961 507 PARK AVENUE DURHAM NC

OTHERS CASH MONEY FOR PIPES AND COIL. MR. BARTLETT GOES OUT TO NEW HOUSING DEVELOPMENTS, APARTMENT COMPLEXES AND ANYWHERE ELSE HE CAN FIND PIPES AND COILS AND STEALS IT FROM THESE LOCATIONS. MR. BARTLETT USES ONE OF MR. WEAVERS VEHICLES TO TRANSPORT THIS STOLEN PIPE AND COIL BACK TO MR. WEAVER. MR. WEAVER THEN SELLS THE COPPER WIRE TO A SCRAP YARD AND SPLITS THE PROFITS WITH MR. BARTLETT. MY INDEPENDENT WITNESSES TOLD ME THAT ON 3/24/07 MR. BARTLETT WENT INTO CARY DRIVING A VEHICLE THAT MR. WEAVER GAVE TO HIM TO USE. MR. BARTLETT THEN WENT WITH HIS GIRLFRIEND (KIMBERLY GRAY) TO CARY WHERE THEY MADE FOUR TRIPS BACK AND FORTH FROM CARY TO DURHAM WITH COPPER WIRE MR. BARTLETT HAD STOLEN FROM THE HOUSES. THE COPPER WIRE INCLUDED THE LARGE COPPER PIPE THAT HAD THE PLACEMENT LOCATION INSIDE THE HOUSE WRITTEN ON IT. MR. WEAVER THEN WENT TO AMERICAN METALS IN GARNER NORTH CAROLINA ON THE MORNING OF 3/25/07 AND SOLD IT. I KNOW FROM DEALING WITH AMERICAN METALS THAT THEY ONLY BUY COPPER ON WEDNESDAYS AND FRIDAYS.

MY TWO INDEPENDENT WITNESSES ALSO TOLD ME THAT MR. WEAVER IS IN POSSESSION OF A SHOTGUN. MR. WEAVER KEEPS THE SHOTGUN HIDDEN INSIDE 507 PARK AVENUE. MR. WEAVER IS ALSO A CONVICTED FELON AND DOES NOT HAVE THE RIGHT TO POSSESS A FIREARM.

ON 4/26/07 I SPOKE WITH A REPRESENTATIVE FROM AMERICAN METALS WHO TOLD ME THAT TIMOTHY WEAVER WAS AT THAT LOCATION THE MORNING OF 4/25/07 SELLING WIRE AND COIL. THE REPRESENTATIVE SAID MR. WEAVER WAS THERE AROUND 0900 HOURS.

Description of Evidence to be Seized

There is probable cause to believe that the following property will be contained in the residence.

1- STOLEN COPPER WIRE TO INCLUDE PIPE AND COIL.
2- FIREARMS AND AMMUNITION
3- TOOLS USED FOR BUGLARIES INCLUDING BUT NOT LIMITED TO WIRE CUTTERS, SAWS, SCREW DRIVERS, PLIERS AND WRENCHES.
4- U.S. CURRENCY THAT IS THE FRUIT OF ILLEGAL SALES OF COPPER WIRE
5- TIMOTHY WEAVER WHITE MALE D/O/B 1/26/1960

Affiant: A M Crisfield Jr Magistrate:

Date: 4/26/07

I, Corporal Kevin Perry, Special Investigations Division, Sampson County Sheriff's Office, being duly sworn, request that the court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that:

(1) Books, records, receipts, notes, ledgers, and other papers relating to the transportation, ordering, purchasing, in particular, Cocaine, a scheduled controlled substance included in the North Carolina Controlled Substance Act;

(2) Books, records, receipts, bank statements and records, money drafts, letters of credit, money orders, cashier's check receipts, passbooks, bank checks, safe deposit boxes, safe deposit box keys, and other items evidencing the obtaining, secreting, transfer, and / or concealment of assets and the obtaining, secreting, transfer, concealment, and / or expenditure of money;

(3) United States currency, precious metals, jewelry, and financial instruments, and other items indicative of the proceeds of illegal narcotics trafficking;

(4) Photographs, including still photos, negatives, videotapes, undeveloped film and the contents therein, slides, in particular photograph of co-conspirators, of assets, and / or controlled substances;

(5) Address and / or telephone books, rolodex entries and any papers reflecting the names, addresses, telephone numbers, pager numbers, fax numbers, cellular phone numbers of any co- conspirators, sources of supply, customers, financial institutions, and other individual or business with whom a financial relationship exist;

(6) Papers and documents that would establish occupancy, residency, rental and / or ownership of the premises described herein, including, but not limited to utility and telephone bills, canceled envelopes, rental, purchase or lease agreements, and keys;

(7) Firearms and ammunition, including, but not limited to handguns, pistols, revolvers, rifles, shotguns, machine-guns, and other weapons, and any records or receipts pertaining to firearms;

SWORN AND SUBSCRIBED BEFORE ME:

Signature: _____ Date: September 27, 2006

[ ] Deputy CSC [ ] Assistant CSC [ ] Clerk of Superior Court

[X] Magistrate [ ] District Court Judge [ ] Superior Court Judge

Signature of Applicant: _____ Date: September 27, 2006

APPLICATION 2: TAYLOR

(8) Electronic equipment, such as computers, cellular phones, pagers, facsimile machines, currency counting machines, tape recording devices, video recording devises, cameras and other items and related manuals used to generate, transfer, count, and / or to store information described in items 1, 2, 3, 4, 5, and 6 of this affidavit. Additionally, computer software tapes and discs, audiotapes, and the contents there in, containing the information generated by the aforementioned electronic equipment;

(9) Controlled substances, in particular Cocaine, which is included in Schedule II of the North Carolina Controlled Substance Act and would be illegal to possess; in violation of North Carolina General Statute 90-95;

(10) Paraphernalia, used to weigh, manufacture, sell, distribute, package, re-package, store, secret, ingest, inhale, inject, or otherwise introduce into the body a controlled substance, in particular Cocaine, which would be illegal to possess; in violation of North Carolina General Statute 90-113.22;

Would constitute evidence of a crime and the identity of a crime and the identity of a person participating in a crime, namely **Illegal Distribution of a Controlled Substance in Violation of North Carolina General Statute 90-95**
and is located;

[X] on the following premises: **which is described as a tan single wide mobile home located at 3095 Brewer Rd Faison, NC 28341 and the single story wood frame house that is located directly behind the mobile home. Directions to the residence are as follows: Travel Hwy 403 North from Clinton towards Faison. After crossing I-40 stay to the right and continue on Hwy 403 towards Faison. Turn right on to Brewer Rd. The house is located on the right side of the road just after a curve to the right approximately 100 feet off the roadway.**

(and)
[X] on the following person(s): **Any person or persons as may be on the premises of the residence to be searched at the time of the execution of this Search Warrant, should it please the Court for its issuance.**

(and)
[X] in the following vehicle(s): **Any vehicle as may be located within the curtilage of the residence to be searched or as may be determined to be under the dominion and control of any of the persons located within the residence to be searched at the time of the execution of this Search Warrant, should it please the Court for its issuance.**

(and)
[X] Any outbuildings or other such appurtenances as may be affixed to the residence to be searched or situated within its curtilage at the time of the execution of this Search Warrant, should it please the Court for its issuance.

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant:

I, Corporal Kevin Perry, am a sworn law enforcement officer for the Sampson County Sheriff's Office and assigned as a Narcotic/Alcohol Enforcement Special Agent in the Special Investigation Division Previously I was a sworn law enforcement officer with the Goldsboro Police Department. I have been a sworn law enforcement officer for 02 years. I have served 10 years as a United States Marine where I was promoted to the rank of Sergeant and was awarded the Navy Achievement Medal, along with two Meritorious Mass commendations. As a law enforcement officer, I have received 500 hours training in the area of investigations and have been involved in over 100 Narcotic/Alcohol investigations. I have been awarded the Patriot award; meritorious award and I hold certificates for, The United States Department of Justice, Drug Enforcement Administration Basic Narcotic's Investigator School, Interview and Interrogations, and Methamphetamines awareness and recognition. I am familiar with the methods of operations of people involved in Narcotic/Alcohol and the evidence associated with these crimes. I will be known as Applicant from this point on.

–Based upon the Affiant's training, knowledge, experience and participation in other investigations involving the illegal distribution of controlled substances, He knows that:

–That persons involved in the illegal drug trade must maintain, on hand, U. S. currency in order to maintain and finance their on-going narcotics business. That this U. S. currency is maintained in the residence, businesses or other locations in which these persons maintain control over;

–That it is common for persons involved in the illegal drug trade to maintain books, tally sheets, records, notes, ledgers, airline tickets, receipts relating to the purchase of financial instruments and / or the transfer of funds, and other papers relating to the transportation, ordering, sale and distribution of controlled substances. That the aforementioned books, records, receipts, notes, ledgers, etc., are maintained within their residences, businesses, or other locations in which they have dominion and control over;

–That it is common for persons involved in the illegal drug trade to secret contraband, proceeds of drug sales, and records of drug transactions in secure locations within their residences, their businesses and / or other locations which they maintain dominion and control over, for the ready access and to conceal these items from law enforcement authorities.

SWORN AND SUBSCRIBED BEFORE ME:
Signature: _____ Date: September 27, 2006
[ ] Deputy CSC [ ] Assistant CSC [ ] Clerk of Superior Court
[X] Magistrate [ ] District Court Judge [ ] Superior Court Judge

Signature of Applicant: _____ Date: September 27, 2006

–That it is common for persons involved in the illegal drug trade to maintain evidence pertaining to their obtaining, secreting, transfer, concealment and / or expenditure of narcotics proceeds such as: currency, financial instruments, precious metals and gemstones, jewelry, books, records, invoices, receipts, records of real estate transactions, bank statements and related records, passbooks, money drafts, letters of credit, money orders, bank drafts, cashiers checks, bank checks, safe deposit boxes, safe deposit box keys, and money wrappers. These items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

–That it is common for persons involved in the illegal drug trade to maintain address and / or telephone numbers in books or on papers, in rolodex entries and reflect the names, addresses, telephone numbers, pager numbers, fax numbers of their associates in the illegal drug trade. That these items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

–That it is common for persons involved in the illegal drug trade to have in their possession photographs / videotapes of themselves, their associates, their property and their product. That these items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

–That it is common for persons involved in the illegal drug trade to commonly have in their possession, that is on their person, at their residences, and / or other locations in which they have dominion and control over, firearms and other weapons. Said firearms and other weapons are used to protect and secure property. Such property may include, but not limited to: narcotics, jewelry, narcotics paraphernalia, books, records, and U. S. currency;

–That it is common for persons involved in the illegal drug trade to utilize electronic equipment, such as computers, cellular phones, pagers, facsimile machines, currency counting machines, tape recording devices, video recording devises, cameras and other items and related manuals used to generate, transfer, count, and / or to store information described in items 1, 2, 3, 4, 5, and 6 above;

–That it is common for persons involved in the illegal drug trade to keep on hand, that is on their person, in their residences, and / or other locations in which they have dominion and control over, controlled substances, in particular Cocaine. That this Cocaine would be used for the illegal sale, distribution and use of this controlled substance;

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Signature: _____ Date: September 27, 2006

[ ] Deputy CSC [ ] Assistant CSC [ ] Clerk of Superior Court

[X] Magistrate [ ] District Court Judge [ ] Superior Court Judge

Signature of Applicant: _____ Date: September 27, 2006

–That it is common for persons involved in the illegal drug trade to keep on hand, that is on their person, in their residences, and / or other locations in which they have dominion and control over, paraphernalia. That this Paraphernalia would be used to weigh, manufacture, sell, distribute, package, re-package, store, secret, ingest, inhale, inject, or otherwise introduce into the body a controlled substance which would be illegal to possess;

–**In addition, the Affiant is aware that:** during the past several months the Special Investigations Division of the Sampson County Sheriff's Office has received several complaints in reference to the sale of the controlled substance Cocaine, a controlled substance that is included in Schedule II of the North Carolina Controlled Substance Act, at the above location.

Due to these complaints, this applicant began an investigation that included surveillance and the use of a Confidential Informant.

Within the past seventy-two, (72) hours, a Confidential Informant had visited the described location at the direction and surveillance of this Applicant and while at the location the Confidential Informant made a purchase of the controlled substance. Immediately after leaving the location, the Confidential Informant met with the applicant and turned over the controlled substance.

The Confidential Informant has proven reliable by making numerous controlled buys of controlled substances at the direction of the Applicant. This was accomplished by insuring the Confidential Informant has no controlled substances in his / her possession, then furnishing the informant with Special Funds, then directing the Confidential Informant to a predetermined location known as an illegal outlet for the sale of controlled substances. The Confidential Informant was observed entering the location and after only a few minutes leaving, then meeting with the applicant and turning over the substance purchased.

–Based on the above-mentioned facts, the Applicant prays to the Court for the issuance of this Search Warrant.

SWORN AND SUBSCRIBED BEFORE ME:

Signature: _____ Date: September 27, 2006

[ ] Deputy CSC [ ] Assistant CSC [ ] Clerk of Superior Court

[X] Magistrate [ ] District Court Judge [ ] Superior Court Judge

Signature of Applicant: _____ Date: September 27, 2006

Continuation page attached to the SEARCH WARRANT application, dated Thursday, July 14, 2005

CONTINUATION OF "PROPERTY / EVIDENCE TO BE SEIZED"

Hydrocodone (Schedule III), devices used to introduce controlled substances into the body which are illegal to posses, and evidence of ownership access, possession and control; also beepers, firearms, cellular phones, and US currency.

CONTINUATION OF "PREMISES, PERSON, VEHICLE, OR OTHER ITEM (S) TO BE SEARCHED"

A single story, single family dwelling, constructed of white vinyl siding with brick underpinning and black shutters, located at 5228 Statesville Road, Charlotte, Mecklenburg County, N.C., USA.

CONTINUATION OF "PROBABLE CAUSE AFFIDAVIT"

This applicant swears to the following facts to establish probable cause for a search warrant:
Officer M.F. Warren #353 has received information from a confidential and reliable informant who has been in 5228 Statesville Road and has seen a large quantity of the Schedule III drug Hydrocodone in the residence without a prescription. This informant states that they have been in the above described location within the past 48 hours and have seen various forms of Hydrocodone throughout the house. This officer has known this informant for approximately 9 years. During this time, this officer has used information provided by this confidential and reliable informant to be true through independent investigations. This informant is familiar with various forms of Hydrocodone and the uses of various forms of Schedule III drugs.

Officer M.F. Warren #353 has been a Charlotte-Mecklenburg Police officer for 24 years and 6 months, including 7 years of Street level Drug Interdiction. I have been to various drug schools at the federal, state and local level. I have been directly or indirectly involved with over 1,900 drug arrests and have assisted with the execution of approximately 550 search warrants. Based on this affiant's training and experience, I have knowledge that firearms, beepers, cellular phones, and U.S. Currency are commonly used in the furtherance of drug distribution.

Based on the information contained in this application, I have knowledge that firearms, beepers, cellular phones, and US currency are commonly used in the furtherance of drug distribution. Based on the information contained in this application and the proven reliability of this informant, I request that a search warrant be issued for a single story, single family dwelling, constructed of white vinyl siding with brick underpinning and black shutters, located at 5228 Statesville Road, Charlotte, Mecklenburg County, N.C., USA.

SEP 01 2005

EDWARDS 3

APPLICATION

SWORN AND SUBSCRIBED TO BEFORE ME:

Judge / Magistrate

7-14-05

Date

M F Warren

Applicant(s)

7/14/05

Date

Tab:

Elements of Crimes

ELEMENTS (AUGUST, 2012)

Conspiracy, Solicitation, Attempts, and Principals and Accessories

After-the-Fact Crimes
Accessory after the fact
Compounding a felony

Crimes of Preparation
Solicitation
Conspiracy
Attempt

Responsibility as Principal
Accessory before the fact
Aiding and abetting
Acting in concert

Prepared by John Rubin, July 2009

Prepared by Jamie Markham, 2/11
Revised by John Rubin, 8/11

Selected Assault Crimes

Injury

Simple assault [Class 2]

Inflicting serious injury [A1]

Inflicting serious bodily injury [F]

Inflicting physical injury: strangulation [H]

Weapon

With a deadly weapon [A1]

By pointing a gun [A1]

With a deadly weapon with intent to kill [E]

With a deadly weapon inflicting serious injury [E]

With a deadly weapon with intent to kill inflicting serious injury [C]

Discharge of firearm into occupied…
- property [E]
- dwelling/conveyance in operation [D]
- property causing serious bodily injury [C]

Secret assault [E]

Victim Characteristics

On female [A1]

On child under 12 [A1]

In presence of minor [A1]

On handicapped person:
- simple [A1]
- aggravated (deadly weapon, serious injury, intent to kill) [F]

On unborn child (12/1/11):
- battery [A1]
- inflicting serious bodily injury [F]

Victim's Job

On gov't officer/employee; company/campus police officer [A1]

With deadly weapon on…
- gov't officer or employee or company/campus police [F]

With firearm on:
- law enforcement officer
- probation/parole officer
- detention employee [E]

Inflicting physical injury on (12/1/11):
- law enforcement officer
- probation/parole officer
- detention employee [I]

Inflicting serious injury or serious bodily injury on:
- law enforcement officer
- probation/parole officer
- detention employee [F]

Malicious conduct by prisoner [F]

On court officer:
- simple [I]
- with deadly weapon or inflicting serious injury [F]

On school personnel [A1]

On sports official [1]

On transit operator [A1]

On firefighter or specialized medical personnel:
- simple [A1] (until 11/30/11)
- physical injury [I] (12/1/11)
- inflicting serious bodily injury or with deadly weapon other than firearm [I] (until 11/30/11)
- inflicting serious bodily injury or with deadly weapon other than firearm inflicting physical injury [H] (12/1/11)
- with firearm [F]

On emergency personnel in declared emergency/riot:
- simple [1] (until 11/30/11)
- inflicting physical injury [I] (12/1/11)
- with dangerous weapon or substance [F]

Selected Sexual Assaults and Offenses

FIRST DEGREE FORCIBLE RAPE/SEXUAL OFFENSE

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
By force and against the victim's will*	Same
Under specified conditions	Same

*Courts also may find this element met if victim helpless

SECOND DEGREE FORCIBLE RAPE/SEXUAL OFFENSE

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
By force and against the victim's will, or victim helpless	Same

SEXUAL BATTERY

Sexual battery
Sexual contact
For sexual purpose
By force and against the victim's will, or victim helpless

CRIME AGAINST NATURE

Crime against nature
Unnatural sexual act

FIRST DEGREE STATUTORY RAPE/SEXUAL OFFENSE

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
Victim < 13	Same
Defendant ≥ 12	Same
Defendant ≥ 4 years older than victim	Same

RAPE/SEXUAL OFFENSE OF CHILD UNDER 13 BY ADULT

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
Victim < 13	Same
Defendant ≥ 18	Same

STATUTORY RAPE/SEXUAL OFFENSE OF CHILD 13, 14, 15

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
Victim = 13, 14, 15	Same
B1 felony: Defendant ≥ 6 years older than victim	Same
C felony: Defendant > 4 and < 6 years older than victim	Same

INDECENT LIBERTIES WITH MINOR

Indecent liberties with minor
Indecent liberty or lewd or lascivious act
Victim < 16
Defendant ≥ 16
Defendant ≥ 5 years older than victim

Prepared by John Rubin (updated Aug. 2011)

John Rubin
UNC School of Government
August 2011

Questions on Conspiracy, Solicitation, Attempts, Principals, and Accessories

1. Tonya Hardnose, world class roller skater, suspects that her husband, Jeff McGillicuddy, and her bodyguard, Bill Moose, are planning to assault Hardnose's chief rollerskating rival, Bambi Carrigan. The plan is to break Bambi's nose with a baseball bat so that potential sponsors will not be interested in using her in commercials even if she wins the upcoming world rollerskating championship. Hardnose says nothing to the authorities, and Bambi is later assaulted. What crimes, if any, has Hardnose committed?

2. Hardnose is concerned that if the World Rollerskating Association (WSA) learns of her prior knowledge of the planned assault on Bambi, the WSA will not let her skate at the world rollerskating championship next month. After the assault takes place, Hardnose agrees with McGillicuddy that she will not report him to the police if he will not say anything to the WSA. What crimes, if any, has Hardnose committed?

3. Assume Bill Moose, Hardnose's bodyguard, goes to John Indifferent and offers him $10,000 to break Bambi's nose with a baseball bat. Indifferent says he's not interested. What crimes, if any, has Moose committed? What about John Indifferent?

4. Same facts as Question # 3, except Indifferent accepts the money. However, three weeks later he changes his mind and does not commit the assault. What crimes, if any, have Moose and Indifferent committed? What if Indifferent returns the money?

5. Suppose Bill Moose goes to Jim Survivalist and makes the same offer. Survivalist accepts the money and agrees to break Bambi's nose. Two weeks later Survivalist follows through on the plan. At the time of the assault, Moose is home asleep. What crimes, if any, has Moose committed?

Robert L. Farb
Institute of Government
January 2005

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON ASSAULT AND RELATED OFFENSES

Which assault offense would be the proper charge under these facts?

1. A city law enforcement officer is on the way home, still wearing his uniform, after completing his shift for that day. For no apparent reason, another man comes up behind the officer, shoves him to the ground, and runs.

2. A husband beats his wife about her head and body with his fists, and she suffers a broken arm and lacerations to her face that requires 35 stitches.

3. A man is standing next to his house when his angry neighbor, about 50 yards away, fires a pistol at him—wanting to scare him. The shot misses about five feet to the left of the man.

4. After having a violent argument in a bar, a man is walking through the parking lot when the man he was arguing with comes at him in his car, going about 50 m.p.h. The man jumps out of the way and just avoids being hit.

5. Smith shoots a law enforcement officer who is attempting to execute a search warrant at his house. The officer suffers serious chest injuries but survives.

6. An 18 year-old male kicks a 5 year-old boy one time.

7. While being tried in district court for impaired driving, a man gets angry at the judge, jumps up on the judge's bench, and hits her twice in the shoulder.

8. While on patrol in a residential neighborhood, a city law enforcement officer has the back side window of his car shot out with a rifle.

9. An officer arrests Jones for armed robbery. While taking Jones to the magistrate’s office for the initial appearance, he spits in the officer’s face.

10. Unhappy with the amount of noise they are making, a theater manager grabs two 10-year old boys, drags them into his office, spanks them both, and sends them out of the theater.

11. At the end of a heated argument in a bar, one man yells at the other, “I'm going to kill you some day, you goddamn bastard!” He then leaves.

12. After stopping a car for impaired driving, a state trooper is jumped upon by the driver. The man has a knife in his hand but the trooper manages to subdue him without being cut.

13. After being called by the neighbors, an officer finds a man standing on his front porch holding a butcher knife in his hand. He is yelling at his wife in the front yard that he will kill her if she tries to come back in the house.

14. Two men have an argument in a bar. One leaves and hides behind a car in the parking lot. When the second man comes out, the first jumps from behind the car with a knife in his hand and makes several superficial cuts before two other men intervene and stop the attack.

15. When two men pull into a parking space at the same time, one driver gets out of his car, pulls the other driver out and hits him with his fist several times, knocking the man unconscious. When he is taken to the hospital, the doctor says he has a mild concussion and will have to stay overnight.

16. Two neighbors get in an argument about the noise made by one of the neighbor's kids. After saying "I'll get even with you for those damn noisy brats of yours; I'm going to cut your damn head off," one man stabs the other in the shoulder with a nine-inch knife. He is about to stab again when stopped by another neighbor.

17. While his wallet is being taken, a man is beaten over the head with a pistol carried by the thief. When the victim raises his arm to protect himself, his arm is broken.

18. Angry that her two-year-old daughter will not stop crying, a mother deliberately places her in a bathtub with extremely hot water. The daughter suffers third-degree burns.

19. John Jones is the former husband of Susan Jones. She is now dating Howard Findley. John Jones follows her to work every day for a week, after having told her over the telephone that if she continues to date Findley, "something serious might happen" to her. Findley calls John Jones and tells him that Susan Jones wants him to stop following her to work. The next day, John Jones follows her to work again.

20. An officer arrests Peter Smith for assault on a female. Smith shoved the female in the back, and she fell down and bruised her elbow. Smith has previously been convicted of simple assault, and assault by pointing a gun. Both convictions have occurred within the past 3 years. Assuming the magistrate finds probable cause for assault on a female, what is the most serious charge that may be brought against Smith?

21. An officer arrests John Jones for assault by pointing a gun. The victim of the assault suffered no injury. He has previously been convicted of simple assault and assault with a deadly weapon inflicting serious injury. Both convictions have occurred within the past 12 years. Assuming the magistrate finds probable cause for assault on a female, what is the most serious charge that may be brought against Jones?

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON LARCENY AND ROBBERY

Which offense would be the proper charge under these facts?

1. A man picks a lock and enters a home at 2 p.m., then takes three Playboy magazines and nothing else.

2. A man goes to another man's farm and takes a hunting dog worth about $300.

3. A woman is trying on dresses at a department store. While the sales clerk is busy elsewhere, the woman puts on one of the store's dresses worth $500 and walks out without paying for it.

4. At the State Fair a man picks the wallet out of another man's back pocket without being noticed. The wallet has about $40 in cash and four gasoline credit cards.

5. Two men are working together at the State Fair. While one bumps into a man, starts a scuffle, and pushes the man, the other slips behind the victim and takes his wallet. There is $25 in the wallet.

6. Two teenage boys see a car with the keys still in it, get in, and drive the car around town for about five hours. They then leave the car parked on the street about two miles from where they took it.

7. A man enters a grocery store and tells the clerk that he will shoot her unless she gives him the cash from her cash register. He has an object in his pocket which he points at her. She hands over the cash. The man is captured as he leaves the store; all that is found in his pocket other than the cash is a carrot. The amount of cash was $327.

8. Seeing that the clerk at a jewelry store has gone to the back of the store, a man tells a 6-year old kid that he left his ring on the store counter. The child goes in, picks up the ring off the counter, and brings it out to the man. The ring, which belongs to the store, is worth about $1,750.

9. A man has a television set worth $450 and a stereo worth $600 he is holding for a friend. The friend, who is taking a short vacation at the beach, tells him the goods are stolen. The man will be giving the goods back to the friend when he returns in a week.

10. A man puts a watch worth $50 in his pocket and walks out of the department store without paying for it.

11. A store employee sees a man put a pen worth $3.00 in his pocket while shopping in the store.

12. Two neighbors have been arguing for several months about which one owns a lawn mower. Each asserts that another neighbor who moved recently gave it to him. One night one of the two men sneaks over to the other's yard and takes the mower. It is worth about $80.

13. A man hits another man over the head with a blackjack and takes from him a wallet containing $12.

14. While searching a house for drugs, officers finds iPods which were stolen one week earlier in a housebreaking. The iPods are worth about $75 each.

15. A man goes into a sporting goods store, puts on a tennis racket a price tag which was on another racket, listing the price at $25 instead of $35, then takes the racket to the cashier to pay for it.

16. A man steals two television sets from the beach cottage he is renting. The sets were bought for $1,500 about a year and a half before. The owner says he recently had someone offer to buy the sets for $950.

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON SEXUAL ASSAULTS

Which sexual assault offense would be the proper charge under these facts?

1. A 21 year-old man forces a 19 year-old woman to have sexual intercourse with him by holding a knife to her face and threatening to cut her.

2. A 21 year-old man forces a 19 year-old woman to have sexual intercourse with him by driving her into the woods and threatening to abandon her.

3. A 21 year-old man holds a 19 year-old woman down to make her submit to sexual intercourse. Although he says nothing about it, a large knife strapped to his waist is plainly visible.

4. A 21 year-old man holds a 19 year-old woman down and makes her submit to sexual intercourse. When she fights, he twists her arm and breaks it.

5. A 19 year-old woman is pulled off the street by a 21 year-old man and shoved into a car driven by another man. The 21 year-old holds her down and has sexual intercourse with her on the back seat while the other man drives through a wooded area.

6. A 21 year-old woman holds a 25 year-old woman down while her boyfriend has sexual intercourse with her.

7. A 17 year-old male (whose birthday is on July 15) has sexual intercourse with a 13 year-old female (whose birthday is on August 21) with her consent.

8. On April 22, a 16 year-old male (whose birthday is on January 2) makes a 12 year-old female (whose birthday is on March 15) have sexual intercourse with him by holding a knife to her throat and threatening to kill her.

9. A 17 year-old male holds a 12 year-old female down and has sexual intercourse with her against her will.

10. A 22 year-old man commits fellatio with a 15 year-old female with her consent.

11. A 26 year-old man gives his date, a 25 year-old woman, a great deal to drink during the evening. After she passes out, he has sexual intercourse with her.

12. Same facts as #11 except that he has cunnilingus with her instead of intercourse.

13. A man and woman are husband and wife, but they have been separated for a year and a half without a written agreement. One night the man comes over to his wife's apartment and forces her to have sexual intercourse with him.

14. A 28 year-old woman has consensual sexual intercourse with a 12 year-old male.

15. Three 30 year-old men pick up a 16 year-old woman who is hitchhiking, drive her to a wooded area and make her perform fellatio on each by threatening to beat her and abandon her.

16. A 16 year-old male and a 12 year-old female are dating. His birthday is on July 15; hers is on July 1. On August 1, she voluntarily performs fellatio on him.

17. A 15 year-old male and a 15 year-old female voluntarily have sexual intercourse with each other.

18. Two 30 year-old men hold down a 24 year-old woman and threaten to beat her, making her perform fellatio on one man. After that, the second man forces a soft drink bottle into her vagina.

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON TRESPASS LAW AND DAMAGE TO PROPERTY

Which trespass or property damage offense would be the proper charge under these facts?

1. Elmo Suggins takes his shotgun and goes hunting for doves on the property of John James without his consent. The property is not posted.

2. Peter Ryder, a college student, has a one-year lease with Paul Jones to rent an apartment; there are no restrictions in the lease about visitors. Jones realizes that Ryder is inviting Sylvia Sweetheart over to Ryder's apartment each night. Jones tells Sweetheart that she cannot come to Ryder's apartment, but she ignores him.

3. John Alston lives in his house at 312 Main Street. His neighbor, Jim Billerman, and he get into an argument in Alston's living room. Alston tells him to leave and never come back. Billerman leaves, but he comes back an hour later into Alston's house and begins to argue with him again.

4. At 4:30 a.m., Howard Garfield climbs over the ten-foot high chain link fence surrounding Powe's Lumber Yard. As he begins to examine the lumber, a law enforcement officer drives by and arrests him.

5. Phil Garner enters the woods surrounding Sally Jeffrey's house where there are posted “NO TRESPASSING” signs every twenty feet. There is no direct evidence that Garner saw the signs.

6. Sam and Alice Simmons, who are married, are living separate and apart by written agreement. Alice tells Sam that she never wants him entering her property. One night Sam (after a few drinks) enters her property and knocks on her door, because he wants to tell her how happy he is that he is no longer living with her.

7. Howard Jones, owner of the Eastowne Shopping Mall, signs an agreement with the West Orange Police Department authorizing its officers to give trespass warnings to anyone who is on Mall property from 12 midnight to 6 a.m. without a reasonable basis for being there. Officer Jones tells three teenagers parked on Mall property at 3 a.m. to leave because they give no reason for being there. The teenagers refuse to leave.

8. A person hired by the owner of a tavern to keep order there tells an unruly person to leave the tavern. He refuses to leave.

9. Fred Smith is using his neighbor's mountain cabin for the weekend. Three deer hunters, carrying deer rifles, appear and tell Smith to get off the property because they want to use the cabin that night. Smith leaves because he is afraid he will get hurt.

10. Husband and wife orally agree to break up, with the wife staying in the house and the husband renting an apartment. A boyfriend moves into the house with the wife. One night the husband, angry about his wife having a boyfriend, enters the house and refuses to leave when asked by the boyfriend.

11. Sam Jones gets into an argument with his neighbor while both are on Jones's front lawn and tells the neighbor to leave. The neighbor refuses to leave.

12. A neighbor deliberately throws one brick through a window of his neighbor's house and another brick through a window of this neighbor's car, causing a total of $100 damage.

13. Fred Smertz deliberately and maliciously spray paints his brother's car, causing $750 damage.

14. Peter Jones puts a bomb in the car of his ex-wife, hoping that it will kill her when she turns the ignition switch. Instead it goes off prematurely before she enters the car, destroying the car but not injuring her.

15. Sylvia Kitchins plants a bomb in the local movie theater. It goes off during a movie, damaging the movie screen but not injuring any person.

Jeff Welty
July 2008

**NC CRIMES REVIEW QUESTIONS COVERING CHAPTERS 19 THROUGH 22
DISORDERLY CONDUCT, BOMBING AND TERRORISM, OBSTRUCTION OF JUSTICE,
AND WEAPONS OFFENSES**

Which offense, if any, would be the proper charge under these facts?

1. A man walks up to someone standing on a public street, raises his fist, and tells him that he is a cowardly bastard who better get ready to defend himself.

2. Paul Jones gets drunk at a party, walks down Main Street loudly yelling "Go to hell" to each person he sees.

3. Howard Keller, who is drunk, stands still in front of Roses Store for an hour looking in the window at a toy train running around a circular track.

4. Officer Jones stops a car for speeding 45 m.p.h. in a 35 m.p.h. zone. While writing the citation, the driver says, "Officer, you are an S.O.B. for stopping me."

5. Officer Smith writes Peter Gant a citation for concealing merchandise. Gant crumbles his pink copy of the citation in a ball and tosses it in the trash can.

6. A Duke University public safety officer is patrolling a parking lot on the campus because there have been several auto break-ins committed there in the past few weeks. He sees Sam Jones standing next to a car. Jones has a gun in a holster attached to his belt.

7. Susan Jones is arrested for impaired driving. When searching her pocketbook incident to her arrest, law enforcement officers find a pocketknife.

8. When Harold Jones is arrested for impaired driving, he is searched and found to have a blackjack in his back pants pocket.

9. Officer Jones is executing a search warrant to search Mildred Cashwell's home. Mrs. Cashwell refuses to let Officer Jones in her home, saying she wants to talk to her husband before she lets him in.

10. Officer Johnson arrests John Matheson for disorderly conduct. Matheson tells Johnson that Johnson is a pig, and takes Johnson's hat and tosses it in the nearby pond.

11. Steve Grogan is stopped for speeding. Next to him on the front seat is a .357 magnum revolver. Last week he was terminated from his parole for an armed robbery conviction.

12. Tina Stevenson shoplifts a purse. A clerk sees her leave the store and runs after her. Tina offers the clerk $20 if the clerk will agree not to report the incident.

Robert L. Farb
Institute of Government
January 2006

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON DRUG OFFENSES

Which drug offense(s) would be the proper charge(s) under these facts?
(Note: 28.34 grams equals 1 ounce)

1. A person arrested for shoplifting has 87 phenobarbital (Schedule IV) tablets in his pocket and no valid prescription for them. He offers no explanation why he has them.

2. When law enforcement officers execute a search warrant at Smith's house, they find an ounce of heroin, a spoon, and a hypodermic needle on the dresser in his bedroom.

3. A college student writes a prescription for Miltown (meprobamate, Schedule IV) on a stolen prescription form, goes to the pharmacist, and obtains 20 tablets.

4. What a dealer sells to an undercover agent as cocaine turns out to be pieces of chalk.

5. A valid search discloses that a farmer has 90 pounds of marijuana stored in his barn.

6. When they enter a man's house to arrest him for receiving stolen goods, officers find approximately 10 ounces of marijuana, some of which is in eight small envelopes but most of which is in one large bag, plus about 30 empty envelopes and a small scale.

7. Officers execute a search warrant to search a house rented by Jack Sterling for cocaine. There is no cocaine there, but the officers find 450 Ritalin (methylphenidate, Schedule II) tablets. On the dresser are some credit cards in the name of Jack Sterling and on the kitchen table are some letters addressed to him at that address. Sterling's name is also on the mailbox.

8. Two college students are sitting on a bench on campus. One puffs on a marijuana cigarette and passes it to the other.

9. When a car is stopped for speeding, the officer smells marijuana and asks for permission to search. The driver-owner gives consent and the driver and three passengers (one in front, two in back) step out. The remains of a marijuana cigarette are found in the ash tray below the radio.

10. A person arrested for an assault in a bar has 30 grams of methamphetamine in his pocket.

11. A 21-year-old man sells five ounces of marijuana to an undercover agent about 150 feet from an elementary school.

12. A search of a boat tied to the dock discloses that 400 grams of cocaine are aboard. The boat owner is present at the time of the search.

Jamie Markham
School of Government
July 2010

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON WORTHLESS CHECKS

1. On June 15, John Smith writes and delivers a check to ABC Cleaners for $27.50 for cleaning. He dates the check June 25. ABC deposits the check with its bank, and two weeks later the check is returned stamped “insufficient funds.” The owner of ABC Cleaners appears before you seeking a worthless check warrant. What would you do?

2. On June 20, Susie Barnes writes and delivers a check to Best Buy for $800.00. The check is dated June 20. Susie wrote the check to purchase a TV. When she got the TV home, it didn't work. She called the bank and asked them to stop payment on the check. Today, a Best Buy employee comes before seeking a worthless check warrant. They indicate that Ms. Barnes wrote and delivered the check on June 20. The check is stamped “stop payment.” What would you do?

3. An employee of Kroger's appears before you seeking issuance of process for writing a check on a closed account. The employee shows you a check written by Frederick Williams to Kroger, dated June 10. The employee indicates that the check was delivered to the store on June 10. The check is marked “closed account.” What would you do?

4. Robert Smith appears before you seeking issuance of process for writing a worthless check. Smith tells you that James Walker came to his business on March 25 and asked him to cash a check for $2500 written on Walker’s account and to hold it and not deposit it for 20 days until Walker’s next pay day. Walker wrote the check on March 25, dated it March 25, and delivered it to Smith. Smith waited until April 16 to deposit the check. He shows you the check, which was returned marked “insufficient funds.” What would you do?

5. An employee of Wayne's Lumber Yard appears before you seeking issuance of process for writing a worthless check. The employee shows you a check written to Wayne's Lumber Yard on a bank account listed as Weston Contractors, Inc. and signed by Jimmy Weston, President. The employee testifies that the check was written and delivered on May 15, and that is the date on the check. The check is stamped “insufficient funds.” Who would you charge? Would it make any difference if the check were signed by Wanda Gooding, office secretary?

6. An employee of your local Food Lion appears before you seeking process. They bring a check written to Wade Brown, signed by William Golding, dated May 30. The check is for $50. The employee testifies that Wade Brown endorsed the check over to Food Lion on June 2, and that the check was returned for insufficient funds. The employee shows you the check, which is stamped “insufficient funds.” What would you do?

Robert L. Farb
Institute of Government
January 2003

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON BURGLARY AND BREAKING AND ENTERING

Which burglary or breaking and entering offense would be the proper charge under these facts?

1. A man breaks a window and enters a home at 3 a.m., takes a $150 television set, and leaves. No one is home at the time.

2. A man breaks a window and enters a home at 3 a.m., takes a $150 television set, and leaves. The woman who is at home upstairs is too scared to do anything while the man is there.

3. A man breaks a window and enters a home at 1 p.m. He takes a tape recorder worth $75 and leaves. No one was home at the time.

4. A man breaks a window and enters a store at 3 a.m. He takes jewelry worth $800 and leaves.

5. At 3 a.m., a man knocks on the door of a house saying “police.” Mrs. Jones opens the door, the man rushes in, steals her pocketbook, and leaves.

6. Because of the hot weather, all the doors and windows of a house are open. A man walks through an open door at 11 a.m., takes a tape recorder worth $40, and leaves. The man and woman who live in the house are across the street visiting a neighbor at the time.

7. Because of the hot weather, all the doors and windows of a house are open. A man walks through an open door at 11 a.m., takes a television set worth $90, and leaves. The woman working in the kitchen does not notice the man come and leave.

8. A man lifts open an unlocked store window, goes into the store at 2 a.m., takes six radios worth about $40 each, and leaves.

9. A man lifts open an unlocked store window at 2 a.m., but before he enters is scared away by a passing patrol car.

10. A man breaks into a closed jewelry store at 1 p.m., takes a dozen watches worth a total of $1,500, and leaves.

11. A man breaks into Harold Smith's beach cottage at 11 p.m. and takes several pieces of furniture worth a total of about $300. This happens in January; the cottage has not been used for two months and probably will not be used again for three more months.

12. A man picks the lock and enters a motel room at 1 a.m. He takes an $80 watch and a wallet with $150 in cash and several credit cards, without disturbing the man who is sleeping in the room.

13. A man loans his radio to his neighbor; the neighbor tells him he can get his radio back whenever he wants. The neighbor is not home one night when the man wants the radio back to listen to a ball game, so the man lifts open an unlocked window, climbs in, gets his radio, and leaves.

14. A man breaks into a garage about 20 feet from a house and takes a bicycle worth $150. This takes place at 4:30 in the morning.

15. A man breaks the window to an automobile, opens the door, takes out a CB radio, and leaves.

16. A man enters an open window of a house at 3 a.m., walks down the hallway, opens a closed bedroom door, and enters and takes a watch worth $12 and leaves, while Thelma Jones is sleeping in the room.

