



# NORTH CAROLINA JUSTICE ACADEMY

JOSH STEIN  
ATTORNEY GENERAL

STATE OF NORTH CAROLINA  
DEPARTMENT OF JUSTICE

TREVOR ALLEN  
DIRECTOR

## **MEMORANDUM**

**TO:** Stephanie Freeman, Chair  
Education and Training Committee  
North Carolina Criminal Justice Education and Training Standards Commission

Trevor Allen, Director  
North Carolina Justice Academy

**FROM:** Jennifer Fisher  
BLET Advisory Group Chairperson

**DATE:** April 6, 2023

**SUBJECT:** Education and Training Committee Agenda Items for May 19, 2023

The BLET Advisory Group met at Cleveland Community College on March 3, 2023, and approved the following minor revisions for your consideration. These revisions will be implemented in all Basic Law Enforcement Training (BLET) academies beginning on or after July 1, 2023.

### **Information Items:**

- Arrest, Search and Seizure/Constitutional Law – Revisions include adding case law to the lesson plan regarding the show of authority and exigent circumstances relating to the hot pursuit of a fleeing subject.
- Communication Skills for Law Enforcement Officers - The lesson plan revision includes using gender-neutral terminology when addressing individuals of the public.
- Juvenile Law and Procedures -Revisions include removing an outdated instructor note and updating an Administrative Office of the Courts (AOC) form.
- Alcoholic Beverage Control (ABC) Laws and Procedures – Revisions include updating a practical exercise to reflect recent legislative changes on the transportation of alcoholic beverages and adding a third ethical dilemma for discussion.
- Motor Vehicle Laws – The lesson plan revisions include updating various statutes and AOC forms.
- Domestic Violence Response – The lesson plan revision includes updating an instructor note that discusses the new N.C. Administrative Office of the Courts

eCourts database that replaced NCAWARE.

- Controlled Substances – The lesson plan revision includes adding the statutory definition of hemp and updating the content on limited immunity for a good Samaritan.
- Individuals with Mental Illness and Developmental Disabilities - The lesson plan revision includes updating the handout titled “Commitment Issues for Law Enforcement.”
- Crowd Management – Lesson plan revisions include updating the practical exercise evaluation form to have the criteria listed for the student to demonstrate proficiency and adding an instructor note to the lesson plan to explain the revisions made to the evaluation form.

## ***Arrest, Search and Seizure/Constitutional Law***

BLET: 04AC Draft iv-vi, 28, 42-43, 147-148

TITLE: ARREST, SEARCH AND SEIZURE/CONSTITUTIONAL LAW

Lesson Purpose: To familiarize the student with constitutional law and the laws of arrest, search, and seizure so that the student may recognize those laws' appropriate application in enforcement situations.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives by information received during the instructional period.

1. Name and describe, in writing, the three (3) sources of law.
  - a) Constitutional law
  - b) Statutory law
  - c) Common law
2. State how the First Amendment affects the law enforcement function.
3. State the criminal and civil consequences law enforcement officers may face as it relates to violating a citizen's constitutional rights.
4. Identify how law enforcement authority is affected by subject matter and territorial jurisdiction.
5. State the definitions of "reasonable suspicion" and "probable cause."
6. State the North Carolina statutory requirements for:
  - a) G.S. 15A-401 – making a warrantless arrest
  - b) G.S. 15A-404 – a citizen detention
  - c) G.S. 15A-405 – assistance to enforcement officers by private persons to effect arrest or prevent escape

## ***Arrest, Search and Seizure/Constitutional Law***

7. State the role of law enforcement as it relates to the issuance of various forms of criminal process.
8. Identify the following police-citizen encounters:
  - a) Voluntary contact
  - b) Investigative detention
  - c) Arrest
9. State the statutory procedures officers must follow after making an arrest.
10. State the statutory requirements for conducting an arrest with a warrant.
11. Identify the appropriate level of force when given fact scenarios involving deadly and non-deadly force situations.
12. State the scope of the following warrantless searches:
  - a) Consent searches of persons, premises, or vehicles
  - b) Searches based on probable cause and exigent circumstances
  - c) Searches and seizures based on the plain view doctrine
13. State the legal requirements for conducting searches of motor vehicles.
14. Identify the legal requirements governing preparation and execution of a search warrant for a suspect's premises, vehicle, or person.
15. Identify the special search warrant concerns in obscenity, crime scene, and financial crime situations.
16. Identify the situations when only a District Attorney's Office may apply for a warrant or order.

## Arrest, Search and Seizure/Constitutional Law

17. Identify the legal concepts of “custody” and “interrogation” as they relate to the requirements of the United States Supreme Court decision, *Miranda v. Arizona*.
18. Recite the four (4) *Miranda* warnings, as well as the additional juvenile warning under G.S. 7B-2101.
19. Identify and explain the exceptions to the *Miranda* requirement.
20. State how non-custodial interview techniques can be used to obtain lawful confessions.
21. State how the Fifth Amendment and Sixth Amendment rights protect suspects during interrogation by law enforcement officers.
22. Identify the procedures for conducting a photographic lineup under the North Carolina Eyewitness Identification Reform Act.

Hours: Twenty-eight (28)

Instructional Method: Lecture, Discussion

Testing Requirement(s): End of block test

Training Environment(s): Classroom

Materials Required: Audio-visual classroom equipment  
*Miranda* Rights Warning Cards (available from the Legal Center at the North Carolina Justice Academy)  
Current edition and supplements of Farb textbook  
Handouts

References: Farb, Robert. *Arrest, Search, and Investigation in North Carolina*, 4<sup>th</sup> ed., Chapel Hill, NC: School of Government, University of North Carolina at Chapel Hill, 2011.

Farb, Robert L. “The United States Supreme Court Ruling in *Montejo v. Louisiana*.” The University of North Carolina at Chapel Hill School of Government, May 30, 2009.

*Florida v. Bostick*, 501 U.S. 429, 437 (1991).

## ***Arrest, Search and Seizure/Constitutional Law***

*Illinois v. Wardlow*, 528 U.S. 119 (2000).

*Lange v. California*, 579 U.S. 486, 141 S. Ct. 2011 (2021).

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Berkeley, CA: Accessed October 2020. <http://www.nolo.com/dictionary/common-law-term.html>.

N.C. Session Law 2019-186.

North Carolina, General Statutes. (2020) 7B-1900, "Taking a juvenile into temporary custody."

North Carolina, General Statutes. (2020) 7B-1901, "Duties of person taking juvenile into temporary custody."

North Carolina, General Statutes. (2020) 7B-2103. "Authority to issue nontestimonial identification order where juvenile alleged to be delinquent."

North Carolina, General Statutes. (2020) 7B-3100. "Disclosure of information on juveniles."

North Carolina, General Statutes. (2020) 7B-3101.  
"Notification of schools when juveniles are alleged or found to be delinquent."

North Carolina, General Statutes. (2020) 14-190.20, "Warrants for obscenity offenses."

North Carolina, General Statutes. (2020) 15A-284.51.  
"Purpose."

North Carolina, General Statutes. (2020) 15A-284.52.  
"Eyewitness identification reform."

North Carolina, General Statutes. (2020) 15A-303, "Criminal summons."

North Carolina, General Statutes. (2020) 15A-401, "Arrest by law enforcement officer."

North Carolina, General Statutes. (2020) 15A-404, "Detention of offenders by private persons."

## ***Arrest, Search and Seizure/Constitutional Law***

North Carolina, General Statutes. (2020) 15A-501,” Police processing and duties upon arrest generally.”

North Carolina, General Statutes. (2020) 15A-503, “Police assistance to persons arrested while unconscious or semiconscious.”

North Carolina, General Statutes. (2020) 15A-505, “Notification of parent and school.”

North Carolina General Statutes. (2020) Chapter 15A, “North Carolina Criminal Procedure Act.”

Sharps, Matthew J., and Adam B. Hess, “To Shoot or Not to Shoot: Response and Interpretation of Response to Armed Assailants.” *The Forensic Examiner*. Winter 2008.

*State v. Blackstock*, 165 N.C. App. 50 (2004).

*State v. Eagle*, 2022-NCCOA-680, \_\_ N.C. App. \_\_ (2022).

*State v. Johnson*, 627 S.E.2d 488 (2006).

*State v. Murphy*, 342 N.C. 813 (1996).

*State v. Stone*, 362 N.C. 50 (2007).

Revised By: Jennifer H. B. Fisher, M.S.  
Instructor/Developer  
North Carolina Justice Academy

Date Revised: July 2014  
January 2015  
January 2016  
July 2016  
January 2017  
January 2018

Revised By: Jarrett McGowan  
Associate Attorney General  
North Carolina Department of Justice

Jacquelyn Greene  
Assistant Professor of Public Law and Government  
UNC School of Government

## ***Arrest, Search and Seizure/Constitutional Law***

January 2020

Content Revision By: Jarrett McGowan  
Associate Attorney General  
North Carolina Department of Justice

Date Revised: July 2020  
July 2021

Content Revision By: Jennifer H. B. Fisher, M.S.  
Instructor/Developer  
North Carolina Justice Academy

Date Revised: January 2023  
**July 2023**



## ***Arrest, Search and Seizure/Constitutional Law***

### **TITLE: ARREST, SEARCH AND SEIZURE/CONSTITUTIONAL LAW – Instructor Notes**

1. This lesson plan must be presented by an instructor currently certified by the North Carolina Criminal Justice Education and Training Standards Commission as a General Instructor or Professional Lecturer (law). Due to the intricate nature of this material, it is recommended that this block of instruction be taught by an attorney who is very familiar with criminal law and procedure. Attorneys are usually professional lecturers. Very few are general instructors.
2. Every student must have a copy of the current edition and supplements of Robert Farb's textbook, *Arrest, Search, and Investigation in North Carolina*.
3. It is recommended for the instructor to review the supplemental documents authored by Robert Farb to further prepare themselves for class discussion regarding recent law changes.
4. To promote and facilitate law enforcement professionalism, three (3) ethical dilemmas are listed below for classroom discussion. At their discretion, instructors must provide students with each ethical dilemma listed below. Sometime during the lecture, instructors should "set the stage" for the dilemma before taking a break. Instructors are encouraged to develop additional dilemmas as needed.
  - a) An arrest warrant is issued by a judicial official. The officer knows this is for the wrong person. Should he serve the warrant anyway and explain it to the magistrate, or should he refuse to serve the warrant? Why or why not?
  - b) The level of force used by a law enforcement officer is excessive. The officer knows no one saw what happened. Should he write the report favorably toward himself or tell the truth, knowing it could result in disciplinary action?
  - c) A patrol officer encounters an individual in a public place who curses at the officer in a threatening manner. The officer draws his weapon and tells the suspect he is going to kill him. You are his partner; what is your response?

## ***Arrest, Search and Seizure/Constitutional Law***

TITLE: ARREST, SEARCH AND SEIZURE/CONSTITUTIONAL LAW

I. Introduction

A. Opening Statement

**NOTE: Show slide, “Arrest, Search & Seizure/Constitutional Law.”**

The United States Constitution guarantees citizens various rights and freedoms and provides them certain protections in their dealings with the government. Because of the Constitution, and the multiple amendments discussed in this lesson plan, the government is limited in its ability to restrict a citizen’s freedom of speech; citizens are protected against unreasonable searches and seizures by government agents, and citizens cannot be forced to incriminate themselves in a criminal proceeding. These are just a few of many freedoms and protections afforded citizens by our Constitution. North Carolina, through its Constitution and legislation, has also provided its citizen's certain rights and protections when dealing with law enforcement officers, as government agents, to comply with both Constitutional and statutory requirements when engaged in official duties. Failure to do so may lead to adverse consequences for the officer who participates in the illegal conduct, including criminal prosecution, civil liability, suppression of evidence recovered from the suspect, and department discipline. Furthermore, the citizens whom you are sworn to protect and serve deserve to have their rights respected and honored.

B. Training Objectives

**NOTE: Show slides, “Training Objectives.”**

1. Name and describe, in writing, the three (3) sources of law.
  - a) Constitutional law
  - b) Statutory law
  - c) Common law
2. State how the First Amendment affects the law enforcement function.
3. State the criminal and civil consequences law enforcement officers may face as it relates to violating a citizen’s constitutional rights.
4. Identify how law enforcement authority is affected by subject matter and territorial jurisdiction.

## ***Arrest, Search and Seizure/Constitutional Law***

5. State the definitions of “reasonable suspicion” and “probable cause.”
6. State the North Carolina statutory requirements for:
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7. State the role of law enforcement as it relates to the issuance of various forms of criminal process.
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## ***Arrest, Search and Seizure/Constitutional Law***

15. Identify the special search warrant concerns in obscenity, crime scene, and financial crime situations.
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17. Identify the legal concepts of "custody" and "interrogation" as they relate to the requirements of the United States Supreme Court decision, *Miranda v. Arizona*.
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20. State how non-custodial interview techniques can be used to obtain lawful confessions.
21. State how the Fifth Amendment and Sixth Amendment rights protect suspects during interrogation by law enforcement officers.
22. Identify the procedures for conducting a photographic lineup under the North Carolina Eyewitness Identification Reform Act.

### C. Reasons

Law enforcement officers must be knowledgeable in the laws about arrest, search, and seizure to lawfully apprehend criminal offenders and obtain evidence for use in prosecution. Knowledge of the laws and legal issues involving arrest, search, and seizure will help you effectively and quickly command criminal investigations, assert control over dangerous situations, and protect yourself, other officers, and citizens while engaged in law enforcement. Further, the successful prosecution of criminals requires you to properly apply the laws of arrest, search, and seizure in the field.

## II. Body

### A. Introduction to Constitutional Law

This introduction to constitutional law will cover the three sources of law, a brief overview of the United States Constitution, and the consequences of violating constitutional rights.

1. Historical background

## ***Arrest, Search and Seizure/Constitutional Law***

**NOTE: Show slide, “Historical Background.”**

Americans were always much concerned with the concept of law and freedom. Several of the American colonies were established to gain individual freedoms and rights, such as the freedom of religion. These colonies considered fundamental freedoms inalienable or not subject to change. When these rights were threatened, the colonists acted to protect them. They responded by writing down the concepts or principles in a document called the United States Constitution.

### 2. Sources of law

**NOTE: Show slide, “Sources of Law.”**

#### a) Constitutional law

The basic law of the land is the United States Constitution. This document sets forth the fundamental principles for government, including grants and limitations of power. Constitutional provisions have greater permanence, are broader in the application, and concern more fundamental issues of law than statutes enacted by the legislative branch of government or rules created by decisions of the judicial branch. Thus, it is said that Constitutional law is the supreme law of the land. All other laws must comply with the necessary constitutional provisions. Next in importance is statutory law, and then common law.

Each state also has its constitution, generally modeled after the United States Constitution. A typical state constitution:

- (1) Describes the basic organization of the state government, including the legislative, judicial, executive, and administrative branches;
- (2) Establishes basic rights of citizens of the state; and,
- (3) Makes provisions for amendments and legislative enactments.

