



# Basic School for Magistrates: Summer 2019 Week II

## UNC School of Government

August 19-August 23, 2019

### Monday, August 19

- 8:30 a.m.**      **Elements of Crimes (Assaults)** (60 mins)  
John Rubin, School of Government
- 9:30 a.m.**      *Break*
- 9:45 a.m.**      **Elements of Crimes (Assaults)** (*continued*) (60 mins)  
John Rubin, School of Government
- 10:45 a.m.**      *Break*
- 11:00 a.m.**      **Elements of Crimes (Motor Vehicle Law)** (60 mins)  
Shea Riggsbee Denning, School of Government
- 12:00 p.m.**      *Lunch (SOG Dining Room)*
- 12:45 p.m.**      **Elements of Crimes (Sexual Assaults)** (60 mins)  
Jamie Markham, School of Government
- 1:45 p.m.**      *Break*
- 2:00 p.m.**      **Elements of Crimes (Sexual Assaults)** (*continued*) (60 mins)  
Jamie Markham, School of Government
- 3:00 p.m.**      *Break*
- 3:15 p.m.**      **Elements of Crimes (Trespass)** (60 mins)  
Jamie Markham, School of Government
- 4:15 p.m.**      *Break*
- 4:30 p.m.**      **Solicitation, Conspiracy, Attempts, Principals, and Accessories Offenses** (30 mins)  
John Rubin, School of Government
- 5:00 p.m.**      *Adjourn*

### Tuesday, August 20

- 9:00 a.m.**      **Initial Appearance** (60 mins)  
John Rubin, School of Government, and Joe Privette, Business Systems Analyst, NCAOC
- 10:00 a.m.**      *Break*
- 10:15 a.m.**      **Initial Appearance** (*continued*) (60 mins)  
John Rubin, School of Government, and Joe Privette, Business Systems Analyst, NCAOC
- 11:15 a.m.**      *Break*

- 11:30 a.m.**      **Initial Appearance** (*continued*) (60 mins)  
John Rubin, School of Government, and Joe Privette, Business Systems Analyst, NCAOC
- 12:30 p.m.**      *Lunch (SOG Dining Room)*
- 1:30 p.m.**      **Initial Appearance** (*continued*) (60 mins)  
John Rubin, School of Government, and Joe Privette, Business Systems Analyst, NCAOC
- 2:30 p.m.**      *Break*
- 2:45 p.m.**      **Elements of Crimes (Larceny & Robbery)** (75 mins)  
Jonathan Holbrook, School of Government
- 4:00 p.m.**      *Break*
- 4:15 p.m.**      **Contempt** (45 mins)  
Ann Anderson, School of Government
- 5:00 p.m.**      *Adjourn*

## **Wednesday, August 21**

- 8:30 a.m.**      **Elements of Crimes (Drunk, Weapons, Resisting)** (60 mins)  
Christopher Tyner, School of Government
- 9:30 a.m.**      *Break*
- 9:45 a.m.**      **Selecting Process** (60 mins)  
Jeff Welty, School of Government
- 10:45 a.m.**      *Break*
- 11:00 a.m.**      **Selecting Process** (*continued*) (60 mins)  
Jeff Welty, School of Government
- 12:00 p.m.**      *Lunch (SOG Dining Room)*
- 1:00 p.m.**      **Selecting Process** (*continued*) (60 mins)  
Jeff Welty, School of Government
- 2:00 p.m.**      *Break*
- 2:15 p.m.**      **Impaired Driving Holds** (60 mins)  
Shea Riggsbee Denning, School of Government, and Joe Privette, Business Systems Analyst, NCAOC
- 3:15 p.m.**      *Break*
- 3:30 p.m.**      **CVRs and Vehicle Seizures** (90 mins)  
Shea Riggsbee Denning, School of Government, and Joe Privette, Business Systems Analyst, NCAOC
- 5:00 p.m.**      *Adjourn*

## Thursday, August 22

- 8:45 a.m.**      **Search Warrants** (60 mins)  
Jeff Welty, School of Government
- 9:45 a.m.**      *Break*
- 10:00 a.m.**     **Search Warrants (continued)** (60 mins)  
Jeff Welty, School of Government
- 11:00 a.m.**     *Break*
- 11:15 a.m.**     **Search Warrants (continued)** (60 mins)  
Jeff Welty, School of Government
- 12:15 p.m.**     **Lunch & NCMA Presentation** (*Room 2401*)
- 1:15 p.m.**      **Elements of Crimes (Burglary)** (75 mins)  
Phil Dixon, School of Government
- 2:30 p.m.**      *Break*
- 2:45 p.m.**      **Elements of Crimes (Drugs)** (60 mins)  
John Donovan, Durham County Magistrate
- 3:45 p.m.**      *Break*
- 4:00 p.m.**      **Elements of Crimes (Drugs) (continued)** (60 mins)  
John Donovan, Durham County Magistrate
- 5:00 p.m.**      *Adjourn*

## Friday, August 23

- 8:30 a.m.**      **Domestic Violence Procedure** (60 mins)  
Dona Lewandowski, School of Government
- 9:30 a.m.**      *Break*
- 9:45 a.m.**      **Judicial Independence** (60 mins)  
Sarah Owens, Rutherford County Magistrate
- 10:45 a.m.**     *Break*
- 11:00 a.m.**     **Capstone Exercise: Applying What You've Learned** (90 mins)  
Shea Riggsbee Denning, School of Government
- 12:30 p.m.**     *Lunch (SOG Dining Room)*
- 1:30 p.m.**      **Evaluations & Test** (*Room 2601*)

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North Carolina Administrative Office of the Courts  
UNC School of Government

## **SOG FACULTY BIOGRAPHIES**

**Ann Anderson**

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Ann Anderson joined the School of Government faculty in 2007. Prior to that, she was an associate for six years with the law firm of Kennedy Covington in Raleigh and Durham, where she specialized in real-estate litigation and quasi-judicial proceedings. Anderson earned a BA in history with highest distinction from the University of North Carolina at Chapel Hill and a law degree with honors from the University of North Carolina at Chapel Hill School of Law, where she was a member of the *North Carolina Law Review*.

**Areas of Interest:** Civil procedure; judicial authority and education; real-estate litigation

**Mark Botts**

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Mark Botts joined the School of Government (then the Institute 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 BA from Albion College and a JD 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**

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

**Areas of Interest:** Motor vehicle law; prosecutor education

**Phil Dixon Jr.**

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Phil Dixon joined the School of Government in 2017. Previously he worked for eight years as an attorney in Pitt and surrounding eastern North Carolina counties, focusing primarily on criminal defense and related matters. Dixon served as assigned counsel to indigent clients throughout his career, and represented adult and juvenile clients charged with all types of crimes at the trial level. He earned a BA from the University of North Carolina at Chapel Hill and a JD with highest honors from North Carolina Central University. He works with the indigent education group at the School to provide training and consultation to public defenders and defense lawyers, as well as to research and write about criminal law issues.

**Areas of Interest:** Criminal law and procedure; evidence; indigent defense; public defender training

**Jonathan Holbrook**

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Jonathan Holbrook joined the School of Government in 2017 as the School's first-ever Prosecutor Educator. Jonathan previously worked as a prosecutor for nearly ten years, both in state court with the Wake County District Attorney's Office and in federal court with the U.S. Attorney's Office for the Eastern District of North Carolina. Jonathan earned his B.A. from Northwestern University, and his J.D. with Honors from UNC Chapel Hill School of Law. Jonathan writes and updates legal entries for NC PRO, the new online criminal procedure resource for prosecutors, as well as the NC Criminal Law Blog, and he provides assistance, consultation, and training to prosecutors on a wide variety of issues.

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

**Dona Lewandowski**

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

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

**Jamie Markham**

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

**Areas of Interest:** Criminal law and procedure, especially community corrections and sentencing law

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

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

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

**Christopher Tyner****[ctyner@soq.unc.edu](mailto:ctyner@soq.unc.edu) / (919) 843-8404**

Christopher Tyner joined the School of Government in 2012. He is a member of the North Carolina State Bar and provides research support to faculty members in the areas of criminal and local government law. Tyner earned a BA and a JD from the University of North Carolina at Chapel Hill.

**Areas of Interest:** Criminal law and procedure; local government law

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

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

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

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

**Areas of Interest:** Criminal law and procedure; evidence; judicial education; prosecutor training; police attorneys; search and seizure law

## FIELDS OF EXPERTISE

December 2018

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## 2019

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Basic School for Magistrates – Summer 2019

July 22-July 26 *and* August 19-August 23

<https://www.sog.unc.edu/courses/basic-school-magistrates>

Chapel Hill

NC Magistrates' Fall Conference

October 7-10

<https://www.sog.unc.edu/courses/nc-magistrates-fall-conference>

Concord

Regional One-Day Seminars for Magistrates: *Small Claims*

<https://www.sog.unc.edu/courses/regional-one-day-seminars-magistrates-small-claims>

October 17 Chapel Hill

October 23 Greenville

October 30 Asheville

Regional One-Day Seminars for Magistrates: *Criminal Law and More*

<https://www.sog.unc.edu/courses/regional-one-day-seminars-magistrates-hot-topics>

October 14 Chapel Hill

October 24 Greenville

October 29 Asheville

Advanced Criminal Procedure for Magistrates

November 12-15

<https://www.sog.unc.edu/courses/advanced-criminal-procedure-magistrates>

Chapel Hill

## 2020

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NC Magistrates' Spring Conference

March 23-26

<https://www.sog.unc.edu/courses/nc-magistrates-spring-conference>

Location TBD

The Magistrate's Role in Involuntary Commitment

April 20-22

<https://www.sog.unc.edu/courses/magistrates-role-involuntary-commitment>

Chapel Hill

Introduction to Small Claims Court for Magistrates

May 12-14

<https://www.sog.unc.edu/courses/introduction-holding-small-claims-court-magistrates-0>

Chapel Hill

Special Topics for Small Claims: Topic TBD

June 24-26

<https://www.sog.unc.edu/courses/special-topics-small-claims>

Chapel Hill

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# Criminal Procedure

**CRIMINAL PROCEDURE**

2018 Legislation Affecting Criminal Law and Procedure ..... Criminal Procedure-Page 1

## 2018 Legislation Affecting Criminal Law and Procedure

John Rubin

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January 2019

Below are summaries of 2018 legislation affecting criminal law and procedure. To obtain the text of the legislation, click on the link provided below or go to the North Carolina General Assembly's website, [www.ncleg.gov](http://www.ncleg.gov). Be careful to note the effective date of each piece of legislation.

1. **[S.L. 2018-5 \(S 99\): Appropriations Act \(as amended by S.L. 2018-97 \(S 335\) and S.L. 2018-114 \(H 374\)](#)**). The act enacts various provisions related to criminal law and procedure, effective July 1, 2018 unless otherwise indicated.

*Criminal record checks.* Under new G.S. 143B-935.1, the Department of Public Safety may provide a criminal record check to the Division of Social Services or Division of Medical Assistance of the Department of Health and Human Services or a county agency for applicants for employment, current employees, contractual employees or applicants, and employees of contractors who are permitted to access federal tax information. Under new G.S. 143B-968, the Department of Public Safety may provide a criminal record check to the Office of State Human Resources for any prospective temporary employee of a State agency or department if a criminal record check is a requirement for employment by the agency or department with which the individual would be temporarily assigned.

*Criminal Justice Fellows Program.* New Article 2 of G.S. Chapter 17C establishes the North Carolina Criminal Justice Fellows Program providing forgivable loans for applied associate degrees in criminal justice and related fields of study as preparation for a criminal justice profession. The Division of Criminal Justice Education and Training Standards of the Department of Justice must report to the General Assembly by April 1, 2019, regarding implementation of the program.

*Office of Indigent Defense Services (IDS).* Section 18A of the Appropriations Act requires IDS to report on a workload formula for public defender offices by December 1, 2018; establishes a new public defender office in District 29A (McDowell and Rutherford counties) and expands the public defender office in District 3B to include Craven and Pamlico counties in addition to Carteret County; allows the chief district court judge of a county selected to participate in the flat-fee pilot project to request to withdraw the county from the project; and requires IDS to report on indigency standards by October 1, 2018.

*Judicial Department.* Section 18B of the Appropriations Act amends G.S. 7A-304 to require the Administrative Office of the Courts (AOC) to report by October 1, 2018, and annually thereafter, on the implementation of the notice of waiver of costs to directly affected government entities; requires the North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission) to study the most effective setting to house and provide treatment services for driving while impaired aggravated level one and level one offenders and report by February 1, 2019; requires the Sentencing Commission to develop

projections of available bed space in the Statewide Misdemeanant Confinement Program and report by February 15, 2019 and annually thereafter and requires the Sentencing Commission to study the feasibility of developing a five-year population projection, with the report due by February 15, 2019; and transfers the North Carolina Human Trafficking Commission from the Department of Justice to the AOC. The Appropriations Act also makes changes to the allocation of superior court judges and assistant district attorneys, effective January 1, 2019. ([S.L. 2018-121](#) (H 717), not summarized in this paper, modifies superior court, district court, and prosecutorial districts, effective on the dates indicated in that act.)

2. [S.L. 2018-13](#) (S 486): **Criminal record checks for state and county boards of elections; unlawful retention of information.** Effective June 20, 2018, the act adds G.S. 163A-7 and G.S. 163A-778 to require a criminal history record check of current and prospective employees of the State Board of Elections and Ethics Enforcement and county boards of elections, current and prospective county directors of elections, and employees and agents of current and prospective contractors. The statutes state that a single conviction constitutes just cause for not selecting the person for employment or dismissing the person from employment but a conviction does not automatically bar employment.

Effective December 1, 2018, the act adds G.S. 163A-1388(a)(16) to make it a Class 2 misdemeanor for any person who is not an elections official or who is not otherwise authorized by law “to retain a registrant’s signature, full or partial Social Security number, date of birth, or the identity of the public agency at which the registrant registered under G.S. 163A-884, any electronic mail address submitted under Part 2 of Article 17 of this Chapter, or drivers license number from any form described in G.S. 163-862 after submission of the form to the county board of elections or elections official.”

3. [S.L. 2018-31](#) (H 325): **Arson laws.** Effective for offenses committed on or after December 1, 2018, the act adds G.S. 14-67.2 to make it a Class D felony, unless the conduct is covered under another provision of law providing greater punishment, for a person to:
- during the commission of a felony
  - knowingly damage any dwelling, structure, building, or conveyance referenced in Article 15 (Arson and Other Burnings) of G.S. Chapter 14
  - by means of fire or explosive
  - that results in damages of \$10,000 or more.

The statute states that aiding and abetting the offense is likewise a Class D felony.

The act also amends G.S. 14-69.3, which has made it a Class E felony to commit a felony under Article 15 of G.S. Chapter 14 causing serious bodily injury to a firefighter or emergency medical technician. The amended statute adds law enforcement officers and fire investigators to the coverage of the statute. The act also amends the caption of the statute to clarify that it applies to offenses resulting in serious bodily injury, not serious injury (the statute itself has required serious bodily injury).

4. **[S.L. 2018-33 \(S 630\): Involuntary commitment.](#)** As part of a larger act making several changes to North Carolina involuntary commitment laws, the act adds G.S. 122C-55(c1), effective October 1, 2019. The new subsection allows a mental health facility (as defined in G.S. 122C-3(14)) to provide confidential information to a sheriff on request about a client of the facility who is confined in the county's jail if the county jail medical unit has determined that the inmate needs to be treated for mental illness, developmental disabilities, or substance abuse. The new provision likewise allows a sheriff to provide confidential information to a facility if the inmate is seeking treatment from the requesting facility or has been involuntarily committed. The client's consent is not required in either instance.
5. **[S.L. 2018-36 \(S 124\): Disposal of hemp oil.](#)** Effective December 1, 2018, the act adds G.S. 90-94.1(d) to require anyone who possesses or uses hemp extract to dispose of residual oil at a secure collection box managed by a law enforcement agency. The subsection states that no criminal penalty attaches to a violation.
6. **[S.L. 2018-40 \(S 168\): Miscellaneous court system changes.](#)** The act amends several statutes related to the courts, including the following related to criminal courts.

G.S. 7A-498.3, which describes the responsibilities of the Office of Indigent Defense Services (IDS), is amended to require IDS to develop a model appointment plan, with minimum qualification standards for appointed counsel, by July 1, 2019. Judicial districts may request modifications to the model plan; however, if a judicial district has not adopted a plan with IDS's approved qualification standards by January 2, 2021, the IDS model plan becomes effective in that district.

Effective for arrest warrants issued on or after October 1, 2018, the act modifies G.S. 7A-304(b)(3), which describes the process for issuing an arrest warrant. That subdivision was modified in 2017 to require citizens seeking criminal process to put the facts supporting probable cause in a written affidavit. The act removes the written affidavit requirement; however, the amended subsection states that if the finding of probable cause is based solely on evidence provided by a person who is not a law enforcement officer, the issuing judicial official must issue a criminal summons instead of an arrest warrant except in specified circumstances. For a further discussion of this change, see Jeff Welty, [Easy Come, Easy Go: Legislature Removes Affidavit Requirement for Citizen-Initiated Criminal Process](#), N.C. Crim. L. Blog (July 9, 2018). The act also repeals subdivision G.S. 15A-304(b)(2), added in 2017 to specify circumstances in which the issuing official must issue a criminal summons instead of an arrest warrant, and restores the language previously in effect directing the issuing official to consider certain circumstances in deciding whether to issue a warrant or summons. The repealed subdivision included, among other provisions, that the fact that the offense charged is a felony is not itself grounds for issuance of an arrest warrant.
7. **[S.L. 2018-44 \(S 616\): Controlled substance changes.](#)** As part of a larger act dealing with heroin and opioids, the act makes the following changes, effective for offenses committed on or after December 1, 2018, unless otherwise indicated.

- Sections 2, 3, and 6 correct the names of certain substances in the controlled substance schedules. Section 4 amends G.S. 90-90(2) to add fentanyl immediate precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP), and section 5 amends G.S. 90-95(d2) to add N-phenethyl-4-piperidinone (NPP). Section 7 amends the trafficking statutes by revising G.S. 90-95(h)(3d) to delete MDPV and add substituted cathinones, repealing G.S. 90-95(h)(3e) on mephedrone, and amending G.S. 90-95(h)(4) to cover opioids as well as opium and opiates.
- Section 9 amends G.S. 90-108(a)(14), which makes it an offense for an employee of a registrant or practitioner to unlawfully divert a controlled substance, to add registrants and participants; and adds G.S. 90-108(a)(15) to make it a Class G felony under G.S. 90-108(b)(2) for a person who is not a registrant or practitioner or an employee of a registrant or practitioner to divert a controlled substance. New G.S. 90-108(b)(3) makes it a Class E felony if a person violates subdivision (14) or (15) and intentionally diverts any controlled substance by means of dilution or substitution as those terms are defined in the new provision.
- Section 11 adds 90-113.74(k) creating three new offenses involving individuals authorized to access data in the controlled substances reporting system. A person who is convicted of any of the new offenses is permanently barred from accessing the controlled substances reporting system.
  - A person who knowingly and intentionally accesses prescription information in the controlled substances reporting system for an unauthorized purpose is guilty of a Class I felony.
  - A person who knowingly and intentionally discloses or disseminates prescription information from the system for an unauthorized purpose is guilty of a Class I felony.
  - A person who willfully and maliciously obtains, discloses, or disseminates prescription information for an unauthorized purpose and with the intent to use the information for commercial advantage or personal gain or maliciously harm any person is guilty of a Class H felony.
- Several sections of the act address certified diversion investigators and certified diversion supervisors, new law enforcement positions addressing the diversion of controlled substances from legitimate channels. Effective July 1, 2019, new G.S. 90-107.1 authorizes such investigators to obtain pharmacy records in connection with an active investigation and establishes procedures for such requests; and new G.S. 90-113.74(i) authorizes the Department of Health and Human Services to release data in the controlled substance reporting system to such investigators under the conditions in that subsection. Effective June 22, 2018, new G.S. 90-113.74E requires the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission to develop standards

and training for diversion investigators and supervisors. Amended G.S. 17C-6(a) and G.S. 17E-4(a) elaborates on the standards and training.

8. **S.L. 2018-47 (S 768): People first language; changes to definition of mental incapacity for sexual assaults.** The act amends numerous statutes in two basic respects: (1) by eliminating outdated terminology describing people with a disability, for example by substituting intellectual disability for mental retardation and disability for handicap and (2) by referring to a person with a disability, mental illness, or other condition as a person with such a condition instead of defining the person by that condition, for example, as a disabled or mentally ill person. For the statutes related to criminal cases, the changes are effective for hearings or trials commenced on or after December 1, 2018, or offenses committed on or after December 1, 2018, depending on the particular statute amended.

Section 4(a) of the act also amends the definition of “mentally incapacitated” in G.S. 14-27.20, the definitions section for rape and other sexual offenses, to specify that a poisonous or controlled substance provided to a victim without his or her knowledge or consent may render the victim mentally incapacitated. This change applies to offenses committed on or after December 1, 2018.

9. **S.L. 2018-49 (H 156): Medicaid.** Effective June 22, 2018, the act adds Article 93, Prepaid Health Plan Licensing Act, in G.S. Chapter 58 regarding prepaid health plans, defined as a commercial plan or provider-led entity holding a license under the article for the purposes of operating a capitated contract for the delivery of services under the North Carolina Medicaid and NC Health Choice programs. A violation of the article and other provisions of Chapter 58 is a Class 1 misdemeanor under G.S. 58-93-80(b).
10. **S.L. 2018-61 (H 1076): Alamance/Guilford boundary.** Effective July 1, 2018, the act recognizes the revised boundary line between Alamance and Guilford counties as described in a 2008 survey by the North Carolina Geodetic Survey. The act states that no cause of action pending on July 1, 2018, including criminal actions, in areas affected by the 2008 survey are abated, that such actions shall continue in the appropriate adjoining county, and that lack of jurisdiction is not a defense.
11. **S.L. 2018-66 (H 744): Trespass on lands of Eastern Band of Cherokee Indians.** Effective for offenses committed on or after December 1, 2018, the act amends G.S. 14-159.12(a) to add to the places covered by first-degree trespass lands of the Eastern Band of Cherokee Indians after the person has been excluded by a resolution passed by the Eastern Band of Cherokee Indian Tribal Council. The act amends G.S. 14-159.12(f) to provide that a second or subsequent violation on such lands is a Class I felony, with a mandatory fine of \$1,000 per violation.
12. **S.L. 2018-67 (H 969): Prisoner offenses.** Effective for offenses committed on or after December 1, 2018, the act adds a new definitions section, G.S. 14-254.5, in Article 33 (Prison Breach and Prisoners) in G.S. Chapter 14. An employee is defined as any person

hired or contracted to work for the State or a local government. A prisoner is defined as any person in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, any law enforcement officer, or any local confinement facility as defined in G.S. 153A-217 or G.S. 153A-230.1, whether pending trial, appellate review, or presentence diagnostic evaluation.

The act broadens G.S. 14-258.4, which has made it a Class F felony for a prisoner to throw, emit, or cause to be used as a projectile bodily fluids at an employee, to cover that conduct with an unknown substance. The amended statute also adds a new offense of a prisoner knowingly and willfully exposing genitalia to an employee while the employee is in the performance of the employee's duties, a Class I felony. The revised statute also provides that "[s]entences imposed under this Article shall run consecutively to and shall commence at the expiration of any sentence being served by the person sentenced under this section." As written, this language appears to mean that if a person is currently serving a sentence for a violation of G.S. 14-258.4, the court must impose a consecutive sentence for any new violation of Article 33 of G.S. Chapter 14; it does not require a consecutive sentence for a violation of G.S. 14-258.4 unless the person is already serving a sentence for violating that statute. Also, under cases construing similar statutory language, if a person is sentenced at in the same proceeding for more than one violation, the court is not required to impose a consecutive sentence. *See, e.g., State v. Walston*, 193 N.C. App. 134, 141 (2008).

The act rewrites G.S. 14-258, which dealt with conveying messages and weapons to or trading with prisoners. Under the revised statute, it is a Class H felony for a person to sell, trade, convey, or provide to a prisoner (1) an article forbidden by prison rules or (2) a letter, oral message, weapon, tool, good, clothing, device, or instrument to effect an escape, or aid in an assault or insurrection. A violation involving the items in (2) is a Class F felony if an escape, assault, or insurrection occurs. The revised statute also makes it a Class H felony for a prisoner who possesses a letter, weapon, tool, good, article of clothing, device, or instrument to effect an effect an escape or aid in an assault or insurrection. This part of the statute does not require that the items be unlawfully provided to the prisoner, but such a requirement may be implied.

Effective June 25, 2018, new G.S. 14-258.7 requires by March 15 of each year a report by the Department of Public Safety to the General Assembly regarding assaults on officers in violation of Article 33, G.S. 14-34.5, and G.S. 14-34.7 by a prisoner against an employee or contractor. It also requires reports by that date by the Conference of District Attorneys and Administrative Office of the Courts regarding violations of those provisions.

Also effective June 25, 2018, amended G.S. 143B-929 authorizes the Information Sharing and Analysis Center of the State Bureau of Investigation to analyze information and, if credible, notify local law enforcement agencies about any threat of violence to the safety of any individual associated with educational property as defined in G.S. 14-269.2 or a place of worship as defined in G.S. 14-54.1.

13. **S.L. 2018-68 (H 776): Human trafficking and juveniles.** Effective October 1, 2018, the act adds G.S. 14-43.15 to require that a minor victim of a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or 14-43.13 (sexual servitude) be alleged to be abused and neglected under G.S. Chapter 7B.
14. **S.L. 2018-69 (H 379): Recodification of criminal law.** To assist the criminal law recodification working group, the act directs every state agency, board, and commission that has the power to define conduct as a crime to submit a list of crimes it has created to the General Assembly by December 1, 2018. The act likewise directs every county, city, town, and metropolitan sewage district that has enacted an ordinance for which a violation is punishable as a crime under G.S. 14-4(a) to submit such a list. The Administrative Office of the Courts must create and submit a list by February 1, 2019, of all criminal statutes that are duplicative; inconsistent with other statutes, rarely charged, fail to state a mens rea, or contain undefined terms; obsolete; or held to be unconstitutional by an appellate court.
15. **S.L. 2018-70 (H 945): Tracking of sexual assault evidence collection kits.** Effective June 25, 2018, the act adds G.S. 114-65 to establish the Statewide Sexual Assault Evidence Collection Kit Tracking System in the State Crime Lab, with the following requirements. All sexual assault evidence collection kits purchased or distributed on or after October 1, 2018, must be trackable and comply with the requirements of the system. (Amended G.S. 143B-1201 imposes the same requirement.) All medical providers, law enforcement agencies, forensic laboratories, and others having custody or use of any such kit must participate in and comply with the new system. Victims should be able to track the location of the kit and determine whether testing of the kit has been completed. Previously untested kits should be entered into the system in compliance with system protocols. Beginning October 1, 2019, the Director of the State Crime Lab must report to the General Assembly on, among other things, the number of tracking-enabled kits shipped, used, submitted for tests, and tested and efforts to track and test previously untested kits. The Secretary of the Department of Public Safety must convene a working group to make recommendations on, among other things, the testing of untested kits and testing of kits in the future; findings and recommendations of the working group are due to the General Assembly by December 1, 2018.
16. **S.L. 2018-72 (H 670): Threat of mass violence at school and religious place of worship.** Effective for offenses committed on or after December 1, 2018, the act creates two new offenses. New G.S. 14-277.6 makes it a Class H felony for a person to:
- by any means of communication
  - to any person or group of people
  - threaten to commit an act of mass violence as defined in G.S. 14-277.5
  - on educational property or at a curricular or extracurricular activity sponsored by a school as defined in G.S. 14-277.5.

New G.S. 14-277.7 makes it a Class H felony for a person to:

- by any means of communication
- to any person or group of people
- threaten to commit an act of mass violence as defined in G.S. 14-277.5
- at a place of worship as defined in the new statute.

New G.S. 14-277.8 creates a discharge and dismissal procedure for a person who violates G.S. 14-277.5 or the two new statutes if the person was under 20 at the time of the offense and has not prior convictions other than for a traffic violation; and new G.S. 15A-145.7 creates a procedure for expunging the discharge and dismissal. For a discussion of these procedures, see Jamie Markham, [\*Another New Conditional Discharge: Threats and False Reports of Mass Violence\*](#), N.C. Crim. L. Blog (July 12, 2018).

New G.S. 15A-534.7 requires that pretrial release conditions be determined by a judge in the first 48 hours after arrest of a person for a violation of either of the two new statutes. If the judge determines that immediate release of the person will pose a danger of injury to people and that the execution of an appearance bond will not reasonably assure that injury will not occur, the judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release. The statute recognizes that the judge may impose stay-away conditions in addition to a secured bond. If a judge has not acted within 48 hours, a magistrate has the authority to set conditions as provided in G.S. 15A-534.7.

**17. [S.L. 2018-75 \(S 162\): Human trafficking.](#)** The act makes several changes to statutes related to human trafficking, with effective dates as indicated below.

- Amended G.S. 14-43.10 defines “victim” for purposes of Article 10A (Human Trafficking) of G.S. Ch. 14 as a person subjected to the practices set forth in G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13. Effective June 15, 2018.
- New G.S. 14-43.15 makes it an affirmative defense to a prosecution under Article 10A that the person charged with the offense was a victim at the time of the offense and was coerced or deceived into committing the offense as a direct result of the person’s status as a victim. Effective December 1, 2018.
- New G.S. 14-43.16 makes confidential the name, address, and other information that reasonably could be expected to lead directly to the identity of any victim, alleged victim, or immediate family member (as defined in the statute) of a victim. The statute provides some exceptions, such as use in a law enforcement investigation or criminal prosecution. Presumably, the term “criminal prosecution” includes providing information to the defense in discovery. A knowing violation of the confidentiality requirement is a Class 3 misdemeanor. Effective December 1, 2018.
- Amended G.S. 14-43.20 allows the judge to order as part of restitution any costs reasonably certain to be incurred by or on behalf of the victim for medical care,

psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim recover from any injuries or loss resulting from an offense committed under G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13. This change is effective for offenses committed on or after December 1, 2018. The amended statute also provides that if a judge finds that the victim to whom restitution is due is unavailable to claim the restitution award, the judge is to order that the restitution be paid to the clerk of superior court in the county in which the conviction for the offense occurred. If the victim does not claim the restitution award within two years, the clerk is to remit the restitution proceeds to the Crime Victims Compensation Fund under G.S. 15B-23. Effective for restitution orders entered on or after December 1, 2018.

- Amended G.S. 7B-101 includes in the definition of “abused juvenile” any juvenile less than 18 years of age who is a victim of an offense under G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13, regardless of the relationship between the victim and the perpetrator. Effective December 1, 2018.
- Amended Rule 412 of the North Carolina Rules of Evidence applies the “rape shield” provisions of the rule to trials involving charges of sexual servitude under G.S. 14-43.13 in addition to the previously-listed offenses. Effective for trials held on or after December 1, 2018.
- Amended G.S. 114-70 adds three ex-officio members to the North Carolina Human Trafficking Commission, appointed by the Director of the Administrative Office of the Courts, President of the Conference of Superior Court Judges, and President of the District Court Judges. The act directs the Commission, in consultation with the Conference of District Attorneys, to study the appropriate level of sentencing for offenses under Article 10A and the effects of expanding eligibility for post-conviction relief to human trafficking victims. The report is due to the General Assembly by February 1, 2019. Effective June 25, 2018.

**18. [S.L. 2018-78 \(H 529\): Funeral laws.](#)** Effective October 1, 2018, the act adds G.S. 90-210.25(c)(14) to authorize the North Carolina Board of Funeral Service to suspend, revoke, or refuse to issue or renew a permit to transport or remove a dead human body, place the permittee on a term of probation, or impose a civil penalty up to \$5,000 if, among other reasons, the permittee has been convicted of a felony or of a crime involving fraud or moral turpitude. Effective December 1, 2018, the act adds G.S. 90-210.25(f)(2) to make it a Class 2 misdemeanor to knowingly and willfully abuse or mutilate a dead human body in the person’s custody.

**19. [S.L. 2018-79 \(H 774\): Certificates of relief.](#)** Effective for petitions filed on or after December 1, 2018, the act modifies the eligibility criteria in G.S. 15A-173.2 for obtaining a certificate of relief . It expands eligibility by allowing a person to obtain a certificate of relief if he or she has three or fewer prior Class H or I felony convictions as well as any prior misdemeanor convictions. If the felony convictions occurred during the same session of court, the

convictions count as a single conviction. The act contracts eligibility by making a person ineligible if convicted of a Class G (or higher class) felony. Amended G.S. 15A-173.2 requires a \$50 filing fee unless the person is indigent, directs the District Attorney to provide the person's criminal history to the court, provides that a certificate of relief is automatically revoked if the person is subsequently convicted of a felony or misdemeanor other than a traffic violation (also reflected in amended G.S. 15A-173.4), and requires the person to notify any employer, landlord, or other party who has relied on a certificate of relief of any conviction, modification, or revocation within ten days. For a further discussion, see John Rubin, [Expanded Forgiveness of a Criminal Conviction](#), N.C. Crim. L. Blog (July 3, 2018).

20. **[S.L. 2018-84 \(H 977\)](#): Forfeiture of retirement benefits.** G.S. 135-18.10 prohibits the Teachers' and State Employees' Retirement System from paying any retirement benefits or allowances, except for a return of member contributions plus interest, to any member convicted of a felony specified in that section if the offense was committed while the person was serving as an elected government official and the conduct was directly related to the person's service as an elected official. G.S. 128-38.4 imposes the same prohibition for retirement benefits and allowances from the North Carolina Local Governmental Employees' Retirement System. Effective for offenses committed on or after June 25, 2018, the act amends both statutes to specify additional felonies resulting in forfeiture. The act also amends G.S. 161-50.4 and G.S. 161-50.5 to terminate the pension benefits of a county register of deeds on forfeiture of retirement benefits under G.S. 128-38.4 or G.S. 128-38.4A (forfeiture of retirement benefits for certain felonies related to employment or holding office), effective for any forfeiture occurring on or after June 25, 2018.
21. **[S.L. 2018-87 \(H 388\)](#): Mutual assistance between law-enforcement agencies and to State law-enforcement agencies.** Effective June 25, 2018, the act amends G.S. 160A-288 and G.S. 160A-288.2 to allow the head of a law-enforcement agency to provide assistance on request to another law-enforcement agency or a State law-enforcement agency unless prohibited or limited by a city or county ordinance (was, rules, policies, or guidelines adopted by city or county).
22. **[S.L. 2018-91 \(H 357\)](#): Dietetics/Nutrition Practice Act.** The act adds G.S. 90-357.6 to require applicants for a license as a licensed dietitian/nutritionist to consent to a criminal history check. The new statute states that one or more convictions does not automatically bar issuance of a license; the licensing board, the North Carolina Board of Dietetics/Nutrition, must consider several factors listed in the statute. The licensing board also may request a criminal history record check of applicants returning to active status. The act adds G.S. 143B-966 authorizing the Department of Public Safety to provide a criminal history check to the board.
23. **[S.L. 2018-98 \(S 561\)](#): Authority to prosecute tax violations.** Effective for offenses committed on or after December 1, 2018, the act amends G.S. 105-236(b) to provide that

for a criminal violation of a tax law the District Attorney of the county where the charged offense occurred has sole jurisdiction to prosecute; however, the Attorney General has concurrent jurisdiction if the District Attorney requests in writing that the Attorney General prosecute.

- 24. [S.L. 2018-100 \(H 500\): Raffles.](#)** Effective October 1, 2018, the act amends G.S. 14-309.6, a section within the part on bingo and raffles, to define nonprofit organization as an organization recognized as tax-exempt by the North Carolina Department of Revenue and as any bona fide branch, chapter, or affiliate. Amended G.S. 14-309.15 allows any regional or county chapter of a nonprofit organization to conduct a raffle independently of its parent organization, increases the number of raffles that a nonprofit organization may hold from two to four per year, and increases the prize that a nonprofit organization may offer from \$125,000 to \$250,000. Amended G.S. 18B-308 allows the sale and consumption of alcohol at a raffle; the prohibition remains in effect for bingo. Effective December 1, 2018, new G.S. 18B-903A authorizes the reissuance of a limited special occasion permit or a special one-time permit to a nonprofit organization as provided in that section and, effective for offenses on or after that date, makes it a Class 1 misdemeanor to knowingly make a false statement in an application for reissuance of the permit.
- 25. [S.L. 2018-105 \(H 1080\): Release of police disciplinary information.](#)** G.S. 160A-168 makes a city employee's personnel record confidential except in specified circumstances. To facilitate citizen review, the statute has authorized the city manager and chief of police to release disciplinary charges against a police officer to the Human Relations Commission Complaint Subcommittee in the City of Greensboro and to the person aggrieved by an officer's actions or the person's survivor. Effective June 26, 2018, the act amends the statute to authorize release to the Criminal Justice Advisory Commission and its subcommittee, the Police Community Review Board, and to authorize those entities as well as the city manager and police chief to release the information to the aggrieved person or survivor. The act applies to the City of Greensboro only.
- 26. [S.L. 2018-110 \(H 551\): Victims rights constitutional amendment.](#)** The act directs placement on the November 2018 ballot in North Carolina the following question, which voters may vote for or against: "Constitutional amendment to strengthen protections for victims of crime; to establish certain absolute basic rights for victims; and to ensure the enforcement of these rights." The act provides additional detail about the changes to the current section on victims rights in the state constitution, Art. I, Sec. 37. If approved, the amended section would apply to victims of acts of delinquency by juveniles as well as victims of crimes by adults and would require that victims be treated with dignity and respect by the criminal justice system. If the crime or act of delinquency is against a person or is a felony property crime, the amended section would revise the rights previously enumerated in the section. The revised rights include the right to reasonable, accurate, and timely notice of court proceedings (was, informed); the right on request to be present at court proceedings; the

right to be reasonably heard at any court proceeding involving the plea, conviction, adjudication, sentencing, or release of the accused (was, sentencing); and the right to received restitution in a reasonably timely manner when ordered by the court. The amended section includes a section on enforcement of these rights. It requires the General Assembly to adopt laws establishing procedures for victims to exercise these rights, including the right to make a motion to the court to enforce the rights, to be represented by counsel but not have counsel provided by the State, and the right of a family member, guardian, or custodian to exercise the rights on behalf of a victim who is a minor, incapacitated, or deceased. As under the current section, a defendant has no ground for relief for a violation of these rights. The revised section provides further that a victim has no right to “(i) to appeal any decision made in a criminal or juvenile proceeding; (ii) to challenge any verdict, sentence, or adjudication; (iii) to participate as a party in any proceeding; or (iv) to obtain confidential juvenile records.” For a further discussion of the act, see Shea Denning, [Marsy’s Law Is on the Ballot; Voters Will Decide Whether it Goes on the Books](#), N.C. Crim. L. Blog (July 25, 2018).