Jeff Welty
July 2008

NC CRIMES REVIEW QUESTIONS COVERING CHAPTER 6
HOMICIDE

Which homicide offense, if any, would be the proper charge under these facts?

1. Defendant puts poison in his father's supper but it is eaten by his mother who dies as a result.

2. Defendant is driving drunk, passes a stopped school bus at 70 m.p.h., and kills three elementary school children crossing the street.

3. Defendant learns that the cocaine he is selling is causing people to get seriously ill, but he continues to sell the cocaine. He sells it to Jane Smith, who uses it and then dies. The death is caused by impurities in the cocaine.

4. Defendant's wife comes home and says she has been raped. Defendant immediately proceeds to the man's house (about five miles from the defendant's house) and shoots him, killing him.

5. Defendant has a gun concealed in his coat at a movie theater, the gun drops out accidentally and goes off, killing a woman standing nearby.

6. Defendant runs a red light he did not see, and he hits and kills a 7-year old girl on a bicycle.

7. After an argument in a bar, defendant pulls out a gun from his pocket and says "You're gone from this earth," and shoots the man (he was arguing with) in the head. The man is rushed to the hospital, but goes untreated for 12 hours and dies because the doctor who was supposed to be on call was drunk. A timely operation probably could have saved the man's life.

Burglary & Breaking or Entering Offenses
"At A Glance"

Jessica Smith, UNC School of Government

1st Degree Burglary	**2nd Degree Burglary**
(1) Breaks	√
(2) AND enters	√
(3) Without consent	√
(4) Dwelling house or sleeping apartment	√ & buildings in the curtilage
(5) Of another (possession is the key!)	√
(6) Occupied	X
(7) Night	√
(8) With intent to commit a felony/larceny therein	√

Felony Breaking or Entering	**Misdemeanor Breaking or Entering**
(1) Breaks OR enters	√
(2) W/Out consent	√
(3) Any building	√
(4) With intent to commit a felony/larceny therein	X

DRUG OFFENSES

- Sale/Delivery of Controlled Substance
  - **Regular Sale/Delivery (p. 575)**
  - Sale/Delivery to Pregnant Female by Person ≥18 (p. 577)

- **Manufacture of Controlled Substance (p. 578)**

- Possession
  - **Simple Possession of Controlled Substance (p. 579)**
  - Possession of Controlled Substance at Prison or Local Confinement Facility (p. 584)
  - **Possession of Controlled Substance with Intent to Mfg., Sell or Deliver (p. 585)**
  - Possession of Immediate Precursor Chemical With Intent to Manufacture, Sell or Deliver Controlled Substance (p. 586)
  - **Possession of Drug Paraphernalia (p. 617)**

- Counterfeit Controlled Substance Offenses (p. 588-589)

- Controlled Substances & Minors
  - Sale or Delivery to Person < 16 but > 13 by Person ≥ 18 (p. 590)
  - Sale or Delivery Person <13 by Person ≥ 18 (p. 591)
  - Employing/Intentionally Using a Minor to Commit Controlled Substance (p. 591)
  - Promoting Drug Sales by Minor (p. 593)
  - Participating in a Drug Violation by Minor (p. 595)
  - Mfg., Sell/Deliver or Possess w/Intent to Mfg., Sell/Deliver at or near a School, Child Care Center, or Playground by D ≥ 21 (p. 596)

- **Trafficking (p. 597-609)**

- **Maintaining a Dwelling (p. 614)**

- Obtaining a Controlled Substance by Misrepresentation/Fraud/Forgery (p. 616)

Tab:

Motor Vehicles

MOTOR VEHICLES (AUGUST, 2012)

Table of Contents for Motor Vehicle Statutes

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. – Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. – A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

(1d) Business District. – The territory prescribed as such by ordinance of the Board of Transportation.

(2) Canceled. – As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or fraud, or to which G.S. 20-15(a)(3) applies, is void and terminated.

(2a) Class A Motor Vehicle. – A combination of motor vehicles that meets either of the following descriptions:

a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. – Any of the following:

a. A single motor vehicle that has a GVWR of at least 26,001 pounds.

b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001

pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. – Any of the following:

a. A single motor vehicle not included in Class B.

b. A combination of motor vehicles not included in Class A or Class B.

(3) Repealed by Session Laws 1979, c. 667, s. 1.

(3a) Chemical Analysis. – A test or tests of the breath, blood, or other bodily fluid or substance of a person to determine the person's alcohol concentration or presence of an impairing substance, performed in accordance with G.S. 20-139.1, including duplicate or sequential analyses.

(3b) Chemical Analyst. – A person granted a permit by the Department of Health and Human Services under G.S. 20-139.1 to perform chemical analyses.

(3c) Commercial Drivers License (CDL). – A license issued by a state to an individual who resides in the state that authorizes the individual to drive a class of commercial motor vehicle. A "nonresident commercial drivers license (NRCDL)" is issued by a state to an individual who resides in a foreign jurisdiction.

(3d) Commercial Motor Vehicle. – Any of the following motor vehicles that are designed or used to transport passengers or property:

a. A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

b. A Class B motor vehicle.

c. A Class C motor vehicle that meets either of the following descriptions:

1. Is designed to transport 16 or more passengers, including the driver.

2. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

d. Repealed by Session Laws 1999, c. 330, s. 9, effective December 1, 1999.

(4) Commissioner. – The Commissioner of Motor Vehicles.

(4a) Conviction. – A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.

2. A determination that a person is responsible for an infraction, including a no contest plea.

3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.

4. A third or subsequent prayer for judgment continued within any five-year period.

5. Any prayer for judgment continued if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:
   1. An unvacated adjudication of guilt.
   2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
   3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
   4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
   5. A final conviction of a criminal offense, including a no contest plea.
   6. Any prayer for judgment continued, including any payment of a fine or court costs, if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.

(4b) Crash. – Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous.

(5) Dealer. – Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers, or semitrailers in this State, and having an established place of business in this State.

The terms "motor vehicle dealer," "new motor vehicle dealer," and "used motor vehicle dealer" as used in Article 12 of this Chapter have the meaning set forth in G.S. 20-286.

(5a) Disqualification. – A withdrawal of the privilege to drive a commercial motor vehicle.

(6) Division. – The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(7) Driver. – The operator of a vehicle, as defined in subdivision (25). The terms "driver" and "operator" and their cognates are synonymous.

(7a) Electric Personal Assistive Mobility Device. – A self-balancing nontandem two-wheeled device, designed to transport one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

(7b) Employer. – Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle and would be subject to the alcohol and controlled substance testing provisions of 49 C.F.R. § 382 and also includes any consortium or third-party administrator administering the alcohol and controlled substance testing program on behalf of owner-operators subject to the provisions of 49 C.F.R. § 382.

(8) Essential Parts. – All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(9) Established Place of Business. – Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading, and selling motor vehicles is or will be

carried on and at which the books, records, and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

(10) Explosives. – Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(11) Farm Tractor. – Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(11a) For-Hire Motor Carrier. – A person who transports passengers or property by motor vehicle for compensation.

(12) Foreign Vehicle. – Every vehicle of a type required to be registered hereunder brought into this State from another state, territory, or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.

(12a) Golf Cart. – A vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

(12b) Gross Combination Weight Rating (GCWR). – Defined in 49 C.F.R. § 390.5.

(12c) Gross Combined Weight (GCW). – The total weight of a combination (articulated) motor vehicle, including passengers, fuel, cargo, and attachments.

(12d) Gross Vehicle Weight (GVW). – The total weight of a vehicle, including passengers, fuel, cargo, and attachments.

(12e) Gross Vehicle Weight Rating (GVWR). – The value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the GVWR of that vehicle shall be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles for the purpose of enforcing this Chapter. For the purpose of classification of commercial drivers license and skills testing, the manufacturer's GVWR shall be used.

(12f) Hazardous Materials. – Any material that has been designated as hazardous under 49 U.S.C. § 5103 and is required to be placarded under Subpart F of Part 172 of Title 49 of the Code of Federal Regulations, or any quantity of a material listed as a select agent or toxin under Part 73 of Title 42 of the Code of Federal Regulations.

(13) Highway. – The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of

the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" and their cognates are synonymous.

(14) House Trailer. – Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle.

(14a) Impairing Substance. – Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

(15) Implement of Husbandry. – Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(15a) Inoperable Vehicle. – A motor vehicle that is substantially disassembled and for this reason is mechanically unfit or unsafe to be operated or moved upon a public street, highway, or public vehicular area.

(16) Intersection. – The area embraced within the prolongation of the lateral curblines or, if none, then the lateral edge of roadway lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(17) License. – Any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:

a. Any temporary license or learner's permit;

b. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

c. Any nonresident's operating privilege.

(18) Local Authorities. – Every county, municipality, or other territorial district with a local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

(19) Manufacturer. – Every person, resident, or nonresident of this State, who manufactures or assembles motor vehicles.

(20) Manufacturer's Certificate. – A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.

(21) Metal Tire. – Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(21a) Moped. – A type of passenger vehicle as defined in G.S. 105-164.3.

(21b) Motor Carrier. – A for-hire motor carrier or a private motor carrier.

(22) Motorcycle. – A type of passenger vehicle as defined in G.S. 20-4.01(27).

(23) Motor Vehicle. – Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1.

(24) Nonresident. – Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. – Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

(25) Operator. – A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms "operator" and "driver" and their cognates are synonymous.

(25a) Out of Service Order. – A declaration that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service.

(26) Owner. – A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

(27) Passenger Vehicles. –

a. Excursion passenger vehicles. – Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. – Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United

States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. – Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

c1. Child care vehicles. – Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.

d. Motorcycles. – Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. – Defined in G.S. 105-164.3.

d2. Motor home or house car. – A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. – A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. – A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, that is painted primarily yellow below the roofline, and that bears the plainly visible words "School Bus" on the front and rear. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. – Passenger vehicles included in the definition of U-drive-it vehicles set forth in this section.

f. Ambulances. – Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. – All other passenger vehicles not included in the above definitions.

h. Low-speed vehicle. A four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but less than 25 miles per hour.

(28) Person. – Every individual, firm, partnership, association, corporation, governmental agency, or combination thereof of whatsoever form or character.

(29) Pneumatic Tire. – Every tire in which compressed air is designed to support the load.

(29a) Private Motor Carrier. – A person who transports passengers or property by motor vehicle in interstate commerce and is not a for-hire motor carrier.

(30) Private Road or Driveway. – Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(31) Property-Hauling Vehicles. –

a. Vehicles used for the transportation of property.

b., c. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4.

d. Semitrailers. – Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.

e. Trailers. – Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including "pole trailers" or a pair of wheels used primarily to balance a load rather than for purposes of transportation.

f. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4.

(31a) Provisional Licensee. – A person under the age of 18 years.

(32) Public Vehicular Area. – Any area within the State of North Carolina that meets one or more of the following requirements:

a. The area is used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.

2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.

3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public.

d. The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

(32a) Recreational Vehicle. – A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper.

a. Motor home. – As defined in G.S. 20-4.01(27)d2.

b. Travel trailer. – A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.

c. Fifth-wheel trailer. – A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

d. Camping trailer. – A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

e. Truck camper. – A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck.

(32b) Regular Drivers License. – A license to drive a commercial motor vehicle that is exempt from the commercial drivers license requirements or a noncommercial motor vehicle.

(33) a. Flood Vehicle. – A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

b. Non-U.S.A. Vehicle. – A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

c. Reconstructed Vehicle. – A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

d. Salvage Motor Vehicle. – Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA

Pricing Guide Book or other publications approved by the Commissioner.

e. Salvage Rebuilt Vehicle. – A salvage vehicle that has been rebuilt for title and registration.

f. Junk Vehicle. – A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(33a) Relevant Time after the Driving. – Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

(33b) Reportable Crash. – A crash involving a motor vehicle that results in one or more of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars ($1,000) or more, or property damage of any amount to a vehicle seized pursuant to G. S. 20-28.3.

(33c) Reserve components of the Armed Forces of the United States. – The organizations listed in Title 10 United States Code, section 10101, which specifically includes the Army and Air National Guard.

(34) Resident. – Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State.

(35) Residential District. – The territory prescribed as such by ordinance of the Department of Transportation.

(36) Revocation or Suspension. – Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(37) Road Tractors. – Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(38) Roadway. – That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(39) Safety Zone. – Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(40) Security Agreement. – Written agreement which reserves or creates a security interest.

(41) Security Interest. – An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as

security. A security interest is "perfected" when it is valid against third parties generally.

(41a) Serious Traffic Violation. – A conviction of one of the following offenses when operating a commercial or other motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported.

(42) Solid Tire. – Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(43) Specially Constructed Vehicles. – Motor vehicles required to be registered under this Chapter and that fit within one of the following categories:

a. Replica vehicle. – A vehicle, excluding motorcycles, that when assembled replicates an earlier year, make, and model vehicle.
b. Street rod vehicle. – A vehicle, excluding motorcycles, manufactured prior to 1949 that has been materially altered or has a body constructed from nonoriginal materials.
c. Custom-built vehicle. – A vehicle, including motorcycles, reconstructed or assembled by a nonmanufacturer from new or used parts that has an exterior that does not replicate or resemble any other manufactured vehicle. This category also includes any motorcycle that was originally sold unassembled and manufactured from a kit or that has been materially altered or that has a body constructed from nonoriginal materials.

(44) Special Mobile Equipment. – Defined in G.S. 105-164.3.

(44a) Specialty Vehicles. – Vehicles of a type required to be registered under this Chapter that are modified from their original construction for an educational, emergency services, or public safety use.

(45) State. – A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, a province of Canada, or the Sovereign Nation of the Eastern Band of the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina. For provisions in this Chapter that apply to commercial drivers licenses, "state" means a state of the United States and the District of Columbia.

(46) Street. – A highway, as defined in subdivision (13). The terms "highway" and "street" and their cognates are synonymous.

(47) Suspension. – Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(48) Truck Tractors. – Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(48a) U-drive-it vehicles. – The following vehicles that are rented to a person, to be operated by that person:

a. A private passenger vehicle other than the following:
   1. A private passenger vehicle of nine-passenger capacity or less that is rented for a term of one year or more.
   2. A private passenger vehicle that is rented to public school authorities for driver-training instruction.

b. A property-hauling vehicle under 7,000 pounds that does not haul products for hire and that is rented for a term of less than one year.

c. Motorcycles.

(48b) Under the Influence of an Impairing Substance. – The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

(48c) Utility Vehicle. – Vehicle designed and manufactured for general maintenance, security, recreational, and landscaping purposes, but does not include vehicles designed and used primarily for the transportation of persons or property on a street or highway.

(49) Vehicle. – Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement. This term shall not include an electric personal assistive mobility device as defined in G.S. 20-4.01(7a).

(50) Wreckers. – Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed.

§ 20-7. Issuance and renewal of drivers licenses.

(a) License Required. – To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. – A Class A license authorizes the holder to drive any of the following:
   a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
   b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. – A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. – A Class C license authorizes the holder to drive any of the following:
   a. A Class C motor vehicle that is not a commercial motor vehicle.
   b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.
   c. A combination of noncommercial motor vehicles that have a GVWR of more than 10,000 pounds but less than 26,001 pounds. This sub-subdivision does not apply to a Class C license holder less than 18 years of age.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A person holding a commercial drivers license issued by another jurisdiction must apply for a transfer and obtain a North Carolina issued commercial drivers license within 30 days of becoming a resident. Any other new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 60 days after becoming a resident.

* * * *

(e) Restrictions. – The Division may impose any restriction it finds advisable on a drivers license. It is unlawful for the holder of a restricted license to operate a motor vehicle without complying with the restriction and is the equivalent of operating a motor vehicle without a license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community

designated by the Division. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either restricted or unrestricted, to any person deemed to be incapable of safely operating a motor vehicle. This subsection does not prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by Department of Health and Human Services; use of test results or refusal.

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:
   a. Committed a moving traffic violation; or
   b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. – The Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the Department and the screening test is conducted in accordance with the applicable regulations of the Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. – The fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court, or may also be used by an administrative agency in determining if there are reasonable grounds for believing:

(1) That the driver has committed an implied-consent offense under G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol.

§ 20-17.8. Restoration of a license after certain driving while impaired convictions; ignition interlock.

(a) Scope. – This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.15 or more;

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked; or

(3) The person was sentenced pursuant to G.S. 20-179(f3).

For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the Division to determine that person's alcohol concentration.

(a1) **(Expires December 1, 2014)** Additional Scope. – This section applies to a person whose license was revoked as a result of a conviction of habitual impaired driving, G.S. 20-138.5.

(b) **(Effective until December 1, 2014)** Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) or (a)(3) of this section, or subsection (a1) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00.

* * * *

(c) Length of Requirement. – The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(c1) Vehicles Subject to Requirement. – A person subject to this section shall have all registered vehicles owned by that person equipped with a functioning ignition interlock system of a type approved by the Commissioner, unless the Division determines that one or more specific registered vehicles owned by that person are relied upon by another member of that person's family for transportation and that the vehicle is not in the possession of the person subject to this section.

* * * *

(f) Effect of Violation of Restriction. – A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subdivision (b)(3) of this section. If a person subject to this section is charged with driving while license revoked by violating the requirements of subsection (c1) of this section, and no other violation of this section is alleged, the court may make a determination at the hearing of the case that the vehicle, on which the ignition interlock system was not installed, was relied upon by another member of that person's family for transportation and that the vehicle was not in the possession of the person subject to this section, and therefore the vehicle was not required to be equipped with a functioning ignition interlock system. If the court determines that the vehicle was not required to be equipped with a functioning ignition interlock system and the person subject to this section has committed no other violation of this section, the court shall find the person not guilty of driving while license revoked.

(g) Effect of Violation of Restriction When Driving While License Revoked Not Charged. – A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year.

* * * *

§ 20-146. Drive on right side of highway; exceptions.

(a) Upon all highways of sufficient width a vehicle shall be driven upon the right half of the highway except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) Upon a highway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a highway designated and signposted for one-way traffic.

(b) Upon all highways any vehicle proceeding at less than the legal maximum speed limit shall be driven in the right-hand lane then available for thru traffic, or as close as practicable to the right-hand curb or edge of the highway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.

(c) Upon any highway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the highway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the highway for use by traffic not otherwise permitted to use such lanes or except as permitted under subsection (a)(2) hereof.

(d) Whenever any street has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply.

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a street which is divided into three or more lanes and provides for the two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in the preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control device.

(3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the street and drivers of vehicles shall obey the direction of every such device.

(4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of streets, and drivers of vehicles shall obey the directions of every such device.

(e) Notwithstanding any other provisions of this section, when appropriate signs have been posted, it shall be unlawful for any person to operate a motor vehicle over and upon the inside lane, next to the median of any dual-lane highway at a speed less than the posted speed limit when the operation of said motor vehicle over and upon said inside lane shall impede the steady flow of traffic except when preparing for a left turn. "Appropriate signs" as used herein shall be construed as including "Slower Traffic Keep Right" or designations of similar import.

§ 20-150. Limitations on privilege of overtaking and passing.

(a) The driver of a vehicle shall not drive to the left side of the center of a highway, in overtaking and passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.

(b) The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed within a distance of 500 feet.

(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any railway grade crossing nor at any intersection of highway unless permitted so to do by a traffic or police officer. For the purposes of this section the words "intersection of highway" shall be defined and limited to intersections designated and marked by the Department of Transportation by appropriate signs, and street intersections in cities and towns.

(d) The driver of a vehicle shall not drive to the left side of the centerline of a highway upon the crest of a grade or upon a curve in the highway where such centerline has been placed upon such highway by the Department of Transportation, and is visible.

(e) The driver of a vehicle shall not overtake and pass another on any portion of the highway which is marked by signs, markers or markings placed by the Department of Transportation stating or clearly indicating that passing should not be attempted.

(f) The foregoing limitations shall not apply upon a one-way street nor to the driver of a vehicle turning left in or from an alley, private road, or driveway.

§ 20-154. Signals on starting, stopping or turning.

(a) The driver of any vehicle upon a highway or public vehicular area before starting, stopping or turning from a direct line shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement. The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(a1) A person who violates subsection (a) of this section and causes a motorcycle operator to change travel lanes or leave that portion of any public street or highway designated as travel lanes shall be responsible for an infraction and shall be assessed a fine of not less than two hundred dollars ($200.00). A person who violates subsection (a) of this section that results in a crash causing property damage or personal injury to a motorcycle operator or passenger shall be responsible for an infraction and shall be assessed a fine of not less than five hundred dollars ($500.00).

(b) The signal herein required shall be given by means of the hand and arm in the manner herein specified, or by any mechanical or electrical signal device approved by the Division, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the Division.

Whenever the signal is given the driver shall indicate his intention to start, stop, or turn by extending the hand and arm from and beyond the left side of the vehicle as hereinafter set forth.

Left turn – hand and arm horizontal, forefinger pointing.

Right turn – hand and arm pointed upward.

Stop – hand and arm pointed downward.

All hand and arm signals shall be given from the left side of the vehicle and all signals shall be maintained or given continuously for the last 100 feet traveled prior to stopping or making a turn. Provided, that in all areas where the speed limit is 45 miles per hour or higher and the operator intends to turn from a direct line of travel, a signal of intention to turn from a direct line of travel shall be given continuously during the last 200 feet traveled before turning.

Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles except combinations operated by farmers in hauling farm products.

(c) No person shall operate over the highways of this State a right-hand-drive motor vehicle or a motor vehicle equipped with the steering mechanism on the right-hand side thereof unless said motor vehicle is equipped with mechanical or electrical signal devices by which the signals for left turns and right turns may be given. Such mechanical or electrical devices shall be approved by the Division.

(d) A violation of this section shall not constitute negligence per se.

Basic School for Magistrates
August 2012
Motor Vehicle Offenses
Shea Denning, School of Government

Think you know Chapter 20? Test yourself.

1. Darren Driver, a resident of College Park, Maryland, was stopped at a checkpoint on Country Club Road in Chapel Hill, NC. When the law enforcement officer asked for his license, Darren said that he did not have a license because it had been revoked. Darren said he drove because all of his friends (who had traveled from College Park, Maryland, to Chapel Hill with him) were trashed. Further investigation revealed that Darren's Maryland license was revoked by the Maryland DMV. Darren has never been licensed in North Carolina and North Carolina DMV has no record of him. With which of the following offenses may Darren properly be charged?

    A. No operator's license (G.S. 20-7)
    B. Driving while license revoked (G.S. 20-28)
    C. Both A and B
    D. No charge. Serving as a designated driver is an affirmative defense to any motor vehicle charge.

2. Dana Driver was convicted of impaired driving in January 2007. Her license was restored in January 2008 with a 0.04 alcohol concentration restriction. Dana is stopped at a checkpoint. After the officer examined Dana's driver's license, he noticed that Dana's eyes were red and detected a "moderate odor" of alcohol on her breath. The officer requested that Dana submit to a chemical analysis of her breath in the BATmobile stationed at the checkpoint. The resulting blood alcohol concentration was 0.04. The officer performed no field sobriety tests. Dana may properly be charged with:

    A. No operator's license (G.S. 20-7)
    B. Driving while license revoked (G.S. 20-28)
    C. Driving while impaired (G.S. 20-138.1)
    D. Both A and B

3. Same facts as above except Dana also was subject to an ignition interlock restriction. The car she was driving when she was stopped at the checkpoint belonged to a friend and was not equipped with ignition interlock. Dana may properly be charged with:

    A. Reckless Driving (G.S. 20-140)
    B. Driving while license revoked (G.S. 20-28)
    C. Driving while impaired (G.S. 20-138.1)

D. Dana has not committed a criminal offense. This is a matter to be dealt with solely through DMV's licensure process.

4. Rob Ready received a text message from his girlfriend, Gina, on his smart phone while driving home from work. While driving, Rob texted Gina: 2 mch traffic CU in 15. When Rob looked up from typing, he saw brake lights in front of him. He slammed on his brakes, swerved to the right to avoid hitting the car in front of him, and struck a panhandler standing on the side of the highway. The panhandler died as a result of the injuries sustained in the crash. Which of the following offenses has Rob committed?

    A. Involuntary Manslaughter
    B. Misdemeanor Death by Vehicle
    C. Felony Death by Vehicle
    D. Both A and B
    E. All of the above

5. While driving northbound on Highway 421, Dave Driver passed a car in the bend of a sharp curve marked with a double yellow line. Dave was traveling 50 miles per hour. The speed limit was 45 miles per hour. The car Dave attempted to pass was traveling 35 miles per hour. The southbound lane of traffic approaching the curve was not visible from the point at which Dave began his maneuver. As Dave's car rounded the curve, he encountered a truck headed southbound. The truck swerved to avoid Dave's car, driving off the shoulder and crashing into a fence. Which of the following offenses did Dave commit?

    A. Improper Passing (G.S. 20-150)
    B. Reckless Driving (G.S. 20-140)
    C. Aggressive Driving (G.S. 20-141.6)
    D. Both A and B
    E. All of the above

6. See problem 8. The driver of the truck who swerved to avoid Dave was not injured, though the front of his truck was dented and scratched. A six-foot long section of the wooden fence also was destroyed. Dave saw the truck run off the road, but did not see it collide with the fence. Dave did not stop at the scene. Which of the following offenses has Dave committed?

    A. Failure to Report an Accident (G.S. 20-166.1)
    B. Failure to Stop at Scene of Crash (G.S. 20-166(c)) (Class 1 misdemeanor)
    C. Hit and Run (G.S. 20-166(a1)) (Class H felony)
    D. Both A and B
    E. All of the Above

7. Ashley Angel, who is 21 and a senior in college, leaves the library, where she has been diligently studying for mid-term exams for the previous six hours, to drive to a party a few miles from campus. On the way, she picks up her friend, Bethany Bedlam who also is 21. Bedlam has spent the last few hours gearing up for the party rather than studying. Bedlam gets into the cab of Angel's pick-up truck with a 40-ounce bottle of King Cobra malt liquor in her hand. At the next stoplight, Angel drives up next to a police vehicle. The officer sees Bedlam holding the bottle of malt liquor, which clearly is half-full, though the cap is screwed on top of the bottle. When the light turns green, the police officer pulls behind Angel's car and activates the blue lights and siren on her cruiser. Which of the following is a true statement?

    A. Angel has violated G.S. 20-138.7 by driving a motor vehicle on a highway while there is an open alcoholic beverage in the passenger area of the motor vehicle.
    B. Bedlam has violated G.S. 20-138.7 by possessing an open alcoholic beverage in the passenger area of a motor vehicle.
    C. Both A and B
    D. None of the above

8. Officer Able is called to the scene of a single-car accident on the shoulder of Interstate 40. Trooper Barnes arrives after Able. The two see Cynthia Carter's car upside down in a ditch next to an exit ramp, where it came to rest after rolling several times. Able asks Carter to submit to an alcosensor test. Carter provides one sample. It is positive. Carter says she is unable to blow again because of the intense pain in her neck from the accident. Carter explains: "My left front tire looked flat. I was going to stop to check the air pressure but I couldn't find a gas station. I was having an argument on the phone. The next thing I knew I ran off the road." Before handing the investigation over to Barnes, Able told him he smelled alcohol on Carter's breath and that the alcosensor result was positive. Barnes smelled no alcohol on Carter. Barnes arrested Carter for impaired driving. Carter failed to provide a sufficient breath sample for the Intoximeter, again saying that the pain in her neck prevented her from blowing any harder. Do you find probable cause that Carter was driving while impaired?

    A. Yes
    B. No

9. A sheriff's deputy testifies as follows: I noticed a car parked near the entrance of a pawn shop in the downtown area at 1 a.m. The pawn shop was closed, but the car was parked near the entrance, and the engine was running. I pulled into the parking lot and walked up to the car. I saw the defendant slumped over the steering wheel asleep. I knocked on the window and called out to him. He woke up and turned off the car engine. I motioned for him to roll down the window. When he did, I smelled a strong odor of alcohol coming from the defendant and saw that his eyes were red and glassy. I asked him to step out of the car. He fell down in the parking lot. I arrested the defendant for impaired driving. I took him downtown, and administered an

Intox EC/IR II. He registered a 0.14. Do you find probable cause that the defendant committed the offense of impaired driving?

A. Yes
B. No

10. The North Carolina driver's license of the defendant in the previous example was revoked. The officer also charged him with driving while license revoked in violation of G.S. 20-28(a). Is there probable cause that the defendant committed the offense of driving while license revoked?

A. Yes
B. No

New G.S. 20-13.3: Civil License Revocations for Provisional Licensees Some Questions and Answers

Prepared by Shea Denning, School of Government
October 17, 2011
With acknowledgements to Matt Osborne, Associate Legal Counsel for the Administrative Office of the Courts, who prepared the list of covered offenses and whose insights as to other aspects of the law are reflected herein

New G.S. 20-13.3, effective January 1, 2012, provides for the immediate civil revocation of the permit or license of a provisional licensee charged with a misdemeanor or felony motor vehicle offense that is defined as a criminal moving violation. Set forth below in a question and answer format is additional information about the new law.

Which drivers may be subjected to the new civil license revocation?

Drivers who are 16 or 17 years old who have a limited learner's permit or a provisional license issued by NC DMV pursuant to G.S. 20-11. These drivers are defined as "provisional licensee[s]." G.S. 20-13.3(a)(4).

Persons who are 15 years old who have a limited learner's permit issued by NC DMV also are considered provisional licensees. Such persons are not, however, subject to civil license revocation under G.S. 20-13.3 because, pursuant to the Juvenile Code, Chapter 7B of the North Carolina General Statutes, persons under 16 may not be arrested. Furthermore, there is no initial appearance for a juvenile alleged to be delinquent.

Which offenses trigger this license revocation?

The revocation is triggered by commission of a criminal moving violation, defined as a violation of Part 9 or 10 of Article 3 of Chapter 20 that is punishable as a misdemeanor or felony offense. G.S. 20-13.3(a)(2). Offenses listed in G.S. 20-16(c) for which no points are assessed are not included. Equipment violations codified in Part 9 of Article 3 of Chapter 20 likewise are not included.

The following offenses are criminal moving violations:

- G.S. 20-137.4: Operating a school bus while using a mobile phone
- G.S. 20-137.4A: Operating a school bus while using a mobile phone to text or access electronic email
- **G.S. 20-138.1: Driving while impaired**
- **G.S. 20-138.2: Driving while impaired in a commercial vehicle**
- **G.S. 20-138.2A: Operating a commercial vehicle after consuming**
- **G.S. 20-138.2B: Operating a school bus, school activity bus, or child care vehicle after consuming alcohol**
- **G.S. 20-138.3: Operating a motor vehicle by person less than 21 after consuming alcohol or drugs**
- **G.S. 20-138.5: Habitual impaired driving**

- **G.S. 20-138.7(a): Operating a motor vehicle while there is an open container of alcohol in the passenger area and while the driver is consuming or has consumed alcohol**
- G.S. 20-140: Reckless driving
- G.S. 20-141(j1): Speeding more than 15 mph over limit or more than 80 mph
- G.S. 20-141(j3): Speeding in a commercial motor vehicle carrying a load that is subject to the permitting requirements of G.S. 20-119 and (i) driving 15 mph or more over the posted speed, or (ii) driving 15 mph or more over the permit speed
- G.S. 20-141.3: Operating a motor vehicle willfully in a prearranged speed competition, or operating a motor vehicle willfully in speed competition, or allowing one's vehicle to be operated in a prearranged speed competition, or wagering on a prearranged speed competition
- **G.S. 20-141.4: Felony death by vehicle, misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony serious injury by vehicle, aggravated felony death by vehicle, repeat felony death by vehicle**
- G.S. 20-141.5: Speeding to elude arrest
- G.S. 20-141.6: Aggressive driving
- G.S. 20-149(b): Improper operation by an overtaken driver causing a collision resulting in serious bodily injury, bodily injury, or property damage
- G.S. 20-157(a), (h), (i): Failing to move over for law enforcement or emergency vehicle giving warning signal, or violating G.S. 20-157 and causing damage to property or injury, or violating G.S. 20-157 and causing serious injury or death
- G.S. 20-166(a), (a1), (b), (c), (c1): Failing to stop and remain after a crash resulting in serious bodily injury or death, or failing to stop and remain after a crash resulting in injury, or failing to provide information or render assistance following a crash, or failing to stop and remain after a crash resulting in damage to property or non-apparent injury
- G.S. 20-166.1: Failing to notify law enforcement or other owner following crash, or failing to provide proof of insurance to DMV upon request
- G.S. 20-166.2: Failing, when a passenger in a vehicle involved in a crash, to remain at the scene, or provide information, or render assistance
- G.S. 20-167.1: Transporting spent nuclear fuel without notifying NCSHP in advance

(Note: The offenses in bold type are implied consent offenses that trigger a separate civil license revocation pursuant to G.S. 20-16.5. A judicial official may not enter a G.S. 20-13.3 revocation if the provisional licensee is subject to a G.S. 20-16.5 civil revocation for the same underlying conduct. The offense of misdemeanor death by vehicle is classified as an implied consent offense for offenses committed on or after December 1, 2011. See S.L. 2011-119.)

When is a provisional licensee's license subject to civil revocation?

A provisional licensee's permit or license is subject to revocation under G.S. 13-3 if: (1) a law enforcement officer has reasonable grounds to believe that the provisional licensee has committed a criminal moving violation, (2) the provisional licensee is charged with that offense, and (3) the provisional licensee is not subject to a civil revocation pursuant to G.S. 20-16.5 for the same underlying conduct.

What is the procedure for ordering the civil revocation of a provisional licensee's license?

If a provisional licensee's permit or license is subject to revocation under G.S. 20-13.3, the law enforcement officer must execute a revocation report (new AOC-CVR-12) and take the provisional licensee before a judicial official for an initial appearance. The law enforcement officer must expeditiously file the revocation report with the judicial official conducting the initial appearance.

If a properly executed revocation report concerning a provisional licensee is filed before a judicial official when that person is present before that official, the judicial official must, after completing any other proceedings involving the provisional licensee, determine whether there is probable cause to believe the conditions requiring civil license revocation are met. If the judicial official finds probable cause that the conditions in G.S. 20-13.3(b) are met, he or she must enter an order (new AOC-CVR-13) revoking the provisional licensee's permit or license.

What happens if a provisional licensee's permit or license also is subject to revocation under G.S. 20-16.5?

If the provisional licensee's permit or license also is subject to civil revocation under G.S. 20-16.5, then only the G.S. 20-16.5 revocation may be imposed. G.S. 20-13.3(b). For example, if a 17-year-old with a full provisional license is charged with driving after consuming alcohol or drugs in violation of G.S. 20-138.3 and the requirements for a G.S. 20-16.5 civil revocation are satisfied at the initial appearance, only the G.S. 20-16.5 revocation may be imposed.

What if a G.S. 20-16.5 civil license revocation is imposed after the initial appearance but while the provisional licensee civil revocation still is in effect?

When a defendant's blood is withdrawn for analysis in an implied consent case, the results of that analysis necessarily will be reported after the defendant's initial appearance. In such a case, the conditions for civil license revocation under G.S. 20-16.5 may not exist at the time of the initial appearance. If the defendant is under 18, and the other requirements for G.S. 20-13.3 revocation are satisfied, a provisional licensee civil revocation may issue.

A civil revocation subsequently ordered pursuant to G.S. 20-16.5 for the same underlying conduct terminates any earlier-issued G.S. 20-13.3 revocation. G.S. 20-13.3(f).

Suppose a provisional licensee whose license is revoked under G.S. 20-16.5 drives during the revocation period and is charged with a criminal moving violation that is not an implied consent offense. Is the person's license subject to civil revocation pursuant to G.S. 20-13.3(f)?

Yes. This driver is subject to the G.S. 20-13.3 civil license revocation since it is premised on different conduct than that giving rise to the earlier-imposed G.S. 20-16.5 civil license revocation. G.S. 20-13.3(f) provides that "[r]evocations under this section are independent of and run concurrently with any other revocations, except for a revocation pursuant to G.S. 20-16.5." The G.S. 20-16.5 exception to the concurrent rule reflects that both types of civil revocations may not be simultaneously imposed for a single occurrence. In the scenario described above, the G.S. 20-13.3 revocation is premised on different conduct than the G.S. 20-16.5 revocation; thus, it appears that the G.S. 20-13.3 revocation may run concurrently with the previously imposed G.S. 20-16.5 civil license revocation.

How long does the provisional licensee civil revocation last?

The period of revocation is 30 days. G.S. 20-13.3(d). Since the civil license revocation is a civil action, see G.S. 20-13.3(g), the civil counting rules of G.S. 1A-1, Rule 6(a) apply. Pursuant to Rule 6(a), the revocation ends at 12:01 a.m. on the thirtieth day after the revocation order is entered unless that date falls on a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions, in which case the revocation remains in effect until the next day that the courthouse is open for transactions.

Is a written revocation order required?

Yes. The judicial official must give the provisional licensee a copy of the revocation order (new AOC-CVR-13). G.S. 20-13.3(d). The order must state the date on which the provisional licensee's permit or license again becomes valid.

Is the provisional licensee required to surrender his or her license or permit?

No. The provisional licensee keeps his or her license or permit. G.S. 20-13.3(d). The provisional licensee is not, however, authorized to drive during the revocation period.

Must the court inform DMV of the revocation?

Yes. The clerk must notify DMV of the issuance of a provisional licensee civil revocation within two business days of the issuance of the revocation order. G.S. 20-13.3(e). The notice must specify the beginning and end date of the revocation period.

May a provisional licensee be awarded a limited driving privilege?

No. G.S. 20-13.3(f) provides that a person whose license is revoked pursuant to G.S. 20-13.3 is not eligible for a limited driving privilege.

Must the licensee pay a fee to end the civil revocation?

No. The person's permit or license becomes valid by operation of law at the conclusion of the revocation period. Payment of a fee is not required.

Are driver's license or insurance points assessed for such revocations?

No. G.S. 20-13.3(h) provides that no driver's license or insurance surcharge may be assessed for a G.S. 20-13.3 revocation.

May a provisional licensee appeal from the entry of a G.S. 20-13.3 civil revocation order?

No. No direct appeal from the entry of such an order is provided by statute.

What is the effective date of G.S. 20-13.3?

S.L. 2011-385 (S 636) enacted new G.S. 20-13.3, effective for offenses committed on or after October 1, 2011. The effective date was amended by H 335, ratified by the General Assembly on September 14,

2011 and presented to the governor on September 15, 2011. The bill, chaptered as S.L. 2011-412, became law without the governor's signature on October 15, 2011. S.L. 2011-412 made new G.S. 20-13.3 effective January 1, 2012 for offenses committed on or after that date.

To carry out the legislature's intent as reflected in H 335 and to avoid the confusion that would be caused by implementing the provisional licensee civil revocation as of October 1, 2011 and, shortly thereafter suspending it until January 1, 2012, the Administrative Office of the Courts elected not to implement S.L. 2011-385 on October 1, 2011, instead delaying its implementation until January 1, 2012.

G.S. 20-13.3: Civil License Revocations for Provisional Licensees
Some Questions and Answers
(For Offenses Committed On or After October 1, 2012)

Prepared by Shea Denning, UNC School of Government
July 25, 2012

With acknowledgements to Matt Osborne, Associate Legal Counsel for the Administrative Office of the Courts, who prepared the list of covered offenses and whose insights as to other aspects of the law are reflected herein

G.S. 20-13.3 provides for the immediate civil revocation of the permit or license of a provisional licensee charged with a misdemeanor or felony motor vehicle offense that is defined as a criminal moving violation. The provisions of G.S. 20-13.3 were amended by S.L. 2012-168, effective for offenses committed on or after October 1, 2012. Set forth below in a question and answer format is information about the amended provisions of G.S. 20-13.3 effective for offenses committed on or after October 1, 2012. The provisions of G.S. 20-13.3 applicable to offenses committed January 1, 2012 through September 30, 2012 are described in a paper available at the following link: http://bit.ly/LO3z2K.

Which drivers may be subjected to civil license revocation under G.S. 20-13.3?

G.S. 20-13.3 applies to drivers who are 16 or 17 years old who have a limited learner's permit or a provisional license issued by NC DMV pursuant to G.S. 20-11. These drivers are defined as "provisional licensee[s]." G.S. 20-13.3(a)(4). Persons who are 15 years old who have a limited learner's permit issued by NC DMV also are considered provisional licensees. However, because license revocation under G.S. 20-13.3 before the 2012 amendments required that the person be arrested and brought before a magistrate for an initial appearance, it was clear that 15-year-olds (who may not be arrested nor subjected to an initial appearance) were not subject to G.S. 20-13.3. (In North Carolina all 16- and 17-year-olds, although considered juveniles for some purposes, are treated as adults when they commit crimes or infractions, including violations of the motor vehicle laws.)

S.L. 2012-168 amends G.S. 20-13.3 to permit issuance of a revocation order without an arrest and initial appearance. Nevertheless, it appears that 15-year-old provisional licensees continue to be ineligible for license revocation under G.S. 20-13.3. One of the triggering conditions for a G.S. 20-13.3 revocation is that the provisional licensee be "charged with" a criminal moving violation. A juvenile may not be arrested, nor may criminal process issue, for a covered offense. Instead, the pleading in a juvenile action is a petition drawn by the juvenile court counselor or clerk, or, in emergency situations, by the magistrate. Moreover, a petition alleges delinquency based on the juvenile's commission of a crime or infraction, rather than charging the juvenile criminally with the underlying crime or infraction.