Constitutional law is more than just the written document; it also includes judicial interpretations of the constitution, which are outlined in judicial decisions. Such decisions may address the authority and duties of the President, Congress, courts,

## ***Arrest, Search and Seizure/Constitutional Law***

public officials, and may also affect governmental habits and customs.

b) Statutory law

Written laws enacted by the legislative branches of the state or federal governments are called statutes. Statutory law declares, commands, or prohibits something. It is the written will of the politically elected legislature, which in this state is the North Carolina General Assembly. Courts interpret the meaning of the statutes. Written laws of local governments (cities and counties) are called ordinances. Examples of laws are 18 United States Code (“U.S.C.”) 2510, the Omnibus Crime Control and Safe Streets Act of 1968, North Carolina General Statute (“G.S.”) 15A-251 (Entry by Force) and 20-138.1 (Driving While Impaired).

c) Common law

(1) Common law is judge-made law. Judicial decisions may establish rules and principles where the legislature has not enacted statutes, or where a statute needs clarification or interpretation. Common law is frequently referred to as case law.

(2) The common law developed over many years in England based on court decisions and customs. Colonists imported England’s common law to what became the United States, and it survives today, much expanded and changed by the published decisions of our courts. Many common law principles have been codified in state statutes.<sup>1</sup>

(3) Legislatures and voters must enact or ratify constitutions or statutes for them to become active. However, common law is binding and effective unless expressly abandoned by statute or court decision (G.S. 4-1.) In our history, common law precedes both statute and constitutional law. Although there is a strong preference in the United States to codify criminal law and procedure rather than to leave the common law as the controlling authority, some common law crimes remain. Some North Carolina examples are conspiracy and involuntary manslaughter.

## ***Arrest, Search and Seizure/Constitutional Law***

### 3. Types of law

**NOTE: Show slide, “Types of Law.”**

#### a) Substantive law

Substantive law defines the rights and duties of citizens. It is created by legislative or judicial action. It prohibits conduct such as robbery, larceny, or assault.

#### b) Procedural law

Procedural law specifies the method whereby substantive law is enforced. The statutes concerning issuance, execution, and return of search warrants are examples of procedural laws.

### B. United States Constitution

**NOTE: Show slide, “United States Constitution.”**

Our Constitution is a concise document. However, the U.S. Constitution was not intended to cover every detail of law or scenario which might arise in the future. It is a flexible, dynamic document subject to judicial decisions, legislative enactments, custom and usage, and to a lesser degree, the formal process of amendment provided for in the document itself.

#### 1. The U.S. Constitution is divided into seven major articles:

- a) Article I establishes the structure and functions of Congress. The legislative powers of the United States government are vested in a Congress made up of two chambers: the Senate and the House of Representatives.
- b) Article II establishes the executive branch of government and provides that the executive powers are vested in the President. This Article also provides the qualifications of the President and Vice President, the method for their election, and their oaths of office. There are also provisions on the process and grounds for removal (impeachment).
- c) Article III vests the judicial powers of the United States in the Supreme Court of the United States and any inferior courts established by Congress.
- d) Article IV defines the duties that states owe each other.

## ***Arrest, Search and Seizure/Constitutional Law***

- e) Article V provides the procedures to amend the Constitution.
  - f) Article VI contains the Supremacy Clause, which says that the Constitution, laws, and treaties of the United States are the **Supreme Law** of the land. Judges of every state are bound by the U.S. Constitution regardless of contrary state law. This article also requires all legislative, executive, and judicial officers of both the states and the United States to take an oath to support the Constitution.
  - g) Article VII contains the requirements for the original ratification of the Constitution. It is of historical importance only.
2. The Constitution grants four procedural safeguards to persons accused of crimes.

### **NOTE: Show slide, “Procedural Safeguards.”**

- a) Habeas corpus

Article I, Section 9 provides: “The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.” A writ is an order of a court commanding a government official to perform an act. “*Habeas corpus*” is a Latin phrase meaning, “have the body.” This provision allows issuance of a Writ of Habeas Corpus. This writ is directed to the person detaining the subject of the writ (a prisoner) and requires that custodian to bring the prisoner before a judge for a determination upon the legality of the detention. The objective of the writ is the fast release of an illegally detained person. Failure to comply with the order is a crime. Judges must review petitions for a writ of habeas corpus when asked.

- b) Jury

Article III, Section 2, requires that all criminal cases except impeachment be tried by a jury. [The Sixth Amendment supersedes this provision.]

- c) Bills of attainder

Article I, Sections 9 and 10, prohibit Congress and the states from enacting “Bills of Attainder.” A bill of attainder is a



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special act of the legislature inflicting punishment on a person without a conviction through judicial proceedings. The legislature improperly acts as a court and pronounces the guilt of a person without any of the common forms, procedures, or safeguards of a trial.

d) Ex post facto laws

Article I, Sections 9 and 10 forbid the enactment of “*ex post facto*” laws. Such laws are illegal because they attempt to make certain conduct illegal after the fact. This provision prohibits any law which makes criminal an act that was innocent when done or which inflicts a greater punishment than allowed at the time of the prohibited action.

3. Amendments

a) Bill of Rights

**NOTE: Show slide, “Bill of Rights.”**

The first ten amendments to the Constitution are called the “Bill of Rights.” During the battle over the ratification of the Constitution, one of the strongest objections raised by its opponents was its lack of a Bill of Rights. Several states ratified the document but urged the Continental Congress to reconvene and propose the needed amendments to protect individual rights. These states proposed a total of 124 amendments. Ten were finally approved and became our “Bill of Rights.”

The Bill of Rights was written to protect certain guarantees or immunities the colonists felt were fundamental and not subject to change. Originally, the Bill of Rights only restricted the federal government. The framers of the Constitution specifically rejected several amendments that directly applied these restrictions to the states. The framers wanted to prevent the strong central government they created from violating certain individual rights. Over time, though, the Supreme Court decided that most of the protections in the Bill of Rights apply to the states as well as the federal government.

b) Selective incorporation

## ***Arrest, Search and Seizure/Constitutional Law***

For many years, there was a double standard in the courts regarding individual rights. Courts applied one standard to the federal government and another standard to the states. Gradually, through the **Due Process Clause** of the Fourteenth Amendment, the United States Supreme Court applied most of the safeguards in the Bill of Rights to the states.

Without the Fourteenth Amendment due process and equal protection clauses, the United States Supreme Court could not review state decisions on search and seizure, self-incrimination, and the right to counsel.

- C. The Bill of Rights and the Fourteenth Amendment as They Affect Law Enforcement
  - 1. The First Amendment

**NOTE: Show slide, “First Amendment.”**

The First Amendment establishes rights that we consider fundamental in a free society. These rights are the freedoms of religion, speech, press, assembly, and petition.

- a) Religion

Congress cannot make any law concerning the establishment of religion or prohibiting the free exercise of religion. These two clauses prevent the federal government from building a national church (requiring support by taxation) or from intruding on personal religious beliefs

- (1) Establishment clause

The government may not require or enforce religious observations. The government may not compel citizens to follow any particular religion, either through law or spending of tax dollars. Judicial interpretation of this clause has, for example, led to restrictions on government maintained holiday displays that contain religious symbols. Such displays are permissible only when they do not appear to endorse religion. *County of Alleghany v. A.C.L.U.*, 492 U.S. 573, (1985).

- (2) Free exercise clause

## ***Arrest, Search and Seizure/Constitutional Law***

Citizens have a right to worship God, a Supreme Being, or hold any other belief in compliance with their conscience (or not to hold such beliefs). However, states may prohibit most criminal acts even if they are performed under the guise of religious ceremonies (for example, the use of peyote during a religious ceremony). *Employment Division v. Smith*, 494 U.S. 872, (1990).

### b) Speech

The First Amendment protections for speech and press are directed toward the right to criticize and publish freely. While First Amendment rights are not absolute—they are subject to reasonable time, place, and manner limitation by the federal and state government—the Amendment bars most prior restraints of expression and punishment of all but a narrow range of expression. “Prior restraint” means prohibiting speech before it is made. An example of prior restraint is England’s use of censorship of the press to suppress criticism of the crown at the time of the American Revolution. The English government burned books, destroyed printing presses, and sent “subversive” authors to prison. They suppressed political dissent with “seditious libel” laws. This offense consisted of speaking out against public officials. A person committed this offense by reading objectionable material, hearing it read, laughing about it, or repeating it to others. The colonists’ revulsion toward such laws led in part to the Revolutionary War.

#### (1) Belief

Freedom of expression begins with freedom of belief or non-belief. The government cannot coerce its citizens to affirm or disavow a belief. A right to believe or not to believe has little value without the corresponding right to express that belief or lack thereof. Again, though, freedom of expression is subject to reasonable “time, place, and manner” restrictions by the government. The government can, for example, prohibit participants in an otherwise lawful pro-abortion demonstration from lying down in the street and blocking traffic. (G.S. 20-174.1 Standing, Sitting or Lying Upon Highway or Streets Prohibited).

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### (2) Symbolic speech

Protected speech includes the spoken and written word, the act of not speaking, and symbolic conduct. The First Amendment may also protect actions intended to convey meaning or symbolic speech. The United States Supreme Court has ruled, for example, that burning the American flag is symbolic speech and protected by the First Amendment. *Texas v. Johnson*, 491 U.S. 397, (1989). In a similar vein, the United States Supreme Court has upheld the right of a Vietnam War protester to wear a jacket with the phrase “f--- the draft” inscribed on the back. *Cohen v. California*, 403 U.S. 15, (1977).

### (3) Restrictions on free speech

Specific methods of communication may conflict with the goals and values of society. For example, mass pickets, street rallies, marches, and demonstrations can cause serious traffic problems, elevate noise levels, inconvenience other citizens, and provoke riots. The government may require compliance with reasonable time and place restrictions by citizens who use public areas. These restrictions must be content-neutral (meaning the subject of the speech cannot be screened by the government), narrowly tailored to serve a significant government interest, and leave open alternative channels of communication.

The Constitution does not give everyone an unqualified right to speak out on any conceivable subject at all times and places. Falsely shouting “fire!” in a crowded theater or auditorium with the likely result of causing panic is not protected.

- (a) Examples of reasonable government “time, place, and manner” regulation of speech include the prohibition of:
  - i) Certain activities involved with anti-abortion protests. In a series of decisions, the federal courts have allowed restrictions on the activities of anti-abortion protestors to ensure access

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to abortion facilities and to limit interference with patients of such clinics.

- ii) “Offensive” or “indecent” speech on a public medium such as the radio. *F.C.C. v. Pacifica Foundation*, 438 U.S. 726, (1978).

The following types of speech have no First Amendment protection and thus may be barred by the government:

- (b) Obscenity

Obscenity is a depiction of sexual conduct that taken as a whole, by the average person, applying contemporary community standards, appeals to the prurient interest in sex, portrays sex in a patently offensive way, and does not have a serious literary, artistic, political, or scientific value. In North Carolina, the sale, creation, or possession for sale of obscene materials is a Class I felony. G.S. 14-190.1.

- (c) Fighting words

Words addressed to an ordinary citizen who is intended and is likely to incite immediate physical retaliation are not protected by the First Amendment. Note that insults alone are not “fighting words” unless they are so provocative as to incite violence. The United States Supreme Court has stated that because of the nature of the job, law enforcement officers are expected to endure more significant verbal abuse than the ordinary citizen (the Court reasoned that an officer’s professionalism and training make him much less likely to be incited to a violent reaction). *Lewis v. New Orleans*, 415 U.S. 130, (1974).

- (d) Threats

Threats, which are utterances calculated to intimidate, provide no social benefit. The threat

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must be genuine, and the person making the threat must be reasonably capable of carrying it out for the threat to lose First Amendment protection. See, e.g., G.S. 14-118 (Blackmailing).

(e) Incendiary speech

Incendiary speech advocates the imminent violent use of force against the government. Protests against the government are, of course, lawful unless and until the speaker encourages the protesters to engage in violent, lawless action, and such lawlessness is likely to occur. *Brandenburg v. Ohio*, 395 U.S. 444, (1969). As an example, an intoxicated person muttering to himself in a bar that “the government should be overthrown” is not unlawfully speaking. On the other hand, it would be illegal for a member of a hate group to urge receptive fellow members to bomb federal or state property. See, e.g., G.S. 14-11 (Activities aimed at the overthrow of the government).

c) Press

The First Amendment protects the right to gather and receive information. Members of the organized press often assert this right. However, the media has no more right of access to information than the individual citizen, and the government may lawfully limit access to information in certain circumstances. Members of the press may not, for example, demand access to crime scenes or disaster areas when their presence could disrupt law enforcement efforts. Also, in some circumstances, law enforcement officers may recover information held by the press. For example, law enforcement officers may obtain search warrants for newspaper files when evidence of criminal conduct is present.

d) Assembly and petition

The First Amendment protects the right to peaceably assemble and petition the government for a redress of grievances. With one major exception—the years 1861-1865—our nation has experienced over two centuries of internal stability under one

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Constitution. One reason for this peace is the First Amendment. When citizens can openly criticize their government and advocate change, the chances of an orderly political process are maximized. Dissident and radical groups will always exist, but the First Amendment provides a safety valve for them to express discontent (within reasonable constitutional limits).

### 2. The Second Amendment

**NOTE: Show slide, “Second, Third, and Fourth Amendments.”**

The Second Amendment states that Congress shall not infringe on the right of the people to keep and bear arms. It was intended to protect the **individual’s** right to possess personal firearms for lawful purposes. See *District of Columbia v. Heller*, 554 U.S. 570, (2008).

### 3. The Third Amendment

The Third Amendment prevents the quartering of troops in private homes without legally approved procedures.

### 4. The Fourth Amendment

#### a) History

The Fourth Amendment prohibits unreasonable searches or seizures by the government. This amendment initially addressed the issuance of general search warrants—called “writs of assistance”—by the English kings. These writs authorized the holder to enter any house or other places to search for and seize “prohibited and unaccustomed” goods. They commanded all loyal subjects to assist in these searches. Once issued, the writs remained in force until six months after the death of the sovereign. A more detailed discussion of the officer’s rights and responsibilities under the Fourth Amendment appears later in this block of instruction.

#### b) Exclusionary rule

The U. S. Supreme Court created the “exclusionary rule” to enforce the Fourth Amendment’s prohibition against “unreasonable searches and seizures.” The exclusionary rule makes any evidence obtained by the government through an

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illegal (unreasonable) search and seizure inadmissible in court.  
*Mapp v. Ohio*, 367 U.S. 643 (1961).

### 5. The Fifth Amendment

**NOTE: Show slide, “Fifth Amendment.”**

The Fifth Amendment specifies the rights of persons accused of crimes and thus has a special significance for law enforcement officers. There are five different provisions in this amendment, but this block of instruction will only examine: the double jeopardy, self-incrimination, and the due process clauses.

#### a) Double jeopardy

The provision against double jeopardy protects an individual against the hazards and pressures of repeated trials and possible conviction for the same offense. Jeopardy is the danger of conviction and punishment when an accused is placed on trial in a criminal action. There is no protection against double jeopardy in a civil action. In a jury trial, jeopardy attaches when the court impanels and swears in the jury. In non-jury trials, jeopardy attaches after the first witness is sworn. Where the same conduct violates the laws of two States or a state and the federal government, each of the sovereign entities may separately try and punish for the violation of its laws.