27. **[S.L. 2018-113 \(S 711\): Mutual assistance for international equestrian event.](#)** As part of a larger agricultural bill, the act adds G.S. 153A-212.5 to authorize law enforcement agencies to enter into intergovernmental law enforcement mutual aid agreements with out-of-state law enforcement agencies and officers to aid in enforcing the laws of North Carolina within the jurisdiction of the requesting law enforcement agency for maintaining security and safety for an international equestrian event. This part of act because effective June 27, 2018, and expires October 1, 2018.
28. **[S.L. 2018-116 \(S 808\): Domestic violence fatality review team.](#)** Effective June 28, 2018, the act amends previous session laws by adding Buncombe County to the counties previously authorized to establish a domestic fatality review team (Alamance, Mecklenburg, Pitt, and Wake).
29. **[S.L. 2018-120 \(H 382\): Set aside of bail bond forfeiture; surplus lines insurance.](#)** As part of a larger act recommended by the North Carolina Department of Insurance, amended G.S. 15A-544.5(b)(7) requires that the forfeiture of a bail bond be set aside if the defendant was incarcerated in a local, state, or federal detention center, jail, or prison anywhere with the United States at the time of the failure to appear “or any time between the failure to appear and the final judgment date.” The quoted language is new and applies to hearings on or after October 1, 2018. The other requirements for a set aside under this subdivision remain the same, including that notice be given to the district attorney for the county in which the charges are pending within the time frames described in the subdivision.

Effective for offenses committed on or after June 28, 2018, the act amends 58-21-105(a) to make it a Class 1 misdemeanor for any surplus lines licensee in this State to represent or aid a nonadmitted domestic surplus lines insurer in violation of Article 21 of G.S. Chapter 58.

- 30. [H 131](#): Additional grounds for set aside of bail bond forfeiture.** This bill was passed by the General Assembly but did not become law because the Governor vetoed the bill and the General Assembly did not override the veto. The bill would have amended G.S. 15A-544.8 to allow the court to grant relief from a final judgment of forfeiture if circumstances, rather than extraordinary circumstances, existed that warrant relief. As part of the change, the bill would have deleted language expressly limiting relief to the grounds specified in that statute. The bill also would have amended G.S. 15A-544.5 to add as an additional ground for setting aside a bond forfeiture that the defendant was in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or the Federal Bureau of Prisons within the borders of North Carolina at any time between the failure to appear and the final judgment of forfeiture.
- 31. [S.L. 2018-144 \(S 824\)](#): Photographic identification to vote.** Effective December 19, 2018, the act adds G.S. 163A-1389(19) to make it a Class I felony to counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled to it, a form of photo identification required in new G.S. 163A-1145.1 for voting. New G.S. 163A-1145.2 requires university and college officials to report any misuse of student identification equipment to law enforcement if new G.S. 163A-1389(19) is potentially violated, and new G.S. 163-1145.3 imposes a similar requirement for state and local officials for any misuse of employee identification equipment. The act also adds G.S. 163A-741(o1) to require the State Board of Elections to include in all forms that the false or fraudulent completion of a declaration (regarding, for example, inability to obtain photo identification) is a Class I felony.
- 32. [S.L. 2018-145 \(S 469\)](#): Technical corrections.** Effective December 27, 2018, the act makes the following technical and clarifying changes:
- The act amends [S.L. 2018-75 \(S 162\)](#), enacted earlier in the 2018 session, to clarify that the provisions about affirmative defenses in new G.S. 14-43.16, victim confidentiality requirements in new G.S. 14-43.17, and restitution in revised G.S. 14-43.20(b) apply to offenses committed on or after December 1, 2018. It also repeals section 5 of S.L. 2018-75, which revised the definition of abused juvenile in G.S. 7B-101; the repeal does not affect [S.L. 2018-68 \(H 776\)](#), which revised the definition of abused juvenile to include a minor victim of human trafficking under G.S. 14-43.15. The act also amends G.S. 14-43.17 to provide that the confidentiality requirements do not apply to records that have been made part of the court file in the custody of the General Court of Justice.
- The act amends G.S. 20-7(b2) to allow the Division of Motor Vehicles to disclose applicants' social security numbers to the Judicial Department for the purpose of administering the criminal and motor vehicle laws.
- The act amends G.S. 15A-173.2(f) to require the Administrative Office of the Courts to include a statement on the petition and order for a certificate of relief form (was, forms recording the criminal judgment) that a certificate of relief is automatically revoked for a subsequent conviction of a felony or misdemeanor other than a traffic violation.

**33. [S.L. 2018-146](#) (H 1029): Confidential investigation of campaign finance violations.** Section 4.11 of the act amends various statutes to authorize the State Ethics Commission to issue confidential recommendations to the State Board of Elections regarding the appropriateness of criminal referrals of campaign finance violations. The section applies to referrals of violations made on or after January 31, 2019, by the State Board of Elections to prosecuting authorities.

# Elements of Crimes

## ELEMENTS OF CRIMES

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## 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

## Selected Assault Crimes

### Victim's Job

### Victim Characteristics

### Weapon

### Injury

<p>Simple assault [Class 2]                   Inflicting serious injury [A1]                   Inflicting serious bodily injury [F]                   Inflicting physical injury: strangulation [H]</p>	<p>With deadly weapon [A1]                   By pointing gun [A1]                   With deadly weapon with intent to kill [E]                   With deadly weapon inflicting serious injury [E]                   With deadly weapon with intent to kill inflicting serious injury [C]</p>	<p>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 :                  - battery [A1]                  - inflicting serious bodily injury [F]</p>	<p>On gov't officer/employee or company/campus police officer [A1]                   With deadly weapon on:                  - gov't officer/employee or company/campus police [F]                   With firearm on:                  - law enforcement officer                  - probation/parole officer                  - detention employee                  - NC National Guard [E]                   Inflicting physical injury on:                  - law enforcement officer                  - probation/parole officer                  - detention employee                  - NC National Guard [I]                   Inflicting serious bodily injury on:                  - law enforcement officer                  - probation/parole officer                  - detention employee                  - NC National Guard [F]                   Malicious conduct by prisoner [F]</p>	<p>On court officer:                  - simple [I]                  - on another person as retaliation [I]                  - with deadly weapon or inflicting serious injury [F]                   On school personnel [A1]                   On sports official [I]                   On transit operator [A1]                   On firefighter, EMT, medical responder, or hospital personnel:                  - inflicting physical injury [I]                  - inflicting serious bodily injury or with deadly weapon other than firearm inflicting physical injury [H]                  - with firearm [F]                   On emergency personnel in declared emergency/riot:                  - inflicting physical injury [I]                  - with dangerous weapon or substance [F]</p>
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<p><b>RAPE</b></p> <p>1. _____</p>	<p><b>First-degree FORCIBLE</b></p> <p>Rape that is: _____  + at least one of the following:</p> <p>1. _____  2. _____  3. _____  4. _____</p> <p>Class: _____</p>	<p><b>Second-degree FORCIBLE</b></p> <p>Rape that is:</p> <p>1. _____  or  2. With a person who is:  a. _____  b. _____  c. _____</p> <p>Class: _____</p>	<p><b>First-degree STATUTORY</b></p> <p>D at least: _____  V under: _____</p> <p>Age differential: _____</p> <p>Class: _____</p>	<p><b>STATUTORY— Victim 15 or younger of a Child by an Adult</b></p> <p>D at least: _____  V under: _____</p> <p>Class: _____</p> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>	<p><b>STATUTORY— Victim 15 or younger (Defendant at least 6 years older than Victim)</b></p> <p>D at least: _____  V under: _____</p> <p>Age differential: _____</p> <p>Class: _____</p>	<p><b>STATUTORY— Victim 15 or younger (Defendant more than 4 but less than 6 years older than Victim)</b></p> <p>D at least: _____  V under: _____</p> <p>Age differential: _____</p> <p>Note: _____</p> <p>Class: _____</p>
<p><b>SEXUAL OFFENSE</b></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> <p>5. _____</p>	<p><b>First-degree FORCIBLE</b></p> <p>Sexual offense that is: _____  + at least one of following:</p> <p>1. _____  2. _____  3. _____  4. _____</p> <p>Class: _____</p>	<p><b>Second-degree FORCIBLE</b></p> <p>Sexual offense that is:</p> <p>1. _____  or  2. With a person who is:  a. _____  b. _____  c. _____</p> <p>Class: _____</p>	<p><b>First-degree STATUTORY</b></p> <p>D at least: _____  V under: _____</p> <p>Age differential: _____</p> <p>Class: _____</p>	<p><b>STATUTORY— Victim 15 or younger of a Child by an Adult</b></p> <p>D at least: _____  V under: _____</p> <p>Class: _____</p> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>	<p><b>STATUTORY— Victim 15 or younger (Defendant at least 6 years older than Victim)</b></p> <p>D at least: _____  V under: _____</p> <p>Age differential: _____</p> <p>Class: _____</p>	<p><b>STATUTORY— Victim 15 or younger (Defendant more than 4 but less than 6 years older than Victim)</b></p> <p>D at least: _____  V under: _____</p> <p>Age differential: _____</p> <p>Note: _____</p> <p>Class: _____</p>

**INDECENT LIBERTIES WITH CHILDREN (p. 246)**

- Takes or attempts to take an indecent liberty with a child for the purpose of arousing or gratifying sexual desire, or
- Willfully commits or attempts to commit any lewd or lascivious act upon or with the body of a child

D at least: \_\_\_\_\_

V under: \_\_\_\_\_

Age differential: \_\_\_\_\_

Class: \_\_\_\_\_

**SEXUAL BATTERY (p. 254)**

- Sexual contact, defined as:
  - Touching the sexual organ, anus, breast, groin, or buttocks of any person;
  - Touching another person with one's own sexual organ, anus, breast, groin, or buttocks; or
  - Ejaculating, emitting, or placing semen, urine, or feces on another person
- For a sexual purpose
- Either
  - By force and against the will of a victim, or
  - With a person who is mentally disabled, mentally incapacitated, or physically helpless.

Class: \_\_\_\_\_

**CRIME AGAINST NATURE (p. 281)**

- Sex acts other than vaginal intercourse.
- Constitutional limitation: Does not apply to adults engaged in consensual acts in private. Lawrence v. Texas, 539 U.S. 558 (2003).

Class: \_\_\_\_\_

Note: \_\_\_\_\_

**Chart: Elements of Burglary & Breaking or Entering Offenses**  
 Alyson Grine, Feb. 2014

<b>1st Degree Burglary</b>	<b>2d Degree Burglary</b>	<b>Felony B or E</b>	<b>Misd. B or E</b>
<b>breaks</b>	<b>breaks</b>	<b>breaks</b>	<b>breaks</b>
<b>and enters</b>	<b>and enters</b>	<b>or enters</b>	<b>or enters</b>
<b>w/o consent</b>	<b>w/o consent</b>	<b>w/o consent</b>	<b>w/o consent</b>
<b>dwelling</b>	<b>dwelling/ curtilage</b>	<b>any building</b>	<b>any building</b>
<b>of another</b>	<b>of another</b>	<b>of another</b>	<b>of another</b>
<b>while occupied</b>	<b>---</b>	<b>---</b>	<b>---</b>
<b>at night</b>	<b>at night</b>	<b>---</b>	<b>---</b>
<b>w/intent</b>	<b>w/intent</b>	<b>w/intent</b>	<b>---</b>

**Major Categories of Violations of Controlled Substances Act (90-86 through 90-113.8)\***

<b>90-95(a)(3) offenses</b>	<b>90-95(a)(1) offenses</b>	<b>90-95(a)(2) offenses</b>	<b>90-95(d1) offenses</b>	<b>Trafficking (90-95(h))</b>	<b>Common 90-108 offenses</b>
Possess	Manufacture	Create	Possess precursor with intent to mfg.	Sell	Maintain dwelling, etc.
	Sell or deliver	Sell or deliver	Possess or distribute precursor with knowledge of mfg.	Manufacture	Obtain controlled substance by fraud/forgery
	Possess with intent to manufacture, sell, or deliver	Possess with intent to sell or deliver	Possess pseudoephedrine product after conviction of certain methamphetamine and precursor offenses	Deliver	
<b>Enhancements</b>	<b>Enhancements</b>		<b>Enhancements</b>	Transport	
Possess controlled substance in prison or jail (90-95(e)(9))	Sell or deliver to person who is 16/13 or younger by person 18 or older (90-95(e)(5))		Possess precursor with intent/knowledge re mfg. (90-95(d1)(2))	Possess	
Prior conviction under Controlled Substances Act (90-95(e)(3), (e)(4), (e)(7))	Sell or deliver to pregnant female by person 18 or older (90-95(e)(5))				
	Any (a)(1) violation by person 21 or older near school, child care center, or public park (90-95(e)(8), (10))				
	Employ minor/person 13 or younger to commit (a)(1) violation by person who is 18/21 or older (90-95.4)				
	Promote (a)(1) violation by minor (90-95.6)				
	Purchase or receive by person 21 or older from minor 13 or under who sells or delivers or possesses with intent to sell or deliver (90-95.7)				
	Give or sell controlled substance to inmate (14-258.1)				
<b>Reductions</b>	<b>Reductions</b>			<b>Reductions</b>	
No active time for first offender for Class 3 misdemeanor possession of Schedule VI substance (90-95(d)(4)) <sup>‡</sup>	Delivery of less than 5g of marijuana or 2.5g of synthetic cannabinoid for no remuneration is possession only, not delivery (90-95(b)(2))			Substantial assistance (90-95(h)(5)) <sup>‡</sup>	
Discharge and dismissal for first offender. (90-96(a), (a1)) <sup>‡</sup>					

\* This chart does not include violations of the NC Toxic Vapors Act (90-113.8A through 90-113.14) or NC Drug Paraphernalia Act (90-113.20 through 90-113.24).

<sup>‡</sup> Not a charging decision made by magistrates.

### **Questions on Conspiracy, Solicitation, Attempts, Principals, and Accessories**

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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?

**NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON ASSAULT AND RELATED OFFENSES**

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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, spansks 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 damn bastard!" He then leaves.
  
12. After stopping a car for impaired driving, a state trooper is jumped on 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 SEXUAL ASSAULTS

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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. On August 1, 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.

## REVIEW QUESTIONS ON LARCENY, ROBBERY, & RELATED OFFENSES

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Which offense(s) from Chapter 13 or 14 would be proper to charge under these facts?

1. A man picks a lock and enters a home at 4 p.m., then takes three Sports Illustrated 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 jackets at a department store. While the sales clerk is busy elsewhere, the woman puts on one of the jackets worth \$200 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. 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 wife's 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.
6. 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.
7. 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.
8. A man hits another man over the head with a blackjack and takes from him a wallet containing \$12.

9. Two men are working together at the State Fair. While one man bumps into, pushes, and starts a scuffle with the victim, the second man slips behind the victim and takes his wallet. There is \$25 in the wallet.
  
10. 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.
  
11. While searching a house for drugs, officers finds 6 iPods which were stolen one week earlier in a housebreaking. The iPods are worth about \$75 each.
  
12. 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.
  
13. 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.
  
14. A man puts a watch worth \$50 in his pocket and walks out of the department store without paying for it.
  
15. A store employee sees a man put a pen worth \$3.00 in his pocket while shopping in the store.
  
16. 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.

**NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON BURGLARY  
AND BREAKING AND ENTERING**

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Which burglary or breaking and entering offense would be the proper charge under these facts, and why?

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 goes into a house under construction at 11:00 p.m. to take shelter from the rain.
  
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.

**NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON TRESPASS LAW AND  
DAMAGE TO PROPERTY**

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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 Kitchens plants a bomb in the local movie theater. It goes off during a movie, damaging the movie screen but not injuring any person.

**NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON DRUG OFFENSES**

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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 fentanyl, a spoon, and a hypodermic needle on the dresser in his bedroom. What additional charges could be added if the ounce bag contained a mixture of fentanyl and heroin?
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 ethcathinone 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.

**NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON WORTHLESS CHECKS**

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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 you 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 accept 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 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?

## Review Questions

### Chapters 19-22

### Disorderly Conduct, Bombing & Terrorism, R/D/O, Weapons Offenses

Which offenses, if any, would be a 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, he then walks down the sidewalk of Main Street loudly yelling "Go to hell" at each person he sees.
  - a. Suppose Jones walks down the middle of main street yelling "have a nice day" at the cars that are trying to get around him
3. Howard Keller, who is drunk, stands in front of Roses Store for an hour looking in the window at a toy train running around a circular track.
  - a. Suppose Keller asks passersby for money
4. Nervous about taking the test on criminal law at the end of Magistrate's Basic School, Morgan Smith, though she knows it is not true, tweets that everyone should stay away from the School of Government on Friday because the place is going to be "blown to bits."
5. Thinking it will be better suited for home defense, Kat Bogan cuts the barrel of her shotgun down to 14 inches and then stores the shotgun in her gun safe.
6. Officer Jones stops a car for speeding 40 m.p.h in a 35 m.p.h. zone. While Jones is writing the citation, the driver says "Officer, you are an S.O.B. for stopping me."
  - a. Suppose Jones writes a shoplifter a citation for concealing merchandise, the shoplifter crumples up his pink copy of the citation and tosses it in the trash.
  - b. Suppose Jones is properly executing a search warrant at the home of Howard Keller, Keller refuses to let Jones inside because Keller wants to talk to his wife, who is a magistrate, before he lets Jones in.
  - c. Suppose Jones has a hunch that Jack Barker is involved in selling illicit drugs, one day Jones sees Barker walking casually down the sidewalk. Jones says "Hey Jack, have you got a minute to talk?" Barker responds "nope" and continues walking.

- d. Suppose Jones witnesses a person he knows by the nickname “Action Jack” make a hand-to-hand drug transaction. While Jones tries to write a citation, Action Jack refuses to provide Jones with his real name.
7. To celebrate his release from prison after being incarcerated for armed robbery, Max Mandell goes deer hunting, in season. He is carrying a shotgun when he is stopped by a wildlife officer.
- a. Suppose that instead of going hunting, Max celebrates his release from prison by going to town to see a concert with his neighbor Mike. Mike offers to drive to the concert, but on the way they are stopped for speeding. An officer discovers Mike’s handgun in the glove compartment in front of the passenger seat where Max is sitting.
8. Lisa is arrested for impaired driving. When searching her pocketbook incident to arrest, an officer finds a pocketknife.
- a. Suppose that instead of a pocketknife Lisa has a dagger in her purse
  - b. Suppose that Lisa has a pistol in her purse

# Larceny, Robbery & Worthless Checks



Jonathan Holbrook  
UNC School of Government

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## Misdemeanor Larceny

- 1) Takes
- 2) Personal Property
- 3) In the Possession of Another *and*
- 4) Carries it Away
- 5) Without the Consent of the Possessor *and*
- 6) With Intent to Deprive Possessor Permanently
- 7) Knowing Not Entitled to It



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## Felony Larceny

Same as Misd. Larceny #1-7, and add #8:

- a) Property Worth More Than \$1,000
- b) From the Person
- c) Committed Pursuant to a B&E Offense
- d) Of an Explosive/Incendiary Device
- e) Of a Firearm
- f) Of a Record Paper at NC State Archives
- g) Of a Horse/Mule/Swine/Cattle/Dog

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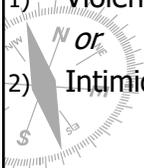
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### Common Law Robbery

Larceny From a Person or the Person's Presence, and:

Committed by...

- 1) Violence
- or*
- 2) Intimidation




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### Armed Robbery

Larceny (or Attempt) From a Person or the Person's Presence, and:

Committed by...

- 1) Possession, Use, or Threatened Use of a Firearm or Other Dangerous Weapon
- 2) That Endangers or Threatens the Life of a Person




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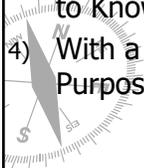
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### Misdemeanor Possession of Stolen Property

- 1) Possesses
- 2) Stolen Property
- 3) Knowing, or Having Reasonable Grounds to Know, That it was Stolen
- 4) With a Dishonest Purpose




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Felony Possession  
of Stolen Property

Misdemeanor PSP, plus Element #3 (& 4):

- 1) Possesses
- 2) Property
- 3) Stolen or Taken Feloniously
- 4) Knowing, or Having Reasonable Grounds to Know, That it was Stolen Feloniously
- 5) With a Dishonest Purpose

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Receiving Stolen Property

- 1) Receives or Conceals
- 2) Property
- 3) Stolen (or Taken Feloniously) by Another
- 4) Knowing, or with Reasonable Grounds to Believe, That it was (Feloniously) Stolen (or Taken)
- 5) With a Dishonest Purpose

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Possession of Property  
Represented as Stolen

- 1) Knowingly
- 2) Possesses
- 3) Property
- 4) In the Custody of Law Enforcement
- 5) Explicitly Represented as Stolen By
- 6) A Law Enforcement Agent or Person Authorized to Act on Their Behalf



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Shoplifting ("Standard")

- 1) Willfully Conceals
- 2) Goods or Merchandise of a Store
- 3) Without Authority
- 4) Without Having Purchased the Goods or Merchandise *and*
- 5) While Still on the Premises of the Store



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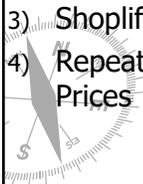
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Shoplifting ("Advanced")

- 1) Repeat Shoplifting by Concealment
- 2) Concealing by Using a Lead- or Aluminum-Lined Bag
- 3) Shoplifting by Substitution of Prices
- 4) Repeat Shoplifting by Substitution of Prices



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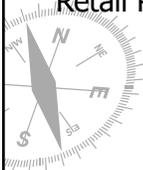
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Other "Retail Theft" Offenses

- 1) Larceny from a Merchant
- 2) Organized Retail Theft
- 3) Receiving or Possessing Stolen Retail Property



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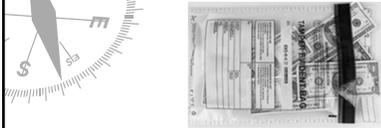
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### Embezzlement (Standard)

- 1) Fraudulently, or Knowingly and Willingly
- 2) Uses for a Purpose Other Than That for Which the Defendant Received It
- 3) Property of Another
- 4) Held by Defendant Under His Care



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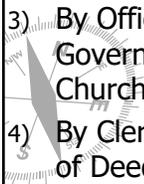
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### Embezzlement (Variations)

- 1) By Employee (Most Common)
- 2) Of State Property by Public Officers and Employees
- 3) By Officers, Agents or Employees of Government Agencies, Local Boards, Churches, or Institutions
- 4) By Clerks, Sheriffs, Treasurers, Register of Deeds, Other Officials



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### Extortion

- 1) Threatens, or Communicates a Threat to Another
- 2) With the Intent to Obtain Wrongfully
- 3) Property of Another
- 4) Anything of Value, or any Acquittance, Advantage, or Immunity



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Unauthorized Use of a Motor Vehicle

- 1) Willfully
- 2) Takes or Operates
- 3) Car (or Other "Motor-Propelled Conveyance")
- 4) Of Another
- 5) Without the Consent of the Owner, or Other Person in Lawful Possession



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Other Motor Vehicle Offenses

- 1) Possession of a Stolen Vehicle
- 2) Receiving/Transferring a Stolen Vehicle
- 3) Altering/Destroying Vehicle or Parts
- 4) Purchasing/Selling Car with Altered VIN
- 5) Permitting "Chop Shop" Activity
- 6) Purchasing/Disposing Vehicles or Parts in Connection With a "Chop Shop"
- 7) Larceny of Vehicle Parts

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Financial Transaction Card Theft

- 1) Taking or Withholding a Card
- 2) Receiving a Wrongfully Obtained Card
- 3) Wrongful Retention of Misplaced Card
- 4) Buying a Card
- 5) Selling a Card
- 6) Receiving Two Cards in Different Names
- 7) Obtaining/Receiving Encoded Information

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### Serial Number Offenses

- 1) Altering/Removing Serial Number
- 2) Buying/Selling/Possessing Property With an Altered Serial Number



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### Worthless Checks

- 1) Making or Uttering Worthless Check
- 2) Worthless Check on a Nonexistent Account
- 3) Worthless Check on a Closed Account
- 4) Obtaining Property for a Worthless Check



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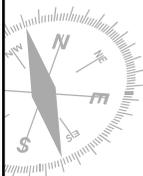
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### Larceny, Robbery & Worthless Checks



Jonathan Holbrook  
UNC School of Government  
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(919) 962-0942

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**Burglary and Related Offenses**  
 Basic School for Magistrates  
 Thursday, August 22, 2019

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**PHIL DIXON, JR.**  
**DEFENDER EDUCATOR**  
**UNC SCHOOL OF GOVERNMENT**  
 DIXON@SOG.UNC.EDU

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**First-Degree Burglary**

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- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

▪ Class D felony (Attempted 1<sup>st</sup> Degree Burglary is Class E felony)

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**First-Degree Burglary**

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- (8) with the intent to commit any felony or larceny therein

▪ Class D felony

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**Breaks**

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- Making of some kind of opening, however slight
  - Destructive force ✓ (but not necessary)
  - Opening an unlocked window ✓
  - Opening a partly opened door ✓
  - Go down chimney with open flu ✓
  - Opening an inner door ✓
  - Induce another to open with trickery, force or intimidation ✓
  - Get accomplice or co-conspirator to open ✓
  - Going through an open door or window ✗

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**First-Degree Burglary**

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- (5) of another
- (6) while it is actually occupied
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- (8) with the intent to commit any felony or larceny therein

• Class D felony

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**Enters**

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*Burglary requires breaks AND enters*

- Inserting any part of body ✓
- Inserting tool for purpose of committing felony ✓
  - e.g., put gun in to shoot occupant
- Inserting tool for purpose of breaking ✗
  - e.g., use gun barrel to smash window

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**First-Degree Burglary**

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(5) of another  
(6) while it is actually occupied  
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▪ Class D felony

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**Without Consent**

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- Owner or person entitled to possession consents to entry 
- Owner/possessor/occupant induced to allow entry with trickery, force or intimidation 

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**First-Degree Burglary**

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(1) breaks  
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▪ Class D felony

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**Dwelling or Sleeping Apt.**



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**Dwelling or Sleeping Apt.**



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**Dwelling or Sleeping Apt.**



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**Dwelling or Sleeping Apt.**



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**Dwelling or Sleeping Apt.**



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**Dwelling or Sleeping Apt.**



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### Dwelling or Sleeping Apt.

- A dwelling is a structure regularly used by a person for sleeping.
  - Mobile home or house trailer ✓
  - Room in a hotel, motel or rooming house ✓
  - Crude habitation with walls and a roof ✓
  - Commercial space with sleeping apt. ✓
- Regularly used: use occurs in ordinary course of events
  - Abandoned home ✗
  - Sold home where new owner has not moved in ✗
  - Summer cottage if has been used regularly for sleeping and intent to use it again ✓

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### First-Degree Burglary

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• Class D felony

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### Of Another

- Property must be legally possessed by someone other than D.
- Possession, not ownership, is the key.
  - Landlord enters tenant's room without consent ✓
  - One spouse has legal and exclusive possession of marital home, and other enters without consent ✓

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**First-Degree Burglary**

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▪ Class D felony

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**Actually Occupied**

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- Someone must be inside when the B&E occurs.
- D does not need to know someone was there.




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**First-Degree Burglary**

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- (5) of another
- (6) while it is actually occupied
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▪ Class D felony

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### At Night

- Time after sunset and before sunrise, when it is so dark that a man's face cannot be identified except by artificial light or moonlight.




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### First-Degree Burglary

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

• Class D felony

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### Intent to Commit Felony or Larceny

- D must have the requisite intent **WHEN** the breaking and entering occurs.
- D need not succeed in committing larceny or felony.

**Proof:**

- Committed felony
- Preparation
- Inference of intent to steal
- Doctrine of recent poss.




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<b>Burglary</b>	
1st Degree	2d Degree
breaks	breaks
and enters	and enters
w/o consent	w/o consent
dwelling	dwelling/curtilage
of another	of another
while occupied	---
at night	at night
w/intent	w/intent

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**Second-Degree Burglary**

○

- Does not need to be occupied
- Includes buildings within curtilage



\* Class G

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**Felony Breaking or Entering of a Building**

○

- (1) breaks **OR** enters
- (2) without consent
- (3) any building
- (4) with intent to commit any felony/larceny therein

\* Class H

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1st Degree Burglary	2d Degree Burglary	Felony B or E
breaks	breaks	breaks
and enters	and enters	or enters
w/o consent	w/o consent	w/o consent
dwelling	dwelling/ curtilage	any building
		<ul style="list-style-type: none"> <li>• Store</li> <li>• Trailer used for storage</li> <li>• Warehouse</li> <li>• Bank</li> <li>• Bldg under construction</li> </ul>
of another	of another	of another
while occupied	---	---
at night	at night	---
w/intent	w/intent	w/intent

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Felony B or E	Misd. B or E
breaks	breaks
or enters	or enters
w/o consent	w/o consent
any building	any building
of another	of another
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w/intent	---

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1st Degree Burglary	2d Degree Burglary	Felony B or E	Misd. B or E
breaks	breaks	breaks	breaks
and enters	and enters	or enters	or enters
w/o consent	w/o consent	w/o consent	w/o consent
dwelling	dwelling/ curtilage	any building	any building
of another	of another	of another	of another
while occupied	---	---	---
at night	at night	---	---
w/intent	w/intent	w/intent	----

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# Drug Offenses

JOHN DONOVAN  
MAGISTRATE

AUGUST 2019

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## Magistrates Keep the Bill of Rights Alive

▶ "The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."

▶ *Johnson v. United States*, 333 U.S. 10, 13-14, 68 S. Ct. 367, 369 (1948)

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## Just Say No (Sometimes)

▶ "The official issuing a warrant must judge for himself or herself the persuasiveness of the facts; otherwise there would be little point in interposing a 'neutral and detached magistrate' between a citizen and an arresting officer."

▶ *United States v. Evans*, 574 F.2d 352 (6th Cir. 1978)

▶ We exist to say no to the police. How frequently we say no, and under what circumstances, are a matter of judicial discretion. But sooner or later, if we are fulfilling our constitutional mandate, we will say no.

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### Offense Keys

- ▶ Conduct
  - ▶ Possess, sell, deliver, manufacture, traffic?
- ▶ Substance
  - ▶ Class of drug?
  - ▶ Analogs (Drugs with similar effects)?
- ▶ Amount
  - ▶ Weight? "Dosage Units"?
- ▶ Enhanced Offenses / Punishments
  - ▶ Possession in jail or prison
  - ▶ Prior record aggravates some misdemeanor possession charges (90-95(e))
- ▶ Reduced Offenses / Punishments
  - ▶ First offender options

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### Drug Schedules: Examples

- ▶ I – Heroin, MDMA, LSD, Substituted Cathinones, Synthetic Cannabinoids
- ▶ II – Opium, Fentanyl, Cocaine, Methamphetamine
- ▶ III – Barbiturates, Ketamine, Anabolic Steroids
- ▶ IV – Valium
- ▶ V – Few drugs of abuse
- ▶ VI – Marijuana

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### Be Prepared to Google Chemical Name of Drug

- ▶ Search function of NC Crimes Online
  - ▶ Upper right corner of screen
  - ▶ Beware of relying on 2012 printed edition
- ▶ Control + F search of the NC General Statutes online
  - ▶ But be sure you are searching in the right schedule
- ▶ Google search of NC General statutes and substance chemical name
- ▶ Lots of complicated chemistry

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New changes in statutes to cover classes of drugs based on structure or effect, rather than naming specific drugs

- ▶ Trafficking in "substituted cathinones" (stimulant drug class used in some "bath salts")
  - ▶ 90-95(h)(3d)
  - ▶ Effective December 1, 2018
- ▶ Addition of term "opioids" to opiate trafficking statute:
  - ▶ "Any synthetic narcotic drug having opiate-like activities but is not derived from opium."
  - ▶ G.S. 90-95(h)(4)
  - ▶ Effective December 1, 2018

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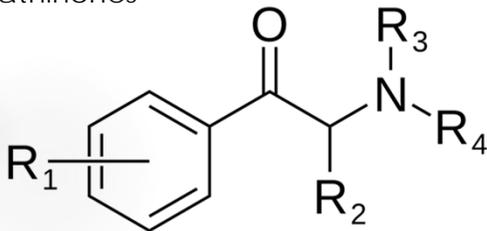
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A family of drugs: substituted cathinones




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Lock and Key Model




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### Offenses under the Controlled Substances Act

- ▶ Possession
- ▶ Manufacture, sale, delivery, possession with intent to do the same
- ▶ Counterfeit drugs
- ▶ Possession of "precursor" chemicals which can be used as ingredients to synthesize drugs (e.g. Methamphetamine)
- ▶ Trafficking (by sale, manufacture, delivery, transportation, or possession)
- ▶ Regulatory offenses under G.S. 90-108
  - ▶ Regulations controlling production, distribution, storage, labelling, sale, etc. of controlled substances
- ▶ Toxic Vapors Act ("Huffing")
- ▶ Drug paraphernalia

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### 90-95(a)(3): Possession

- ▶ Actual vs. constructive
- ▶ Exclusive vs. non-exclusive
- ▶ Multiple caches of drugs
- ▶ Compound drugs / mixtures
- ▶ Special circumstances (near schools, prior record, etc.)

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### Actual Possession

- ▶ The subject has it on his person,
- ▶ is aware of its presence, and (either alone or together with others),
- ▶ has both the power and intent to control its disposition or use.

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OK, I guess you got me...



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### Constructive Possession

- ▶ Does NOT have it on the person but is aware of its presence,
- ▶ And has (either alone or together with others), both the power and intent to control its disposition or use.
- ▶ A person's awareness of the presence of the substance and the person's power and intent to control its disposition or use may be shown by direct evidence or may be inferred from the circumstances

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Must have both power and intent to control disposition or use



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Close proximity is only part of the analysis

- ▶ Close physical proximity is a circumstance from which, together with other circumstances,
- ▶ you may infer that the defendant was aware of the presence of the substance
- ▶ and had the power and intent to control its disposition or use.

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Mere proximity is not enough




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Close but no cigar

- ▶ Defendant's physical proximity, if any, to the substance does not by itself permit an inference that the defendant was aware of its presence or had the power or intent to control its disposition or use.
- ▶ Such an inference may be drawn only from this and other circumstances which you find from the evidence.

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### Need Proximity +

- ▶ "The most the State has shown is that defendant had been in an area where he could have committed the crimes charged. Beyond that we must sail in a sea of conjecture and surmise. This we are not permitted to do."

▶ *State v. Minor*, 290 N.C. 68, 75 (1976)

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### Exclusive Control of Premises




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### Control of premises

- ▶ If the defendant exercised control over premises or a place,
- ▶ Whether or not the defendant owned them,
- ▶ That would be a circumstance from which you might infer that the defendant was aware of the presence of the substance and had the power and intent to control its disposition or use.

▶ See *State v. Harvey*, 281 N.C. 1, 6, 187 S.E.2d 706, 710 (1972)

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### Exclusive vs. Nonexclusive Control



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### Exclusive vs. Nonexclusive Control

- ▶ Constructive possession has been found when the contraband was on the property in which the defendant had some exclusive possessory interest and there was evidence of his or her presence on the property, and it has been found where possession is not exclusive but defendant exercises sole or joint physical custody.

*State v. Thorpe*, 326 N.C. 451, 451, 390 S.E.2d 311, 311 (1990)

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### Nonexclusive possession of Premises

- ▶ Where such materials are found on the premises under the control of an accused, this fact, in and of itself, gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury on a charge of unlawful possession. However, unless the person has exclusive possession of the place where the narcotics are found, the state must show other incriminating circumstances before constructive possession may be inferred.

*State v. Davis*, 325 N.C. 693, 693, 386 S.E.2d 187, 188 (1989)

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### Nonexclusive Possession, cont.

- ▶ Although it is not necessary to show that an accused has exclusive possession of the premises where contraband is found, where possession of the premises is nonexclusive, constructive possession of the contraband materials may not be inferred without other incriminating circumstances.

*State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984)

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### Incriminating Circumstances




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### Incriminating Circumstances:

- ▶ The defendant's proximity to the contraband.
- ▶ Whether or not the defendant owned or occupied the location where, or had control of the item in which, the contraband was found.
- ▶ The defendant's opportunity to dispose of or place the contraband in the location where it was found.
- ▶ Whether or not the defendant's personal items were found in the same location as the contraband.

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### Incriminating Circumstances, cont.

- ▶ Whether or not the defendant fled or engaged in other suspicious behavior.
  - ▶ Suggesting "guilty knowledge" of presence of drugs.
- ▶ Whether or not the defendant engaged in drug activity or was impaired by drugs.

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### No minimum amount required for possession of controlled substance

- ▶ Mere residue in a crack stem has been found to support a conviction for possession of cocaine.
  - ▶ State v. Williams, 149 N.C. App. 795 (2002)
- ▶ But from a practical, ethical and equitable standpoint, is it appropriate to issue possession charges for miniscule amounts of controlled substances?
- ▶ "*De minimis non curat lex*": the law does not concern itself with trifles
- ▶ Is this an appropriate use of the power of the State?

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### Drug metabolites are different from residue

- ▶ A positive urinalysis for marijuana metabolites is insufficient, without other evidence, to prove that the defendant knowingly possessed marijuana.
  - ▶ State v. Harris, 361 N.C. 400 (2007).
- ▶ *But see* G.S. 20-138.1:
  - ▶ A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:
    - ▶ (3) With any amount of a Schedule I controlled substance...or its metabolites in his blood or urine.

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### Compare: search warrants for "very minor offenses"?

- ▶ See Jeff Welty's blog post on this issue: <https://nccriminallaw.sog.unc.edu/search-warrants-for-very-minor-offenses/>
- ▶ No search warrants for infractions.
- ▶ But otherwise, no NC statute limits the issuance of search warrants for any class of crime, even very minor misdemeanors.

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### Multiple caches of drugs, one charge

- ▶ In order for the State to obtain multiple convictions for possession of a controlled substance, the State must show distinct acts of possession separated in time and space.
  - ▶ *State v. Moncree*, 188 N.C. App. 221, 231 (2008).
- ▶ Unless the multiple caches of drugs are possessed for "two distinct purposes", they are considered one cumulative amount for possession.
- ▶ Otherwise, the Court reasoned, drug dealers would divide drug caches into smaller amounts to avoid felony level charges.

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### Compound Drugs: example

- ▶ A defendant may be convicted and sentenced for both possession of ecstasy and possession of ketamine when both controlled substances are contained in a single pill.
  - ▶ *State v. Hall*, 203 N.C. App. 712, 692 S.E.2d 446, 450-51 (2010).
- ▶ Does not violate double jeopardy because "each provision requires proof of a fact which the other does not".
  - ▶ *State v. Hall*, 203 N.C. App. 712, 712, 692 S.E.2d 446, 448 (2010)

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### Drug mixtures are treated the same as pure substances for trafficking

- ▶ The entire weight of a mixture containing a controlled substance covered by the trafficking statutes can be used to support trafficking charges; the fact that the mixture is at an intermediate stage in the manufacturing process and is not ingestible, is unstable, and is not ready for distribution is irrelevant.
  - ▶ State v. Davis, 236 N.C. App. 376, 386-87 (2014).
- ▶ For purposes of the trafficking statutes, a mixture includes a combination of a controlled substance and rice, added to remove moisture.
  - ▶ State v. Miranda, 235 N.C. App. 601, 608-09 (2014).

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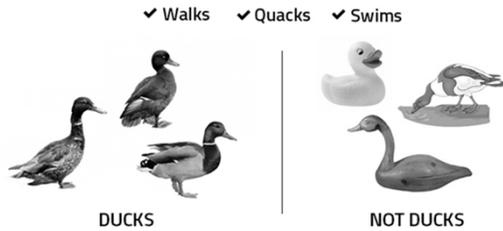
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### What kind of drug identification is sufficient to establish PC for possession?




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### Should you find PC without a field test?

- ▶ See Jeff Welby's blog post on this issue: <https://nccriminallaw.sog.unc.edu/determining-probable-cause-drug-crimes-without-field-tests/>
- ▶ No bright line requirement for field test at the probable cause stage
- ▶ Consider the totality of circumstances
- ▶ The appearance of the substance, along with "packaging of the substance, where it is located, the presence of large amounts of cash or other drug paraphernalia, and the defendant's statements about the identity of the substance" are part of the analysis.
- ▶ But note, at the trial stage, that the State must prove the identity of the substance even if the defendant admits it is a CS
  - ▶ See State v. Osborne, 821 S.E.2d 268 (N.C. Ct. App. 2018)

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### Smokable Hemp or Marijuana? Can field inspection provide PC?