Because some criminal moving violations are felonies, it bears mention that the district court may transfer jurisdiction over a juvenile to superior court if the juvenile was 13, 14, or 15 years of age at the time the juvenile committed an offense that would be a felony if committed by an adult. *See* G.S. 7B-2200. Upon such a transfer, the superior court acquires jurisdiction over the felony offense (and any related misdemeanors), see G.S. 7B-2203(c), and the case is tried as in the case of an adult, see G.S. 7B-2204.

It does not appear, however, that the General Assembly intended for a G.S. 20-13.3 revocation to issue when a juvenile provisional licensee is charged with a felony criminal moving violation that is transferred to superior court. The transfer to superior court necessarily will occur some days, and likely weeks, after commission of the criminal moving violation. The law enforcement officer with reasonable grounds to believe the juvenile committed a criminal moving violation will not be directly involved in the issuance of criminal process against the juvenile in such a circumstance, depriving the officer of any ready opportunity to advise the juvenile of the impending revocation or to "expeditiously" file a revocation report as required by G.S. 20-13.3(c).

Moreover, the likely impetus for the legislative amendments permitting issuance of a revocation without an arrest and initial appearance is unrelated to the exclusion of juveniles from the statutory provisions. The amendments apparently were enacted to eliminate the requirement that provisional licensees charged with minor traffic violations be arrested in order to trigger issuance of a civil license revocation.

Finally, it bears noting that the Juvenile Code, Chapter 7B of the North Carolina General Statutes, already addresses juveniles' driving privileges to some extent. Once a juvenile has been adjudicated delinquent, for any offense, the court may order that the juvenile not be licensed to operate a motor vehicle for as long as the juvenile court has jurisdiction or for a shorter time. The clerk is required to notify NC DMV of any such order. *See* G.S. 7B-2506(9).

Had the General Assembly intended to subject juveniles to civil license revocation, it presumably would have amended the provisions of G.S. 20-13.3 to comport with the juvenile delinquency procedures in Chapter 7B, amended the Juvenile Code to deal with revocations, or both.

Which offenses trigger this license revocation?

The revocation is triggered by commission of a criminal moving violation, defined as a violation of Part 9 or 10 of Article 3 of Chapter 20 that is punishable as a misdemeanor or felony offense. G.S. 20-13.3(a)(2). Offenses listed in G.S. 20-16(c) for which no points are assessed are not included. Equipment violations codified in Part 9 of Article 3 of Chapter 20 likewise are not included.

The following offenses are criminal moving violations:

- G.S. 20-137.4: Operating a school bus while using a mobile phone
- G.S. 20-137.4A: Operating a school bus while using a mobile phone to text or access electronic email
- **G.S. 20-138.1: Driving while impaired**
- **G.S. 20-138.2: Driving while impaired in a commercial vehicle**
- **G.S. 20-138.2A: Operating a commercial vehicle after consuming**
- **G.S. 20-138.2B: Operating a school bus, school activity bus, or child care vehicle after consuming alcohol**
- **G.S. 20-138.3: Operating a motor vehicle by person less than 21 after consuming alcohol or drugs**
- **G.S. 20-138.5: Habitual impaired driving**
- **G.S. 20-138.7(a): Operating a motor vehicle while there is an open container of alcohol in the passenger area and while the driver is consuming or has consumed alcohol**

- G.S. 20-140: Reckless driving
- G.S. 20-141(j1): Speeding more than 15 mph over limit or more than 80 mph
- G.S. 20-141(j3): Speeding in a commercial motor vehicle carrying a load that is subject to the permitting requirements of G.S. 20-119 and (i) driving 15 mph or more over the posted speed, or (ii) driving 15 mph or more over the permit speed
- G.S. 20-141.3: Operating a motor vehicle willfully in a prearranged speed competition, or operating a motor vehicle willfully in speed competition, or allowing one's vehicle to be operated in a prearranged speed competition, or wagering on a prearranged speed competition
- **G.S. 20-141.4: Felony death by vehicle, misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony serious injury by vehicle, aggravated felony death by vehicle, repeat felony death by vehicle**
- G.S. 20-141.5: Speeding to elude arrest
- G.S. 20-141.6: Aggressive driving
- G.S. 20-149(b): Improper operation by an overtaken driver causing a collision resulting in serious bodily injury, bodily injury, or property damage
- G.S. 20-157(a), (h), (i): Failing to move over for law enforcement or emergency vehicle giving warning signal, or violating G.S. 20-157 and causing damage to property or injury, or violating G.S. 20-157 and causing serious injury or death
- G.S. 20-166(a), (a1), (b), (c), (c1): Failing to stop and remain after a crash resulting in serious bodily injury or death, or failing to stop and remain after a crash resulting in injury, or failing to provide information or render assistance following a crash, or failing to stop and remain after a crash resulting in damage to property or non-apparent injury
- G.S. 20-166.1: Failing to notify law enforcement or other owner following crash, or failing to provide proof of insurance to DMV upon request
- G.S. 20-166.2: Failing, when a passenger in a vehicle involved in a crash, to remain at the scene, or provide information, or render assistance
- G.S. 20-167.1: Transporting spent nuclear fuel without notifying NCSHP in advance

(Note: The offenses in bold type are implied consent offenses that trigger a separate civil license revocation pursuant to G.S. 20-16.5. A judicial official may not enter a G.S. 20-13.3 revocation if the provisional licensee is subject to a G.S. 20-16.5 civil revocation for the same underlying conduct.)

When is a provisional licensee's license subject to civil revocation?

A provisional licensee's permit or license is subject to revocation under G.S. 13-3 if: (1) a law enforcement officer has reasonable grounds to believe that the provisional licensee has committed a criminal moving violation, (2) the provisional licensee is charged with that offense, and (3) the provisional licensee is not subject to a civil revocation pursuant to G.S. 20-16.5 for the same underlying conduct.

What is the procedure for ordering the civil revocation of a provisional licensee's license?

If a provisional licensee's permit or license is subject to revocation under G.S. 20-13.3, the law enforcement officer must execute a revocation report (AOC-CVR-12) and must ensure that the report is expeditiously filed with the appropriate judicial official.

Initial appearance

If an initial appearance is required on the underlying criminal moving violation, (which is the case if the provisional licensee is arrested for the offense), the law enforcement officer must file the revocation report (AOC-CVR-12) with the judicial official conducting the initial appearance (typically, a magistrate). If a properly executed revocation report concerning a provisional licensee is filed before a judicial official when the person is present before the official, the judicial official must, after completing any other proceedings involving the provisional licensee, determine whether there is probable cause to believe the conditions requiring civil license revocation are met. If the judicial official finds probable cause that the conditions in G.S. 20-13.3(b) are met, he or she must enter an order (AOC-CVR-13) revoking the provisional licensee's permit or license.

In addition to setting it out in the order, the judicial official must personally inform the provisional licensee of the right to a hearing pursuant to new G.S. 20-13.3(d2) to contest the validity of the revocation and that the provisional licensee's permit or license remains revoked pending the hearing.

The provisional licensee is not required to physically surrender his or her permit or license, though he or she is not authorized to drive at any time or for any purpose during the period of revocation.

No initial appearance

If no initial appearance is required on the underlying criminal moving violation at the time the person is charged (which is the case if the law enforcement officer issues a citation charging the defendant with a misdemeanor criminal moving violation but does not arrest the defendant), the law enforcement officer must tell the provisional licensee that his or her permit or license is subject to revocation pursuant to G.S. 20-13.3 and must provide the provisional licensee with a written form containing notice of the process for revocation and hearing under G.S. 20-13.3. (The Administrative Office of the Courts will develop a form providing the required notice.)

When no initial appearance is required, the revocation report must be filed with the clerk of superior court in the county in which the underlying criminal charge is brought. When the clerk receives a properly executed revocation report and the provisional licensee named in the report is not present before the clerk, the clerk must determine whether there is probable cause to believe that (1) the law enforcement officer had reasonable grounds to believe the provisional licensee committed a criminal moving violation; (2) the provisional licensee is charged with that offense; and (3) the provisional licensee is not subject to a civil revocation pursuant to G.S. 20-16.5.

If the clerk determines there is such probable cause, the clerk must issue a revocation order and send it to the provisional licensee by first-class mail. The order must inform the provisional licensee that: (1) the period of revocation is for 30 days; (2) the revocation becomes effective on the fourth day after the order is deposited in the U.S. mail and continues for 30 additional calendar days; (3) the provisional licensee may request a hearing to contest the validity of the revocation pursuant to G.S. 20-13.3(d2); and (4) the revocation remains in effect pending the hearing. (The Administrative Office of the Courts will create a form for revocation orders entered by the clerk pursuant to G.S. 20-13.3(d1).)

The provisional licensee is not required to physically surrender his or her permit or license, though he or she is not authorized to drive at any time or for any purpose during the period of revocation.

What happens if a provisional licensee's permit or license also is subject to revocation under G.S. 20-16.5?

If the provisional licensee's permit or license also is subject to civil revocation under G.S. 20-16.5, then only the G.S. 20-16.5 revocation may be imposed. G.S. 20-13.3(b). For example, if a 17-year-old with a full provisional license is charged with driving after consuming alcohol or drugs in violation of G.S. 20-138.3 and the requirements for a G.S. 20-16.5 civil revocation are satisfied at the initial appearance, only the G.S. 20-16.5 revocation may be imposed.

What if a G.S. 20-16.5 civil license revocation is imposed after the initial appearance but while the provisional licensee civil revocation still is in effect?

When a defendant's blood is withdrawn for analysis in an implied consent case, the results of that analysis necessarily will be reported after the defendant's initial appearance. In such a case, the conditions for civil license revocation under G.S. 20-16.5 may not exist at the time of the initial appearance. If the defendant is under 18, and the other requirements for G.S. 20-13.3 revocation are satisfied, a provisional licensee civil revocation may issue.

A civil revocation subsequently ordered pursuant to G.S. 20-16.5 for the same underlying conduct terminates any earlier-issued G.S. 20-13.3 revocation. G.S. 20-13.3(f).

Suppose a provisional licensee whose license is revoked under G.S. 20-16.5 drives during the revocation period and is charged with a criminal moving violation that is not an implied consent offense. Is the person's license subject to civil revocation pursuant to G.S. 20-13.3(f)?

Yes. This driver is subject to the G.S. 20-13.3 civil license revocation since it is premised on different conduct than that giving rise to the earlier-imposed G.S. 20-16.5 civil license revocation. G.S. 20-13.3(f) provides that "[r]evocations under this section are independent of and run concurrently with any other revocations, except for a revocation pursuant to G.S. 20-16.5." The G.S. 20-16.5 exception to the concurrent rule reflects that both types of civil revocations may not be simultaneously imposed for a single occurrence. In the scenario described above, the G.S. 20-13.3 revocation is premised on different conduct than the G.S. 20-16.5 revocation; thus, it appears that the G.S. 20-13.3 revocation may run concurrently with the previously imposed G.S. 20-16.5 civil license revocation.

How long does the provisional licensee civil revocation last?

The period of revocation is 30 days. G.S. 20-13.3(d).

Revocation orders entered by the clerk when the provisional licensee is not present become effective on the fourth day after the order is deposited in the U.S. mail and continue for 30 additional calendar days. G.S. 20-13.3(d1).

Since the civil license revocation is a civil action, see G.S. 20-13.3(g), the civil counting rules of G.S. 1A-1, Rule 6(a) apply. Pursuant to Rule 6(a), the revocation ends at 12:01 a.m. on the thirtieth day after the revocation order is entered unless that date falls on a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions, in which case the revocation remains in effect until the next day that the courthouse is open for transactions.

Is a written revocation order required?

Yes. The judicial official must give the provisional licensee a copy of the revocation order (AOC-CVR-13). G.S. 20-13.3(d). The order must state the date on which the provisional licensee's permit or license again becomes valid and must inform the provisional licensee of the right to a hearing to contest the validity of the revocation pursuant to G.S. 20-13.3(d2). (The Administrative Office of the Courts will amend the current revocation order form (AOC-CVR-13) to provide notice of the right to a hearing and will develop a new revocation order form for use by clerks issuing revocations pursuant to G.S. 20-13.3(d1), which also will notify the provisional licensee of the right to a hearing to contest the validity of the revocation.)

Is the provisional licensee required to surrender his or her license or permit?

No. The provisional licensee keeps his or her license or permit. G.S. 20-13.3(d), (h). The provisional licensee is not, however, authorized to drive during the revocation period.

Must the court inform DMV of the revocation?

Yes. The clerk must notify DMV of the issuance of a provisional licensee civil revocation within two business days of the issuance of the revocation order. G.S. 20-13.3(e). The notice must specify the beginning and end date of the revocation period.

May a provisional licensee be awarded a limited driving privilege?

No. G.S. 20-13.3(f) provides that a person whose license is revoked pursuant to G.S. 20-13.3 is not eligible for a limited driving privilege.

Must the licensee pay a fee to end the civil revocation?

No. The person's permit or license becomes valid by operation of law at the conclusion of the revocation period. Payment of a fee is not required.

Are driver's license or insurance points assessed for such revocations?

No. G.S. 20-13.3(h) provides that no driver's license or insurance surcharge may be assessed for a G.S. 20-13.3 revocation.

May a provisional licensee appeal from the entry of a G.S. 20-13.3 civil revocation order?

A provisional licensee may request in writing a hearing to contest the validity of a G.S. 20-13.3 revocation. G.S. 20-13.3(d2).The request may be made at the time of the person's initial appearance or within ten days of the effective date of the revocation. The written request may be made to the clerk or to a magistrate designated by the clerk and may specifically request that the hearing be conducted by a district court judge.

Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district court judge to conduct such hearings. If the provisional licensee requests that a district court judge hold the hearing, the hearing must be conducted within the district court district by a district court judge assigned to conduct such hearings.

The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within ten working days if the hearing is before a district court judge. If the hearing is not held and completed in three working days of the written request (in the case of a hearing before a magistrate) or ten working days of the written request (in the case of a hearing before a district court judge), the judicial official must enter an order rescinding the revocation unless the provisional licensee who requested the hearing contributed to the delay in completing the hearing.

The request for the hearing must specify the grounds on which the validity of the revocation is challenged and the hearing must be limited to the specified grounds.

A witness may submit evidence via affidavit unless subpoenaed to appear. Any person who appears and testifies may be questioned by the judicial official conducting the hearing. The judicial official may adjourn the hearing to seek additional evidence if he or she is not satisfied with the accuracy or completeness of the evidence. The provisional licensee may, but is not required to, testify on his or her own behalf.

Unless contested by the provisional licensee, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under G.S. 20-13.3(b) is contested ((1) law enforcement officer had reasonable grounds to believe provisional licensee committed a criminal moving violation, (2) provisional licensee is charged with that offense, and (3) provisional licensee is not subject to a civil revocation pursuant to G.S. 20-16.5), the judicial official must find by the greater weight of the evidence that the condition was met to sustain the revocation. At the conclusion of the hearing, the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the provisional licensee and any other party as to any other proceedings that involve facts bearing on the conditions in G.S. 20-13.3(b) considered by the judicial official. The decision of the judicial official is final and may not be further appealed.

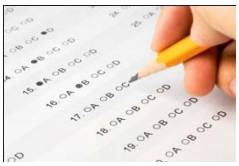
If the provisional licensee requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he or she forfeits the right to a hearing.

G.S. 20-13.3(d2) requires the Administrative Office of the Courts to develop a hearing request form for any provisional licensee requesting a hearing. The AOC also will develop a form order for entry of the judicial official's determination regarding the validity of the revocation.

Tab:
Implied Consent Procedures

IMPLIED CONSENT PROCEDURES (AUGUST, 2012)

Impaired Driving: Test Yourself



1. Donna Driver was charged with impaired driving on September 2, 2007, and her license was civilly revoked. Donna was convicted of impaired driving on March 1, 2008. Donna completed a substance abuse assessment and ADET school. She did not, however, pay the $100 fee required to end the civil license revocation. Donna is again charged with impaired driving on March 26, 2010, based upon driving that occurred on that date. Donna was driving a car registered to Edwin Elms. The charging officer has presented to you an AOC-CR-323, an affidavit for seizure and impoundment of the vehicle Donna was driving when she was stopped on March 26, 2010. Do you order seizure and impoundment of the vehicle?

    a. Yes

    b. No

2. Sam Speedy was convicted of impaired driving on December 15, 2009. His license was revoked upon conviction. Sam, who is 19, was charged on March 26, 2010 with driving while license revoked and driving by a person under 21 after consuming alcohol, in violation of G.S. 20-28 and G.S. 20-138.3. At his initial appearance the law enforcement officer presents an affidavit for seizure and impoundment of the car Sam was driving on March 26, 2010. Do you order seizure and impoundment of the vehicle?

    a. Yes

    b. No

3. Which official may sign the "Release from Detention Order" section of AOC-CR-270, thereby releasing a person from an impaired driving hold?

    a. Jailer

    b. Magistrate

    c. Probation officer

    d. Defendant's attorney

4. To save time and paperwork, it is acceptable to impose a detention of an impaired driver on the Conditions of Release form, AOC-CR-200, instead of on the Detention of Impaired Driver form, AOC-CR-270.

    a. Yes

    b. No

5. A law enforcement officer may request that a person submit to chemical analysis of his or her blood after the person has already submitted to a chemical analysis of his or her breath.

    a. True

    b. False

6. Helen Heart is charged with impaired driving under G.S. 20-138.1 as well as driving by a person less than 21 years old after consuming under G.S. 20-138.3. Both charges arise from the same incident of driving. Helen submitted to a breath test that revealed an alcohol concentration of .08. Assuming that other statutory factors are met, should the magistrate order two civil license revocations?

    a. **Yes**, the magistrate should issue two civil license revocations. Both of these offenses are implied consent offenses that, along with other statutory factors, require civil license revocation

    b. **No,** only one civil license revocation should issue. When more than one offense requiring civil license revocation results from a single transaction, a magistrate should order only one civil license revocation.

7. A magistrate orders civil revocation of James Johnson's driver's license. James is licensed in California. Should the magistrate order James to surrender his California driver's license?

    a. **Yes.** The magistrate should order James to surrender his California driver's license. Licenses issued by jurisdictions other than North Carolina are covered by the surrender provisions and must, like North Carolina driver's licenses, be surrendered to the magistrate.

    b. **No**. A magistrate may only order surrender of a North Carolina driver's license

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What's *Knoll* Got to Do with It? Procedures in Implied Consent Cases to Prevent Dismissals Under *Knoll*

Shea Riggsbee Denning

Introduction

In addition to enacting the pretrial motions and appeals procedures for implied consent cases recently upheld by the North Carolina Court of Appeals in *State v. Fowler*[1] and *State v. Palmer*,[2] the Motor Vehicle Driver Protection Act of 2006, S.L. 2006-53, created statutory provisions designed to, in the words of the task force recommending the changes, "avoid a dismissal under *Knoll*."[3] The *Knoll* reference is to the North Carolina Supreme Court's opinion in *State v. Knoll*[4] ordering that charges of impaired driving against defendants in three separate cases be dismissed. The court had found in each case that the magistrate committed substantial statutory violations related to the setting of conditions of pretrial release that prejudiced the defendant's ability to gain access to witnesses. Though *Knoll* is most widely recognized for its outcome—the dismissal of charges in three impaired driving cases—the *Knoll* court's holding actually *increased* the showing required from certain defendants to warrant dismissal of impaired driving charges. Before *Knoll*, to obtain dismissal of the charges a defendant charged with impaired driving had only to demonstrate that he or she was denied access to witnesses during the time in which such witnesses might provide testimony as to his or her lack of intoxication; prejudice from such a denial was presumed. *Knoll* requires that to establish a basis for dismissal of charges a defendant charged with impaired driving based upon driving with an alcohol concentration that equals or exceeds the per se limit in Section 20-138.1(a)(2) of the North Carolina General Statutes (hereinafter G.S.) must not only demonstrate a substantial statutory violation of the defendant's right to pretrial release, but also prove that he or she was prejudiced by the violation.

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1. ___ N.C. App. ___, 676 S.E.2d 523 (2009).
2. ___ N.C. App. ___, 676 S.E.2d 559 (2009).
3. Governor's Task Force on Driving While Impaired, *Final Report to Governor Michael F. Easley* (January 14, 2005) (hereinafter Task Force Report), 22.
4. 322 N.C. 535, 369 S.E.2d 558 (1988).

Among the implied consent–offense procedures enacted in 2006 to prevent dismissals based on *Knoll* is G.S. 20-38.4, which governs initial appearances in implied consent cases. This statute requires, among other things, that a magistrate who finds probable cause for an offense involving impaired driving consider whether the defendant is "impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed."[5] G.S. 15A-534.2, enacted by the Safe Roads Act of 1983, provides that if a magistrate "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" (1) the defendant is no longer impaired to the extent that the defendant poses a danger or (2) a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant is no longer impaired.[6] G.S. 20-38.4 also requires a magistrate conducting an initial appearance for an implied consent offense[7] to "[i]nform 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."[8] Magistrates must also "[r]equire 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."[9]

Because of the adoption of implied consent–offense procedures in 2006 and their relationship to *Knoll* motions, the twenty-year-old *Knoll* case and its progeny (which are seldom mentioned) deserve examination to determine (1) under what circumstances dismissal of impaired driving charges is warranted based upon the denial to a detained defendant of access to family and friends and (2) how the implied consent–offense procedures may impact such motions.

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5. N. C. Gen. Stat. (hereinafter G.S.) § 20-38.4(a)(3).
6. G.S. 15A-534.2(b), (c).
7. The following are implied consent offenses:
   - Impaired driving (G.S. 20-138.1)
   - Driving after consuming alcohol or drugs by a person under 21 (G.S. 20-138.3)
   - Violating no-alcohol condition of limited privilege (G.S. 20-179.3)
   - Impaired instruction (G.S. 20-12.1)
   - Impaired driving in commercial vehicle (G.S. 20-138.2)
   - Operating commercial vehicle after drinking (G.S. 20-138.2A)
   - Operating school bus, school activity bus, or child care vehicle after drinking (G.S. 20-138.2B)
   - Habitual impaired driving (G.S. 20-138.5)
   - Open container (G.S. 20-138.7)
   - Driving in violation of restriction requiring ignition interlock (G.S. 20-17.8(f))
   - Felony death by vehicle or felony serious injury by vehicle (G.S. 20-141.4)
   - First- or second-degree murder or involuntary manslaughter if the offense involved impaired driving (G.S. 14-17; G.S. 14-18)

   G.S. 20-16.2(a1). While first-degree murder is statutorily defined as an implied consent offense, the state supreme court in *State v. Jones*, 53 N.C. 159, 538 S.E.2d 917 (2000), reversed the defendant's first-degree murder convictions, which were based upon deaths resulting from the defendant's commission of the felony offense of assault with a deadly weapon with intent to inflict serious injury. The court held that because the intent required to prove the felony assault was not actual intent but instead was implied from defendant's culpable negligence in driving while impaired, the felony assault could not serve as the underlying felony for felony murder under G.S. 14-17.
8. G.S. 20-38.4(a)(4)a.
9. G.S. 20-38.4(a)(4)b.

Denial of Access to Family and Friends in Implied Consent Cases

To understand *Knoll*, one must first consider *State v. Hill*,[10] which established a defendant's right to the extraordinary remedy of dismissal based upon the denial of access to witnesses.

State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971)

The North Carolina Supreme Court held in *Hill* that the defendant's Sixth Amendment right to obtain witnesses on his behalf was violated when his brother-in-law, who also was his attorney, was not allowed to see him after his arrest. The jailer holding Hill refused to release him after his brother-in-law posted bond and further refused to allow the brother-in-law to see Hill. From the time Hill was arrested at 11 p.m. until 7 a.m. the next morning, only law enforcement officers saw or had access to him.

The *Hill* court recognized that for offenses "of which intoxication is an essential element," the denial of immediate access to witnesses may deprive "a defendant of his only opportunity to obtain evidence which might prove his innocence."[11] Because the guilt or innocence of a defendant charged with impaired driving "depends upon whether he was intoxicated at the time of his arrest," such a defendant "must have access to his counsel, friends, relatives, or some disinterested person within a relatively short time after his arrest" in order to have "witnesses for his defense."[12] The court held that in Hill's case "the right . . . to communicate with counsel and friends implies, at the very least, the right to have them see him, observe and examine him, with reference to his alleged intoxication."[13]

The court concluded, therefore, that Hill was denied his constitutional and statutory right to communicate with counsel and friends at a time when the denial deprived him of any opportunity to confront the State's witnesses with other testimony.[14] The court held that "[u]nder these circumstances, to say that the denial was not prejudicial is to assume that which is incapable of proof."[15]

The General Assembly codified the holding in *Hill* by enacting G.S. 15A-954(a)(4), which requires that a court dismiss criminal charges upon determining that "[t]he defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution."[16] The Official Commentary notes the assumption "that the drastic relief called for under this motion would be granted most sparingly."[17]

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10. 277 N.C. 547, 178 S.E.2d 462 (1971).

11. *Id.* at 555, 178 S.E.2d at 467.

12. *Id.* at 553, 178 S.E.2d at 466.

13. *Id.*

14. Hill moved for dismissal before the superior court on the basis that he was denied counsel at a critical stage of the proceedings, but the supreme court based its ruling on the defendant's right to communicate with counsel and friends generally, noting that these rights were "not limited to receiving professional advice from his attorney." *Id.* at 552, 178 S.E.2d at 465.

15. State v. Hill, 277 N.C. 547, 554, 178 S.E.2d 462, 466 (1971).

16. *See* Official Commentary to G.S. 15A-954. Despite the statement in the official commentary that subdivision (a)(4) is "intended to embody the holding" in *Hill*, the provision adds the requirement that "irreparable prejudice" result from the violation.

17. *Id.*

State v. Knoll, 322 N.C. 535, 369 S.E.2d 558 (1988)

Three impaired driving cases were consolidated for hearing in *Knoll*. In each case, the defendant was charged with impaired driving in Wake County, North Carolina, and made a pretrial motion to dismiss the charge based upon a violation of statutory and constitutional rights.

Defendant Knoll

David Knoll was stopped at 1:15 p.m. and charged with driving while impaired. He submitted to a chemical analysis of his breath at 2:31 p.m., which revealed a breath alcohol concentration of 0.30. Knoll then appeared before a magistrate, who set bond at $300 without inquiring into any of the factors relevant to conditions of pretrial release. Between 4 p.m. and 5 p.m., Knoll made several requests to call his father. He was allowed to call him at about 5 p.m. After speaking to Knoll, Knoll's father spoke to the magistrate, telling him that he wanted to come right away to get his son. The magistrate told Knoll's father that Knoll could not be released until 11 p.m. As a result, Knoll's father waited until 11 p.m. to go to the jail to post bond. Knoll's father stated that when he talked with his son on the phone, his son was oriented and coherent and not noticeably impaired in either his manner of speech or in the substance of what he said.

Defendant Warren

The second defendant, Samson Warren Jr., was stopped at 10:11 p.m. and charged with driving while impaired. Warren submitted to a chemical analysis of his breath at 11:08 p.m., which revealed a breath alcohol concentration of 0.25. Warren then appeared before a magistrate, who set a $500 secured bond. The magistrate did not inform Warren of his right to communicate with counsel and friends. Two adult friends of Warren attempted to secure his release. The first, Donald Martin, arrived at the magistrate's office between 11 p.m. and 11:30 p.m., while Warren was in the breath-testing room. Martin spoke with Warren and observed his condition. Martin had $300 in cash and was willing to assume responsibility for Warren, but the magistrate told Martin that Warren would have to go to jail until 6 a.m. in order to sober up.

John Lewis went to the courthouse between 1 a.m. and 1:30 a.m. following Warren's arrest. The magistrate informed Lewis, who had $200 in cash with him, that Warren could not be released until 6 a.m. After being so advised, Lewis did not request to see Warren. Warren was released from the Wake County Jail at 8 a.m. when Martin posted bond for him.

Defendant Hicks

The third defendant, Bennie Hicks, was arrested for driving while impaired at 12:45 a.m. He submitted to a chemical analysis of his breath, which revealed a breath alcohol concentration of 0.18. Hicks appeared before a magistrate, who set a $200 bond without informing Hicks of his right to communicate with counsel and friends and without asking questions about matters relevant to conditions of release. Hicks had $2,200 in cash but was not allowed to post his own bond. At 1:30 a.m., Hicks called his wife at their home, which was about thirty minutes away from the Wake County courthouse. Hicks's wife did not have a vehicle at the time and could not come to the courthouse to pick him up. Hicks was released from jail at 6 a.m.

Knoll court's analysis

The court began its analysis in *Knoll* by reviewing "the general obligations of the magistrate" in impaired driving cases.[18] Curiously, however, this exposition failed to mention provisions of G.S. 15A-534.2 requiring in certain circumstances that a defendant charged with an offense

18. State v. Knoll, 322 N.C. 535, 536, 369 S.E.2d 558, 559 (1988).

involving impaired driving be detained. Though the court later acknowledged a magistrate's authority to "refuse to release one who is intoxicated to such a degree that he would be endangered by being released without supervision,"[19] this was a reference to G.S. 15A-534(c), which governs the setting of conditions of pretrial release generally and permits a magistrate to consider, among other factors, "whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision," rather than the more specific requirements of G.S. 15A-534.2.

The court found that Knoll and Warren were unlawfully detained because they could have been released into the custody of "appropriate people who were seeking their release."[20] As for Hicks, the court concluded that though his "wife was temporarily unavailable to pick him up, he could have, by the use of a taxi, been in the presence of his wife within a short period of time."[21] The high court agreed with the superior court's determination that the magistrate failed to comply with statutory provisions governing the setting of conditions of pretrial release, and that, but for these statutory deprivations, each defendant could have had access to friends and family.

The court of appeals in *State v. Knoll* [22] had distinguished *Hill*, concluding that the creation of a per se impaired driving offense meant that denial of access was "no longer inherently prejudicial to a defendant's ability to gather evidence in support of his innocence in every driving while impaired case."[23] The appellate court opined that "[p]rejudice may or may not occur since a chemical analysis result of 0.10 or more is sufficient, on its face, to convict."[24] Prejudice might result from "a denial of access or unwarranted detention," explained the court of appeals, if the "defendant was not advised of his right to a second chemical test . . . or where his right to secure a second test was denied."[25] The court of appeals explained that "[p]rejudice might also occur . . . if pertinent evidence relating to contested elements of the offense, such as whether the defendant was in fact driving, became unavailable as a result of the denial of access."[26] The court of appeals found nothing in the record to support the trial court's finding that the statutory deprivations caused Knoll to lose significant evidence or testimony helpful to his defense, noting that the result of the chemical analysis alone was sufficient to convict Knoll.

Though the state supreme court adopted the rule articulated by the court of appeals that a defendant charged with a per se violation of the impaired driving statute must demonstrate prejudice resulting from a substantial statutory violation,[27] the supreme court, unlike the court of appeals, found that each defendant made a sufficient showing that "lost evidence or testimony would have been helpful to his defense, that the evidence would have been significant, and that the evidence or testimony was lost" because of the statutory violations.[28] The court based this determination on each defendant's confinement "during the crucial period" in which friends and family could have observed him to "form opinions as to his condition following arrest."[29] The court explained that "[t]his opportunity to gather evidence and to prepare a case in his own

19. *Id.* at 542, 369 S.E.2d at 563 (internal citations omitted).
20. *Id.*
21. *Id.*
22. 84 N.C. App. 228, 233, 352 S.E.2d 463, 466 (1987), *rev'd*, 322 N.C. 535, 369 S.E.2d 558 (1988). Only Craig Raymond Knoll's case was before the court of appeals.
23. *Knoll,* 84 N.C. App. at 233, 352 S.E.2d at 466.
24. *Id.* at 234, 352 S.E.2d at 466.
25. *Id.* at 233, 352 S.E.2d at 466.
26. *Id.* at 233–34, 352 S.E.2d at 466.
27. State v. Knoll, 322 N.C. 535, 545, 369 S.E.2d 558, 564 (1988).
28. *Id.* at 547, 369 S.E.2d at 565 (internal citations omitted).
29. *Id.*

defense was lost to each defendant as a direct result of a lack of information during processing as to numerous important rights and because of the commitment to jail."[30] The court found that "[t]he lost opportunities, in all three cases, to secure independent proof of sobriety, and the lost chance, in one case, to secure a second test for blood alcohol content" constituted prejudice to the defendants.[31]

The court's reliance upon "lost opportunities" and "a lost chance" as establishing prejudice raises questions regarding whether the prejudice requirement as applied in *Knoll* requires any showing additional to that presumed prejudicial in *Hill*. Knoll, like Hill, was denied access to a witness who sought his release. One might interpret *Knoll* as adhering to the proposition that denial of sought-after access during the "crucial period" is always prejudicial. But if denial of access is presumptively prejudicial, then the rule announced in *Knoll* did not, in fact, depart from *Hill*. And while the basis for the finding of prejudice in Knoll's case is not clearly specified, it is even more difficult to ascertain in Warren's and Hicks's cases.

Shortly after he submitted to the chemical analysis, Warren spoke in person to Martin, one of the people who attempted to secure his release. Thus Warren did not suffer a complete denial of access to witnesses. One might argue that his ability to communicate with a friend so soon after his arrest eliminated any prejudice resulting from his unlawful detention.

In Hicks's case, the finding of prejudice is difficult to reconcile with a magistrate's statutory obligation to hold certain impaired drivers. While the court held that Hicks should have been released to take a taxi home to his wife, G.S. 15A-534.2 makes clear that a defendant who is detained pursuant its provisions may only be released to the custody of a sober, responsible adult who appears before the judicial official ordering the release. And while Hicks attempted to procure his release by posting bond, there is no evidence that he requested to see anyone while confined or that anyone requested to see him.

Perhaps the court based its determination in part on the fact that neither Warren nor Hicks were informed by the magistrate that they had the right to access counsel and friends; yet, again, any determination that such a statutory violation is presumptively prejudicial does not comport with the standard articulated by the court requiring that the defendant demonstrate prejudice.

These curious aspects of the court's holding may explain why *Knoll*, which purported to increase the showing required to obtain dismissal of charges, is widely perceived as the seminal case entitling defendants charged with impaired driving to the dismissal of charges.

Right to dismissal based upon a constitutional, versus statutory, claim

Though the *Knoll* defendants argued that dismissal was warranted on the basis of a violation of constitutional as well as statutory rights, the court did not rule on the defendants' constitutional claims. In *State v. Gilbert*,[32] the court of appeals distinguished statutory violations resulting from a magistrate's failure to comply with statutory procedures governing the setting of conditions of pretrial release from constitutional violations. The *Gilbert* court found a magistrate's refusal to set conditions of release and the ensuing five-hour detention of a defendant to constitute statutory,

30. *Id.*

31. *Id.*

32. 85 N.C. App. 594, 355 S.E.2d 261 (1987). *Gilbert* was decided after the decision of the court of appeals in *State v. Knoll*, see 84 N.C. App. 228, 352 S.E.2d 463 (1987), but before the supreme court's ruling reversing the court of appeals, see 322 N.C. 535, 369 S.E.2d 558 (1988). *Gilbert* is still good law, however, as it relied upon the determination of the court of appeals in *Knoll* that the presumptive prejudice rule of *Hill* did not govern in statutory per se cases—a rule adopted by the supreme court.

but not constitutional, violations.[33] The court explained that Gilbert, who saw his brother shortly after he was administered a breath test, did not request and was not denied access to anyone. For this reason, the court determined that Gilbert failed to establish a constitutional violation. *Gilbert* further explained that a defendant seeking dismissal of per se impaired driving charges based upon a violation of the constitutional right to access witnesses must, like a defendant seeking dismissal for a statutory violation, demonstrate irreparable prejudice resulting from the violation.[34]

Prejudice: Proven or presumed?

Because the *Knoll* requirement that a defendant demonstrate prejudice resulting from a violation of statutory rights related to pretrial release or the constitutional right to have access to witnesses applies only in cases in which the defendant is charged with a per se violation of the impaired driving statute, two lines of cases exist post-*Knoll*: the *Knoll* branch, requiring proof of prejudice for dismissal of charges pursuant to G.S. 20-138.1(a)(2) (the per se prong), and the presumptive prejudice branch,[35] for cases in which a defendant prosecuted solely pursuant to G.S. 20-138.1(a)(1) (the impairment prong) is denied access to witnesses. Furthermore, post-*Knoll* jurisprudence suggests that dismissal is an appropriate remedy in an impairment-prong case only when the defendant is denied his or her constitutional right to obtain evidence in his or her defense; less serious statutory violations warrant suppression of evidence rather than dismissal of charges.[36]

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33. *Gilbert*, 85 N.C. App. at 597, 355 S.E.2d at 263.

34. *Id*. at 597, 355 S.E.2d at 264 (citing as support *State v. Curmon*, 295 N.C. 453, 245 S.E.2d 503 (1978); *State v. Joyner*, 295 N.C. 55, 243 S.E.2d 367 (1978)); *see also* State v. Haas, 131 N.C. App. 113, 505 S.E.2d 311 (1998) (explaining that "[a] motion to dismiss will only be granted when the statutory or constitutional violation caused irreparable prejudice to the development of [the defendant's] case."). Note that this standard differs from that set forth in G.S. 15A-1443(b), which provides that "[a] violation of the defendant's rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt" and places the burden upon the state to "demonstrate, beyond a reasonable doubt, that the error was harmless."

35. *See* State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971).

36. The court of appeals decided *State v. Ferguson*, 90 N.C. App. 513, 369 S.E.2d 378 (1988), another presumptive prejudice case, one week before the supreme court decided *Knoll*. *Knoll* made no mention of *Ferguson*. In *Ferguson*, the defendant was advised of his right to have a witness observe his breath test. Ferguson called his wife and told her to arrive at the jail in twenty minutes. When the twenty minutes expired, Ferguson refused the test because his wife was not there. Ferguson did not see his wife until he was released from jail later that evening. She had arrived at the jail within the twenty minutes and informed the desk officer that she was there to witness her husband's breath test but was told that she was too late. She waited an hour and a half before seeing her husband.

Ferguson moved to dismiss the charges because he was denied his constitutional and statutory right of access to a witness to observe the breath test. While the trial court expressed its "distress" over the "regrettable" circumstances, it denied Ferguson's motion. *Id.* at 518–19, 369 S.E.2d at 381. The court of appeals remanded to the trial court noting that if, upon remand, it found "that Mrs. Ferguson's arrival to the jail was timely and she made reasonable efforts to gain access to the defendant, then defendant was denied access to a potential witness." *Id.* at 519, 369 S.E.2d at 382. The appellate court concluded that "[t]he denial of access to a witness in this case—when the State's sole evidence of the offense is the personal observations of the authorities—would constitute a flagrant violation of the defendant's constitutional right to obtain witnesses under N.C. Const. Art. 1 Sec. 23 as a matter of law and would require that the charges be dismissed." *Id.* (citing *Hill*, 277 N.C. 547, 178 S.E.2d 462).

Were *Knoll* the end of the matter, one might conclude that any time a magistrate fails to comply with statutory provisions governing initial appearances and the setting of conditions of pretrial release, resulting in the detention of a defendant charged with impaired driving, a defendant suffers prejudice requiring dismissal of the charges. But cases following *Knoll* emphasize that to warrant dismissal of charges, a defendant must make more than a perfunctory showing of prejudice resulting from such a violation to be entitled to the drastic relief of dismissal.

Knoll's Progeny

Cases in *Knoll's* wake have identified numerous circumstances in which the complained-of violations were deemed unfounded, insubstantial, or not prejudicial to the defendant. Indeed, there are no reported appellate court opinions post-*Knoll* in which the courts have found dismissal of implied consent charges an appropriate remedy for an alleged violation of provisions governing pretrial release. Instead, the court of appeals has made the following determinations in post-*Knoll* cases:

State v. Eliason, 100 N.C. App. 313, 395 S.E.2d 702 (1990), cited *Ferguson* for the proposition that "if a witness arrived timely under the breathalyzer statute and was unable to gain access to the accused despite reasonable efforts to do so, it would constitute a flagrant violation of defendant's constitutional right to gather witnesses and would require dismissal of all charges." *Id.* at 317, 395 S.E.2d at 704. Eliason was charged with a per se violation of the impaired driving statute and alleged that the magistrate's failure to inquire into all of the statutory considerations before setting the conditions of his pretrial release violated his statutory and constitutional rights to access to counsel and friends. The court determined that Eliason failed to show that he was prejudiced by this denial as required by *Knoll* and was not entitled to relief on constitutional grounds as there was no showing that he was denied access to anyone. The court found that "[t]here was no violation of defendant's constitutional rights which would warrant dismissal of the charges against him." *Id.* at 318, 395 S.E.2d at 704.

In subsequent cases in which a defendant has been denied the right to have a witness observe the breath test, the court of appeals has characterized this as a denial of a statutory, rather than a constitutional, right, which requires suppression of the test results rather than dismissal of the charges. In *State v. Myers*, 118 N.C. App. 452, 455 S.E.2d 492 (1995), the defendant moved to suppress the results of the chemical analysis based upon the officer's statement, after Myers requested that his wife come into the breath-testing room, that "that might not be a good idea because she had been drinking also." *Id.* at 453, 455 S.E.2d at 493. Myers's wife then left the police department. The court of appeals held that the breath test results should have been suppressed based on the refusal of Myers's request to have his wife witness the test. Myers did not argue that the case should have been dismissed because of the violation, and the court did not intimate that dismissal would have been an appropriate remedy.