#### b) Self-incrimination

This provision preserves the common law rule that the State cannot compel a person to furnish statements against oneself. This protects a witness against the danger of giving forced testimony that leads to the infliction of criminal penalties. This right to silence attaches when a person who is in custody is interrogated by law enforcement. Persons may waive this right after they are notified of their rights under the United States Supreme Court case, *Miranda v. Arizona* (discussed at length below). The remedy for such government compelled self-incrimination is that the compelled statements may not be used in any criminal prosecution.

The U. S. Supreme Court has also ruled that, in addition to the right not to speak, an accused has the right to the presence of counsel during custodial interrogation.



c) Due process

The Fifth Amendment due process clause applies only to the federal government, not the states. Therefore, the “due process” officers must be most concerned with is found in the Fourteenth Amendment. The concept remains the same, even though the amendment number may be different. The Supreme Court defined due process as “a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society. . . Due Process is that which comports with the deepest notions of what is fair and right and just.”

6. The Sixth Amendment

**NOTE: Show slide, “Sixth Amendment.”**

The Sixth Amendment gives an accused specific fundamental right in criminal prosecutions. It grants the right to a speedy and public trial and information about the nature and cause of the accusation, to confront the witnesses against him, to compulsory process for attaining witnesses in his favor, and to the assistance of counsel for his defense.

- a) The right to a speedy trial applies to both federal and state prosecutions. It attaches after formal charging. It is essential to prevent delays because of adverse effects on a person who is presumed innocent. The accused may suffer prolonged detention, psychological and emotional damage, and the reduced capacity to prepare a meaningful defense.
- b) A public trial helps ensure procedural due process. A court may exclude spectators from the courtroom to prevent disruptions. There is no right to radio and television coverage of a trial. However, the United States Supreme Court decided that people could videotape trials if allowed by the state, and the taping followed the State’s procedures.
- c) The existence of an impartial jury allows citizens to contribute in the administration of justice, raises public trust of the criminal justice system, reflects the conscience of the community, and safeguards against a miscarriage of justice.
- d) The right to face accusers prevents the use of written depositions or affidavits rather than personal testimony of

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witnesses. When a witness appears in court, the accused may test his recollection, and the jury may judge his credibility.

- e) An accused has the right to be informed of the nature and cause of the accusation and a right to legal process to compel the appearance of witnesses. These two rights help the defendant prepare a meaningful defense.
- f) The Sixth Amendment guarantees an accused the right to counsel. A detailed discussion of the Sixth Amendment follows later in this lesson plan.

### 7. The Seventh Amendment

**NOTE: Show slide, “Seventh, Eighth, Ninth, and Tenth Amendments.”**

The Seventh Amendment preserves the right of trial by jury in civil cases. This right provides for a trial by twelve people under the supervision of a judge who instructs them on the law, advises them on the facts, and sets aside their verdict if it is against the law or the evidence.

### 8. The Eighth Amendment

The Eighth Amendment protects people from excessive bail, excessive fines, and cruel and unusual punishment. It does not require bail in every case. Bail is unreasonable when the amount is higher than an amount reasonably calculated to ensure that the accused comes to trial and submits to sentencing if found guilty. The death penalty is not cruel and unusual punishment, but it cannot be imposed upon an offender who was under 18 when the crime was committed. However, the Supreme Court has struck down statutes which were coercive, discriminatory, or unduly restrictive on the jury (for example, the Court ruled a law mandating the death penalty for certain offenses unconstitutional.) This amendment preserves the basic concept of the dignity of man by assuring that the power to impose punishment is exercised by the state in a lawful manner.

### 9. The Ninth Amendment

The history of the Ninth Amendment reveals the belief of the framers of our Constitution that there are additional fundamental rights not listed in the first eight amendments which are protected from governmental infringement. These other rights include the right of

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privacy in marriage, the right of interstate travel, and the right to participate in political activities.

### 10. The Tenth Amendment

The Tenth Amendment reserves the powers not granted to the United States government to the states or the people. Some powers reserved for the states are laws regulating marriage, educational systems, corporate charters, voting qualifications, and police powers. The police power of a state refers to law enforcement and regulations designed to promote the public convenience, the general prosperity, public safety, health, and morals. This power is not restricted to the suppression of what is offensive, disorderly, or unsanitary, but extends to what is for the greatest welfare of the state.

### 11. The Fourteenth Amendment

**NOTE: Show slide, “Fourteenth Amendment.”**

Two of the three key phrases in the Fourteenth Amendment affect the government’s law enforcement function: due process of law and equal protection of the laws.

#### a) Due process

The due process clause is used to protect the rights of citizens against infringement by the states. This clause extends the same protection against arbitrary state legislation affecting life, liberty, and property, as is offered by the Fifth Amendment due process clause against federal legislation.

#### (1) There are two types of due process

- (a) Procedural due process guarantees that the government will not take a person’s life, liberty, or property interest without notice and a meaningful opportunity to be heard. For example, if the state attempts to suspend driving privileges, the driver must be given notice of why and an opportunity to rebut the state’s evidence.
- (b) Substantive due process guarantees that the notice, hearing, and result is fair. It is also a source of rights the Court has deemed

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fundamentally fair in a civilized society, like abortion, contraception, or the right to marry.

The Fourteenth Amendment provides that: “No state . . . shall . . . deprive any person of life, liberty, or property, without due process of law . . .” In the context of interrogation law, this Amendment forbids law enforcement officers from using physical coercion to extract a statement. It is also a due process violation for officers to make promises ***which they cannot keep*** to obtain a statement. Officers may not, for example, promise a suspect that he will not be indicted as a habitual felon should he confess, as the indictment decision is within the sole authority of the district attorney and the grand jury. *State v. Sturgill*, 469 S.E. 2d 557, (1996).

- (2) Effect
  - (a) Due process requires that a defendant receive adequate notice of the offense charged.
  - (b) Due process requires certain necessary guarantees of a fair trial such as:
    - i) A right to counsel
    - ii) A right to a speedy and public trial
    - iii) A right to be free from the use of unlawfully seized evidence and unlawfully obtained confessions.
  - (c) A defendant may be entitled to a plea bargain by entering a guilty plea to obtaining a less severe sentence. However, the plea must be voluntary, knowing, and understood.
  - (d) Due process requires the state to prove a defendant’s guilt beyond a reasonable doubt.
  - (e) Due process requires that a convicted prisoner be sane or competent before being executed.

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### b) Equal protection

This provision requires equal protection of the laws. It applies to government actions only, not private conduct. It requires the government to implement its laws equally. The exclusion of an identifiable racial or ethnic group from a grand jury or petit jury is an example of denial of equal protection of the laws.

### D. Constitutional Law Summary

By applying the Bill of Rights to the states, the United States Supreme Court greatly enlarged the powers of the federal courts. State officers must protect both state and individual federal rights. For this reason, it is extremely important that law enforcement officers stay informed about both State and Federal court decisions that affect criminal justice. We never know when the Supreme Court may decide the next *Miranda v. Arizona* [requirement to warn of right to silence and counsel before interrogating a person in custody], *Mapp v. Ohio* [exclusionary rule], *Terry v. Ohio* [stop and frisk], or *Delaware v. Proust* [prohibiting random vehicle stops]. Without this legal foundation, the laws of arrest, search, and seizure are challenging to apply. Remember, law enforcement is designed to protect our constitutional rights as citizens as well as to protect society as a whole. Insufficient comprehension and application of the rules described herein can lead to adverse consequences for officers and citizens alike.

### E. Jurisdiction<sup>2</sup>

**NOTE: Show slide, “Jurisdiction.” This is not a complete list of all agencies.**

1. Territorial – Territorial jurisdiction refers to the geographical area in which a law enforcement officer is empowered to act.

This is a basic overview of the territorial jurisdiction of the below agencies. Officers may have jurisdiction outside their ordinary geographical area under mutual aid agreements. Officers must consult their agency for specific guidance concerning their territorial jurisdiction.

- a) Statewide – Officers may arrest anywhere within the state.
  - (1) North Carolina State Highway Patrol (SHP) officers
  - (2) North Carolina Division of Motor Vehicles (DMV) officers, agents, and inspectors

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- (3) North Carolina State Bureau of Investigation (SBI) agents
  - (4) North Carolina Alcohol Law Enforcement (ALE) agents
  - (5) North Carolina Wildlife enforcement officers
  - (6) North Carolina Probation and Parole officers
- b) Local
- (1) Sheriffs and their deputies – may arrest within the county, on county property outside the county, and anywhere in the state for a felony committed in the county. Consolidated county-city law enforcement agencies also have this jurisdiction.
  - (2) City police officers – may arrest in the city in which they serve, in the area within one mile of the city limits, and on city property outside the city
  - (3) Alcohol Beverage Control (ABC) officers employed by county or city ABC boards – ABC officers employed by county may arrest anywhere in the county in which they are employed. ABC officers employed by the city may arrest anywhere in the county in which they are employed unless limited by a special legislative act that governs the city’s ABC system.
  - (4) Company police officers – may arrest on property owned or possessed and controlled by their employer. Company police of college campuses are discussed below.
  - (5) Campus police officers. The territorial jurisdiction of campus police of private colleges and universities, UNC system institutions, and community colleges, includes the property owned or leased by the educational institution that employs them, and the portions of public roads passing through or immediately adjoining their property.
- c) Immediate and continuous pursuit

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If an offender has committed any criminal offense for which the officer can arrest within his or her jurisdiction, the officer can pursue the offender anywhere in North Carolina and make the arrest. G.S. 15A-402.<sup>3</sup> To maintain the power to arrest the offender, the officer must continue the pursuit and not stop to do something else. The officer does not have to keep the offender in sight at all times.

Officers may pursue and arrest outside North Carolina only under the following circumstances:

- (1) In Georgia, Virginia, South Carolina or Tennessee; and
  - (2) For a suspected felony committed in North Carolina.<sup>4</sup>
- d) A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to investigate and seek evidence of the driver's impairment anywhere in-state or out-of-state, and to make arrests at any place in the state.
2. Subject matter – Subject matter jurisdiction refers to the types of crimes for which officers are authorized to arrest.
- a) Arrest for any crime
    - (1) ALE agents
    - (2) SBI agents
    - (3) Sheriffs and their deputies
    - (4) City police officers
    - (5) Local ABC officers
    - (6) Company police officers
    - (7) Campus police officers
  - b) Limited subject matter jurisdiction
    - (1) Highway Patrol officers
    - (2) DMV officers, agents, and inspectors

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- (3) Wildlife enforcement officers
- (4) Probation and Parole officers
- 3. Mutual aid agreements – “Several statutes authorize the head of one law enforcement agency to provide temporary assistance to another agency upon its written requires. If this assistance includes officers working temporarily with the other agency, the officers have the jurisdiction and authority of both the requesting agency and their own agency.”<sup>5</sup>
- 4. Crimes committed in other states
  - (a) “North Carolina law enforcement officers may arrest a person who flees to North Carolina after the person has committed a misdemeanor or felony in another state if the officers obtain a fugitive warrant for the person’s arrest from a North Carolina judicial official.”<sup>6</sup>
  - (b) Officers may arrest without a fugitive warrant if the person has been charged in the other state with any crime punishable by more than one year imprisonment.
- 5. Foreign diplomats

Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of the local courts and authorities. Diplomatic agents and designated members of their administrative and technical staff enjoy the highest degree of these immunities. These persons may not be arrested or detained; their residences may not be entered subject to ordinary procedures; they may not be subpoenaed as witnesses, and they may not be prosecuted. They may be issued traffic citations. The names of the persons enjoying these immunities are published on a “Diplomatic List” by the Office of Protocol of the United States Department of State. Changes on this list occur daily, and the status of personnel should be verified with the Office of Protocol. Other embassy staff and consular staff not on this list do not enjoy the same degree of immunity. A summary of immunities is available from the Office of Protocol, and there is a brief statement on the personal identification cards issued solely by the Office of Protocol as to the bearer’s immunity.



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Some countries' consulates must be notified when one of their nationals is arrested or detained. This will be addressed when discussing arrest procedures later in this lesson plan.

### F. Voluntary Encounters, Investigative Stops and Arrest

**NOTE: Show slide, "Voluntary Encounters, Investigative Stops, Arrest."**

The Fourth Amendment requires searches and seizures to be reasonable. If officers are not conducting a search or seizure, then the Fourth Amendment requirements do not apply. It is important for officers to know when their conduct is regulated by the requirements of the Fourth Amendment.

#### 1. Overview

a) A person has been "seized" when, under the circumstances, a reasonable person in his position would not feel free to walk or drive away from the law enforcement officer. *Florida v. Royer*, 460 U.S. 491, (1983). A person is seized at the point that he submits to an officer's command to stop or when he is stopped—physically restrained—by an officer. *California v. Hodari D.*, 499 U.S. 116, (1991). A seizure can also occur when a reasonable person in the suspect's position would not feel free to terminate an encounter with a law enforcement officer. *Florida v. Bostick*, 501 U.S. 429, (1991).

(1) The test for whether a person is seized is an objective one: would a reasonable person in the suspect's position feel that the officer deprived his freedom of movement. Thus, it is legally irrelevant that a person believes he is not free to leave the office unless there are objective facts that make such belief reasonable. Further, it is legally irrelevant that the law enforcement officer believes that a person is seized, unless the officer says or does something which would indicate to a reasonable person in the suspect's position that he was not free to leave.<sup>7</sup>

(a) The chase of a suspect, for example, is not a seizure until the suspect stops or is stopped; thus, any property thrown away by the suspect during the chase is admissible in court even if the officer had no reason to chase in the first place. Officers should not attempt to seize a suspect without the legal authority to do so.)

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*California v. Hodari D.*, 499 U.S.116, (1991).  
Once, however, the suspect stops running in response to a police order to halt, then there is a seizure at that moment, and there must be at least reasonable suspicion to justify the stop. (Probable cause is needed for an arrest; only reasonable suspicion is needed for temporary detention.)

- (b) A person is arrested either when he is told he is under arrest by the officer or when the person's freedom of movement has been significantly deprived (this is called the functional equivalent of an arrest). A person is under arrest, for example, when the police place her in a police vehicle and drive her to a police facility—assuming she did not consent to this activity—even though the police never tell the suspect that she is under arrest.
- (2) The more intrusive the government conduct, the more proof of criminal activity is required for the reasonableness standard of the Fourth Amendment to be met. For example, more evidence of a crime is needed to arrest a person (probable cause) than to merely detain him for a few minutes to investigate a possible crime (only reasonable suspicion is required in order to detain).
- b) Not all police contacts with citizens are seizures. Law enforcement frequently involves contact short of a seizure where no justification for the police action is required since the Fourth Amendment is not implicated. Such encounters are known as “voluntary encounters” or “consensual encounters.”
- c) When an officer begins to investigate a crime, the encounter with the citizen can become more invasive, such that a reasonable person in the suspect's position would not feel free to leave or terminate the encounter with the police—a seizure. The officer must meet some level of a legal standard to justify the restriction of the citizen's liberty.