- ▶ Smokable hemp is currently legal in NC as of August 2019. Legislation to ban it is currently under debate.
- ▶ Hemp and Marijuana are distinguished by differing THC content, which requires a lab test to determine.
- ▶ They are otherwise practically indistinguishable based on appearance and odor.
- ▶ The SBI has argued that legalized smokable hemp destroys probable cause to charge possession of marijuana, because it provides a non-criminal explanation for possession of cannabis.
- ▶ What should magistrates do?
- ▶ For more, see Phil Dixon's NC Criminal Law Blog post at: <https://nc.criminallaw.sog.unc.edu/hemp-or-marijuana/>

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### Possession on Prison /Jail Premises

- ▶ Knowingly possesses a controlled substance on the premises of a penal institution or local confinement facility.
  - ▶ General intent crime: knowledge of possession is enough.
- ▶ Defendant's presence on premises does not need to be voluntary.
- ▶ Doesn't matter if the defendant is brought to jail in custody against his will – defendant has to choose to disclose possession of drugs on his person to avoid this charge. "Pick your poison" situation.
  - ▶ *State v. Barnes*, 229 N.C. App. 556, 747 S.E.2d 912 (2013)
- ▶ Applies to any person on premises, not just inmates.
- ▶ Does not only apply to secured "pods" or cellblock areas.
- ▶ Includes detention areas where arrestees wait to see magistrates, search rooms, secured lobbies and the magistrate's courtroom in a local jail.
- ▶ Case law has not addressed unsecured areas fully open to the public – is passing through metal detectors enough to trigger liability?

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### 90-95(a)(1): Manufacture, sale, delivery, PWISD

- ▶ Manufacture
- ▶ Sale vs. delivery
- ▶ Proving intent
- ▶ Multiple charges

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### Manufacture of CS

- ▶ Production, preparation, propagation, compounding, conversion, or processing of a controlled substance by any means, directly or indirectly, artificially or naturally, or by extraction from substances of a natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis;
- ▶ And any packaging or repackaging of the substance or labeling or relabeling of its container.

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### For preparation, State must allege and prove intent to distribute

- ▶ Preparation or compounding for personal use is NOT manufacturing under the statute. State must prove intent to distribute.
- ▶ If intent to distribute not alleged, the indictment is defective.
  - ▶ See *State v. Lofton*, 816 S.E.2d 207 (N.C. Ct. App. 2018)

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### Sale vs. Delivery

- ▶ Sale
  - ▶ Transfer in exchange for money, goods or services
- ▶ Delivery
  - ▶ Transfer of drugs to another person
  - ▶ Includes constructive transfer (through third-party agent or other "cutout" procedure) and attempted transfer
- ▶ It is NOT a delivery to transfer for no remuneration less than 5 grams of marijuana.
  - ▶ G.S. 90-95(b)(2)
  - ▶ Such a transfer constitutes possession for both parties however

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### Proving Intent

- ▶ The packaging of the controlled substance
  - ▶ Multiple small retail size packages
- ▶ The labeling of the controlled substance
  - ▶ E.g., stamps on small bundles of heroin showing what "brand" it is
- ▶ The storage of the controlled substance
  - ▶ Stored to facilitate hand to hand sales (e.g. 20 small baggies of crack cocaine in a brown paper bag)
- ▶ The defendant's activities
  - ▶ Hand to hand transactions, lots of traffic at an address, written or phone records
- ▶ The presence of cash near drugs, and
- ▶ The presence of drug paraphernalia
  - ▶ Scales, baggies, other packaging materials, cutting agents

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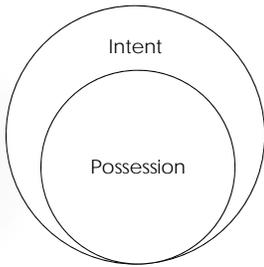
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Simple possession of drugs is a lesser included offense of PWISD




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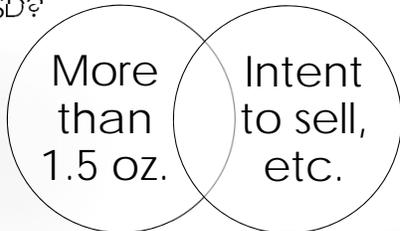
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How about possession of a particular quantity of drugs vs. PWISD?




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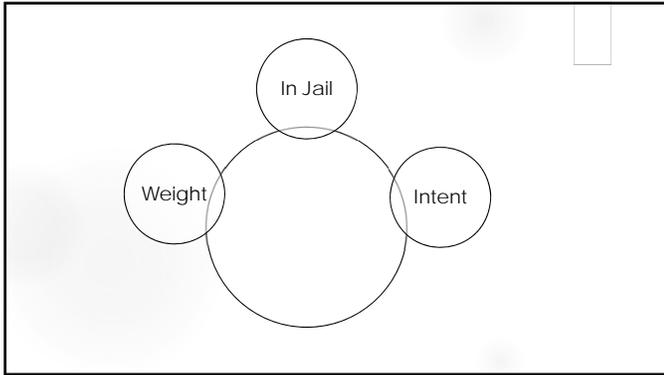
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**PWIMSD School Enhancement:  
Over 21 Only!**

- ▶ "Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for a child care center, or for an elementary or secondary school or within 1,000 feet of the boundary of real property used for a child care center, or for an elementary or secondary school" shall be punished as a Class E felon."

N.C. Gen. Stat. § 90-95 (e)(8)

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Can't charge with the PWIMSD 1000 foot school enhancement if under 21.

A rectangular sign with a white background and a black border. The text is arranged in four lines: 'You' (top), 'Must Be' (second), '21' (third, in large bold font), and 'to Enter' (bottom). There is a small logo at the very bottom.

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### Elevated punishment for some CS misdemeanors based on prior convictions

- ▶ G.S. 90-95(e)(3): For any person who commits a Class 1 misdemeanor under the N.C. Controlled Substances Act (CSA) with at least one prior conviction (in this state, in any other state, or under federal law) for conduct punishable under the CSA, the offense is a Class I felony.
- ▶ G.S. 90-95(e)(4): For any person who commits a Class 2 misdemeanor with at least one prior conviction (in this state, in any other state, or under federal law) for conduct punishable under the CSA, the offense is a Class 1 misdemeanor.
- ▶ G.S. 90-95(e)(7): For any person who commits an offense under the CSA for which the prescribed punishment requires that any sentence of imprisonment be suspended and who has at least one prior conviction (in this state, in any other state, or under federal law) for conduct punishable under the CSA, the offense is a Class 2 misdemeanor.
- ▶ Any fact that elevates punishment must be alleged in a charging instrument and proved at trial. See G.S. 15A-928 (pleading and proving prior convictions).

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### 90-95(h): Trafficking

- ▶ Conduct
  - ▶ By sale, delivery, manufacture, transportation or possession
- ▶ Substance and quantity
  - ▶ Individual substances have different quantity thresholds for trafficking
  - ▶ Not all drugs are included in trafficking statutes
  - ▶ Trafficking statutes apply to specific named drugs or drug classes, not drug schedules
  - ▶ Some thresholds are based on weight, some on "tablets, capsules, or dosage units, or the equivalent quantity"
  - ▶ For synthetic cannabinoids, a "dosage unit" consists of 3 grams of synthetic cannabinoid or any mixture containing such a substance.
  - ▶ G.S. 90-95(h)(1a)

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### Drug Mixtures




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### Mixtures treated like pure drug, no matter how dilute the mixture

- ▶ The NC Court of Appeals has specifically rejected an argument that treating prescription drugs like pure drug is an unconstitutionally harsh penalty when only a small portion of the total weight is active drug.
- ▶ "Liability for trafficking cases involving prescription medications hinges upon the total weight of the pills or tablets in question instead of the weight of the controlled substance contained within those medications."

*State v. Ellison*, 213 N.C. App. 300, 310, 713 S.E.2d 228, 236 (2011)

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### Note: trafficking in opiates statute is applied to prescription drugs by weight, not by dosage units.

- ▶ What about Rx drugs with only a small amount of opiates?
- ▶ Percocet is Acetaminophen with a relatively small amount of Oxycodone added: 1.5% by weight in a high potency form, .07% by weight in low dose form.
- ▶ How about OxyContin, which contains approximately 30% Oxycodone by weight?
- ▶ Should prescription drug trafficking be based on "dosage units" or tablets, given the drugs are sold and consumed in tablet form?
- ▶ Consider that a "standard" heroin dose is somewhere around 30-50 mg. 4 grams of heroin amounts to some 80-133 dosage units.
- ▶ 4 grams of Percocet amounts to approximately 7 dosage units (tablets). The drug is typically prescribed in bottles of 100, with maximum daily dose of 6 tablets for the high potency version.

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### Multiple trafficking charges

- ▶ As a general rule, multiple caches of drugs are combined for charging purposes
- ▶ This is so even if drugs are seized in distinct locations, if possessed for similar purposes and at similar times.
- ▶ If distinct drug caches are possessed for distinct purposes (sale vs. personal use), courts are more inclined to find two separate offenses
- ▶ If multiple sales are spread out over several days or weeks, courts are not inclined to aggregate these offenses for trafficking purposes.
- ▶ For more detail, see Jeff Welty's blog post at <https://nccriminallaw.sog.unc.edu/combining-drug-quantities/>

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Possession (with or without intent) and Trafficking by Possession: an exception to the lesser included rule!

- ▶ A person may be convicted and punished for both possession of a controlled substance under G.S. 90-95(a)(3) and trafficking by possessing a controlled substance even though the offenses are based on the same controlled substance.
  - ▶ *State v. Pipkins*, 337 N.C. 431 (1994).
- ▶ Where a legislature clearly expresses its intent to proscribe and punish exactly the same conduct under two separate statutes, a trial court in a single trial may impose cumulative punishments under the statutes.
  - ▶ *State v. Pipkins*, 337 N.C. 431, 432 (1994)
- ▶ Court reasons that small-scale and large-scale possession are two different social problems and the legislature is free to punish both to advance public policy goals.

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90-95(d1): Possession of Precursors with Intent

- ▶ A person guilty of this offense
  - ▶ (1) knowingly
  - ▶ (2) possesses
  - ▶ (3) an immediate precursor chemical
  - ▶ (4) with intent to manufacture
  - ▶ (5) a controlled substance.
- ▶ Precursors are key ingredients essential to the manufacture of certain drugs
- ▶ Precursors are listed in G.S. 90-95(d2)
- ▶ Warrant should include the specific product that is considered a precursor (Lithium battery, lye, camping fuel)

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Pseudoephedrine purchase and possession




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### Precursor Offenses

- ▶ Punishment for possessing methamphetamine precursors is higher
  - ▶ G.S. 90-95(d1)(2)
- ▶ Additional separate offense for possession of pseudoephedrine after certain methamphetamine related convictions
  - ▶ G.S. 90-95(d1)
- ▶ Additional regulations in Ch. 90 Article 5D on retail sale of pseudoephedrine

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### New statute includes Fentanyl "immediate precursor" in Schedule II

- ▶ 90-90(2)(h1)
- ▶ 4-anilino-N-phenethyl-4-piperidine (ANPP)
- ▶ Effective 12/1/2018

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### 90-95(a)(2): Counterfeit Controlled Substances

- ▶ Creating Counterfeit Controlled Substance
  - ▶ A person guilty of this offense
    - ▶ (1) knowingly
    - ▶ (2) creates
    - ▶ (3) a counterfeit controlled substance.
- ▶ "Creating" includes
  - ▶ 1. falsely labeling or molding a substance for sale as a controlled substance, and
  - ▶ 2. repackaging things like flour and oregano to look "substantially identical" to a specific controlled substance as it is usually encountered in the illicit drug trade.
- ▶ Always a Class I Felony, regardless of which CS is being faked.

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Counterfeit Controlled Substances, cont.

- ▶ Possession with Intent to Sell or Deliver CCS
- ▶ Sale or Delivery of a CCS
- ▶ Simple Possession of Counterfeit Controlled Substance is NOT a crime.

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90-108: Regulatory Offenses

- ▶ 90-108(7): Maintaining a dwelling/vehicle/etc.
- ▶ (1) knowingly
- ▶ (2) keeps or maintains
- ▶ (3) a store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or other place
- ▶ (4)(a) being resorted to by persons unlawfully using controlled substances *or*
- ▶ (4)(b) being used for unlawfully keeping or selling controlled substances.

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NC Supreme Court expands definition of maintaining a vehicle for "keeping" drugs

- ▶ 90-108(a)(7) does not "create a separate crime simply because the controlled substance was temporarily in a vehicle" .... In other words, merely possessing or transporting drugs inside a car—because, for instance, they are in an occupant's pocket or they are being taken from one place to another—is not enough to justify a conviction under the "keeping" element of subsection 90-108(a)(7). Rather, courts must determine whether the defendant was using a car for the *keeping* of drugs—which, again, means the *storing* of drugs—and courts must focus their inquiry "on the *use*, not the contents, of the vehicle."
- ▶ *State v. Rogers*, 371 N.C. 397, 405, 817 S.E.2d 150, 156 (2018)(citations omitted)

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Court disavows any "duration of time" requirement for maintaining a vehicle to keep drugs

- ▶ No longer any requirement that drugs be stored in a car over any period of time
- ▶ The use of the car to store drugs is the issue, regardless of how long the drugs are stored.
- ▶ "Merely having drugs in a car (or other place) is not enough to justify a conviction under N.C. Gen. Stat. § 90-108(a)(7) (2017). The evidence and all reasonable inferences drawn from the evidence must indicate, based on the totality of the circumstances, that the drugs are also being stored there."

*State v. Rogers*, 371 N.C. 397, 398, 817 S.E.2d 150, 151 (2018)

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One drug sale, without more, is not enough for Maintaining a Dwelling.

- ▶ The NC Court of Appeals ruled in March of 2019 that there was insufficient evidence to support a conviction for maintaining a dwelling for the keeping or sale of controlled substances where:
  - ▶ no evidence showing any drugs or drug paraphernalia, scales, residue, baggies, large amounts of cash, weapons, or other implements of the drug trade, were observed or seized from Defendant's home.
- ▶ *State v. Miller*, 826 S.E.2d 562 (N.C. App. 2019)

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A dwelling "resorted to" for use of drugs

- ▶ "Maintaining" a dwelling does not mean keeping drugs in a dwelling for the use of the people who live there.
- ▶ "Maintaining" means maintaining a dwelling where non-residents come to use illegal controlled substances.
- ▶ The NC Court of Appeals ruled that the General Assembly did not intend the words "resorted to," as used in subdivision (a)(7) of 90-108 to include persons who live in the dwelling.
  - ▶ *State v. Rich*, 87 N.C. App. 380, 361 S.E.2d 321 (1987)

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### Knowingly vs Intentionally?

- ▶ Here's how the NC Court of Appeals interpreted the distinction:
  - ▶ (1) Maintaining a vehicle with knowledge that it is resorted to by persons for the use, keeping or selling of controlled substances shall be a misdemeanor,
  - ▶ (2) Maintaining a vehicle with the intent that it be so used shall be a Class I felony.

*State v. Bright*, 78 N.C. App. 239, 242, 337 S.E.2d 87, 89 (1985)

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### Obtaining CS by fraud or forgery

- ▶ 90-108(a)(1)
  - ▶ By misrepresenting oneself as a licensed practitioner
- ▶ 90-108(a)(10)
  - ▶ By misrepresentation, fraud, forgery, deception, or subterfuge

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### Ch. 90 Art. 5A: Toxic Vapors Offenses

- ▶ 90-113.10 Huffing
- ▶ 90-113.11 Possession for huffing
- ▶ 90-113.21 Sale for huffing

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Possession of Drug Paraphernalia:  
90-113.22

- ▶ (1) knowingly
- ▶ (2) uses or possesses with the intent to use
- ▶ (3) drug paraphernalia
- ▶ (4) for any of the following purposes:
  - ▶ (a) to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal or
  - ▶ (b) to inject, ingest, inhale, or otherwise introduce into the body
- ▶ (5) a controlled substance that is unlawful to possess.

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So what counts as paraphernalia?



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Roses are red, violets are blue, I got you a flower and a crack pipe too!



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### Huffing socks?



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### How do we identify paraphernalia?

- ▶ (1) Statements by the owner or anyone in control of the object concerning its use;
- ▶ (2) Prior convictions of the owner or other person in control of the object for violations of controlled substances law;
- ▶ (3) The proximity of the object to a violation of the Controlled Substances Act;
- ▶ (4) The proximity of the object to a controlled substance;
- ▶ (5) The existence of any residue of a controlled substance on the object;
- ▶ (6) The proximity of the object to other drug paraphernalia;
- ▶ (7) Instructions provided with the object concerning its use;

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### Identifying paraphernalia, pt. 2

- ▶ (8) Descriptive materials accompanying the object explaining or depicting its use;
- ▶ (9) Advertising concerning its use;
- ▶ (10) The manner in which the object is displayed for sale;
- ▶ (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a seller of tobacco products or agricultural supplies;
- ▶ (12) Possible legitimate uses of the object in the community;
- ▶ (13) Expert testimony concerning its use;
- ▶ (14) The intent of the owner or other person in control of the object to deliver it to persons whom he knows or reasonably should know intend to use the object to facilitate violations of the Controlled Substances Act.

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PDP must be alleged with particularity (warrant must name and describe paraphernalia)

- ▶ "As common household items and substances may be classified as drug paraphernalia when considered in the light of other evidence, in order to mount a defense to the charge of possession of drug paraphernalia, a defendant must be apprised of the item or substance the State categorizes as drug paraphernalia."

*State v. Moore*, 162 N.C. App. 268, 274, 592 S.E.2d 562, 566 (2004)

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PDP: Declared needle exception

- ▶ "If there is a hypodermic needle or other sharp object on the person, on the person's premises, or in the person's vehicle and the person alerts the officer of that fact prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object, or for residual amounts of a controlled substance contained in the needle or sharp object."

N.C. Gen. Stat. § 90-113.22

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90-113.22A Possess marijuana Paraphernalia

- ▶ (1) knowingly
- ▶ (2) uses or possesses with the intent to use
- ▶ (3) drug paraphernalia
- ▶ (4) for any of the following purposes:
  - ▶ (a) to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal or
  - ▶ (b) to inject, ingest, inhale, or otherwise introduce into the body
- ▶ (5) marijuana.
- ▶ Class 3 Misdemeanor

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### Other new CS laws

- ▶ Amended G.S. 90-108(a)(14) makes it an offense for an employee of a registrant or practitioner to unlawfully divert a controlled substance, to add registrants and participants; and adds G.S. 90-108(a)(15) to make it a Class G felony under G.S. 90-108(b)(2) for a person who is not a registrant or practitioner or an employee of a registrant or practitioner to divert a controlled substance.
- ▶ New G.S. 90-108(b)(3) makes it a Class E felony if a person violates subdivision (14) or (15) and intentionally diverts any controlled substance by means of dilution or substitution as those terms are defined in the new provision.
- ▶ New G.S. 90-113.74(k) creates three new offenses involving individuals authorized to access data in the controlled substances reporting system.

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Thank you!  
John.C.Donovan@nccourts.org



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# Motor Vehicle Law

**MOTOR VEHICLE Law**

Elements of Motor Vehicles Offenses .....Motor Vehicle Law-Page 1  
Self-Test.....Motor Vehicle Law-Page 13

## Elements of Motor Vehicle Offenses

Basic School for Magistrates  
 Shea Denning, School of Government  
 August 2019

DWI Offenses		Elements	Items to note
DWI: G.S. 20-138.1		<ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. While impaired                             <ol style="list-style-type: none"> <li>a.</li> <li>b.</li> <li>c.</li> </ol> </li> </ol>	p. 29 of yellow book
Misdemeanor sentenced under G.S. 20-179		<ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3. Street/highway or PVA</li> <li>4. While impaired                             <ol style="list-style-type: none"> <li>a.</li> <li>b.</li> <li>c.</li> </ol> </li> </ol>	p. 68 of yellow book
Habitual impaired driving: G.S. 20-138.5		<ol style="list-style-type: none"> <li>1. DWI</li> <li>2.</li> </ol>	p. 52 of yellow book
Class F felony			

Zero Tolerance Offenses	Elements	Items to Note
<p>Driving after consuming by person &lt; 21: G.S. 20-138.3</p> <p>Class 2 misdemeanor</p>	<ol style="list-style-type: none"> <li>1. Less than 21</li> <li>2. Drive</li> <li>3.</li> <li>4.               <ol style="list-style-type: none"> <li>a. While consuming alcohol;</li> <li>b. At any time while person has remaining in his or her body any alcohol previously consumed; or</li> <li>c. Any time while he or she has remaining in his or her body any previously consumed controlled substance, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts</li> </ol> </li> </ol>	<p>p. 75 of yellow book</p> <p>Not a lesser included offense of DWI, but punishment limitations apply.</p>
<p>Operating commercial motor vehicle after consuming: G.S. 20-138.2A</p> <p>Class 3 misdemeanor</p>	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2. Commercial motor vehicle*</li> <li>3. Street, Highway, or PVA</li> <li>4. While consuming alcohol or while alcohol remains in body</li> </ol>	<p>p. 76 of yellow book</p> <p>*Does not apply to the driving of Class C motor vehicles designed to transport 16 or more passengers or that are transporting hazardous material</p>
<p>Driving school bus/child care vehicle/ambulance/EMS vehicle/firefighting vehicle/LE Vehicle after consuming: G.S. 20-138.2B</p> <p>Class 3 misdemeanor</p>	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2. School bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle</li> <li>3. Street, Highway, or PVA</li> <li>4. While consuming alcohol or while alcohol remains in body</li> </ol>	<p>p. 77 of yellow book</p> <p>Does not apply to law enforcement officers acting in the course of, and within the scope of, their duties</p>

Driver's License Offenses		Elements	Items to Note
Driving while license revoked: G.S. 20-28(a) Class 3 misdemeanor	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. While driver's license or privilege to drive in NC is revoked</li> <li>5.</li> </ol>	p. 101 of Pulled Over	
Driving while license revoked for impaired driving: G.S. 20-28(a1) Class 1 misdemeanor	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. While driver's license or privilege to drive in NC is revoked</li> <li>5.</li> <li>6.</li> </ol>	<p>p. 103 of Pulled Over</p> <p>A person subject to ignition interlock who violates that condition commits the offense of driving while license revoked for impaired driving under G.S. 20-28(a1). See G.S. 20-17.8(f).</p> <p>Driving in violation of the terms of a limited driving privilege constitutes the offense of DWLR. If the limited driving privilege was issued to permit driving during an impaired driving revocation, then violation of its terms constitutes DWLR for an impaired driving revocation.</p>	
No operator's license: G.S. 20-7(a) Class 3 misdemeanor	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. Without a valid license</li> </ol>	p. 98 of Pulled Over	
Failure to comply with license restriction: G.S. 20-7(e) Class 3 misdemeanor	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. In violation of license restriction</li> </ol>	<p>p. 98 of Pulled Over</p> <p>This is proper charge for violation of alcohol concentration restriction.</p>	

Rules of the Road	Elements	Items to Note
Reckless driving: G.S. 20-140(a) <i>Carelessly and heedlessly</i>  Class 2 misdemeanor	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. Carelessly and heedlessly</li> <li>5. In willful or wanton disregard</li> <li>6. Of the rights and safety of others</li> </ol>	p. 133 of Pulled Over
Reckless driving: G.S. 20-140(b) <i>Endangering persons or property</i>  Class 2 misdemeanor	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. Without due caution and circumspection</li> <li>5. At a speed or in a manner</li> <li>6. That endangers or is likely to endanger any person or property</li> </ol>	p. 133 of Pulled Over  A person who violates both G.S. 20-140(a) and (b) in "one continuous operation of [a] vehicle" may be convicted of only one offense of reckless driving.
Aggressive driving: G.S. 20-141.6(a)  Class 1 misdemeanor	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3. Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others</li> <li>4. Street/highway or PVA</li> <li>5. In violation of speed restrictions in G.S. 20-141 or speed restrictions in school zones in G.S. 20-141.1</li> </ol>	p. 144 of Pulled Over  Reckless driving is a lesser-included offense of aggressive driving.

<p>Hit and run: G.S. 20-166(a1)  <i>Failure to stop, remain at scene when injury occurs</i>  Class H felony</p>	<ol style="list-style-type: none"> <li>6. Drive</li> <li>7. Vehicle</li> <li>8. Street/highway or PVA</li> <li>9. Involved in crash</li> <li>10. Causing injury</li> <li>11. Knows or reasonably should that vehicle was involved in crash causing injury</li> <li>12. Willfully <ol style="list-style-type: none"> <li>a. Fails to _____</li> <li>b. Fails to _____</li> <li>c. _____</li> </ol> </li> </ol>	<p>p. 165 of Pulled Over</p> <p>An exception permits a driver to leave the scene of a crash in his or her vehicle to call for a law enforcement officer, to call for or obtain medical assistance or treatment, or to remove himself, herself, or others from significant risk of injury. A driver who leaves for one of these purposes must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer.</p>
<p>Hit and run: G.S. 20-166(b)  <i>Failure to give information or assistance when injury, serious bodily injury, or death occurs</i>  Class 1 misdemeanor</p>	<ol style="list-style-type: none"> <li>1. Drive</li> <li>2. Vehicle</li> <li>3. Street/highway or PVA</li> <li>4. Involved in crash</li> <li>5. Causing injury, serious bodily injury, or death</li> <li>6. Knows or reasonably should that vehicle was involved in crash causing injury, serious bodily injury, or death</li> <li>7. Driver fails to <ol style="list-style-type: none"> <li>a. Give name, address, DL #, license plate number of vehicle involved in crash to person struck by his or her vehicle or to the driver or occupants of any vehicle with which he or she collided; or</li> <li>b. Render reasonable assistance to any person injured, including calling for medical assistance if it is apparent that such assistance is necessary or is requested by injured person</li> </ol> </li> </ol>	<p>p. 166 of Pulled Over</p> <p>A driver is not required to give information to person who is not physically and mentally capable of receiving it.</p>

<p>Misdemeanor flee to elude: G.S. 20-141.5(a)</p> <p>Class 1 misdemeanor If violation causes death, Class H felony</p>	<p>1. Drive</p> <p>2. _____</p> <p>3. _____</p> <p>4. While fleeing or attempting to elude a LEO who is lawfully performing duties</p>	<p>p. 143 of Pulled Over</p>
<p>Felony flee to elude: G.S. 20-141.5(b)</p> <p>Class H felony If violation causes death, Class E felony</p>	<p>Misdemeanor flee to elude, plus two of the following:</p> <ol style="list-style-type: none"> <li>1. Speeding more than 15 m.p.h. over the legal speed limit;</li> <li>2. Person's faculties are grossly impaired while driving due to: <ol style="list-style-type: none"> <li>a. consumption of an impairing substance; or</li> <li>b. BAC of 0.14 or more;</li> </ol> </li> <li>3. Reckless driving under G.S. 20-140;</li> <li>4. Negligent driving leading to an accident causing: <ol style="list-style-type: none"> <li>a. property damage of more than \$1,000; or</li> <li>b. personal injury;</li> </ol> </li> <li>5. Driving while driver's license is revoked;</li> <li>6. Driving over speed limit on school property, in school zone, or in a highway work zone;</li> <li>7. Passing a stopped school bus under G.S. 20-217; or</li> <li>8. Driving with a child under 12 in the vehicle.</li> </ol>	<p>p. 143 of Pulled Over</p> <p>Motor vehicle subject to seizure if driven by person charged with felony flee to elude.</p> <p>Officer must seize motor vehicle unless (1) it has been reported stolen or (2) is a rental vehicle and the driver is not listed as an authorized driver on contract. G.S. 20-28.3(a1).</p> <p>Seizing officer presents affidavit of impoundment to magistrate. Magistrate determines if seizure requirements are met.</p>

<p>Second degree murder: G.S. 14-17</p> <p>Class B2 felony if based on inherently dangerous act performed in reckless and wanton manner, such as DWI</p>	<ol style="list-style-type: none"> <li>1. Killing</li> <li>2. Another person</li> <li>3. With malice</li> </ol>	<p>p. 58 of yellow book</p>
<p>Involuntary manslaughter: Common law offense</p> <p>Class F felony</p>	<ol style="list-style-type: none"> <li>1. Kill</li> <li>2. Another person</li> <li>3. (a) By an unlawful act that does not amount to a felony and is not ordinarily dangerous to life or (b) by a culpably negligent act or omission</li> </ol>	<p>p. 60 of yellow book</p> <p>DWI is culpable negligence.</p> <p>DWI and proximately causing death of another is both involuntary manslaughter and felony death by vehicle. A person convicted of both offenses based on a single death in a single incident may be sentenced only for felony death by vehicle, the more serious offense.</p> <p>This offense is not limited to deaths caused by DWI.</p> <p>Violation of traffic laws other than DWI unintentionally or negligently is not culpable negligence unless act is likely to result in death/great bodily harm. Consider whether the person intentionally violated a statute (culpable negligence) or simply negligently failed to observe its provisions (ordinary negligence).</p>

<p>Felony death by vehicle: G.S. 20-141.4(a1) Class D felony</p>	<ol style="list-style-type: none"> <li>1. Unintentionally cause death of another</li> <li>2. While engaged in offense of (a) _____ or (b) _____</li> <li>3. _____ is proximate cause of death</li> </ol>	<p>p. 61 of yellow book</p>
<p>Aggravated felony death by vehicle: G.S. 20-141.4(a5) Class D felony (sentenced in aggravated range)</p>	<ol style="list-style-type: none"> <li>1. Felony death by vehicle</li> <li>2. Prior conviction for offense involving impaired driving within 7 years</li> </ol>	<p>p. 62 of yellow book</p>
<p>Repeat felony death by vehicle: G.S. 20-141.4(a6) Class B2 felony</p>	<ol style="list-style-type: none"> <li>1. Felony death by vehicle</li> <li>2. Previous conviction for felony death by vehicle, aggravated felony death by vehicle, or murder based on the unintentional death of another person while engaged in DWI</li> </ol>	<p>p. 63 of yellow book</p>
<p>Misdemeanor death by vehicle: G.S. 20-141.4(a2) Class A1 misdemeanor</p>	<ol style="list-style-type: none"> <li>1. Unintentionally cause death of another</li> <li>2. While violating a state law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic – other than DWI</li> <li>3. Traffic offense is proximate cause of death</li> </ol>	<p>p. 64 of yellow book</p>

Serious Injury by Vehicle	Elements	Items to Note
Felony serious injury by vehicle: G.S. 20-141.4(a3)  Class F felony	<ol style="list-style-type: none"> <li>1. Unintentionally cause serious injury to another person</li> <li>2. While engaged in DWI or DWI in commercial motor vehicle</li> <li>3. DWI is proximate cause of serious injury</li> </ol>	<p>p. 64 of yellow book</p> <p>Serious injury is not defined by statute. Refer to definitions in assault context. Consider pain and suffering, loss of blood, hospitalization, and/or time lost from work.</p> <p>This offense is limited to DWI and does not include serious injuries caused by other types of traffic offenses.</p>
Aggravated felony serious injury by vehicle: G.S. 20-141.4(a4)  Class E felony	<ol style="list-style-type: none"> <li>1. Felony serious injury by vehicle</li> <li>2. Previous conviction for offense involving impaired driving within 7 years of offense</li> </ol>	<p>p. 66 of yellow book</p>

## **Definitions.**

**Drive:** To be in actual physical control of a vehicle that is in motion or that has the engine running. Drive and operate have the same meaning. G.S. 20-4.01(7), (25).

**Vehicle:** Any device that will take people or property down the road other than devices moved by human power. But, bicycles are vehicles, even though human-powered. Segways are not vehicles. And certain devices used by a person who has a mobility impairment are not vehicles. G.S. 20-4.01(49).

**Motor Vehicle:** Every vehicle that is self-propelled and every vehicle designed to run on the highways that is pulled by a self-propelled vehicle. Except as specifically provided otherwise, this term does not include mopeds or electric assisted bicycles. G.S. 20-4.01(23).

**Moped:** A vehicle, other than a motor-driven bicycle or electric assisted bicycle, that has two or three wheels, no external shifting device, 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. The motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each. G.S. 20-4.01(27)].

**Commercial Motor Vehicle:** Any of the following vehicles designed or used to transport passengers or property:

- a. A Class A motor vehicle that has a combined gross vehicle weight rating (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: (1) a single motor vehicle that has a GVWR of at least 26,001 pounds or (2) 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;
- c. A Class C motor vehicle that:
  1. Is designed to transport sixteen or more passengers, including the driver; or
  2. Is transporting hazardous materials and is required to be placarded in accordance with federal regulations.

G.S. 20-4.01(3d).

**Street, 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. G.S. 20-4.01(13), (46).

**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.
- 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.  
G.S. 20-4.01(32).

**While Impaired:** Impairment can be proved in one of three ways. To violate G.S. 20-138.1, the person must drive:

1. While under the influence of an impairing substance;
2. After having consumed sufficient alcohol that the person has, at any relevant time after the driving an alcohol concentration of 0.08 or more; or
3. With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

**Impairing substance:** Alcohol, controlled substance under Chapter 90, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances. G.S. 20-4.01(14a).

**Offense involving impaired driving:** The following are offenses involving impaired driving:

1. Impaired driving under G.S. 20-138.1
2. Habitual impaired driving under G.S. 20-138.5
3. Impaired driving in a commercial vehicle under G.S. 20-138.2
4. Death or serious injury by vehicle under G.S. 20-141.4 based on impaired driving
5. 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 jurisdiction.  
G.S. 20-4.01(24a).

**Impaired driving license revocation:** The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

- G.S. 20-13.2 Driving after 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
  - G.S. 20-16.5 Civil license revocation
  - G.S. 20-17(a)(2) Driving while impaired; driving while impaired in a commercial motor vehicle
  - G.S. 20-17(a)(12) Transporting open container – second or subsequent
  - G.S. 20-138.5 Habitual driving while impaired
  - G.S. 20-16(a)(7) Out-of-state offense similar to DWI resulting in NC revocation
  - G.S. 20-17(a)(1) Manslaughter involving DWI
  - G.S. 20-17(a)(3) Any felony in the commission of which a motor vehicle is used if the offense includes 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 the offense involves impaired driving; or
  - The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed above.
- G.S. 20-28.2(a).

**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 share the same meaning. G.S. 20-4.01(4b).

**Self-test.**

**Basic School for Magistrates, August 2019**

1. Donna Davis has been arrested for DWI. The officer discovered her sleeping in the driver's seat of her car in the parking lot of a closed business. The engine of the car was running, but the officer did not see it move. Donna was noticeably impaired and admitted to the officer that she had consumed several mixed drinks that evening. She said, however, that she only turned on the engine in the car to keep it warm inside. Do you find probable cause for DWI?
  - a. No, because Donna did not drive the car anywhere.
  - b. No, because the business was closed.
  - c. No, for the reasons in (a) and (b).
  - d. Yes, I find probable cause because Donna was in actual physical control of a vehicle in a public vehicular area whose engine was running.
  
2. Luther Logan was riding his bicycle on a city street, when he lost control of it and ran into a ditch. An officer who was concerned that Logan might be hurt, approached. He noticed that Logan was unsteady on his feet, smelled of alcohol, and that his speech was slurred. Logan admitted that he had consumed several beers at a nearby bar and that he was riding his bicycle to avoid driving his car while impaired. The officer arrested Logan for DWI. Do you find probable cause for DWI?
  - a. No, because Logan was riding a bicycle.
  - b. No, because Logan was trying to do the right thing.
  - c. No, for the reasons in (a) and (b).
  - d. Yes, I find probable cause, because a bicycle is a vehicle.
  
3. Paul Jones has been arrested for DWI. A security officer stopped Jones while he was driving his Mercedes on a private road within the gated subdivision where Jones lives. The security officer called a city police officer to the scene. The city officer formed the opinion, based on Jones' strong odor of alcohol, slurred speech, and his poor performance on field sobriety tests, that Jones was impaired and arrested him. Do you find probable cause for DWI?
  - a. No, because Jones was driving in a gated subdivision on a private road.
  - b. No, because I need to know the results of the breath test before I can find probable cause.
  - c. No, for the reasons in (a) and (b).
  - d. Yes, I find probable cause because Jones was driving while impaired in a public vehicular area.
  
4. Marla Manning was driving her moped on a city street when she was stopped on suspicion of DWI. Marla smelled strongly of alcohol, her speech was slurred, and she was unsteady on her feet. She also performed poorly on field sobriety tests. The officer discovered that Marla's driver's license was revoked. Which of the following statements is true?
  - a. Marla may properly be charged with DWI only.
  - b. Marla may properly be charged with DWI and DWLR.
  - c. Marla may **not** be charged with DWI or DWLR because she was driving a moped.