In *State v. Hatley*, ___ N.C. App. ___, 661 S.E.2d 43 (2008), the defendant likewise moved to suppress the results of a chemical analysis of her breath based upon the denial of her right to have a witness observe the testing procedures. The court of appeals cited *Ferguson* for the proposition that "[a] witness who has been selected to observe the testing procedures must make reasonable efforts to gain access to the defendant." *Id.* at ___, 661 S.E.2d at 45. The court held that the denial of this right "requires suppression of the intoxilyzer results" but again did not intimate that dismissal was the appropriate remedy. *Id.* at ___, 661 S.E.2d at 45.

Thus, while the presumptive prejudice rule of *Hill* has survived, post-*Ferguson* cases suggest that while suppression of a chemical analysis is warranted when defendant is denied the right to have a witness observe the procedures, dismissal of the case is not necessarily warranted upon such a denial. Instead, it appears that there must be outright denial of access to witnesses during the relevant time frame to warrant dismissal based upon a flagrant violation of a defendant's constitutional rights.

- Dismissal was not warranted based upon the defendant's allegation that law enforcement officials refused to take him to the hospital for additional testing or to withdraw blood for later testing. The alleged refusal did not violate the defendant's statutory rights under G.S. 20-139.1 or his constitutional right to due process. Law enforcement officials met their statutory and constitutional obligations by providing the defendant access to a telephone and by allowing access to the defendant for purposes of conducting an initial test.[37]
- The defendant was not entitled to dismissal of charges based upon the magistrate's failure to inquire into every statutorily enumerated factor relevant to setting conditions of pretrial release where he failed to show that consideration of other factors would have required different conditions of release.[38]
- To warrant dismissal, a defendant must prove that he or she was denied access to witnesses and friends during the crucial period during which exculpatory evidence could have been gathered.[39]
- Suppression of evidence regarding field sobriety tests and dismissal of appreciable impairment theory cured any prejudice resulting from denial of the defendant's request to allow a witness to observe field sobriety tests. The defendant was not entitled to have charges under the per se prong of G.S. 20-138.1 dismissed.[40]
- Substantial violation of the defendant's right to pretrial release does not establish basis for dismissal of charges when she was not denied access to family and friends while in jail. Defendant, who was unlawfully detained, saw her friends at the jail but did not ask to speak to them.[41]

Juxtaposing *Knoll* and the latest case of its progeny, *State v. Labinski*,[42] reveals the heightened evidentiary standard applied by the appellate courts post-*Knoll* to defendants' claims that they have suffered irreparable prejudice arising from an unlawful detention. In *Labinski*, the defendant was arrested for impaired driving and taken to the jail for a breath test. On the way to the jail, Labinski sent a text message to her friend Brian Anderson to let him know she was in trouble. The officer who administered the breath test notified Labinski of her rights, including her right to have a witness present. Labinski did not call anyone. She submitted to the chemical analysis of her breath at 3 a.m., which revealed a breath alcohol concentration of 0.08.

Around the time Labinski was performing her breath test, four of her friends, including Anderson, arrived at the jail. Labinski saw her friends while she was walking with the officer from the breath-testing room to the magistrate's office, but she did not ask to speak with them, and they did not ask to speak to her. Labinski appeared before the magistrate at 3:25 a.m. The magistrate set a $500 secured bond and conditioned Labinski's release upon release to a sober, responsible adult or would release her either when she had a breath alcohol concentration of 0.05 or at 9 a.m.

Labinski was logged into the jail at 3:47 a.m. She was placed in an interview room with a phone and given a list of bail bondsmen. A detention officer allowed Labinski to retrieve telephone numbers from her mobile phone, and she called three of her friends who were already at

37. State v. Bumgarner, 97 N.C. App. 567, 389 S.E.2d 425 (1990).
38. State v. Haas, 131 N.C. App. 113, 505 S.E.2d 311 (1998); *Eliason,* 100 N.C. App. 313, 395 S.E.2d 702.
39. State v. Ham, 105 N.C. App. 658, 414 S.E.2d 577 (1992).
40. State v. Rasmussen, 158 N.C. App. 544, 582 S.E.2d 44 (2003).
41. State v. Labinski, 188 N.C. App. 120, 654 S.E.2d 740 (2008).
42. 188 N.C. App. 120, 654 S.E.2d 740 (2008).

the jail. She did not call a bail bondsman. Ultimately, a bail bondsman contacted by one of her friends posted bond for her release. At 5:02 a.m. she was released to the bail bondsman and one of her friends who had been waiting at the jail.

Labinski moved to dismiss the impaired driving charges based upon violation of her right to timely pretrial release and thus, access to family and friends. Labinski contended that the magistrate violated G.S. 15A-534.2 by ordering her detained without considering whether she was so intoxicated that she posed a danger to herself or others. She also argued that the magistrate required a secured bond without making the findings required by G.S. 15A-534(b) and considering the factors listed in G.S. 15A-534(c). Labinski alleged that the magistrate's failure to grant her timely pretrial release and access to friends and family resulted in the loss of evidence, which prejudiced her defense to the impaired driving charges. She asserted that, under *Knoll*, the appropriate remedy for the violation was dismissal of the charges.

In considering Labinski's appeal, the court noted that a noncapital defendant generally has the right to pretrial release. Citing *Knoll*, the court explained that if statutory provisions governing conditions of pretrial release in an impaired driving case are violated and the defendant can show irreparable prejudice directly resulting from a lost opportunity to gather evidence in her behalf by having family and friends observe her and form opinions about her condition after her arrest and to prepare a case in her own defense, the charges must be dismissed.

The court recognized the magistrate's authority under G.S. 15A-534.2 to hold Labinski in custody if he found clear and convincing evidence that her impairment presented a danger, if she was released, of physical injury to herself or others or damage to property. The trial court found that "based on [the magistrate's] opinion that anyone charged with driving while impaired who blows a 0.08 or above on the Intoxilyzer 5000 would possibly hurt himself or someone else, [the magistrate] set the defendant's bond at $500 secured."[43] The court of appeals held that this finding was not supported by the evidence. The magistrate did not testify regarding his reason for setting a $500 secured bond but said he required that Labinski be released to a sober, responsible adult "'[b]ecause that's what the statute requires me to do.'"[44] The magistrate did not testify that he had any concern about Labinski hurting herself or anyone else or to having an opinion regarding her behavior based on a particular alcohol concentration alone. Indeed, the magistrate stated that Labinski was polite and cooperative. Thus the court concluded that the magistrate substantially violated Labinski's right to pretrial release by ordering her held without evidence that her impairment presented a danger to herself or others or of damage to property.

The court then considered whether Labinski suffered irreparable prejudice resulting from the statutory violation. Labinski alleged that her commitment to jail under improper release conditions prevented her friends from observing her physical and mental condition during the time period crucial to her defense. The court concluded, however, that even though Labinski was not timely released from detention, she was not denied access to friends and family such that she lost the opportunity to gather evidence in her behalf. The court noted that Labinski was informed of her right to have a witness present for the breath test and that she did not request a witness, even though four of her friends were at the jail and could have witnessed the test. The court further noted that these friends were at the jail by the time Labinski left the breath-testing room and remained there until she was released. The court reported that Labinski could see her friends and they could see her but that she did not ask to speak to them or that they be permitted

43. *Id.* at 124, 654 S.E.2d at 743.
44. *Id.* at 126, 654 S.E.2d at 744.

to come to her. Finally, the court noted that Labinski had access to a telephone and made several phone calls.

In *Knoll*, the court determined that the detention of Warren, like that of Labinski, amounted to a statutory violation. Warren's friends, like Labinski's, came to the jail notwithstanding his unlawful detention. And Warren spoke to one of his friends in person, while Labinski only saw her friends. When another of Warren's friends was informed that Warren could not be released to him, the friend did not ask to see Warren. The *Knoll* court found prejudice, but the *Labinski* court did not, reasoning in part that Labinski did not ask to speak to her friends, nor they to her. *Knoll's* progeny, including *Labinski*, demonstrate that despite the curious circumstances in *Knoll*, prejudice will not be automatically—or even readily—inferred from a statutory violation, even one that results in the defendant's unlawful detention.

Procedural Requirements Enacted in 2006

As previously noted, the Motor Vehicle Driver Protection Act of 2006 includes several procedural requirements designed to ensure that defendants in impaired driving cases are detained when appropriate and that detained defendants are not denied access to witnesses.

Impaired Driving Holds

Among the new provisions is G.S. 20-38.4, which requires a magistrate, upon finding probable cause for an implied consent offense, to consider whether the defendant "is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed." G.S. 15A-534.2 applies to initial appearances for *offenses involving impaired driving*. These offenses are as follows:

1. Impaired driving (G.S. 20-138.1)
2. Habitual impaired driving (G.S. 20-138.5)
3. Impaired driving in a commercial vehicle
4. Death by vehicle based upon impaired driving (G.S. 20-141.4)
5. First- or second-degree murder under G.S. 14-17 based on impaired driving
6. Involuntary manslaughter under G.S. 14-18 based on impaired driving
7. Substantially similar offenses committed in another state or jurisdiction

If a magistrate conducting an initial appearance for an offense involving impaired driving finds clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if the defendant is released, of physical injury to the defendant or others or damage to property, the magistrate must order that the defendant be held in custody. Such detentions commonly are referred to as "impaired driving holds." A magistrate ordering such a detention must inform the defendant that he or she will be held in custody until (a) the magistrate determines that the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to himself, herself, or others, or of damage to property if released or (b) a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired. A magistrate who orders a defendant detained pursuant to these provisions must also determine the appropriate conditions for pretrial release in accordance with G.S. 15A-534, which governs the setting of conditions of pretrial release generally.

A defendant subject to detention under G.S. 15A-534.2 may be denied pretrial release based upon the defendant's impairment for no longer than twenty-four hours. After twenty-four hours, a defendant held pursuant to G.S. 15A-534.2 must be released upon meeting the conditions of pretrial release imposed at the initial appearance. In determining whether a defendant subject to an impaired driver hold remains impaired, a magistrate may request the defendant to submit to periodic tests to determine his or her alcohol concentration. Approved alcohol screening devices as well as other approved chemical analysis instruments may be used for this purpose. A magistrate must determine that a defendant with an alcohol concentration of 0.05 or less is no longer impaired unless there is evidence that the defendant is still impaired from a combination of alcohol and some other impairing substance or condition.

It bears noting that G.S. 15A-534.2 itself was unchanged by the Motor Vehicle Driver Protection Act of 2006. Its statutory provisions have authorized impaired driving holds since the provisions were enacted in 1983. The significance of the 2006 legislation for impaired driving is its explicit requirement that magistrates consider whether such a hold be imposed. In addition, G.S. 20-38.4(b) requires that the Administrative Office of the Courts (AOC) adopt a form implementing its requirements. The implementing form is AOC-CR-270, which must be completed by a magistrate who detains an impaired driver pursuant to G.S. 15A-534.2. The magistrate must set forth in writing in the "Findings" section of AOC-CR-270 the reasons for the detention. When the defendant is released, the magistrate must complete the corresponding section of the form. If release is to a sober, responsible adult, that person's name must be entered on the form. The sober, responsible adult must sign the form certifying that he or she is a sober, responsible person, at least 18 years old, and is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

In determining whether an adult who seeks to secure a defendant's release qualifies as a "sober, responsible adult," a magistrate may rely upon his or her own observations as well as reports from others.[45] There is no statutory or case law guidance for determining whether an adult is responsible. A magistrate making this determination might reasonably consider factors such as whether the person was a passenger in the car at the time the defendant was driving while impaired, whether the person has a driver's license, the person's criminal record, and the person's relationship to the defendant. The ultimate determination must be based upon the magistrate's exercise of reasonable discretion. In addition to being sober and responsible, an adult who assumes responsibility for an impaired defendant must be "willing and able" to do so. While a magistrate generally may base his or her determination that someone is willing to assume responsibility upon that person's request to assume custody, further inquiry may be necessary to determine the person's ability to secure the safety of the defendant and others. These determinations likewise are left to the magistrate's reasonable exercise of discretion.

The completion of AOC-CR-270, which requires a magistrate ordering an impaired driving hold to provide reasons for the detention, may reduce the risk that a defendant will be unlawfully held pursuant to G.S. 15A-534.2. The "Findings" section of the form disabuses the notion that persons who commit an offense involving impaired driving are, without additional findings, subject to detention based on impairment simply based on the finding of probable cause to believe the offense occurred. The form also makes clear that it is the magistrate, rather than the

45. *See* State v. Haas, 131 N.C. App. 113, 505 S.E.2d 311 (1998) (finding that magistrate had no duty to release defendant to the custody of an adult who was a passenger in the car driven by the defendant when officer informed magistrate that that adult was extremely intoxicated eighty minutes earlier).

jailer, who determines whether a defendant is no longer impaired such that the defendant is subject to the impaired driving hold and whether an adult meets the criteria for assuming custody of the defendant during the time the defendant is impaired.

Procedures for Gaining Access to Witnesses

In addition to enacting procedures designed to ensure that defendants charged with implied consent offenses are detained in appropriate cases involving impaired driving, the Motor Vehicle Protection Act of 2006 enacted provisions designed to ensure that defendants confined to jail are informed of the manner in which they may gain access to witnesses while detained. G.S. 20-38.4(a)(4) requires the magistrate to inform a defendant "unable to make bond" 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."

The established procedures must be approved by the chief district court judge, the Department of Health and Human Services, the district attorney, and the sheriff.[46] County procedures vary. Guilford County's procedures are included in the appendix as an example. A magistrate who conducts an initial appearance in an implied consent case for a defendant who will be detained in jail, however briefly, must certify on form AOC-CR-271 that the magistrate has informed the defendant of the procedures to access others while in jail and that he or she has required the defendant to list all persons the defendant wishes to contact and their telephone numbers.

Some argue that the requirement that a magistrate inform a defendant charged with an implied consent offense who is "unable to make bond" of the procedures for access to witnesses while in jail does not apply to defendants subject to an impaired driving hold, but instead applies to persons detained solely because of their inability to post bond sufficient to satisfy pretrial release conditions set in G.S. 15A-534. Under this interpretation, a defendant who has posted bond but is held based upon his or her impairment is not entitled to the notice. This reading of the statute is problematic for several reasons. First, a defendant subject to an impaired driving hold could be described as "unable to make bond" given that the posting of bond will not secure the defendant's release. Moreover, interpreting G.S. 20-38.4(a)(4) as requiring notice to all defendants charged with implied consent offenses who are detained better aligns it with the task force goal of "prevent[ing] dismissals related to delays in processing and by the defendant's lack of access to witnesses."[47] Informing all defendants about how to access witnesses and health care professionals in jail serves to counter any argument that a defendant was prejudiced by his or her detention.

The magistrate must complete AOC-CR-271 and provide the defendant, along with that form, a copy of written local procedures explaining how the defendant may contact others and how others can observe the defendant at the jail and administer an additional chemical analysis. The magistrate also must require a defendant unable to make bond to list on form AOC-CR-271 names and telephone numbers for anyone the defendant wishes to contact. If the defendant returns the AOC-CR-271, the magistrate must note the return and place a copy of the form in the case file. If the defendant does not return the form, the magistrate must note in the space provided on a separate AOC-CR-271 that the defendant failed to return the form. The magistrate must place the form on which this notation is made in the file.

46. G.S. 20-38.5(a)(3).

47. Task Force Report, *supra* note 3, at 21.

New Procedures and *Knoll*

North Carolina's appellate courts have not ruled on the merits of any appeals from *Knoll* motions in cases governed by the 2006 procedures, which became effective December 1, 2006. Indeed, compliance with the amended procedural requirements may render *Knoll* motions obsolete, since a defendant seeking dismissal under *Knoll* must demonstrate a substantial statutory violation, and the requirement that a magistrate consider whether an impaired driving hold should be imposed and make written findings supporting that determination reduces the likelihood a defendant will be detained when the detainment is not statutorily authorized. In addition, to warrant dismissal of the charges, a defendant must demonstrate prejudice resulting from the violation. It will be difficult for a defendant to meet this burden if he or she is informed of the procedures for gaining access to witnesses but fails to avail him- or herself of the available access.

Procedures Governing Consideration of *Knoll* Motions in District and Superior Court

Motion to Dismiss

District court

A defendant seeking dismissal of implied consent charges in district court must move for dismissal before trial begins unless the defendant can establish that the motion is based upon facts not previously known that are discovered during the trial.[48] Given that *Knoll* motions are premised upon the denial of access to witnesses, it seems unlikely that such motions ever will be founded on facts unknown to the defendant before trial. There is no requirement that such motions be made in writing in district court.[49]

Superior court

In superior court, a defendant may file a motion to dismiss based upon a denial of constitutional rights prior to trial[50] but is not required to do so.[51] Motions made pretrial in superior court must be filed in writing, but motions made during trial may be oral.[52] A defendant may file a motion to dismiss upon trial de novo in superior court regardless of whether the defendant filed such a motion in district court.[53] A defendant whose motion to dismiss is denied by the district court may again move to dismiss upon trial de novo in superior court.[54]

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48. G.S. 20-38.6(a).

49. The procedures governing motions to dismiss charges and suppress evidence in implied consent cases in district court are discussed in detail in Shea Riggsbee Denning, "Motions Procedures in Implied Consent Cases after *State v. Fowler* and *State v. Palmer*," *Administration of Justice Bulletin* No. 2009/06 (December 2009), http://www.sog.unc.edu/programs/crimlaw/Motions%20Procedures%20Fowler%20Palmer.pdf.

50. *See* G.S. 15A-952.

51. G.S. 15A-954(a), (c).

52. *See* G.S. 15A-951.

53. G.S. 15A-953.

54. *Id*.

Motion Hearings

A defendant who makes a timely motion for dismissal in district or superior court must be heard on the motion. The court is not required, however, to conduct a full evidentiary hearing unless the defendant has sufficiently alleged a denial of constitutional or statutory rights.[55] The court may summarily deny a motion to dismiss that contains only conjectural and conclusory allegations of possible constitutional or statutory violations or of prejudice resulting therefrom.[56]

A defendant who files a motion to dismiss for denial of access to witnesses bears both the burden of producing evidence in support of the motion and establishing the violation and resulting prejudice.[57] The dismissal of charges on this basis is "drastic relief" that "should be granted sparingly."[58] A district or superior court hearing such a motion may summarily rule on the motion if the defendant fails to produce sufficient evidence to warrant an evidentiary hearing. If an evidentiary hearing is required, the court must conduct a hearing at which testimony is provided under oath.[59] A superior court must issue a final written ruling on the motion, containing findings of fact and conclusions of law,[60] while a district court must issue a written preliminary determination containing findings of fact and conclusions of law and indicating how the court intends to rule on the motion.[61] The State may appeal a district court's preliminary determination granting a motion to dismiss to superior court[62] and may appeal to the court of appeals a superior court order dismissing charges based upon denial of access to family and friends.[63]

Conclusion

Knoll and its progeny permit the dismissal of impaired driving charges only in extraordinary cases. To succeed in establishing a basis for the dismissal of charges, a defendant charged with driving while impaired under the per se prong of G.S. 20-138.1 must show not only a constitutional or substantial statutory violation, but also must establish that the defendant was prejudiced by the violation. Appellate court opinions following *Knoll* reveal that establishing prejudice is a high hurdle for the defense. Magistrates' compliance with implied consent procedures enacted in 2006 further reduces the likelihood that a defendant will successfully establish a basis for relief on these grounds. These procedures are designed to ensure that defendants are detained only as authorized by statute and, furthermore, that when defendants are detained, they are informed about how to gain access to witnesses while in custody and are afforded such access pursuant to established and agreed-upon methods.

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55. *See* State v. Spicer, 299 N.C. 309, 261 S.E.2d 893 (1980).
56. *See* State v. Goldman, 311 N.C. 338, 317 S.E.2d 361 (1984).
57. *See* G.S. 15A-951; State v. Williams, 362 N.C. 628, 669 S.E.2d 290 (2008).
58. *Williams*, 362 N.C. at 634, 669 S.E.2d at 295 (internal citations omitted).
59. G.S. 20-38.6(e); *see* State v. Lewis, 147 N.C. App. 274, 279, 555 S.E.2d 348, 351 (2001).
60. *Lewis*, 147 N.C. App. at 277, 555 S.E.2d at 351 ("When a defendant alleges he has been denied his right to communicate with counsel, family, and friends, the trial court must conduct a hearing on defendant's motion to dismiss and make findings and conclusions.").
61. *See* G.S. 20-38.6(f).
62. *See* G.S. 20-38.7(a).
63. G.S. 15A-1445(a)(1).

Appendix
AOC-CR-270

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name Of Defendant

Date Of Birth

DETENTION OF IMPAIRED DRIVER

G.S. 15A-534.2

FINDINGS

The undersigned judicial official conducting an initial appearance for the defendant named above finds the following by clear and convincing evidence:

1. The defendant has been charged with an offense involving impaired driving as defined in G.S. 20-4.01(24a).
2. At the time of the defendant's initial appearance, the impairment of the defendant's physical or mental faculties presents a danger, if the defendant is released, of physical injury to the defendant or others or damage to property in that *(specify reasons)*:

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff until an appropriate judicial official determines that

1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released or
2. a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

The period of detention under this Order shall not exceed twenty-four (24) hours.

Date | Time ☐ AM ☐ PM

Signature Of Judicial Official

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

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

☐ 1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released.

☐ 2. _____ *(name)*, a sober, responsible adult, has indicated by signing below that he/she is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

☐ 3. the period of detention has reached twenty-four (24) hours.

By signing immediately below, I certify that I am a sober, responsible person, age 18 or older, who is willing and able to assume responsibility for the defendant until the defendant's physical or mental faculties are no longer impaired.

Date | Signature Of Sober Responsible Adult

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date | Time ☐ AM ☐ PM

Signature Of Judicial Official

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

NOTE: *"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." G.S. 20-38.4(a)(3).*

AOC-CR-270, Rev. 12/06

AOC-CR-271

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
Before The Magistrate

STATE VERSUS

Name Of Defendant

IMPLIED CONSENT OFFENSE NOTICE
G.S. 20-38.4

OBSERVATION PROCEDURE

TO THE DEFENDANT:

The established local procedure to contact other persons and have other persons appear at the jail to observe your condition or administer an additional chemical analysis to you is provided in writing with this form and incorporated into this form by reference. You are hereby notified of this procedure.

CONTACT PERSONS

TO THE DEFENDANT:

Pursuant to G.S. 20-38.4(a)(4), you are required to list all persons you wish to contact and their telephone numbers: *(attach additional sheets if necessary)*

	Name	**Telephone Number**
1.		
2.		
3.		

☐ I do not wish to contact anyone.

SIGNATURE

By signing below, the defendant indicates that he/she has received notice of the contact and observation procedure and has listed all persons that he/she wishes to contact.

Date	*Signature Of Defendant*

MAGISTRATE'S CERTIFICATION

The undersigned magistrate certifies that pursuant to Article 24 of Chap. 15A and G.S. 20-38.4 that

1. An initial appearance was held and the undersigned found probable cause to believe the defendant committed an implied consent offense.
2. The undersigned reviewed all alcohol screening tests, chemical analyses and testimony from law enforcement officers concerning impairment and the circumstances of the arrest, and observed the defendant.
3. The undersigned considered whether the defendant was impaired to the extent that the provisions of G.S. 15A-534.2 should have been imposed.
4. The undersigned informed the defendant in writing of the established procedure to have others appear at the jail to observe the 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*	*Signature Of Magistrate*
	☐ AM ☐ PM	

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

Date	*Time*	*Signature*	
	☐ AM ☐ PM		☐ *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).*

AOC-CR-271, New 12/06

Guilford County Implied Consent Procedures

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

1. Any person seeking to observe jailed 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.
2. 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 shall be documented by Booking in the Booking log book and by the dispatcher on the attached witness observation form.
3. Booking shall 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 person to be observed, the time and date the witness was escorted to the jail and the time and date of the completion of the observation.
4. A witness seeking to observe the defendant shall be admitted to observe the defendant in an area designated by the Sheriff for observation of the defendant. Jail staff shall note the time the witness is admitted to the jail and the time the observation begins.
5. All witnesses shall be required to submit to a search of their person and belongings prior to entry into the jail. Witnesses must comply with all jail or facility regulations prior to being admitted into any secured area.
6. Guilford County Sheriff's Office staff shall not hold or retain any personal property items for the witness.
7. No person under the age of 16 will be admitted to the jail as a witness to observe impaired defendants.
8. The jail supervisor shall determine the number of persons that may be admitted at one time to observe defendants in jail.
9. Observations of defendants will be limited to five (5) minutes and will include the ability for the witness to observe the person by sight, sound, and smell.
10. No physical contact will be allowed between the witness and the person charged.
11. All witnesses will be searched initially and supervised by jail detention officers during the entire observation period.

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Magistrate Procedures for Ordering Civil License Revocations and the Seizure and Impoundment of Motor Vehicles

Shea Riggsbee Denning

I. Introduction

Several recent issues in this series have focused on the procedures magistrates should follow in conducting initial appearances. The procedures involving criminal cases generally are described in detail in *Administration of Justice Bulletin* No. 2009/08 ("Criminal Procedure for Magistrates"). Criminal cases involving implied consent laws, such as a charge of suspicion of impaired driving or an alcohol-related offense, may require magistrates to carry out several additional processes during the initial appearance. For example, magistrates may be required to revoke the defendant's driver's license, order that a vehicle driven by the defendant be seized and impounded, consider whether the defendant should be detained because his or her impairment poses a danger to others, and inform the defendant of the procedure for having witnesses appear at the jail to observe his or her condition or perform additional chemical analyses. The applicability of these procedures depends on the existence of factors specific to each.

The procedures for detaining impaired drivers and for informing defendants of their right to secure witnesses and to obtain further chemical analyses are described in *Administration of Justice Bulletin* No. 2009/07 ("What's *Knoll* got to do with It? Procedures in Implied Consent Cases to Prevent Dismissals under *Knoll*"). This bulletin focuses on the aforementioned procedures governing civil license revocation and the seizure and impoundment of motor vehicles. This discussion is flanked at the beginning by a review of police processing procedures in implied consent cases and at the end by two appendixes. Appendix A contains Administrative Office of the Courts (AOC) forms referenced in the discussion, and Appendix B presents flowcharts illustrating the processes for ordering the revocation of a civil license and the seizure of motor vehicles.

Shea Riggsbee Denning is a School of Government faculty member specializing in motor vehicle law.

II. Police Processing Duties in Implied Consent Cases

To understand the procedures applicable in connection with an initial appearance for an implied consent offense, one must first consider the activities undertaken by law enforcement officers and chemical analysts before that appearance.

When a person is arrested for an implied consent offense, or if criminal process has been issued, including a citation, a law enforcement officer who has reasonable grounds to believe that the person charged has committed the offense may require that person to undergo chemical analysis.[1] The officer is authorized to transport the accused to any location within North Carolina for the purposes of administering one or more chemical analyses.[2]

North Carolina law defines chemical analysis as a test or tests of the breath, blood, or other bodily fluid or substance of a person performed in compliance with statutory requirements to determine the person's blood–alcohol level or the presence of an impairing substance.[3] The concentration of alcohol in a person is expressed either as grams of alcohol per 100 milliliters of blood or as grams of alcohol per 210 liters of breath.[4] The results of a defendant's alcohol concentration determined by a chemical analysis are reported to the hundredths, with any result between hundredths reported to the next lower hundredth.[5]

Before any type of chemical analysis is administered, a person charged with an implied consent offense must be taken before a chemical analyst, defined as a person granted a permit by the Department of Health and Human Services under G.S. 20-139.1 to perform such analyses.[6] The analyst must first tell the person, and provide notice in writing of, the following rights:

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 thirty days if you refuse any test or if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of twenty-one.
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 these purposes longer than thirty minutes from the time you are notified of these rights. You must take the test at the end of thirty minutes even if you have not contacted an attorney or your witness has not arrived.[7]

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1. Section 20-16.2(a) of the North Carolina General Statutes (hereinafter G.S.).
2. G.S. 20-38.3(2).
3. G.S. 20-4.01(3a).
4. G.S. 20-4.01(1b). The alcohol concentration for breath tests is based on an assumption that a breath–alcohol concentration of .10 grams per 210 liters of breath is equivalent to a blood–alcohol concentration of .10 percent, or, in other words, a 2100 to 1 blood–breath ratio. *See* State v. Cothran, 120 N.C. App. 633, 635, 463 S.E.2d 423, 424 (1995).
5. *Id*.
6. G.S. 20-4.01(3b).
7. G.S. 20-16.2(a).

If a law enforcement officer has reasonable grounds to believe that a person has committed an implied consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusing the test, the officer may direct the taking of a blood sample or the administration of any other type of chemical analysis that may be effectively performed.[8] There is no requirement in the North Carolina General Statutes (hereinafter G.S.) that the chemical analyst inform such a person of the implied consent rights in G.S. 20-16.2(a) or that the person be asked to submit to the analysis pursuant to G.S. 20-16.2(c).[9]

The law enforcement officer or the chemical analyst designates the type of test or tests to be administered, that is, a test of blood, breath, or urine.[10] The officer or chemical analyst then asks the person to submit to the designated type of chemical analysis.[11] A person's refusal prevents testing under the implied consent laws but does not preclude testing pursuant to other applicable procedures of law,[12] such as pursuant to a search warrant or the exigency exception to the search warrant requirement of the Fourth Amendment.[13]

Chemical analyses are most frequently obtained through utilization of a breath-testing instrument.[14] The North Carolina Department of Health and Human Services approves breath-testing instruments on the basis of results of evaluations by the department's Forensic Tests for Alcohol Branch.[15] The breath-testing instrument currently authorized and used is the Intoximeter, Model Intox EC/IR II.[16] The operational procedures for the instrument are prescribed by administrative regulation.[17] The regulations require that the person being tested be observed to

8. G.S. 20-16.2(b).

9. *Id*.

10. G.S. 20-16.2(c). Tests of urine are the only type of test of "other bodily fluid[s] or substances[s]" currently conducted pursuant to the implied consent procedures.

11. *Id*.

12. *Id*.; *see* State v. Davis, 142 N.C. App. 81, 87, 542 S.E.2d 236, 240 (2001) (holding that results of blood and urine tests obtained pursuant to search warrant issued after defendant refused blood test were properly admitted at defendant's impaired driving trial, as "the General Assembly does not limit the admissibility of competent evidence lawfully obtained").

13. *See* G.S. 20-139.1(d1) (providing that if a person refuses to submit to a test, a law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine for analysis if the officer reasonably believes that the delay necessary to obtain a court order would result in the dissipation of the percentage of alcohol in the person's blood or urine) and State v. Fletcher, ___ N.C. App. ___, ___S.E.2d ___ (Jan. 19, 2010) (finding exigent circumstances warranting blood draw and upholding G.S. 20-139.1 as constitutional); *see also* Schmerber v. California, 384 U.S. 757 (1966) (concluding that warrantless taking of defendant's blood incident to his arrest for driving while impaired was constitutional under the Fourth Amendment where the officer reasonably believed he was confronted with an emergency in which the delay necessary to obtain a warrant threatened the dissipation of alcohol in the defendant's blood and blood was taken in a hospital environment according to accepted medical practices); State v. Steimel, 921 A.2d 378 (N.H. 2007) (upholding as constitutional warrantless blood draw to detect drugs incident to defendant's arrest for aggravating driving while intoxicated and refusing to distinguish between metabolization of alcohol and controlled drugs for purposes of applying the Fourth Amendment's exigency exception); People v. Ritchie, 181 Cal. Rptr. 773 (Cal. App. 1982) (upholding as constitutional warrantless blood draw to detect drugs incident to defendant's arrest for driving under the influence of drugs).

14. 10A N.C.A.C. 41B .0101(2).

15. 10A N.C.A.C. 41B .0313.

16. 10A N.C.A.C. 41B .0322.

17. *Id*.

ensure that he or she has not ingested alcohol or other fluids or regurgitated, vomited, eaten, or smoked in the fifteen minutes immediately prior to the collection of a breath specimen[18] as well as the collection of two breath samples in which alcohol concentrations do not differ by more than 0.02.[19]

A person's willful refusal to submit to a chemical analysis may, depending on other factors, result in the revocation of his or her driver's license.[20] A person is considered to have willfully refused a chemical analysis when that person (1) is aware that he or she has a choice to take or refuse to take the test, (2) is aware of the time limit within which he or she must take the test, (3) voluntarily elects not to take the test, and (4) knowingly permits the prescribed thirty-minute time limit to expire before electing to take the test.[21]

At the law enforcement officer's discretion, a person may be asked to submit to a chemical analysis of his or her blood or urine in addition to or in lieu of a chemical analysis of the person's breath.[22] If a subsequent chemical analysis is requested, the person must again be advised of the implied consent rights under G.S. 20-16.2(a).[23] When a law enforcement officer specifies a blood or urine test as the type of chemical analysis to be conducted, a physician, registered nurse, emergency medical technician, or other qualified person must withdraw the blood sample or obtain the urine sample.[24] A person's willful refusal to submit to a blood or urine test is a willful refusal under G.S. 20-16.2.[25]

In an implied consent case in which a defendant is asked to submit to a chemical analysis, the law enforcement officer and chemical analyst (who may be the same person) complete an AOC-CVR-1A (Affidavit and Revocation Report; see Appendix A) averring that the implied consent testing procedures have been followed. The affidavit, which in certain cases (discussed below) serves also as a revocation report, typically is sworn and subscribed before the magistrate at the initial appearance.

After completing all investigatory and other specified procedures, crash reports, and chemical analyses, a law enforcement officer must take the person before a judicial official for an initial appearance.[26]

The procedures set forth in Article 24 of Chapter 15A of the General Statutes govern initial appearances in implied consent cases just as they do in other criminal cases, except where those procedures are modified by the implied consent offense procedures set forth in Article 2D of Chapter 20. The implied consent offense procedures permit a magistrate to hold an initial appearance at any place within the county and require, "to the extent practicable," that a magistrate "be available at locations other than the courthouse when it will expedite the initial appearance."[27] To determine whether there is probable cause to believe a person charged with an implied consent offense is impaired, a magistrate may review all alcohol screening tests[28]

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18. 10 N.C.A.C. 41B s .0101(6).
19. G.S. 20-139.1(b3).
20. G.S. 20-16.2(d).
21. Etheridge v. Peters, 301 N.C. 76, 81, 269 S.E.2d 133, 136 (1980).
22. G.S. 20-139.1(b5).
23. *Id*.
24. G.S. 20-139.1(c).
25. G.S. 20-139.1(b5).
26. G.S. 20-38.3(5).
27. G.S. 20-38.4(a)(1).
28. A valid alcohol screening test must be performed with an approved portable breath-testing device, such as an ALCO-SENSOR. G.S. 20-16.3(b), (c); 10A N.C.A.C. 41B .0501-.0503. A law enforcement officer

and chemical analyses, and may receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest.[29] The magistrate also may observe the person arrested.[30]

III. Civil License Revocations

State law requires the immediate civil revocation of driver's licenses of certain persons charged with implied consent offenses.[31] When the results of a chemical analysis or reports indicating a refusal to submit to a chemical analysis are available at the time of the initial appearance, the law enforcement officer and chemical analyst must execute a revocation report before the magistrate.[32] The magistrate must, after completing any other proceedings involving the person, determine whether there is probable cause to believe that the conditions requiring civil license revocation are met.[33]

A. Conditions Requiring Civil License Revocation

A person's driver's license is subject to civil revocation under G.S. 20-16.5 if each of the following four conditions is satisfied:

1. A law enforcement officer has reasonable grounds to believe that the person has committed an implied consent offense (see sidebar, p. 6).
2. The person is charged with an implied consent offense.
3. The law enforcement officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and -139.1 in requiring the person to submit to or in procuring a chemical analysis.
4. The person:
   a. willfully refuses to submit to the chemical analysis,
   b. has an alcohol concentration of .08 or more within a relevant time after the driving,
   c. has an alcohol concentration of .04 or more at any relevant time after the driving of a commercial motor vehicle, or
   d. has any alcohol concentration at any relevant time after the driving and the person is under twenty-one years of age.

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may use "[t]he fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result," in determining probable cause for an implied consent offense. G.S. 20-16.3(d). An officer also may use a driver's refusal to submit to an alcohol screening test in determining probable cause. *Id*.

A different rule governs the use of alcohol screening tests in cases in which a defendant is charged with driving by a person less than twenty-one years old after consuming alcohol. *See* G.S. 20-138.3(b2). In such cases, a law enforcement officer, court, or administrative agency may use the results of an alcohol screening test to determine whether alcohol was present in the driver's body. *Id*. Thus not only may the results of the test be used in such cases, but reliance on the results also is not limited to determining probable cause.

29. G.S. 20-38.4(a)(2).
30. *Id*.
31. G.S. 20-16.5.
32. G.S. 20-16.5(c).
33. G.S. 20-16.5(e).

Implied Consent Offenses

1. Impaired driving (G.S. 20-138.1),
2. Impaired driving in a commercial vehicle (G.S. 20-138.2),
3. Habitual impaired driving (G.S. 20-138.5),
4. Any death by vehicle or serious injury by vehicle offense under G.S. 20-141.4 when based on impaired driving or a substantially similar offense under previous law,
5. First- or second-degree murder (G.S. 14-17) or involuntary manslaughter (G.S. 14-18) when based on impaired driving,
6. Driving by a person less than twenty-one years old after consuming alcohol or drugs (G.S. 20-138.3),
7. Violating no-alcohol condition of limited driving privilege (G.S. 20-179.3),
8. Impaired instruction (G.S. 20-12.1),
9. Operating commercial motor vehicle after consuming alcohol (G.S. 20-138.2A),
10. Operating school bus, school activity bus, or child care vehicle after consuming alcohol (G.S. 20-138.2B),
11. Transporting an open container of alcohol (G.S. 20-138.7(a)),
12. Driving in violation of restriction requiring ignition interlock (G.S. 20-17.8(f)).

Note: *See* G.S. 20-16.2(a1); -4.01(24a).

Although normally a person submits to chemical analysis only after he or she is arrested and charged with an implied consent offense, a person who is stopped or questioned by a law enforcement officer who is investigating whether that person may have committed an implied consent offense may request that a chemical analysis be administered before any arrest or other charge is made.[34] Upon such a request, the officer must afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b).[35] The notice of rights required prior to administration of a pre-charge test is prescribed by statute and differs slightly from the notice provided in a case in which the person already has been charged with an implied consent offense.[36] A precharge chemical analysis can give rise to a license revocation if the following conditions are satisfied:[37]

1. The person requested a precharge chemical analysis pursuant to G.S. 20-16.2(i) and
2. The person has
   a. an alcohol concentration of .08 or more at any relevant time after driving,
   b. an alcohol concentration of .04 or more at any relevant time after driving a commercial vehicle, or
   c. any alcohol concentration at any relevant time after driving and the person is under twenty-one years of age, and
3. The person is charged with an implied consent offense.

34. G.S. 20-16.2(i).
35. *Id*.
36. *Id*.
37. G.S. 20-16.5(b1).

Driving in Violation of an Alcohol Restriction That Is Not an Implied Consent Offense

When a person's license is restored after having been revoked as a result of the person's conviction for being under the age of twenty-one and driving after consuming alcohol or drugs, for impaired driving, or for another offense involving impaired driving specified in G.S. 20-19, the license is restored with the restriction that the person not operate a motor vehicle while having an alcohol concentration greater than 0.04 or, in the case of a second or subsequent restoration or conviction of certain specified offenses involving impaired driving, 0.00.[38] A person seeking to have his or her license restored must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe that the person is operating a motor vehicle on a highway or public vehicle area in violation of the restriction. The person must also agree to be transported by the officer to the place where chemical analysis is to be administered.

Magistrates frequently question whether a person who drives in violation of such a restriction is subject to civil license revocation based merely on the violation of the alcohol restriction. The usual answer is no. Driving in violation of an alcohol restriction imposed as a condition of a license restoration pursuant to G.S. 20-19(c3) is *not* an implied consent offense, so the conditions for civil license revocation are not met based merely on violating such a restriction. That said, there may be instances in which there is probable cause to believe that a person with an alcohol restriction has, in addition to violating the conditions of a restricted license, also committed an implied consent offense. In such a case, if the other conditions for civil license revocation exist, the civil revocation must be issued.

One reason for the confusion may be that in addition to its use in the civil revocation context, the AOC-CVR-1A is used also to report violations of alcohol concentration restrictions to the North Carolina Department of Motor Vehicles (DMV). G.S. 20-16.2(c1) requires that when a person's driver's license has an alcohol concentration restriction and the results of a chemical analysis establish a violation of that restriction, or when a law enforcement officer has reasonable grounds to believe that the person has violated another provision of the restriction, the law enforcement officer must execute an affidavit regarding the violation and "immediately mail" it to the DMV.