An officer's level of suspicion determines the extent to which she can intrude on the right of a person to move about freely.

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Remember these basic rules, which will be expanded upon shortly:

- (1) Officers need **no** suspicion to approach people in public and talk to them (this is a voluntary encounter having no Fourth Amendment implications). The person cannot be compelled to respond.
- (2) Officers need reasonable suspicion to detain a person, that is, to forcibly restrain a person while the officer investigates possible criminal activity. Only reasonable force may be used to affect the stop (use of force is addressed later in this block of instruction).

### 2. “Voluntary encounters” or “consensual encounters”

**NOTE: Show slide, “Voluntary Encounters.”**

Officers need no justification to approach a citizen. However, during these voluntary encounters, officers must limit their actions toward the citizen to avoid creating a seizure. These encounters should involve non-confrontational language. Officers should avoid physical contact with or movement of the citizen. Officers should not frisk citizens during these encounters. Officers should take steps to let the citizen know they are free to leave and are not under arrest. This type of encounter is useful in conducting a “non-custodial” interview with a suspect. An officer can request the suspect speak to her, with the suspect arranging the time and location the conversation will take place. This type of encounter can also provide the officer with an excellent opportunity to ask for consent to search.

- a) In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court wrote: “Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, injuries, or loss of life . . . [e]ncounters are initiated by the police for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime.”

Therefore, law enforcement officers need no justification to speak to or look at anyone in a public place. In the area of voluntary encounters, officers have all of the rights of an ordinary citizen.

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- b) In *Florida v. Royer*, 460 U.S. 491, (1983), the United States Supreme Court stated: “Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.” Because these encounters are entirely voluntary, officers may not compel cooperation. The Court further stated, “The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way.”
- c) New community policing expands voluntary contacts with citizens. Most contacts will be positive, but some will develop facts that justify a seizure, like a frisk or an arrest. Officers who employ voluntary encounters will become more productive as they will generate information that may lead to investigations, detentions, and arrests.
- d) To lawfully conduct a voluntary encounter, an officer need only approach a citizen and engage in conversation, including asking questions to get information. It is essential to let the citizen control her environment to keep the encounter wholly voluntary. Use language that makes the citizen feel at ease. Reiterate, if necessary, that the citizen is free to leave at any time. Do not confine the citizen in any way, e.g., block a doorway, or traffic lane, or by surrounding the citizen with several officers. Do not threaten or suggest sanctions should the citizen not want to continue the conversation or encounter.

### 3. Introduction: seizures

**NOTE: Show slide, “Investigative Stops/Seizures.”**

- a) Unlike a voluntary encounter, where a reasonable person would feel free to leave or otherwise terminate the encounter with the officer, some interactions between citizens and police are not voluntary.
- b) A seizure occurs when a law enforcement officer:
  - (1) Applies physical force to a suspect, or

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- (2) Issues a show of authority (commands to stop, activates blue lights, etc., and the suspect submits to this show of authority).

An example to illustrate “show of authority” is found in *State v. Eagle*.

“In November of 2019, an officer from the Orange County Sherriff’s Department was performing checks of businesses along a road at 3:00am. The officer observed defendant’s car pulling into the driveway of a closed business. Driving slowly by the driveway, the officer put the cruiser in reverse, backed up to the driveway and pulled in, blocking defendant’s exit while activating the cruiser’s blue lights. The officer ran defendant’s plates, then approached the vehicle to ask what defendant was doing, noticing a strong odor of alcohol and glassy eyes. Defendant was charged with impaired driving; at trial, the court concluded that the encounter was voluntary up until the time that defendant gave the officer her identification card, denying her motion to suppress.

Reviewing defendant’s argument, the Court of Appeals noted it was undisputed that the officer did not observe a crime before pulling in behind defendant. The only issue was when the encounter became a seizure under the Fourth Amendment. The court explained that a ‘show of authority’ such as blocking a vehicle’s exit or activating blue lights can be interpreted as a seizure, even when an officer does not physically restrain or touch the defendant. Emphasizing the difficult choice that the defendant had as a result of the officer’s actions, the court noted ‘in such a situation most people would feel compelled to remain in their car and wait to speak with the officer, knowing that attempting to leave would only end in trouble and/or danger.’ As a result, the court held that defendant was seized ‘at the point that the officer pulled in behind defendant’s car while activating her blue lights and blocked defendant’s available exit.’”<sup>8</sup>

- (3) A seizure also occurs when the officer’s conduct “would have communicated to a reasonable person that

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he was not at liberty to ignore the police presence and go about his business.”<sup>9</sup>

- c) If an officer seizes a suspect, the officer must meet the legal requirements of the Fourth Amendment for the seizure to be lawful. These legal requirements are known as legal standards. In other words, some legal justification, based on objective factors, must exist before conducting a seizure.
  
- d) Officers must become familiar with the objective factors that justify seizures of any type, whether it is an investigative stop requiring reasonable suspicion or a full custodial arrest requiring probable cause. The following list contains numerous factors courts have considered in determining whether a seizure is objectively justified, and thus reasonable under the Fourth Amendment. This list is useful as a guide. However, this list is not complete. An officer is free to use any observation or factor that in his training and experience, raises suspicion of criminal activity.
  - (1) Officer’s observation in light of training and experience
  - (2) Information received from other officers or citizens
  - (3) Time of day or night
  - (4) Whether the area is a high crime area
  - (5) Proximity to crime
  - (6) Whether the suspect is a stranger to the area
  - (7) Reaction to the officer, including flight
  - (8) Officer’s knowledge of suspect’s prior criminal activity or record
  - (9) Flight from the scene of the crime
  - (10) Actions matching a profile of criminal behavior

*See State v. Fleming*, 106 N.C. App., (1992); *U.S. v. Sharpe*, 470 U.S. 675, (1985).<sup>10</sup>

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There is no magic number of the above factors that must be present to establish reasonable suspicion or probable cause; the more factors you have and the stronger they are, the greater your proof will be. However, reasonable suspicion and probable cause may be established with only one of those factors. The courts will look at the “totality of the circumstances”—all the factors present in the particular case—to determine whether the seizure was legally justified. Thus, it is critical that officers be aware of the level of suspicion needed to establish reasonable suspicion necessary for an investigative stop, and probable cause required for arrests. These standards will be discussed below.

### 4. Investigative stop

**NOTE: Show slide, “Reasonable Suspicion/Investigative Stop.”**

#### a) Purpose

The purpose of the investigative stop is to determine whether there is probable cause to believe that

- (1) A crime has or is being committed; and
- (2) The suspect has probably committed the crime.<sup>11</sup>

This type of police action is commonly called a “Terry Stop,” named after the United States Supreme Court case. *Terry v. Ohio*, 392 U.S. 1, (1969). In *Terry*, a plainclothes officer observed defendant Terry and another person walking back and forth in front of a store. Each of the suspects made five, or six trips past the store window and back. The officer had also been in law enforcement for over thirty-nine years and had been assigned to patrol the vicinity for shoplifters and pickpockets. The officer, suspecting that the men were planning to rob the store, approached. The officer asked Terry for his name, but Terry only mumbled an answer. Fearing for his safety, the officer spun Terry around and felt the outside of his coat. The officer felt a gun in the coat and removed it. The United States Supreme Court ruled that the officer had reasonable suspicion, though no probable cause, to believe Terry was about to commit a crime. Given the violent nature of the crime being investigated - the possible armed robbery of the store - the officer had reason to fear for his safety. (Terry’s many trips by the store and unresponsiveness to questioning added to the legitimacy of the officer’s fear.)

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- b) Legal standard for investigative stops – reasonable suspicion
  - (1) Terry established that when an officer develops reasonable suspicion to believe criminal activity is afoot, he can conduct a brief investigative stop. Officers must understand this legal standard—reasonable suspicion—necessary for an investigative stop to be legal.
  - (2) Reasonable suspicion is a “minimal level of objective justification”—more than a hunch, but less than probable cause.<sup>12</sup>
  - (3) “In ascertaining whether an officer had a reasonable suspicion to make an investigatory stop, the court must consider the totality of the circumstances. The stop must be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training.”<sup>13</sup>
  - (4) A generalized suspicion, or a hunch, is insufficient to justify an investigative stop.
- c) An investigative stop has limitations. Even though it is a type of seizure, the length of the detention should be limited to that time, which is reasonably necessary to determine if probable cause exists. Twenty minutes has been used as a general rule to govern the length of an investigative stop. “Generally an officer will be permitted more time to conduct an investigative stop involving a serious crime or dangerous offender than one involving a minor crime or non-dangerous offender.”<sup>14</sup>
  - (1) During the investigative stop, officers should try to gather information to determine whether or not there is probable cause to believe the suspect committed a crime.
  - (2) Since the suspect is not yet under arrest during an investigative stop, officers should avoid moving the suspect against his will from one location to another, absent strong justification for doing so, such as weather or safety. Generally, when a show-up is necessary, the victim/witness should be brought to the location of the suspect.



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Show-ups are discussed later in this lesson plan.

- (3) An officer may normally question the suspect during a routine investigative stop without the need for the reading of *Miranda* rights. However, the suspect does not have to answer those questions. (Questioning and Interrogation will be discussed in greater detail in later sections of this material.)
- (4) During the investigative stop, if an officer can articulate that his safety is in jeopardy and the suspect may be armed, he may frisk the suspect. (Frisks and other types of searches will be discussed in later sections of this material.)

### 5. Arrest

**NOTE: Show slide, “Arrest.”**

- a) Purpose
  - (1) An arrest is a more intrusive seizure on a citizen’s liberty than an investigative stop; therefore, more proof is required to justify an arrest. An arrest is a seizure to initiate criminal prosecution (bringing a person to court to face charges).
  - (2) An arrest is complete when “the person submits to the control of the arresting officer who has indicated his intention to arrest, or the arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force.”<sup>15</sup>
  - (3) Since the purpose of an arrest is much different than an investigative stop, officers may move a suspect against his will, restrain a suspect, transport a suspect, and search a suspect during the arrest process. The type and extent of the searches that can be conducted of a suspect and his property after an arrest will be discussed later in this material.
  - (4) Unlike an investigative stop, an officer may not interrogate a suspect without reading *Miranda* and obtaining a valid waiver. This issue will also be discussed in greater detail later in the material.

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- b) Legal standard for arrests – probable cause
- (1) To be lawful, arrests must be supported by probable cause. “Probable cause requires a showing—considering the totality of the circumstances—that a crime was probably committed and the defendant probably committed it. Thus, the degree of certainty that corresponds to probable cause is fair probability; that is, the required amount of proof is more than [reasonable suspicion] but less than for such other legal evidentiary standards as preponderance of the evidence, more probable than not, [or] more likely than not . . .”<sup>16</sup>
  - (2) “The United States Supreme Court has defined probable cause to arrest as follows: whether at the moment the arrest was made, the facts and circumstances within [the officer’s] knowledge and of which [the officer] had reasonably trustworthy information were sufficient to warrant a prudent [person] in believing that the [defendant] had committed or was committing an offense.”<sup>17</sup>
  - (3) Private citizens authority to detain offenders and to assist law enforcement officers<sup>18</sup>

This section discusses citizens’ authority to detain offenders, and to assist law enforcement officers. Officers who are outside their jurisdiction have this authority.

- c) Authority to detain offenders<sup>19</sup>

**NOTE: Show slide, “A Citizen May Detain an Offender.”**

- (1) A private person may detain another person when he has probable cause to believe that the person detained has committed in his presence:
  - (a) A felony
  - (b) A breach of the peace
  - (c) An offense involving physical injury to another person, or

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- (d) An offense involving theft or destruction of property.
  - (2) The private person must immediately notify law enforcement and must, unless he releases the person earlier as required, surrender the person to the law enforcement officer.
  - (3) The detention must be in a reasonable manner considering the offense involved and the circumstances of the detention.
- d) Private citizen's assistance to law enforcement officers—G.S. 15A-405

**NOTE: Show slide, "Private Citizen's Assistance to Law Enforcement."**

- (1) North Carolina law allows a private citizen to assist law enforcement officers in making arrests and preventing escapes from arrest when requested by a law enforcement officer.
- (2) The citizen is not legally obligated to assist.
- (3) If the citizen chooses to assist, that citizen has the same power as the officers to arrest and prevent escape.
- (4) The citizen is not subject to criminal or civil liability when lawfully providing this assistance, and is entitled to worker's compensation coverage if injured.

### 5. Arrest – statutory requirements

**NOTE: Show slide, "Arrest – Statutory Requirements."**

Arrests of adults are covered by G.S. 15A-401, discussed below. Juveniles that fall within the jurisdiction of the juvenile court are not "arrested" but are taken into "temporary custody" under G.S. 7B-1900 and the following statutes.<sup>20</sup> Taking a delinquent juvenile into temporary custody under G.S. 7B-1900 is similar to a warrantless arrest of an adult; therefore, you do need to know the contours of warrantless arrests under G.S. 15A-401(b) (discussed below in subsection b)(3).

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The authority to make a warrantless arrest of an adult is referenced in G.S. 7B-1900(1) and incorporated explicitly into that authority. However, when you take a delinquent juvenile into temporary custody, different procedures must be followed and various obligations than the arrest of an adult in similar circumstances. For the best discussion of those different requirements, see Section 11 – *Juvenile Laws and Procedures*.

- a) Statutory requirements for arrests by law enforcement officers—G.S. 15A-401
  - (1) Arrest warrants in general—G.S. 15A-401
    - (a) Valid throughout the state
    - (b) Issued and signed by a judicial official
    - (c) Names or describes the defendant
    - (d) States the offense
    - (e) Must be returned after 180 days if not served, but still valid after that
    - (f) A state automated electronic repository exists for a criminal process that includes arrest warrants. The electronic repository does **not** apply to search warrants. G.S. 15A-101.1; G.S. 15A-301; G.S. 15A-301.1.
    - (g) If a warrant exists only in paper form (is not in the electronic repository), it must be returned after 180 days if not served. Failure to return the warrant does not invalidate the warrant, nor does it invalidate service or execution made after 180 days. G.S. 15A-301.
    - (h) If a warrant exists in electronic form and a copy printed from the electronic repository is not served within 24 hours, it must record a lack of service in the repository, and all paper copies must be destroyed. The warrant may again be printed in paper form at later times. Failure to comply does not invalidate the warrant, nor does

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it invalidate service or execution made after 24 hours. G.S. 15A-301.1.

### (2) Arrests with an arrest warrant

**NOTE: Show slide, “Arrests With an Arrest Warrant.”**

#### (a) When the officer has the warrant in his possession

“An officer having a warrant for arrest in his possession may arrest the person named or described therein at any time and at any place within the officer’s territorial jurisdiction.”<sup>21</sup>

#### (b) When warrant exists but is not in the officer’s possession

“An officer who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his possession may arrest the person named therein at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him as soon as possible.”<sup>22</sup> This applies even though the arrest process has been returned to the clerk.