5. Marla is 20 years old. May she also be charged with Driving after consuming by a person under 21?
  - a. Yes
  - b. No
  
6. Cassie Clayton was convicted two years ago of driving after consuming while under 21. Cassie is now 24 years old. Her license has been restored with a restriction that she not drive with an alcohol concentration of .00 or more. She is stopped at a checkpoint, and the officer asks whether she has had anything to drink. She said that she had wine with dinner a few hours ago. The results of a portable breath test are positive. The officer requires Cassie to submit to a breath test. She blows a .03. For which, if any, of the following offenses do you find probable cause?
  - a. DWI
  - b. Driving while license revoked
  - c. Driving after consuming
  - d. Driving in violation of a license restriction
  - e. None of the above
  
7. Merle Maynard's license was revoked last year for a DWI conviction and he obtained a limited driving privilege from the court. Because Merle had an alcohol concentration of 0.15, the limited driving privilege requires that he operate only a motor vehicle equipped with ignition interlock. Merle is stopped for speeding, and the officer discovers that the car Merle is driving does not have ignition interlock. What is the proper charge (in addition to speeding)?
  - a. DWI
  - b. Driving while license revoked
  - c. Driving in violation of a license restriction
  - d. None of the above
  
8. May Merle continue to drive pursuant to the limited driving privilege until the charges are disposed of?
  - a. Yes, the limited driving privilege remains in effect until it is revoked by the trial court
  - b. No, the magistrate must suspend and order Merle to surrender the limited driving privilege
  
9. Suppose that the ignition interlock was imposed as a restriction on Merle's driver's license rather than as a condition of a limited driving privilege. If Merle is discovered to be driving a car that does not have ignition interlock, what is the proper charge?
  - a. DWI
  - b. Driving while license revoked
  - c. Driving in violation of a license restriction
  - d. None of the above
  
10. May Merle, in this second example, continue to drive until the charges are disposed of?
  - a. Yes, the license remains in effect until it is revoked by the trial court
  - b. No, the magistrate must suspend and order Merle to surrender his license

# Initial Appearance

## INITIAL APPEARANCE

Exceptions to Pretrial Release Procedures:

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**EXCEPTIONS TO PRETRIAL RELEASE PROCEDURES: A GUIDE FOR MAGISTRATES**

**THE GENERAL RULE:** Upon 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.

<b>Category</b>	<b>Specific Situation</b>	<b>Response</b>	<b>Statutory Basis</b>	<b>Form to Use</b>
<b>Delay initial appearance altogether</b>	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.
<b>Conduct initial appearance, BUT delay setting pretrial release conditions</b>	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	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	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	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)
	Violation of 14-277.6 or 14-277.7 (threat of mass violence on educational property or place of worship), eff. for offenses on or after Dec. 1, 2018	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 may retain defendant for reasonable time while determining PTR conditions if immediate release poses danger of injury and appearance bond will not prevent injury	15A-534.7	No form yet

Category	Specific Situation	Response	Statutory Basis	Form to Use
<p><b>Conduct initial appearance, set pretrial release conditions, BUT delay release</b></p>	<p>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</p>	<p>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.</p>	<p>15A-534.2</p>	<p>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.</p>
	<p>Probable cause that individual was exposed to defendant in a nonsexual manner that poses significant risk of transmission of AIDS or Hepatitis B</p>	<p>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.</p>	<p>15A-534.3</p>	<p>AOC-CR-200, AOC-CR-270 (side two) See immediately above.</p>
<p><b>Conduct initial appearance, BUT deny any pretrial release conditions if criteria met</b></p>	<ul style="list-style-type: none"> <li>• Capital offense</li> <li>• 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</li> <li>• Out-of-state probationer arrested for violation of probation if subject to Interstate Compact for Adult Supervision</li> <li>• Offense while person was involuntarily committed or on escape from involuntary commitment if person is still subject to commitment</li> <li>• Certain drug trafficking offenses</li> <li>• Certain gang offenses</li> <li>• Certain offenses with firearm</li> <li>• Violation of certain health control measures if person poses health and safety threat</li> <li>• Certain methamphetamine offenses if certain findings</li> <li>• Military deserter</li> <li>• Violation of post-release supervision or parole</li> <li>• Violation of probation by person who has pending felony charge or is subject to sex offender registration if danger to public<sup>1</sup></li> </ul>	<p>In all of these situations, deny release if criteria are met. Make findings if required.</p> <p>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.</p> <p>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.</p>	<ul style="list-style-type: none"> <li>• 15A-533(c)</li> <li>• 15A-736</li> <li>• Ch. 148, Art. 4B (Interstate Compact)</li> <li>• 15A-533(a)</li> <li>• 15A-533(d)</li> <li>• 15A-533(e)</li> <li>• 15A-533(f)</li> <li>• 15A-534.5</li> <li>• 15A-534.6</li> <li>• Case law</li> <li>• 15A-1368.6,</li> <li>• 15A-1376</li> <li>• 15A-1345(b1)</li> </ul>	<p>AOC-CR-200</p> <p>In upper portion of form, check the box that states "Your release is not authorized." In additional information section, write any findings or instructions.</p> <p>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)</p>

1. 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
<b>Conduct initial appearance, BUT set certain pretrial release conditions</b>	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 \$1,000. 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)
	New offense while on pretrial release for prior offense	May require (was, shall require) secured bond in at least twice the amount of previous bond for the charges. If no previous bond for the charges, may require (was, shall require) secured bond of at least \$1,000 <sup>2</sup>	15A-534(d3)	AOC-CR-200 Set pretrial release conditions with required bond amount.
	Felony by person on probation if danger to public	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	If you require house arrest with electronic monitoring, set secured bond.	15A-534(a)	AOC-CR-200 Check appropriate box.
	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.

2. Effective for pretrial release conditions set on or after Oct. 1, 2015.

Category	Specific Situation	Response	Statutory Basis	Form to Use
<b>Set certain pretrial release conditions (cont'd)</b>	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.
	When fingerprints or DNA sample have not been collected as required by certain statutes	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.
<b>Reasons that initial appearance and/or pretrial release conditions may NOT be delayed or denied</b>	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.		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.	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

# Domestic Violence Crimes and the 48-Hour Rule<sup>1</sup>

Jeff Welty  
UNC School of Government  
December 2015

Crime Charged	Relationship between the Parties	Does the 48-Hour Rule Apply?	Is the Case Covered by the Crime Victims' Rights Act?
<ul style="list-style-type: none"> <li>• Simple assault, G.S. 14-33(a)</li> <li>• Assault with a deadly weapon, G.S. 14-33(c)(1)</li> <li>• Assault inflicting serious injury, G.S. 14-33(c)(1)</li> <li>• Assault by pointing a gun, G.S. 14-34</li> <li>• Misdemeanor stalking, G.S. 14-277.3A</li> </ul>	<ul style="list-style-type: none"> <li>• Current or former spouses (same sex or opposite sex)</li> <li>• Currently live or formerly lived together as if married (same sex or opposite sex)<sup>2</sup></li> <li>• Currently or formerly in a dating relationship<sup>3</sup> (opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>• Currently or formerly in a dating relationship (same sex)<sup>4</sup></li> </ul>	Yes	No
	<ul style="list-style-type: none"> <li>• Child in common</li> <li>• Parent (or person in a parental role)/child</li> <li>• Grandparent/grandchild</li> <li>• Current or former members of the same household</li> </ul>	No	Yes

<sup>1</sup> The so-called 48-hour rule of G.S. 15A-534.1 provides that, for certain domestic violence crimes, only a judge may set conditions of release in the first 48 hours after the defendant's arrest. The rule does not require or permit the defendant to be held if a judge is available to set conditions of release. Effective December 1, 2015, the rule applies "[i]n all cases in which the defendant 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 spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes." S.L. 2015-62. This chart indicates whether several common offenses are, or are not, covered by the rule. This chart is not comprehensive. For the listed offenses, the chart also indicates whether they are covered by the Crime Victims' Rights Act, G.S. 15A-830 et seq. When creating criminal processes in NCAWARE, magistrates are required to indicate whether an offense is a "domestic violence case" and whether it is a "victim rights" case. This chart is intended to assist magistrates in making those determinations.

<sup>2</sup> The Crime Victims' Rights Act applies to certain misdemeanor offenses "when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b)." G.S. 15A-830(7)(g). The portion of the definition of "personal relationship" in G.S. 50B-1(b) that concerns "persons . . . who live together or have lived together" applies only to people "of opposite sex." However, another portion of the definition includes all "current or former household members" regardless of sex. Thus, same-sex individuals who live together or have lived together as if married share a "personal relationship" as "current or former household members" and the Crime Victims' Rights Act applies when one such individual is charged with committing a covered misdemeanor against another.

<sup>3</sup> Effective December 1, 2015, G.S. 15A-534.1(a) makes the 48-hour rule applicable to covered offenses committed against "a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6)." G.S. 50B-1(b)(6) provides in pertinent part that "a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

<sup>4</sup> Effective December 1, 2015, G.S. 15A-534.1(a) makes the 48-hour rule applicable to covered offenses committed against "a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6)." G.S. 50B-1 contains definitions pertinent to the issuance of domestic violence protective orders. G.S. 50B-1(b) defines the term "personal relationship." G.S. 50B-1(b)(6) states that a "personal relationship" includes "persons of the opposite sex who are in a dating relationship or have been in a dating relationship. A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship." Nothing in the definition of "dating relationship" requires the parties to be of different sexes. Under the statute, a "dating relationship" is a "personal relationship" only if the parties are of different sexes, but the applicability of the 48-hour rule turns on the existence of a "dating relationship," not the existence of a "personal relationship." By contrast, the Crime Victims' Rights Act applies to certain misdemeanor offenses "when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b)." Thus, the existence of a same-sex dating relationship does not trigger the misdemeanor provisions of the Crime Victims' Rights Act, though the existence of an opposite-sex dating relationship does. Whether it is constitutional to distinguish between same-sex and opposite-sex couples in this way is beyond the scope of this document but might be questioned under *Obergefell v. Hodges*, 576 U.S. \_\_\_ (2015) (holding that laws limiting marriage to same-sex couples are unconstitutional, in part on equal protection grounds).

Crime Charged	Relationship between the Parties	Does the 48-Hour Rule Apply?	Is the Case Covered by the Crime Victims' Rights Act?
<ul style="list-style-type: none"> <li>Assault on a female, G.S. 14-33(c)(2) (note that this offense requires a male defendant and a female victim, so issues concerning same-sex couples do not arise)</li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses</li> <li>Currently live or formerly lived together as if married</li> <li>Currently or formerly in a dating relationship</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
<ul style="list-style-type: none"> <li>Assault with a deadly weapon with intent to kill, G.S. 14-32(c)</li> <li>Assault with a deadly weapon inflicting serious injury, G.S. 14-32(b)</li> <li>Assault with a deadly weapon with intent to kill inflicting serious injury, G.S. 14-32(a)</li> <li>Assault inflicting serious bodily injury, G.S. 14-32.4(a)</li> <li>Habitual misdemeanor assault, G.S. 14-33.2</li> <li>Felony stalking, G.S. 14-277.3A</li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
<ul style="list-style-type: none"> <li>Assault by strangulation, G.S. 14-32.4(b)</li> <li>Communicating a threat, G.S. 14-277.1</li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	No
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
<ul style="list-style-type: none"> <li>Harassing telephone calls, G.S. 14-196</li> <li>Cyberstalking, G.S. 14-196.3</li> </ul>	Any	No	No
Domestic criminal trespass, G.S. 14-134.3	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> </ul> <p>(Note that having one of the above relationships is an element of the offense)</p>	Yes	Yes <sup>5</sup>

<sup>5</sup> Domestic criminal trespass normally is a Class 1 misdemeanor, but is a Class G felony if the defendant trespasses “upon property operated as a safe house or haven for victims of domestic violence and . . . is armed with a deadly weapon.” G.S. 14-134.3(b). The felony offense is not listed in G.S. 15A-830(7), so the Crime Victims’ Rights Act does not appear to apply to the felony.

Crime Charged	Relationship between the Parties	Does the 48-Hour Rule Apply?	Is the Case Covered by the Crime Victims' Rights Act?
Violating a domestic violence protective order, G.S. 50B-4.1	Any (Such orders may be issued only when a "personal relationship" exists, as defined in G.S. 50B-1(b), but a magistrate considering a violation of a DVPO should not second-guess the determination of the judicial official who issued the order that such a relationship existed)	Yes	Yes
<ul style="list-style-type: none"> <li>Rape (any kind/degree), G.S. 14-27.21, 14-27.22, 14-27.23, 14-27.24, 14-27.25</li> <li>Sex offense (any kind/degree), G.S. 14-27.26, 14-27.27, 14-27.28, 14-27.29, 14-27.30<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
<ul style="list-style-type: none"> <li>Kidnapping, G.S. 14-39</li> <li>Felonious restraint, G.S. 14-43.3</li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
Arson, G.S. 14-58	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	

<sup>6</sup> As of this writing, G.S. 15A-534.1 refers in pertinent part to felonies "provided in Article[] 7A . . . of Chapter 14 of the General Statutes." However, S.L. 2015-181 gutted Article 7A and moved the rape and sex offense crimes to new Article 7B. The General Assembly certainly did not intend to remove these crimes from the scope of the 48-hour rule, and the Revisor of Statutes is expected to correct G.S. 15A-534.1 to refer to Article 7B under the authority in section 47 of S.L. 2015-181. Crimes committed before December 1, 2015, will be prosecuted under the former statutes set forth in Article 7A, and the 48-hour rule should apply to those cases as well.

### PROBLEMS IN DETERMINING THE CONDITIONS OF PRETRIAL RELEASE

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[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. 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.
  
3. 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
  
4. 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
  
5. 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 box to "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."

6. 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?
- Set release conditions as usual.
  - Set release conditions and commit him to jail for a reasonable time.
  - Do not set release conditions and commit him to jail for a specified reasonable period of time.
  - Commit him to jail for 12 hours.
  - Commit him to jail because only a judge may set release conditions for the period of 48 hours from Will Jones' arrest.
7. 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?
- Yes
  - No
8. 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?
- Set release conditions as usual.
  - 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.
  - 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.
9. 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?
- Yes
  - No
- Are you required to change his pretrial release conditions if Peter gets mad and demands a secured bond without conditions?
- Yes
  - No
10. 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?
- Yes
  - No

11. 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

12. 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?

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**PROBLEMS IN SETTING PRETRIAL RELEASE CONDITIONS**

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*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 E.....	15 to 85 months
Class B1.....	144 months to life without parole	Class F.....	10 to 50 months
Class B2.....	94 to 481 months	Class G.....	8 to 38 months
Class C.....	44 to 228 months	Class H.....	4 to 30 months
Class D.....	38 to 201 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 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)

5. 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 18 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.

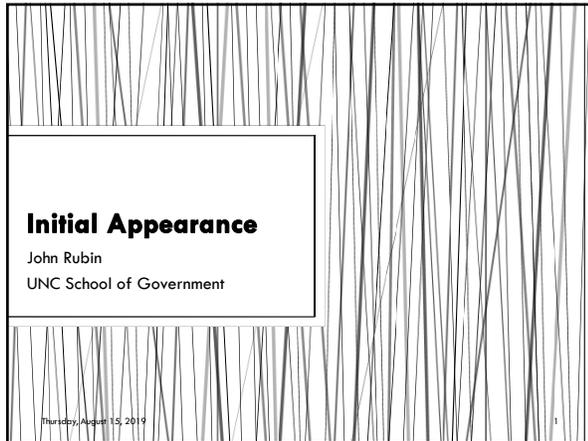
The charges are burning personal property (Class H felony) and malicious use of an incendiary device (Class G felony)

6. 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

7. 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



**Initial Appearance**  
John Rubin  
UNC School of Government

Thursday, August 15, 2019 1

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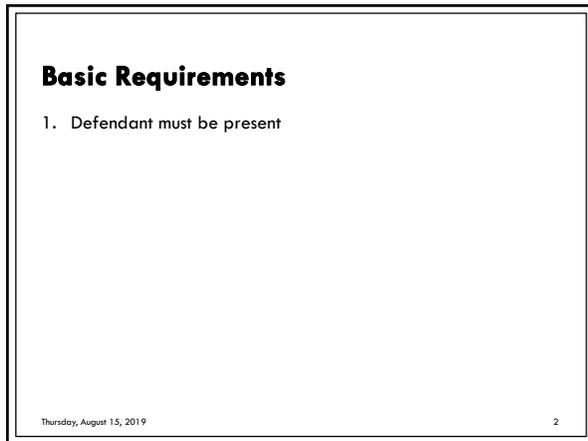
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**Basic Requirements**

1. Defendant must be present

Thursday, August 15, 2019 2

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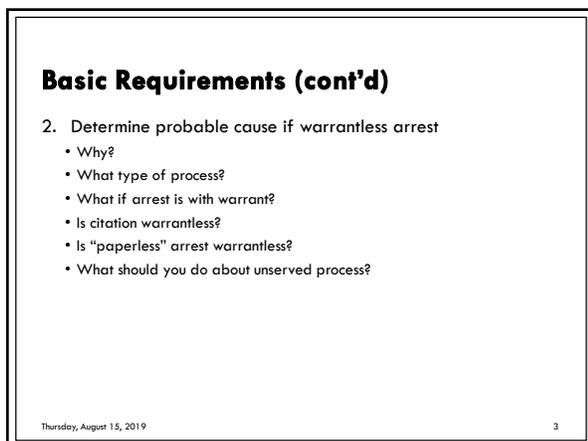
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**Basic Requirements (cont'd)**

2. Determine probable cause if warrantless arrest
  - Why?
  - What type of process?
  - What if arrest is with warrant?
  - Is citation warrantless?
  - Is "paperless" arrest warrantless?
  - What should you do about unserved process?

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**Basic Requirements (cont'd)**

3. Inform defendant of charges and rights
  - Appoint counsel?
4. Set pretrial release conditions in accordance with rules and exceptions

Thursday, August 15, 2019 4

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**Basic Requirements (cont'd)**

5. Set court date
  - Misdemeanor first appearances?
  - Out-of-county charges?
6. Fingerprint when required
  - Is arrest required when fingerprints are required?

Thursday, August 15, 2019 5

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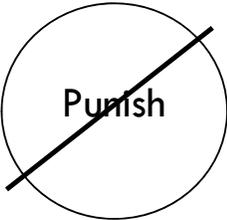
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**Types of Pretrial Release**

- Purpose of pretrial release



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**Types of Pretrial Release (cont'd)**

- Forms of pretrial release
  - Written promise, unsecured bond, custody release, secured bond, and electronic house arrest (EHA) with secured bond
- Can you combine more than one form?

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**Types of Pretrial Release (cont'd)**

- What type is preferred?
  - "The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses." G.S. 15A-534(b).

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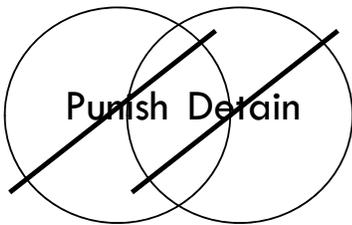
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**Types of Pretrial Release**

- Purpose of pretrial release



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**Types of Pretrial Release (cont'd)**

- Conditions of pretrial release
  - Can you impose conditions with any form of pretrial release?
  - What are permissible conditions?
- Effect of violation
  - Who issues OFA?
  - Is violation new offense?
  - What happens if officer arrests without OFA?

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**Secured Bonds**

- Types of security
  - Cash, property bond (accommodation bond), commercial bond
- Can you designate type?

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**Exceptions and Restrictions**

- Delay initial appearance

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**Exceptions and Restrictions (cont'd)**

- Hold initial appearance, but delay setting PTR conditions (DV offenses)
  - What are covered offenses?
  - What does 48-hour requirement mean?
  - What is "a spouse or former spouse or a person with whom the defendant lives or has lived as if married"? G.S. 15A-534.1(a).
  - What is "dating relationship" as defined in G.S. 50B-1(b)(6)?
  - What are permissible conditions?
  - Can you delay release beyond 48 hours?

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**Exceptions and Restrictions (cont'd)**

- Hold initial appearance, set PTR conditions, but delay release (mainly, impaired driving offenses)

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**Exceptions and Restrictions (cont'd)**

- Hold initial appearance, but deny PTR conditions
  - For certain offenses in certain circumstances, rebuttable presumption against release
  - Certain drug trafficking, gang, firearm, and methamphetamine offenses in certain circumstances

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**Exceptions and Restrictions: Firearms**

- Rebuttable presumption that no condition of pretrial release will assure appearance or safety of community if
  - felony or Class A1 misdemeanor with firearm and one of following circumstances exist
    - defendant is on pretrial release for such an offense, or
    - less than 5 years have passed since prior conviction or release for such an offense, whichever is later

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**Exceptions and Restrictions (cont'd)**

- Hold initial appearance, set PTR conditions, but in accordance with statute
  - After failure to appear
  - New offense while on pretrial release

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**Exceptions and Restrictions: Probation**

<p><b>Felony by person on probation</b></p> <ul style="list-style-type: none"> <li>• If danger, secured bond only</li> <li>• If not danger, set conditions</li> <li>• If insufficient information, delay setting conditions</li> </ul>	<p><b>Probation violation by person with pending felony or s/o registration</b></p> <ul style="list-style-type: none"> <li>• If danger, deny release</li> <li>• If not danger, set conditions</li> <li>• If insufficient information, delay setting conditions</li> </ul>
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**Exceptions and Restrictions (cont'd)**

- Reasons for not delaying initial appearance, delaying release, or denying PTR conditions
  - Probation absconders?
  - Paperless arrests?
  - Noncitizens and ICE holds?

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**Appearance Bonds**

- Cash bonds
  - Who can post?
  - What happens to cash at end of case?
- Property bonds
  - When is a security instrument or mortgage required?

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**Appearance Bonds (cont'd)**

- Commercial bonds
  - Are they as good as cash? (Hint: We already talked about this)
- Split bonds

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Contempt

## CONTEMPT

Essentials of Contempt for Magistrates .....	Criminal Contempt – Page 1
Show Cause Order, Findings and Judgment - Failure To Pay Fine and/or Costs, To Obey Jury Summons, To Appear Pursuant To Criminal Summons, Or For Contempt (AOC-CR-219) .....	Criminal Contempt – Page 7
Direct Criminal Contempt/Summary Proceedings/ Findings and Order (AOC-CR-390) .....	Criminal Contempt – Page 9

# ESSENTIALS OF CONTEMPT FOR MAGISTRATES

Michael Crowell  
UNC School of Government  
October 2013

## Different kinds of contempt

There are two kinds of contempt: criminal contempt and civil contempt.

Criminal contempt is used to punish for acts that disrupt a court proceeding or show disrespect, and also can be used for violation of court orders. Criminal contempt can be direct or indirect. Direct criminal contempt occurs in the court's presence; indirect does not. Criminal contempt can be punished by imprisonment and/or a fine.

Civil contempt is used to get someone to comply with a court order. There is no distinction between direct and indirect civil contempt; in any event, virtually all civil contempt takes place outside the court's presence. The only means of enforcing civil contempt is to imprison the person until the person complies with the court order.

## Magistrate's authority

A magistrate's authority to use contempt is stated in G.S. 7A-292(2). A magistrate may punish only for direct criminal contempt. That is, a magistrate may punish only for criminal contempt that takes place in the magistrate's presence. Any other kind of contempt must be referred to a district court judge.

## Meaning of criminal contempt

Criminal contempt is defined in G.S. 5A-11. Only the acts listed in the statute may be punished by criminal contempt.

The contemptuous acts listed in G.S. 5A-11 most likely to be committed directly before a magistrate are:

- "Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings."
- "Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority."

It is also possible, though less likely, that this form of criminal contempt will be committed directly before a magistrate:

- “Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.”

One can also think of unusual situations in which the following forms of criminal contempt could occur directly before a magistrate, but most often they would not be direct contempt because the magistrate would not have actually observed the violation:

- “Willful disobedience of, resistance to, or interference with a court’s lawful process, order, directive, or instruction or its execution.”
- “Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.”

### **Meaning of direct contempt**

G.S. 5A-13 says that an act is direct criminal contempt only when the act:

- “(1) Is committed within the sight and hearing of a presiding judicial official; and
- (2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and
- (3) Is likely to interrupt or interfere with matters then before the court.”

### **Summary or plenary proceeding**

Contempt may be dealt with in a summary proceeding or a plenary proceeding. A summary proceeding means that the magistrate deals with the contempt right then and there as it occurs. That choice is always available for direct contempt. If for whatever reason the magistrate does not wish to deal with the contempt immediately, the magistrate may issue a show cause order for the defendant to appear before a district judge at a later time for a plenary proceeding. A summary proceeding is an on-the-spot quick determination of contempt; a plenary proceeding is more like a regularly-scheduled trial.

### **The summary proceeding**

At a summary proceeding for direct criminal contempt the magistrate must tell the person that the magistrate is considering holding the person in contempt; describe what the person did that was contemptuous; and give the person a chance to respond why it is not contempt. Even if the conduct which is the basis for contempt is obvious to everyone, and it is clear that the defendant has no good excuse, the magistrate still must explain the basis for the contempt and still must give the defendant an opportunity to respond. The magistrate should also inform the person that contempt can be punished by imprisonment for up to 30 days and a fine of up to \$500.

The summary proceeding must be held “substantially contemporaneously” with the contempt. As a practical matter that means just as soon as the contempt occurs or within a few minutes thereafter. There can be situations in which it is permissible to delay the summary proceeding for a day or so, but a magistrate should not attempt to do that. If the contempt proceeding is not going to be held right away the magistrate should issue a show cause order for the defendant to appear before a district judge at a later time.

G.S. 15A-511(a)(3) says that if a defendant at an initial appearance is so unruly or is unconscious or so intoxicated as to be unable to understand what is going on the magistrate can order the person held for a short time before conducting the initial appearance. If the defendant’s unruliness includes contemptuous behavior, the magistrate may wait on the summary proceeding until the defendant is brought back for the initial appearance. If the defendant acts contemptuously but is too intoxicated for the initial appearance or for an orderly summary proceeding, the defendant probably is not capable of acting willfully (see below) and contempt is not appropriate.

G.S. 5A-16(a) authorizes a magistrate to order a person being charged with direct criminal contempt to be held and restrained “to the extent necessary to assure his presence for summary proceedings . . . .” That statute should be used only when necessary to keep the person from fleeing.

A magistrate conducting a summary proceeding should use form AOC-CR-390. The form should describe in detail the behavior that was contemptuous, including direct quotation of words that were spoken.

### **Show-cause order for a plenary proceeding**

Although direct criminal contempt always may be punished summarily, it does not have to be done summarily. The magistrate may choose to issue a show cause order and direct the person to appear before a district court judge in a plenary proceeding. The plenary proceeding should be used when the person is so belligerent or disruptive that it is not possible to conduct a summary proceeding; when the office is too busy to stop for a summary proceeding; or when the magistrate has become too personally involved to decide the contempt.

The form a magistrate should use for a show-cause order for contempt is AOC-CR-219, but the form is not designed for the most common kind of direct criminal contempt. The simplest way to use the form usually will be to check box IV for “Failure To Obey Other Order Of the Court” but strike through that heading and substitute “Interruption of Court Proceeding” or “Disrespect to Court” and then describe the behavior which is contemptuous.

### **Willfulness and warning**

G.S. 5A-12(b) provides that a person may be punished for criminal contempt only if the person’s actions are “willfully contemptuous” or the person was given “a clear warning by the court that the conduct is improper.” Willfulness has been defined by appellate court opinions to mean “more than deliberation or conscious choice; it also imports a bad faith disregard for authority

and the law.” Some acts such as spitting at a magistrate or yelling profanity or kicking a table are willfully contemptuous by their nature and so inherently disruptive and disrespectful that no warning is needed. However, when the defendant is doing something less disrespectful and disruptive, such as talking so much that no one else can speak or refusing to sit down and await one’s turn to be heard, the magistrate must warn the person that the behavior is unacceptable before using contempt.

To avoid later questions about whether the contempt was “willfully contemptuous,” it is better for the magistrate to always give a warning before holding a person in contempt. The willfully contemptuous defendant is not likely to stop just because of the warning.

### **Right to counsel**

If a lawyer is present with a person charged with direct contempt, of course the lawyer may represent the defendant in the summary contempt proceeding. It is not necessary to delay the summary hearing to allow the defendant to get a lawyer, however. And it is not necessary to appoint a lawyer to represent an indigent defendant in a summary contempt proceeding. If the contempt is not addressed summarily by the magistrate and instead proceeds to a plenary hearing before a judge, the indigent defendant is entitled to have counsel appointed.

### **Recusal**

Contemptuous conduct often can be very personal. A defendant may use degrading terms to speak to the magistrate and may be openly hostile in close quarters. In those circumstances the magistrate may feel personally insulted and want to get back at the defendant. If anything about the contemptuous behavior causes a magistrate to feel that way, the magistrate should not conduct a summary proceeding for contempt but instead should issue a show-cause order and allow the contempt charge to be heard by a judge at a later time.

### **Proof beyond a reasonable doubt**

The standard for criminal contempt is the same as for conviction of a crime: A person may not be held in criminal contempt unless the contempt is proved beyond a reasonable doubt. Because direct contempt occurs in the presence of the magistrate, the magistrate’s own view of the defendant’s conduct will establish the proof.

### **Punishment**

G.S. 5A-12 sets out the punishment for criminal contempt. The possible punishments include censure, imprisonment for up to 30 days, a fine of not more than \$500, or any combination of those three options. A magistrate will not use censure, leaving imprisonment and a fine as the choices. Before sentencing a defendant to jail for contempt, or imposing a fine, the magistrate should consider how the penalty will compare with the punishment a defendant likely would

receive for conviction of a crime. If a fine is being imposed, the magistrate needs to consider the person's ability to pay.

Although it will not be appropriate in most instances when a magistrate holds a person in contempt, the sentence for criminal contempt may be suspended with conditions, just as for other criminal offenses.

If a magistrate sentences a defendant to jail for criminal contempt, the magistrate may go back and reduce or terminate the sentence at any time. For example, if a magistrate sentenced a person to jail for two days for contempt, the magistrate could terminate the sentence after one day. Likewise, if a magistrate imposes a fine the magistrate may later reduce or eliminate the fine.

## **Appeal**

Appeal for criminal contempt is from the magistrate to superior court. The appeal is for a hearing *de novo*.

G.S. 5A-17 provides that an appeal from criminal contempt is the same as an appeal in a criminal action. The statute on criminal appeals generally, G.S. 15A-1451, provides that the payment of a fine and costs is stayed upon the defendant's giving notice of appeal, but confinement is stayed only when the defendant is released pursuant to the bail statutes. Thus, if the defendant gives notice of appeal from a sanction of criminal contempt the payment of any fine is stayed automatically but the defendant starts serving the jail time until released on bail. Starting December 1, 2013, G.S. 5A-17 will require that the bail hearing be held by a district judge when a magistrate orders someone to jail for criminal contempt and that the hearing has to be within 24 hours. If a district judge has not held the bail hearing within 24 hours, any other judicial official may do so.

File No.

**SHOW CAUSE ORDER, FINDINGS AND JUDGMENT - FAILURE TO PAY FINE AND/OR COSTS, TO OBEY JURY SUMMONS, TO APPEAR PURSUANT TO CRIMINAL SUMMONS, OR FOR CONTEMPT**

**STATE VERSUS/IN THE MATTER OF**

Name And Address Of Defendant/Contemnor

County Of Residence		Telephone No.	
Race	Sex	Date Of Birth	Age
Social Security No.		Drivers License No. & State	
Name And Address Of Moving Party, If Not The Court			

**RETURN OF SERVICE**

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

- By personally serving the defendant/contemnor named above with a copy of this Order.
- Defendant/contemnor WAS NOT served for the following reason:

Date Received	Date Served	Time Served	<input type="checkbox"/> AM <input type="checkbox"/> PM	Date Returned
Name Of Officer (type or print)				

Signature Of Officer \_\_\_\_\_

Department Or Agency \_\_\_\_\_

County Of Department/Agency \_\_\_\_\_

**NOTE TO CLERK:** An Order under No. I is filed in the original criminal/infraction case. An Order under No. II is either a Miscellaneous or Registration file, based on its disposition; see Rule of Recordkeeping 16. An Order under No. III establishes a new CR/CRS case if prosecuted as criminal contempt, but it is filed in the existing case file if disposed as civil contempt. An Order under No. IV or V establishes a new CR/CRS case in the court in which filed.

**STATE OF NORTH CAROLINA**

County \_\_\_\_\_ District  Superior Court Division  Before The Clerk  
In The General Court Of Justice

**To the Defendant/Contemnor Named To The Left:** Upon motion of the moving party named herein or on its own motion, the Court finds probable cause to believe that you should be held in contempt of court or fined for your:

**I. Failure To Pay Fine And/Or Costs [G.S. 15A-1364]**

Failure to pay the fine and/or costs as ordered in this case. The Court will conduct a hearing and decide whether you should be imprisoned for your failure to pay the fine and/or costs. The amount of the fine and/or costs that you were ordered to pay and the balance due as of the date of this Order are as follows:

Amount Of Fine And/Or Costs Ordered Paid	Balance Due As Of The Date Of This Order
\$ _____	\$ _____

**II. Failure To Obey Jury Summons [G.S. 9-13]**

Failure to report for jury duty as directed pursuant to a jury summons issued on (date) \_\_\_\_\_.

**III. Failure To Obey Other Order Of The Court [G.S. 5A-11; G.S. 5A-21]**

Failure to obey the order of the Court indicated below:

Date Of Order	File Number	County	Name Of Official Who Entered Order
Describe Action(s) Ordered And Facts Constituting Contempt			

**IV. Failure To Obey Order To Appear Pursuant To Criminal Summons [G.S. 15A-303(e)(3); G.S. 5A-11]**

Failure to appear before this Court as directed by a criminal summons issued and duly served on you, ordering you to appear before this Court and answer to the offense(s) indicated below:

Date Summons Issued	File Number	County	Name Of Official Who Issued Summons
Date Summons Served	Date Of Failure To Appear	Offense(s)	

**V. Other Criminal Contempt [G.S. 5A-11; G.S. 15A-1344(e1)]**

Act of criminal contempt described below: (NOTE TO COURT: The grounds provided in G.S. 5A-11(a) are exclusive.)

You are ORDERED to appear before the Court as indicated below and show cause why you should not be punished for contempt or for failure to comply with the Court's order as described above. If you do not appear, the Court may issue an order for your arrest or may enter other sanctions against you in your absence.

Location Of Court		Court Date	Court Time
Date Order Issued	Name Of Issuing Official (type or print)	Signature Of Issuing Official	<input type="checkbox"/> AM <input type="checkbox"/> PM
<input type="checkbox"/> Superior Court Judge	<input type="checkbox"/> District Court Judge	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Deputy CSC

(Over)

Attorney For State/Moving Party

Attorney For Defendant/Contemnor

Def. Not Indigent  Waived  Appointed  Retained

**APPEAL ENTRIES - CRIMINAL CONTEMPT**

**NOTE TO COURT:** *If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17. On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.*

The defendant/contemnor gives notice of appeal from the judgment of the District Court to the Superior Court.

The defendant/contemnor gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appellate entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

Date \_\_\_\_\_ Name Of Presiding Judge (type or print)

Signature Of Presiding Judge \_\_\_\_\_

**CERTIFICATION**

I certify that this Judgment and attachment(s) marked below is a true and complete copy of the original which is on file in this case.  
 Appellate Entries (AOC-CR-350)  
 Other: \_\_\_\_\_

Date \_\_\_\_\_ Date Certified Copies Delivered To Sheriff \_\_\_\_\_

Signature Of Clerk \_\_\_\_\_

**SEAL**

Deputy CSC  Assistant CSC  Clerk Of Superior Court

**FINDINGS**

The defendant/contemnor having  appeared  not appeared before the Court, the Court makes the following findings:  
**Contempt. G.S. Chapter 5A. (NOTE: The Court may not find both civil and criminal contempt for the same conduct. G.S. 5A-12(d), 5A-21(c), and 5A-23(g).)**  
 that the defendant/contemnor is not in criminal or civil contempt.  
 that the defendant/contemnor is in  criminal  civil contempt of court, based on the Court's findings of fact  beyond a reasonable doubt and conclusions of law herein: (attach additional pages if necessary)

**Failure To Obey Jury Summons. G.S. 9-13.**

that the juror was summoned to appear, was served with a jury summons, failed to appear, and  has  not rendered an excuse deemed sufficient for that failure to appear.  
 Other: \_\_\_\_\_

**Failure To Pay Fine And/Or Costs. G.S. 15A-1364.**

that the defendant has defaulted in payment of the fine and/or costs imposed in this case, for which defendant had the ability to comply or failed to make a good faith effort to obtain the necessary funds for payment.  
 Other: \_\_\_\_\_

**JUDGMENT**

**Dismissal.** All proceedings pursuant to this Show Cause Order are dismissed.

**Criminal Contempt. G.S. 5A-12.** It is ORDERED that the defendant: (check all that apply)

**NOTE TO COURT:** *If suspending a sentence for contempt, impose judgment on form AOC-CR-604.*

1. is hereby censured for contempt.  2. shall pay a fine of \$ \_\_\_\_\_ (max \$500.00).  3. shall pay the costs of court.  
 4. be imprisoned for a term of \_\_\_\_\_ days in the custody of the  Sheriff  Other: \_\_\_\_\_  
The defendant shall be given credit for \_\_\_\_\_ days' pretrial confinement.  Work release is recommended.

This sentence shall run at the expiration of the sentence imposed in file number \_\_\_\_\_.  
 **Civil Contempt. G.S. 5A-21.** It is ORDERED that the contemnor be imprisoned in the custody of the Sheriff until the contemnor purges himself/herself of the contempt by: (describe conduct to purge) \_\_\_\_\_

The Sheriff shall release the contemnor from custody unconditionally upon finding pursuant to G.S. 5A-22 that the contemnor has satisfied the purge condition(s) above or upon notice from a judicial official of such satisfaction.

**Rehearing Date.** If the contemnor is not sooner released, the Sheriff is hereby ORDERED to produce him/her before this Court at the time, date, and location below for a *de novo* hearing on the issue of contempt.

**NOTE TO COURT:** *A person committed for civil contempt for nonpayment of a monetary obligation other than child support may not be imprisoned more than 90 days at one time. Recombmittment is allowed only after a de novo hearing for contempt. G.S. 5A-21 (b2).*

Location Of Court \_\_\_\_\_ Court Date \_\_\_\_\_ Court Time \_\_\_\_\_ AM  PM

**Failure To Obey Jury Summons. G.S. 9-13.** The juror is ordered to pay a fine of \$ \_\_\_\_\_ (not to exceed \$50.00). If the fine is not paid by (date) \_\_\_\_\_, the Clerk shall docket a civil judgment for that amount and issue an execution against the juror's estate.

**Failure To Pay Fine And/Or Costs. G.S. 15A-1364.** The Court hereby orders that:

**NOTE TO COURT:** *To activate a suspended sentence imposed at the time of conviction, use form AOC-CR-343, AOC-CR-607, or AOC-CR-608.*  
 the defendant be imprisoned for \_\_\_\_\_ days (not to exceed 30) in the custody of the  Sheriff  N.C. DACJJ (felony fines, only).  
 The Court finds that the defendant  is  is not suitable for placement in a county satellite jail/work release unit.

The defendant's fine and cost obligations are modified as follows:  
 upon receipt of notice from a judicial official that the defendant has paid or satisfied the remaining obligation for the fine and costs,  
 the custodian designated above shall release the defendant from custody.

The Clerk shall docket the fine of \$ \_\_\_\_\_ and costs of \$ \_\_\_\_\_ against the defendant as a civil judgment, G.S. 15A-1365.  
 but pursuant to the defendant's election to serve a sentence of imprisonment for the default, no execution may issue thereon.

**ORDER OF COMMITMENT**

It is ordered that the Clerk deliver two certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant/contemnor to be delivered with these copies to the custody of the agency named above to serve the sentence imposed or until the defendant/contemnor shall have complied with the conditions for his/her release.

**SIGNATURE OF JUDICIAL OFFICIAL**

Date \_\_\_\_\_ Name Of Presiding Judicial Official (type or print) \_\_\_\_\_ Signature Of Presiding Judicial Official \_\_\_\_\_

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Before the Clerk District Superior Court Division

IN THE MATTER OF

DIRECT CRIMINAL CONTEMPT/
SUMMARY PROCEEDINGS/
FINDINGS AND ORDER

Name And Address Of Contemnor

Race Sex Date Of Birth Age

G.S. 5A-11, -12, -13, -14

Date Time AM PM Place

On the date, time and place of hearing as stated above, the undersigned judicial official conducted:

- an initial appearance a probable cause hearing a trial
a first appearance an estates proceeding other:
a pre-trial motion hearing a special proceeding

The Court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did

The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond.

(NOTE: The contemnor should be given an opportunity to explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes act of contempt.)

The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority.

Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor

NOTE TO COURT: If suspending a sentence for contempt, impose judgment on form AOC-CR-604.

- be censured for contempt.
shall pay a fine of \$ (max. \$500.00). shall pay the costs of court.
be imprisoned for a term of hours days in the custody of the Sheriff Other:
The contemnor shall be given credit for days' pretrial confinement. Work release is recommended.
This sentence shall run at the expiration of the sentence imposed in file number

Date Name Of Judicial Official (type or print) Signature Of Judicial Official

ORDER OF COMMITMENT/APPEAL ENTRIES

- It is ORDERED that the Clerk deliver two certified copies of this Findings and Order to the sheriff or other qualified officer and that the officer cause the contemnor to be delivered with these copies to the custody of the sheriff of the county named above to serve the sentence imposed or until the contemnor shall have complied with the conditions of release pending appeal.
The contemnor gives notice of appeal from this Findings and Order to the Superior Court.
The contemnor gives notice of appeal from this Findings and Order in the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

NOTE TO COURT: If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17. On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.