The officer must designate in item 2 of AOC-CVR-1A the type of driver's license restriction and specify in item 3 the nature of the restriction violation. Upon receipt of a properly executed AOC-CVR-1A setting forth a restriction violation, the DMV must notify the person that the person's driver's license is revoked for the period of time specified under G.S. 20-19, effective on the tenth calendar day after the mailing of the revocation order, unless before the effective date of the order the person requests in writing a hearing before the DMV.[39]

Driving in Violation of Ignition Interlock Restriction

Certain persons convicted of impaired driving may have their licenses restored only in conjunction with an ignition interlock restriction.[40] A person whose license is revoked as a result of a conviction of impaired driving pursuant to G.S. 20-138.1 who had either (1) an alcohol concentration level of 0.15 or higher or (2) a prior conviction for an offense involving impaired driving, that offense having occurred within seven years immediately preceding the date of

38. G.S. 20-19(c3).
39. G.S. 20-19(c5).
40. G.S. 20-17.8.

the offense for which the person's license is revoked, may have his or her license restored only with an ignition interlock restriction.[41] This requires that a person operate only a vehicle that is equipped with a functioning ignition interlock system.[42] The person must personally activate the ignition interlock system before driving the vehicle.[43] An alcohol concentration restriction of 0.04 or 0.00 also applies, with the level dependant on the circumstances of the conviction giving rise to the ignition interlock requirement.[44]

A person who violates an ignition interlock restriction commits the offense of driving while license revoked (DWLR) under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section.[45] If a law enforcement officer has reasonable grounds to believe that a person subject to an ignition interlock restriction has consumed alcohol while driving, or has driven while any previously consumed alcohol remains in his or her body, the suspected offense of DWLR is an alcohol-related offense subject to the implied consent provisions of G.S. 20-16.2.[46]

Thus certain violations of ignition interlock restrictions constitute implied consent offenses. If a person is charged with such an offense and the other requirements of G.S. 20-16.5 are satisfied, the magistrate must order the person's driver's license civilly revoked under G.S. 20-16.5.

The person's license also will be suspended pursuant to G.S. 20-17.8, which provides that when a person subject to an ignition interlock restriction is charged with DWLR based on a violation of the ignition interlock restrictions set forth in G.S. 20-17.8(b)[47] and the judicial official finds probable cause for the charge, the person's license is suspended pending the resolution of the case. G.S. 20-17.8 provides that the judicial official must require the person to surrender the license and inform the person that he or she is not entitled to drive until the case is resolved.

B. Affidavit and Revocation Report (AOC-CVR-1A)

In implied consent cases in which the law enforcement officer and a chemical analyst determine that the conditions requiring an immediate civil license revocation exist, the law enforcement officer and chemical analyst (who may be the same person) must execute an AOC-CVR-1A.[48]

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41. G.S. 20-17.8(l) sets forth a medical exception to the ignition interlock requirement for people who establish that they are not capable of personally activating the ignition interlock system.

42. G.S. 20-17.8(b)(1).

43. G.S. 20-17.8(b)(2).

44. G.S. 20-17.8(b)(3).

45. G.S. 20-17.8(f).

46. *Id*.

47. These restrictions are that the person (1) operate only a vehicle equipped with interlock, (2) personally activate the ignition interlock before driving, and (3) comply with the alcohol concentration restrictions. The requirement that a person subject to ignition interlock have all registered vehicles owned by that person equipped with ignition interlock unless the DMV determines that one or more vehicles owned by that person are relied upon by a family member for transportation and that the vehicle is not in the possession of the restricted person is contained in G.S. 20-17.8(c1). Thus a violation of this requirement alone does not give rise to a G.S. 20-17.8(f) revocation. Nor would it constitute an implied consent offense, since it would not involve the consumption of alcohol while driving or driving while previously consumed alcohol remains in the body.

48. The charging officer may also perform the work of the chemical analyst—the person authorized to conduct chemical analyses of the breath—if the officer has a current permit issued by the Department of Health and Human Services authorizing the officer to perform a breath test using the type of instrument employed. G.S. 20-139.1(b1).

This report is a sworn statement by a law enforcement officer and chemical analyst containing facts indicating that the conditions requiring a civil license revocation are met and reporting whether the person has a pending offense for which the person's license had been or is revoked under the civil revocation statute.[49]

A law enforcement officer must ensure that the AOC-CVR-1A is expeditiously filed with the appropriate judicial official. If no revocation report has previously been filed and the results of the chemical analysis or the reports indicating the defendant's willful refusal to submit to a chemical analysis are available, the law enforcement officer must file the report with the judicial official conducting the initial appearance on the underlying criminal charge—typically a magistrate.[50]

After completing any other proceedings involving the person, the magistrate must determine whether there is probable cause to believe that the conditions requiring civil license revocation are satisfied.[51] If the magistrate determines that the requirements are met, the magistrate must enter an order revoking the defendant's license for the requisite period, unless the exception for revoked licenses, described below, applies.[52] The revocation begins at the time the order is issued.[53]

Exception for Revoked Licenses

If the magistrate finds that the person whose license is subject to civil revocation has a currently revoked driver's license, no limited driving privilege, and will not become eligible for restoration of his or her license or a limited driving privilege during the period of civil revocation, the magistrate is not required to issue the civil revocation order.[54] If this exception applies and the revocation order is not issued, the magistrate must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he or she relied in making that determination.[55]

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49. G.S. 20-16.5(a)(4). If the charging officer and the chemical analyst are different people, the officer will complete the pertinent part of one AOC-CVR-1A (paragraphs 1–5), and the chemical analyst will complete the remaining portions (paragraphs 6–14) of a separate AOC-CVR-1A. If one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his or her rights and responsibilities under G.S. 20-16.2, the affidavit and report must include the statements of both analysts. The officer also must state in the last block of paragraph 4 of the AOC-CVR-1A whether the person has a pending offense for which the person's license has been or is revoked under G.S. 20-16.5, as this will affect the length of the revocation period.

50. G.S. 20-16.5(d)(1). If no report has previously been filed and the results or reports indicating a refusal were not available at the initial appearance, the report must be filed with a judicial official conducting any other proceeding relating to the underlying criminal charge at which the person is present. G.S. 20-16.5(d)(2). If neither G.S. 20-16.5(d)(1) nor (d)(2) is applicable at the time the law enforcement officer must file the report, the report must be filed with the clerk of superior court in the county in which the underlying criminal charge has been brought. G.S. 20-16.5(e).

51. G.S. 20-16.5(e).

52. A person's license is subject to immediate civil revocation if the aforementioned statutory requirements are met—even if the person was driving a vehicle for which no license was required, such as a moped, bicycle, or lawn mower.

53. G.S. 20-16.5(e).

54. G.S. 20-16.5(n).

55. *Id.*

Multiple Offenses

A person may be charged with more than one implied consent offense arising from a single event. For example, as a result of one episode of driving while impaired a person may be charged under G.S. 20-138.1 as well as under G.S. 20-138.3, if the driver is less than twenty-one years old. Both of these offenses are implied consent offenses that, when combined with other requisite factors, require a civil license revocation. However, when a defendant is charged with more than one offense requiring a civil license revocation based on conduct arising from a single occurrence, only one civil license revocation should be issued.

C. Revocation Order When the Person Is Present (AOC-CVR-2)

The form a magistrate must use to enter a revocation order is AOC-CVR-2 (Revocation Order When Person Present; see Appendix A). The magistrate must check the appropriate box under paragraph 4 of the findings for probable cause section to indicate whether the defendant (a) willfully refused to submit to a chemical analysis, (b) had an alcohol concentration of .08 or more at any relevant time after driving, (c) had an alcohol concentration of .04 or more at any relevant time after the driving of a commercial motor vehicle, or (d) had any alcohol concentration at any relevant time after the driving and, at the time of the offense, was under twenty-one years of age. If the defendant has been charged with an offense for which his or her license had been or is revoked pursuant to G.S. 20-16.5 and that offense is pending, the magistrate must so indicate by checking paragraph 5 in the same section.

The magistrate must then complete the order portion of AOC-CVR-2. The magistrate must indicate whether the revocation is in effect for at least thirty days from (1) the date the order is entered [box 1], (2) the date the defendant surrenders his or her driver's license to the court or demonstrates that he or she is not currently licensed to drive [box 2], or (3) the date he or she surrenders his or her driver's license to the court or demonstrates that he or she is not currently licensed to drive and indefinitely until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his or her driver's license had been or is revoked under G.S. 20-16.5 [box 3]. If the person surrenders his or her license at the time of revocation and has no pending offenses for which the license was or is revoked under G.S. 20-16.5, the magistrate checks box 1. If the person does not surrender his or her license at the time of the revocation but has no pending offenses for which the license was revoked, the magistrate checks box 2. If the magistrate checked box 5 in the findings for probable cause section, indicating that the person has a pending offense for which his or her license is or was civilly revoked, the magistrate must check box 3 in the order portion of the form, indicating that the current civil revocation is indefinite in duration. Again, these provisions provide the starting date for measuring the minimum term of the revocation. The defendant's license is revoked immediately upon being ordered.

Notifying the Defendant

The magistrate must give the defendant a copy of the revocation order. Although G.S. 20-16.5 does not require that the magistrate orally notify the defendant of the revocation period, a magistrate should, in the interest of securing compliance with the revocation, inform the defendant that his or her license is revoked for at least thirty days. If box 3 of the order portion of AOC-CVR-2 is checked, indicating an indefinite revocation, the magistrate should inform the defendant that his or her license is revoked for at least thirty days and that it remains revoked indefinitely, until a final judgment is entered for the current offense and all pending offenses for

which his or her license had been or is revoked under G.S. 20-16.5. The magistrate must state in the order and personally inform the defendant that he or she may request a hearing to contest the validity of the revocation order and that his or her license remains revoked pending that hearing.[56]

Surrender of License

Upon entering the revocation order, the magistrate must order the person to surrender his or her license and, if necessary, may order a law enforcement officer to seize the license.[57] Licenses issued by jurisdictions other than North Carolina are covered by the surrender provisions and must, like North Carolina driver's licenses, be surrendered to the magistrate.[58]

A person may surrender the license by turning over to a court or a law enforcement officer his or her most recent, valid driver's license or learner's permit or a limited driving privilege issued by a North Carolina court.[59] In July 2008, the North Carolina DMV launched a central system for issuing licenses.[60] Under this system, a person who applies to renew his or her driver's license does not receive a newly minted license from the local DMV office.[61] Instead, the person receives a temporary driving certificate valid for twenty days.[62] In the interim, the person's driver's license is produced at a central location and then mailed to the applicant.[63] When a magistrate orders a civil license revocation for a person who has a temporary driving certificate rather than a renewed license, the magistrate should require the driver to surrender the temporary certificate. The magistrate should further instruct the person that upon receiving his or her renewed license in the mail, he or she must surrender it to the office of the clerk for superior court for the remainder of the revocation period.

No License or Lost License (AOC-CVR-8)

A person who is validly licensed but unable to locate his or her license may surrender the license by filing with the clerk form AOC-CVR-8 (Affidavit—No License; see Appendix A), indicating why, though validly licensed, he or she does not possess the license card.[64] A person who is not licensed to drive in North Carolina and thus has no license from North Carolina or elsewhere may complete AOC-CVR-8 and submit the affidavit to either the magistrate or the clerk. A person also may demonstrate to the magistrate that he or she is not licensed by producing appropriate identification that the magistrate can check against North Carolina DMV records. If a person submits AOC-CVR-8 to establish that he or she does not have a license or otherwise demonstrates to the magistrate that he or she has no license, the magistrate must check box 3 in the supplemental findings and order section on side two of AOC-CVR-2, indicating that the person demonstrated that he or she was not currently authorized to drive in North Carolina, and record the time and date in the first sentence of this section of the form. The magistrate must then sign and date the supplemental findings and order section.

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56. G.S. 20-16.5(e).
57. *Id.*
58. G.S. 20-16.5(a)(5).
59. *Id.*
60. *See* G.S. 20-7(f)(5).
61. *Id.*
62. *Id.*
63. *Id.*
64. G.S. 20-16.5(a)(5).

For Persons Who *Do Not* Have a Pending Implied Consent Charge at the Time of the Current Offense, the Civil Revocation Concludes When:

1. The person has surrendered his or her license or has demonstrated to the court that he or she has no license or has lost his or her license;
2. Thirty days (forty-five days if the person fails to surrender his or her license within five working days after the effective date of a revocation order issued by a clerk and served by mail) have passed since the license was surrendered; and
3. The person has paid the $100 in costs.

If within five working days of the effective date of the order the person does not surrender his or her license or demonstrate that he or she is not currently licensed, the clerk must immediately enter a Drivers License Pick-Up Order (AOC-CVR-4; see Appendix A).[65]

Revocation Period

A civil license revocation ordered by a magistrate begins at the time the revocation order is issued and continues until the person's license has been surrendered for the minimum revocation period (discussed below) and the person has paid the applicable costs.[66] Revocations under G.S. 20-16.5 are never shorter than thirty days from the date the person surrenders the license. The revocation period may be longer, depending on whether, at the time of the present implied consent offense, the person has a pending offense for which his or her license was or has been revoked under G.S. 20-16.5.

The above sidebar sets forth the revocation period for persons who *do not* have an implied consent charge pending at the time of the current offense. For a person who, at the time of the new offense has a pending implied consent charge for which his or her license was or is civilly revoked, the new civil revocation is indefinite and lasts until a final judgment (including all appeals) has been entered for the current offense and all pending implied consent offenses. In no event may the revocation period be shorter than thirty days. This indefinite revocation period applies regardless of whether the *civil revocation* in the earlier case was in place at the time of the instant offense; the key is whether the prior implied consent charge itself is still pending.

D. Contesting a License Revocation (AOC-CVR-5)

As previously mentioned, a person whose license is revoked under G.S. 20-16.5 may request a hearing to contest the validity of the revocation. The request must be in writing and may be made at the time of the person's initial appearance or within ten days of the effective date of the revocation.[67] The appropriate form for this situation is AOC-CVR-5 (Request for Hearing to Contest License Revocation; see Appendix A). It must be made to the clerk or a magistrate designated by the clerk and must specify the grounds upon which the revocation is challenged.[68] The ensuing hearing must be limited to the grounds specified in that request.[69]

65. G.S. 20-16.5(e).
66. *Id.*
67. G.S. 20-16.5(g).
68. *Id.*
69. *Id.*

The person may specifically request that the hearing be conducted by a district court judge.[70] If the person does not make that request, the hearing must be conducted by a magistrate assigned by the chief district court judge to conduct such hearings.[71] The General Statutes are silent on the matter, but in order to ensure an impartial review, the review hearing should be held by a magistrate other than the magistrate who entered the initial revocation order. If the person does request that a district court judge hold the hearing, it must be conducted within the district court district by a district court judge assigned to conduct such hearings.[72] The revocation remains in effect pending the hearing.[73] The hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if before a district court judge.[74] If the hearing is not held and completed by a magistrate within three working days or by a district court judge within five working days of the written request, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay.[75] If the person requesting the hearing fails to appear at the hearing or at any rescheduled hearing after having been property notified, he or she forfeits the right to a hearing.[76]

A witness may submit evidence via affidavit at the hearing unless the witness is subpoenaed.[77] Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he or she deems necessary.[78] If the hearing is adjourned, it must be reconvened and the matter resolved within the applicable time limit (three working days if held by the magistrate, five working days if held by a district court judge).[79] The person contesting the validity of the revocation may, but is not required to, testify on his or her own behalf.[80] Unless contested by the person requesting the hearing, statements in the revocation report may be accepted as true by the judicial official.[81] If any relevant condition under G.S. 20-16.5(b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation.[82] At the end of the hearing, the judicial official must enter an order on side two of AOC-CVR-5 sustaining or rescinding the revocation. The decision of the judicial official is final and may not be appealed.[83]

E. Return of License

After the applicable period of revocation has passed, or if a magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of the surrendered license. The clerk generally keeps surrendered licenses rather than mailing them to

70. *Id*.
71. *Id*.
72. *Id*.
73. G.S. 20-16.5(g).
74. *Id*.
75. *Id*.
76. *Id*.
77. *Id*.
78. *Id*.
79. G.S. 20-16.5(g).
80. *Id*.
81. *Id*.
82. *Id*.
83. *Id*.

the DMV. An exception applies if the person's license is revoked pursuant to G.S. 20-16.5 and under another section of Chapter 20. In such cases, the clerk must surrender the license to the DMV if the G.S. 20-16.5 revocation can end before the other revocation.[84] The $100 in costs[85] still must be paid before the G.S. 20-16.5 civil revocation may be terminated, even after the other revocation ends.[86]

Upon application, a clerk must return a person's license if (1) the applicable period of revocation has passed and the person has paid the $100 in costs or (2) the magistrate or judge has rescinded the revocation.[87] If the license has expired, the clerk may return it to the person with a caution that it is no longer valid.[88] If the person has surrendered his or her copy of a limited driving privilege and is no longer eligible to use it, the clerk must make a record that the limited driving privilege was withheld.[89] The clerk must then forward that record to the clerk in the county in which the limited driving privilege was issued for inclusion in the case file.[90]

F. Nature of Revocation

Civil license revocations pursuant to G.S. 20-16.5 are intended to "prevent unsafe and unfit drivers from operating vehicles and endangering the citizens of North Carolina"[91] rather than to punish drivers for conduct for which they have not yet been convicted. A civil revocation pursuant to G.S. 20-16.5 revokes a person's privilege to drive in North Carolina regardless of the source of his or her authorization to drive.[92] Revocations under G.S. 20-16.5 are independent of and run concurrently with other revocations.[93] A court that imposes a period of revocation upon

84. An exception applies for out-of-state licenses revoked because the driver refused to submit to a chemical analysis. When a person refuses to submit to a chemical analysis, the person's license is revoked by the DMV for twelve months, unless the person requests a hearing on the matter and the DMV concludes that certain statutory requirements are not met. G.S. 20-16.2(d). Upon refusal by a nonresident and out-of-state license holder, the DMV may revoke only the person's privilege to drive in North Carolina—not the person's privilege to drive in his or her home state. *See* G.S. 20-16.2(f) (providing for notice to other states of revocation of nonresident's privilege to drive a motor vehicle in North Carolina based on a refusal to submit to a chemical analysis); *see also* State v. Streckfuss, 171 N.C. App. 81, 85–87, 614 S.E.2d 323, 326–327 (2005) (implicitly recognizing that North Carolina lacks authority to prohibit a nonresident from driving in his or her home state). For this reason, the DMV will not accept out-of-state licenses, and the clerk must return such licenses to the license holder upon satisfaction of the conditional revocation period and payment of costs. The DMV will, however, pursuant to the provisions of G.S. 20-16.2(f), notify both the state of the person's residence and any state in which the person is licensed of the revocation of the North Carolina driving privilege.

85. Of the total fee, 50 percent is credited to the state's general fund; 25 percent must be used for the statewide chemical alcohol testing program administered by the Forensic Tests for Alcohol Branch of the Department of Health and Human Services; and the remaining 25 percent must be remitted to the county as reimbursement for jail expenses incurred due to enforcement of the impaired driving laws. G.S. 20-16.5(j).

86. G.S. 20-16.5(h).

87. *Id.*

88. *Id.*

89. G.S. 20-16.5(h).

90. *Id.*

91. State v. Evans, 145 N.C. App. 324, 332–333, 550 S.E.2d 853, 859 (2001).

92. G.S. 20-16.5(i).

93. *Id.*

conviction of an offense involving impaired driving may not give credit for any period of revocation imposed under G.S. 20-16.5.[94]

G. Limited Driving Privileges

A person whose license is civilly revoked for thirty or forty-five days may apply to the court for a limited driving privilege if the following conditions are met: (1) at the time of the alleged offense the person held a valid driver's license or one that had been expired for less than one year; (2) except for the charge for which the license is currently revoked, the person does not have (a) an unresolved pending charge involving impaired driving or (b) additional convictions for an offense involving impaired driving since being charged for the violation for which the license is currently revoked under G.S. 20-16.5; (3) the person's license has been revoked for at least ten days if the revocation period is thirty days or for at least thirty days if the revocation period is forty-five days; and (4) the person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.[95] Any district court judge authorized to hold court in the judicial district where the case is pending is authorized to issue such a limited privilege.[96] Other judicial officials, such as clerks and magistrates, are not authorized to do so.

A person whose license has been indefinitely revoked (which occurs when the person has a pending charge for an implied consent offense involving impaired driving at the time of the instant alleged offense) may, after completing thirty days of revocation or forty-five days if the license was surrendered more than five working days after the effective date of the revocation order entered by the clerk, apply for a limited driving privilege.[97] A judge of the division in which the instant charge is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the following eligibility requirements: (1) at the time of the offense, the person held either a valid driver's license or a license that had been expired for less than one year; (2) at the time of the offense the person had not within seven years been convicted of an offense involving impaired driving; (3) after the current offense, he or she has not been convicted of, or charged with, an offense involving impaired driving; and (4) the person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for restoration of a driver's license.[98]

H. Driving While License Civilly Revoked

A person who drives while his or her license is civilly revoked commits the offense of DWLR under G.S. 20-28. This is true even when the minimum revocation period has expired at the time of the driving and the person is eligible to have his or license returned upon payment of costs. G.S. 20-28(a1) provides that a person convicted of DWLR for driving after the minimum revocation period had expired but before reclaiming his or her license is *punished* as if the person has been convicted of the less serious offense of driving without a license. This reduced punishment does not alter the charge or conviction of DWLR.

94. *Id*.
95. G.S. 20-16.5(p).
96. *Id*.
97. *Id*.
98. *Id*.

IV. Vehicle Seizure and Impoundment

The final procedure discussed in this bulletin is vehicle seizure and impoundment. This procedure applies only to offenses involving impaired driving, which constitute a subset of the broader category of implied consent offenses. G.S. 20-28.3 provides that 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 (1) the driver's license of the person driving the motor vehicle was revoked as the result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a) or (2) at the time of the violation the person was not validly licensed and was not covered by an automobile liability policy.[99]

A judge later determines at the defendant's sentencing or other hearing whether a motor vehicle driven by an impaired driver and seized and impounded pursuant to G.S. 20-28.3 is subject to an order of forfeiture.[100] The proceeds of any forfeiture sale are disbursed to the county board of education.[101]

A. Key Terms Defined

An understanding of several terms is required to determine whether a motor vehicle is subject to seizure pursuant to G.S. 20-28.3. The terms "motor vehicle," "driving without a valid drivers license," driving while "not covered by an automobile liability policy," "offenses involving impaired driving," and "prior impaired driving license revocation" are defined in the following paragraphs. The latter two terms also are defined on side two of AOC-CR-323 (Officer's Affidavit for Seizure and Impoundment and Magistrate's Order; see Appendix A).

Motor Vehicle

The term "motor vehicle" is defined as "[e]very vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle."[102] The term does not include mopeds,[103] which are vehicles with "two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface."[104] Only motor vehicles are subject to seizure pursuant to G.S. 20-28.3.

Offenses Involving Impaired Driving

The term "offenses involving impaired driving" is defined in G.S. 20-4.01(24a) to consist of the following offenses:

- 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,

99. G.S. 20-28.3(a).
100. G.S. 20-28.2.
101. G.S. 20-28.2(d).
102. G.S. 20-4.01(23).
103. *Id*.
104. *See* G.S. 20-4.01(27)(d1)(incorporating definition of moped in G.S. 105-164.3(22)).

- involuntary manslaughter under G.S. 14-18 based on impaired driving,
- substantially similar offenses committed in another state or jurisdiction.

As previously noted, a motor vehicle driven by a person during the commission of an impaired driving offense (defined above) is subject to seizure in two circumstances: (1) if the person's driver's license was revoked as a result of a prior impaired driving license revocation or (2) if the person was not validly licensed and was not covered by an automobile liability policy.

Prior Impaired Driving License Revocations

This term is defined by G.S. 20-28.2(a) to include revocations made under any of the following statutes:

- G.S. 20-13.2: consuming alcohol or drugs or willful refusal by driver under age twenty-one to submit to chemical analysis;
- G.S. 20-16(a)(8b): driving while impaired on a military installation;
- G.S. 20-16.2: refusal to take a chemical test;
- G.S. 20-16.5: pretrial civil license revocation;
- G.S. 20-17(a)(2): impaired driving or impaired driving in a commercial vehicle;
- G.S. 20-138.5: habitual impaired driving;
- G.S. 20-17(a)(12): transporting an open container of alcohol;
- G.S. 20-17.2: court order not to operate motor vehicle (repealed effective December 1, 2006);
- G.S. 20-16(a)(7): impaired driving while out of state resulting in revocation of North Carolina driver's license;
- G.S. 20-17(a)(1): manslaughter or second-degree murder involving impaired driving;
- G.S. 20-17(a)(3): felony involving use of motor vehicle involving impaired driving;
- G.S. 20-17(a)(9): felony or misdemeanor death or felony serious injury by vehicle involving impaired driving;
- G.S. 20-17(a)(11): assault with motor vehicle involving impaired driving;
- G.S. 20-28.2(a)(3): the laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct that, if committed in North Carolina, would result in a revocation listed under any of the statutes listed above.

Driving without a Valid Driver's License

With respect to the provision for seizure of a vehicle driven by a person charged with an impaired driving offense who was driving without a license and without liability insurance, it is important to note that a person who has a complete defense pursuant to G.S. 20-35 to a charge of driving without a driver's license is considered to have had a valid driver's license at the time of the violation. Thus a motor vehicle driven by such a person is not subject to seizure.[105] A person may *not* be convicted of the offense of driving a motor vehicle without a driver's license if the person demonstrates the following: (1) that at the time of the offense, the person had an expired license, (2) that the person renewed the license within thirty days after it expired, and (3) that the person could not have been charged with driving without a license because the person had the renewed license when charged with the offense.[106] Moreover, a person's simple

105. G.S. 20-28.3(a).
106. G.S. 20-35(c).

failure to carry a license on his or her person does not satisfy the "driving without a license" prong so as to subject the vehicle to seizure.

Driving While Not Covered by Automobile Liability Policy

In addition to having probable cause to believe that the driver was charged with an impaired driving offense and did not have a valid license, in order to seize a motor vehicle under G.S. 20-28.3(a)(2), an officer must have probable cause to believe that the driver was not covered by an automobile liability policy. G.S. 20-309 requires financial responsibility in the form of a liability insurance policy, financial security bond, or financial security deposit or by qualification as a self-insurer, as a prerequisite to registration. G.S. 20-313 makes it a Class 1 misdemeanor for the owner of a motor vehicle registered or required to be registered in North Carolina to operate the motor vehicle or permit the motor vehicle to be operated in the state without having the required financial responsibility. It is important to note that G.S. 20-28.3(a)(2)b. refers to whether the driver—not the motor vehicle—is covered by an automobile liability policy. A person who drives a motor vehicle owned by someone else with the owner's permission is covered by the automobile liability policy for the motor vehicle being driven, if such a policy exists.[107] In addition, the authorized driver may be covered by an automobile liability insurance policy under which he or she is an insured driver, even if the motor vehicle itself is not listed on a policy.

B. Procedure for Ordering Seizure and Impoundment

Law enforcement officers who seize or plan to seize a motor vehicle pursuant to G.S. 20-28.3 must present to a magistrate within the county where the driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture.[108] AOC-CR-323 is the form on which the officer may complete an affidavit in support of the seizure and/or impoundment. Upon determining that the statutory requirements for seizure are met, a magistrate must order the vehicle held. The magistrate may do so on the bottom portion of the same form (designated magistrate's order). In addition to reviewing the officer's affidavit, the magistrate may request additional information and may hear from the defendant if the defendant is present.[109] If the motor vehicle has not yet been seized and the magistrate determines that seizure is warranted, the magistrate must issue an order of seizure.[110] If the vehicle already has been seized, and the conditions are satisfied, the magistrate orders that the seized vehicle be impounded and held.[111] The magistrate must provide a copy of the order to the clerk of court, who, in turn, must provide copies to the district attorney and the attorney for the county board of education.[112] If the magistrate determines that the statutory requirements for seizure and impoundment are *not* satisfied, the magistrate must order the vehicle released to its owner upon payment of towing and storage fees.[113] Towing and storage fees may not be

107. G.S. 20-279.21(b)(2).
108. G.S. 20-28.3(c).
109. *Id*.
110. *Id*.
111. *Id*.
112. *Id*.
113. *Id*.

waived—even when the magistrate orders the vehicle released based on a finding that the statutory requirements for seizure have not been met.[114]

C. Exceptions to Seizure

There are two important exceptions to the above-described requirements for seizure of a motor vehicle. A motor vehicle may not be seized if it has been reported stolen or if it is a rental vehicle and the driver is not listed as an authorized driver under the rental contract.[115] Other types of what the statute refers to as "innocent owners" may secure the release of their motor vehicles from impoundment, but those circumstances are not relevant to the magistrate's consideration of whether to order the vehicle seized and impounded.[116]

D. Executing an Order of Seizure

Orders of seizure are valid anywhere in North Carolina and may be carried out by any officer with territorial jurisdiction who has subject matter jurisdiction for violations of G.S. Chapter 20.[117] Such an officer may use reasonable force to seize the motor vehicle and may enter upon the property of the defendant in order to accomplish the seizure.[118] If an officer has probable cause to believe that the motor vehicle is located on the property of someone other than the defendant, the officer may obtain a search warrant to enter that property for the purpose of seizing the vehicle.[119]

V. Conclusion

In conducting initial appearances in implied consent cases, magistrates may be required to carry out procedures in addition to those generally required for all criminal offenses. This bulletin has described the steps for two of those additional processes: civil license revocation, required in certain implied consent cases, and vehicle seizure and impoundment, required in certain offenses involving impaired driving, a subset of implied consent cases. The following AOC forms and procedural flowcharts are presented to assist magistrates in completing the procedures associated with an initial appearance in an implied consent case.

114. G.S. 20-28.3(n).
115. G.S. 20-28.3(b).
116. *See* G.S. 20-28.3(e1), (e2), (e3).
117. G.S. 20-28.3(c1).
118. *Id*.
119. *Id*.

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NOTE TO OFFICER: *The officer should review and follow the instructions on Side Two of this form.*

ATTACH TEST RECORD TICKET HERE

File No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

NOTE: *A "commercial motor vehicle" is as defined in G.S. 20-4.01(3d).*

IN THE MATTER OF:

Name

Address

City | *State* | *Zip*

AFFIDAVIT AND REVOCATION REPORT OF

☐ **LAW ENFORCEMENT OFFICER**

☐ **CHEMICAL ANALYST**

☐ The charged offense is impaired supervision or instruction under G.S. 20-12.1. Accordingly, substitute "supervisor/instructor" wherever "driver" appears below.

G.S. 20-16.2, 20-16.5, 20-17.8, 20-19(c3), 20-139.1

Race	*Sex*	*Date Of Birth*	*Drivers License No.*	*State*	*Vehicle Type*	*CMV*	*Haz. Mat.*	*Citation No.*

The undersigned being first duly sworn says:

☐ 1. I am a law enforcement officer. On the _____ day of _____, _____, at _____ (a.)(p.)m., a law enforcement officer had reasonable grounds to believe the above named person, hereinafter referred to as driver, operated a vehicle (☐commercial motor vehicle) in the above named county upon _____
(Give Street, Highway, Or Public Vehicular Area)
while committing an implied-consent offense in that _____
_____
_____ .
(List Sufficient Facts To Establish Probable Cause)

☐ 2. The driver has a drivers license restriction: ☐ alcohol concentration. ☐ ignition interlock. ☐ conditional restoration (Restr: '9).

☐ 3. The driver violated a drivers license restriction by: ☐ refusing to be transported for testing. ☐ not having an operable ignition interlock on the vehicle being driven. ☐ failing to personally activate the ignition interlock on the vehicle being driven. ☐ the driver's alcohol concentration.

☐ 4. A law enforcement officer charged the driver with the implied-consent offense of: ☐ G.S. 20-138.1; ☐ Other Implied-Consent Offense: _____; ☐ and the driver has one or more pending offenses in the following county(ies) _____ for which the drivers license had been or is revoked under G.S. 20-16.5.

☐ 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 EC/IR 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 EC/IR II, and it 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 EC/IR II on the _____day of _____, _____, as 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.

☐ 12. The chemical analysis of the driver's breath indicated an alcohol concentration of 0.15 or more.

☐ 13. A sample of the driver's blood or urine was collected for a chemical analysis as indicated on the attached DHHS 4081.

☐ 14. The driver willfully refused to submit to a chemical analysis as indicated on the attached ☐ DHHS 4082. ☐ DHHS 4081. ☐ The willful refusal occurred in an implied-consent offense involving death or critical injury to another person.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Chemical Analyst/Law Enforcement Officer | *DHHS Permit No.*

Date | *Signature Of Official Authorized To Administer Oaths*

Print Name Of Chemical Analyst/Law Enforcement Officer

☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *CSC*

☐ *Notary* **SEAL** | *Date My Commission Expires* | *County Where Notarized*

Agency Name

AOC-CVR-1A/DHHS 3907, Rev. 6/08

Law Enforcement Officer/Analyst Copy

NOTES TO LAW ENFORCEMENT OFFICER/CHEMICAL ANALYST

NOTE TO LAW ENFORCEMENT OFFICER WHO IS NOT GOING TO *administer breath test or read the implied-consent rights:*

1. Complete the identifying information at the top,
2. Check the "Law Enforcement Officer" block under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 1-5, and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

NOTE TO LAW ENFORCEMENT OFFICER WHO CHARGES DRIVER AND IS CHEMICAL ANALYST *who administers the breath test or reads the implied-consent rights for a blood test:*

1. Complete the identifying information at the top,
2. Check both the "Law Enforcement Officer" and "Chemical Analyst" blocks under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 1-14, and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

NOTE TO CHEMICAL ANALYST WHO IS NOT THE CHARGING OFFICER:

1. Complete the identifying information at the top,
2. Check the "Chemical Analyst" block under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 6-14, and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

INSTRUCTIONS

1. This form should be used in District Court to prove alcohol concentration in implied-consent criminal cases.
2. This form should be used before the Magistrate for the pretrial civil revocation (CVR) when the driver is charged with DWI or another implied-consent offense and the driver
   a. has an alcohol concentration of 0.08 or more;
   b. has an alcohol concentration of 0.04 or more and was operating a commercial motor vehicle;
   c. is under age 21 and has an alcohol concentration of 0.01 or more; or
   d. refuses the breath test and/or a blood or urine test.
3. This form should be used to notify DMV of (i) an alcohol concentration of 0.15 or more or (ii) a refusal to submit to a breath test and/or a blood or urine test.
4. This form should be used to notify DMV of violations of the following drivers license restrictions+:
   a. *9= the driver has a Conditional Restoration of his or her drivers license
   b. 19= alcohol concentration (A/C) of 0.04
   c. 20= A/C 0.04+ignition interlock
   d. 21= A/C 0.00
   e. 22= A/C 0.00+ignition interlock
   f. 23= ignition interlock only

   \+ When a driver has violated a restriction and Paragraphs 2 and 3 on Side One are completed, ALL sections in these paragraphs that apply must be checked. For example, if the driver had a restriction 20 and violated both the alcohol concentration and the ignition interlock provisions, both the "alcohol concentration" and the "ignition interlock" blocks should be checked in Paragraph 2. The same applies to Paragraph 3.
5. File the original and copies of this form, with a copy of the test record ticket attached, as follows:
   a. Original - To the Magistrate for the pretrial civil revocation (CVR).
   b. Second copy - To the Court for the criminal case.
   c. Yellow copy - To DMV for violation of any alcohol or ignition interlock restriction on drivers license, alcohol concentration of 0.15 or more, or for refusal to submit to a breath test and/or a blood or urine test. DMV's address is: DMV, Information Processing Services, 3120 Mail Service Center, Raleigh, NC 27699-3120.
   d. Pink copy - To the Law Enforcement Officer/Chemical Analyst.

AOC-CVR-1A/DHHS 3907, Side Two, Rev. 6/08

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address

REVOCATION ORDER
WHEN PERSON PRESENT

G.S. 20-16.5

FINDINGS FOR PROBABLE CAUSE

The undersigned judicial official finds probable cause to believe that:

1. A law enforcement officer had reasonable grounds to believe that the above named person committed an offense subject to the implied-consent provisions of G.S. 20-16.2(a);
2. The above named person has been charged with that offense as provided in G.S. 20-16.2(a);
3. Both the law enforcement officer and the chemical analyst(s) complied with the provisions of G.S. 20-16.2 and 20-139.1 in requiring the above named person's submission to or procuring of a chemical analysis; and
4. The above named person:
   - ☐ a. willfully refused to submit to a chemical analysis.
   - ☐ b. had an alcohol concentration of 0.08 or more at any relevant time after the driving.
   - ☐ c. had an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle.
   - ☐ d. had any alcohol concentration at any relevant time after the driving, and at the time of the offense, was under 21 years of age.
5. ☐ The above named person has one or more pending offenses in the following county(ies)_____ _____for which the person's drivers license had been or is revoked under G.S. 20-16.5.

ORDER

It is ORDERED that the above named person's **drivers license or privilege to drive be revoked**. The above named person is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation. The revocation remains in effect **at least thirty (30) days** from:

- ☐ 1. this date.
- ☐ 2. the date he/she surrenders his/her drivers license to the Court, or demonstrates that he/she is not currently licensed to drive.
- ☐ 3. *(check this option if Findings For Probable Cause No. 5 above is checked)* the date he/she surrenders his/her drivers license to the Court, or demonstrates that he/she is not currently licensed to drive **and** indefinitely until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5.

The above named person's privilege to drive in North Carolina is revoked and will remain revoked until the person has actually surrendered his/her license for the period specified above and has paid a $100 fee to the Clerk of Superior Court.

I informed the above named person of his/her rights to a hearing and gave him/her a copy of this Order.

Date	Name Of Judicial Official (Type Or Print)	Signature Of Judicial Official

NOTE: *See reverse for supplemental findings and order, and for disposition of license.*

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

NOTICE

If at the time of this Revocation you were not licensed to drive by the North Carolina Division of Motor Vehicles and did not have a valid drivers license from another state, an additional $50 restoration fee must be paid to the Division of Motor Vehicles before you can drive again in North Carolina. This fee must be paid even though you are a resident of another state.

You have a right to a hearing to contest the validity of this Revocation before a magistrate or judge. To do so, a written request must be made within ten (10) days of the effective date of the revocation. A hearing request form is available from the office of the Clerk of Superior Court or magistrate. Your license will remain revoked and you are not authorized to drive pending the hearing. If you do request a hearing but fail to appear, you forfeit the right to a hearing.

If your license is revoked under Paragraph 1 or 2 of this Order, at the end of the revocation period you are still prohibited from driving until you have paid a fee of $100 to the Clerk of Superior Court.

If your license is revoked under Paragraph 3 of this Order, that revocation remains in effect at least thirty (30) days and until a final judgment, including appeals, is entered for this current offense and for all pending offenses for which your license has been or is revoked under G.S. 20-16.5. At the end of the revocation period you are still prohibited from driving until you have paid a fee of $100 to the Clerk of Superior Court. This fee is in addition to any fee you have paid or are to pay in connection with any other pending offense for which your drivers license has been revoked under G.S. 20-16.5.

The $100 fee may be paid at any time, **even prior to the end of the period of revocation**, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Payment in person must be made in cash, by certified check, cashier's check or money order. Payment by mail must be made by certified check, cashier's check or money order, payable to the Clerk of Superior Court. If you wish to have your drivers license returned to you by mail, please enclose a stamped, self-addressed envelope with your payment.

IT IS UNLAWFUL FOR YOU TO DRIVE A MOTOR VEHICLE IN THE STATE OF NORTH CAROLINA UNTIL YOU ARE AUTHORIZED TO DO SO.

AOC-CVR-2, Rev. 8/07

Original-File Copy-Person Whose License Revoked
(Over)

SUPPLEMENTAL FINDINGS AND ORDER

It is further found that the person named herein appeared before the undersigned judicial official at _____ ☐ AM ☐ PM on this _____ day of _____, _____, and,

☐ 1. surrendered his/her drivers license to the Court.
☐ 2. was validly licensed but unable to locate his/her license card and filed an affidavit which constituted surrender of the drivers license.
☐ 3. demonstrated he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation of the drivers license of the person named herein:

☐ 1. remains in effect for at least thirty (30) days from the above time and date and until payment of a $100 fee has been made to the Clerk of Superior Court.

☐ 2. *(check this option if Findings For Probable Cause No. 5 on reverse side is checked)* is indefinite and remains in effect for at least thirty (30) days from the above time and date and until a final judgment, including appeals, has been entered for the current offense and all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5, and until payment of a $100 fee to the Clerk of Superior Court.

Date	*Signature Of Judicial Official*
Name Of Judicial Official (Type Or Print)	☐ *Judge* ☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

It is further found that a Pick-Up Order was issued for the license of the person named herein, and the person on the _____ day of _____, _____.

☐ 1. surrendered his/her license to the Court.
☐ 2. demonstrated to the officer serving the Pick-Up Order that he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation:

☐ 1. remains in effect for at least thirty (30) days from the above date and until payment of a $100 fee to the Clerk of Superior Court.

☐ 2. *(check this option if Findings For Probable Cause No. 5 on reverse side is checked)* is indefinite and remains in effect for at least thirty (30) days from the above date and until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5, and until payment of a $100 fee to the Clerk of Superior Court.