Special rules apply to enter private premises to arrest, even with an arrest warrant. These will be discussed below.

### (3) Arrest without an arrest warrant—G.S. 15A-401

This section deals with the authority to arrest where an arrest warrant does not exist, also known as a “warrantless arrest.”

**NOTE: Show slide, “Arrests Without a Warrant.”**

#### (a) An offense committed in the presence of the officer:

An officer may arrest without a warrant any person who the officer has probable cause to

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believe has committed a criminal offense in the officer's presence.

- (b) An offense committed out of the presence of the officer:

An officer may arrest without a warrant any person who the officer has probable cause to believe:

- i) Has committed a felony; or
- ii) Has committed a misdemeanor, and:
  - Will not be apprehended unless immediately arrested, or
  - May cause physical injury to himself or others, or damage to property unless immediately arrested; or
- iii) Has committed the misdemeanor offense of concealment of merchandise, domestic criminal trespass, impaired driving, or impaired driving in a commercial vehicle; or
- iv) Has committed the misdemeanor offense of simple assault, simple assault and battery, simple affray, assault inflicting serious injury or using a deadly weapon, assault on a female, or assault by pointing a gun when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in the domestic violence statute; or
- v) Has committed the misdemeanor offense of violation of a valid domestic violence protective order; or
- vi) Has violated a pretrial release order entered under G.S. 15A-543 (Procedure

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for determining conditions of pretrial release) or G.S. 15A-534.1(a)(2) (“Crimes of domestic violence; bail and pretrial release”).

(4) Statutory requirements upon arrest: 15A-401(c)

“Upon making an arrest, a law enforcement officer must:

- (a) Identify himself as a law enforcement officer unless his identity is otherwise apparent,
- (b) Inform the arrested person that he is under arrest, and
- (c) As promptly as is reasonable under the circumstances, inform the arrested person of the cause for the arrest, unless the cause appears to be evident.”<sup>23</sup>

(5) Other types of process

(a) Criminal summons<sup>24</sup>

A criminal summons charges a crime and orders the accused to appear in court on a designated time and date to answer the charges against him. The accused is not arrested on a criminal summons but instead served the summons to appear in court on a specified date.

(b) Magistrate’s order<sup>25</sup>

“An officer must take a person arrested without a warrant to a magistrate so that the magistrate may determine whether to issue a magistrate’s order. A magistrate’s order is a document that charges a person with a criminal offense; it is issued only if the magistrate determines that probable cause exists to believe that a criminal offense was committed, and that the defendant committed that offense.”

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The uniform traffic citation in paper form may be converted to a magistrate's order when an officer decides to arrest a person instead of charging the person by using a citation.

For example, when an officer charges DWI, the officer will arrest the suspect; the magistrate will sign the portion of the citation that converts that citation into a "magistrate's order" upon a finding of probable cause.

(c) Order for arrest

Process issued by a judicial official that orders law enforcement to take a named person into custody.

For example, it may be issued in certain circumstances where a defendant fails to appear in court, or when a person is indicted.

(d) Citation

A directive issued by a law enforcement officer that a person appears in court and answer a misdemeanor or infraction charge or charges.

For example, when an officer writes a ticket for a routine traffic violation or decides to cite a defendant to court on a misdemeanor instead of making an arrest. This is often one when officers do not have the authority to arrest for certain misdemeanors that were not committed in the officer's presence.

(6) Officer's role in seeking issuance of the criminal process

Officers usually appear in person before a magistrate to present under oath the facts which justify the issuance of the warrant or other process charging a criminal offense or offenses. The facts presented must support every element of the criminal offense for which the process issued. The magistrate's role is to make an independent judgment as to whether probable cause



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exists to issue the warrant or other processes, not to just issue it because an officer is requesting that it be done.

- b) Entering private premises to arrest

**NOTE: Show slide, “Entering Private Premises.”**

- (1) Enter the defendant’s home or residence to arrest

Without consent or exigent circumstances, the arresting officer must: have an arrest warrant in her possession and probable cause to believe the defendant is inside.

By North Carolina General Statute 15A-401(e):

A law enforcement officer may enter the defendant’s private premises to make an arrest when:

- (a) The officer has in his possession the original warrant for arrest or order for arrest.

A copy of the warrant or order will be sufficient only if the original warrant or order is in possession of a member of a law enforcement agency located in the county where the officer is employed, and the officer verifies with the agency that the warrant is current and valid.

- (b) The officer has reasonable cause to believe the person to be arrested is present.

- (c) The officer must give, or make a reasonable effort to give, a notice of his authority and purpose to an occupant of the premises to be entered.

Such notice need not be given only when the officer has reasonable cause to believe that the giving of such notice would present a clear danger to human life.

- (d) The officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or where he is not required to give

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notice of his authority and purpose when he has reasonable cause to believe that providing such notice would present a clear danger to human life.

- i) If an officer has a printed warrant or order for arrest from the electronic repository (NCAWARE), a faxed copy, or a certified copy from the Clerk of Court, then the process is valid as the original. The word “copy” means a photocopy.<sup>26</sup>
  - ii) Under North Carolina law, officers must knock and announce even though there is reason to believe that doing so will increase the chance of evidence being destroyed. If officers have such a belief, they may enter shortly after the knock and announce. *State v. Gaines*, 33 N.C. App. 66, (1977).
  - iii) “Notice of identity” means that before entering, the officer must state in a voice loud enough to be heard inside the house, “Police, open up, search (or arrest) warrant.” The officer may forcibly enter if entry is unreasonably delayed or denied.
- (2) Enter third party’s home or residence to arrest the defendant
- (a) Absent consent or exigent circumstances, the officer must have a search warrant (to protect the privacy interests of the third party) in addition to an arrest warrant (to allow the arrest of the suspect within the residence of the third party).
  - (b) The notice and entry requirements are the same as above.

Search warrant drafting and execution rules are reviewed later in this lesson plan.

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- c) Enter home or residence with consent to arrest the defendant
- (1) “When officers want to enter the defendant’s or a third party’s home to arrest the defendant, they may not need an arrest or search warrant if they receive consent to enter from someone who has the authority to give it.
  - (2) If officers want to enter the defendant’s home, they normally may receive consent from the defendant’s spouse, mother, father, adult sibling, or live-in friend or any other person who has equal privacy interests in the defendant’s home.”<sup>27</sup>
  - (3) “When officers want to enter the home of a third party to arrest a person who does not live there, they must receive consent from a person who has a privacy interest in that home—generally, an adult who lives there.”<sup>28</sup>

Even when consent is given, officers will still need an arrest warrant to arrest the defendant for certain misdemeanors that were not committed in their presence, as set forth previously in the warrantless arrest section of this lesson plan.

- d) Enter home with exigent circumstances to arrest the defendant
- (1) “When exigent circumstances exist to make an arrest, officers may enter the defendant’s or third party’s home or other place of residence even though they do not have an arrest warrant, search warrant, or consent. Although the term “exigent circumstances” is not easily described, it generally means that officers need to act immediately.”<sup>29</sup>
  - (2) Factors to consider in determining if exigent circumstances exist include:
    - (a) Hot pursuit of a suspect **although when entering a private premise to make an arrest on a misdemeanor, hot pursuit can not be the ONLY exigent circumstance.**<sup>30</sup>

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- (b) Danger to the public or law enforcement officers outside or inside the dwelling of an immediate, warrantless entry is not made;<sup>31</sup>
  - (c) The need to prevent the imminent destruction of evidence;<sup>32</sup>
  - (d) The need to prevent the suspect's escape;<sup>33</sup>
  - (e) Whether the suspect is armed;<sup>34</sup>
  - (f) The gravity of the offense for which the suspect is being arrested; exigent circumstances will rarely be found to justify entry into a home to arrest for extremely minor offenses, particularly offenses not punishable by imprisonment.<sup>35</sup>
- e) Procedures following the arrest:<sup>36</sup>

### **NOTE: Show slide, "Procedures Following Arrest."**

- (1) The officer takes the arrested person to a magistrate or judicial official without unnecessary delay:
  - (a) To determine whether probable cause exists for a warrantless arrest
  - (b) To set pre-trial release conditions

Delay is reasonable to conduct interviews, specific identification procedures, searches, intoxilyzer and sobriety tests, and other procedures incident to arrest.

In the context of taking temporary custody of a juvenile, the judicial official before which the juvenile would be taken is the juvenile court counselor, not the magistrate.<sup>37</sup> The juvenile court counselor will decide if a juvenile petition should be filed (equivalent of the magistrate's probable cause determination reference above) and whether there may be need for secure or non-secure custody for the juvenile (equivalent of the magistrate's pre-trial release decision).<sup>38</sup>

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- (2) The officer must, without unnecessary delay, allow the defendant to communicate with lawyer, family, and friends.
- (3) Notify juvenile's parent or guardian—G.S. 7B-1901; notify the minor's parent or guardian—G.S. 15A-505
  - (a) An officer who takes a juvenile who is alleged to be undisciplined or delinquent into custody without a court order must notify the juvenile's parent, guardian or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian or custodian of the right to be present with the juvenile until a determination is made as to the need for secure or non-secure custody. (See G.S. 7B-1901.)
  - (b) An officer who charges a minor with a criminal offense must notify the minor's parent or guardian of the charge as soon as practicable, in person, or by telephone. If the minor is taken into custody, the officer or the officer's immediate supervisor must notify a parent or guardian in writing that the minor is in custody within twenty-four hours of the minor's arrest.

Notification is not required under this statute if the minor is emancipated; the minor is not taken into custody and has been charged with a motor vehicle moving violation for which three or fewer points are assessed, except an offense involving impaired driving; or the minor has been charged with a motor vehicle offense that is not a moving violation. (See G.S. 15A-505.)

- (4) Notification to the principal of the secondary school at which the arrestee attends. It does not apply to juveniles taken into custody as a result of delinquency allegations. This notification must be made within five days of the arrest.

Limited to non-chapter felony arrests. (See G.S. 15A-505.) If the offender is a minor, this notification should be made by the officer **only** in two circumstances:

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- (a) When the minor has a previous district or superior court conviction for a felony, non-Chapter 20 misdemeanors, or impaired driving offense as defined in G.S. 20-4.01(24a) and is being charged or arrested for a non-Chapter 20 felony committed after that conviction,<sup>39</sup> or
- (b) When the juvenile is emancipated, married or in the military and is being charged or arrested for a non-Chapter 20 felony.

For a minor who is being processed as a juvenile for an allegation of delinquency, the juvenile court counselor has the legal duty to notify the principal verbally and in writing should such notification be required.<sup>40</sup> Law enforcement is not legally authorized to make any school notification regarding a minor being processed as a juvenile.

- (5) Seek medical assistance for the suspect if necessary, and otherwise monitor the physical well-being at all times the suspect is in your custody.

Further, whenever an officer arrests a person who is unconscious, semiconscious, or suffering from some disabling condition, and who is unable to provide information on the cause of such condition, officers are required to look for a bracelet or necklace containing the Medic Alert Foundations symbol indicating the person suffering diabetes, epilepsy, a cardiac condition, or any other form of illness which would cause loss of consciousness. If so, officers must make a reasonable effort to have appropriate medical care provided.<sup>41</sup>

- (6) When a law enforcement officer arrests an adult who is supervising minor children who are present at the time of the arrest, the minor children must be placed with a responsible adult approved by the parent or guardian of the minor children. If this is not possible within a reasonable period, the law enforcement officer shall contact the county department of social services. (G.S. 15A-401(g).)
- (7) Consular notification and access for foreign nationals. A “foreign national” is anyone who is not a United

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States citizen who is on United States land. Foreign nationals who are arrested or detained in this country enjoy privileges provided by the federal government by the provisions of the Vienna Convention on Consular Relations, just as United States citizens are entitled to the same provisions when arrested or detained in another country. Local law enforcement officers must recognize these privileges.

The United States State Department does not consider brief routine detentions, such as traffic violations and traffic crash investigations, to initiate the requirements of the treaty. On the other hand, undoubtedly, an arrest or requiring a foreign national to accompany an officer to a place of detention would trigger the requirements.

- (a) Mandatory notification of consulate. It is mandatory that some countries' consulates be notified when one of their nationals is arrested or detained, regardless of the foreign national's wish. A list of these countries is available from the United States Department of State. Notification of the consulate should occur as reasonably as possible, and there should be no deliberate delay in doing so. The State Department normally expects notification within twenty-four hours. The foreign national is to be advised that his consulate will be notified and confirmed when it has been.
- (b) Requested notification of consulate. Even if their country is not on the mandatory notification list, foreign nationals who are arrested or detained must be advised of their right to have their consulate notified. If so requested, notification should occur as reasonably as possible.
- (c) Communication between foreign nationals and their consulates. Once notified, consular officials are entitled to visit and communicate with their detained nationals and are entitled to provide consular assistance.

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- (d) Deaths of foreign nationals. When a government official, including a law enforcement officer, becomes aware of the death of a foreign national, the nearest consulate of that national's country must be notified.

Further and complete information on consular notification may be obtained from the Department of State at [http://travel.state.gov/law/consular/consular\\_753.html](http://travel.state.gov/law/consular/consular_753.html).

**NOTE: Instructors are encouraged to obtain Consular Notification and Access Reference Cards from the State Department. These pocket-sized cards include instructions and a list of the mandatory notification countries.**

- (8) If a deaf person is arrested for an alleged violation of a law or local ordinance, the arresting officer shall immediately procure a qualified interpreter from a qualified court for any interrogation, warning, notification of rights, arraignment, bail hearing, or other preliminary proceeding (G.S. 8B-2(d).)

Once an arrest is made, it is important to properly disclose all evidence to the prosecutor's office. Because of the importance of disclosing information as required by law, as well as protecting certain information not subject to discovery, law enforcement officers should work closely with the prosecutor to assure full compliance with this pre-trial process. Failing to provide discovery can jeopardize the case, and even result in criminal penalties against the violating party, to include the officer.

N.C. General Statute 15A-903 states the "law enforcement and investigatory agencies shall make available to the prosecutor's office a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant..." Additionally, any person who willfully omits or misrepresents evidence or information required to be disclosed by the State to the defendant the complete files of the law enforcement agencies involved in the investigation of the crimes committed or the prosecution of the defendant shall be guilty of a Class H felony. Any person who willfully omits or misrepresents evidence on the information required to be disclosed under any other provision such as notice of expert witness testimony or opinion, a written list of the names of all



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witnesses to be called during the trial, etc. shall be guilty of a Class 1 misdemeanor.

Additional information on discovery is provided in the “Responding to Victims and the Public” block of instruction.

### G. Force

The use of force is a “seizure” under the Fourth Amendment, and thus, must be reasonable. What is a reasonable use of force under the Fourth Amendment will depend on the facts and circumstances of every particular case.

#### 1. Non-deadly force

### **NOTE: Show slide, “Non-Deadly Force.”**

Officers are often required to use non-deadly force. Using force is a matter of quick personal judgment shaped not only by an understanding of the law but by other training you will receive in BLET.