Date Name Of Judicial Official (type or print) Signature Of Judicial Official

CERTIFICATION

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

Date Signature SEAL

Date Certified Copies Delivered To Sheriff Deputy CSC Assistant CSC Clerk Of Superior Court

Original - File Copy - Sheriff

# Selecting Process

**SELECTING PROCESS**

Selecting (and Completing) Process Class Materials .....Selecting Process-Page 1  
Statute 15A-924.....Selecting Process-Page 7  
Selecting (and Completing) Process Exercises .....Selecting Process-Page 9

## SELECTING (AND COMPLETING) PROCESS

Jeff Welty  
UNC School of Government  
February 2019

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### Objectives

After this session, you will be able to:

- Apply the probable cause standard
- Name the purposes of, and legal requirements for, criminal process
- Choose the most appropriate criminal process for each case
- Understand NCAOC forms and know how to complete them
- Draft legally sufficient charging language when necessary

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### Determining Probable Cause

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

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

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### You May/Should Consider

- Evidence from officers
- Evidence from citizens
- Hearsay evidence
- Evidence via remote testimony

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### You May/Should Not Consider

- Defenses
- What about "slam dunk" defenses?
- Whether evidence may be excluded or suppressed

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### Loose Ends about Probable Cause

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

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### Purposes of Criminal Process

- Compel the defendant to come to court
- Give the defendant notice of the charge
- Enable the defendant to assert double jeopardy if later charged with the same offense
- Provide a record of the case

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

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

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### Selecting Process: the Options

Process	Citation	Who Issues	What Charges
Citation	G.S. 15A-302	LEO	MDM or infraction
Summons	G.S. 15A-303	Judicial Official	Felony, MDM, or infraction
Arrest Warrant	G.S. 15A-304	Judicial Official	Felony or MDM
Magistrate's Order	G.S. 15A-511(c)	Judicial Official	Felony or MDM

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### Selecting Process: Warrant vs. Summons

- Statutory factors
- Statutory preference for summons
- Summons for a felony?
- Local practice

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### Creating Process Correctly

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### Charging Language

- Principles
- Sources
- What to do when there is no "standard" language for an offense

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### Charging Language: Common Problems

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

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### Loose Ends re Creating Process

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

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### Other Issues

- Venue and jurisdiction
- Recall of process
- Things you can't charge
  - Habitual felon
  - Certain offenses re school personnel
  - Certain obscenity offenses

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**SELECTING (AND COMPLETING)  
PROCESS**

Jeff Welty  
UNC School of Government  
February 2019

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

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

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

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

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

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

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

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

## **Selecting (and Completing) Process**

### **In Class Exercises**

Jeff Welty

UNC School of Government

August 2019

### **Considering Evidence from Citizens**

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

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

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

### **Considering Defenses**

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

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

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

### **Warrant vs. summons**

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

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

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

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

## Arrest warrant form treasure hunt

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

2. Extra credit! How many dates are referenced on the arrest warrant form, AOC-CR-100, and what dates are they? (Consider only the front side of the form.)

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## Drafting charging language

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

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

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

(b) The following definitions apply to this section:

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

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

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

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# Impaired Driving Holds

**IMPAIRED DRIVING HOLDS**

Impaired Driving Holds & Implied Consent Offense Notices.....  
..... Impaired Driving Holds-Page 1

# Impaired Driving Holds & Implied Consent Offense Notices

Shea Denning  
School of Government  
August 2019




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## Impaired Driving Holds

**§ 15A-534.2. Detention of impaired drivers.**  
 (a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede a defendant's right to communicate with counsel and friends.  
 (b) If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection (c) is met; provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.




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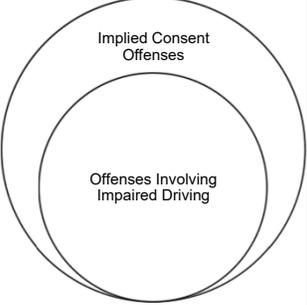
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### Offenses involving impaired driving

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





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### AOC-CR-200: Conditions of Release

STATE OF NORTH CAROLINA

County: \_\_\_\_\_

STATE VERSUS: \_\_\_\_\_

CONDITIONS OF RELEASE AND RELEASE ORDER

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

Additional Information: \_\_\_\_\_

Your release is subject to the conditions as shown on the attached  AOC-CR-270  Other: \_\_\_\_\_

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### Impaired Driving Holds

Offense involving impaired driving

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

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

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

Clear and convincing evidence that the impairment presents a danger

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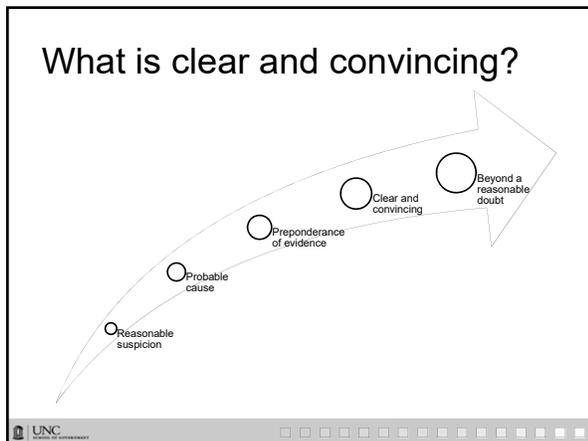
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When is a defendant impaired to extent he or she presents a danger?

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

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

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

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

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**G.S. 15A-534.2(c)**

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

- (1) The defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or others or of damage to property if he is released; or
- (2) A sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the defendant is released from the custody of another, the judicial official may impose any other condition of pretrial release authorized by G.S. 15A-534, including a requirement that the defendant execute a secured appearance bond.

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

**No longer impaired to extent that he presents danger**

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

**No longer than 24 hours**

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

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**G.S. 15A-534.2(d)**

(d) In making his determination whether a defendant detained under this section remains impaired, the judicial official may request that the defendant submit to periodic tests to determine his alcohol concentration. Instruments acceptable for making preliminary breath tests under G.S. 20-16.3 may be used for this purpose as well as instruments for making evidentiary chemical analyses. Unless there is evidence that the defendant is still impaired from a combination of alcohol and some other impairing substance or condition, a judicial official must determine that a defendant with an alcohol concentration less than 0.05 is no longer impaired. The results of any periodic test to determine alcohol concentration may not be introduced in evidence:

- (1) Against the defendant by the State in any criminal, civil, or administrative proceeding arising out of an offense involving impaired driving; or
- (2) For any purpose in any proceeding if the test was not performed by a method approved by the Commission for Public Health under G.S. 20-139.1 and by a person licensed to administer the test by the Department of Health and Human Services.

The fact that a defendant refused to comply with a judicial official's request that he submit to a chemical analysis may not be admitted into evidence in any criminal action, administrative proceeding, or a civil action to review a decision reached by an administrative agency in which the defendant is a party. (1983, c. 435, s. 4; 1997-443, s. 11A.118(a); 2007-182, s. 2.)

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### State v. Daniel, 208 N.C. App. 364 (2010)

- No statutory violation when magistrate refused at 11 p.m. to release defendant to adult who earlier in evening had odor of alcohol and who said he had beer with dinner
- Defendant met with friend for 8 minutes during crucial period of time after her arrest, so no prejudice



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### Implied Consent Offense Notice

**§ 20-38.4. Initial appearance.**  
 (a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.  
 (1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.  
 (2) In determining whether there is probable cause to believe a person is

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

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



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### Procedures for Access

**§ 20-38.5. Facilities.**  
 (a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:  
 (1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.  
 (2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.  
 (3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.  
 (b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.  
 (c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county, the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section. (2006-253, s. 5.)



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# Implied Consent Offense Notice

**§ 20-38.4. Initial appearance.**  
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 (1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.  
 (2) In determining whether there is probable cause to believe a person is

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

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



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# Implied Consent Offense Notice

STATE OF NORTH CAROLINA  
 County: \_\_\_\_\_  
 In the Department of Public Safety  
 Motor Vehicle Division

**IMPLIED CONSENT OFFENSE NOTICE**

To the undersigned: \_\_\_\_\_  
 Identification Procedure: \_\_\_\_\_  
 The undersigned hereby certifies that the undersigned is the person named in the above information and that the undersigned is the person named in the above information.

To the undersigned: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_

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

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

Date: \_\_\_\_\_ Time:  AM  PM Signature of Magistrate: \_\_\_\_\_

The defendant returned this form to the undersigned after the initial appearance.  
 Date: \_\_\_\_\_ Time:  AM  PM Signature: \_\_\_\_\_ Magistrate Deputy CDS Chief 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. 20-38.4b(4)



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# What's the big deal?



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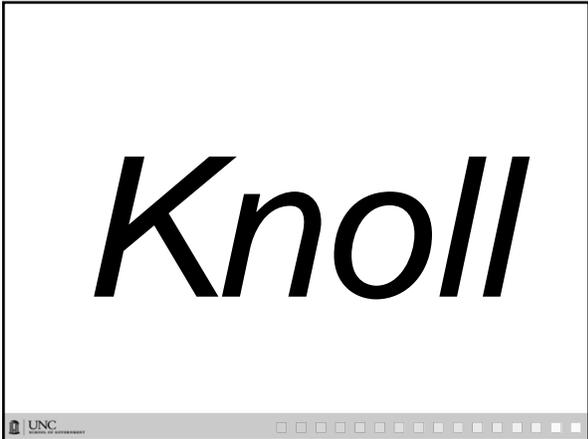
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- If the State violates a defendant's statutory right to pretrial release by impermissibly holding the defendant; and
- The defendant is—during the crucial time period following his or her arrest—denied access to witnesses;
- The defendant may be entitled to ***dismissal*** of the charges.




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- If a defendant charged with an impaired driving offense is denied access to witnesses
- He may be entitled to dismissal of the charges based on a flagrant violation of his constitutional rights
- **Even if he is lawfully detained**




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# CVRs and Vehicle Seizures

**CVRs AND VEHICLE SEIZURES**

Civil License Revocations & Motor Vehicle Seizures .....CVRs/Vehicle Seizures-Page 1

AOC-CR-323A – Affidavit for Seizure and Impoundment and

Magistrate Order for Impaired Driving.....CVRs/Vehicle Seizures-Page 17

# Civil License Revocations & Motor Vehicle Seizures

Shea Denning  
School of Government  
August 2019



www.sog.unc.edu

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## What is a CVR?

**STATE OF NORTH CAROLINA**  
County: \_\_\_\_\_ In the General Court Of Justice  
District Court Division \_\_\_\_\_

State for Motorist: \_\_\_\_\_ IN THE MATTER OF \_\_\_\_\_  
**REVOCATION ORDER WHEN PERSON PRESENT**  
G.S. 20-16.5

**PURPOSE FOR PROBABLE CAUSE**  
The undersigned justice of the peace 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;  
2. The above-named person has been charged with that offense as provided in G.S. 20-16.2(a);  
3. All the reasonable grounds and the chemical analysis completed with the presence of G.S. 20-16.2 and 20-136.1 in respect to the above-named person's submission to or procuring a chemical analysis, are:  
4. The above-named person:  
a. Intentionally refused to submit to a chemical analysis;  
b. Had an alcohol concentration of 0.02 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.  
The above-named person has one or more pending offenses for the following jurisdiction(s): \_\_\_\_\_ in which the person's driver's license has been or is revoked under G.S. 20-16.5.

**ORDER**  
It is ORDERED that the above-named person's driver's 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 expires in effect on \_\_\_\_\_ (20) days from \_\_\_\_\_.

**NOTE:** See statute for supplemental findings and order, and for allocation of blame.

\_\_\_\_\_  
Justice of the Peace

\_\_\_\_\_  
Name of Defendant

\_\_\_\_\_  
Date of Suspension

**NOTE:** If at the time of the Order you have any temporary driving privileges, you must surrender the privilege, and then you may not surrender your license and reinstatement when you are released from the local jail.

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## CVRs in Implied Consent Cases

CVRs “provide for swift and certain penalties for DWI, rather than the lengthy and uncertain outcomes of criminal courts”

(NHTSA 2011 Highway Safety Countermeasure Guide at 1-11)



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**G.S. 20-16.5 Civil License Revocation (CVR)**

- 1. LEO has reasonable grounds to believe person committed implied consent offense
- 2. Person is charged with offense
- 3. LEO and CA comply with implied consent procedures re chemical analysis
- 4. Person
  - a. Willfully refuses
  - b. A/C of 0.08 or more
  - c. A/C of 0.04 or more if CMV
  - d. Any A/C if person <21



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**G.S. 20-16.5**

- 1. LEO has reasonable grounds to believe person committed implied consent offense.

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 \_\_\_\_\_ while committing an implied-consent offense in that \_\_\_\_\_ (Give Street, Highway, Or Public Vehicular Area)

\_\_\_\_\_ (List Sufficient Facts To Establish Probable Cause)



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**G.S. 20-16.5**

- 2. Person is charged with that offense

4. The driver was charged with the implied-consent offense of:  G.S. 20-138.1.  Other: \_\_\_\_\_



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### G.S. 20-16.5

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

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### Compliance with procedures

- 5. After the driver was charged, I took the driver before \_\_\_\_\_, a chemical analyst authorized to administer a test of the driver's breath.
- 6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to conduct chemical analyses of the breath utilizing the Intox ECIR II.
- 7. I informed the driver orally and also gave notice in writing of the rights specified in G.S. 20-16.2(a). I completed informing the driver of the rights as indicated on the attached DHHS 4082.
- 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.k.a. j.p.m.) on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (a.k.a. j.p.m.). I requested the driver to submit to a chemical analysis of his/her breath or blood or urine.
- 9. 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 that taking of a blood sample by a person qualified under G.S. 20-138.1 based on the arrest warrant \_\_\_\_\_ (AOC-CR-155 search warrant issued and executed in this case) [ ] totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.
- 10. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methods/rules approved by the Department of Health and Human Services using an Intox ECIR II, and I printed the results of the driver's chemical analysis on the attached test record, DHHS 4082, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intox ECIR II on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ 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.

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

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

Breath  Blood  Subsequent Test

1. You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers 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 privileges will be revoked immediately for at least 30 days if you refuse any test or 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 21.
4. After you are released, you may seek your own test in addition to this test.
5. You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

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

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### G.S. 20-139.1

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

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### Duplicate sequential breath samples?

<p>Lot Number: AG011703 Exp Date: 04/27/2012</p> <p>Test 9/21 DIAG Pass AIR BLK .00 ACCY CHK .08 AIR BLK .00 SUB TEST .10 AIR BLK .00 SUB TEST **</p> <p>11:27 p.m. 11:27pm 11:29pm 11:32pm</p> <p>TEST IME OUT Signature Chemical Analyst CVR</p> <p>Insuff. sample 11:32 p.m.</p>	<p>Lot Number: AG011703 Exp Date: 04/27/2012</p> <p>Test 9/21 DIAG Pass AIR BLK .00 ACCY CHK .08 AIR BLK .00 SUB TEST .09 AIR BLK .00 SUB TEST **</p> <p>11:38 p.m. 11:38pm 11:39pm 11:41pm</p> <p>NO TEST Signature Chemical Analyst Court CVR</p>
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### Observation Period

- A period during which a chemical analyst observes the person . . . to determine that the person . . . has not ingested alcohol or other fluids, regurgitated, vomited, eaten, or smoked in the 15 minutes immediately prior to the collection of a breath specimen. The chemical analyst may observe while conducting the operational procedures in using a breath-testing instrument.

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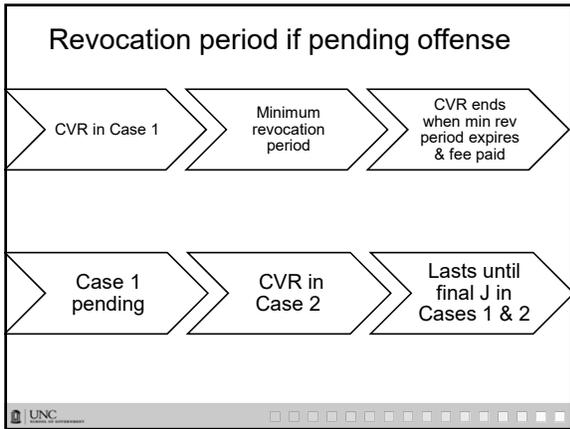
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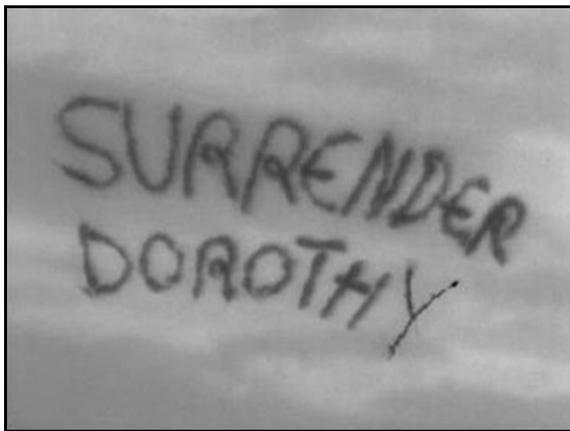
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**Affidavit - No License AOC-CVR-8**

STATE OF NORTH CAROLINA  
County \_\_\_\_\_

IN THE MATTER OF \_\_\_\_\_  
AFFIDAVIT - NO LICENSE

County Of Residence \_\_\_\_\_ Date Of Residence \_\_\_\_\_ G.S. 20-263

I, the undersigned, being that duly sworn, my that I am a resident of the county and state named above, and at the time of the offense:

I am not currently licensed to drive in the State of North Carolina because:

my license is revoked  my license has expired  
 I have never had a license  other \_\_\_\_\_

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:

\_\_\_\_\_

I, the undersigned, being that duly sworn, my that I am a resident of the county and state named above, and at the time of the offense:

I am not currently licensed to drive in the State of North Carolina and do not have a valid drivers license from another state because:

my license is revoked  my license has expired  
 I have never had a license  other \_\_\_\_\_

I am validly licensed to drive by the State of \_\_\_\_\_ 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:

\_\_\_\_\_

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME \_\_\_\_\_ Signature Of Affiant  
Date \_\_\_\_\_

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### Multiple Offenses

Danielle Driver is charged with driving while impaired (G.S. 20-138.1) and driving after consuming by a person under 21 (G.S. 20-138.3). All of the requirements for civil license revocation under G.S. 20-16.5 are satisfied.



Do you order one revocation or two?



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### Violation of A/C restriction on license NOT implied consent offense

NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form. ATTACH TEST RECORD TICKET HERE.

STATE OF \_\_\_\_\_

NOTE: A "toxicologist" is a person who is licensed by the State of North Carolina to perform chemical analysis of biological specimens for the purpose of determining the concentration of alcohol, drugs, or other substances in the blood or urine of a person.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Sex \_\_\_\_\_

PORT OF \_\_\_\_\_

The driver violated a drivers license restriction by . . .

1. I am a law enforcement officer by \_\_\_\_\_ of \_\_\_\_\_, a law enforcement officer by \_\_\_\_\_ believe the above named person, hereinafter referred to as driver, operated a vehicle \_\_\_\_\_ in the above named county upon \_\_\_\_\_ while committing \_\_\_\_\_ consistent offense in that \_\_\_\_\_

2. The driver has a drivers license restriction:  alcohol concentration  ignition interlock  conditional restoration (driver is \_\_\_\_\_)

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  exceeding the driver's alcohol concentration limitation

4. The driver was charged with the implied consent offense of:  G.S. 20-138.1  \_\_\_\_\_ 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 \_\_\_\_\_



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### What about violation of an ignition interlock restriction?

- DWLR (G.S. 20-17.8(f))
- Revocation under G.S. 20-17.8(f)
  - Lasts until case is resolved
  - AOC-CR-341
- If alcohol consumed, then DWLR for ignition interlock violation *is* implied consent offense
- So CVR also may issue



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**G.S. 20-13.3:  
CVR for 16- and 17-year-olds**



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**What about Daniel?**

- Daniel is 17. He has a full provisional license.
- He is charged with speeding 82 in a 65 mph zone on January 5, 2012.
- Must Daniel be arrested for this offense?
- Is Daniel's license subject to revocation?



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**What about Lilly?**



- Lilly is 16. She has a limited provisional license.
- She is charged with driving after consuming by a person under 21
- The results of her breath test are 0.02
- Is Lilly's license subject to civil revocation?
- Under what provision?

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Motor Vehicle Seizure & Impoundment:  
G.S. 20-28.3



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Vehicle Seizure & Impoundment:  
G.S. 20-28.3

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

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Offenses involving impaired driving

**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.

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### Prior impaired driving license revocation

**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. 20-11.2 - Driving After Consuming Alcohol/Drugs While Less Than 21
- G.S. 20-16(a)(8) - Military Driving While Impaired
- G.S. 20-16.2 - Refused Chemical Test
- G.S. 20-16.5 - Civil Revocation
- G.S. 20-17(a)(2) - Driving While Impaired
- G.S. 20-138.5 - Driving While Impaired In Commercial Motor Vehicle
- G.S. 20-17(a)(12) - Habitual Driving While Impaired
- G.S. 20-17(a)(12) - Transporting Open Container - 2nd Or Subsequent
- 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 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.



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### Vehicle Seizure & Impoundment: G.S. 20-28.3

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



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### Driving While Not Covered by an Automobile Liability Policy



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## Exceptions to Seizure

1. Vehicle reported stolen
2. Rental vehicle and driver not listed in contract

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### Affidavit for Seizure and Impoundment AOC-CR-323



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### Expedited Sales

\$1500 or less, may be sold after 90 days  
When towing & storage costs > 85% FMV

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### Purpose?

“[K]eeping impaired drivers and their cars off the roads”

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

Vehicle impoundment for DWI offenders  
“reduces recidivism while the vehicle is in custody and to a lesser extent after the vehicle has been released.”

NHTSA, 2011 Highway Safety Countermeasure Guide at 1-34.



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### DWI Seizure and Impoundment

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



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(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 -  
IMPAIRED DRIVING**

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, or if it is a rental vehicle, the defendant is listed as an authorized driver on the rental contract.

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 LT-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. G.S. 20-28.3(c1).

**NOTE TO MAGISTRATE:**

The magistrate shall provide the original of this form to the Clerk. G.S. 20-28.3(c). The magistrate should provide copies to the defendant and to the seizing officer.

**NOTE TO CLERK:**

If a seizure is ordered, the Clerk shall provide copies of this form to the district attorney and the attorney for the county board of education. G.S. 20-28.3(c).

(Over)

### 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 - Driving After 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
- G.S. 20-16.5 - Civil Revocation
- G.S. 20-17(a)(2) - Driving While Impaired
- Driving While Impaired In Commercial Motor Vehicle
- G.S. 20-138.5 - Habitual Driving While Impaired
- G.S. 20-17(a)(12) - Transporting Open Container - 2nd Or Subsequent
- 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 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.

# Search Warrants

**SEARCH WARRANTS (FEBRUARY, 2019)**

A Short Introduction to Search Warrants ..... Search Warrants-Page 1  
Test Yourself..... Search Warrants-Page 5  
Problem Pack for Search Warrants 101..... Search Warrants-Page 7  
Evaluation Form of Real Applications ..... Search Warrants-Page 11  
Application 1: Bartlett..... Search Warrants-Page 13  
Application 2: Taylor ..... Search Warrants-Page 15  
Application 3: Edwards..... Search Warrants-Page 21  
Search Warrant Form (AOC-CR-119) and copy..... Search Warrants-Page 23

## A Short Introduction to Search Warrants

Jeff Welty

UNC School of Government

July 2018

**Overview and history.** The founders of the United States of America valued individual liberty. They abhorred the absolute power of the English king and believed in limiting the power of the government. The first ten amendments to the Constitution – commonly known as the Bill of Rights – reflect the founders’ shared commitment to freedom from government oppression.

Different amendments protect different rights. For example, the First Amendment protects free speech and the free exercise of religion, while the Second Amendment protects the right to bear arms. The Fourth Amendment to the Constitution is the amendment that is pertinent to search warrants. It protects citizens’ rights to be free from unreasonable searches and seizures. The Amendment 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.

In this context, the reference to “Warrants” means search warrants. A search warrant is simply “a court order . . . directing a law-enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items.”<sup>1</sup> The Fourth Amendment requires that a search warrant be supported by *probable cause* and that it be limited in scope to a *particular place* to be searched and *particular things* to be seized. These requirements were reactions to the English concept of a general warrant, which gave the king’s officers unlimited authority to enter and search people’s homes for evidence of wrongdoing. The founders believed that officers should be able to invade people’s homes only to the extent necessary to collect evidence of a specific offense, and only after a judicial official had determined that it was likely that evidence of wrongdoing would be found. The North Carolina Constitution contains similar provisions protecting citizens from unreasonable searches.<sup>2</sup>

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<sup>1</sup> G.S. 15A-241.

<sup>2</sup> Art. I sec. 20 of the North Carolina Constitution provides: “General warrants, whereby any officer or other person 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.” Court decisions have interpreted this language to be virtually coextensive with the protections of the Fourth Amendment.

The Fourth Amendment is the cornerstone of the law concerning search and seizure.<sup>3</sup> Courts have interpreted the Amendment as stating or implying the following precepts:

- Searches and seizures must be reasonable.
- Searches conducted pursuant to a valid warrant are reasonable.
- A valid warrant requires (1) probable cause, (2) a specific description of the place to be searched, and (3) a specific description of the property to be seized.
- Searches conducted without a valid warrant are unreasonable unless an exception to the warrant requirement applies. (There are quite a few exceptions, including consent and exigent circumstances, but the exceptions are beyond the scope of this paper.)

Because the Fourth Amendment often requires officers to obtain search warrants before conducting searches, and because applications for search warrants are often directed to magistrates, it is important for magistrates to understand the legal limits on search warrants, including the requirements of probable cause and particularity. Those topics are discussed in greater detail below.

**Applying for a search warrant.** Normally, the person seeking a search warrant will be a law enforcement officer. The officer may use form AOC-CR-119, which is available on the NCAOC website, or may use a form or format created by his or her agency. It is common, but not required, for officers to attach supplementary pages to the form rather than trying to cram all of the necessary information into the blanks on the form.

Whatever form is used, the application will contain a sworn statement, or affidavit, from the applicant. The statement must set forth factual information that establishes probable cause to believe that items subject to seizure – generally, evidence of a crime – will be found in a particular place.<sup>4</sup>

The application may be submitted to any magistrate or judge. If the issuing official is a superior court judge or an appellate judge, the search warrant is valid statewide, while a search warrant issued by a district court judge is valid throughout the judge's district, and one issued by a magistrate is valid in

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<sup>3</sup> Although the Fourth Amendment is the foundation of the law in this area, statutory and case law are also pertinent. For example, Article 11 of Chapter 15A of the North Carolina General Statutes establishes a number of important procedural requirements governing search warrants.

<sup>4</sup> G.S. 15A-244.

the magistrate's county.<sup>5</sup> Because judges are often busy with court during the day and are not formally "on duty" at night, most search warrant applications are presented to magistrates.

**Determining probable cause.** The magistrate must determine whether the application does, in fact, establish probable cause. Probable cause is meant to be a practical and common sense standard. It is a lower hurdle than proof beyond a reasonable doubt, or even proof by a preponderance of the evidence. On the other hand, it must be more than a hunch or a suspicion. There is a considerable body of case law regarding whether certain facts amount to probable cause. Many of those cases are collected and summarized in Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (5<sup>th</sup> ed. 2015).

Often, the application will provide information that the applicant received from another source, as opposed to his or her own observations. That is perfectly acceptable, but it is important to consider the reliability of the source when determining whether probable cause exists. The other source may be another officer; a crime victim; a witness; a confidential informant; or an anonymous tipster. Generally, information from other officers, victims, and ordinary witnesses may be treated as credible unless there is a reason to do otherwise. By contrast, information from confidential informants and anonymous tipsters should be viewed with a healthy skepticism. Such information normally isn't reliable enough to provide probable cause on its own – it must be corroborated, at least in part, unless it comes from an informant with a proven track record of reliability.

Sometimes the information in an application will provide probable cause that evidence of a crime was present at a particular location at one time, but that time is long past. For example, an officer may develop evidence that a suspect sold drugs from his house six months ago. Such information is said to be "stale" and will not provide probable cause to support a search warrant. Courts have suggested that information older than two months is at a greater risk of being stale, but staleness depends on many factors other than how old the information is, including what kind of evidence is at issue and whether the crime in question was a one-time incident or an ongoing business activity.

**Determining particularity.** In addition to determining probable cause, a judicial official must determine whether a search warrant application describes the place to be searched and the property to be seized with sufficient particularity. The purpose of the particularity requirement is to ensure that officers search for the right items in the right places and do not go on general rummaging expeditions.

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<sup>5</sup> G.S. 15A-243.

As to the place to be searched, it is generally sufficient to describe real property, such as a home or an apartment, by its address. However, providing additional information, such as a description of the premises, its longitude and latitude, or driving directions to reach it, is a common practice and may be helpful if the address turns out to be inaccurate. Vehicles likewise may be identified by plate number or VIN number but also may be described by make, model, color, and the like.

As to the object of the search, the description should be sufficiently precise that an officer not involved in the investigation could read the description of the items to be seized and know what property to seize and what to leave in place. The more common an item is, and the more likely that it may be possessed legally, the more specific the description should be. For example, in a case involving a stolen bicycle, it might not be sufficient to describe the property to be seized simply as “a bicycle” – bicycles are very common and are legal to possess, and an officer executing the warrant could easily come across multiple bicycles on the premises and be unsure which one to seize. “A blue girls’ Trek bicycle with a white wicker basket on the handlebars” would be a much better description. By contrast, courts are more forgiving when the property in question is contraband that it would never be wrong to seize. So, “a quantity of cocaine” might be a perfectly adequate description.

**Issuance, execution, and return.** If the application establishes probable cause, satisfies the particularity requirement, and is otherwise in order, a magistrate should issue the warrant. An officer must execute the warrant – that is, must conduct the search – within 48 hours.<sup>6</sup> Once the warrant has been executed, the officer must provide a list of items seized to the person from whom they were taken,<sup>7</sup> and must return the warrant to the clerk along with a copy of the list.<sup>8</sup>

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<sup>6</sup> G.S. 15A-248.

<sup>7</sup> G.S. 15A-254.

<sup>8</sup> G.S. 15A-257.

## Test Yourself

Answer the following questions, then check the answers on the back side of this sheet.

1. Which amendment to the United States Constitution concerns search and seizure?
  - a. The First Amendment
  - b. The Second Amendment
  - c. The Fourth Amendment
  - d. The Fourteenth Amendment
  
2. What is the legal standard for issuance of a search warrant?
  - a. Probable cause
  - b. Reasonable suspicion
  - c. Preponderance of the evidence
  - d. Beyond a reasonable doubt
  
3. Which of the following may not issue a search warrant?
  - a. Magistrate
  - b. Sheriff
  - c. District court judge
  - d. Chief Justice of the Supreme Court of North Carolina
  
4. May probable cause be based on information provided by a confidential informant?
  - a. No
  - b. Yes, if the informant has a track record of reliability
  - c. Yes, if the information has been corroborated by a law enforcement officer
  - d. Both (b) and (c)
  
5. What period of time have courts said increases the risk that information will be stale?
  - a. 24 hours
  - b. 48 hours
  - c. Two weeks
  - d. Two months

Answers: c, a, b, d, d

## Problem Pack for Search Warrants 101

Jeff Welty  
School of Government  
July 2018

1. Does the following information provide probable cause?

A narcotics officer states that yesterday, he purchased two ounces of cocaine for \$1,650 in marked bills. The cocaine was delivered to the applicant by three men, who were arrested when they delivered the cocaine. The officer further states that during the purchase, he 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 that the U.S. currency . . . and other controlled substances are at this time located in” a residence belonging to a fourth man.

2. Does the following information provide probable cause?

An officer applies for a search warrant, stating: “A reliable informant who has provided accurate and reliable information in the past and whose information in the past had led to arrest[s] and convictions under the N.C. Controlled Substance[s] 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 Substance[s] Act.” The officer wants a warrant to search Beam’s home for marijuana.

3. Does the following information provide probable cause?

An officer states that he has been “informed by a reliable confidential informant that he has been inside the [residence that is the subject of the warrant] within the past 48 hours and has seen cocaine inside the residence and cocaine is being sold at this time by the . . . 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.”

4. Does the following information provide probable cause?

A deputy states: "During the last year I have been involved in several investigations concerning drug offenses in [this] County. Within the past five days . . . [a person] contacted me. This person offered his assistance . . . in the investigation of drug sales . . . This person told me that he had been inside the residence [that is the subject of the warrant] 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."

5. Does the following information provide probable cause?

An officer states: "Sometime between [one and five days ago]," the Fairchild Christian School in the City of Livingston "was broken into and two microscopes [described by brand elsewhere in the application]" were stolen. The officer also states that "sometime prior to 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." The officer is seeking a warrant to search Roark's residence.

6. Does the following information provide probable cause?

An officer states that she and other officers "have received information from a confidential and reliable informant that . . . 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. [The officers] have known this informant for approximately [one and a half years] 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." The officer is seeking a search warrant for 1509 Luther Street.

7. Does the following information provide probable cause?

An experienced narcotics officer states that he "has received information from a confidential and reliable informant that James Paul Brody is possessing and selling cocaine from his residence at 3124 Olde Creek Trail. . . . This informant has arranged, negotiated and purchased cocaine from Brody under the direct supervision of [the applicant] and has been to 3124 Olde Creek Trail . . . within the past 48 hours and has observed Brody possessing and selling cocaine. . . . Investigators have known this informant for approximately two weeks. This informant has provided information on other persons involved in drug trafficking . . . which we have investigated independently. Through interviews with the informant, detectives know this informant is familiar with drug pricing and how controlled substances are packaged and sold for distribution." The officer is seeking a search warrant for 3124 Olde Creek Trail.

8. Does the following information provide probable cause?

An informant told an officer that the defendant was growing marijuana in his house. According to the officer, "all previous information from the confidential informant had proven to be truthful and accurate." The officer conducted a knock and talk at the defendant's home. No one answered the door, but the officer saw "substantial mold and condensation [in a window] . . . consistent with the heat and humidity associated with marijuana growing operations," and he heard the sound of a generator running, which was consistent with the informant's report. Based on this information, the officer wants a search warrant for the house.

9. A search warrant issued on the basis of information supplied by a victim or witness named in an affidavit is usually valid if there is no reason to believe the named person's information is unreliable.

True/False

10. A search warrant issued on the basis of information supplied by a confidential informant is usually valid even if no other basis for reliability appears in the affidavit.

True/False

11. A magistrate may not issue a search warrant based upon hearsay.

True/False

12. Which of the following are adequate descriptions of things to be seized?

- a. "quantity of marijuana"
- b. "quantity of stolen iPads"
- c. "cocaine"
- d. "stolen property"
- e. "evidence of any crime"
- g. "Xbox game console with a Mellow Mushroom sticker on the top"
- h. "journals, registers, ledgers, canceled checks, and similar records and documents that constitute evidence of the embezzlement described in the affidavit"
- i. "Glock 19 9mm handgun"

13. 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 plate 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.

14. If you have a street address, there is no reason to include a physical description of the building.

True/False

15. 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

16. 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.

## 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. \_\_\_\_\_

\_\_\_\_\_

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 YEARS AND 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: [Signature]

Date: 4/26/07

APPLICATION 1: BARTLETT

000006

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: AM Cristaldi

Magistrate: [Signature]

Date: 4/26/07

Application For Search Warrant

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;

APPLICATION 2: TAYLOR

SWORN AND SUBSCRIBED BEFORE ME

Signature: [Signature] Date: September 27, 2006

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

Signature of Applicant: [Signature] Date: September 27, 2006

Application For Search Warrant

- (8) Electronic equipment, such as computers, cellular phones, pagers, facsimile machines, currency counting machines, tape recording devices, video recording devices, 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.

Application For Search Warrant

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: [Signature] Date: September 27, 2006

Deputy CSC  Assistant CSC  Clerk of Superior Court

Magistrate  District Court Judge  Superior Court Judge

Signature of Applicant: [Signature] Date: September 27, 2006

Application For Search Warrant

-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 devices, 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;

SWORN AND SUBSCRIBED BEFORE ME

Signature: \_\_\_\_\_

Date: September 27, 2006

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

Signature of Applicant: \_\_\_\_\_

Date: September 27, 2006

Application For Search Warrant

-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  
 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 possess, 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

APPLICATION 3: EDWARDS

SWORN AND SUBSCRIBED TO BEFORE ME:

Judge / Magistrate: [Signature]
Date: 7-14-05

Applicant(s): [Signature]
Date: 7/14/05

File No.

# STATE OF NORTH CAROLINA

In The General Court Of Justice  
District/Superior Court Division

County

## SEARCH WARRANT

### IN THE MATTER OF

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

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 \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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.

Name Of Officer Making Return (type or print) \_\_\_\_\_

Signature Of Officer Making Return \_\_\_\_\_

Department Or Agency Of Officer \_\_\_\_\_

Incident Number \_\_\_\_\_

Date \_\_\_\_\_ Name (type or print) \_\_\_\_\_ Signature \_\_\_\_\_

Deputy CSC  Assistant CSC  CSC  Magistrate  District Ct. Judge  Superior Ct. Judge

**NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).**

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  AM  PM Name Of Magistrate (type or print) \_\_\_\_\_ Signature Of Magistrate \_\_\_\_\_

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

Date \_\_\_\_\_ Time  AM  PM Name Of Clerk (type or print) \_\_\_\_\_ Signature Of Clerk \_\_\_\_\_ Dep. CSC  Asst. CSC  CSC

**Original - File Copy - For Search of a Person, to Person from Whom Items Taken**  
**Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon**  
(Over)



File No.

# STATE OF NORTH CAROLINA

In The General Court Of Justice  
District/Superior Court Division

County

## SEARCH WARRANT

### IN THE MATTER OF

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

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 \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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.

Name Of Officer Making Return (type or print)

Signature Of Officer Making Return

Department Or Agency Of Officer

Incident Number

Date \_\_\_\_\_ Name (type or print) \_\_\_\_\_ Signature \_\_\_\_\_

Deputy CSC  Assistant CSC  CSC  Magistrate  District Ct. Judge  Superior Ct. Judge

**NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).**

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  AM  PM \_\_\_\_\_ Name Of Magistrate (type or print) \_\_\_\_\_ Signature Of Magistrate \_\_\_\_\_

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

Date \_\_\_\_\_ Time  AM  PM \_\_\_\_\_ Name Of Clerk (type or print) \_\_\_\_\_ Signature Of Clerk \_\_\_\_\_

Dep. CSC

Asst. CSC

CSC

**Original - File Copy - For Search of a Person, to Person from Whom Items Taken**

**Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon**

(Over)



# Domestic Violence Procedure

**DOMESTIC VIOLENCE PROCEDURE**

Special Procedures for Cases Involving Domestic Violence Statutes and Rules Sheet.....  
..... Domestic Violence Procedure – Page 1

Domestic Violence Crimes and the 48-Hour Rule.....  
..... Domestic Violence Procedure – Page 7

Conditions of Release Form (AOC-CR-630)..... Domestic Violence Procedure – Page 11

Domestic Violence Law and Procedure Blog Post .... Domestic Violence Procedure – Page 13

Same-Sex Marriage and Domestic Violence Blog Post.....  
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Does a No Contact Order Apply While the Defendant is in Jail? Blog Post .....  
..... Domestic Violence Procedure – Page 19

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State v. Elder: DVPO Cannot Authorize Search for Guns Blog Post .....  
..... Domestic Violence Procedure – Page 25

Can the Person Protected by a DVPO be Charged with Violating the Order? Blog Post.....  
..... Domestic Violence Procedure – Page 27

I’ve Been Arrested...But Committed No Crime Blog Post .....  
..... Domestic Violence Procedure – Page 29

Cyberstalking and the 48-Hour Rule Blog Post..... Domestic Violence Procedure – Page 31

# Special Procedures for Cases Involving Domestic Violence

## DVPO Enforcement

Research has demonstrated repeatedly that DVPOs can be a powerful tool in reducing domestic violence when they are consistently enforced. In NC, violation of a DVPO is both a crime, punishable under criminal law statutes, and a violation of a court order, punishable by the contempt power of the court. In the majority of cases, violation of a DVPO is treated as a criminal offense, which may come before a magistrate either before or after an arrest is made.