Date	*Signature*	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

DISPOSITION OF LICENSE OR PRIVILEGE

☐ 1. Drivers license of person named herein returned to him/her, and receipt by him/her is acknowledged below.
☐ 2. At the licensee's request, license returned to him/her by mail. License mailed on the date shown below.
☐ 3. License mailed to Division of Motor Vehicles on date shown below, since the person named herein is not eligible to use the license for the following reason:

☐ 4. Limited driving privilege withheld and record forwarded to _____ County.

Date	*Signature*
Date License Mailed	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of my license.

Date	*Signature Of Licensee*

Date $100 Fee Paid	*Signature*	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-CVR-2, Side Two, Rev. 8/07

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address

AFFIDAVIT - NO LICENSE

G.S. 20-16.5

County Of Residence

State Of Residence

NORTH CAROLINA RESIDENTS

I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of this charge:

☒ I am validly licensed to drive in North Carolina, but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are:

☐ my license was revoked. ☐ my license was expired.

☐ I have never had a license. ☐ other: _____

_____

☐ I was not currently licensed to drive in the State of North Carolina because

_____

_____

_____

OUT-OF-STATE RESIDENTS

I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of this charge:

☐ I was not currently licensed to drive in the State of North Carolina and did not have a valid drivers license from another state because

☐ my license was revoked. ☐ my license was expired.

☐ I have never had a license. ☐ other: _____

_____

☐ I am validly licensed to drive by the State of _____, but am unable to locate my card. The circumstances of the loss and the efforts I have made to find the license card are:

_____

_____

_____

SWORN AND SUBSCRIBED TO BEFORE ME

Signature Of Affiant

Date

Signature

☐ Deputy CSC ☐ Assistant CSC

☐ Magistrate ☐ Clerk Of Superior Court

AOC-CVR-8, Rev. 11/97

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address

DRIVERS LICENSE PICK-UP ORDER

G.S. 20-16.5

Race	Sex	Height	Weight

Hair Color	Eye Color	DOB	Drivers License No.	State

TO ANY LAW ENFORCEMENT OFFICER:

You are ORDERED to pick up the drivers license issued to the person named above in accordance with G.S. 20-29 and deliver it to the undersigned within three (3) days of the surrender.

Date	Signature	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

RETURN OF SERVICE

I certify that this Order was received and served as follows:

Date Received	Date Served

☐ 1. by personally serving the person named above and picking up the attached drivers license.
☐ 2. the person named above demonstrated that he/she is not currently licensed.
☐ 3. the person named above was not served for the following reason:

Date Of Return	Signature Of Law Enforcement Officer	No.
	Department Or Agency	

NOTICE TO PERSON SERVED

Your license to drive is revoked. Unless the revocation is indefinite, your license will remain revoked for at least a _____ day period beginning on the day you surrender your license or show that you are not currently licensed to drive. If the revocation is indefinite, your license will be revoked for that period or until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which your drivers license had been or is revoked under G.S. 20-16.5.

At the end of the revocation period you are still prohibited from driving until you have paid a $100 fee to the Clerk of Superior Court. This $100 fee may be paid at any time, even prior to the end of the revocation period, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Payment in person must be paid in cash, by certified check or money order. Payment by mail must be made by certified check or money order, made payable to the Clerk of Superior Court. This fee is in addition to any fee you have paid or are to pay in connection with any other pending offense for which your drivers license has been or is revoked under G.S. 20-16.5.

If prior to the effective date of this Order you were not licensed by the North Carolina Division of Motor Vehicles or did not have a valid license from another state, an additional $50 restoration fee must be paid to the Division of Motor Vehicles before you can drive again in North Carolina. This fee must be paid even though you are a resident of another state.

You have a right to a hearing to contest the validity of this Revocation before a magistrate or judge. To do so a written request must be made within ten (10) days of the effective date of the revocation. A hearing request form is available from the office of the Clerk of Superior Court or magistrate. Your license will remain revoked and you are not authorized to drive pending the hearing. If you do request a hearing but fail to appear, you forfeit the right to a hearing.

IT IS UNLAWFUL FOR YOU TO DRIVE A MOTOR VEHICLE IN THE STATE OF NORTH CAROLINA UNTIL YOU ARE AUTHORIZED TO DO SO.

AOC-CVR-4, Rev. 8/07

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Petitioner

Home Telephone No. | Work Telephone No.

REQUEST FOR HEARING TO CONTEST LICENSE REVOCATION

G.S. 20-16.5

TO THE APPROPRIATE JUDICIAL OFFICIAL:

I request a hearing to contest the validity of the revocation of my drivers license which was ordered revoked on the date set forth below.

I challenge the validity of the revocation on the following specific ground(s):

(NOTE: *List the finding(s) for probable cause, as set forth on the Revocation Order, which you believe to be wrong.*)

_____

_____

_____

_____

_____

☐ I specifically request that the hearing be conducted by a District Court Judge.

I understand that the hearing will be limited to the grounds I specify in this request and that the revocation of my drivers license remains in effect pending the hearing. I further understand that this hearing must be held and completed within three (3) working days following the date of this request, or within five (5) working days if I have requested a District Court Judge to conduct the hearing. I also understand that my failure to appear at the hearing will result in the forfeiture of my right to a hearing.

I understand that the decision of the Magistrate or District Court Judge at the hearing is final, and that there is no right of appeal from the decision.

Date License Revoked | Date | Signature Of Petitioner

ORDER SETTING HEARING

The defendant having requested a hearing, the undersigned hereby sets a time, date and location of hearing as shown below.

Date Of Hearing | Time Of Hearing ☐ AM ☐ PM | Date

Location Of Hearing | Signature

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

FILING INSTRUCTIONS

This request must be filed by the Petitioner within ten (10) days of the effective date of the revocation order with one of the following:

1. Judicial official at the initial appearance; or
2. The Clerk of Superior Court; or
3. A Magistrate designated by the Clerk of Superior Court to receive such requests.

Original-File Copy-Petitioner
(Over)

AOC-CVR-5, Rev. 8/07

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Petitioner

FINDINGS AND ORDER IN CONTESTED LICENSE REVOCATION

G.S. 20-16.5

The Court finds that the petitioner filed a timely Request For Hearing To Contest License Revocation form setting forth the specific grounds upon which the validity of the revocation is challenged.

The Court, having considered the evidence and arguments presented at the hearing, finds by the greater weight of the evidence the following:

1. The hearing
   - ☐ a. was held and completed within the required time limits.
   - ☐ b. was not held and completed within the required time limits.

2. As to each condition alleged by the law enforcement officer and chemical analyst in this matter,
   - ☐ a. all were met.
   - ☐ b. at least one was not met.
   - ☐ c. other than the current offense, there are no additional pending offenses for which the person's drivers license had been or is revoked under G.S. 20-16.5.

Based upon the foregoing findings of fact, the Court CONCLUDES and ORDERS that the revocation of the petitioner's license be:

- ☐ a. sustained.
- ☐ b. rescinded.
- ☐ c. the indefinite suspension is rescinded and a separate order shall be entered by an appropriate judicial official revoking the petitioner's drivers license for an appropriate period.

Date

Name Of Judicial Official (Print Or Type)

Signature Of Judicial Official

☐ *Judge* ☐ *Magistrate*

AOC-CVR-5, Side Two, Rev. 8/07

Original-File Copy-Petitioner

(TYPE OR PRINT IN BLACK INK)

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

Name And Address Of Defendant

OFFICER'S AFFIDAVIT FOR SEIZURE AND IMPOUNDMENT AND MAGISTRATE'S ORDER

G.S. 20-28.3

Defendant's Drivers License No.	*State*	*Name And Address Of Vehicle Owner*
Vehicle Identification No.		

Vehicle License No.	*State*	*Year*	*Make*	*Model*	*Body Style*

Present Location Of Motor Vehicle

Date Of Offense	*Date Of Seizure*	*Time Of Seizure* ☐ AM ☐ PM

I. OFFICER'S AFFIDAVIT

The undersigned being first duly sworn says:

1. I am a law enforcement officer. On or about the date of offense shown above, I had probable cause to believe that the defendant named above drove the motor vehicle described above in the above county upon *(Give street, highway or public vehicular area.)* _____ while committing an offense involving impaired driving in violation of ☐ G.S. 20-138.1 ☐ G.S. 20-138.5 ☐ G.S. _____ *(See Section III on reverse for a list of offenses involving impaired driving.)* in that: *(List sufficient facts to constitute probable cause.)* _____.

   ☐ *(Check if defendant charged under G.S. 20-138.5.)* and a check of the Division of Motor Vehicles' records or other reliable information indicates that the defendant has been convicted of three (3) or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ten (10) years of the date of offense shown above.
2. I charged the defendant with an offense in violation of the statute cited above.
3. A check of the records of the Division of Motor Vehicles or other reliable information indicates that, at the time of the above offense, ☐ the defendant's drivers license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a). *(See Section IV on reverse for a list of impaired driving license revocations.)* ☐ the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy.
4. A check of law enforcement records or other reliable information indicates that the motor vehicle described above has not been reported stolen.
5. The motor vehicle described above is not a rental vehicle.
6. ☐ (a) On the date of seizure shown above, I seized the vehicle described above and it is presently at the location shown above.
   ☐ (b) The motor vehicle has not yet been seized.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Seizing Officer

Date	*Signature Of Official Authorized To Administer Oaths*	*Name Of Seizing Officer (Type Or Print)*

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

Name Of Department Or Agency Of Officer

☐ *Notary*	*Date My Commission Expires*
SEAL	*County Where Notarized*

II. MAGISTRATE'S ORDER

On the basis of the facts set forth in the above Affidavit and any additional information furnished under oath, the undersigned finds that the requirements of G.S. 20-28.3 for the seizure and impoundment of the motor vehicle described above

☐ have ☐ have not been met.

1. ☐ a. It is ORDERED that the above described motor vehicle be impounded and held pending further orders of the court.
   ☐ b. It is ORDERED that any officer with authority and jurisdiction seize the above described motor vehicle and that it be impounded and held pending further orders of the court.

☐ 2. It is ORDERED that the above described motor vehicle be released to the motor vehicle owner upon payment of all towing and storage charges incurred as a result of the seizure of that vehicle.

Date	*Name Of Magistrate (Type Or Print)*	*Signature Of Magistrate*

NOTE TO OFFICER: *The seizing officer shall notify the Division of Motor Vehicles (DMV) of the seizure as soon as practical, but not later than 24 hours after the seizure of the motor vehicle. G.S. 20-28.3(b). The seizing officer should complete form ENF-176 and forward it to the officer's DCI terminal operator. The terminal operator will then transmit the information to DMV via DCI. This Order authorizes any officer with jurisdiction to enter the property of the defendant to seize the motor vehicle. Consent or a search warrant is required to enter the private property of another.*

NOTE TO CLERK: *The Clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education. G.S. 20-28.3(c).*

(Over)

AOC-CR-323, Rev. 8/07

III. OFFENSES INVOLVING IMPAIRED DRIVING

G.S. 20-4.01(24a) defines "offense involving impaired driving" to include the following:

- *impaired driving under G.S. 20.138.1;*
- *any offense set forth under G.S. 20-141.4 based on impaired driving;*
- *first or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when [the charge] is based on impaired driving;*
- *impaired driving in a commercial vehicle under G.S. 20-138.2;*
- *habitual impaired driving under G.S. 20-138.5.*

IV. IMPAIRED DRIVING LICENSE REVOCATIONS - G.S. 20-28.2(a)

Under G.S. 20-28.2(a), the revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to any of the following statutes:

G.S. 20-13.2	*- Consuming Alcohol/Drugs While Less Than 21*
G.S. 20-16(a)(8b)	*- Military Driving While Impaired*
G.S. 20-16.2	*- Refused Chemical Test* *Provisional Licensee Refused Chemical Test* *Refused Chemical Test In A Commercial Motor Vehicle*
G.S. 20-16.5	*- Civil Revocation*
G.S. 20-17(a)(2)	*- Offense Of Driving While Impaired (1st, 2nd, 3rd Offense)* *Driving While Impaired In Commercial Motor Vehicle* *BAC .04 Or More In Commercial Motor Vehicle*
G.S. 20-138.5	*- Habitual Driving While Impaired*
G.S. 20-17(a)(12)	*- Transporting Open Container - 2nd* *Transporting Open Container - 3rd*
G.S. 20-16(a)(7)	*- Out-Of-State Offense Similar To Driving While Impaired Resulting In NC Revocation*
G.S. 20-17(a)(1)	*- Manslaughter Or Second Degree Murder Involving Driving While Impaired*
G.S. 20-17(a)(3)	*- Any Felony In The Commission Of Which A Motor Vehicle Is Used, If The Offense Involves Impaired Driving*
G.S. 20-17(a)(9)	*- Any Offense Set Forth Under G.S. 20-141.4 Based On Impaired Driving*
G.S. 20-17(a)(11)	*- Conviction Of Assault With A Motor Vehicle If Offense Involves Impaired Driving*
G.S. 20-28.2(a)(3)	*- Laws of another state when the offense for which the person's drivers license is revoked prohibits substantially similar conduct that if committed in this state would result in a revocation based on one of the offenses listed above.*

V. GROUNDS FOR SEIZURE - G.S. 20-28.3(a)

A motor vehicle is subject to seizure if the driver is charged with an offense involving impaired driving as listed in Section III above and at the time of the offense

- *the driver's license is revoked for one of the reasons listed in Section IV above* **or**
- *the driver does not have a valid drivers license and is not covered by an automobile liability insurance policy.*

AOC-CR-323, Side Two, Rev. 8/07

Figure 1. Magistrate Procedures for Initial Appearances in Implied Consent Cases

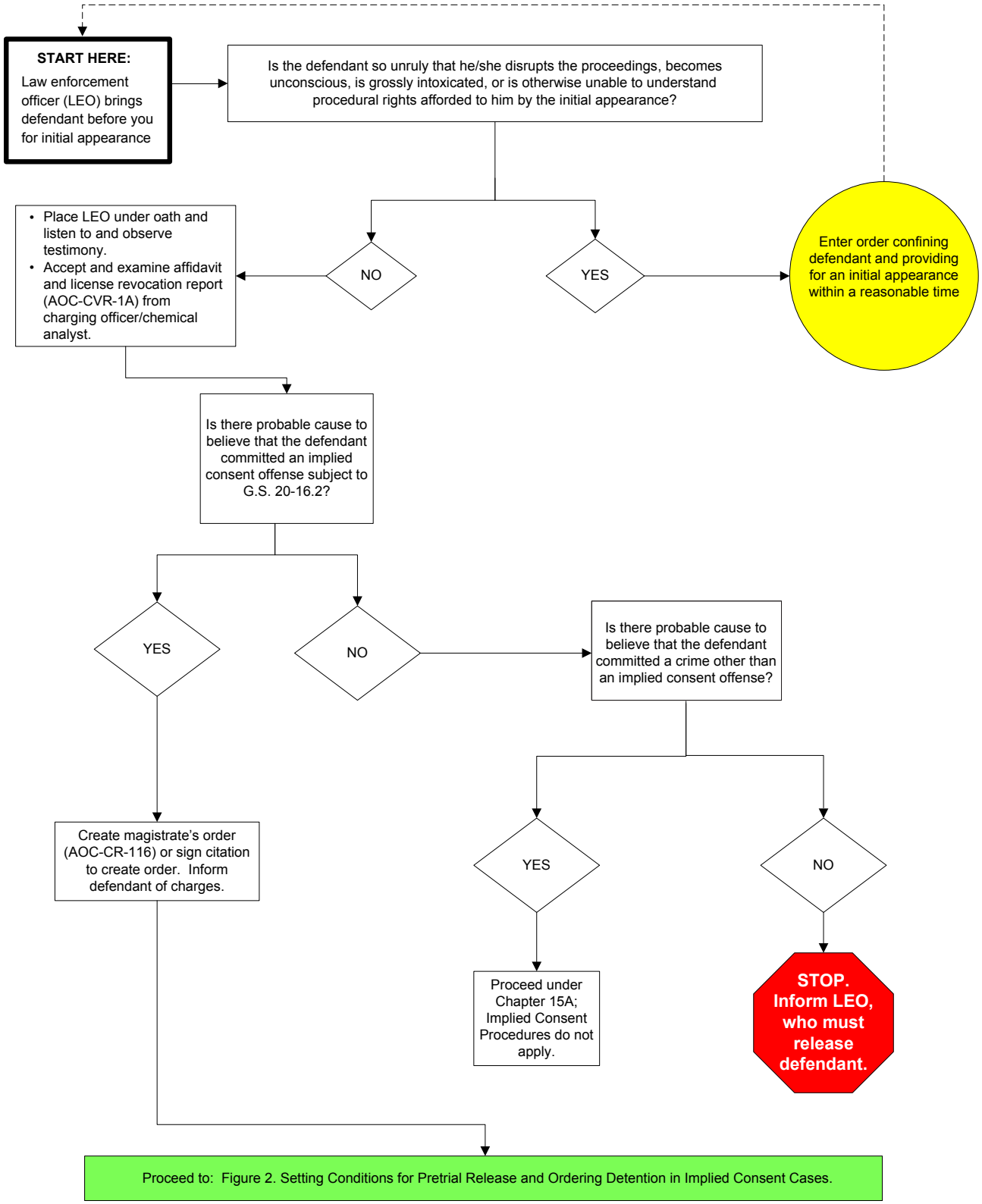


Figure 2. Setting Conditions for Pretrial Release and Ordering Detention in Implied Consent Cases

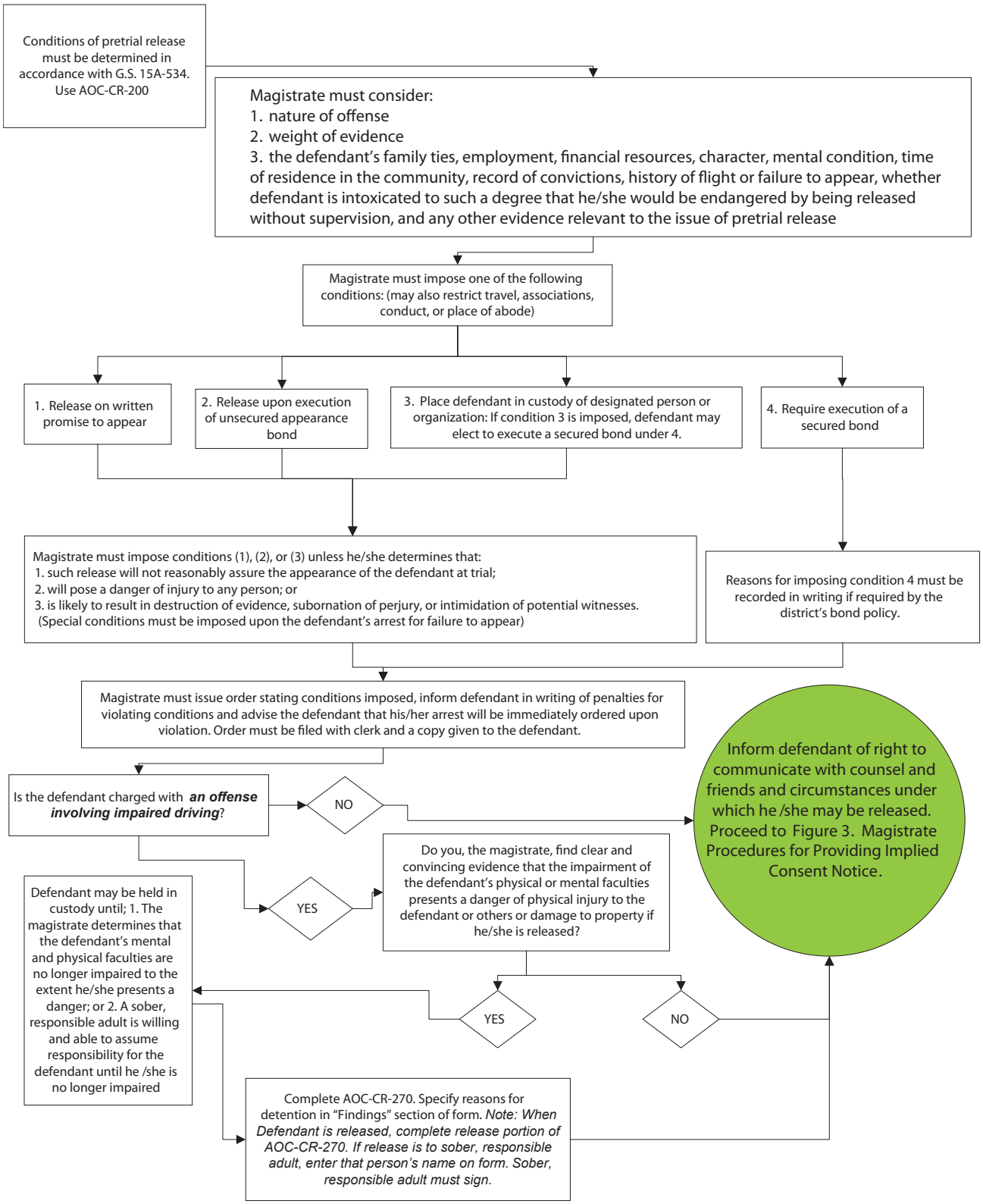


Figure 3. Magistrate Procedures for Providing Implied Consent Notice

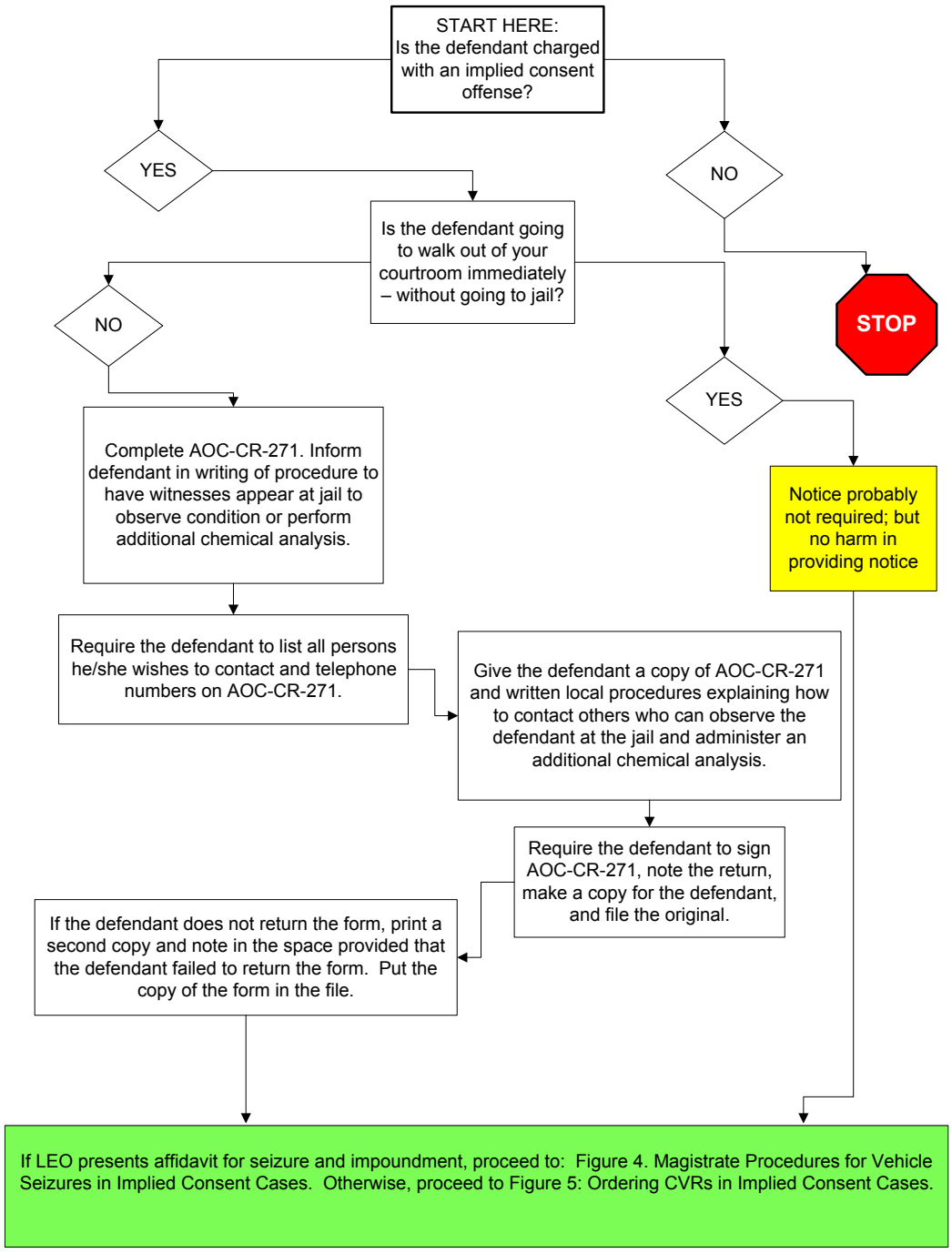


Figure 4. Magistrate Procedures for Motor Vehicle Seizures in Implied Consent Cases

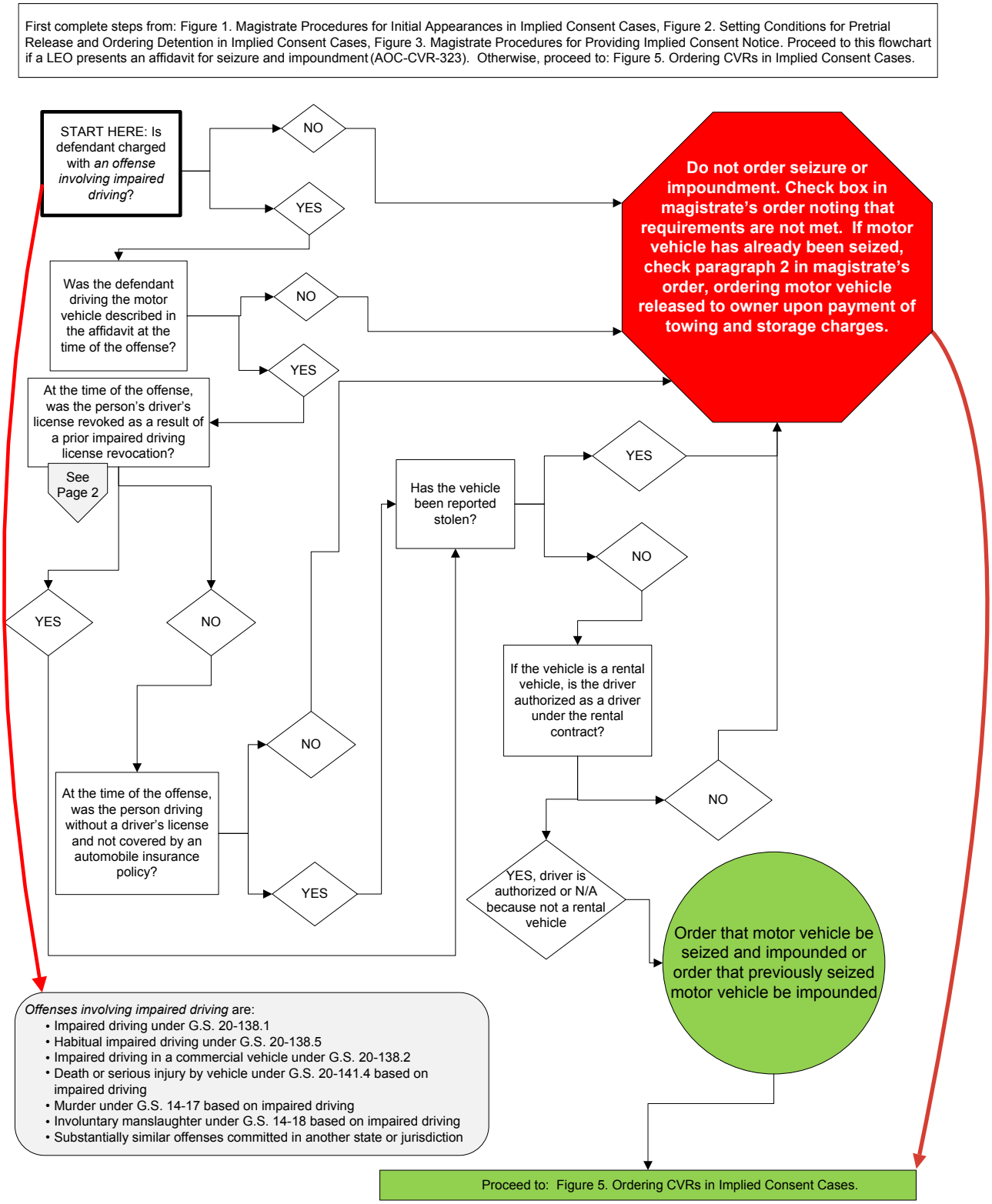
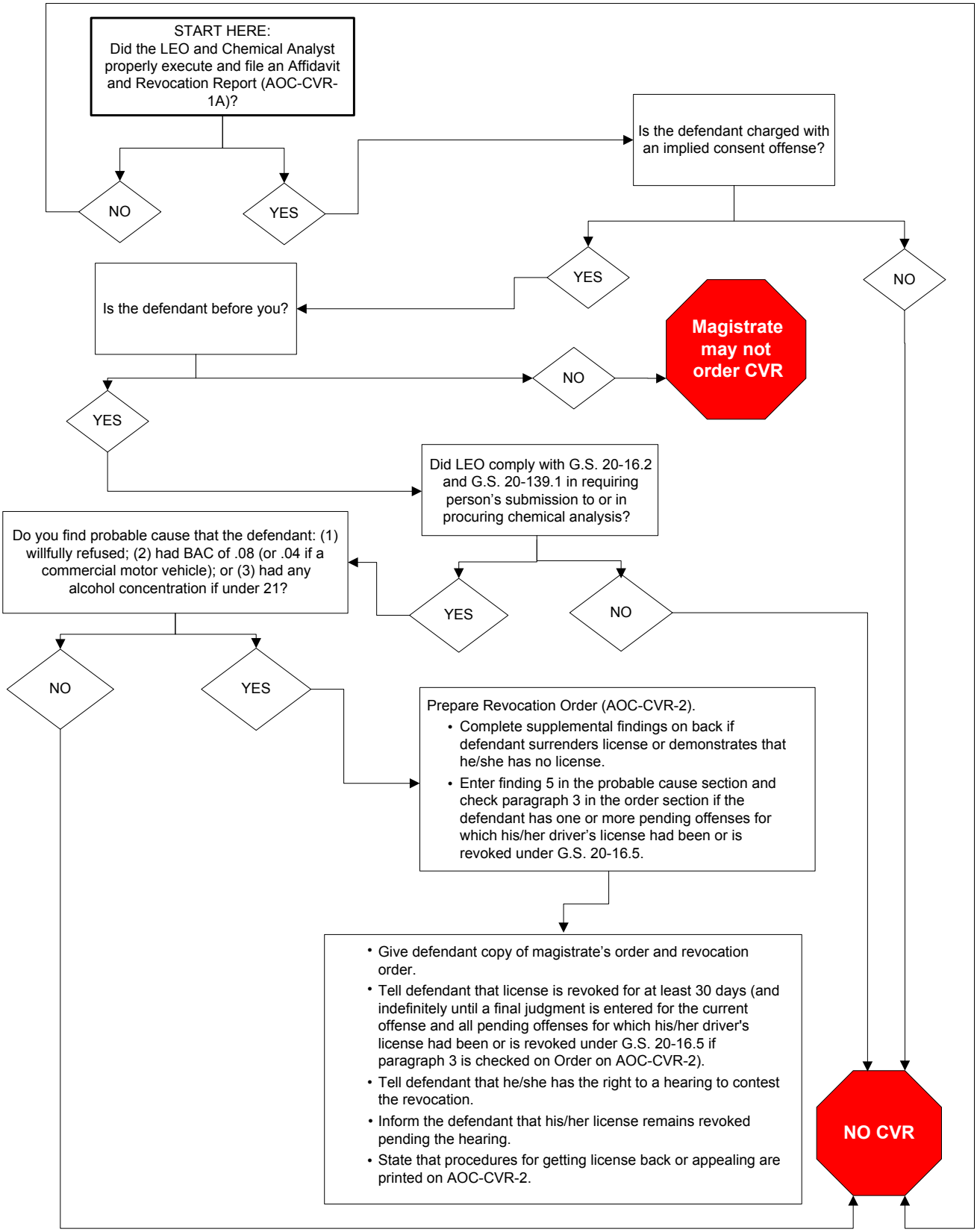


Figure 4. Magistrate Procedures for Motor Vehicle Seizures in Implied Consent Cases (*continued*)

Prior impaired driving license revocations are any made under the following statutes:

- GS 20-13.2: driving after consuming or willful refusal if under twenty-one
- GS 20-16(a)(8b): DWI on military installation
- GS 20-16.2: refusal
- GS 20-16.5: CVR
- GS 20-17(a)(2): DWI or DWI in commercial vehicle
- GS 20-138.5: habitual DWI
- GS 20-17(a)(12): open container
- GS 20-17.2: court order not to operate
- GS 20-16(a)(7): out of state DWI; N.C. revocation
- GS 20-17(a)(1): manslaughter or second-degree murder involving impaired driving
- GS 20-17(a)(3): felony involving use of motor vehicle; involving impaired driving
- GS 20-17(a)(9): felony or misdemeanor death or serious injury by vehicle involving impaired driving
- GS 20-17(a)(11): assault with motor vehicle involving impaired driving
- GS 20-28.2(a)(3): revocation by another state for an offense that would result in revocation in N.C. under one of the above statutes

Figure 5. Ordering CVRs in Implied Consent Cases



Tab:
Forms

FORMS TABLE OF CONTENTS

All Forms Used by the AOC can be found at

http://www.nccourts.org/Forms/FormSearch.asp

File No.

WARRANT FOR ARREST

Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

Race	Sex	Date Of Birth	Age

Social Security No./Tax ID No.	Drivers License No. & State

Name Of Defendant's Employer

Offense Code(s)	Offense In Violation Of G.S.

Date Of Offense

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Complainant (Name, Address Or Department)

Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)

☐ **Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan**

Date Issued

Law Enforcement Case No.	LID No.	SID No.	FBI No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below:

This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.

Signature	Location Of Court	Court Date
☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court		Court Time ☐ AM ☐ PM

Forms-Pg 1

AOC-CR-100, Rev. 4/11 (Structured Sentencing)

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to execute the Warrant and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Warrant was received and served as follows:

Date Received	Date Served	Time Served ☐ AM ☐ PM	Date Returned

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (Type Or Print)

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date	Signature	
		☐ Dep. CSC ☐ Assist. CSC ☐ CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Warrant was received and served as follows:

Date Received	Date Served	Time Served ☐ AM ☐ PM	Date Returned

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (Type Or Print)

Department Or Agency Of Officer

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the Superior Court.

☐ The current pretrial release order is modified as follows:

Date	Signature Of District Court Judge

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived	Signature Of Defendant
	Signature Of Attorney

District Attorney	☐ Waived ☐ Not Indigent	Attorney For Defendant	☐ Appointed ☐ Retained

PRIOR CONVICTIONS: No./Level: 0 ☐ I (0) ___ ☐ II (1-4) ___ ☐ III (5+)

PLEA: ☐ guilty ☐ no contest _____ **VERDICT:** ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ not guilty _____ ☐ not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: ☐ pay costs and a fine of $ _____ .

☐ be imprisoned for a term of _____ days in the custody of ☐ the sheriff. ☐ DOC.* Pretrial credit _____ days served.

☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]

☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.A. 15A-1343.2(d) is necessary.

☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	Restitution*	Attorney's Fee	Community Service Fee	Other
$	$	$	$	$

*Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: (**Note To Clerk:** *Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance)."*)

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-262.4(b) within _____ days.

☐ 7. not be found in or on the premises of the complainant or _____ .

☐ 8. not assault, communicate with or be in the presence of the complainant or _____ .

☐ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)

☐ 10. Other: _____

It is ORDERED that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____ .
☐ sentence is to run at the expiration of the sentence in _____ .

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE: ☐ Probable cause is found as to all Counts except _____ , and the defendant is bound over to Superior Court for action by the grand jury. ☐ No probable cause is found as to Count(s) _____ of this Warrant, and the Count(s) is dismissed.

Date	Name Of District Court Judge (Type Or Print)	Signature Of District Court Judge

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	Date Delivered To Sheriff	Signature	
			☐ Deputy CSC ☐ Assist. CSC ☐ CSC

Forms-Pg 2

***NOTE:** *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

File No.

WARRANT FOR ARREST

Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

Race	Sex	Date Of Birth	Age

Social Security No./Tax ID No.	Drivers License No. & State

Name Of Defendant's Employer

Offense Code(s)	Offense In Violation Of G.S.

Date Of Offense

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Complainant (Name, Address Or Department)

Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)

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Date Issued

Law Enforcement Case No.	LID No.	SID No.	FBI No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below:

This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.

Signature	Location Of Court	Court Date
☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court		Court Time ☐ AM ☐ PM

Forms-Pg 3

AOC-CR-100, Rev. 4/11 (Structured Sentencing)

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to execute the Warrant and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Warrant was received and served as follows:

Date Received	Date Served	Time Served ☐ AM ☐ PM	Date Returned

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Name Of Judicial Official

☐ This Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (Type Or Print)

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date	Signature	☐ Dep. CSC ☐ Assist. CSC ☐ CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

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☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

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Department Or Agency Of Officer

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the Superior Court.

☐ The current pretrial release order is modified as follows:

Date	Signature Of District Court Judge

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived	Signature Of Defendant
	Signature Of Attorney

District Attorney	☐ Waived ☐ Not Indigent	Attorney For Defendant	☐ Appointed ☐ Retained	PRIOR CONVICTIONS: No./Level: 0 ☐ I (0) ___ ☐ II (1-4) ___ ☐ III (5+)

PLEA: ☐ guilty ☐ no contest _____ **VERDICT:** ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ not guilty _____ ☐ not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: ☐ pay costs and a fine of $ _____ .

☐ be imprisoned for a term of _____ days in the custody of ☐ the sheriff. ☐ DOC.* Pretrial credit _____ days served.

☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]

☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.A. 15A-1343.2(d) is necessary.

☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	Restitution*	Attorney's Fee	Community Service Fee	Other
$	$	$	$	$

*Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: (**Note To Clerk:** *Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance)."*)

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-262.4(b) within _____ days.

☐ 7. not be found in or on the premises of the complainant or _____ .

☐ 8. not assault, communicate with or be in the presence of the complainant or _____ .

☐ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)

☐ 10. Other: _____

It is ORDERED that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____ .
☐ sentence is to run at the expiration of the sentence in _____ .

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver <u>two</u> certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE: ☐ Probable cause is found as to all Counts except _____ , and the defendant is bound over to Superior Court for action by the grand jury. ☐ No probable cause is found as to Count(s) _____ of this Warrant, and the Count(s) is dismissed.

Date	Name Of District Court Judge (Type Or Print)	Signature Of District Court Judge

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	Date Delivered To Sheriff	Signature	☐ Deputy CSC ☐ Assist. CSC ☐ CSC

AOC-CR-100, Side Two, Rev. 4/11 (Structured Sentencing)

***NOTE:** *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

File No.

MISDEMEANOR CRIMINAL SUMMONS

Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

Race	Sex	Date Of Birth	Age

Social Security No. | Drivers License No. & State

Name Of Defendant's Employer

Offense Code(s) | Offense In Violation Of G.S.

Date Of Offense

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Complainant (Name, Address Or Department)

Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)

☐ **Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan**

Date Issued

Law Enforcement Case No. | LID No. | SID No. | FBI No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

To the defendant:

I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully and willfully did

This act was in violation of the law referred to in this Criminal Summons. This Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge. If you fail to appear, an order for your arrest may be issued and you may be held in CONTEMPT OF COURT and imprisoned for up to thirty (30) days or fined up to $500.00 or both. This penalty for failure to appear is in addition to any sentence which may be imposed for the crime charged.

Signature | Location Of Court | Court Date

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

Court Time ☐ AM ☐ PM

Forms-Pg 5

If this Criminal Summons is not served within ninety (90) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to serve the Summons and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Time Served	Date Returned
		☐ AM ☐ PM	

☐ By personally serving this Criminal Summons on the defendant.

☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (Type Or Print)

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date	Signature	
		☐ Dep. CSC ☐ Assist. CSC ☐ CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Time Served	Date Returned
		☐ AM ☐ PM	

☐ By personally serving this Criminal Summons on the defendant.

☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (Type Or Print)

Department Or Agency Of Officer

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the Superior Court.

☐ The current pretrial release order is modified as follows:

Date	Signature Of District Court Judge

District Attorney	☐ Waived ☐ Not Indigent	Attorney For Defendant	☐ Appointed ☐ Retained	**PRIOR CONVICTIONS:** No./Level: 0 ☐ I (0) ___ ☐ II (1-4) ___ ☐ III (5+)

PLEA: ☐ guilty ☐ no contest _____ **VERDICT:** ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ not guilty _____ ☐ not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict it is **ORDERED** that the defendant: ☐ pay costs and a fine of $ _____ .

☐ be imprisoned for a term of _____ days in the custody of the ☐ sheriff. ☐ DOC.* Pretrial credit _____ days served.

☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]

☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary.

☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	Restitution*	Attorney's Fee	Community Service Fee	Other
$	$	$	$	$

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-262.4(b) within _____ days.

☐ 7. not be found in or on the premises of the complainant or _____ .