#### a) Use of non-deadly force – G.S. 15A-401(d)(1)

G.S. 15A-401(d)(1) provides that an officer is justified in using force—not deadly force—when and to the extent, he reasonably believes is necessary to:

- (1) Prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense unless the officer knows the arrest is unauthorized; or
- (2) Defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to arrest or while preventing or attempting to prevent an escape.

#### b) Case law – objective reasonableness and *Graham v. Connor*, 490 U.S. 386, (1989).

The overriding test for all use of force, whether deadly or not, is whether the use of force was *objectively reasonable* under the circumstances and at the time the force was used. Like all Fourth Amendment claims, the standard is objective, not subjective. Thus, it does not matter what a particular officer

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thought at the time force was used. The court must look at what a reasonably well-trained police officer could have done.

The court will balance the nature and extent of the intrusion upon the citizen's Fourth Amendment interests against the government's need to investigate criminal offenses and enforce the laws. The court must review the totality of the circumstances known to the officer at the time the force was used and consider the following factors:

- (1) The type of crime for which the stop or arrest is being made;
- (2) Whether the suspect is an immediate threat to the safety of the officers or others;
- (3) Whether the suspect is actively resisting;
- (4) Whether the suspect is attempting to evade arrest or detention by flight.

### 2. Deadly force

**NOTE: Show slide, "Deadly Force."**

- a) The legal authority for use of force

**NOTE: Refer to 15A-401 in *North Carolina Criminal Law and Procedures*.**

G.S. 15A-401(d) defines the legal authority for the use of force in North Carolina.

- b) Use of deadly force – G.S. 15A-401(d)(2)

The use of deadly force is much more restrictive, as shown by subdivision (2) of G.S. 15A-401(d). The authority to use deadly force depends on the nature of the circumstances the officer faces at the time such force must be used. The use of deadly force must be "reasonably necessary" under the circumstances.

- (1) In other words, the officer must believe:
  - (a) That the use of deadly force is necessary; and,

- (b) The officer's belief must be reasonable.
- (2) An officer's belief that deadly force is "reasonably necessary" must be based on facts and circumstances which reasonably appear to present an imminent threat of death or serious bodily injury to the officer or a third party. The apparent threat must be immediate, not remote, and must call for immediate action to prevent life-threatening injury. If a realistic and effective alternative to deadly force exists, and such an alternative will prevent the life-threatening injury, officers must not use deadly force. An imminent threat of serious physical harm may be created by an armed suspect trying to escape by threatening the use of a dangerous weapon, or by an unarmed but aggressive and strong suspect who is overpowering an officer and trying to get the officer's handgun. An imminent threat of serious physical harm may also be created by an armed individual threatening the use of what reasonably appears to be a dangerous weapon.
- (3) An officer attempting to make an arrest does not have to retreat when the suspect is threatening to use deadly force.
- (4) Deadly physical force is authorized in any of four situations. (G.S. 15A-401(d)(2).)
  - (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.
  - (b) To prevent the escape of a suspect from custody who he reasonably believes is attempting to escape by using a deadly weapon.
  - (c) To effect an arrest or prevent an escape from custody of a person who, by his conduct or any other means, indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay.

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- (d) To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.
- (5) The U. S. Supreme Court reinforced the prohibition against using deadly force to arrest fleeing felons in the absence of a deadly threat in 1985 when it decided the case of *Tennessee v. Garner*, 471 U.S. 1 (1985). The facts of that case are as follows:
- (a) Police officers responded to a prowler call. Upon arriving, they heard a door slam and saw someone running across the backyard. One of the officers identified himself and told the suspect to halt. When the suspect, fifteen-year-old Edward Garner, attempted to climb over a fence, the officer shot and killed him. The officer later testified that he was “reasonably sure” that Garner was unarmed but that he knew if Garner made it over the fence, he would not be captured. Tennessee had a statute that authorized the officer’s action in using deadly force against a fleeing felony suspect.
  - (b) The U. S. Supreme Court ruled that the use of deadly force to prevent the escape of a suspected criminal is unconstitutional if the suspect appears to be neither armed nor dangerous. They held that deadly force may not be used unless necessary to prevent escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.
- (6) The safest and most apparent authority for the use of deadly force is in defense of self or others. However, deadly force should only be used when necessary to prevent death or serious injury while confronting an immediate threat. The consequences of being wrong in the use of deadly force are too serious to permit any other interpretation. The amount of force used must always be reasonable under the circumstances, but the officer may rely on appearances (e.g., a realistic-looking toy pistol or pistol carved from a soap bar could meet the reasonable belief requirement).

- (7) G.S. 15A-401 also authorizes an officer to use deadly force to prevent the escape of a suspect who is attempting to escape by means of a deadly weapon. Attempting to escape “by means of a deadly weapon” means using a deadly weapon as an instrument or tool to aid in escaping. This section clearly states that if the suspect is using a deadly weapon to escape, the officer may use deadly force to counteract the effect of the suspect’s use of force.
- (8) The fourth situation which authorizes the use of deadly force is deceptively simple. An officer is authorized to use deadly force when reasonably necessary to prevent the escape from custody of a convicted felon. To use deadly force in this situation, the officer must know the escapee is trying to escape from custody after being sentenced to custody for a felony.

This situation would primarily apply to correctional officers in preventing an escape from a prison unit, although concurrent authority rests with law enforcement officers with territorial and subject matter jurisdiction. Many agencies throughout North Carolina prohibit officers from using this statutory authority by policy. Officers must be thoroughly familiar with their agency’s use of force and related policies.

The rules on the use of deadly force under North Carolina law will not permit the use of deadly force against a person accused or suspected of committing a crime who is attempting to escape from custody or arrest unless his conduct presents an immediate threat of death or serious injury. Persons seen running from a building or the scene of a crime may be subject to arrest for a felony, but deadly force cannot be used to prevent the escape unless a serious threat is presented as a means of escape.

- c) Circumstances involving potential excessive use of force
  - (1) The officer uses substantial force against a passively resisting, verbally-protesting suspect – little or no force is needed.

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- (2) The officer validly uses substantial force against an actively resisting suspect and continues after the suspect ceases resistance - force began as a necessity but did not stop when the suspect was, in fact, subdued.

d) Use of deadly force decision-making

Sometimes an officer confronts an obvious immediate threat to life from an armed suspect pointing a gun or a suspect trying to stab the officer with a knife. But some threats are not so clear. Circumstances may require an officer to decide exactly when a deadly threat is imminent so that deadly force is authorized by law. The exact moment a deadly threat becomes imminent may be uncertain.

Suppose officers approach a car to arrest the driver and passenger after they sold an undercover officer a kilo of cocaine. The officers know drug dealers are often armed, but no weapons are in plain view. An officer orders the passenger to raise his hands, but the passenger does not. The passenger refuses to comply with a second order to raise his hands. The passenger then turns and reaches with his left hand toward the floor behind his seat. The passenger then raises his arm and starts to turn toward the officer. The officer sees an object in the passenger's left hand but does not know what it is. The officer then sees the object looks like a gun. Passenger points a gun at the officer.

**NOTE: Show slide, "When Can the Officer Shoot?"**

- (1) Exactly when is an officer first authorized to shoot?
  - (a) Time 1: Passenger refuses to raise hands.
  - (b) Time 2: Passenger non-compliant second time.
  - (c) Time 3: Passenger reaches toward the floor.
  - (d) Time 4: Passenger turns toward the officer.
  - (e) Time 5: The officer sees an unknown object in hand.

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- (f) Time 6: Object is a gun.
  - (g) Time 7: Gun is pointed at the officer.
- (2) Dilemmas:
- (a) The sooner the officer shoots, the greater the chance the officer will survive the encounter.
  - (b) The sooner the officer shoots, the more difficult it is to justify the use of deadly force.
  - (c) The longer the officer waits, the easier to justify the use of deadly force – the deadly threat becomes clear.
  - (d) The longer the officer waits, the more challenging to survive the threat – suspect may be able to shoot back even if an officer shoots first.

The officer wants to survive and wants to justify the decision to use deadly force. No one can decide for the officer. Several court cases find an officer justified in shooting at Time 5, but many officers prefer to wait until Time 6. The difference could be critical.

“When a police officer confronts an armed suspect, the officer’s choice of response must be made swiftly. Frequently, such decisions must be made in less than a second. During that time, many factors in the scene must be evaluated: the suspect’s motions; where the weapon is aimed; the presence of other people, including other potential suspects, and whether or not they are in the officer’s probable field of fire; and other potential sources of hazard, to self, to others, and to the suspect, in the immediate environment.”<sup>42</sup>

### H. Warrantless Searches

**NOTE: Show slide, “Warrantless Searches.”**

## ***Arrest, Search and Seizure/Constitutional Law***

The Fourth Amendment protects a citizen from government interference when the citizen has a reasonable expectation of privacy in the area or thing searched or seized.

### 1. Overview of the Fourth Amendment

The Fourth Amendment of the United States Constitution restricts the power of the government, particularly law enforcement officers, to search and seize a person or a person's property. The Amendment does not apply to a private person's actions searching or taking another's property unless that person is acting as an agent of the government/officer or with the government's knowledge.<sup>43</sup>

- a) The Fourth Amendment reads, in full: "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." (United States Constitution, Amendment IV).

Thus, under the Fourth Amendment, all searches and seizures must be reasonable. This includes warrantless searches.

It is essential to remember the definition of search since it triggers the requirements of the Fourth Amendment. A search occurs when an officer intrudes into a place where the citizen has a reasonable expectation of privacy. This will be discussed further in this lesson plan.

- b) The United States and North Carolina Constitutions set the minimum standard for protecting privacy. Courts have developed case law, and legislatures have enacted statutes for determining when a warrantless search is justified and, therefore, legal. The stronger the justification for the invasion of privacy, the greater the interference with a person's privacy that is allowed. The determination is made using a balancing approach—weighing the individual's right to be free and left alone, against the law enforcement officer's need to protect the public, investigate a crime, or enforce the law.<sup>44</sup>

### 2. The Fourth Amendment only protects a reasonable expectation of privacy.

- a) Fourth Amendment and expectation of privacy



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If the person has no reasonable expectation of privacy in the place or person searched, then the rules of the Fourth Amendment do not apply, and the suspect will not be able to argue a Fourth Amendment violation in court. Subject to some exceptions, such as overnight guests, a person does not have a reasonable expectation of privacy in someone else's home, person, or property. Therefore, defendants must prove that their rights protected by the Fourth Amendment were violated to allege a constitutional violation.<sup>45</sup>

b) No reasonable expectation of privacy

There are certain circumstances where individuals cannot assert an expectation of privacy. When something has been placed out in the open, abandoned, or left in plain view, the courts have generally found that there is no objectively reasonable expectation of privacy in those circumstances, even if the suspect in his mind has a subjective expectation of privacy. In other words, any subjective expectation of privacy in those circumstances is not one that society would recognize as reasonable.<sup>46</sup>

The Fourth Amendment's protections do not apply the places and things where there is no reasonable expectation of privacy.

(1) Open fields – outside the curtilage

**NOTE: Show slide, "Open Fields."**

People have a reasonable expectation of privacy for their home and the curtilage of the house, or the area immediately surrounding the house. Examples of curtilage include the driveway, a back deck, a flower or vegetable garden just next to the home, or a swimming pool. Structures such as an unattached garage or a storage shed are generally considered part of the curtilage. The legal test for whether an area is part of the curtilage focuses on the proximity to the home and whether the structure frequently serves the needs of the homeowner.

There is no "bright line" judicial rule for determining where curtilage begins and ends; thus, officers who are unsure of whether a particular area or structure is within the curtilage should obtain a search warrant, or act

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under a recognized exception to the warrant requirement, discussed in this lesson plan.

Conversely, areas outside of the curtilage, such as open fields where crops are being cultivated, are not protected by the Fourth Amendment **even though** the fields are owned by the homeowner. The reason for this rule is that the courts have decided that society does not recognize a privacy interest in open fields easily viewed from the ground or air. Officers may seize illegal items that are plainly viewed during the inspection of the open field.<sup>47</sup>

The presence of “no trespassing” signs will not affect the admissibility of evidence seized from an open field in plain view.

### (2) Abandoned property

**NOTE: Show slide, “Abandoned Property.”**

The abandoned property is the property in which a person has intentionally relinquished any interest. If a person has relinquished his rights to a piece of property, he cannot later assert that there was any legitimate expectation of privacy in that abandoned property.<sup>48</sup>

#### (a) Real property

It is often difficult to determine whether the real property has been abandoned. Therefore, it can be difficult to justify searching the real property on the assumption that it is abandoned. An example of real property that is probably abandoned would be a building that has been unoccupied for a long time and gutted by vandals with no sign of anyone asserting any protection or ownership over it. If real property has been rented, then the owner may not normally consent to a search of a rented room or building. If the lease has ended and the renter has left the premises with her belongings—thus indicating intent not to return—then the renter has abandoned the property, and any expectation of privacy in the premises is gone.

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(b) Personal property

Personal property, which is voluntarily discarded, is considered abandoned. The former owner of such property loses any expectation of privacy in it once it is thrown away. Since legally the property belongs to no one, it may be recovered by the police without a search warrant. When a person affirmatively denies any possessory or ownership interest in an item, that person has abandoned it.

(c) Garbage

**NOTE: The instructor should draw curtilage on the flipchart while explaining the below.**

Once a person places garbage outside the curtilage for collection, the homeowner or renter loses his expectation of privacy in the trash, and it can be searched by the police without a search warrant. If however, the trash has been placed within the curtilage for collection, then the trash can be searched without a search warrant under the following conditions:

- i) The regular garbage collector picks up the garbage on the regular collection day; the person picking up the trash has been authorized to enter the defendant's property.
- ii) It is picked up in the usual manner, at the usual time (a separate trip to pick up garbage "after hours" would likely be disapproved by the Courts;
- iii) The trash is searched by law enforcement officers after it has been removed from the premises.

Officers who wish to recover garbage should stress to the collector that the trash must be kept separate from the other collected trash.

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### (3) The plain-view doctrine

**NOTE: Show slide, “Plain View.”**

- (a) There are three basic requirements for a legitimate plain view seizure:
  - i) The officers are lawfully in a position from which they view an object; and
  - ii) The incriminating character of the object is immediately apparent (i.e., they have probable cause); and
  - iii) The officers have a lawful right of access to the object.

What is knowingly exposed to public sight, hearing, or smell lacks constitutional protection. There is no reasonable expectation of privacy in, for example, marijuana smoke exhaled in public.

The plain view rule does not necessarily authorize a warrantless entry into private premises. The plain view merely provides an observation an officer can use to establish probable cause (see (a) 2), below).