### Enforcement by Contempt [GS 50B-4(a)]

Party may file motion (AOC-CV-307) asserting violation of 50B DVPO with clerk or authorized magistrate. Motion must be filed in county in which order was issued.

If authorized magistrate determines that “facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child” at time when clerk is not available, magistrate must “schedule and issue notice of a show cause hearing” (AOC-CV-308) with district court at earliest possible date, and effect service of motion and notice of hearing.

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### Enforcement by Criminal Charges (GS 50B-4.1)

*Violation of DVPO (Class A1 misdemeanor): Essential Elements*

- (1) Knowingly
- (2) Violates
- (3) A valid protective order entered pursuant to
  - N.C. Gen. Stat. Ch. 50B, or
  - A court of another state, or
  - A court of an Indian tribe.

*Other 50B criminal offenses (NC Crimes pp. 186-190)*

- Repeat Violation of a DVPO
- Violation of a DVPO with a Deadly Weapon
- Entering DV Safe House

Legal issues related to elements of offense typically relate to whether violation was knowing and whether order was valid.

#### Validity Issues

- An *ex parte* order is valid for purposes of this statute.
- An expired order is no longer valid. In North Carolina, orders are for a fixed period not to exceed one year and may be renewed multiple times for up to two years. An order issued outside of North Carolina is valid for the length of time specified in the order, even if it exceeds the time limits applicable to NC orders.
- Statute permits, but does not require, registration of order.
- LEO may rely on copy of out-of-state order and on statement of protected person that order remains in effect.
- A DVPO is an order of the court; the person protected by the order has no authority to give the defendant permission to violate the order.

#### Special Rules for Law Enforcement

Immediate arrest (i.e., without a warrant) is mandatory if an officer has probable cause to believe that the defendant knowingly has violated a valid protective order

- a) excluding the defendant from the residence or household occupied by a victim of domestic violence or
- b) directing the defendant to refrain from threatening, abusing, or following the plaintiff, harassing the plaintiff, including by telephone, visiting the home or workplace, or other means, or otherwise interfering with plaintiff.

GS 50B – 4.1(b)

Arrest without a warrant is discretionary for any other violation of G.S. 50B-4.1.

The warrantless arrests described above are authorized even though the offenses are committed outside of the officer’s presence. If the officer has probable cause, the defendant may be arrested even though the defendant has left the premises by the time the officer arrives. GS 15A-401(b)(2)(e). However, the officer may not enter defendant’s home without consent to arrest unless officer gets arrest warrant and may not enter the home of another person to arrest defendant without consent unless the officer gets an arrest warrant for the defendant and a search warrant for the premises.

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### Magistrate's duty when defendant is arrested for a violation of G.S. 50B-4.1.

- If defendant is arrested by an officer **without** a warrant, the magistrate must determine whether there is probable cause to believe person violated order:
  - If magistrate does not find probable cause, defendant is released.
  - If magistrate finds probable cause, issues a magistrate's order.
- If defendant is arrested **with or without a warrant**, conduct initial appearance (i.e., notify defendant of rights and charges against him or her).
- Do not set conditions of pretrial release for defendant. (See discussion below, under **The 48-Hour Rule**.)
- If defendant has been arrested on other crimes in addition to G.S. 50B-4.1, determine whether the additional charges are subject to the special 48-hour pretrial release rules: If they are, do not set bond for any of the offenses. If they are not, the magistrate should set bond for those offenses not covered by the special pre-trial release provisions.

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### GS 15A-534.1: Setting Conditions of Pretrial Release & the 48-Hour Rule

**The Rule: Conditions of pretrial release must be determined by a judge, rather than a magistrate, for the crimes listed below if the victim of the crime is**

- The defendant's spouse or former spouse
- A person with whom the defendant lives or has lived as if married
- A person with whom the defendant has or has had a dating relationship as defined in GS 50B-1(a)(6)

Covered offenses:

- Assault
- Stalking
- Communicating threats
- Committing a felony identified in GS Ch. 14-
  - Art. 7B (Rape & Other Sex Offenses)
  - Art. 8 (Assaults)
  - Art. 10 (Kidnapping & Abduction)
  - Art. 15 (Arson & Other Burnings)

The 48-hour rule also applies to domestic criminal trespass (GS 14-134.3) and to violation of a DVPO under GS Ch. 50B.

See Domestic Violence Crimes & the 48-Hour Rule in your notebook under the *Setting Conditions of Pretrial Release* tab for a chart setting out this information in detail.

Special Note About Dating Relationships:

GS 50B-1(b)(6) allows issuance of a DVPO for

- persons of the opposite sex
- who are in, or have been in, a dating relationship.  
A *dating relationship* is “one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.”

In Thomas v. Williams, filed 7/7/2015, NC App., the Court of Appeals found that whether a relationship falls within the category of “dating relationship” “is necessarily fact sensitive and thus warrants a *factor approach* rather than a *definitional approach*.”

NOTE that GS 15A-534.1 references the definition of a dating relationship contained in GS 50B-1 but does not incorporate that statute’s requirement that the couple be “of the opposite sex.” The result is that a same sex couple involved in a dating relationship fall within the relationships triggering the application of the 48-hour rule.

BUT SEE Jeff Welty’s post on the SOG Criminal Law Blog *DVPOs for Same-Sex Dating Relationships?* (8/15/2017), in which Jeff discusses recent case law raising questions about the constitutionality of the GS Ch 50B restriction to opposite sex dating relationships.

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**48 Hours Later. . .**

“A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section.” GS 15A-534.1(b).

If judge hasn’t set bond with 48 hours, defendant must be brought back before magistrate on duty. Cannot wait until next morning or day.<sup>1</sup>

<sup>1</sup> *State v. Thompson*, 349 N.C. 483, 508 S.E.2d 277 (1998) (upheld constitutionality of statute but said unconstitutional as applied to defendant who was not taken before a judge at 9:30 in the morning when court opened but was held until 2:30 that afternoon).

In determining conditions of pretrial release, magistrate is required to consider the defendant's criminal history, unless obtaining such history will unreasonably delay setting conditions. GS 15A-534.1.

In addition to general law related to determining conditions set out in GS 15A-534, court is expressly authorized to impose specific additional conditions set out in GS 15A-534.1(a)(2) [also set out in AOC-CR-630: CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE].

In extraordinary circumstances, a magistrate might briefly further delay release pursuant to GS 15A-534.1(a)(1) if the magistrate determines

- “that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim,” and that
- “execution of an appearance bond will not reasonably insure that such injury or intimidation will not occur”

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### **What If Defendant Violates Conditions of Pretrial Release?**

A law enforcement officer is authorized to make an immediate arrest without a warrant if the officer has probable cause to believe that the defendant has violated a pretrial release order. G.S. 15A-401(b)(2).

If a defendant violates a condition of pretrial release for a domestic violence crime, but is not arrested by an officer, the magistrate can issue an order for arrest to bring the defendant in and modify the release order, provided that the first appearance before a district court judge has not been held. If a first appearance has been held, the magistrate should consult the chief district court judge about what practice the magistrate should follow.

NOTE: Violation of a condition of pretrial release is not a crime and does not trigger the 48-hour rule requiring delay in setting new conditions of release.

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# Domestic Violence Crimes and the 48-Hour Rule<sup>1</sup>

Jeff Welty  
UNC School of Government  
December 2015

Crime Charged	Relationship between the Parties	Does the 48-Hour Rule Apply?	Is the Case Covered by the Crime Victims' Rights Act?
<ul style="list-style-type: none"> <li>• Simple assault, G.S. 14-33(a)</li> <li>• Assault with a deadly weapon, G.S. 14-33(c)(1)</li> <li>• Assault inflicting serious injury, G.S. 14-33(c)(1)</li> <li>• Assault by pointing a gun, G.S. 14-34</li> <li>• Misdemeanor stalking, G.S. 14-277.3A</li> </ul>	<ul style="list-style-type: none"> <li>• Current or former spouses (same sex or opposite sex)</li> <li>• Currently live or formerly lived together as if married (same sex or opposite sex)<sup>2</sup></li> <li>• Currently or formerly in a dating relationship<sup>3</sup> (opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>• Currently or formerly in a dating relationship (same sex)<sup>4</sup></li> </ul>	Yes	No
	<ul style="list-style-type: none"> <li>• Child in common</li> <li>• Parent (or person in a parental role)/child</li> <li>• Grandparent/grandchild</li> <li>• Current or former members of the same household</li> </ul>	No	Yes

<sup>1</sup> The so-called 48-hour rule of G.S. 15A-534.1 provides that, for certain domestic violence crimes, only a judge may set conditions of release in the first 48 hours after the defendant's arrest. The rule does not require or permit the defendant to be held if a judge is available to set conditions of release. Effective December 1, 2015, the rule applies "[i]n all cases in which the defendant 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 spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes." S.L. 2015-62. This chart indicates whether several common offenses are, or are not, covered by the rule. This chart is not comprehensive. For the listed offenses, the chart also indicates whether they are covered by the Crime Victims' Rights Act, G.S. 15A-830 et seq. When creating criminal processes in NCAWARE, magistrates are required to indicate whether an offense is a "domestic violence case" and whether it is a "victim rights" case. This chart is intended to assist magistrates in making those determinations.

<sup>2</sup> The Crime Victims' Rights Act applies to certain misdemeanor offenses "when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b)." G.S. 15A-830(7)(g). The portion of the definition of "personal relationship" in G.S. 50B-1(b) that concerns "persons . . . who live together or have lived together" applies only to people "of opposite sex." However, another portion of the definition includes all "current or former household members" regardless of sex. Thus, same-sex individuals who live together or have lived together as if married share a "personal relationship" as "current or former household members" and the Crime Victims' Rights Act applies when one such individual is charged with committing a covered misdemeanor against another.

<sup>3</sup> Effective December 1, 2015, G.S. 15A-534.1(a) makes the 48-hour rule applicable to covered offenses committed against "a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6)." G.S. 50B-1(b)(6) provides in pertinent part that "a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

<sup>4</sup> Effective December 1, 2015, G.S. 15A-534.1(a) makes the 48-hour rule applicable to covered offenses committed against "a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6)." G.S. 50B-1 contains definitions pertinent to the issuance of domestic violence protective orders. G.S. 50B-1(b) defines the term "personal relationship." G.S. 50B-1(b)(6) states that a "personal relationship" includes "persons of the opposite sex who are in a dating relationship or have been in a dating relationship. A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship." Nothing in the definition of "dating relationship" requires the parties to be of different sexes. Under the statute, a "dating relationship" is a "personal relationship" only if the parties are of different sexes, but the applicability of the 48-hour rule turns on the existence of a "dating relationship," not the existence of a "personal relationship." By contrast, the Crime Victims' Rights Act applies to certain misdemeanor offenses "when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b)." Thus, the existence of a same-sex dating relationship does not trigger the misdemeanor provisions of the Crime Victims' Rights Act, though the existence of an opposite-sex dating relationship does. Whether it is constitutional to distinguish between same-sex and opposite-sex couples in this way is beyond the scope of this document but might be questioned under *Obergefell v. Hodges*, 576 U.S. \_\_\_ (2015) (holding that laws limiting marriage to same-sex couples are unconstitutional, in part on equal protection grounds).

Crime Charged	Relationship between the Parties	Does the 48-Hour Rule Apply?	Is the Case Covered by the Crime Victims' Rights Act?
<ul style="list-style-type: none"> <li>Assault on a female, G.S. 14-33(c)(2) (note that this offense requires a male defendant and a female victim, so issues concerning same-sex couples do not arise)</li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses</li> <li>Currently live or formerly lived together as if married</li> <li>Currently or formerly in a dating relationship</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
<ul style="list-style-type: none"> <li>Assault with a deadly weapon with intent to kill, G.S. 14-32(c)</li> <li>Assault with a deadly weapon inflicting serious injury, G.S. 14-32(b)</li> <li>Assault with a deadly weapon with intent to kill inflicting serious injury, G.S. 14-32(a)</li> <li>Assault inflicting serious bodily injury, G.S. 14-32.4(a)</li> <li>Habitual misdemeanor assault, G.S. 14-33.2</li> <li>Felony stalking, G.S. 14-277.3A</li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
<ul style="list-style-type: none"> <li>Assault by strangulation, G.S. 14-32.4(b)</li> <li>Communicating a threat, G.S. 14-277.1</li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	No
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
<ul style="list-style-type: none"> <li>Harassing telephone calls, G.S. 14-196</li> <li>Cyberstalking, G.S. 14-196.3</li> </ul>	Any	No	No
Domestic criminal trespass, G.S. 14-134.3	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> </ul> <p>(Note that having one of the above relationships is an element of the offense)</p>	Yes	Yes <sup>5</sup>

<sup>5</sup> Domestic criminal trespass normally is a Class 1 misdemeanor, but is a Class G felony if the defendant trespasses "upon property operated as a safe house or haven for victims of domestic violence and . . . is armed with a deadly weapon." G.S. 14-134.3(b). The felony offense is not listed in G.S. 15A-830(7), so the Crime Victims' Rights Act does not appear to apply to the felony.

Crime Charged	Relationship between the Parties	Does the 48-Hour Rule Apply?	Is the Case Covered by the Crime Victims' Rights Act?
Violating a domestic violence protective order, G.S. 50B-4.1	Any (Such orders may be issued only when a "personal relationship" exists, as defined in G.S. 50B-1(b), but a magistrate considering a violation of a DVPO should not second-guess the determination of the judicial official who issued the order that such a relationship existed)	Yes	Yes
<ul style="list-style-type: none"> <li>Rape (any kind/degree), G.S. 14-27.21, 14-27.22, 14-27.23, 14-27.24, 14-27.25</li> <li>Sex offense (any kind/degree), G.S. 14-27.26, 14-27.27, 14-27.28, 14-27.29, 14-27.30<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
<ul style="list-style-type: none"> <li>Kidnapping, G.S. 14-39</li> <li>Felonious restraint, G.S. 14-43.3</li> </ul>	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	
Arson, G.S. 14-58	<ul style="list-style-type: none"> <li>Current or former spouses (same sex or opposite sex)</li> <li>Currently live or formerly lived together as if married (same sex or opposite sex)</li> <li>Currently or formerly in a dating relationship (same sex or opposite sex)</li> </ul>	Yes	Yes
	<ul style="list-style-type: none"> <li>Child in common</li> <li>Parent (or person in a parental role)/child</li> <li>Grandparent/grandchild</li> <li>Current or former members of the same household</li> </ul>	No	

<sup>6</sup> As of this writing, G.S. 15A-534.1 refers in pertinent part to felonies "provided in Article[] 7A . . . of Chapter 14 of the General Statutes." However, S.L. 2015-181 gutted Article 7A and moved the rape and sex offense crimes to new Article 7B. The General Assembly certainly did not intend to remove these crimes from the scope of the 48-hour rule, and the Revisor of Statutes is expected to correct G.S. 15A-534.1 to refer to Article 7B under the authority in section 47 of S.L. 2015-181. Crimes committed before December 1, 2015, will be prosecuted under the former statutes set forth in Article 7A, and the 48-hour rule should apply to those cases as well.

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 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 former Article 7A or Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or (for offenses committed on or after December 1, 2015, only) a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of 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. (for offenses committed on or after December 1, 2012) The defendant shall abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney.
6. 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.



## Domestic Violence Law and Procedure

**Author :** John Rubin

**Categories :** [Crimes and Elements](#), [Procedure](#), [Sentencing](#), [Uncategorized](#)

**Tagged as :** [domestic violence](#), [DVPO](#), [personal relationship](#)

**Date :** September 5, 2017

In getting ready for the North Carolina magistrates' fall conference and a session that I'm teaching on issuing process in domestic violence cases, I began thinking about the ways that North Carolina criminal law addresses domestic violence. The North Carolina General Assembly has made numerous changes and additions in this area of criminal law, collected below. If I omitted some part of North Carolina criminal law involving domestic violence cases, please let me know.

### Crimes Involving Domestic Violence

Several laws address crimes involving domestic relationships, although the relationship requirement varies. Some offenses require a romantic relationship of some kind. For example, domestic criminal trespass requires that the defendant trespass on premises occupied by the defendant's present or former spouse or a person with whom the defendant lives or has lived as if married. Others incorporate the broader definition of "personal relationship" for obtaining a domestic violence protective order (DVPO) in G.S. 50B-1, as for the offense of assault in the presence of a minor. Some offenses do not require a specific relationship but were evidently enacted with relationship violence in mind, such as assault by strangulation under G.S. 14-32.4(b) and stalking under G.S. 14-277A. Although the latter statute does not require a specific relationship, it opens with the statement that the General Assembly "recognizes . . . the strong connections between stalking and domestic violence . . ."

The offenses requiring a specific relationship include:

- Domestic criminal trespass, G.S. 14-134.3
  - Simple, Class 1 misdemeanor
  - Entry of safe house with deadly weapon, Class G felony
- Assault with a deadly weapon or inflicting serious injury, a Class A1 misdemeanor, in the presence of a minor, G.S. 14-33(d)
  - First offense, supervised probation if active sentence not imposed
  - Subsequent offense, minimum 30 day active sentence
- Disclosure of private images (sometimes referred to as revenge porn), G.S. 14-190.5A
  - If the defendant is 18 or older at the time of the offense, Class H felony
  - If the defendant is under 18 at the time of the offense, Class 1 misdemeanor for the first offense and Class H felony for a subsequent offense
  - This offense has required a personal relationship between the defendant and victim, but the requirement does not apply to offenses committed on or after December 1, 2017
- Domestic violence homicide, G.S. 14-17(a1) (effective for offenses committed on or after December 1, 2017)
  - First-degree premeditated and deliberate murder, Class A felony
  - This crime is based on a rebuttable presumption that the defendant acted with premeditation and deliberation if he kills with malice as defined in G.S. 14-17(b)(1) and was in a certain type of relationship with the victim and had previously been convicted of a certain type of crime against the victim. As written, this presumption may not be enforceable because it bases premeditation and deliberation on the version of malice in G.S. 14-17(b)(1), which involves recklessness, not an intentional act. See

*generally County Court of Ulster v. Allen*, 442 U.S. 140 (1979) (even if a presumption is considered permissive, there must be a “rational connection” between the facts proved and the fact to presumed); *see also State v. Coble*, 351 N.C. 448 (2000) (crime of attempted second-degree murder, which requires specific intent to commit underlying offense, does not exist because second-degree murder does not include specific intent to kill as element).

Several other offenses involve violations of domestic violence protective orders:

- DVPO violation, G.S. 50B-4.1
  - Simple, Class A1 misdemeanor
  - Third offense, Class H felony
  - Felony while DVPO prohibits act, one class higher than felony committed
  - Violation of stay-away condition with deadly weapon, Class H felony
  - Entry of safe house where protected person resides, Class H felony
- Possession of firearm while DVPO in effect, Class H felony, G.S. 14-269.8, G.S. 50B-3.1(j)
- Cyberstalking by electronic tracking device while subject to DVPO, Class 2 misdemeanor, G.S. 14-196.3(b)(5)

### **Arrest Procedures**

Several provisions permit or require law enforcement officers to take action in cases involving domestic violence.

*Warrantless arrests.* G.S. 15A-401(b)(2) regulates an officer’s authority to make a warrantless arrest for offenses committed outside the officer’s presence. An officer has this authority when the officer has probable cause for any felony but only for certain misdemeanors. The statute gives officers this authority for the following misdemeanors involving domestic violence (as well as in cases in which the person will cause physical injury or property damage or will not be apprehended unless immediately arrested):

- Domestic criminal trespass
- Simple assault, assault with deadly weapon or inflicting serious injury, and assault by pointing a gun if a personal relationship exists as defined in G.S. 50B-1
- DVPO violation

An officer also may make a warrantless arrest for a violation of a pretrial release condition, whether committed in or outside the officer’s presence. G.S. 15A-401(b)(1), (2). Originally, this statute concerned domestic violence cases only, allowing warrantless arrests for violations of pretrial release conditions under G.S. 15A-534.1(a)(2), which lists pretrial release conditions in domestic violence cases. The statute was later broadened to other pretrial release violations.

*Mandatory arrests.* An officer must arrest when the officer has probable cause that a person has violated a DVPO excluding the person from the residence or household of a domestic violence victim or directing the person to refrain from doing any act in G.S. 50B-3(a)(9), such as threatening the victim. G.S. 50B-4.1(b).

*Fingerprinting and other information.* The arresting law enforcement agency must take the fingerprints of a defendant for all felonies and certain misdemeanors, including the following domestic violence offenses: domestic criminal trespass; an offense involving domestic violence as described in G.S. 15A-1382.1 (discussed further below under Sentencing); a DVPO violation; and misdemeanor assault, stalking, or communicating a threat if the person is held under G.S. 15A-534.1 (discussed further below under Pretrial Release Procedures). G.S. 15A-502(a2), (a4). The arresting agency must provide the magistrate with available information about the defendant’s relationship with the alleged victim and whether it is a personal relationship as defined in G.S. 50B-1, and the magistrate must enter the information into the court information system. G.S. 15A-502(a3), (a5).

### **Pretrial Release Procedures**

G.S. 15A-534.1 contains several provisions on pretrial release in cases involving domestic violence:

- The most well-known provision is what has become known as the 48-hour law, which requires that a judge set pretrial release conditions in the first 48 hours after arrest. Over the years, the provision has been expanded to cover additional offenses and relationships, such as dating relationships. See Jeff Welty, [Recent Changes to the Pretrial Release Statutes](#), N.C. Crim. L. Blog (Nov. 19, 2015).
- The judicial official, whether a judge or magistrate, must consider the defendant's criminal history when setting pretrial release conditions. G.S. 15A-534.1(a); [Conditions of Release for Person Charged with a Crime of Domestic Violence](#), AOC-CR-630 (Dec. 2015) (form release order with these conditions).
- The judicial official may impose the pretrial release conditions listed in G.S. 15A-534.1(a)(2), such as stay-away conditions.
- The judicial official may detain a defendant for a reasonable time if the judicial official determines that immediate release will pose a danger to the victim or other person or result in intimidation to the victim and an appearance bond will not reasonably avert this risk. G.S. 15A-534.1(a)(1). This provision predated the 48-hour procedure and allowed for a cooling-off period for the defendant and an opportunity for the alleged victim to take safety precautions.

## Sentencing

The following provisions concern sentencing in cases involving domestic violence:

- If the conviction involves assault, communicating a threat, or any act in G.S. 50B-1(a), and the defendant and victim had a personal relationship, the judge must indicate in the judgment and the clerk of court must indicate in the official record that the offense involved domestic violence. G.S. 15A-1382.1(a).
- If the court finds the defendant responsible for acts of domestic violence and sentences the defendant to probation, a regular condition of probation is to attend and complete an abuser treatment program. G.S. 15A-1343(b)(12).
- The Department of Public Safety must establish a domestic violence treatment program for inmates whose official record includes a finding that they committed acts of domestic violence. G.S. 143B-704(e).

*See also* G.S. 15A-1340.16(d)(15) (aggravating factor at felony sentencing for the defendant to have taken advantage of a position of trust and confidence, including a domestic relationship, in committing the offense).

## Victims' Rights

The North Carolina Crime Victims' Rights Act gives victims of certain offenses various rights, including the right to notice throughout the proceedings and the right to restitution and a civil judgment for damages greater than \$250. G.S. 15A-830 through G.S. 15A-841, G.S. 15A-1340.34(b), G.S. 15A-1340.38. Many felonies are covered. The following misdemeanors, which involve domestic violence, are also covered:

- Simple assault, assault on female, assault with a deadly weapon or inflicting serious injury, assault by pointing a gun, domestic criminal trespass, and stalking if the defendant and victim had a personal relationship as defined in G.S. 50B-1
- Violation of a DVPO

## Firearm Consequences

Federal law imposes a firearms ban for felonies and misdemeanor crimes of domestic violence. State law follows suit, providing that a person may not obtain a permit to purchase or carry a concealed handgun if prohibited by state or federal law. G.S. 14-404(a)(1), G.S. 14-415.12(b)(1), (8b); *see also* [Firearm Prohibition Notice](#), AOC-CR-617 (Dec. 2007) (form notice to convicted defendants that firearm possession may be unlawful under federal or state law). *But*

see Jeff Welty, [Vinson, Voisine, and Misdemeanor Crimes of Domestic Violence](#) , N.C. Crim. L. Blog (July 18, 2016) (questioning whether North Carolina misdemeanor assaults constitute misdemeanor crimes of domestic violence under federal law as applied by Fourth Circuit, but suggesting that North Carolina courts should continue to consider using AOC form to notify convicted defendants that possession of firearms “may” be unlawful).

During the term of a DVPO, it is unlawful for the defendant to possess firearms (discussed above under Crimes Involving Domestic Violence). After the DVPO expires, a defendant may move for return of firearms surrendered during the term of the DVPO, but the court must deny the motion if the defendant is disqualified from possessing firearms under state or federal law or has pending charges for an offense against the person protected by the DVPO. G.S. 50B-3.1(f).

## Same Sex Marriage and Domestic Violence

**Author :** Jeff Welty

**Categories :** [Procedure](#), [Uncategorized](#)

**Tagged as :** [48 hour rule](#), [bond](#), [Chapter 50B](#), [domestic violence](#), [DVPOs](#), [same-sex marriage](#)

**Date :** October 29, 2014

Same sex marriage has been permitted in North Carolina for a couple of weeks. Shea blogged [here](#) about one potential criminal law implication: the possibility, discussed in a memorandum from the Administrative Office of the Courts, that magistrates could be charged criminally for refusing to marry same-sex couples. As noted in [this recent news article](#), a number of magistrates have resigned as a result. But the issue I've been asked most about is how same-sex marriage relates to our domestic violence laws.

Specifically, I have been asked how same-sex marriage relates to the 48-hour rule and to domestic violence protective orders issued under Chapter 50B.

**The 48-hour rule.** Under G.S. 15A-534.1, only a judge may set bond in a domestic violence case within the first 48 hours after arrest. The statute applies mainly to certain crimes committed against a "spouse or former spouse or a person with whom the defendant lives or has lived as if married." I noted in [this prior post](#) the uncertainty about whether same-sex couples were covered by that language. I don't see any more uncertainty. A same-sex couple married in North Carolina or elsewhere are "spouse[s]," or if subsequently divorced, "former spouse[s]." Same-sex couples who are cohabiting are living together as if married.

**Chapter 50B orders.** More complicated interpretive and legal issues arise in the context of Chapter 50B orders. G.S. 50B-1(b) lists the types of relationships that are eligible for DVPOs. The list includes "current or former spouses," and the new meaning of that term is clear. However, the expanded definition of that term probably doesn't cover many more people, as "current or former household members" was already a covered category and presumably reached most same-sex spouses.

I can imagine some changes to the category "related as parents and children," if the law regarding adoption changes in the aftermath of the same-sex marriage ruling. I imagine that it might but the issue is far beyond my expertise. (My colleagues Sara DePasquale and Meredith Smith address one aspect of the question in [this blog post](#).) Again, I tend to think that any change will be of limited practical import given the existing coverage of household members.

Perhaps the most interesting issue here, and the one of greatest practical import, concerns subdivision (b)(6), which encompasses "persons of the opposite sex who are in a dating relationship or have been in a dating relationship." I can imagine a constitutional challenge to that provision on the grounds that there is no basis for limiting it to opposite-sex couples. If such a challenge were successful, I don't know whether the remedy would be a judicial expansion of the rule or an excision of the rule from the statute.

As always, questions and comments are invited.

## Does a No Contact Order Apply While the Defendant Is in Jail?

**Author :** Shea Denning

**Categories :** [Crimes and Elements](#), [Procedure](#)

**Tagged as :** [15A-534](#), [contempt](#), [domestic violence](#), [nancy](#), [no contact](#), [stalking](#), [state v. mitchell](#)

**Date :** June 6, 2018

When setting conditions of pretrial release in domestic violence cases, magistrates and judges often order a defendant not to contact the victim. Those directives clearly apply to a defendant once he is released from jail subject to those conditions. But what about a defendant who remains in jail? Is he also subject to a no contact condition included on a release order? The court of appeals addressed that issue yesterday in [State v. Mitchell](#).

The court in *Mitchell* concluded that the no contact directive set forth on Mitchell's release orders (he was charged with more than one crime for allegedly assaulting his girlfriend) applied to Mitchell while he was confined in jail. Thus, Mitchell's mailing of letters to his girlfriend from jail violated a court order. And because the letters amounted to stalking, Mitchell's conduct was felonious since there was a court order in effect (the pretrial release orders) prohibiting his conduct.

**Facts.** Mitchell was arrested for assault on a female on December 26, 2014 after he allegedly punched his girlfriend, "Nancy," in the face. At his initial appearance, the magistrate wrote on the [AOC-CR-200](#), Conditions of Release and Release Order form, that he was "NOT TO HAVE ANY CONTACT WITH [NANCY]." Mitchell's release was not authorized that evening because he was charged with a domestic violence offense for which only a judge could set pretrial release conditions during the first 48 hours following his arrest. Two days later, a judge authorized Mitchell's release upon the posting of a secured bond. The judge, like the magistrate, ordered that Mitchell have no contact with the victim.

A week later, while Mitchell remained in jail, he was charged in an arrest warrant with habitual misdemeanor assault for the alleged December 26 assault of Nancy. The Conditions of Release and Release Order issued in connection with this charge imposed a secured bond and ordered Mitchell "NOT TO HAVE ANY CONTACT WITH [NANCY]." Mitchell did not post bond and remained jailed on both charges.

Mitchell wrote six letters to Nancy from jail while he was subject to conditions of release orders for one or both of these charges. The first letters were "cordial," but the later letters "escalated to threats when she did not respond or reply." Slip op. at 5. Nancy also received a letter marked "return to sender" that listed her return address. The letter was addressed to the Federal Building on Fayetteville Street in Raleigh and contained a bomb threat and demand for \$1 million, purportedly written by Nancy. The defendant later admitted to writing the letter.

In March 2015, the Wake County District Attorney's Office received a letter through "jail mail" from the Wake County Detention Center that purported to be written by Nancy. The letter stated that Nancy had falsely accused Mitchell and threatened to place explosives in the Wake County Courthouse. Nancy denied sending the letter.

Mitchell was charged with felony stalking while a court order was in effect for the letters to Nancy and with two counts of felony obstruction of justice based on the letters to the Federal Building and the District Attorney's office.

**Felony stalking.** [G.S. 14-277.3A](#) defines the offense of stalking, which generally is a Class A1 misdemeanor. If, however, stalking is committed "when there is a court order in effect prohibiting the conduct described under [G.S.

14-277.3A] by the defendant against the victim,” the offense is elevated to a Class H felony.

**Defendant’s argument.** Mitchell moved to dismiss the felony stalking charges on the basis that he was not subject to the conditions of pretrial release that prohibited him from having contact with Nancy because he never posted his bond. Instead, he remained in jail during the entire time the letters were sent. Since he was not released, he said that the order did not apply to him.

**Court’s analysis.** Calling Mitchell’s argument “deceptively simple,” the court rejected it. Slip op. at 9. The court noted that the orders, titled “Conditions of Release and Release Order,” contained more than their title suggested. In addition to establishing conditions of release, the orders committed Mitchell to a detention facility (as required by [G.S. 15A-521\(a\)](#)), noted that he was subject to a domestic violence hold, directed when the defendant was to again be produced before a judicial official (as required by G.S. 15A-521(b) and [G.S. 15A-534.1](#)), and, for one of the orders, required that Mitchell provide fingerprints.

Such orders, the court of appeals said, “memorialize[] the trial court’s determinations governing the defendant, whether the defendant is held in a detention facility or released.” Slip op. at 12. Some of the terms of such an order, the court explained, apply whether a defendant is committed or released, while others apply only in one circumstance or another.

The court stated that the directive in the *Mitchell* orders that Mitchell have no contact with Nancy contained no language indicating that the provision applied only upon Mitchell’s release. Thus, the court concluded, contact with Nancy was barred as long as the orders were in effect. And the orders were in effect until the charges were disposed of, whether Mitchell remained confined in jail or was released.

**The stalking enhancement.** The court further held that Mitchell’s stalking was felonious because the pre-trial release orders barring Mitchell from contacting Nancy “prohibit[ed] the conduct described under [G.S. 14-277.3A] by the defendant against the victim.”

The court reasoned: Conduct described in G.S. 14-277.3A includes harassment, which requires “[k]nowing contact” that may consist of “written or printed communication.” Mitchell was ordered not to contact Nancy. Because harassment under G.S. 14-277.3A requires contact, the orders prohibited conduct under G.S. 14-277.3A, even though they did not specifically mention stalking.

The court said its view that the no contact order prohibited conduct described in the stalking statute was “in keeping with the intent” of the stalking statute, which provides in part: “[T]he General Assembly enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The General Assembly intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct.” Slip op. at 15 (citing G.S. 14-277.3A(a)).

**Practical effect.** The *Mitchell* court did not identify the source of a judicial official’s authority to impose conditions upon a person that apply while the person is detained, but its analysis assumes such authority exists. *Cf. Baker v. United States*, 891 A.2d 208 (D.C. Cir. 2006) (declining to decide whether trial court that ordered defendant preventatively detained had the authority to issue a no-contact order under the bail statute or pursuant to the court’s inherent authority). That issue has been the subject of considerable debate in the trenches (see Jeff’s post [here](#)), so its resolution is significant, particularly given the frequency with which no contact conditions are imposed.

The court also did not address what limitations exist on a judicial official’s authority to impose such conditions. While Mitchell’s post-arrest conduct leaves little doubt about the need for such a restriction in his case, it is not clear what standard judicial officials are to use in crafting general conditions regulating the conduct of a defendant both in and out of jail. *Cf. G.S. 15A-534(a)* (permitting a judicial official to “place restrictions on the travel, associations, conduct, or

place of abode of the defendant ***as conditions of pretrial release*** (emphasis added); G.S. [15A-534.1](#)(a)(2)(permitting a judge to impose, among other “pretrial release” conditions, a condition that the defendant “stay away from the home, school, business or place of employment of the alleged victim”).

Most violations of no contact orders do not, of course, result in statutorily enhanced charges like those in *Mitchell*. Instead, they are more often addressed through contempt proceedings under Chapter 5A. *Cf. Baker*, 891 A.2d at 212 (stating that “even assuming for the sake of argument that the trial court’s no-contact order was invalid, Baker’s conviction for contempt must be upheld for his failure to comply with that order” which he did not challenge or appeal). After *Mitchell*, I expect that magistrates and judges will continue to impose such conditions (though they may wish to specify whether they apply in jail as well as upon release) and that contempt proceedings will continue to be initiated for defendants who do not follow them.

*Thanks to my colleague John Rubin for helping me think through the issues in State v. Mitchell and for teaching me everything I know about pretrial release.*

## DVPOs for Same-Sex Dating Relationships?

**Author :** Jeff Welty

**Categories :** [Uncategorized](#)

**Tagged as :** [domestic violence](#), [DVPO](#), [equal protection](#), [same-sex couples](#), [south carolina](#)

**Date :** August 15, 2017

Domestic violence protective orders (DVPOs) are available to “persons of the opposite sex who are . . . or have been in a dating relationship,” and who are able to establish that the person that they are or were dating committed an act of domestic violence against them. Persons of the same sex who are or were in a dating relationship don’t have the same opportunity. Is that constitutional? The Supreme Court of South Carolina just addressed a related question, and its opinion suggests that the answer is no.

**Background.** [G.S. 50B-1](#) defines a “personal relationship” as a relationship where the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

The statute defines “domestic violence” as the commission of certain acts by a party to a “personal relationship,” so only individuals in a “personal relationship” are eligible for a DVPO. Same-sex couples who are dating but not living together aren’t in a “personal relationship” as defined by the statute.

It has been clear at least since [Obergefell v. Hodges](#), 576 U.S. \_\_\_ (2015) (ruling that the Due Process Clause and the Equal Protection Clause of the Constitution require all states to permit and to recognize same-sex marriages), that distinctions between same-sex and opposite-sex relationships require legal scrutiny. In [this prior post](#), I noted that Chapter 50B contained several questionable provisions.

**South Carolina case.** The recent South Carolina case that bears on this issue is [Doe v. State](#), \_\_\_ S.E.2d \_\_\_, 2017 WL 3165132 (S.C. July 26, 2017). South Carolina’s domestic violence statutes apply only to “household members,” defined in part as a “male and female who are cohabiting or formerly have cohabited.” A woman who suffered domestic violence at the hands of her female partner -- the two were engaged, but not married -- sought a DVPO but was denied based on the above definition. She challenged the law in court, arguing that the exclusion of same-sex couples violated equal protection principles.

The state supreme court agreed. It stated that it “cannot find a reasonable basis for providing protection to one set of domestic violence victims—unmarried, cohabiting or formerly cohabiting, opposite-sex couples—while denying it to others. Accordingly, we find no constitutionally valid rational basis for the statutory classifications created by the definitional subsections at issue.”

Turning to the question of how to remedy the defect, the court decided to “sever the discriminatory provision,” removing the reference to cohabiting couples from the statute. In other words, *the court made opposite-sex cohabiting couples ineligible for DVPOs* so that both same-sex and opposite-sex couples are treated in the same way. (The chief justice dissented as to the remedy. He would have held the statute unconstitutional as applied to the plaintiff and would have held “that the family court may not utilize these statutory provisions to prevent [the plaintiff] or those in similar same-sex relationships from seeking [a DVPO].”)

**Back to North Carolina.** Obviously, South Carolina cases aren’t binding on North Carolina courts. But that court was unanimous on the fundamental equal protection issue. Using the same lens to look at North Carolina’s statute, there are two provisions that are worth considering:

- The phrase “[a]re persons of opposite sex who live together or have lived together.” This is virtually indistinguishable from the language at issue in the South Carolina case. However, it may be difficult for a plaintiff to establish standing to contest this portion of the North Carolina statute because the statute also covers individuals who “[a]re current or former household members.” Persons of the same sex who “live together or have lived together” appear to be covered by the latter provision -- though I have heard arguments that the “household members” provision should not be interpreted to include romantic partners -- and so arguably suffer no legally cognizable injury by their exclusion from the “live together” prong of the statute.
- The phrase “[a]re persons of the opposite sex who are in a dating relationship or have been in a dating relationship.” This provision is the focus of today’s post, and I must say, the argument that this provision violates equal protection strikes me as quite strong. Violence in same-sex relationships seems to be [as common](#), or maybe even [more common](#), than in opposite-sex ones, suggesting an equivalent need for DVPOs. Of course, legislative actions are presumptively constitutional; *Obergefell* was decided partly based on the fundamental right to marry, which is not implicated in the “dating relationship” provision; and it is not clear what degree of scrutiny would apply to a challenge to this provision, so perhaps the issue is not a complete slam dunk.

**What’s the practice?** I suspect that judges are receiving DVPO requests arising out of same-sex dating relationships, and I have heard that at least some judges will issue DVPOs in such circumstances. But as always, I welcome comments regarding how this issue is playing out in the real world.



## State v. Elder: DVPO Cannot Authorize Search for Guns

**Author :** Shea Denning

**Categories :** [Search and Seizure](#)

**Tagged as :** [domestic violence](#), [DVPO](#), [firearms](#), [fourth amendment](#), [search warrants](#)

**Date :** June 25, 2015

A judge who issues an emergency or ex parte domestic violence protective order must order the defendant to surrender all firearms in his care, custody or control if the judge makes certain findings about the defendant's prior conduct. Among the findings that trigger the weapons-surrender requirement is a finding that the defendant used or threatened to use a deadly weapon or has a pattern of prior conduct involving the use or threatened use of violence with a firearm. A defendant served with such an order must immediately surrender his firearms to the sheriff. If the weapons cannot be immediately surrendered, he must surrender them within 24 hours. But what if the defendant does not turn over any firearms? May the protective order authorize the sheriff to search the defendant, his home, and/or his vehicle for such weapons?