☐ 8. not assault, communicate with or be in the presence of the complainant or _____ .

☐ 9. Other: _____

It is **ORDERED** that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____ .
☐ sentence is to run at the expiration of the sentence in _____ .

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver <u>two</u> certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

Date	Name Of District Court Judge (Type Or Print)	Signature Of District Court Judge

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	Date Delivered To Sheriff	Signature	
			☐ Deputy CSC ☐ Assist. CSC ☐ CSC

AOC-CR-113, Side Two, Rev. 3/09 (Structured Sentencing)

***NOTE:** *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

File No.

MISDEMEANOR CRIMINAL SUMMONS

Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

Race	Sex	Date Of Birth	Age

Social Security No. | Drivers License No. & State

Name Of Defendant's Employer

Offense Code(s) | Offense In Violation Of G.S.

Date Of Offense

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Complainant (Name, Address Or Department)

Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)

☐ **Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan**

Date Issued

Law Enforcement Case No. | LID No. | SID No. | FBI No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

To the defendant:

I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully and willfully did

This act was in violation of the law referred to in this Criminal Summons. This Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge. If you fail to appear, an order for your arrest may be issued and you may be held in CONTEMPT OF COURT and imprisoned for up to thirty (30) days or fined up to $500.00 or both. This penalty for failure to appear is in addition to any sentence which may be imposed for the crime charged.

Signature | Location Of Court | Court Date

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

Court Time ☐ AM ☐ PM

Forms-Pg 7

If this Criminal Summons is not served within ninety (90) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to serve the Summons and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Time Served	Date Returned
		☐ AM ☐ PM	

☐ By personally serving this Criminal Summons on the defendant.

☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (Type Or Print)

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date	Signature	
		☐ Dep. CSC ☐ Assist. CSC ☐ CSC

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Time Served	Date Returned
		☐ AM ☐ PM	

☐ By personally serving this Criminal Summons on the defendant.

☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (Type Or Print)

Department Or Agency Of Officer

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the Superior Court.

☐ The current pretrial release order is modified as follows:

Date	Signature Of District Court Judge

District Attorney	☐ Waived ☐ Not Indigent	Attorney For Defendant	☐ Appointed ☐ Retained	**PRIOR CONVICTIONS:** No./Level: 0 ☐ I (0) ___ ☐ II (1-4) ___ ☐ III (5+)

PLEA: ☐ guilty ☐ no contest _____ **VERDICT:** ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ not guilty _____ ☐ not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict it is **ORDERED** that the defendant: ☐ pay costs and a fine of $ _____ .
☐ be imprisoned for a term of _____ days in the custody of the ☐ sheriff. ☐ DOC.* Pretrial credit _____ days served.
☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]
☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary.
☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	Restitution*	Attorney's Fee	Community Service Fee	Other
$	$	$	$	$

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-262.4(b) within _____ days.
☐ 7. not be found in or on the premises of the complainant or _____ .
☐ 8. not assault, communicate with or be in the presence of the complainant or _____ .
☐ 9. Other: _____

It is **ORDERED** that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____ .
☐ sentence is to run at the expiration of the sentence in _____ .

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

Date	Name Of District Court Judge (Type Or Print)	Signature Of District Court Judge

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	Date Delivered To Sheriff	Signature	
			☐ Deputy CSC ☐ Assist. CSC ☐ CSC

***NOTE:** *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

AOC-CR-113, Side Two, Rev. 3/09 (Structured Sentencing)

File No.

MAGISTRATE'S ORDER

Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

Race	Sex	Date Of Birth	Age

Social Security No.	Drivers License No. & State

Name Of Defendant's Employer

Offense Code(s)	Offense In Violation Of G.S.

Date Of Offense

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Arresting Officer (Name, Address Or Department)

Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)

☐ **Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan**

Date Issued

Law Enforcement Case No.	LID No.	SID No.	FBI No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

This act was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.

Signature	Location Of Court	Court Date
☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court		Court Time ☐ AM ☐ PM

Forms-Pg 9

District Attorney	☐ Waived ☐ Not Indigent	Attorney For Defendant	☐ Appointed ☐ Retained	**PRIOR CONVICTIONS:** No./Level: 0 ☐ I (0) ___ ☐ II (1-4) ___ ☐ III (5+)

PLEA: ☐ guilty ☐ no contest _____ **VERDICT:** ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ not guilty _____ ☐ not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: ☐ pay costs and a fine of $ _____ .

☐ be imprisoned for a term of _____ days in the custody of ☐ the sheriff. ☐ DOC.* Pretrial credit _____ days served.

☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]

☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary.

☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	Restitution*	Attorney's Fee	Community Service Fee	Other
$	$	$	$	$

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-262.4(b) within _____ days.

☐ 7. not be found in or on the premises of the complainant or _____ .

☐ 8. not assault, communicate with or be in the presence of the complainant or _____ .

☐ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)

☐ 10. Other: _____

It is **ORDERED** that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____ .
☐ sentence is to run at the expiration of the sentence in _____ .

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE: ☐ Probable cause is found as to all Counts except _____ , and the defendant is bound over to Superior Court for action by the grand jury. ☐ No probable cause is found as to Count(s) _____ of this Magistrate's Order and the Count(s) is dismissed.

Date	Name Of District Court Judge Or Magistrate (Type Or Print)	Signature Of District Court Judge Or Magistrate

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the ☐ District ☐ Superior Court.

☐ The current pretrial release order is modified as follows:

Date	Signature Of District Court Judge Or Magistrate

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived	Signature Of Defendant
	Signature Of Attorney

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	Date Delivered To Sheriff	Signature	☐ Deputy CSC ☐ Assist. CSC ☐ CSC

AOC-CR-116, Side Two, Rev. 3/09 (Structured Sentencing)

***NOTE:** *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

File No.

MAGISTRATE'S ORDER

Offense

THE STATE OF NORTH CAROLINA VS.

Name And Address Of Defendant

Race	Sex	Date Of Birth	Age

Social Security No.	Drivers License No. & State

Name Of Defendant's Employer

Offense Code(s)	Offense In Violation Of G.S.

Date Of Offense

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Arresting Officer (Name, Address Or Department)

Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)

☐ **Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan**

Date Issued

Law Enforcement Case No.	LID No.	SID No.	FBI No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division

I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

This act was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.

Signature	Location Of Court	Court Date
☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court		Court Time ☐ AM ☐ PM

AOC-CR-116, Rev. 3/09 (Structured Sentencing)

District Attorney	☐ Waived ☐ Not Indigent	Attorney For Defendant	☐ Appointed ☐ Retained	**PRIOR CONVICTIONS:** No./Level: 0 ☐ I (0) ☐ II (1-4) ☐ III (5+)

PLEA: ☐ guilty ☐ no contest _____ **VERDICT:** ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐A1 ☐1 ☐2 ☐3
☐ not guilty _____ ☐ not guilty _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: ☐ pay costs and a fine of $ _____ .

☐ be imprisoned for a term of _____ days in the custody of ☐ the sheriff. ☐ DOC.* Pretrial credit _____ days served.

☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]

☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary.

☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	Restitution*	Attorney's Fee	Community Service Fee	Other
$	$	$	$	$

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-262.4(b) within _____ days.

☐ 7. not be found in or on the premises of the complainant or _____ .

☐ 8. not assault, communicate with or be in the presence of the complainant or _____ .

☐ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)

☐ 10. Other: _____

It is **ORDERED** that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____ .
☐ sentence is to run at the expiration of the sentence in _____ .

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE: ☐ Probable cause is found as to all Counts except _____ , and the defendant is bound over to Superior Court for action by the grand jury. ☐ No probable cause is found as to Count(s) _____ of this Magistrate's Order and the Count(s) is dismissed.

Date	Name Of District Court Judge Or Magistrate (Type Or Print)	Signature Of District Court Judge Or Magistrate

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the ☐ District ☐ Superior Court.

☐ The current pretrial release order is modified as follows:

Date	Signature Of District Court Judge Or Magistrate

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived	Signature Of Defendant
	Signature Of Attorney

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	Date Delivered To Sheriff	Signature	☐ Deputy CSC ☐ Assist. CSC ☐ CSC

AOC-CR-116, Side Two, Rev. 3/09 (Structured Sentencing)

***NOTE:** *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

File No.

SEARCH WARRANT

IN THE MATTER OF

Date Issued	Time Issued
	☐ AM ☐ PM

Name Of Applicant

Name Of Additional Affiant

Name Of Additional Affiant

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

Date Received	Time Received
	☐ AM ☐ PM
Date Executed	**Time Executed**
	☐ AM ☐ PM

☐ I made a search of _____

_____

_____

_____

_____

_____ as commanded.

☐ I seized the items listed on the attached inventory.

☐ I did not seize any items.

☐ This Warrant WAS NOT executed within forty-eight (48) hours of the date of issuance and I hereby return it not executed.

Name Of Officer Making Return (Type Or Print)

Signature Of Officer Making Return

Department Or Agency Of Officer	Incident Number

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District/Superior Court Division

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Date	Name (Type Or Print)	Signature

☐ Deputy CSC ☐ Assistant CSC ☐ CSC ☐ Magistrate ☐ District Ct. Judge ☐ Superior Ct. Judge

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date	Time		Name Of Magistrate (Type Or Print)	Signature Of Magistrate
		☐ AM ☐ PM		

This Search Warrant was returned to the undersigned clerk on the date and time shown below.

Date	Time		Name Of Clerk (Type Or Print)	Signature Of Clerk	
		☐ AM ☐ PM			☐ Dep CSC ☐ Asst CSC ☐ CSC

AOC-CR-119, Rev. 6/12

(Over)

APPLICATION FOR SEARCH WARRANT

I, _____,
(Insert name and address; or if law enforcement officer, name, rank and agency)

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that *(Describe property to be seized; or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)*

_____

_____

_____

_____

_____

constitutes evidence of a crime and the identity of a person participating in a crime, *(Name crime)* _____

_____,

and is located *(Check appropriate box(es) and fill-in specified information)*

☐ in the following premises *(Give address and, if useful, describe premises)*

_____

_____

_____

(and)

☐ on the following person(s) *(Give name(s) and, if useful, describe person(s))*

_____

_____

_____

(and)

☐ in the following vehicle(s) *(Describe vehicle(s))*

_____

_____

_____

(and)

☐ *(Name and/or describe other places or items to be searched, if applicable)*

_____

_____

_____

_____.

The applicant swears or affirms to the following facts to establish probable cause for the issuance of a search warrant:

_____

_____

_____

_____

_____

_____

SWORN/AFFIRMED AND SUSCRIBED TO BEFORE ME	*Date*
Date	*Name Of Applicant (Type Or Print)*
Signature	*Signature Of Applicant*

☐ *Magistrate* ☐ *Dep. CSC* ☐ *Asst. CSC* ☐ *Clerk Of Superior Court* ☐ *Judge*

☐ In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____

_____

☐ In addition to the affidavit included above, this application is supported by sworn testimony, given by _____

_____

This testimony has been *(check appropriate box)* ☐ reduced to writing

☐ tape recorded and I have filed each with the clrek.

NOTE: *If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.*

Forms-Pg 14

File No.

SEARCH WARRANT

IN THE MATTER OF

Date Issued	Time Issued
	☐ AM ☐ PM

Name Of Applicant

Name Of Additional Affiant

Name Of Additional Affiant

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

Date Received	Time Received
	☐ AM ☐ PM
Date Executed	**Time Executed**
	☐ AM ☐ PM

☐ I made a search of _____

_____

_____

_____

_____

_____ as commanded.

☐ I seized the items listed on the attached inventory.

☐ I did not seize any items.

☐ This Warrant WAS NOT executed within forty-eight (48) hours of the date of issuance and I hereby return it not executed.

Name Of Officer Making Return (Type Or Print)

Signature Of Officer Making Return

Department Or Agency Of Officer	Incident Number

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District/Superior Court Division

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Date	Name (Type Or Print)	Signature

☐ Deputy CSC ☐ Assistant CSC ☐ CSC ☐ Magistrate ☐ District Ct. Judge ☐ Superior Ct. Judge

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date	Time		Name Of Magistrate (Type Or Print)	Signature Of Magistrate
		☐ AM ☐ PM		

This Search Warrant was returned to the undersigned clerk on the date and time shown below.

Date	Time		Name Of Clerk (Type Or Print)	Signature Of Clerk	
		☐ AM ☐ PM			☐ Dep CSC ☐ Asst CSC ☐ CSC

AOC-CR-119, Rev. 6/12

(Over)

APPLICATION FOR SEARCH WARRANT

I, _____,
(Insert name and address; or if law enforcement officer, name, rank and agency)

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that *(Describe property to be seized; or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)*

_____

_____

_____

_____

_____

constitutes evidence of a crime and the identity of a person participating in a crime, *(Name crime)* _____

_____,

and is located *(Check appropriate box(es) and fill-in specified information)*

☐ in the following premises *(Give address and, if useful, describe premises)*

_____

_____

_____

(and)

☐ on the following person(s) *(Give name(s) and, if useful, describe person(s))*

_____

_____

_____

(and)

☐ in the following vehicle(s) *(Describe vehicle(s))*

_____

_____

_____

(and)

☐ *(Name and/or describe other places or items to be searched, if applicable)*

_____

_____

_____

_____.

The applicant swears or affirms to the following facts to establish probable cause for the issuance of a search warrant:

_____

_____

_____

_____

_____

_____

SWORN/AFFIRMED AND SUSCRIBED TO BEFORE ME	*Date*
Date	*Name Of Applicant (Type Or Print)*
Signature	*Signature Of Applicant*

☐ *Magistrate* ☐ *Dep. CSC* ☐ *Asst. CSC* ☐ *Clerk Of Superior Court* ☐ *Judge*

☐ In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____

_____

☐ In addition to the affidavit included above, this application is supported by sworn testimony, given by _____

_____

This testimony has been *(check appropriate box)* ☐ reduced to writing

☐ tape recorded and I have filed each with the clrek.

NOTE: *If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.*

AOC-CR-119, Rev. 6/12

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name And Address Of Defendant

CONDITIONS OF RELEASE AND RELEASE ORDER

G.S. Chapter 15A, Art. 25, 26

Amount Of Bond

$

Offenses And Additional File Numbers

☐ See Attachment

Location Of Court	☐ *District* ☐ *Superior*	*Date*	*Time* ☐ AM ☐ PM

To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.

The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel and friends.

☐ Your release is authorized upon execution of your: ☐ WRITTEN PROMISE to appear ☐ UNSECURED BOND in the amount shown above
☐ CUSTODY RELEASE ☐ SECURED BOND in the amount shown above
☐ HOUSE ARREST with ELECTRONIC MONITORING administered by *(agency)* _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of ☐ employment ☐ counseling ☐ course of study ☐ vocational training

☐ Your release is not authorized.
☐ The defendant is required to provide *(check all that apply)* ☐ fingerprints under G.S. 15A-502(a1) or (a2). ☐ a DNA sample under G.S. 15A-266.3A. Prior to release, the defendant shall provide his/her *(check all that apply)* ☐ fingerprints. ☐ DNA sample.
☐ The defendant has been ☐ (i) charged with a felony while on probation *(complete AOC-CR-272, Side One)*. ☐ (ii) arrested for violation of probation with a pending felony charge or prior conviction requiring registration under G.S. 14, Article 27A *(complete AOC-CR-272, Side Two).*
☐ *(for offenses committed on or after December 1, 2011)* The defendant has been charged with an offense involving impaired driving, G.S. 20-4.01(24a), and was convicted of a prior offense involving impaired driving, which prior offense occurred within 7 years before the date of this offense. The defendant is ORDERED to abstain from alcohol as verified by a continuous alcohol monitoring system for the period of pretrial release or until this condition is removed by entry of order of the court.
☐ The defendant was arrested or surrendered after failing to appear as required under a prior release order.
☐ This was the defendant's second or subsequent failure to appear in this case.
☐ Your release is subject to the conditions as shown on the attached ☐ AOC-CR-270. ☐ Other: _____.

Additional Information

Date	*Signature Of Judicial Official*	☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *District Court Judge* ☐ *Superior Court Judge*

ORDER OF COMMITMENT

To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: ☐ produce him/her in Court as provided above. ☐ hold him/her ☐ as provided on the attached AOC-CR-272. ☐ for the following purpose: _____.

☐ *[Check in all domestic violence and stalking cases covered by G.S. 15A-534.1(b)]* produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before *(enter date and time 48 hours after time of arrest)* _____ , _____ ☐ AM ☐ PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.

Name Of Detention Facility	*Date*	*Signature Of Judicial Official*

WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above.

I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.

Date	*Signature Of Defendant*	*Signature Of Person Agreeing To Supervise Defendant*

Name Of Person Agreeing To Supervise Defendant (Type Or Print)	*Address Of Person Agreeing To Supervise Defendant*

DEFENDANT RELEASED ON BAIL

Date	*Time* ☐ AM ☐ PM	*Signature Of Jailer*

CONDITIONS OF RELEASE MODIFICATIONS

The Conditions of Release on the reverse are modified as follows:

Modification	Date	Signature Of Judicial Official

SUPPLEMENTAL ORDERS FOR COMMITMENT

The defendant is next Ordered produced in Court as follows:

Date	Time	Place	Purpose	Signature Of Judicial Official

DEFENDANT RECEIVED BY DETENTION FACILITY

Date	Time	Signature Of Jailer

DEFENDANT RELEASED FOR COURT APPEARANCE

Date	Time	Signature Of Jailer

NOTE TO CUSTODIAN: *This form shall accompany the defendant to court for all appearances.*

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name And Address Of Defendant

CONDITIONS OF RELEASE AND RELEASE ORDER

#

G.S. Chapter 15A, Art. 25, 26

Amount Of Bond

$

Offenses And Additional File Numbers

☐ See Attachment

Location Of Court	☐ *District* ☐ *Superior*	*Date*	*Time* ☐ AM ☐ PM

To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.

The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel and friends.

☐ Your release is authorized upon execution of your: ☐ WRITTEN PROMISE to appear ☐ UNSECURED BOND in the amount shown above
☐ CUSTODY RELEASE ☐ SECURED BOND in the amount shown above
☐ HOUSE ARREST with ELECTRONIC MONITORING administered by *(agency)* _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of ☐ employment ☐ counseling ☐ course of study ☐ vocational training

☐ Your release is not authorized.
☐ The defendant is required to provide *(check all that apply)* ☐ fingerprints under G.S. 15A-502(a1) or (a2). ☐ a DNA sample under G.S. 15A-266.3A. Prior to release, the defendant shall provide his/her *(check all that apply)* ☐ fingerprints. ☐ DNA sample.
☐ The defendant has been ☐ (i) charged with a felony while on probation *(complete AOC-CR-272, Side One)*. ☐ (ii) arrested for violation of probation with a pending felony charge or prior conviction requiring registration under G.S. 14, Article 27A *(complete AOC-CR-272, Side Two).*
☐ *(for offenses committed on or after December 1, 2011)* The defendant has been charged with an offense involving impaired driving, G.S. 20-4.01(24a), and was convicted of a prior offense involving impaired driving, which prior offense occurred within 7 years before the date of this offense. The defendant is ORDERED to abstain from alcohol as verified by a continuous alcohol monitoring system for the period of pretrial release or until this condition is removed by entry of order of the court.
☐ The defendant was arrested or surrendered after failing to appear as required under a prior release order.
☐ This was the defendant's second or subsequent failure to appear in this case.
☐ Your release is subject to the conditions as shown on the attached ☐ AOC-CR-270. ☐ Other: _____.

Additional Information

Date	*Signature Of Judicial Official*	☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *District Court Judge* ☐ *Superior Court Judge*

ORDER OF COMMITMENT

To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: ☐ produce him/her in Court as provided above. ☐ hold him/her ☐ as provided on the attached AOC-CR-272. ☐ for the following purpose: _____.

☐ *[Check in all domestic violence and stalking cases covered by G.S. 15A-534.1(b)]* produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before *(enter date and time 48 hours after time of arrest)* _____ , _____ ☐ AM ☐ PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.

Name Of Detention Facility	*Date*	*Signature Of Judicial Official*

WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above.

I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.

Date	*Signature Of Defendant*	*Signature Of Person Agreeing To Supervise Defendant*

Name Of Person Agreeing To Supervise Defendant (Type Or Print)	*Address Of Person Agreeing To Supervise Defendant*

DEFENDANT RELEASED ON BAIL

Date	*Time* ☐ AM ☐ PM	*Signature Of Jailer*

CONDITIONS OF RELEASE MODIFICATIONS

The Conditions of Release on the reverse are modified as follows:

Modification	Date	Signature Of Judicial Official

SUPPLEMENTAL ORDERS FOR COMMITMENT

The defendant is next Ordered produced in Court as follows:

Date	Time	Place	Purpose	Signature Of Judicial Official

DEFENDANT RECEIVED BY DETENTION FACILITY

Date	Time	Signature Of Jailer

DEFENDANT RELEASED FOR COURT APPEARANCE

Date	Time	Signature Of Jailer

NOTE TO CUSTODIAN: *This form shall accompany the defendant to court for all appearances.*

STATE OF NORTH CAROLINA

_____ County

File No.

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

Name And Mailing Address Of Defendant

APPEARANCE BOND FOR PRETRIAL RELEASE

Social Security No.	Telephone No. Of Defendant

Total Bond Required	Amount Of This Bond
$	$

G.S. 15A-531, 15A-534, 15A-544.2

Offenses And Additional File Numbers

☐ See Attachment

☐ **Unsecured Appearance Bond** - I, the undersigned defendant, acknowledge that my personal representatives and I are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.

☐ **Cash Appearance Bond** ***(See note on reverse side.)*** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.

☐ **Defendant's Property Appearance Bond** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side, and as security for said Bond have executed a mortgage or deed of trust to real or personal property, payable to the State of North Carolina and with power of sale conditioned upon the breach of any condition of this Bond.

☐ **Surety Appearance Bond** - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.

- ☐ ***(Professional bondsman, Bail Agent and Runners)*** - The "Affidavit" on the reverse side of this Bond is complete and true.
- ☐ **Cash Deposited By Surety** ***(See note on reverse side.)*** - We have deposited the cash identified below to secure our obligations as sureties on this bond with the understanding that the deposit will be returned to us upon the Court's determination that the conditions of pretrial release have been performed, and that it will NOT be available to satisfy defendant's obligations.

Date Of Execution Of Bond	Signature Of Defendant

ACCOMMODATION BONDSMAN

☐ See Page Two for additional accommodation bondsman executing this bond.

Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.	**Telephone No.**	**Social Security No.**	**Telephone No.**

PROFESSIONAL BONDSMAN

Name Of Bondsman	Name Of Runner, If Applicable
License No. Of Bondsman	**License No. Of Runner**

INSURANCE COMPANY

Name Of Insurance Company	Name Of Bail Agent
Power Of Appointment No. Of Bail Agent	**License No. Of Bail Agent**

SIGNATURE

Signature Of Surety	Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	**Signature**	**Date**	**Signature**

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

COMPLETE IF CASH DEPOSITED

Signature Of Official Accepting Cash	Name Of Official Accepting Cash (Type Or Print)	Receipt No.

NOTE: If cash deposited, see note on reverse side.

AOC-CR-201, Rev. 3/09

(see CR-238 if release after judgment in superior court)

Original-File
(Over)

CONDITIONS

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required and will at all times remain amenable to the orders and processes of the Court. It is agreed and understood that this Bond is effective and binding upon the defendant and each surety throughout all stages of the proceedings in the trial divisions of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or until the entry of judgment in the superior court. If the defendant appears as ordered and otherwise performs the foregoing conditions of the bond, then the bond is to be void, but if the defendant fails to obey any of these conditions, the Court will forfeit the bond pursuant to Part 2 of Article 26 of Chapter 15A of the General Statutes.

Each accommodation bondsman, by signing on the reverse or on Page Two, states: "I have reached the age of 18 years and am a bona fide resident of North Carolina. Aside from love and affection and release of the above named defendant, I have received no consideration for acting as surety. I own sufficient property over and above all liabilities, homestead and other exemptions allowed me by law to enable me to pay this Bond should it be ordered forfeited. I understand that if I sign this Bond without sufficient property, I am guilty of a crime."

AFFIDAVIT

NOTE: *"Professional bondsmen, surety bondsmen [bail agent], and runners must file with the clerk of court having jurisdiction over the principal, an affidavit on a form furnished by the Administrative Office of the Courts." G.S. 58-71-140(d). Check all options that apply.*

☐ 1. I have not, nor has anyone for my use, been promised or received any collateral, security or premium for executing this Bond.

☐ 2. I have been promised a premium in the amount shown below, which is due on the date shown below.

☐ 3. I have received a premium in the amount shown below.

☐ 4. I have been given collateral security by the person named below, of the nature and in the amount shown below.

Amount Of Premium Promised	*Date Due*	*Amount Of Premium Received*
$		$

Name Of Person From Whom Collateral Received	*Nature Of Collateral*	*Value*

AFFIX STAMP OR POWER OF ATTORNEY HERE

RETURN OF CUSTODIAN OF DETENTION FACILITY

The defendant named on the reverse was released from my custody on the date shown below upon the execution of this Appearance Bond.

Date Defendant Released	*Signature Of Custodian*	☐ *Sheriff* ☐ *Deputy Sheriff* ☐ *Other* _____

NOTES ON CASH BONDS:

(1) ***To Official Taking The Bond.*** *Use this form for all cash bonds. Only magistrate or clerk may take cash bond. Jailer may not take cash bond. Complete this form as follows:*

When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations*. Enter defendant's name, address and SS# at the top of Side One. Check "Cash Appearance Bond." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.*

When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and SS# at the top of Side One. Check "Surety Appearance Bond." Also check "Cash Deposited By Surety." Have defendant sign. Enter name, address and SS# of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.*

(2) ***To Bookkeeper.*** *When case disposed, disburse cash as follows: (1) If "Cash Appearance Bond" checked on Side One, disburse to Defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" and "Cash Deposited by Surety" are checked on Side One, disburse only to person named under "Accommodation Bondsman."*

(3) ***Bond With Insurance Company As Surety Same As Cash Except In Child Support.*** *G.S. 15A-531(4) provides that an appearance bond executed by a bail agent acting on behalf of an insurance company is the same as a cash bond, except in child support contempt proceedings where only cash may satisfy a cash bond requirement.*

AOC-CR-201, Side Two, Rev. 3/09

STATE VERSUS	File No.
Name Of Defendant	

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.	Telephone No.	Social Security No.	Telephone No.

SIGNATURE

Signature Of Surety	Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.	Telephone No.	Social Security No.	Telephone No.

SIGNATURE

Signature Of Surety	Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.	Telephone No.	Social Security No.	Telephone No.

SIGNATURE

Signature Of Surety	Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

AOC-CR-201A, Rev. 9/03

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name Of Defendant

Name Of Surety(ies)

SURRENDER OF DEFENDANT BY SURETY

G.S. 15A-540, -534

Date Of Appearance Bond	*Amount Of Bond*	*County Where Defendant To Appear If Different*
	$	

All File Nos. And Offenses

I, the undersigned surety for the named defendant, request that the Court release me from the defendant's Appearance Bond which I signed as indicated above. A certified copy of the bail bond is attached.

(You must complete both I. and II. below.)

I. Form Of Surrender *(check only one)*

☐ (a) I arrested the defendant and now surrender the defendant to the jail in this county where the defendant
☐ is to appear on these charges. ☐ was bonded on these charges.

☐ (b) I surrender the defendant who is currently in the jail in this county where the defendant
☐ is to appear on these charges. ☐ was bonded on these charges. ☐ Other: _____ .

II. Status Of Order Of Forfeiture *(check only one)*

☐ (a) The surrender of the defendant has occurred **after** an Order of Forfeiture was entered for the appearance bond for the offense(s) listed above, and after an order for arrest was issued.

☐ (b) The surrender of the defendant has occurred **before** an Order of Forfeiture was entered for the appearance bond for the offense(s) listed above.

I understand that this Surrender does not relieve me from my responsibility if an Order of Forfeiture has been entered before this Surrender. I also understand that I must apply to the Court for relief in that matter.

Date	*Name Of Surety (Type Or Print)*	*Signature Of Surety*

RECEIPT OR ACKNOWLEDGMENT OF CUSTODIAN

I, the undersigned custodian, acknowledge that the defendant is in custody as indicated.

Date	*Name Of Custodian/Jailer (Type Or Print)*	*Signature Of Custodian/Jailer*

NOTES TO CUSTODIAN:

(1) Only an actual surety may surrender the defendant. If the person offering the defendant for surrender presents an appearance bond form (AOC-CR-201) with the box checked for a "Cash Appearance Bond," then the person is not the surety for the defendant's appearance. Do not accept the surrender of the defendant. If the boxes for "Surety Appearance Bond" and "Cash Deposited By Surety" are checked, and the person attempting to surrender the defendant is the same person who signed the bond as surety, then that person is the surety and you may accept the surrender.

(2) G.S. 15A-540(b) requires that a defendant surrendered by a surety must have an immediate hearing on whether the defendant is again entitled to release and, if so, upon what conditions. Take the defendant, with this form, to a judicial official for this hearing. When the above Receipt is completed, provide surety with a copy of this form.

(See **NOTES TO MAGISTRATE** on reverse)

Original-Clerk Copy-Surety Copy-Custodian

AOC-CR-214, Rev. 6/08

NOTES TO MAGISTRATE:

*(1) If the defendant was surrendered **before** a breach of the conditions of release, the original conditions of release should be reentered. The defendant remains in custody until conditions of original release order are again satisfied. The court date remains the same.*

*(2) If the defendant was surrendered **after** a breach of the conditions of release, G.S. 15A-540(c) requires that a judicial official determine whether the defendant is again entitled to pretrial release and, if so, upon what conditions. If the breach was a failure to appear for any charge(s) covered by the appearance bond provided at the time of surrender, G.S. 15A-534(d1) provides that the official shall at a minimum impose the conditions of release recommended in an order for arrest issued for that failure to appear. If no conditions were recommended, the judicial official shall require a secured bond at least double the amount of the most recent secured or unsecured bond, or at least $500 if there was no monetary bond previously required. On the new release order, check the appropriate box(es) indicating the failure to appear.*

(3) If an order for arrest was issued for the defendant's failure to appear, the court date in the new release order should be the same as the court date, if any, in the order for arrest. The order for arrest should be served on the defendant, if possible, without detaining the defendant beyond the time when he or she should be released under the new release order. If the order for arrest cannot be served in that time, use the court's records to learn the court date in the order for arrest, and arrange to have order for arrest recalled.

(4) If the defendant was surrendered in a county other than the county where the defendant is to appear, return original order for arrest, if any, with return of service completed, along with this form and a copy of the new release order, to the county where the defendant is to appear. When conditions of pretrial release are satisfied, return original of the new release order with any custodian's entries completed, together with the original appearance bond, if any, to the county where the defendant is to appear.

File No.	☐ See Attachment	Law Enforcement Case No.	LID No.	SID No.	FBI No.

ORDER FOR ARREST

#

STATE OF NORTH CAROLINA

In The General Court Of Justice

_____ County ☐ District ☐ Superior Court Division

Offense

THE STATE OF NORTH CAROLINA VS.

Name, Address & Telephone No. Of Defendant

Race	*Sex*	*Date Of Birth*	*Age*

Social Security No.	*Drivers License No. & State*

Name And Address Of Defendant's Employer

Date Defendant Failed To Appear

Amount Of Bond	*Type Of Bond*
$	

TRUE BILL OF INDICTMENT ONLY

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Offense Code	*Offense In Violation Of G.S.*

Date Of Offense	*Date Issued*

To any officer with authority and jurisdiction to serve an Order For Arrest:

The Court finds that:

☐ 1. FTA - RELEASE ORDER [G.S. 15A-305(b)(2)]
the defendant has been arrested and released from custody and has failed on the date shown to appear as required by the Release Order. ☐ This is the defendant's second or subsequent failure to appear on these charges.

☐ 2. FTA - CRIMINAL SUMMONS OR CITATION (Do not use for infraction.) [G.S. 15A-305(b)(3)]
the defendant has failed on the date shown to appear as required by a duly executed Criminal Summons or by a Citation that charged the defendant with a misdemeanor.

☐ 3. TRUE BILL OF INDICTMENT [G.S. 15A-305(b)(1)]
a Grand Jury has returned a true bill of indictment against the defendant, a copy of which is attached.
[**Note To Arresting Officer:** *If this option is checked, defendant must be fingerprinted. G.S. 15A-502(a).*]

☐ 4. FTA - SHOW CAUSE AFTER FTC [G.S. 15A-305(b)(8)]
the defendant has failed on the date shown to appear as required in a Show Cause Order entered in this criminal proceeding.

☐ 5. FTA - SHOW CAUSE ORDER IN ORIGINAL CRIMINAL JUDGMENT
[G.S. 15A-305(b)(8); -1362(c); -1364(a)]
the defendant has failed by the date shown to pay a fine or costs or both as required by a judgment entered in this case and has also failed, as required upon such failure, to appear on that date and show cause why the defendant should not be imprisoned.

☐ 6. PROBABLE CAUSE THAT DEFENDANT MAY FAIL TO APPEAR - CRIMINAL CONTEMPT
[G.S. 15A-305(b)(9); 5A-16]
this Court has initiated plenary proceedings for contempt against the defendant under G.S. 5A-16, has issued a show cause order and finds probable cause to believe that the defendant will not appear as required in response to that order.

☐ 7. PROBATION VIOLATION [G.S. 15A-305(b)(4); -1345(a)]
the probation officer has provided the court with a written statement, signed by the probation officer, alleging that the defendant has violated specified conditions of the defendant's probation and a copy of the written statement is attached.

☐ 8. Other: *(specify)*

You are DIRECTED to take the defendant into custody and bring the defendant before a judicial official for the purpose of:

☐ determining conditions of release, and for commitment if the defendant is unable to comply.
☐ commitment since release of the defendant is not authorized.

Signature	*Location Of Court*	*Court Date*
☐ *Magistrate* ☐ *Deputy CSC* ☐ *DC Judge* ☐ *Asst. CSC* ☐ *Clerk Of Superior Court* ☐ *SC Judge*		*Court Time* ☐ AM ☐ PM

AOC-CR-217, Rev. 4/11

(Over)

If this Order For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by his/her department in attempting to serve the order and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Order was received and served as follows:

Date Received	*Date Served*	*Time Served* ☐ AM ☐ PM	*Date Returned*

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Order WAS NOT served for the following reason:

Signature Of Officer Making Return	*Name Of Officer (Type Or Print)*

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date	*Signature*	☐ *Dep. CSC* ☐ *Asst. CSC* ☐ *CSC*

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Order was received and served as follows:

Date Received	*Date Served*	*Time Served* ☐ AM ☐ PM	*Date Returned*

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Order WAS NOT served for the following reason:

Signature Of Officer Making Return	*Name Of Officer (Type Or Print)*

Department Or Agency Of Officer

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the Superior Court.

☐ The current pretrial release order is modified as follows:

Date	*Signature Of District Court Judge*

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived	*Signature Of Defendant*
	Signature Of Attorney

File No.	☐ See Attachment	Law Enforcement Case No.	LID No.	SID No.	FBI No.

ORDER FOR ARREST

#

STATE OF NORTH CAROLINA

In The General Court Of Justice

_____ County ☐ District ☐ Superior Court Division

Offense

THE STATE OF NORTH CAROLINA VS.

Name, Address & Telephone No. Of Defendant

Race	Sex	Date Of Birth	Age

Social Security No.	Drivers License No. & State

Name And Address Of Defendant's Employer

Date Defendant Failed To Appear

Amount Of Bond	Type Of Bond
$	

TRUE BILL OF INDICTMENT ONLY

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

Offense Code	Offense In Violation Of G.S.

Date Of Offense	Date Issued

To any officer with authority and jurisdiction to serve an Order For Arrest:

The Court finds that:

☐ 1. FTA - RELEASE ORDER [G.S. 15A-305(b)(2)]
the defendant has been arrested and released from custody and has failed on the date shown to appear as required by the Release Order. ☐ This is the defendant's second or subsequent failure to appear on these charges.

☐ 2. FTA - CRIMINAL SUMMONS OR CITATION (Do not use for infraction.) [G.S. 15A-305(b)(3)]
the defendant has failed on the date shown to appear as required by a duly executed Criminal Summons or by a Citation that charged the defendant with a misdemeanor.

☐ 3. TRUE BILL OF INDICTMENT [G.S. 15A-305(b)(1)]
a Grand Jury has returned a true bill of indictment against the defendant, a copy of which is attached.
[**Note To Arresting Officer:** *If this option is checked, defendant must be fingerprinted. G.S. 15A-502(a).*]

☐ 4. FTA - SHOW CAUSE AFTER FTC [G.S. 15A-305(b)(8)]
the defendant has failed on the date shown to appear as required in a Show Cause Order entered in this criminal proceeding.

☐ 5. FTA - SHOW CAUSE ORDER IN ORIGINAL CRIMINAL JUDGMENT
[G.S. 15A-305(b)(8); -1362(c); -1364(a)]
the defendant has failed by the date shown to pay a fine or costs or both as required by a judgment entered in this case and has also failed, as required upon such failure, to appear on that date and show cause why the defendant should not be imprisoned.

☐ 6. PROBABLE CAUSE THAT DEFENDANT MAY FAIL TO APPEAR - CRIMINAL CONTEMPT
[G.S. 15A-305(b)(9); 5A-16]
this Court has initiated plenary proceedings for contempt against the defendant under G.S. 5A-16, has issued a show cause order and finds probable cause to believe that the defendant will not appear as required in response to that order.

☐ 7. PROBATION VIOLATION [G.S. 15A-305(b)(4); -1345(a)]
the probation officer has provided the court with a written statement, signed by the probation officer, alleging that the defendant has violated specified conditions of the defendant's probation and a copy of the written statement is attached.

☐ 8. Other: *(specify)*

You are DIRECTED to take the defendant into custody and bring the defendant before a judicial official for the purpose of:

☐ determining conditions of release, and for commitment if the defendant is unable to comply.
☐ commitment since release of the defendant is not authorized.

Signature	Location Of Court	Court Date
☐ Magistrate ☐ Deputy CSC ☐ DC Judge ☐ Asst. CSC ☐ Clerk Of Superior Court ☐ SC Judge		Court Time ☐ AM ☐ PM

AOC-CR-217, Rev. 4/11

(Over)

If this Order For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by his/her department in attempting to serve the order and any information obtained about the whereabouts of the defendant.

RETURN OF SERVICE

I certify that this Order was received and served as follows:

Date Received	*Date Served*	*Time Served* ☐ AM ☐ PM	*Date Returned*

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Order WAS NOT served for the following reason:

Signature Of Officer Making Return	*Name Of Officer (Type Or Print)*

Department Or Agency Of Officer

REDELIVERY/REISSUANCE

Date	*Signature*	☐ *Dep. CSC* ☐ *Asst. CSC* ☐ *CSC*

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Order was received and served as follows:

Date Received	*Date Served*	*Time Served* ☐ AM ☐ PM	*Date Returned*

☐ By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

☐ This Order WAS NOT served for the following reason:

Signature Of Officer Making Return	*Name Of Officer (Type Or Print)*

Department Or Agency Of Officer

APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the Superior Court.

☐ The current pretrial release order is modified as follows:

Date	*Signature Of District Court Judge*

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived	*Signature Of Defendant*
	Signature Of Attorney

(TYPE OR PRINT IN BLACK INK)

STATE OF NORTH CAROLINA

_____ County

File No.

Additional File Nos.

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

Name Of Defendant, Petitioner, Respondent

Street Address Of Defendant, Petitioner, Respondent

Permanent Mailing Address Of Defendant, Petitioner, Respondent (If Different Than Above)

Telephone Number of Defendant, Petitioner, Respondent

☐ *Check here if defendant is in jail*

Full Social Security No.
___ ___ ___ - ___ ___ - ___ ___ ___ ___ ☐ *Has No Social Security No.*

ORDER OF ASSIGNMENT OR DENIAL OF COUNSEL

G.S. 7A-146(11), 7A-292(15), 7A-450, 7A-451(a)

Offense(s) (List Offense(s) Only If File No. Has Not Been Assigned)

INSTRUCTIONS: *Do not use this form for first-degree murder cases or murder cases where the degree is undesignated, except for cases where the defendant was under 18 years of age at the time of the offense, or for capital post-conviction cases or appeals to the Court of Appeals or Supreme Court. For adult first-degree murder cases or murder cases where the degree is undesignated at the trial level, the Office of Indigent Defense Services will use form AOC-CR-624. For capital post-conviction cases, the Office of Indigent Defense Services will use form AOC-CR-625. For appellate cases, the Court will use form AOC-CR-350.*

I. ASSIGNMENT OR DENIAL OF COUNSEL

From the petition heard in this matter, it appears to the Court that the applicant named above is party to a proceeding or action listed in G.S. 7A-451(a);

and, from the affidavit made by the applicant, and from the inquiry made by the Court, which is documented in the record, it is determined that the applicant:

☐ 1. will not receive an active or suspended term of imprisonment if he/she is convicted of the offense(s) for which he/she is charged; it is ORDERED that the defendant's petition is denied.

☐ 2. will not receive an active or suspended term of imprisonment if he/she is found in contempt; it is ORDERED that the defendant's petition is denied.

☐ 3. is financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is not an indigent and his/her petition is denied.