- (b) Examples of plain-view observations
  - i) Observation from a private place after legitimate access

An officer may enter a private area by consent, to execute a search or arrest warrant, to respond to a call for service, or because of exigent circumstances. If the officer’s entry is lawful, he or she may lawfully seize illegal items in plain sight, even if the items seized are not related to the reason for the entry.<sup>49</sup>

- ii) An observation into a home from a public place

An officer standing on a sidewalk or in a public hallway of an apartment complex may observe illegal items through an open doorway or an unobstructed window. Even when her training and experience tell her what she is observing is unlawful (and in plain view), the officer still needs a search warrant to seize it, unless there are exigent circumstances or the officer obtains consent to enter the premises. For example, an officer driving by observes a marijuana plant growing inside someone's residence. The officer may not enter the residence to seize the plant unless there are exigent circumstances, or the officer first obtains a search warrant, or the officer has valid consent to enter.<sup>50</sup>

The North Carolina Court of Appeals decided that it was unlawful for the officer investigating a recent robbery to walk up to the suspect's porch, lean over a couch, and look through a three inch opening in a drawn curtain to view the suspect counting money (the officer did not have a search warrant). The Court reasoned that such a small opening in the curtain was not the kind of exposure to public view, which would eliminate the suspect's right to privacy.

Officers should note that neither this nor any other North Carolina case limits the right of law enforcement officers to "knock and talk," that is, to knock on the front door of a residence and engage in a voluntary talk with the homeowner or resident.<sup>51</sup> When officers go to a house using a common entranceway for a legitimate purpose, such as to question

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the suspect in a criminal investigation, they are not conducting a search under the Fourth Amendment.

iii) An observation into a car

If a car is in a public place, and the officer sees an object that is evidence of a crime, the officer may seize the object without a search warrant.<sup>52</sup>

iv) Plain view and plain touch

The plain view doctrine also applies to smell and touch. The odor of marijuana emanating from a car establishes probable cause to believe that marijuana is in the vehicle.

In *Minnesota v. Dickerson*, 508 U.S. 366 (1993), the United States Supreme Court created the “plain feel” or “plain touch” exception to the Fourth Amendment’s warrant requirement. *Dickerson* holds that if officers are conducting a lawful frisk for weapons and feel an object, which is probably contraband, officers may seize the object *even though they do not believe it is a weapon*. North Carolina has adopted the plain touch exception. The critical inquiry is whether at the time the officer felt the object, it was “immediately apparent” that it was contraband. “Immediately apparent” means probable cause to believe that the item is illegal to possess.

(c) Using special devices to enhance perception

**NOTE: Show slide, “Special Devices.”**

Plain view observations can sometimes be enhanced with the assistance of special devices.<sup>53</sup>

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- i) Binoculars and flashlights are usually allowed to clarify an object, but a sophisticated high-power telescope could not be used to look into a home. However, that same telescope could be used to observe activities in an open field or other places where there is no reasonable expectation of privacy.<sup>54</sup>
- ii) Aircraft surveillance has been allowed, if made from lawful navigable airspace, using the unaided eye, especially over open fields. In *U.S. v. Breza*, 308 F.3d 430, (4<sup>th</sup> Cir., 2002), aerial surveillance of the defendant's property was a valid warrantless search when officers flew at 500 feet and descended to 200 feet, and similar flights were a regular occurrence over the property.
- iii) *U.S. v. Kyllo*, 121 S.Ct. 2038, 150 LE2d 94, 2001 U.S. LEXIS 4487, involved the use of a thermal-imaging device from a public street to detect relative amounts of heat within the home. The court ruled that obtaining information by sense-enhancing technology regarding the home's interior that could not otherwise have been obtained without physical "intrusion into a constitutionally protected area" is a search (at least where the technology in question is not in general public use).
- iv) Police canines can be used in public places, such as airports or to walk around a car, without violating the Fourth Amendment. A canine "sniff" is not a search under the Fourth Amendment since persons have no expectation of privacy in the air around their car or luggage. Remember that there must be a justification for detaining the suspect during the sniff. A canine may not enter a private place unless the

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officer controlling the canine has the right to enter.<sup>55</sup>

- c) Consent by a person who has a reasonable expectation of privacy

**NOTE: Show slide, “Consent Searches.”**

A person may waive his Fourth Amendment right to privacy if he voluntarily consents to a law enforcement officer’s entry into a protected place or examination of an object. Once valid consent has been given, an officer may then invade that person’s privacy to the extent that the person gave consent.<sup>56</sup>

Consent searches involve officers intruding into places where a citizen has a reasonable expectation of privacy. However, with consent, officers do not need probable cause or a warrant to search.

- (1) Authority to consent

Only a person who has apparent authority to control a given area can give an officer consent to search that area. Because more than one person may have apparent authority to control a given area, any of those parties may give consent to search such areas in the absence of the other; however, when two people with an equal expectation of privacy in a home are present, and one objects, the objection of one party overrides the consent of the other, and the search cannot be conducted as a consent search.

This rule only applies to consent searches. Thus, such an objection has no impact on a law enforcement officer’s authority to enter premises under other legal authority, such as exigent circumstances or to execute a search warrant.

- (a) A spouse or roommate may give consent to a search of common areas within a home that she shares with another. However, she may **not** consent to a search of a particular place in which the other person has an **exclusive** privacy interest (such as a separate bedroom or office).<sup>57</sup>



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- (b) Parents generally have the authority to consent to a search of a minor child's room; **but**, the older the child, the less clear the parents' authority. However, the parent does **not** have the authority to give consent to search the personal possessions that are within that child's room, if the child has exclusive access and use of those items.<sup>58</sup>
- (c) Only the tenant, not the landlord, may consent to a search of a rented room, apartment, or house. Only when the tenant has abandoned or permanently left the place, may the owner or landlord give consent.<sup>59</sup>
- (d) The homeowner can consent to a search of his home but **may not** consent to a search of an area set aside for the exclusive use of the guest, such as a bedroom.<sup>60</sup> Officers who wish to search a bedroom used by an overnight guest, or a guest's personal belongings such as a suitcase, must have the consent **of the guest**, an emergency, or a search warrant before searching the bedroom or the belongings.
- (e) Employers may give consent to search their entire property, except for areas where the employer has relinquished control, such as a desk or locker set aside for the exclusive use of the employee. Employees may only give consent to search the work area if their authority extends to control over the property (for example, a store manager).<sup>61</sup>
- (f) Officers cannot rely on the consent of a school principal to search a student's locker (a school official, i.e., administrator or principal, can search the locker without a search warrant if there is reasonable suspicion to believe it contains illegal items). Law Enforcement officers are **not** "school officials." *New Jersey v. T.L.O.* 469 U.S. 325, (1985). Similarly, college or university officials have no authority to consent to a search of a student's dormitory room.<sup>62</sup>

(g) G.S. 15A-222(2) allows the driver **or** registered owner of an automobile to consent to a search of the vehicle. If the person driving is not the owner, and she gives consent, the search is lawful **even if** the registered owner is not present to give consent. Conversely, the registered owner's permission allows for the search even if the driver refuses to consent. If the driver and the owner are in the vehicle and the driver gives consent but the owner will not (or vice versa), you should follow the wishes of the owner because the owner's expectation of privacy is greater than the driver.

(2) Consent must be voluntary

A valid consent must be voluntary. The consent must be clearly expressed (although there is no legal requirement for a written consent, written consent makes proving consent easier) and made with the knowledge that a search would follow. Courts will invalidate a "consent" that was obtained through coercion or duress. However, consent may be valid even if officers tell a person that if he does not consent, they will apply for a search warrant if officers have the legal authority to obtain the warrant. Officers need not tell the person of the right to refuse consent, but the person's actual knowledge may later be a factor in determining whether the consent was voluntary.<sup>63</sup>

(3) Scope of search and revocation of consent

(a) The scope of the search depends on the terms of the consent given to the officers. A person giving consent may also limit that consent in any manner, including limiting the duration, location, and scope of the search. ("You may search the first floor of my house, but nowhere else.") Also, during a consent search, the person who gave consent may tell the officers to stop at any time.<sup>64</sup>

(b) In the event general consent is given – in other words, no specific scope of consent is established—then the scope of the search may

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extend to areas in which a reasonable person would expect officers to search.<sup>65</sup>

For example, general consent to search a vehicle does not extend to the dismantling of the car absent additional authority, such as specific consent or probable cause. Similarly, general consent to search a person does not extend to conducting a strip search.<sup>66</sup>

Officers may consider requesting additional, specific consent to search areas that fall outside the scope of a general consent.

3. Warrantless searches when there is a reasonable expectation of privacy and no consent

**NOTE: Show slide, “Warrantless Searches.”**

- a) Exigent circumstances when there is probable cause to search
  - (1) What are “exigent circumstances?”

Officers may do a warrantless search when there are exigent circumstances. Exigent circumstances exist when there is **BOTH (a) PROBABLE CAUSE TO SEARCH AND (b) a likelihood that absent immediate action officers could be endangered or evidence could either be destroyed or removed from the jurisdiction.**<sup>67</sup>

Factors to consider when determining whether exigent circumstances exist to enter and search a home are:

- (a) Whether officers had probable cause to obtain a search warrant before the exigency was created;
- (b) Whether officers had an objectively reasonable belief that destruction or removal of the evidence was imminent
- (c) The seriousness of the offense for which the officers are searching; and
- (d) How long it would have taken to obtain a search warrant.

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- (2) Once the officers have entered a home and secured the area such that exigent circumstances no longer exist, they then must obtain a search warrant.<sup>68</sup>
- (3) The following are circumstances in which the courts *have* found exigent circumstances:
  - (a) In *Ward v. Hayden*, 387 U.S. 294 (1967), five minutes after receiving a 911 call that a suspect had committed an armed robbery and ran into his home, police entered the house to search for the suspect and evidence.
  - (b) In *State v. Wallace*, 71 NC App 681, (1984), an accomplice of a robbery suspect informed the police that the suspect was staying at a motel. Before the police could obtain a warrant, the motel clerk called to advise the officers that the suspect was preparing to check out of the motel. The police entered the hotel room and arrested the suspect.
- (4) Courts *did not* find exigent circumstances in the following situations:
  - (a) Four days after a murder, police make a warrantless entry into the suspect's home. *Payton v. New York*, 445 U.S. 573, (1980);
  - (b) Electronic surveillance reveals that inhabitants of a house are about to smoke one joint of marijuana, following the delivery of fifty pounds of marijuana to the home.
  - (c) Crime/fire scene: Refer to section on searching a crime scene
- (5) Urgent necessity
  - (a) Officers may enter a home without a warrant or consent if entry is required because of an exigent circumstance or to save a life, prevent injury, or protect property.

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- (b) G.S. 15A-285 provides the following emergency authority:

“When an officer reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe, the officer may take one or more of the following actions:

- i) Enter buildings, vehicles, and other premises.
- ii) Limit or restrict the presence of persons in premises or areas.
- iii) Exercise control over the property of others. An action taken to enforce the law or to seize a person or evidence cannot be justified by authority of this section.”<sup>69</sup>

- (c) Examples of situations where officers may consider this authority include:

These are just a few examples. Officers must be able to articulate a reasonable belief that action is necessary to prevent bodily harm or avert a catastrophe.

- i) Officer observes flames and smoke coming from a burning dwelling. Entry may be necessary to save lives.
- ii) Officer notices fighting from the outside of a home and observe individuals injuring each other. If officers do not see fighting, but hears threats, screaming, loud banging sounds, and the sound of fighting or other violence from inside may justify forced entry to prevent serious injury to someone inside.
- iii) Officer responds to a 911 call for help from a victim of domestic violence.

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Admittance is being denied by one who is the aggressor.

While in the home under N.C.G.S. 15A-285, officers may seize illegal items in plain view.

(6) The motor vehicle exception – “The Carroll Doctrine.”

If officers have probable cause to search a vehicle for evidence, and the car is in a public place, the officers may seize and search the car without a search warrant. If the officers have probable cause to search a vehicle, they may also search containers within the car if it would be reasonable to find the object of the search in the container. Containers and vehicles may be searched regardless of ownership.

The rationale for this exception lies in the reduced expectation of privacy within a vehicle, the inherent mobility of the vehicle, and the subsequent ease with which evidence could be destroyed, made to disappear, or the possible removal of the entire vehicle from the jurisdiction.

Various searches of motor vehicles are discussed in more detail later in this lesson plan.

b) Searches incident to arrest and protective searches and frisks

(1) A search of a person incident to arrest

Regardless of the offense leading to the arrest, officers have the **automatic** right to search the arrested person and her lungeable area incident to the arrest. (This automatic right to search the lungeable area does not extend to the interior of a vehicle. The authority to search a vehicle incident to arrest of an occupant will be discussed later.) The search incident to arrest must be accomplished in close proximity in time and place to the arrest. The scope of the search incident to arrest is limited to the arrested person (but not body cavities), and the area and objects within the arrested person’s immediate control (“grab” or “lunge” area). Therefore, an arrest at the front door of a residence does not justify a search of the entire home, unless it is reasonable to

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believe that there are weapons or people inside who pose a danger.

(a) A protective sweep of a home

When officers arrest a person in his home, they may perform a “protective sweep” of the premises. Such a sweep is limited to areas from which an attack could be launched. Such a search is authorized if the officers have an articulable, reasonable suspicion to believe that the place to be searched may harbor a dangerous person.<sup>70</sup>

(b) A search of a motor vehicle incident to arrest of an occupant

If a person is arrested in a vehicle, the entire passenger compartment of the vehicle may be searched incident to arrest only in two circumstances:

First, such a search incident to arrest may occur automatically only when the person is unsecured, and within reaching distance of the passenger compartment at the time, the search is conducted. The courts have stated that this will be very rare. From an officer’s safety perspective, if subjects are under arrest, yet still not adequately secured, the officer’s primary concern should be securing the arrestees rather than searching the vehicle.

Second, such search incident to arrest may occur if the officer reasonably believes there is evidence in the vehicle which is relevant to the crime being charged (this includes the front and back seats, glove compartment, and all containers—open or closed, locked or unlocked—within the interior).

For example, an arrest for a misdemeanor license violation nor speeding offense probably would not authorize a search of the vehicle incident to arrest. On the other hand, officers

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who arrest for DWI may articulate a reason to believe more evidence relevant to that offense may be in the vehicle, such as open containers.

Officers must consider the nature of the offense, and the type of relevant evidence involved, in determining a reasonable belief that such evidence may be in the vehicle. Officers who are not authorized to search the vehicle incident to arrest may seek alternative search authority, such as consent.

- (c) Officers have no right to search incident to a citation, although a person may be asked to consent to such a search.

### (2) Frisk of a person

Once a suspect has been validly stopped, such as an investigative stop, an officer may frisk a person when he has an articulable reasonable suspicion the person may be armed and dangerous, but the officer does not have probable cause to arrest or search the person. *Terry v. Ohio*, 392 U.S. 1, (1968). A frisk is a limited pat-down of outer clothing to determine whether the person has any weapons. If the officer reasonably believes that he has felt a weapon during a frisk, the officer may reach into the suspect's clothing or possessions and seize the object.<sup>71</sup>

- (a) The authority to stop a suspect does not automatically give officers the authority to frisk. The officer must articulate why the frisk was necessary, i.e., why she believed that the detained person was armed and dangerous.
- (b) Persons stopped on reasonable suspicion that they may have committed a violent crime, i.e., murder, kidnapping, robbery, serious assault, and drug sale, are presumed to pose a threat to officers. Such persons may be frisked with or without additional factors indicating that they may be armed and dangerous.