**No.** The North Carolina Supreme Court in [State v. Elder](#), \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 11, 2015), held that [G.S. 50B-3](#) did not authorize the district court to include in a domestic violence protective order (DVPO) a directive that law enforcement officers search the defendant, his vehicle and his residence for weapons.

**Facts.** Gregory Elder's wife sought an ex parte DVPO in September 2010. The court entered the DVPO, finding that Elder had threatened to get gasoline and torch their son's preschool, his wife's house and her sister's house. The court also found that Elder had said "I'm going to get you all," and "you won't [expletive deleted] stop me, and the police won't [expletive deleted] stop me." (Slip op. at 2.) Finally, the court found that Elder had a history of substance abuse and mental illness and that he had made threats to anyone who attempted to go into the marital residence.

The court concluded that Elder had committed acts of domestic violence in the past and that he continued to present a danger of future violence. The court ordered him to surrender his firearms, ammunition and gun permits, as provided in [G.S. 50B-3.1](#).

Relying on [G.S. 50B-3\(a\)\(13\)](#), which authorizes the court to include as relief in a DVPO "any additional prohibitions or requirements the court deems necessary to protect any party or minor child," the court ordered that "[a]ny Law Enforcement officer serving this Order shall search the Defendant's person, vehicle and residence and seize any and all weapons found." (Slip op. at 2.)

The DVPO contained no findings that Elder owned or possessed a weapon.

**Service of the DVPO.** After several attempts, officers successfully served the DVPO on Elder three days after it was issued. They knocked on his door for fifteen minutes. Elder came outside and locked the door behind him? a reasonable precaution since there was marijuana growing operation inside.

The officers took the keys from Elder's pockets, unlocked the door and went inside to search for weapons as ordered in the DVPO.

You know what they found growing in the basement.

**Motion to suppress.** Elder was charged with several drug crimes. He moved to suppress the evidence the officers found on the basis that the search violated his Fourth Amendment rights. The trial court denied the motion. A divided panel of the court of appeals reversed, [holding](#) that the DVPO statutes did not authorize the district court to order the search, that the DVPO was not a de facto search warrant because it contained no findings of probable cause to believe that evidence of a crime would be found in the places ordered searched, and that the search was not authorized by exigent circumstances. The dissenting opinion concluded that the district court was statutorily authorized to order the search. The State appealed, and the state supreme court affirmed.

**Supreme Court's Analysis.** G.S. 50B-3(a)(1)-(13) lists thirteen types of relief that a court may order in a DVPO. The first twelve subsections authorize the court to impose specific prohibitions or requirements on a party to the DVPO. The court may order a party to refrain from acting in a certain way (not to harass the other party, for example) or to act in a certain way (to pay child support, for example). The last subsection, G.S. 50B-3(a)(13), is a catch-all provision that authorizes the court to order "any additional prohibitions or requirements the court deems necessary to protect any party or any minor child."

The *Elder* court held that this catch-all provision limits the court to ordering a party to act or refrain from acting, as do the preceding subsections. The provision does not authorize the court to order in a DVPO that law enforcement officers search the defendant, his vehicle, or his residence.

**Fourth Amendment.** The *Elder* court explained that its interpretation was consistent with the Fourth Amendment and Article 1, Section 20 of the North Carolina Constitution. Were it to conclude otherwise, the court reasoned, "district courts would have seemingly unfettered discretion to order a broad range of remedies in a DVPO so long as the judge believes they are necessary for the protection of any party or child." (Slip op. at 6.)

Because *Elder* was, of course, a criminal case and the defendant's motion to suppress was based on the violation of his state and constitutional rights, the court then considered whether the search indeed violated those rights. The court concluded that nothing in the case excused the requirement that a search of person's home be conducted pursuant to a warrant issued by a judicial official following a determination of probable cause. While acknowledging that domestic violence is a significant problem and the state has a vital interest in protecting victims, the court concluded that the facts of the case did not justify a special needs search of the type authorized when interests beyond the normal need for law enforcement make the warrant and probable cause requirement impracticable. Thus, the court determined that the warrantless search of the defendant's home violated his state and federal constitutional rights.

**What if the DVPO had included findings that the defendant had a gun?** I don't think the outcome would be any different. *Elder* held that the trial court had no authority under G.S. 50B-3 to order in a DVPO that law enforcement officers search the defendant, his home, or vehicle. The court's interpretation of the statute does not appear to hinge on the possible presence of a weapon. I'm likewise doubtful that a finding that the defendant had a firearm would alter the constitutional analysis governing an ensuing search of the defendant's home. At the time a DVPO is served, the defendant must surrender his firearms. If a law enforcement officer has probable cause to believe that a firearm is located within a defendant's residence and has not been surrendered as required, she may seek issuance of a search warrant to recover the weapon.



## Can the Person Protected by a DVPO Be Charged with Violating the Order?

**Author :** John Rubin

**Categories :** [Crimes and Elements](#), [Procedure](#), [Uncategorized](#)

**Tagged as :** [aiding and abetting](#), [domestic violence](#), [DVPO](#)

**Date :** April 27, 2015

Here's a question I get occasionally: What language should I use to charge aiding and abetting a violation of a domestic violence protective order (DVPO)? Here's a similar one: If someone is arrested for aiding and abetting a violation of a DVPO, is the person subject to the 48-hour pretrial release law for domestic violence offenses? I know the scenario immediately. A person protected by a DVPO (Mary) has invited the person subject to the DVPO (her ex-boyfriend, John) over to her house although the DVPO prohibits him from being there. Things deteriorate, and Mary calls the police for assistance. I also know my answers to these questions. There isn't language for charging Mary with aiding and abetting a violation of a protective order that was entered for her protection because such a charge isn't valid. For the same reason, Mary isn't subject to arrest so the 48-hour law doesn't apply. If such a charge is brought, the remedy is for the court to dismiss it for failure to state a crime.

The North Carolina appellate courts haven't addressed whether these charges are proper, but decisions from other states explain why they should not stand. In *State v. Lucas*, 795 N.E.2d 642 (Ohio 2003), the facts were similar to the above scenario. In *Patterson v. State*, 979 N.E.2d 1066 (Ind. App. 2012), the police came to the residence for other reasons (to serve a subpoena) and found the two together. In dismissing the aiding and abetting charge, the court in both cases focused on the legislature's intent in authorizing domestic violence protective orders—namely, to protect victims of domestic violence. As stated by the Ohio Supreme Court in *Lucas*, the legislature did not intend to undo those protections by “allowing abused women to be charged with complicity” in violating orders for their protection. 795 N.E.2d at 648. The courts' reading of legislative intent rests on a combination of common law principles, statutory language, and policy considerations. In light of our state's commitment to protecting victims of domestic violence, I believe our appellate courts would find the reasoning persuasive.

First, a basic tenet of criminal law is that the victim of a crime cannot be charged with aiding and abetting commission of the crime. “Where the statute in question was enacted for the protection of certain defined persons thought to be in need of special protection, it would clearly be contrary to the legislative purpose to impose accomplice liability upon such a person.” See Wayne R. LaFave, *Substantive Criminal Law* § 13.3(e), at 370 (2d ed. 2003). For example, a victim of statutory rape cannot, by consenting, be charged with aiding and abetting the crime.

Second, the language of the statutes indicates that the legislature did not intend for a person protected by a protective order to be held criminally liable for a violation of the order. Thus, the Ohio statute prohibits “mutual” protective orders. That means that a court may not issue a protective order against the person who petitions for a protective order unless the respondent also files for and meets the requirements for issuance of a protective order against the petitioner. The North Carolina DVPO procedures did not originally include such a provision, but the North Carolina General Assembly amended G.S. 50B-3(b) to add it specifically. See S.L. 1995-591 (H 686). The Ohio and Indiana statutes contain an additional provision, not present in North Carolina's statutes, that an invitation to return to the residence does not nullify or waive a protective order. The difference is not critical; jurisdictions without such a provision have interpreted their protective order statutes as establishing the same rule. See, e.g., *State v. Dejarlais*, 969 P.2d 90 (Wash. 1998) (so interpreting statute before legislature enacted such a provision); accord *State v. Branson*, 167 P.3d 370 (Kan. Ct. App. 2007). North Carolina's courts likely would follow the same approach. See Domestic Violence Order of Protection, AOC Form AOC-CV-306 (Oct. 2013) (“Only the Court can change this order. The plaintiff cannot give you permission

to violate this order.”).

Third, the policies behind protective order statutes indicate that the legislature did not intend for the victims of domestic violence to be charged with violations of orders for their protection. Such charges could “chill” enforcement of protective orders, contrary to the legislature’s intent to strengthen protections. *Lucas*, 795 N.E.2d at 647. Even though protected by a protective order, a person may be reluctant to call for help if fearful of being prosecuted for having invited the other person to her home. *See generally Branson*, 167 P.3d at 372 (noting petitioner’s testimony that she did not call police immediately because she thought she “would be in as much trouble as he was”). People in need of protective orders might even be deterred from seeking protective orders. In our Mary and John example, if Mary invites John to her house, wants him to leave, and does *not* have a protective order, she can call the police without being arrested herself; yet, if the law allowed charges of aiding abetting, Mary would be in worse shape for having a protective order.

A somewhat older case from Iowa held that a person could be held liable for, in essence, aiding and abetting a violation of a protective order. *See Henley v. Iowa District Court*, 533 N.W.2d 199 (Iowa 1995). The proceeding in that case was for contempt, but the basic question is the same: whether a person protected by a protective order may be prosecuted for consenting to a violation of the order. The court’s holding rests on far older, “turn-of-the-century” decisions in which the Iowa courts held that nonparties to orders could be held in contempt for violations if they acted in concert or were in privity with the person against whom the order was directed. *See Henley*, 533 N.W. 2d at 202, *citing Hutcheson v. Iowa District Court*, 480 N.W.2d 260, 263–64 (Iowa 1992) (reviewing history). Those decisions are unpersuasive because they recite general contempt principles only and do not consider the complex dynamics of relationships involving domestic violence or the legislature’s intent in enacting procedures for the protection of domestic violence victims.

Dealing with repeated problems with the same couples can undoubtedly be frustrating for court officials and law enforcement officers as well as counselors, family members, and friends. The solution of splitting up and staying split up seems obvious, but research shows that it’s not so simple. For many reasons, it may take a person many tries and many months, if not years, to get out of an abusive relationship. The law’s answer to this difficult problem is not to charge the person protected by a protective order with violating the order.



## I've Been Arrested . . . But Committed No Crime

**Author :** Shea Denning

**Categories :** [Procedure](#)

**Tagged as :** [arrest](#), [conditions of release](#), [domestic violence](#), [Initial appearance](#), [pretrial release](#)

**Date :** February 25, 2015

*[Author's Note: This post has been substantively edited to make corrections in response to helpful comments from readers.]*

A person generally may not lawfully be arrested unless there is probable cause to believe he has committed a crime. But there are several exceptions to this rule. Most involve arrests made pursuant to an order for arrest issued by a judicial official. A judicial official may, for example, issue an order for the arrest of a defendant who fails to appear in court or who violates conditions of probation. See G.S. 15A-305(b). And there is one circumstance in which a law enforcement officer may, without a judicial order or warrant for the defendant's arrest and without probable cause to believe a crime has been committed, arrest a defendant. That's when the officer has probable cause to believe the defendant has violated a condition of pretrial release. G.S. 15A-401(b)(1),(b)(2)(f.).

**Arrests for violations of pretrial release conditions.** The General Assembly amended G.S. 15A-401(b) in 2011 to authorize officers to make warrantless arrests of a defendant based on probable cause that the person had violated a condition of pretrial release, regardless of whether the violation occurred in or out of the officer's presence. Those amendments were effective for violations of pretrial release conditions that occurred on or after December 1, 2011. Before that time, officers were authorized to make warrantless arrests for defendants who were charged with crimes of domestic violence and who violated a condition of release for that crime, but were not permitted to arrest defendants who were charged with other types of crimes for a violation of their pretrial release conditions. See [S.L. 2004-186](#), Sections 13.1 -.2. Under current law, officers may arrest for any pretrial release violation, regardless of the nature of the underlying offense. See [G.S. 15A-401\(b\)\(1\)](#), [\(b\)\(2\)\(f.\)](#) (authorizing arrest based on probable cause that defendant has violated pretrial release order under [G.S. 15A-534](#) (which governs the determination of conditions of pretrial release for crimes generally) or [G.S. 15A-534.1](#)(which governs the setting of pretrial release conditions for crimes of domestic violence)).

**What happens when a person is arrested?** Upon arresting a defendant for a violation of a pretrial release order, an officer must take the defendant before a magistrate for an initial appearance. [G.S. 15A-501\(2\)](#); [15A-511\(a\)](#). The magistrate must first determine whether there is probable cause to believe that the defendant violated the conditions of release. Then, if the magistrate finds probable cause, he or she must set new conditions of initial release. The magistrate does *not* modify his or her earlier release order; instead he or she imposes new conditions of release, which supersede the prior release order.

**No authority to hold.** There is no statutory authority authorizing a magistrate to hold a defendant charged with violating a condition of pretrial release without setting new conditions of release. Confusion about this issue abounds when a defendant who was initially charged with a crime of domestic violence is arrested for violation of the pretrial release order. This might occur if, for example, the defendant was ordered to have no contact with the victim and he is later discovered in the victim's home with the victim's consent. An officer who learns of the defendant's presence may arrest the defendant based on probable cause that the defendant has violated the pretrial release order. The defendant in this circumstance has not, however, committed a new crime, much less a crime of domestic violence. Thus, a magistrate must set conditions of release at the defendant's initial appearance following his arrest.

**Is this constitutional?** Some defendants have complained that being arrested for a violation of an order based on conduct that is not itself a crime is unconstitutional. None of those complaints appear to have reached our appellate courts. If and when they do, I'm skeptical about their prospects for success. Other courts have recognized that when a defendant "breach[es] a condition of the bond originally set by the court, [he] forfeits the right to continued release under the terms of that bond." *State v. Paul*, 783 So.2d 1042 (Fla. 2001). That same sort of reasoning appears to underlie the legislature's authorizing of officers to arrest for violations of pretrial release orders.

## Cyberstalking and the 48 Hour Rule

**Author :** Jeff Welty

**Categories :** [Procedure](#), [Uncategorized](#)

**Tagged as :** [48 hour rule](#), [cyberstalking](#), [harassing phone calls](#), [stalking](#), [threats](#)

**Date :** November 28, 2012

[G.S. 14-196.3](#) prohibits “cyberstalking,” which the statute generally defines to mean using electronic communications to threaten, extort, make an abusive or embarrassing false statement about, or repeatedly harass another person. As Jessie noted in [this prior post](#), cyberstalking has become a frequently charged offense. It can be committed by text message, email, Facebook, and other means.

I’ve been asked several times recently whether the so-called 48 hour rule, set forth in [G.S. 15A-534.1](#), applies to cyberstalking. That statute provides that for certain domestic violence crimes, bond must normally be set by a judge rather than a magistrate. The statute allows a defendant to be held for up to 48 hours if a judge is not immediately available. I’ve previously written about the 48 hour rule [here](#).

The 48 hour rule applies to “all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing [certain felonies] 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 [a DVPO].”

Does the statute’s reference to “stalking” include cyberstalking? I don’t think so, for two reasons.

- First, although the 48 hour rule has been around since 1995, S.L. 1995-527, “stalking” was only added to the statute in 2007, S.L. 2007-14. Both the original stalking statute, G.S. 14-277 (enacted by S.L. 2001-518), and the cyberstalking statute (enacted by S.L. 2000-125) existed at that time. The General Assembly’s decision to add the term “stalking” but not the term “cyberstalking” to G.S. 15A-534.1 may have been a deliberate choice. To the extent that the statutory language is ambiguous, the rule of lenity suggests that the term “stalking” should be strictly construed not to include cyberstalking.
- Second, the cyberstalking statute is clearly patterned on the harassing phone calls statute, G.S. 14-196, not on the “regular” stalking statute, and the General Assembly chose not to include harassing phone calls in the 48 hour law.

Based on the foregoing, I don’t think that the 48 hour rule generally applies to cyberstalking charges. However, there’s one possible limited exception. The cyberstalking statute encompasses certain threatening communications. One could argue that the 48 hour rule should apply to cases of cyberstalking that involve threats based on the provision in G.S. 15A-534.1 regarding “communicating a threat.” (The same argument could be made for harassing phone calls that involve threats.)

I’ve always thought of the reference in G.S. 15A-534.1 to communicating threats to mean simply that the 48 hour rule applies to charges under G.S. 14-277.1, the communicating threats statute. And I’ve always thought of the 48 hour rule as binary – either it applies to all the charges under a certain statute or it doesn’t apply to that statute at all. But I can see a contrary argument, and I don’t think that there’s a case that squarely addresses the issue.

I’d be interested in feedback about whether, in practice, the 48 hour rule is ever being applied to harassing phone calls or to cyberstalking. But the issue may not arise very often, because in most cases, a phone call or an electronic communication that includes a threat would likely be charged under G.S. 14-277.1, a Class 1 misdemeanor to which

the 48 hour rule clearly does apply, instead of or in addition to being charged as a harassing phone call or cyberstalking (both Class 2 misdemeanors).

It is also worth noting that some conduct that violates the cyberstalking statute will also violate the current "normal" stalking statute, G.S. 14-277.3A, to which the 48 hour rule also clearly applies.

# Judicial Independence

**JUDICIAL INDEPENDENCE**

Judicial Independence in Criminal Proceedings ..... Judicial Independence-Page 1

# Judicial Independence In Criminal Proceedings

SARAH OWENS  
NCMA EDUCATION COMMITTEE

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- ▶ Can't officiate
  - ▶ Your alma mater
  - ▶ A school your spouse or child currently attends (but nephews are OK)
  - ▶ A school you've contributed to
  - ▶ A school with which you have a business relationship
  - ▶ A school you've sued or been sued by

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- ▶ Should generally not treat immediate family members.
  - ▶ Professional Objectivity
  - ▶ Undue Influence on judgment
  - ▶ May go beyond their expertise
  - ▶ Spillover tension from the professional/personal relationship dynamic

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► **Eligibility.** Must be at least MINIMUM AGE TO ENTER. Employees, officers, or directors of Sponsor, its parent companies, affiliates, subsidiaries, and their children, parents, spouse, and members of their household are ineligible to participate. No purchase or online entry necessary. Sweepstakes is open only to legal residents of the United States. A purchase does not enhance your chance of winning

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What Kinds of Things Might Limit Your Impartiality?

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### Neutrality and Judicial Officials

- The Fourth Amendment requires that arrest and search warrants be issued by "neutral and detached" judicial officials.
  - *Shadwick v. City of Tampa*, 407 U.S. 345 (1972)
- The *North Carolina Code of Judicial Conduct* requires that judges perform their duties "impartially."
  - Canon 3

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Magistrate Davis retired from the Carolina County Sheriff's Office last year. May Magistrate Davis consider search/arrest warrant applications coming from that agency?

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Magistrate Lee's teenage daughter was killed by a drunk driver three years ago. May Magistrate Lee conduct initial appearances in DWI cases?

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### Neutrality and Your Background

- ▶ Everyone has some background
- ▶ Many magistrates have had experiences such as
  - ▶ Being a law enforcement officer
  - ▶ Being a criminal defense attorney
  - ▶ Being a crime victim
- ▶ You cannot hear matters in which you have "a personal bias or prejudice"
  - ▶ *North Carolina Code of Judicial Conduct, Canon 3C(1)(a)*
  - ▶ You are the person most likely to know whether aspects of your background create bias

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Magistrate Lopez used to date Jenny Jones. Now Jenny Jones is dating Dan Defendant. May Magistrate Lopez conduct an initial appearance for Dan Defendant on drug charges?

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### Neutrality and Your Relationships

- ▶ Everyone has some relationships
- ▶ Many magistrates have relationships such as
  - ▶ A sibling or spouse who is a law enforcement officer
  - ▶ A child who is a prosecutor
  - ▶ A friend who is a crime victim
  - ▶ A cousin who is accused of a crime
- ▶ You cannot hear matters in which you, your spouse, or a person within the third degree of relationship to either of you, or the spouse of such a person, is a participant
  - ▶ *North Carolina Code of Judicial Conduct, Canon 3C(1)(d)*

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May a magistrate conduct initial appearances in a BATmobile at a DWI checkpoint?

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May a magistrate call an Assistant District Attorney for advice on whether certain facts constitute a crime?

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### Neutrality and Your Role in the Justice System

- ▶ DWI initial appearances may be held "at any place within the county" including "locations other than the courthouse."
  - ▶ G.S. 20-38.4
  - ▶ May require extra care to be perceived as neutral
- ▶ May not "knowingly initiate nor knowingly consider ex parte . . . communications concerning a pending proceeding," but may "obtain the advice of a disinterested expert on the law."
  - ▶ *North Carolina Code of Judicial Conduct, Canon 3A(4).*

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An officer comes to you seeking a warrant for misdemeanor larceny. The item that was stolen is a gun. Assuming there is PC, what do you do?

- A. Issue a misdemeanor warrant
- B. Issue a felony warrant
- C. Tell the officer that larceny of a firearm is a felony and ask her whether she wants a felony charge

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### Magistrates as Legal Advisors

- ▶ To officers
  - ▶ Do facts A, B, and C add up to PC?
  - ▶ Do I need a search warrant to search location X under circumstance Y?
- ▶ To citizens
  - ▶ Is my dispute with my neighbor civil or criminal?
  - ▶ Can I throw away my tenant's property after his lease expires?
  - ▶ My sister did X to me. Can you charge her with Y?

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### How do most magistrates in your office dress while on duty?

- A. Black robe
- B. Coat and tie or equivalent
- C. Business casual
- D. Casual

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### What to Do When You May Not be Neutral

- ▶ Recuse yourself
  - ▶ Is another magistrate on duty?
  - ▶ Is another magistrate available?
  - ▶ Can another official hear the matter?
- ▶ Bolster your neutrality with slow and careful deliberation

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### Public perceptions of legitimate procedures and practices

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| <p>What legitimizes legal authorities?</p> <ul style="list-style-type: none"> <li>▶ Act impartially</li> <li>▶ Honestly</li> <li>▶ Transparently</li> <li>▶ Respectfully</li> <li>▶ Ethically</li> <li>▶ Equitably</li> </ul> | <p>What legitimizes legal procedures?</p> <ul style="list-style-type: none"> <li>▶ Neutral</li> <li>▶ Accurate</li> <li>▶ Consistent</li> <li>▶ Trustworthy</li> <li>▶ Fair</li> <li>▶ Opportunities for error correction</li> <li>▶ Process to be heard</li> </ul> |
|---|---|

Bowers, J., & Robinson, P. H. (2012). Perceptions of fairness and justice: The shared aims & occasional conflicts of legitimacy and moral credibility. *Wake Forest Law Review*, 47, 11-13.

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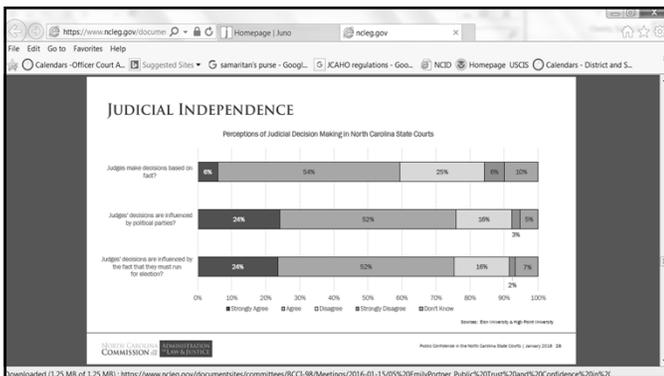
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Capstone

**CAPSTONE**

Capstone Exercises .....Capstone - Page 1

## Capstone Exercises

Magistrates' Basic School

August 2019

**Instructions.** Break into groups of 4-6. Read each problem and answer each question. One of the questions for each problem asks what criminal charges are possible under the circumstances described in the problem. Answer that question as completely as possible. It is not intended to be easy. You are not limited to offenses we have discussed this week, or to offenses in any particular chapter of *North Carolina Crimes*. After the groups have finished their work, we will discuss each problem as a class.

Good luck!

### Problem 1

An officer was investigating reports of vandalism at the local high school. He asked one of the students at the school, who is 18, for permission to look at the pictures on the student's cell phone. The student gave his phone to the officer. The officer did not find any photos related to the vandalism incident, but did see sexually explicit photos of the student and his 16-year-old girlfriend on the phone. The 16-year-old is nude in the photos, several of which depict the teenagers engaging in oral sex. He also discovers a text message from the male student to the 16-year-old girl containing a nude photo of the girl stepping out of the shower.

The officer is seeking issuance of a warrant for arrest charging the male student with second-degree sexual exploitation of a minor, though he is somewhat uncomfortable about charging the student with such a serious offense.

List every criminal charge for which you think there is probable cause:

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What charge or charges, if any, would you issue?

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If you would issue charges, would you do so using an arrest warrant or a criminal summons?

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**Problem 2**

You are a magistrate in a college town. A 19-year-old female appears before you seeking charges against a 19-year-old male university student. The female alleges in an affidavit that she attended a party at the male student's apartment six months ago. She drank approximately 10 mixed drinks. At some point, she fell asleep on the defendant's couch. She awoke to the defendant on top of her, having sexual intercourse with her. She said she was frozen with fear and was confused. The defendant had pulled up her skirt and pulled off her underwear. She said she remained as still as possible until the defendant removed his penis from her vagina. She then ran out of the apartment. She was treated at the hospital, which prepared a rape kit. She said she was in extreme pain for several days following the incident. She was bruised and scraped during the incident. She said she reported the incident to university police, who, after consulting with the district attorney, declined to seek charges. The woman tells you that she believes this decision was based on part on the defendant's status as a star football player for the college. She says that she is not going to let the defendant get away with this just because he is an athlete.

List every criminal charge for which you think there is probable cause:

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What charge or charges, if any, would you issue?

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If you would issue charges, would you do so using an arrest warrant or a criminal summons?

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**Problem 3**

A Highway Patrol Trooper is seeking charges in connection with a driver attempting to unlawfully pass a group of bicyclists, and seriously injuring one of them in the process. The trooper explains that the motorist attempted to pass the group of cyclists on a two-lane road in a rural part of the county. There was a double yellow line on the road prohibiting passing. The driver attempted to pass the group anyway. When she saw another car approaching, she swerved back into her lane, hitting the bicycle at the front of the group. The cyclist was thrown from his bicycle. He sustained several broken bones, which will require surgery to repair. The trooper does not believe that the driver was impaired by alcohol or any other substance.

List every criminal charge for which you think there is probable cause:

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What charge or charges, if any, would you issue?

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If you would issue charges, would you do so using an arrest warrant or a criminal summons?

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**Problem 4**

A local police officer has arrested the defendant, who was discovered concealing merchandise (three containers of baby formula that retail for \$35 each) under her loose-fitting clothes at the neighborhood grocery store. She was past the register and out the door when the manager stopped her. After a previous shoplifting incident at the same store, the manager had told the defendant not to return to the store.

List every criminal charge for which you think there is probable cause:

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What charge or charges, if any, would you issue?

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# Forms

## FORMS

Arrest Warrant (AOC-CR-100) and Copy.....	Forms – Page 1
Criminal Summons (AOC-CR-113) and Copy .....	Forms – Page 5
Magistrate’s Order (AOC-CR-116) and Copy .....	Forms – Page 9
Search Warrant (AOC-CR-119) and Copy.....	Forms – Page 13
Conditions of Release and Release Order Form (AOC-CR-200) and Copy .....	Forms – Page 17
Appearance Bond for Pretrial Release (AOC-CR-201).....	Forms – Page 21
Additional Accommodation Bondsmen (AOC-CR-201A).....	Forms – Page 23
Surrender by Surety (AOC-CR-214).....	Forms – Page 25
Order for Arrest (AOC-CR-217) and Copy.....	Forms – Page 27
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Transmittal of Out-of-County Process (AOC-CR-236) .....	Forms – Page 35
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**All Forms Used by the AOC can be found at**

**<http://www.nccourts.org/Forms/FormSearch.asp>**

<b>File No.</b>	<b>Law Enforcement Case No.</b>	<b>LID No.</b>	<b>SID No.</b>	<b>FBI No.</b>	
<b>WARRANT FOR ARREST</b>					
<i>Offense</i>					
<b>STATE OF NORTH CAROLINA</b> In The General Court Of Justice District Court Division _____ County					
<b>THE STATE OF NORTH CAROLINA VS.</b>					
<i>Name And Address Of Defendant</i>					
<i>Race</i>	<i>Sex</i>	<i>Date Of Birth</i>	<i>Age</i>		
<i>Social Security No./Tax ID No.</i>		<i>Drivers License No. &amp; State</i>			
<i>Name Of Defendant's Employer</i>					
<i>Offense Code(s)</i>					
<i>Offense In Violation Of G.S.</i>					
<i>Date Of Offense</i>					
<i>Date Of Arrest &amp; Check Digit No. (As Shown On Fingerprint Card)</i>					
<i>Complainant (Name, Address Or Department)</i>					
<i>Names &amp; Addresses Of Witnesses (Including Counties &amp; Telephone Nos.)</i>					
				<i>Signature</i>	
				<i>Location Of Court</i>	
				<i>Court Date</i>	
				<i>Court Time</i>	
				<input type="checkbox"/> AM <input type="checkbox"/> PM	
				<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC	
				<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	
				(Over)	

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.

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.

**RETURN OF SERVICE**  
I certify that this Warrant was received and served as follows:

Date Received	Date Served	Time Served	AM	PM	Date Returned
			<input type="checkbox"/>	<input type="checkbox"/>	

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  
 Assst. 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
			<input type="checkbox"/>	<input type="checkbox"/>	

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  
 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 \_\_\_\_\_

Dep. CSC  Assst. CSC  
 Clerk Of Superior Court

District Attorney \_\_\_\_\_ Attorney For Defendant \_\_\_\_\_  
 Waived  Not Indigent  
 Denied

**PLEA:**  guilty  no contest  not guilty  
 guilty  no contest  not guilty  
 guilty  no contest  not guilty  
 guilty  no contest  not guilty

**VERDICT:**  guilty  not guilty  
 guilty  not guilty  
 guilty  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.  MCR.  DACJJ.\* 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), 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 judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 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 Or Magistrate (type or print) \_\_\_\_\_  
Signature Of District Court Judge Or Magistrate \_\_\_\_\_

**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 \_\_\_\_\_

Dep. CSC  Assst. CSC  
 Clerk Of Superior Court

<b>File No.</b>	<b>Law Enforcement Case No.</b>	<b>LID No.</b>	<b>SID No.</b>	<b>FBI No.</b>	
<b>WARRANT FOR ARREST</b>					
<b>STATE OF NORTH CAROLINA</b> In The General Court Of Justice District Court Division _____ County					
<b>THE STATE OF NORTH CAROLINA VS.</b>					
<i>Name And Address Of Defendant</i>					
<i>Race</i>	<i>Sex</i>	<i>Date Of Birth</i>	<i>Age</i>		
<i>Social Security No./Tax ID No.</i>		<i>Drivers License No. &amp; State</i>			
<i>Name Of Defendant's Employer</i>					
<i>Offense Code(s)</i>					
<i>Offense In Violation Of G.S.</i>					
<i>Date Of Offense</i>					
<i>Date Of Arrest &amp; Check Digit No. (As Shown On Fingerprint Card)</i>					
<i>Complainant (Name, Address Or Department)</i>					
<i>Names &amp; Addresses Of Witnesses (Including Counties &amp; Telephone Nos.)</i>					
				<i>Signature</i>	
				<i>Location Of Court</i>	
				<i>Court Date</i>	
				<i>Court Time</i>	
				<input type="checkbox"/> AM <input type="checkbox"/> PM	
				<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC	
				<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	
(Over)					

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.

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.

**RETURN OF SERVICE**  
I certify that this Warrant was received and served as follows:

Date Received	Date Served	Time Served	AM	PM	Date Returned
			<input type="checkbox"/>	<input type="checkbox"/>	

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  
 Assst. 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
			<input type="checkbox"/>	<input type="checkbox"/>	

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  
 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 \_\_\_\_\_

**REDELIVERY/REISSUANCE**  
Date \_\_\_\_\_ Signature \_\_\_\_\_  
 Dep. CSC  
 Assst. 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
			<input type="checkbox"/>	<input type="checkbox"/>	

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  
 District  Superior Court.  
 The current pretrial release order is modified as follows:

Date \_\_\_\_\_ Signature Of District Court Judge Or Magistrate \_\_\_\_\_

District Attorney \_\_\_\_\_ Attorney For Defendant \_\_\_\_\_  
 Waived  Not Indigent  
 Not Indigent  Denied

**PLEA:**  guilty  no contest  
 guilty  no contest  
 guilty  no contest  
 not guilty \_\_\_\_\_  
**VERDICT:**  guilty  
 guilty  
 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.  MCR.  DACJJ.\* 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), 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 judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 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 Or Magistrate (type or print) \_\_\_\_\_  
Signature Of District Court Judge Or Magistrate \_\_\_\_\_

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 \_\_\_\_\_

**CERTIFICATION**

Date \_\_\_\_\_ Signature Of Attorney \_\_\_\_\_  
 Dep. CSC  Assst. CSC  
 Clerk Of Superior Court

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

<b>File No.</b>	<b>Law Enforcement Case No.</b>	<b>LID No.</b>	<b>SID No.</b>	<b>FBI No.</b>	
<b>CRIMINAL SUMMONS</b>					
<b>STATE OF NORTH CAROLINA</b> In The General Court Of Justice District Court Division _____ County					
<b>To the defendant:</b> 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, willfully and feloniously did					
<b>THE STATE OF NORTH CAROLINA VS.</b>					
<i>Name And Address Of Defendant</i>					
<i>Race</i>	<i>Sex</i>	<i>Date Of Birth</i>	<i>Age</i>		
<i>Social Security No.</i>		<i>Drivers License No. &amp; State</i>			
<i>Name Of Defendant's Employer</i>					
<i>Offense Code(s)</i>		<i>Offense In Violation Of G.S.</i>			
<i>Date Of Offense</i>					
<i>Complainant (Name, Address Or Department)</i>					
<i>Names &amp; Addresses Of Witnesses (Including Counties &amp; Telephone Nos.)</i>					
<input type="checkbox"/> <b>Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan</b>				<i>Date Issued</i>	
<input type="checkbox"/> <b>The undersigned finds the following cause to set a court date more than one month from the issue of this summons:</b>				<i>Location Of Court</i>	
				<i>Court Date</i>	
<i>Signature</i>				<i>Court Time</i>	
<input type="checkbox"/> <b>Magistrate</b>				<input type="checkbox"/> <b>AM</b>	
<input type="checkbox"/> <b>Assistant CSC</b>				<input type="checkbox"/> <b>PM</b>	
<input type="checkbox"/> <b>Deputy CSC</b>					
<input type="checkbox"/> <b>Clerk Of Superior Court</b>					

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. Arrest and/or contempt for failure to appear is in addition to any sentence which may be imposed for the crime charged.

The undersigned finds the following cause to set a court date more than one month from the issue of this summons:

(Over)

If this Criminal Summons is not served within ninety (90) days or by the date the defendant is directed to appear, whichever is earlier, 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.

**RETURN OF SERVICE**

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

Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	

By personally serving this Criminal Summons on the defendant.  
 This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

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.

Signature Of Officer Making Return \_\_\_\_\_  
 Name Of Officer (type or print)

Department Or Agency Of Officer \_\_\_\_\_

**REDELIVERY/REISSUANCE**

Date	Signature	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Assst. CSC <input type="checkbox"/> CSC
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The above clerk finds the following cause to set a court date more than one month from reissue:

**RETURN FOLLOWING REDELIVERY/REISSUANCE**

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

Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	

By personally serving this Criminal Summons on the defendant.  
 This Criminal Summons WAS NOT served for the following reason:

6. complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within \_\_\_\_\_ days.

7. not be found in or on the premises of the complainant or \_\_\_\_\_ days.

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: \_\_\_\_\_

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 \_\_\_\_\_ 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 \_\_\_\_\_

Signature Of District Court Judge Or Magistrate

District Attorney	<input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied	Attorney For Defendant	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained
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**PLEA:**  guilty  no contest  not guilty  
 guilty  no contest  not guilty  
 guilty  no contest  not guilty  
 guilty  no contest  not guilty

**VERDICT:**  guilty  not guilty  
 guilty  not guilty  
 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.  MCR.  DACJJ.\* 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), 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).")**

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<b>PRIOR CONVICTIONS:</b>	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained	No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)
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**M.C.L.**  A1  1  2  3  
**M.C.L.**  A1  1  2  3  
**M.C.L.**  A1  1  2  3

**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.  MCR.  DACJJ.\* 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), 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).")**

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<b>File No.</b>	<b>Law Enforcement Case No.</b>	<b>LID No.</b>	<b>SID No.</b>	<b>FBI No.</b>	
<b>CRIMINAL SUMMONS</b>					
<b>STATE OF NORTH CAROLINA</b> In The General Court Of Justice District Court Division _____ County					
<b>To the defendant:</b> 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, willfully and feloniously did					
<b>THE STATE OF NORTH CAROLINA VS.</b>					
<i>Name And Address Of Defendant</i>					
<i>Race</i>	<i>Sex</i>	<i>Date Of Birth</i>	<i>Age</i>		
<i>Social Security No.</i>		<i>Drivers License No. &amp; State</i>			
<i>Name Of Defendant's Employer</i>					
<i>Offense Code(s)</i>		<i>Offense In Violation Of G.S.</i>			
<i>Date Of Offense</i>					
<i>Complainant (Name, Address Or Department)</i>					
<i>Names &amp; Addresses Of Witnesses (Including Counties &amp; Telephone Nos.)</i>					
<input type="checkbox"/> <b>Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan</b>				<i>Date Issued</i>	
<input type="checkbox"/> <b>The undersigned finds the following cause to set a court date more than one month from the issue of this summons:</b>				<i>Location Of Court</i>	
				<i>Court Date</i>	
<i>Signature</i>				<input type="checkbox"/> <b>Magistrate</b>	
				<input type="checkbox"/> <b>Deputy CSC</b>	
				<input type="checkbox"/> <b>Assistant CSC</b>	
				<input type="checkbox"/> <b>Clerk Of Superior Court</b>	
				<input type="checkbox"/> <b>AM</b>	
				<input type="checkbox"/> <b>PM</b>	

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. Arrest and/or contempt for failure to appear is in addition to any sentence which may be imposed for the crime charged.

The undersigned finds the following cause to set a court date more than one month from the issue of this summons:

(Over)

If this Criminal Summons is not served within ninety (90) days or by the date the defendant is directed to appear, whichever is earlier, 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.

**RETURN OF SERVICE**

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

Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	

By personally serving this Criminal Summons on the defendant.  
 This Criminal Summons WAS NOT served for the following reason:

The above clerk finds the following cause to set a court date more than one month from reissue:

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.

Signature Of Officer Making Return \_\_\_\_\_  
 Name Of Officer (type or print)

Department Or Agency Of Officer \_\_\_\_\_

**REDELIVERY/REISSUANCE**

Date	Signature	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Assst. CSC <input type="checkbox"/> CSC
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The above clerk finds the following cause to set a court date more than one month from reissue:

**RETURN FOLLOWING REDELIVERY/REISSUANCE**

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

Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	

By personally serving this Criminal Summons on the defendant.