☐ 4. is **not** financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is an indigent and is entitled to the services of counsel as contemplated by law, and that he/she shall be represented by:
☐ the attorney named below. ☐ the public defender in this judicial district.

Name Of Appointed Attorney (If Applicable)

Next Court Date

II. SIGNATURE OF JUDGE, CLERK OR MAGISTRATE

Date

Signature

☐ *Judge* ☐ *Clerk Of Superior Court* ☐ *Asst. CSC* ☐ *Deputy CSC* ☐ *Magistrate*

NOTE: *A magistrate who is a duly licensed attorney may appoint counsel if designated to do so by the Chief District Court Judge. See G.S. 7A-146(11) and G.S. 7A-292(15).*

Material opposite unmarked squares is to be disregarded as surplusage.

(TYPE OR PRINT IN BLACK INK) In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE OF NORTH CAROLINA
_____ County

File No.

Additional File Nos.

Name Of Applicant

Full Street Address Of Applicant Including City, State And Zip Code

Full Permanent Mailing Address Of Applicant (If Different Than Above)

Telephone Number Of Applicant | *Date Of Birth*

☐ *Defendant* ☐ *Parent/Guardian/Trustee* ☐ _____

AFFIDAVIT OF INDIGENCY

G.S. 7A-450 et seq.

Offense(s)

Applicant: *Do you have other pending criminal charge(s) in which a lawyer has been appointed?* ☐ *Yes* ☐ *No*
Name Of Lawyer

Full Social Security No. Of Applicant ___-___-____ ☐ *Has No Social Security No.*

MONTHLY INCOME (money you make)		**MONTHLY EXPENSES (money you pay out)**	
Employment - Applicant	$	Number Of Dependents	
Name And Address Of Applicant's Employer *(If not employed, state reason; if self-employed, state trade)*		Shelter ☐ *Buying* ☐ *Renting*	$
		Food	$
		Utilities *(power, water, heating, phone, cable, etc.)*	$
Other Income *(Welfare, Food Stamps, S/S, Pensions, etc.)*	$	Health Care	$
Employment - Spouse	$	Installment Payments ☐ *Vehicle* ☐ *Other*	$
Name And Address Of Spouse's Employer		Car Expenses *(gas, insurance, etc.)*	$
		Support Payments	$
		Other: *(specify)*	$
Total Monthly Income	$	**Total Monthly Expenses**	$

DESCRIPTION OF ASSETS AND LIABILITIES	**ASSETS (things you own)**	**LIABILITIES (amounts you owe)**
Cash On Hand And In Bank Accounts *(List Name Of Bank & Account No.)*	$	
Money Owed To Or Held For Applicant	$	
Motor Vehicles *(List Make, Model, Year)*	*(Fair Market Value)* $	*(Balance Due)* $
Real Estate	*(Fair Market Value)* $	*(Balance Due)* $
Personal Property	*(Fair Market Value)* $	*(Balance Due)* $
Other Debts		$
Last Income Tax Filed 20_____ ☐ *Refund* ☐ *Owe*	$	$
Other	$	$
Total Assets And Liabilities	$	$

Bond Type	*Amount*	*By Whom Posted*
	$	

NOTE: *Read the notice on the reverse side before completing this form.*

(Over)

NOTICE TO PERSONS REQUESTING A COURT-APPOINTED LAWYER

1. When answering the questions on the Affidavit Of Indigency *(reverse side of this form)*, please do not discuss your case with the interviewer. The interviewer can be called as a witness to testify about any statements made in his/her presence. Please wait and speak with your lawyer. Do not ask the interviewer for any advice or opinion concerning your case.

2. **A court-appointed lawyer is not free. If you are convicted or plead guilty or no contest, you may be required to repay the cost of your lawyer as a part of your sentence. The Court may also enter a civil judgment against you, which will accrue interest at the legal rate set out in G.S. 24-1 from the date of the entry of judgment. Your North Carolina Tax Refund may be taken to pay for the cost of your court-appointed lawyer. In addition, if you are convicted or plead guilty or no contest, the Court must charge you an attorney appointment fee and may enter this fee as a civil judgment against you pursuant to G.S. 7A-455.1.**

3. The information you provide may be verified, and your signature below will serve as a release permitting the interviewer to contact your creditors, employers, family members, and others concerning your eligibility for a court-appointed lawyer. A false or dishonest answer concerning your financial status could lead to prosecution for perjury. See G.S. 7A-456(a) ("A false material statement made by a person under oath or affirmation in regard to the question of his indigency constitutes a Class I felony.").

Under penalty of perjury, I declare that the information provided on this form is true and correct to the best of my knowledge, and that I am financially unable to employ a lawyer to represent me. I now request the Court to assign a lawyer to represent me in this case. I authorize the Court to contact my creditors, employers, or family members, any governmental agencies or any other entities listed below concerning my eligibility for a court-appointed lawyer.

I further authorize my creditors, employers, or family members, any governmental agencies or any other entities listed below to release financial information concerning my eligibility for a court-appointed lawyer upon request of the Court.

Governmental Agencies Or Other Entities Authorized To Be Contacted And/Or To Release Information

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		*Date*
Date	*Signature*	*Signature Of Applicant*
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *Magistrate*		*Name Of Applicant (Type Or Print)*
☐ *Notary*	*Date My Commission Expires*	☐ *Defendant* ☐ *Parent/Guardian/Trustee* ☐ _____
SEAL	*County Where Notarized*	

NOTE: *If you are less than 18 years old, or if you are at least 18 years old but remain dependent on and live with a parent or guardian, state name and address of parent, guardian or trustee below.*

Name Of Parent/Guardian Or Trustee
Address
City, State, Zip

STATE OF NORTH CAROLINA

File No.

_____ County

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

STATE VERSUS	
Name Of Defendant	
Name And Address Of Law Enforcement Agency	**TRANSMITTAL OF OUT-OF-COUNTY PROCESS**

TO THE LAW ENFORCEMENT AGENCY NAMED ABOVE:

Attached please find an ☐ Order For Arrest ☐ Criminal Summons ☐ Warrant For Arrest for execution in your county or city.

The judicial official who issued the process has made the following recommendations for conditions of release:

The judicial official in your county before whom the defendant is brought should set the trial or hearing at the date, time and location shown below.

Date Of Hearing	*Time Of Hearing* ☐ AM ☐ PM	*Location of Hearing*

If the defendant is committed to jail, the person or agency listed below should be contacted for return to this county.

Name Of Person Or Agency	*Date*
Telephone No.	*Signature*
	☐ *Superior Court Judge* ☐ *District Court Judge* ☐ *CSC* ☐ *Assistant CSC* ☐ *Deputy CSC* ☐ *Magistrate*

NOTE TO EXECUTING OFFICER: *Following execution of the attached process, deliver this form to the judicial official before whom defendant is brought.*

AOC-CR-236, Rev. 4/01

STATE OF NORTH CAROLINA

_____ County

File No.

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

Name Of Defendant

OUT-OF-COUNTY PROCESS VERIFICATION RECALL AND TRANSMISSION

(For use when process electronically transmitted to out-of-county agency)

G.S. 15A-101.1; 15A-401; 15A-501

NOTE: *The county name shown above is the county where the process was originally issued.* ***See instructions on reverse side.***

I. VERIFICATION

Date Of Issuance Of Process	Type Of Process ☐ Warrant ☐ Order For Arrest
Offense(s) Charged	☐ Domestic Violence Offense
Name Of Initiating Officer, If Any	Initiating Officer's Court Date(s)

NOTICE TO THE LAW ENFORCEMENT AGENCY THAT ARRESTED THE DEFENDANT:

The initiating law enforcement agency named below hereby verifies that:

1. The original of the process attached to this verification is in our physical possession.
2. The process is still outstanding and has not already been served on the defendant.
3. The defendant is still wanted for prosecution on these charges.
4. We have entered the following notation in the Return of Service on the original: "Defendant has been arrested in *(name of county where defendant arrested)* _____ County."
5. The initiating officer's next court date(s) are shown above.

Date	Signature
Name Of Initiating Law Enforcement Agency	Name (Type Or Print)
Fax Number of Initiating Law Enforcement Agency	Title (Type Or Print)

II. RECALL OF PROCESS AND TRANSMISSION TO CLERK

County Of Arrest, As Assigned By The Undersigned	Date Of Arrest	Date Of Service Of Process
Name And Address Of Arresting Agency		Defendant's Next Court Date In Your County

NOTICE TO THE LAW ENFORCEMENT AGENCY IN VERIFICATION SECTION ABOVE:

The defendant was arrested in the County of Arrest named above. The attached process ☐ has ☐ has not been served on the defendant. The process is hereby recalled. If you have not already done so, immediately return your original to the office of the Clerk of Superior Court of the county in which the charges are pending.

NOTICE TO THE CLERK OF SUPERIOR COURT OF THE COUNTY WHERE THE PROCESS WAS ISSUED:

The defendant named above has been arrested on the charges specified above and served with a copy of the process in this county. The original process has been recalled. Attached you will find the following:

1. The process served in this county, bearing the officer's return of service.
2. The original release order and appearance bond, if the defendant has been released, or a copy of the release order, if the defendant has not been released.
3. The defendant's next court date in your county is the date shown above, and the defendant has been notified of that court date in the Release Order, of which a copy is attached.

Date		Signature Of Judicial Official
County	Telephone Number	Name Of Judicial Official (Type Or Print)

(Over)

AOC-CR-241, Rev. 3/05

INSTRUCTIONS

THE LAW ENFORCEMENT AGENCY IN POSSESSION OF THE ORIGINAL PROCESS SHOULD:

1. Enter the applicable information in the boxes in the top portion and in the Verification on the reverse side.
2. Under "Name Of Initiating Officer, If Any," enter the name of the officer whose name appears as a complaining witness on the warrant in this case, if any. If the process is an order for arrest, refer to the warrant for this information.
3. If the charges are all misdemeanor(s), under "Initiating Officer's Court Date(s)" enter all the dates on which the initiating officer is scheduled to be in district court during the next month. Otherwise do not enter a date in this box.
4. Complete and sign the Verification on the reverse.
5. Fax this form, and the process, to the law enforcement agency that arrested the defendant.
6. Enter the following notation in the Return of Service on the original: "Defendant has been arrested in *(name of county where defendant arrested)* _____ County."
7. Immediately return the original, with that notation, to the office of the Clerk of Superior Court of the county where the process was issued, to be filed in the defendant's file.
8. Make no further effort to arrest the defendant on this process.
9. If you entered the defendant and the charges in DCI, update DCI with the arrest information.

THE LAW ENFORCEMENT AGENCY THAT ARRESTED THE DEFENDANT SHOULD:

1. By fax or other means, obtain the following from the law enforcement agency in possession of the process:
   a. the original process,
   b. this form, with the Verification on Side One of this form completed and signed.
2. Make a copy of the process, serve it on the defendant, and make a return of service on the original or duplicate original.
3. Take the defendant, and these papers, to a magistrate for an initial appearance without unnecessary delay.
4. Give the process bearing your return of service and two (2) copies of this form to the magistrate.
5. Notify DCI that the defendant has been arrested on these charges, if the process was entered.

THE MAGISTRATE SHOULD:

1. Enter the applicable information in the boxes under "RECALL OF PROCESS AND TRANSMISSION TO CLERK."
2. Conduct an initial appearance immediately and set conditions of pretrial release as soon as sufficient information is available.
3. Assign a court date in the county where the charges are pending. Communicate with that county to obtain an appropriate date. Enter this date under "Defendant's Next Court Date In Your County, As Assigned By The Undersigned."
4. Release the defendant upon satisfaction of the conditions of pretrial release.
5. Complete the "Recall Of Process And Transmission To Clerk" on the reverse.
6. Send this form to the Clerk of Superior Court of the issuing county. Attach the following:
   a. the process bearing the return of service,
   b. the original release order and appearance bond, if the defendant has been released from jail, or a copy of the release order if the defendant has not been released.
7. Send the above by fax and hard mail in all cases.
8. Send a copy of this form to the law enforcement agency in possession of the original process. Attach a copy of the Release Order.

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name Of Defendant

Date Of Birth

DETENTION OF IMPAIRED DRIVER

G.S. 15A-534.2, 20-38.4

FINDINGS

The undersigned judicial official conducting an initial appearance for the defendant named above finds the following by clear and convincing evidence:

1. The defendant has been charged with an offense involving impaired driving as defined in G.S. 20-4.01(24a).
2. At the time of the defendant's initial appearance, the impairment of the defendant's physical or mental faculties presents a danger, if the defendant is released, of physical injury to the defendant or others or damage to property in that *(specify reasons)*:

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff until an appropriate judicial official determines that

1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released or
2. a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

The period of detention under this Order shall not exceed twenty-four (24) hours.

Date | *Time* ☐ AM ☐ PM

Signature Of Judicial Official

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

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

☐ 1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released.

☐ 2. _____ *(name)*, a sober, responsible adult, has indicated by signing below that he/she is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

☐ 3. the period of detention has reached twenty-four (24) hours.

By signing immediately below, I certify that I am a sober, responsible person, age 18 or older, who is willing and able to assume responsibility for the defendant until the defendant's physical or mental faculties are no longer impaired.

Date | *Signature Of Sober Responsible Adult*

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date | *Time* ☐ AM ☐ PM

Signature Of Judicial Official

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

NOTE: *"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." G.S. 20-38.4(a)(3).*

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS	
Name Of Defendant	**DETENTION FOR COMMUNICABLE DISEASE TESTING**
Date Of Birth	G.S. 15A-534.3

FINDINGS

The undersigned judicial official conducting an initial appearance or first appearance for the defendant named above finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by the defendant to the individual in that *(specify reasons)*:

[**NOTE:** *Do **not** include any information indicating that the defendant has or may have a communicable disease. Describe only the nature of the exposure that would pose a significant risk of transmission of the AIDS or Hepatitis B virus if the defendant were infected.*

Note that mere contact of the defendant's bodily fluids with a subject's clothing or unbroken skin does not pose a significant risk of transmission of either virus. A significant risk of transmission occurs when the defendant's bodily fluids come into contact with the subject's broken skin or mucous membranes. For example, a bite by the defendant that does not break the subject's skin does not pose a significant risk of transmission. Contact that may pose a significant risk includes things like a needlestick or a bite that actually breaks the subject's skin.]

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff to allow for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148.

The period of detention under this Order shall not exceed twenty-four (24) hours.

Date	*Time* ☐ AM ☐ PM	☐ *Magistrate*	☐ *Clerk Of Superior Court*
Signature Of Judicial Official		☐ *Deputy CSC*	☐ *District Court Judge*
		☐ *Assistant CSC*	☐ *Superior Court Judge*

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

☐ 1. public health officials have completed their investigation and testing, if any, under G.S. 130A-144 and G.S. 130A-148.

☐ 2. the period of detention has reached twenty-four (24) hours.

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date	*Time* ☐ AM ☐ PM	☐ *Magistrate*	☐ *Clerk Of Superior Court*
Signature Of Judicial Official		☐ *Deputy CSC*	☐ *District Court Judge*
		☐ *Assistant CSC*	☐ *Superior Court Judge*

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
Before The Magistrate

STATE VERSUS

Name Of Defendant

IMPLIED CONSENT OFFENSE NOTICE

G.S. 20-38.4

OBSERVATION PROCEDURE

TO THE DEFENDANT:

The established local procedure to contact other persons and have other persons appear at the jail to observe your condition or administer an additional chemical analysis to you is provided in writing with this form and incorporated into this form by reference. You are hereby notified of this procedure.

CONTACT PERSONS

TO THE DEFENDANT:

Pursuant to G.S. 20-38.4(a)(4), you are required to list all persons you wish to contact and their telephone numbers: *(attach additional sheets if necessary)*

	Name	**Telephone Number**
1.		
2.		
3.		

☐ I do not wish to contact anyone.

SIGNATURE

By signing below, the defendant indicates that he/she has received notice of the contact and observation procedure and has listed all persons that he/she wishes to contact.

Date	*Signature Of Defendant*

MAGISTRATE'S CERTIFICATION

The undersigned magistrate certifies that pursuant to Article 24 of Chap. 15A and G.S. 20-38.4 that

1. An initial appearance was held and the undersigned found probable cause to believe the defendant committed an implied consent offense.
2. The undersigned reviewed all alcohol screening tests, chemical analyses and testimony from law enforcement officers concerning impairment and the circumstances of the arrest, and observed the defendant.
3. The undersigned considered whether the defendant was impaired to the extent that the provisions of G.S. 15A-534.2 should have been imposed.
4. The undersigned informed the defendant in writing of the established procedure to have others appear at the jail to observe the 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*	*Signature Of Magistrate*
	☐ AM ☐ PM	

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

Date	*Time*	*Signature*	
	☐ AM ☐ PM		☐ *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).*

AOC-CR-271, New 12/06

STATE OF NORTH CAROLINA

_____ 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*

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)*

☐ 1. upon receipt and consideration of the additional information described above,

☐ 2. upon review of the defendant's eligibility for release at his/her first appearance,

the undersigned finds that the defendant ☐ does ☐ does not pose a danger to the public, and therefore sets or denies conditions of release accordingly on the attached AOC-CR-200.

Date	*Signature Of Judicial Official*

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

NOTE TO JUDICIAL OFFICIAL: *First appearance must be set for the first regular session of district court in the county or within 96 hours of arrest, whichever occurs first. G.S. 15A-601(c). A lack of information to determine whether the defendant poses a danger to the public does not permit a delay of the first appearance. If the defendant was detained pursuant to No. 3 above, then upon receipt of information identified in No. 3.b.,* ***any*** *judicial official before whom the defendant is brought must set conditions of release pursuant to G.S. 15A-534(d2)(3), in accord with the official's further finding concerning danger to the public under Release From Detention Order above.*

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS	**DETENTION OF DEFENDANT ARRESTED FOR PROBATION VIOLATION WITH PENDING FELONY OR PRIOR SEX OFFENSE**
Name Of Defendant	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*

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)*

☐ 1. upon receipt and consideration of additional information,

☐ 2. upon review of the defendant's eligibility for release after detention without bail pursuant to G.S. 15A-1345(b1) as specified in No. 3.b. above,

the undersigned finds that the defendant ☐ does ☐ does not pose a danger to the public and therefore sets or denies conditions of release accordingly on the attached AOC-CR-200.

Date	*Signature Of Judicial Official*

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

NOTE TO JUDICIAL OFFICIAL: *If the defendant has been held for seven (7) days since arrest pursuant to G.S. 15A-1345(b1) and without a determination of conditions of release, the defendant must be brought before **any** judicial official, who must record in writing that the defendant has been held for 7 days and impose conditions of release as otherwise provided in G.S. 15A-1345. If the defendant is found to be a danger to the public, whether upon receipt of additional information or after 7 days without additional information, release must be denied pending the probation revocation hearing.*

C

In The General Court Of Justice District Court Division

STATE OF NORTH CAROLINA _____ County

NOTE: (If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.) ☐ DOC

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

Date | Signature Of Magistrate/Deputy/Assistant/CSC

COURT USE ONLY

District Attorney | Attorney For Defendant At Time Of Trial Or Plea ☐ Appointed ☐ Retained ☐ Waived

PRIOR CONVICTIONS: No./Level: 0 ☐ I (0) ☐ II (1-4) ☐ III (5+)

PLEA ☐ guilty/resp. ☐ no contest ☐ guilty/resp. ☐ no contest ☐ not guilty/resp. _____

VERDICT/ ☐ guilty/resp. _____ **FINDING:** ☐ guilty/resp. _____ ☐ not guilty/resp. _____

MISD. CLASS: ☐ A1 ☐ 1 ☐ 2 ☐ 3 **MISD. CLASS:** ☐ A1 ☐ 1 ☐ 2 ☐ 3 ☐ V/D _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: ☐ pay costs and a fine/penalty of $ _____. ☐ be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. ☐ The Court finds that a ☐ longer ☐ shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. ☐ Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: ☐ (1) pay costs and a fine/penalty of $ _____; ☐ (2) not operate a motor vehicle until properly licensed by DMV; ☐ (3) complete _____ hours of community service within _____ days and pay the fee; ☐ (4) Other: _____

☐ It is ORDERED that this: ☐ Judgment is continued upon payment of costs. ☐ case be consolidated for judgment with _____ sentence is to run at the expiration of the sentence in _____

☐ ☐ ☐ COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

☐ The defendant in open court, gives notice of appeal to the Superior Court. ☐ The current pretrial release order is modified as follows: _____

Date | Signature Of District Court Judge

I certify that this Judgment is a true copy. Date | Signature Of Deputy/Assistant/CSC

File No.

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court N.C.

Day Of Week	Month	Day	Year	Time ☐ AM ☐ PM

☐ D.L. ☐ D.C.I. ☐ Other | No. Of Charges

THE STATE OF NORTH CAROLINA VS.

Name Of Defendant

Address

City | State | Zip

Drivers License No. | State | CDL | Class

Race | Sex | Date Of Birth | Age

Social Security No. Of Defendant | Telephone No.

Vehicle License No. | State

Vehicle Type | Trailer Type | CMV | Haz. Mat. | Make | Year

Name And Telephone No. Of Defendant's Employer

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE

I acknowledge receipt of this Citation ☐ and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.

Date | Signature Of Defendant

DEPARTMENTAL USE ONLY

Officer | No. | Troop | District

SHP Code ☐ N.C. Patrol ☐ _____ Police/Sheriff

Area	Wea.	Vis.	Traffic	Accident	Speed

On Highway No./Street ☐ Injury Or Serious Injury ☐ Passenger(s) Under 16

In Vicinity/City Of | At/Near Intersection

Wit. | Chemical Analyst | ☐ _____ AC ☐ Refused

The undersigned officer has probable cause to believe that on or about _____, _____ (a.) (p.) m., the _____ day of _____, _____, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

☐ ☐ **1.** At a speed of _____ MPH in a _____ MPH ☐ zone. G.S. 20-141.
77. ☐ work zone. G.S. 20-141(j2). **88.** ☐ school zone. G.S. 20-141.1.

☐ **2.** In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

☐ **3.** By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1.

☐ **4.** By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1).

☐ **5.** While subject to an impairing substance. G.S. 20-138.1.

☐ **6.** Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

☐ **7.** While the defendant's drivers license was revoked. G.S. 20-28.

☐ **8.** While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

☐ **9.** Without (displaying thereon a current approved inspection certificate) (having a current electronic inspection authorizaton for the vehicle), such vehicle requiring inspection in North Carolina. G.S. 20-183.8. Month Expired: _____.

☐ **10.** By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

☐ **11.** By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

☐ **12.** By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

☐ **13.** Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

☐ **14.** (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). [**NOTE:** *Strike "operate a (motor) vehicle" and "(public vehicular area)" above.*]

☐ **15.** Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

☐ ☐ **16.** _____

☐ ☐ **17.** And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

Date | Signature Of Officer

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ORIGINAL-COURT COPY

WITNESSES

Name	Address	Phone
Name	Address	Phone
Name	Address	Phone

C

In The General Court Of Justice District Court Division

STATE OF NORTH CAROLINA _____ County

NOTE: *(If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.)* ☐ DOC

MAGISTRATE'S ORDER - Mmisdemeanor ONLY

The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

Date | *Signature Of Magistrate/Deputy/Assistant/CSC*

COURT USE ONLY

District Attorney | *Attorney For Defendant At Time Of Trial Or Plea* ☐ *Appointed* ☐ *Retained* ☐ *Waived*

PRIOR CONVICTIONS:

No./Level: 0 ☐ **I (0)** ☐ **II (1-4)** ☐ **III (5+)**

PLEA ☐ guilty/resp. ☐ no contest _____ **VERDICT/** ☐ guilty/resp. _____ **MISD. CLASS:** ☐ A1 ☐ 1 ☐ 2 ☐ 3

☐ guilty/resp. ☐ no contest _____ **FINDING:** ☐ guilty/resp. _____ **MISD. CLASS:** ☐ A1 ☐ 1 ☐ 2 ☐ 3

☐ not guilty/resp. _____ ☐ not guilty/resp. _____ ☐ V/D _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: ☐ pay costs and a fine/penalty of $ _____ . ☐ be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. ☐ The Court finds that a ☐ longer ☐ shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. ☐ Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: ☐ (1) pay costs and a fine/penalty of $ _____ ; ☐ (2) not operate a motor vehicle until properly licensed by DMV; ☐ (3) complete _____ hours of community service within _____ days and pay the fee; ☐ (4) Other: _____

_____

_____

_____

☐ It is ORDERED that this: ☐ Judgment is continued upon payment of costs. ☐ case be consolidated for judgment with _____ sentence is to run at the expiration of the sentence in _____

☐ ☐ ☐ COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

☐ The defendant in open court, gives notice of appeal to the Superior Court. ☐ The current pretrial release order is modified as follows: _____

_____

Signature Of District Court Judge | *Date*

Signature Of Deputy/Assistant/CSC | *Date*

I certify that this Judgment is a true copy.

File No.

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court N.C.

Day Of Week	*Month*	*Day*	*Year*	*Time* ☐ AM ☐ PM

☐ D.L. ☐ D.C.I. ☐ Other | No. Of Charges

THE STATE OF NORTH CAROLINA VS.

Name Of Defendant

Address

City | *State* | *Zip*

Drivers License No. | *State* | *CDL* | *Class*

Race | *Sex* | *Date Of Birth* | *Age*

Social Security No. Of Defendant | *Telephone No.*

Vehicle License No. | *State*

Vehicle Type | *Trailer Type* | *CMV* | *Haz. Mat.* | *Make* | *Year*

Name And Telephone No. Of Defendant's Employer

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE

I acknowledge receipt of this Citation ☐ and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.

Date | *Signature Of Defendant*

DEPARTMENTAL USE ONLY

Officer	*No.*	*Troop*	*District*

SHP Code ☐ N.C. Patrol ☐ _____ Police/Sheriff

Area	*Wea.*	*Vis.*	*Traffic*	*Accident*	*Speed*

On Highway No./Street ☐ *Injury Or Serious Injury* ☐ *Passenger(s) Under 16*

In Vicinity/City Of | *At/Near Intersection*

Wit. | *Chemical Analyst* ☐ _____ *AC* ☐ *Refused*

The undersigned officer has probable cause to believe that on or about _____ , _____ (a.) (p.) m., the _____ day of _____ , _____ , in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

☐ ☐ **1.** At a speed of _____ MPH in a _____ MPH ☐ zone. G.S. 20-141.
77. ☐ work zone. G.S. 20-141(j2). **88.** ☐ school zone. G.S. 20-141.1.

☐ **2.** In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

☐ **3.** By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1.

☐ **4.** By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1).

☐ **5.** While subject to an impairing substance. G.S. 20-138.1.

☐ **6.** Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

☐ **7.** While the defendant's drivers license was revoked. G.S. 20-28.

☐ **8.** While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

☐ **9.** Without (displaying thereon a current approved inspection certificate) (having a current electronic inspection authorizaton for the vehicle), such vehicle requiring inspection in North Carolina. G.S. 20-183.8. Month Expired: _____ .

☐ **10.** By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

☐ **11.** By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

☐ **12.** By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

☐ **13.** Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

☐ **14.** (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). [**NOTE:** *Strike "operate a (motor) vehicle" and "(public vehicular area)" above.*]

☐ **15.** Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

☐ ☐ **16.** _____

_____

_____

_____

_____

_____

_____

_____

☐ ☐ **17.** And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Date | *Signature Of Officer*

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DEFENDANT'S COPY (SEE IMPORTANT NOTICE ON REVERSE)

NOTICE TO DEFENDANT

If you fail to appear in court at the time and place specified, or to dispose of this case prior to your court date by pleading Guilty/Responsible, **criminal process may be issued against you.** If you are charged with a motor vehicle offense, your failure to appear **may result in the revocation of your drivers license** until you dispose of this charge, and certain fees may be assessed against you. In addition, if a cash bond is required and posted, it will be forfeited, and your **failure to appear will be treated as a "conviction"** resulting in "points" against your record **or possible license revocation.**

INSTRUCTIONS TO DEFENDANT

(Only the checked block applies)

☐ **1. You must appear** in District Court at the time and place specified on the front side.

☐ **2. You do not have to appear** in District Court at the time and place specified if you waive your trial, plead Guilty/Responsible and pay the amounts shown below for fine/penalty (which is a standard amount set by the Chief District Court Judges of North Carolina) and for court costs. You may do so by mail, in person or online so long as your payment is received by 5:00 p.m. on the last working day prior to your scheduled court date.

Payment By Mail - Date and sign this Citation in the space provided below, place your payment and this Citation in an envelope, affix a stamp and mail to: Clerk of Superior Court, _____ County Courthouse, _____, North Carolina _____ . Payment must be made by **certified check, cashier's check or money order** payable to the Clerk of Superior Court. **Do not** mail cash. **PERSONAL CHECKS WILL NOT BE ACCEPTED.**

Payment In Person - Deliver your payment and this Citation to the office of the Clerk of Superior Court at the above address during regular business hours or to any Magistrate of the above county. Payment must be made by **cash, certified check, cashier's check or money order** payable to the Clerk of Superior Court.
PERSONAL CHECKS WILL NOT BE ACCEPTED.

Payment Online - Certain offenses that do not require a court appearance may be processed online at www.payNCticket.org.

If you wish to contest the charge or appear before a judge, you must appear at the time and place specified on the front side.

☐ **3. You do not have to appear** in District Court at the time and place specified if you waive your trial and plead Guilty. If you wish to do so, **you must appear in person before a Magistrate** of _____ County, because of the nature of the charge. Date and sign this Citation in the space provided below, deliver it to the Magistrate, and pay the fine imposed by the Magistrate and the court costs shown below.
Payment must be made by **cash, certified check, cashier's check or money order** payable to the Clerk of Superior Court.
PERSONAL CHECKS WILL NOT BE ACCEPTED.

If you wish to contest the charge or appear before a judge, you must appear at the time and place specified on the front side.

WARNING: If you decide to plead Guilty/Responsible, you should do so **promptly** to minimize your court costs. If you delay in entering your plea and making the specified payment, you may be liable for the costs of serving subpoenas on witnesses plus witness fees.

Forms-Pg 48

WAIVER OF TRIAL/HEARING - PLEA OF GUILTY/RESPONSIBLE - CONSENT TO ENTRY OF JUDGMENT

I acknowledge that I have been charged with the offense/infraction noted herein by the charging officer.

I understand that I am presumed by law to be Not Guilty/Not Responsible until proven Guilty/Responsible beyond a reasonable doubt. Nevertheless, I do hereby waive my constitutional rights to a trial/hearing in open court, to confront the witnesses against me, and to representation by an attorney.

I hereby plead Guilty/Responsible to this offense/infraction and tender to the court the sums listed below as payment of the fine/penalty and costs in this case.

I request that the court accept my waiver of trial/hearing, plea of Guilty/Responsible and tender of fine/penalty and costs, and that a verdict/finding of Guilty/Responsible be entered. This request is made with the full understanding that a verdict/finding of Guilty/Responsible will be entered against my record, that if this is a motor vehicle offense, the North Carolina Division of Motor Vehicles (or the licensing authority of any other state which issued my license to drive) will be notified of the verdict/finding, that it will have the same legal effect for all purposes as a verdict/finding of Guilty/Responsible after a trial/hearing, and that it may result in the assessment of points on my driving record or the suspension or revocation of my drivers license.

Amount Of Fine/Penalty	*Court Costs*	*Total*
$	$	$

Date	*Signature Of Defendant*

C

In The General Court Of Justice District Court Division

STATE OF NORTH CAROLINA _____ County

NOTE: (If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.) ☐ DOC

MAGISTRATE'S ORDER - Mmisdemeanor ONLY

The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

Date | Signature Of Magistrate/Deputy/Assistant/CSC

COURT USE ONLY

District Attorney | Attorney For Defendant At Time Of Trial Or Plea ☐ Appointed ☐ Retained ☐ Waived

PRIOR CONVICTIONS:

No./Level: 0 ☐ I (0) ☐ II (1-4) ☐ III (5+)

PLEA ☐ guilty/resp. ☐ no contest
☐ guilty/resp. ☐ no contest
☐ not guilty/resp.

VERDICT/ ☐ guilty/resp. _____
FINDING: ☐ guilty/resp. _____
☐ not guilty/resp. _____

MISD. CLASS: ☐ A1 ☐ 1 ☐ 2 ☐ 3
MISD. CLASS: ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ V/D _____

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: ☐ pay costs and a fine/penalty of $ _____. ☐ be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. ☐ The Court finds that a ☐ longer ☐ shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. ☐ Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: ☐ (1) pay costs and a fine/penalty of $ _____; ☐ (2) not operate a motor vehicle until properly licensed by DMV; ☐ (3) complete _____ hours of community service within _____ days and pay the fee; ☐ (4) Other: _____

☐ It is ORDERED that this: ☐ Judgment is continued upon payment of costs. ☐ case be consolidated for judgment with _____ sentence is to run at the expiration of the sentence in _____

☐ ☐ ☐ COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

☐ The defendant in open court, gives notice of appeal to the Superior Court. ☐ The current pretrial release order is modified as follows: _____

Signature Of District Court Judge | Date

I certify that this Judgment is a true copy.

Signature Of Deputy/Assistant/CSC | Date

File No.

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court N.C.

Day Of Week	Month	Day	Year	Time ☐ AM ☐ PM

☐ D.L. ☐ D.C.I. ☐ Other | No. Of Charges

THE STATE OF NORTH CAROLINA VS.

Name Of Defendant

Address

City | State | Zip

Drivers License No. | State | CDL | Class

Race | Sex | Date Of Birth | Age

Social Security No. Of Defendant | Telephone No.

Vehicle License No. | State

Vehicle Type	Trailer Type	CMV	Haz. Mat.	Make	Year

Name And Telephone No. Of Defendant's Employer

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE

I acknowledge receipt of this Citation ☐ and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.

Date | Signature Of Defendant

DEPARTMENTAL USE ONLY

Officer | No. | Troop | District

SHP Code ☐ N.C. Patrol ☐ _____ Police/Sheriff

Area	Wea.	Vis.	Traffic	Accident	Speed

On Highway No./Street ☐ Injury Or Serious Injury ☐ Passenger(s) Under 16

In Vicinity/City Of | At/Near Intersection

Wit. | Chemical Analyst | ☐ _____ AC ☐ Refused

The undersigned officer has probable cause to believe that on or about _____, _____ (a.) (p.) m., the _____ day of _____, _____, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

☐ ☐ **1.** At a speed of _____ MPH in a _____ MPH ☐ zone. G.S. 20-141.
77. ☐ work zone. G.S. 20-141(j2). **88.** ☐ school zone. G.S. 20-141.1.

☐ **2.** In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

☐ **3.** By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1.

☐ **4.** By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1).

☐ **5.** While subject to an impairing substance. G.S. 20-138.1.

☐ **6.** Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

☐ **7.** While the defendant's drivers license was revoked. G.S. 20-28.

☐ **8.** While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

☐ **9.** Without (displaying thereon a current approved inspection certificate) (having a current electronic inspection authorizaton for the vehicle), such vehicle requiring inspection in North Carolina. G.S. 20-183.8. Month Expired: _____.

☐ **10.** By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

☐ **11.** By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

☐ **12.** By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

☐ **13.** Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

☐ **14.** (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). [**NOTE:** *Strike "operate a (motor) vehicle" and "(public vehicular area)" above.*]

☐ **15.** Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

☐ ☐ **16.** _____

☐ ☐ **17.** And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

Date | Signature Of Officer

Forms-Pg 49

SHP DIVISION COPY/CSC AUDIT COPY

In The General Court Of Justice District Court Division

C

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

Signature Of Magistrate/Deputy/Assistant/CSC

Date

The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

OFFICER'S NOTES

File No.

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court

N.C.

Day Of Week	*Month*	*Day*	*Year*	*Time*	☐ AM ☐ PM

☐ D.L. ☐ D.C.I. ☐ Other | No. Of Charges

THE STATE OF NORTH CAROLINA VS.

Name Of Defendant

Address

City	*State*	*Zip*

Drivers License No.	*State*	*CDL*	*Class*

Race	*Sex*	*Date Of Birth*	*Age*

Social Security No. Of Defendant	*Telephone No.*

Vehicle License No.	*State*

Vehicle Type	*Trailer Type*	*CMV*	*Haz. Mat.*	*Make*	*Year*

Name And Telephone No. Of Defendant's Employer

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)

ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE

I acknowledge receipt of this Citation ☐ and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.

Date	*Signature Of Defendant*

DEPARTMENTAL USE ONLY

Officer	*No.*	*Troop*	*District*

SHP Code ☐ N.C. Patrol ☐ _____ Police/Sheriff

Area	*Wea.*	*Vis.*	*Traffic*	*Accident*	*Speed*

On Highway No./Street ☐ *Injury Or Serious Injury* ☐ *Passenger(s) Under 16*

In Vicinity/City Of	*At/Near Intersection*

Wit.	*Chemical Analyst*	☐ _____ ***AC*** ☐ *Refused*

STATE OF NORTH CAROLINA _____ **County**

The undersigned officer has probable cause to believe that on or about _____ , _____ (a.) (p.) m., the _____ day of _____ , _____ , in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

☐ ☐ **1.** At a speed of _____ MPH in a _____ MPH ☐ zone. G.S. 20-141.
77. ☐ work zone. G.S. 20-141(j2). **88.** ☐ school zone. G.S. 20-141.1.

☐ **2.** In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

☐ **3.** By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1.

☐ **4.** By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1).

☐ **5.** While subject to an impairing substance. G.S. 20-138.1.

☐ **6.** Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

☐ **7.** While the defendant's drivers license was revoked. G.S. 20-28.

☐ **8.** While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

☐ **9.** Without (displaying thereon a current approved inspection certificate) (having a current electronic inspection authorizaton for the vehicle), such vehicle requiring inspection in North Carolina. G.S. 20-183.8. Month Expired: _____ .

☐ **10.** By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

☐ **11.** By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

☐ **12.** By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

☐ **13.** Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

☐ **14.** (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). [**NOTE:** *Strike "operate a (motor) vehicle" and "(public vehicular area)" above.*]

☐ **15.** Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

☐ ☐ **16.** _____

☐ ☐ **17.** And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

Date	*Signature Of Officer*

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CONSENT TO TOW, REMOVE OR STORE VEHICLE OR LEAVE VEHICLE AT THE SCENE

I, the undersigned, declare that I am the ☐ registered owner ☐ legal possessor

of the motor vehicle identified on the reverse of this Citation.

(check appropriate block)

☐ I consent to have this vehicle ☐ towed ☐ removed ☐ and stored

by towing service _____ .

☐ I consent to have this vehicle removed to the shoulder of the road by the undersigned law enforcement officer and left at this location.

Date	*Signature*
Date	*Signature*

VIN

OFFICER'S NOTES

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name Of Defendant

CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE

G.S. 15A-534.1

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

FINDINGS

The undersigned judicial official finds that the defendant named above is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.

The undersigned judicial official ☐ has considered the defendant's criminal history as shown on a criminal history report provided by a law enforcement officer or a district attorney. ☐ has not considered the defendant's criminal history as shown on a criminal history report because no report could be obtained within a reasonable time.

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:

☐ 1. The defendant shall stay away from the home, school, business or place of employment of the alleged victim.

☐ 2. The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.

☐ 3. The defendant shall refrain from removing, damaging or injuring the property listed below:

☐ 4. The defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

☐ 5. Other restrictions:

- ☐ a. The defendant shall have no contact with the alleged victim.
- ☐ b. The defendant shall comply with any valid domestic violence protective order in effect.
- ☐ c. The defendant shall not possess any firearms.
- ☐ d. Other:

Date	*Signature Of Judicial Official*	☐ *Magistrate* ☐ *District Court Judge* ☐ *Superior Court Judge*

NOTE TO JUDICIAL OFFICIAL: *The law enforcement officer or district attorney who provided the defendant's criminal history report shall dispose of the report in accordance with DCI regulations. The report shall* ***NOT*** *be placed in the case file.*

AOC-CR-630, Rev. 10/10

STATE OF NORTH CAROLINA

_____ County

File No.

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

STATE VERSUS

Name Of Defendant

CONDITIONS OF RELEASE FOR PERSON CHARGED WITH SEX OFFENSE OR CRIME OF VIOLENCE AGAINST CHILD VICTIM

G.S. 15A-534.4

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

FINDINGS

The undersigned judicial official finds that the defendant named above is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of G.S 14-202.1, with rape or any other sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim, with incest with a minor in violation of G.S. 14-178, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of G.S. 14-320.1, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim.

☐ The undersigned judicial official, upon request of the defendant, has waived one or more of the conditions required by No. 2 or No. 3 below based on the following findings that imposing the condition(s) on the defendant would not be in the best interest of the alleged victim: *(specify reasons)*

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:

1. The defendant shall refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

☐ 2. The defendant shall stay away from the home, temporary residence, school, business, or place of employment of the alleged victim. *(Strike through and initial any waived conditions if block is checked, but not all conditions apply.)*

☐ 3. The defendant shall refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges. *(Strike through and initial any waived conditions if block is checked, but not all conditions apply.)*

Date	*Signature Of Judicial Official*	☐ *Magistrate* ☐ *Clerk Of Superior Court* ☐ *Deputy CSC* ☐ *District Court Judge* ☐ *Assistant CSC* ☐ *Superior Court Judge*

AOC-CR-631, New 6/08