This Criminal Summons WAS NOT served for the following reason:

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.

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  District  Superior Court.

The current pretrial release order is modified as follows:

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District Attorney	<input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied	Attorney For Defendant	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained	<b>PRIOR CONVICTIONS:</b> No./Level: 0 <input type="checkbox"/> I (0) — <input type="checkbox"/> II (1-4) — <input type="checkbox"/> III (5+)
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**PLEA:**  guilty  no contest  not guilty  
 guilty  no contest  not guilty  
 guilty  no contest  not guilty  
 guilty  no contest  not guilty

**VERDICT:**  guilty  not guilty  
 guilty  not guilty  
 guilty  not guilty  
 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.  MCR.  DACJJ.\* 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.

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

<b>File No.</b>	<b>Law Enforcement Case No.</b>	<b>LID No.</b>	<b>SID No.</b>	<b>FBI No.</b>	
<b>MAGISTRATE'S ORDER</b>		<b>STATE OF NORTH CAROLINA</b> In The General Court Of Justice District Court Division			
Offense		County			
<p><b>THE STATE OF NORTH CAROLINA VS.</b></p> <p>Name And Address Of Defendant</p>					
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.)					
<input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Location Of Court Court Date Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Signature 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.			

(Over)

<b>District Attorney</b>	<b>Attorney For Defendant</b>	<b>PRIOR CONVICTIONS:</b>	
<input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained	No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)	
<b>PLEA:</b> <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty	<b>VERDICT:</b> <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty	M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3	

**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.  MCP.  DAC.\* 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.

<b>Fine</b>	<b>Restitution**</b>	<b>Attorney's Fee</b>	<b>Community Service Fee</b>	<b>Other</b>
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

\*\*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 judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 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.

**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:

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<b>Signature Of District Court Judge Or Magistrate</b>	<b>Signature Of District Court Judge Or Magistrate</b>
_____	_____

**WAIVER OF PROBABLE CAUSE HEARING**

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

<b>Date Waived</b>	<b>Signature Of Defendant</b>
_____	_____

<b>Signature Of Attorney</b>	<b>Signature</b>
_____	_____

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 \_\_\_\_\_

Dep. CSC  Assl. CSC  CSC

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

<b>File No.</b>	<b>Law Enforcement Case No.</b>	<b>LID No.</b>	<b>SID No.</b>	<b>FBI No.</b>	
<b>MAGISTRATE'S ORDER</b>		<b>STATE OF NORTH CAROLINA</b> In The General Court Of Justice District Court Division			
Offense _____ County _____					
<p><b>THE STATE OF NORTH CAROLINA VS.</b></p> <p>Name And Address Of Defendant</p>					
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.)					
<input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Location Of Court Court Date Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM	
Signature _____					
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.					

(Over)

District Attorney	<input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied	Attorney For Defendant	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained
<b>PLEA:</b> <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty		<b>VERDICT:</b> <input type="checkbox"/> guilty <input type="checkbox"/> M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> guilty <input type="checkbox"/> M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> guilty <input type="checkbox"/> M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> not guilty	

Fine \$	Restitution** \$	Attorney's Fee \$	Community Service Fee \$	Other \$
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\*\*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 judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 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
<b>CERTIFICATION</b>		
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
		<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asslt. CSC <input type="checkbox"/> CSC

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

<b>APPEAL ENTRIES</b>	
<input type="checkbox"/> The defendant, in open court, gives notice of appeal to the District <input type="checkbox"/> Superior Court.	
<input type="checkbox"/> The current pretrial release order is modified as follows:	
Date	Signature Of District Court Judge Or Magistrate

<b>WAIVER OF PROBABLE CAUSE HEARING</b>	
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.

# STATE OF NORTH CAROLINA

In The General Court Of Justice  
District/Superior Court Division

County

## SEARCH WARRANT

### IN THE MATTER OF

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.

### RETURN OF SERVICE

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

Date Received	Time Received	<input type="checkbox"/> AM	<input type="checkbox"/> PM
Date Executed	Time Executed	<input type="checkbox"/> AM	<input type="checkbox"/> PM

I made a search of \_\_\_\_\_

- 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.

Name Of Officer Making Return (type or print)

Signature Of Officer Making Return

Department Or Agency Of Officer

Incident Number

Date Issued

Time Issued  AM  PM

Name (type or print)

Signature

Deputy CSC  Assistant CSC  CSC  Magistrate  District Ct. Judge  Superior Ct. Judge

**NOTE:** When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).

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  AM  PM

Name Of Magistrate (type or print)

Signature Of Magistrate

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

Date

Time  AM  PM

Name Of Clerk (type or print)

Signature Of Clerk

Dep. CSC  
 Asst. CSC  
 CSC

Original - File Copy - For Search of a Person, to Person from Whom Items Taken

Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon (Over)



File No.

# STATE OF NORTH CAROLINA

In The General Court Of Justice  
District/Superior Court Division

County

## SEARCH WARRANT

### IN THE MATTER OF

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.

### RETURN OF SERVICE

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

Date Received	Time Received
	<input type="checkbox"/> AM <input type="checkbox"/> PM
Date Executed	Time Executed
	<input type="checkbox"/> AM <input type="checkbox"/> 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.

Date Issued \_\_\_\_\_ Time Issued  AM  PM Name (type or print) \_\_\_\_\_ Signature \_\_\_\_\_

Deputy CSC  Assistant CSC  CSC  Magistrate  District Ct. Judge  Superior Ct. Judge

**NOTE:** When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).

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  AM  PM Name Of Magistrate (type or print) \_\_\_\_\_ Signature Of Magistrate \_\_\_\_\_

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	<input type="checkbox"/> Dep. CSC
	<input type="checkbox"/> AM <input type="checkbox"/> PM			<input type="checkbox"/> Asst. CSC
				<input type="checkbox"/> CSC

Signature Of Officer Making Return

Department Or Agency Of Officer \_\_\_\_\_ Incident Number \_\_\_\_\_

Original - File Copy - For Search of a Person, to Person from Whom Items Taken

Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon (Over)



STATE OF NORTH CAROLINA

File No.

County

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 (NOTE: Give a copy of this order to any surety who posts bond.)
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. 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).
This Order is entered upon defendant's warrantless arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated.
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:
[for charges covered by G.S. 15A-534.1 (domestic violence) or 15A-534.7 (threat of mass violence)] 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



STATE OF NORTH CAROLINA

File No.

County

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 (NOTE: Give a copy of this order to any surety who posts bond.)
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. 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).
This Order is entered upon defendant's warrantless arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated.
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: [for charges covered by G.S. 15A-534.1 (domestic violence) or 15A-534.7 (threat of mass violence)] 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



STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

Name And Mailing Address Of Defendant

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 By Defendant (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. Any undersigned professional bondsman, bail agent, or runner attests that the AFFIDAVIT on the reverse side is complete and true. If a cash deposit is indicated below, surety(ies) has deposited the cash to secure the obligation as surety(ies) on this bond with the understanding that the deposit will be returned to the surety(ies) upon termination of that obligation as provided by law, and that it will NOT be available to satisfy defendant's obligations. (For cash bond, see note on reverse side.)

Date Of Execution Of Bond

Signature Of Defendant

ACCOMMODATION BONDSMAN

See attached AOC-CR-201A for additional accommodation bondsmen executing this bond.

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Telephone No.

Telephone No.

PROFESSIONAL BONDSMAN

Name Of Bondsman

Name Of Runner, If Applicable

License No. Of Bondsman

Telephone No.

License No. Of Runner

Telephone No.

INSURANCE COMPANY

Name Of Insurance Company

Name Of Bail Agent

Power Of Appointment No. Of Bail Agent

License No. Of Bail Agent

Telephone No.

SIGNATURE

Signature Of Surety

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

SWORN/AFFIRMED 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)]

- 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. 4/18

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

Original - File (Over)

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**CONDITIONS**

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required. 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, unless terminated earlier by operation of law or order of the court. If the defendant appears as ordered until termination of the Bond, then the bond is to be void, but if the defendant fails to appear as required, 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 the attached AOC-CR-201A, 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 agents], and runners shall 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	Name Of Custodian (type or print)	Signature Of Custodian	<input type="checkbox"/> Sheriff <input type="checkbox"/> Deputy Sheriff
			<input type="checkbox"/> Other _____

**NOTES ON CASH BONDS:**

- (1) **To Official Taking The Bond.** Use this form for all cash bonds. 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 telephone number at the top of Side One. Check "Cash Appearance Bond By Defendant." 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 telephone number at the top of Side One. Check "Surety Appearance Bond." Have defendant sign. Enter name, address and telephone number 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.** If case disposed without forfeiture, disburse cash as follows: (1) If "Cash Appearance Bond By Defendant" checked on Side One, disburse to defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" is checked on Side One, disburse only to the person(s) named under "Accommodation Bondsman."
- (3) **Bond By Insurance Company Or Professional Bondsman As Surety Is Same As Cash Except In Child Support.** G.S. 15A-531(4) provides that an appearance bond executed by an insurance company or a professional bondsman (or a bail agent or runner on behalf of one of those sureties) is considered the same as a cash deposit, except in child support contempt proceedings for which only cash may satisfy a cash bond requirement.

**STATE VERSUS**

File No.



Name Of Defendant

**ADDITIONAL ACCOMMODATION BONDSMAN**

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Telephone No.

Telephone No.

**SIGNATURE**

Signature Of Surety

Signature Of Surety

**SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

**SWORN/AFFIRMED 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

Telephone No.

Telephone No.

**SIGNATURE**

Signature Of Surety

Signature Of Surety

**SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

**SWORN/AFFIRMED 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

Telephone No.

Telephone No.

**SIGNATURE**

Signature Of Surety

Signature Of Surety

**SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

**SWORN/AFFIRMED 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)]

# STATE OF NORTH CAROLINA

File No. (lead file no. listed on Appearance Bond)

County Where Case Pending (if different from County Of Surrender)

County Of Surrender

In The General Court Of Justice  
 District  Superior Court Division

## STATE VERSUS

## SURRENDER OF DEFENDANT BY SURETY

G.S. 15A-534, 15A-540, 58-71-20

Name Of Defendant

Name Of Surrendering Surety(ies) (required)

Name Of Surrendering Agent Of Surety (if applicable)

Date Of Appearance Bond

Amount Of Bond

\$

Additional File Nos. And Offenses (listed on Appearance Bond)

The undersigned hereby surrenders the defendant to the Sheriff of the above-captioned County Of Surrender, and in support of said surrender shows the following:

### PRE-BREACH SURRENDER

G.S. 15A-540(a), 58-71-20

### POST-BREACH SURRENDER

G.S. 15A-540(b)

**NOTE TO SURETY:** Complete this section if the surrender occurs before a breach of the bond (i.e., if the defendant has not failed to appear).

**NOTE TO SURETY:** Complete this section if the surrender occurs after a breach of the bond (i.e., after a failure to appear).

This surrender is offered before there has been a breach of the bond obligation. The County Of Surrender shown above is the county where: (check only one)

- the defendant is bonded to appear.  
 the defendant was bonded (i.e., where the defendant was in custody when the bond was executed).

Upon delivery of this surrender form to the court with the custodian's completed receipt below, I hereby apply to the clerk for exoneration from the bond obligation pursuant to G.S. 15A-540(a).

This surrender is offered after there has been a breach of the bond obligation. The County Of Surrender shown above is the county where: (check only one)

- the defendant is bonded to appear.  
 the defendant was bonded (i.e., where the defendant was in custody when the bond was executed).  
 the county where the defendant currently is in custody.

A copy of the bail bond, forfeiture, or release order is attached.

Date

Signature Of Surety/Agent

Date

Signature Of Surety/Agent

### RECEIPT BY CUSTODIAN

The undersigned custodian hereby accepts the surrender by the surety/agent and acknowledges that the defendant now is in custody of the County Of Surrender identified above.

Date

Name Of Custodian/Jailer (Type Or Print)

Signature Of Custodian/Jailer

### NOTES TO CUSTODIAN:

- (1) Surrender by a surety is governed by G.S. 15A-540 and G.S. 58-71-20. You can determine whether or not the person offering the surrender is the surety on the bond or an agent of that surety by reviewing the Appearance Bond form (AOC-CR-201) or a Bond Forfeiture Notice (AOC-CR-213) issued for a forfeiture of that bond. Both forms identify the surety. If you have any questions about whether or not a person offering a defendant for surrender is authorized to do so, you should consult with your supervising authority or agency counsel; judicial officials may not give sheriffs' personnel advice or approval for the surrender process.
- (2) If the surety completed the section for the Pre-Breach Surrender, above, the previous Conditions Of Release And Release Order (AOC-CR-200) for which the appearance bond was executed remains in effect. You must obtain a copy of that release order from the court in order to determine the defendant's current conditions of release.
- (3) If the surety completed the section for Post-Breach Surrender, above, provide the surrendering surety or agent with a copy of this form with the Receipt By Custodian completed. Then without unnecessary delay, take the defendant before a judicial official along with the completed original of this form and all documentation attached by the surety for entry of a new commitment order and conditions of release.

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

Original and Attachments-Clerk Copy-Surety Copy-Custodian

## NOTES TO MAGISTRATE:

- (1) *A judicial official may not accept or approve a surrender. Surrender is to the Sheriff, only, not to a judicial official. G.S. 15A-540. Sureties who wish to surrender a defendant should be directed to the Sheriff. Custodial personnel with questions about the validity of a proposed surrender should be directed to consult with their supervising authority or agency counsel. You should conduct an appearance for the defendant only if the surety has indicated a Post-Breach Surrender on the reverse and only after the custodian has brought you the original of this form with a completed Receipt By Custodian.*
- (2) *If the defendant was surrendered pursuant to a Pre-Breach Surrender, the previous Conditions Of Release And Release Order (AOC-CR-200) for which the appearance bond was posted remains in effect. You may not enter a new release order for a pre-breach surrender, unless (i) the defendant has had no appearance before the court on any case covered by the bond for which he/she was surrendered, and (ii) you entered the original release order for which the bond was posted. G.S. 15A-534(e). Any court date already scheduled for the defendant remains the same.*
- (3) *If the defendant was surrendered pursuant to a Post-Breach Surrender, 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 for which the defendant was surrendered. G.S. 15A-534(d1) provides that the official shall impose conditions of release as follows:*
  - a. *If an order for arrest (OFA) was issued for the failure to appear and any conditions of release were recommended in that OFA, you must at a minimum impose the conditions of release recommended in the OFA (even if the OFA is recalled pursuant to Note (4), below).*
  - b. *If there were no conditions recommended in an OFA issued for the failure to appear, you must require a secured bond at least double the amount of the most recent secured or unsecured bond.*
  - c. *If there were no conditions recommended in an OFA issued for the failure to appear, and there was no prior monetary condition of release, you must require a secured bond of at least \$1,000.*
- (4) *If an OFA 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 set in the order for arrest, if any. Arrange to have the OFA served on the defendant as quickly as possible, but do not detain the defendant beyond the time when he or she satisfies the conditions of release imposed in the new release order. If the OFA cannot be served before the defendant satisfies the new conditions of release, arrange to have the OFA recalled as quickly as possible to avoid a duplicate arrest of the defendant.*
- (5) *If the defendant was surrendered in a county other than the county where the defendant is to appear, return the original OFA, if any, with return of service completed, along with all original documentation for the defendant's surrender, conditions of release, and any new bond posted, to the county where the defendant is to appear.*

File No.	Law Enforcement Case No.	LID No.	SID No.	FBI No.
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**ORDER FOR ARREST**

**STATE OF NORTH CAROLINA**  
 In The General Court Of Justice  
 District  Superior Court Division  
 \_\_\_\_\_ County

# \_\_\_\_\_

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		
\$ _____			
<b>TRUE BILL OF INDICTMENT ONLY</b>			
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)			
Offense Code	Offense In Violation Of G.S.		
Date Of Offense	Date Issued	Signature	Location Of Court
			Court Date
		<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> DC Judge <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> SC Judge	Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM

- 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.

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.

**RETURN OF SERVICE**

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

Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	

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)

**REDELIVERY/REISSUANCE**

Date	Signature	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC
------	-----------	---

**RETURN FOLLOWING REDELIVERY/REISSUANCE**

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

Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	

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

File No.	Law Enforcement Case No.	LID No.	SID No.	FBI No.
<b>ORDER FOR ARREST</b>				
<b>STATE OF NORTH CAROLINA</b>				
In The General Court Of Justice				
<input type="checkbox"/> District <input type="checkbox"/> Superior Court Division				
_____ County				

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
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> DC Judge <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> SC Judge		<input type="checkbox"/> AM <input type="checkbox"/> PM

File No.	Law Enforcement Case No.	LID No.	SID No.	FBI No.
<b>ORDER FOR ARREST</b>				
<b>STATE OF NORTH CAROLINA</b>				
In The General Court Of Justice				
<input type="checkbox"/> District <input type="checkbox"/> Superior Court Division				
_____ County				

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
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> DC Judge <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> SC Judge		<input type="checkbox"/> AM <input type="checkbox"/> PM

<b>TRUE BILL OF INDICTMENT ONLY</b> Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)	Date Issued
Offense Code	Offense In Violation Of G.S.

Date Defendant Failed To Appear	Type Of Bond
Amount Of Bond	\$
Race	Sex
Date Of Birth	Age
Social Security No.	Drivers License No. & State
Name And Address of Defendant's Employer	

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.

**RETURN OF SERVICE**

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

Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	

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	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	

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

(TYPE OR PRINT IN BLACK INK)

File No.

# STATE OF NORTH CAROLINA

Additional File Nos.

\_\_\_\_\_ County

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.

G.S. 7A-146(11), 7A-292(15), 7A-450, 7A-451(a), 15A-1340.23(d)

Date Of Offense

Most Serious Class Of Offense

Offense(s) (List Offense(s) Only If File No. Has Not Been Assigned)

**INSTRUCTIONS:** The Court should complete Part I. or Part II. of this form. 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 OF COUNSEL

From the petition heard in this matter, the affidavit made by the applicant named above, and the inquiry made by the Court, which is documented in the record, it is determined that the applicant is **not** financially able to provide the necessary expenses of legal representation, and (check one):

- 1. is charged with a felony, a misdemeanor other than a Class 3, or a Class 3 misdemeanor that was committed before December 1, 2013, or is a petitioner or respondent in a proceeding or action listed in G.S. 7A-451(a); it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law; and that the attorney named below or the public defender in this judicial district shall provide representation.
- 2. is charged with a Class 3 misdemeanor that was committed on or after December 1, 2013, and (check one):
  - a. the Court has found that the defendant has more than three prior convictions; it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law.
  - b. the Court has not found at this time that the defendant has more than three prior convictions, the defendant is in custody, the Court does not intend at this appearance to modify the defendant's conditions of release to allow the defendant to be released pending trial without posting a secured bond, and the defendant has a constitutional right to meaningful access to the courts; it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law; and that the attorney named below or the public defender in this judicial district shall provide representation that is limited pursuant to G.S. 15A-141(3) and 15A-143 to the time period of the applicant's pretrial confinement on the Class 3 misdemeanor charge.

It is further ORDERED that the defendant shall be represented by:

- the attorney named below.       the public defender in this judicial district.

Name Of Appointed Attorney (If Applicable)

Next Court Date

Date

Signature

Judge    Clerk Of Superior Court    Asst. CSC    Deputy CSC    Magistrate

**NOTE:** A magistrate 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).

**II. DENIAL OF COUNSEL**

From the petition heard in this matter, the affidavit made by the applicant named above, and the inquiry made by the Court, which is documented in the record, it is determined that the applicant (*check all that apply*):

- 1. is charged with a felony, a misdemeanor higher than a Class 3, or a Class 3 misdemeanor that was committed before December 1, 2013, but 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. is charged with a Class 3 misdemeanor that was committed on or after December 1, 2013, the Court has found that the defendant has fewer than four prior convictions, and the case shall proceed as a fine only case; it is ORDERED that the defendant's petition is denied.
- 3. 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.
- 4. is financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is not indigent and his/her petition is denied.

Date	Signature	<input type="checkbox"/> Judge <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Magistrate
------	-----------	--

**NOTE:** A magistrate 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).

(TYPE OR PRINT IN BLACK INK) In The General Court Of Justice

District  Superior Court Division

File No.

Additional File Nos.

# STATE OF NORTH CAROLINA

County

Name Of Applicant

## AFFIDAVIT OF INDIGENCY

G.S. 7A-450 et seq.

Street Number And Street Name, Including Apartment Or Unit Number If Applicable

Offense(s)

City, State And Zip Code

Full Permanent Mailing Address Of Applicant (If Different Than Above)

**Applicant:** Do you have other pending criminal charge(s) in which a lawyer has been appointed?  Yes  No  
Name Of Lawyer

Telephone Number Of Applicant

Date Of Birth

Full Social Security No. Of Applicant

Has No Social Security No.

Defendant  Parent/Guardian/Trustee

### MONTHLY INCOME (money you make)

### MONTHLY EXPENSES (money you pay out)

Employment - Applicant	\$
Name And Address Of Applicant's Employer <i>(If not employed, state reason; if self-employed, state trade)</i>	
Other Income <i>(Welfare, Food Stamps, S/S, Pensions, etc.)</i>	\$
Employment - Spouse	\$
Name And Address Of Spouse's Employer	
<b>Total Monthly Income</b>	\$

Number Of Dependents	
Shelter <input type="checkbox"/> Buying <input type="checkbox"/> Renting	\$
Food <i>(including Food Stamps)</i>	\$
Utilities <i>(power, water, heating, phone, cable, etc.)</i>	\$
Health Care	\$
Installment Payments <input type="checkbox"/> Vehicle <input type="checkbox"/> Other	\$
Car Expenses <i>(gas, insurance, etc.)</i>	\$
Support Payments	\$
Other: <i>(specify)</i>	\$
<b>Total Monthly Expenses</b>	\$

### DESCRIPTION OF ASSETS AND LIABILITIES

### ASSETS (things you own)

### LIABILITIES (amounts you owe)

Cash On Hand And In Bank Accounts <i>(List Name Of Bank &amp; Account No.)</i>	\$	
Money Owed To Or Held For Applicant	\$	
Motor Vehicles <i>(List Make, Model, Year)</i>	<i>(Fair Market Value)</i>	<i>(Balance Due)</i>
	\$	\$
Real Estate	<i>(Fair Market Value)</i>	<i>(Balance Due)</i>
	\$	\$
Personal Property	<i>(Fair Market Value)</i>	<i>(Balance Due)</i>
	\$	\$
Other Debts		\$
Last Income Tax Filed 20 _____ <input type="checkbox"/> Refund <input type="checkbox"/> Owe	\$	\$
Other	\$	\$
<b>Total Assets And Liabilities</b>	\$	\$

Bond Type

Amount

By Whom Posted

**NOTE:** Read the notice on the reverse side before completing this form.

## 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*

<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		<i>Date</i>
<i>Date</i>	<i>Signature</i>	<i>Signature Of Applicant</i>
<input type="checkbox"/> <i>Deputy CSC</i> <input type="checkbox"/> <i>Assistant CSC</i> <input type="checkbox"/> <i>Clerk Of Superior Court</i> <input type="checkbox"/> <i>Magistrate</i>		<i>Name Of Applicant (Type Or Print)</i>
<input type="checkbox"/> <i>Notary</i>	<i>Date My Commission Expires</i>	<input type="checkbox"/> <i>Defendant</i> <input type="checkbox"/> <i>Parent/Guardian/Trustee</i> <input type="checkbox"/> _____
<b>SEAL</b>	<i>County Where Notarized</i>	

**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.*

<i>Name Of Parent/Guardian Or Trustee</i>
<i>Address</i>
<i>City, State, Zip</i>

**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.

# STATE OF NORTH CAROLINA

File No.

County

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)

## 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**

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

**STATE VERSUS**

Name Of Defendant

**CONDITIONS OF RELEASE  
ABSTINENCE FROM ALCOHOL AND  
CONTINUOUS ALCOHOL MONITORING**

G.S. 15A-534

**NOTE:** Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order, or AOC-CR-922, Release Order For Juvenile Transferred To Superior Court For Trial.

**ORDER**

In addition to the conditions of release imposed on the attached AOC-CR-200 or AOC-CR-922, incorporated herein by reference:

- 1. (for offenses committed on or after December 1, 2011, but before December 1, 2012) The undersigned judicial official finds that 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 therefore is ORDERED to abstain from alcohol consumption 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. G.S. 15A-534(i).
- 2. (for offenses committed on or after December 1, 2012) The defendant is ORDERED to abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney. G.S. 15A-534(a).
- 3. It is further ORDERED that the following conditions related to defendant's release on continuous alcohol monitoring shall apply:

Date

Signature Of Judicial Official

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

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division**STATE VERSUS**

Name Of Defendant

**DETENTION OF IMPAIRED DRIVER**

Date Of Birth

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 <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Clerk Of Superior Court
Signature Of Judicial Official		<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> District Court Judge
		<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> 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 <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Clerk Of Superior Court
Signature Of Judicial Official		<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> District Court Judge
		<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> 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).

**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. Use form AOC-CR-271 for this purpose. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).

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 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.

In The General Court Of Justice
Before The Magistrate

County

STATE VERSUS

IMPLIED CONSENT OFFENSE NOTICE

Name Of Defendant

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 for the purposes of observing me at the jail or administering an additional chemical analysis.

NOTE TO DEFENDANT: You still may contact other persons for other purposes, like an attorney, a bail bondsman, family members, or friends, according to the jail's regular procedures for those contacts.

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 for the purposes of observing him/her at the jail or administering an additional chemical analysis.

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

AM
PM

Signature Of Magistrate

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

Date

Time

AM
PM

Signature

Magistrate Assistant CSC
Deputy CSC Clerk Of Superior Court

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

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

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

File No.

County

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

G.S. 15A-1345(b1)

Name Of Defendant

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 (time) 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.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Before the Clerk District Superior Court Division

IN THE MATTER OF

DIRECT CRIMINAL CONTEMPT/
SUMMARY PROCEEDINGS/
FINDINGS AND ORDER

Name And Address Of Contemnor

G.S. 5A-11, -12, -13, -14

Race Sex Date Of Birth Age

Date Time AM PM Place

On the date, time and place of hearing as stated above, the undersigned judicial official conducted:

- an initial appearance a probable cause hearing a trial
a first appearance an estates proceeding other:
a pre-trial motion hearing a special proceeding

The Court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did

The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond.

(NOTE: The contemnor should be given an opportunity to explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes act of contempt.)

The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority.

Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor

NOTE TO COURT: If suspending a sentence for contempt, impose judgment on form AOC-CR-604.

- be censured for contempt.
shall pay a fine of \$ (max. \$500.00). shall pay the costs of court.
be imprisoned for a term of hours days in the custody of the Sheriff Other:
The contemnor shall be given credit for days' pretrial confinement. Work release is recommended.
This sentence shall run at the expiration of the sentence imposed in file number

Date Name Of Judicial Official (type or print) Signature Of Judicial Official

ORDER OF COMMITMENT/APPEAL ENTRIES

- It is ORDERED that the Clerk deliver two certified copies of this Findings and Order to the sheriff or other qualified officer and that the officer cause the contemnor to be delivered with these copies to the custody of the sheriff of the county named above to serve the sentence imposed or until the contemnor shall have complied with the conditions of release pending appeal.
The contemnor gives notice of appeal from this Findings and Order to the Superior Court.
The contemnor gives notice of appeal from this Findings and Order in the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

NOTE TO COURT: If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17. On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.

Date Name Of Judicial Official (type or print) Signature Of Judicial Official

CERTIFICATION

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

Date Signature SEAL

Date Certified Copies Delivered To Sheriff Deputy CSC Assistant CSC Clerk Of Superior Court

Original - File Copy - Sheriff

**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.

**COURT USE ONLY**

Signature Of Magistrate/Deputy/Assistant/CSC \_\_\_\_\_ Date \_\_\_\_\_

Signature Of District Court Judge \_\_\_\_\_ Date \_\_\_\_\_

I certify that this judgment is a true copy.

**PLA:**  guilty/resp.  no contest  not guilty/resp.

**VERDICT:**  guilty/resp.  not guilty/resp.

**FINDING:**  guilty/resp.  not guilty/resp.

**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 expiration of sentence in \_\_\_\_\_.

The Court finds just cause to waive costs as ordered on attached  AOC-CR-618.  Other: \_\_\_\_\_.

**COMMITMENT:** It is ORDERED that the Clerk deliver  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 \_\_\_\_\_

Date \_\_\_\_\_ Signature Of Deputy/Assistant/CSC \_\_\_\_\_

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

MISD. CLASS:  A1  1  2  3  V/D

MISD. CLASS:  A1  1  2  3  V/D

**VERDICT:**  guilty/resp.  not guilty/resp.

**FINDING:**  guilty/resp.  not guilty/resp.

**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 expiration of sentence in \_\_\_\_\_.

The Court finds just cause to waive costs as ordered on attached  AOC-CR-618.  Other: \_\_\_\_\_.

**COMMITMENT:** It is ORDERED that the Clerk deliver  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 \_\_\_\_\_

Date \_\_\_\_\_ Signature Of Deputy/Assistant/CSC \_\_\_\_\_

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

DL  DCI  Other # Of Chgs \_\_\_\_\_ Interpreter Needed  SP  OTS  ASL

**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 a 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 18

In Vicinity/City Of \_\_\_\_\_ At/Near Intersection \_\_\_\_\_

Wit. \_\_\_\_\_ Chemical Analyst  Refused  AC  Blood

ORIGINAL-COURT COPY

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. 20-141.1.

77.  work zone. G.S. 20-141.1(2).  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(a).  was revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) G.S. 20-28(a1).

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 (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 \_\_\_\_\_

**WITNESSES**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone



## NOTICE TO DEFENDANT

If you fail to appear in court at the time, place, and location specified on the front side, or to dispose of this case prior to your court date as outlined below, **CRIMINAL PROCESS MAY BE ISSUED AGAINST YOU AND SUBSTANTIAL ADDITIONAL FEES MAY BE ASSESSED**. 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 by the North Carolina Division of Motor Vehicles. 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 driving and insurance records or possible license revocation. If you have any questions regarding your legal rights and obligations, consult a licensed attorney.

**1. You must appear** in District Court at the time, place, and location specified on the front side. If this is a speeding offense, you may be able to dispose of it **online** without appearing in court at **OnlineServices.NCCourts.org**, but if you do not dispose of the offense online prior to your court date, you must appear in court.

**2. You have the following options for disposing of the charge without appearing in court:**

- You may dispose of the offense **online** without appearing in court by completing one of the options at **OnlineServices.NCCourts.org**. The online options available to you will vary depending on the offense.
- You may dispose of the offense without appearing in court by using US Mail or by visiting the office of the clerk or the magistrate. To do so, see the "INSTRUCTIONS FOR WAIVING BY MAIL OR IN PERSON" below.

**If you do not use one of these two options prior to your court date, you must appear in court** at the time, place, and location specified on the front side.

**INSTRUCTIONS FOR WAIVING BY MAIL OR IN PERSON:** You do not have to appear in District Court at the time, place, and location 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 costs. You may do so by mail or in person 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. You may also pay by credit card, in person, in the clerk's office.

**PERSONAL CHECKS WILL NOT BE ACCEPTED.**

**PERSONAL CHECKS WILL NOT BE ACCEPTED.**

**PERSONAL CHECKS WILL NOT BE ACCEPTED.**

**3. You do not have to appear** in District Court at the time, place, and location specified on the front side 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 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, place, and location specified on the front side.

**WARNING:** If you decide to plead Guilty/Responsible, you should do so **promptly** to minimize your 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.

### 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 that 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 and insurance records or the suspension or revocation of my drivers license.

Amount Of Fine/Penalty	Costs
\$ _____	\$ _____
Total	
\$ _____	

Date	Signature Of Defendant

**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.

**COURT USE ONLY**

Signature Of Magistrate/Deputy/Assistant/CSC \_\_\_\_\_ Date \_\_\_\_\_

Signature Of District Court Judge \_\_\_\_\_ Date \_\_\_\_\_

I certify that this judgment is a true copy.

**PLA:**  guilty/resp.  no contest  not guilty/resp.

**VERDICT:**  guilty/resp.  not guilty/resp.

**FINDING:**  guilty/resp.  not guilty/resp.

**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 expiration of sentence in \_\_\_\_\_.

The Court finds just cause to waive costs as ordered on attached  AOC-CR-618.  Other: \_\_\_\_\_.

**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 \_\_\_\_\_

Date \_\_\_\_\_ Signature Of Deputy/Assistant/CSC \_\_\_\_\_

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

MISD. CLASS:  A1  1  2  3  V/D

MISD. CLASS:  A1  1  2  3  V/D

**VERDICT:**  guilty/resp.  not guilty/resp.

**FINDING:**  guilty/resp.  not guilty/resp.

**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 expiration of sentence in \_\_\_\_\_.

The Court finds just cause to waive costs as ordered on attached  AOC-CR-618.  Other: \_\_\_\_\_.

**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 \_\_\_\_\_

Date \_\_\_\_\_ Signature Of Deputy/Assistant/CSC \_\_\_\_\_

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

DL  DCI  Other # Of Chgs \_\_\_\_\_ Interpreter Needed  SP  OTS  ASL

**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 a 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 18

In Vicinity/City Of \_\_\_\_\_ At/Near Intersection \_\_\_\_\_

Wit. \_\_\_\_\_ Chemical Analyst \_\_\_\_\_  Refused  AC  Blood

SHP DIVISION COPY/CSC AUDIT COPY

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(i)(2).  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(a).  33.  was revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) G.S. 20-28(a1).  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. 20-136.7(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 \_\_\_\_\_

<b>MAGISTRATE'S ORDER - MISDEMEANOR ONLY</b>	<b>OFFICER'S NOTES</b>	
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.	Signature Of Magistrate/Deputy/Assistant/CSC Date	

File No. <b>NORTH CAROLINA UNIFORM CITATION</b> <i>Defendant Is To Appear In District Court</i>	N.C. Day Of Week: Month, Day, Year, Time <input type="checkbox"/> AM <input type="checkbox"/> PM	<b>THE STATE OF NORTH CAROLINA VS.</b> Name Of Defendant: _____ Address: _____ City, State, Zip: _____ Drivers License No., State, CDL, Class: _____ Race, Sex, Date Of Birth, Age: _____ 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): _____
I acknowledge receipt of this Citation <input type="checkbox"/> 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: _____		
<b>DEPARTMENTAL USE ONLY</b>		
Officer	No. Troop District	
SHP Code	<input type="checkbox"/> N.C. Patrol <input type="checkbox"/>	Police/Sheriff
Area	Wea. Vis. Traffic Accident	Speed
On Highway No./Street	<input type="checkbox"/> Injury Or Serious Injury <input type="checkbox"/> Passenger(s) Under 18	
In Vicinity/City Of	At/Near Intersection	
Wit.	Chemical Analyst	<input type="checkbox"/> AC <input type="checkbox"/> Blood <input type="checkbox"/> Refused

AOC-CR-500, Rev. 3/17, © 2017 Administrative Office of the Courts

OFFICER'S COPY

- The undersigned officer has probable cause to believe that on or about \_\_\_\_\_ (a.) 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. 20-141.1.
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(a). **33.**  was revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) G.S. 20-28(a1).
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. 20-136.7(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 \_\_\_\_\_

**OFFICER'S NOTES**

VIN

<p><b>CONSENT TO TOW, REMOVE OR STORE VEHICLE AT THE SCENE</b></p>	
<p>I, the undersigned, declare that I am the <input type="checkbox"/> registered owner <input type="checkbox"/> legal possessor of the motor vehicle identified on the reverse of this Citation.</p> <p>(check appropriate block)</p> <p><input type="checkbox"/> I consent to have this vehicle <input type="checkbox"/> towed <input type="checkbox"/> removed <input type="checkbox"/> and stored by towing service _____.</p> <p><input type="checkbox"/> I consent to have this vehicle removed to the shoulder of the road by the undersigned law enforcement officer and left at this location.</p>	
Date	Signature
Date	Signature

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 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 former Article 7A or Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or (for offenses committed on or after December 1, 2015, only) a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of 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. (for offenses committed on or after December 1, 2012) The defendant shall abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney.
6. 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.

**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 7B or former Article 7A of 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

- |  |  |
|--|--|
| <input type="checkbox"/> Magistrate    | <input type="checkbox"/> Clerk Of Superior Court |
| <input type="checkbox"/> Deputy CSC    | <input type="checkbox"/> District Court Judge    |
| <input type="checkbox"/> Assistant CSC | <input type="checkbox"/> Superior Court Judge    |

NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form.

ATTACH TEST RECORD TICKET HERE

# STATE OF NORTH CAROLINA

File No.

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

## 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

Name				
Address				
City			State	Zip
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.  exceeding the driver's alcohol concentration limitation.  refusing a chemical analysis (if refusal, also complete items no. 14 and 15 below, as appropriate for this case).
- 4. The driver was charged with the implied-consent offense of:  G.S. 20-138.1.  Other: \_\_\_\_\_
- 4a. 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.
- 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 based on the (check one)  AOC-CR-155 search warrant issued and executed in this case.  totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.
- 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. The driver consented to the obtaining of a sample of his/her blood or urine for a chemical analysis, which was collected 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.
- 15. After the driver's willful refusal, a blood sample was obtained based on the (check one)  AOC-CR-155 search warrant issued and executed in this case.  totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.

### 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  Clerk Of Superior Court

<input type="checkbox"/> Notary SEAL	Date My Commission Expires	County Where Notarized
--------------------------------------	----------------------------	------------------------

Agency Name
-------------

## 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 if the driver is unconscious or incapable of refusing so that the implied-consent rights need not be read, also review and check as appropriate paragraph 10), 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 1-15, 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 6-15, 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<sup>+</sup>:
  - 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.
  - e. Green copy - To the driver.

\_\_\_\_\_ County

**IN THE MATTER OF**

**REVOCATION ORDER  
WHEN PERSON PRESENT**

G.S. 20-16.5

Name And Address

**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;
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 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 or privilege to drive 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 or privilege to drive 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 or privilege to drive 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
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**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 Order you have only a temporary driving certificate, you must surrender the certificate, and then you also must surrender your license card immediately when you later receive it in the mail from DMV.

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 or 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. THE DIVISION OF MOTOR VEHICLES MAY ALSO DISQUALIFY YOU FROM OPERATING A COMMERCIAL MOTOR VEHICLE UNDER G.S. 20-17.4.**

**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 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 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 Of Judicial Official
Name Of Judicial Official (Type Or Print)	<input type="checkbox"/> Judge <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> 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 officer serving the Pick-Up Order.
- 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	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**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.
- 5. Other: \_\_\_\_\_

Date	Signature
Date License Mailed	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

**ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of my license.

Date	Signature Of Licensee
Date \$100 Fee Paid	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

**STATE OF NORTH CAROLINA**

File No.

\_\_\_\_\_ County

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 not currently licensed to drive in the State of North Carolina because:

my license is revoked.

my license has expired.

I have never had a license.

other: \_\_\_\_\_.

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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**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 am not currently licensed to drive in the State of North Carolina and do not have a valid drivers license from another state because:

my license is revoked.

my license has expired.

I have never had a license.

other: \_\_\_\_\_.

I am validly licensed to drive by the State of \_\_\_\_\_, 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

Signature Of Affiant

Date

Signature

Deputy CSC

Assistant CSC

Magistrate

Clerk Of Superior Court

Notary

Date Commission Expires

**SEAL**

County Where Notarized