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- (c) During a frisk, an officer may feel an item that is not likely to be a weapon but is contraband. If at the time, he first felt the object the officer had probable cause to believe it is contraband; the object may be seized even though the officer has no reason to believe it is a weapon. This is known as the “plain feel” doctrine. The incriminating nature of the object must be “immediately apparent” based on plain feel during the frisk.
- (d) An officer may always ask for consent to search if he is unsure of what he felt.

### (3) A protective sweep of a building

An officer may conduct a “protective sweep” or a “frisk” of a building in conjunction with an arrest when the searching officer reasonably believes that potentially dangerous individuals may be hiding or present in the building. Remember, a protective sweep is not a search for evidence. Its purpose is to ensure officer safety. However, evidence in plain view may be seized if it is viewed while the officer is looking in a place where a person could be hiding.

### (4) Car frisk

Officers may look for weapons in a vehicle when they have a reasonable suspicion that an occupant is armed and dangerous and may gain access to weapons. This is called a “car frisk” because it is limited to looking for weapons based upon reasonable suspicion, as opposed to searching for evidence, which requires probable cause. Therefore, officers may only look in locations or containers that may contain a weapon and are within the immediate reach of the suspect.

## 4. Specific rules involving search of vehicles

- a) If officers have probable cause to believe there is evidence of crime in the vehicle, and the vehicle is located in a public place (including public vehicular area), they may search anywhere in the vehicle where the evidence could be located, including the trunk (the vehicle must be stopped in a public place). This is

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known as the motor vehicle exception to the Fourth Amendment's warrant requirement. It is also known as "the Carroll Doctrine." A search warrant (or consent or an emergency) is required before searching a vehicle within the curtilage of the owner's home.

- b) Officers may order the driver and passengers either to remain in or move out of the vehicle with or without suspicion that such persons are a threat.
- c) An arrest of an occupant of a vehicle authorizes officers to search the **passenger** compartment of the vehicle incident to arrest only if the arrested person is unsecured and within reaching distance of the passenger compartment, or the officer reasonably believes there is evidence in the vehicle relevant to the crime for which the person is arrested. The authority to search a vehicle incident to arrest was discussed in detail previously.
- d) During the search of the passenger compartment, officers may discover illegal items which in turn may lead to probable cause to believe that additional evidence may be discovered in the trunk. If so, officers may search the trunk at the scene of the stop without a warrant. The motor vehicle exception was discussed in detail previously.
- e) Vehicles may sometimes be impounded. Reasons for impoundment may be to protect the vehicle and its contents or to prevent the vehicle from becoming a safety hazard. The search of an impounded vehicle must be done by the impoundment and inventory procedures of the law enforcement agency.

### I. Search Warrants

**NOTE: Show slide, "Search Warrants."**

- 1. Drafting search warrants
  - a) General requirements
    - (1) The officer who executes a search warrant does not have to be the officer who applies for the warrant. Therefore, the descriptions of the premises, persons, or

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vehicles to be searched and property to be seized must be sufficiently detailed so that an officer executing the search warrant does not search or seize the wrong person or property.

- (2) It does not matter who completes the application for the search warrant as long as it accurately represents the facts known to the applicant. Thus, an officer may (and usually does) fill out most or all of the application before bringing it to the magistrate for approval. The justice, judge, or magistrate before whom the warrant is brought for signature will question the applicant under oath about the circumstances giving rise to her belief that there is probable cause to believe illegal items are located in a certain place.
- (3) In addition to the applicant officer, other officers, informants, and citizens may come before the judicial official to testify in support of the warrant application. Instead of such testimony, civilians and officers can sign affidavits, which must be attached to the warrant application.
- (4) Who may issue a search warrant?

**NOTE: Show slide, “Who May Issue a Search Warrant?”**

- (a) Only judicial officials may issue a search warrant.
- (b) Appellate and superior court judges may issue search warrants that are valid anywhere in the state.
- (c) District court judges may issue warrants valid within their district.
- (d) Clerks and magistrates may issue search warrants valid within their county.

Officers are cautioned to avoid “boilerplate,” or prewritten, generic language in search warrant applications. There is nothing wrong with referring to past warrant applications for appropriate language, but each search warrant

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application must be geared to the specific facts of the investigation at hand.

- b) Application
  - (1) The AOC form
    - (a) Original – Execute, sign, and return to the clerk.
    - (b) Defendant’s copy – Give to the person in apparent control of premises.
    - (c) Clerk’s copy – Sent to clerk’s office by the issuing official.
    - (d) The officer should make a photocopy for her file.
  - (2) Description of property to be seized
    - (a) The Fourth Amendment requires that a warrant must particularly describe the items to be seized. The warrant application must establish that the item to be seized is:
      - i) Stolen
      - ii) Contraband (unlawful to possess)
      - iii) Used or possessed to commit or conceal the commission of a crime
      - iv) Evidence of a crime or identity of a suspect
    - (b) The description should be sufficient, so an officer unfamiliar with the investigation will be able to seize the appropriate property. Generally, drugs do not require as much detail as other crimes, because possession of narcotics is unlawful. However, warrants alleging that stolen property is in a certain location require greater detail, because, for example, a bald description in the warrant that a “stolen television” will be found at a premises does not

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adequately describe the item to be seized (many if not most residences contain more than one television set.)

- (c) Specific items to be described:
- i) Stolen property
    - Serial numbers
    - A detailed description of the property
    - Inventory from reports
    - Photos from victim
  - ii) Weapons
    - Manufacturer
    - Model
    - Serial number
    - Identifying features
  - iii) Evidence of ownership or possession
    - Letters, checkbooks, bills, leases, and other documents
    - Keys to premises or vehicle
    - Prescription bottles
    - Officers may wish to include language such as the following: “Items or articles of personal property tending to show ownership, dominion, or control of the premises.” Including this language broadens your search to anywhere in the premises where, for example, utility bills or other

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documents could be found to prove that the defendant is the homeowner or resident.

### iv) Controlled substances

- Specific drugs should be stated, “to include, but not limited to...” Do not limit yourself to seizing only one type of drug.
- No specific amount should be identified.
- Officers may also wish to include language such as the following: “records of illegal drug activities, documents, photographs, letters, drug paraphernalia, money, beepers, telephone records, and other evidence of drug trafficking.” Such language will allow officers executing the warrant to seize “trafficking” evidence.

### v) Persons

- Include, if possible, name and alias, sex, race, height, weight, hair color, eye color, scars, and tattoos.
- A photograph may be attached, so an officer unfamiliar with the suspect may identify him.

### (3) Identifying the crime that was committed<sup>72</sup>

Use a short phrase like “armed robbery” or “possession of controlled substances.” Give the statutory citation if possible. The description of the crime does not have to be as detailed as an arrest warrant because a search warrant does not charge a crime. Also, there may be evidence of a homicide, but officers may end up

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charging a different version, like second-degree murder instead of first-degree murder.

- (4) Describing the property to be searched<sup>73</sup>

**NOTE: Show slide, “Describe the Property.”**

Again, the description must be accurate enough so that an officer unfamiliar with the case should be able to find the location. Although not legally required, maps and photographs are helpful and are encouraged.

- (a) Premises

A street address is legally sufficient. However, officers should include a physical description and directions or map in case the street number is wrong, missing, or deliberately altered. Apartments should be described by location in the building, rather than just the apartment number for the same reason.

- (b) Vehicles

Vehicles under control of one of the occupants or parked in an outbuilding do not have to be identified on the warrant, although it is preferable to do so. Officers should note that a vehicle owned by or under control of an occupant of the subject property may be searched under the authority of the warrant as long as the vehicle could contain the contraband named in the warrant. *State v. Reid*, 286 N.C. 323 (1974). Officers should, however, include vehicles in the warrant in the event the vehicle is located somewhere else at the time that the search is carried out.

Include make, model, year, color, license number, VIN, and any unique characteristics like damage or a special paint job.

- (c) Other

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This block on the form should be used to identify containers like luggage, briefcases, or footlockers that are not otherwise subject to a warrantless search.

- c) The probable cause affidavit
  - (1) Officer's background

**NOTE: Show slide, "Officer's Background."**

- (a) Agency and background
  - (b) Years in law enforcement
  - (c) Years in the current assignment
  - (d) Certification and special training
  - (e) Education
  - (f) Knowledge of particular offense
- (2) Sources of information
    - (a) Personal observation - state where, when, how, and what you saw.
    - (b) Hearsay information - what someone else told you. A statement by someone other than the affiant officer
      - i) Other officers
      - ii) Citizen informants

Citizen informants must be identified by name. Once identified, a named citizen's information is generally deemed reliable by the courts.
      - iii) Confidential informants

Because confidential informants generally are not viewed as being as



credible as citizen informants, officers drafting a search warrant based in part on information from a confidential informant should strive to explain fully: **why** the officer believes the informant is credible; **and** why the officer believes that the information provided by the informant is trustworthy.

- The informant's credibility

The best way to indicate why the informant is credible is to show that he or she has given previous information, which has led to arrests, convictions, and seizures of the property **of the type described in the instant warrant application**. While this "track record" is not a requirement for establishing probable cause, previous reliable information from an informant will go a long way to convincing the judicial official that there is probable cause in the warrant application at hand.

A statement against penal interest is another way to establish the credibility of a confidential informant. Thus, where an informant tells an officer that the informant knows what he says to be true because he was engaged in the criminal activity that is a statement against penal interest (an example would be an informant who tells officers that he just purchased narcotics at a certain location). The reason why such an informant is probably telling the truth is that most people do not admit to criminal

activity without some basis in fact for the admission.

- The totality of the circumstances: *Illinois v. Gates*

In *Gates*, the police received an anonymous note detailing Lance and Sue Gates' trip to Florida to buy and transport marijuana. The writer predicted the travel dates and the vehicle to be used to transport the contraband. The police corroborated the activities predicted in the note and then obtained a search warrant for the Gates' car and home. The United States Supreme Court held that although the credibility of the informant could never be established—the note was anonymous—the police nevertheless had probable cause based on their corroboration of the details of the note. Officers should be careful not to misinterpret *Gates*. It does not reduce the officer's burden of probable cause; it merely changes the test that will be used to determine whether that burden has been met. Whenever possible, officers should continue to outline in the warrant application why the informant and his information are credible. North Carolina Courts have adopted the "totality of the circumstances" test. *State v. Riggs*, 328 N.C. 213 (1991); *State v. Beam*, 325 N.C. 217 (1989).

A confidential informant becomes more reliable as the

amount of credible detail he or she gives to the police increases. In *Gates*, for example, if the anonymous note had only read that “Lance and Sue Gates are drug dealers,” the police would have been hard-pressed to obtain a valid warrant. The note, however, gave much more detail concerning travel plans, dates of arrival in Florida, and the vehicle to be used by the Gates’ to transport the marijuana. Critical in *Gates* and any warrant using information from a confidential informant is that law enforcement **corroborates the information**. This means that officers must conduct an independent investigation to determine whether the informant has given accurate information.

The basis of knowledge—why the information provided by the confidential informant is credible—can be established in several ways:

The affidavit should indicate *how* the informant knows; for example, did he see narcotics in the subject location?

How does she know it is narcotics?

*When* did the informant see the contraband?

*Where* on the premises were the drugs located/sold?

*How soon after* observing criminal behavior did the informant come to the police?

Is the informant aware that narcotics are sold from the subject location daily?

The officer's corroboration of the information should also be included in the affidavit.

- iv) Anonymous tips (see discussion of *Illinois v. Gates* above)
  - Information contained in anonymous tips should be corroborated to the extent possible.
  - Anonymous tips predicting future behavior are more credible than tips that state existing facts, especially after the predicted future behavior occurs.
- v) Records
  - Conviction and arrest records
  - Utility records (water, cable, phone, and property tax records) indicating that the suspect owns, lives in, or works at the subject location.
  - DMV records
  - Reputation and character
- d) Presentation of a warrant to judicial official
  - (1) The judicial official must make an independent judgment that there is probable cause. The search warrant must advise the judicial official of facts

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sufficient to establish probable cause to believe the items sought will be located in the place to be searched, not merely an officer's conclusions.

- (2) Additional affidavits from witnesses or officers may be attached to the search warrant. Occasionally, a witness provides oral testimony to the judicial official in support of the warrant.
- (3) An officer should be careful to include all relevant information in the search warrant, as the officer does not get a second chance to "add" to it once it is issued. G.S. 15A-245(a).<sup>74</sup>

### 2. Execution of search warrant

**NOTE: Show slide, "Execution of Search Warrant."**

- a) G.S. 15A-247 specifies who may execute a search warrant (subject matter and territorial jurisdiction), and G.S. 15A-248 states that a search warrant must be executed within 48 hours after it is issued or it is void.

The warrant may be executed at any time during the day or night, but officers should be prepared to testify why it was necessary to execute the warrant at night.

- b) Entering premises

- (1) Notice (G.S. 15A-249)

"The officer executing a search warrant must, **before entering the premises**, give appropriate notice of his identity and purpose to the person to be searched, or the person in apparent control of the premises to be searched. If it is unclear whether anyone is present at the premises to be searched, he must give the notice in a manner likely to be heard by anyone who is present."<sup>75</sup>

N.C. G.S. 15A-251(2) authorizes forced entry without knocking and announcing "... if the officer has probable cause to believe the giving of notice would endanger the life or safety of any person."<sup>76</sup> The threat to life may occur suddenly during the search warrant execution, or officers may be aware of "threat to life"

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information received from credible informers or may be inferred from the violent nature of the crime suspect committed. If possible, officers should include in the search warrant affidavit any factual information they have indicating probable cause to believe life will be threatened by the suspect if officers comply with the notice rules of G.S. 15A-249.

### (2) Service

Officers may secure the premises and occupants after making entry. Before searching, officers must read the warrant (just the order, not the affidavit) to the occupant. If nobody is present, the officers do not have to read the warrant out loud to a silent home but must leave a copy affixed to the premises or vehicle searched.

A copy of the warrant should be left in a conspicuous place.

### (3) Scope of the search (G.S. 15A-253)

The search may include any area within the premises, including outbuildings, and any containers that may contain the items to be seized. Evidence not named in the search warrant but inadvertently seen in plain view may also be seized if it is immediately apparent that it is evidence or contraband.

### (4) Persons on the premises (G.S. 15A-255 and G.S. 15A-256)

#### (a) Public places

During execution of the search warrant, officers may detain individuals named in the warrant. Officers *may not* detain or frisk other persons unless officers have reasonable suspicion that the person is armed or dangerous. For example, suppose an officer is executing a search warrant at a restaurant. The owner/bartender is the only person named on the warrant (there is probable cause to believe he is selling cocaine behind the bar). May the patrons of the bar, or its

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employees, be frisked? They may not be searched unless the officer develops reasonable suspicion once inside, that a patron or employee is engaged in criminal activity and is armed and dangerous.

(b) Private places (G.S. 15A-256)

During execution of the search warrant, officers may detain anyone on the premises. Officers may frisk anyone who they reasonably suspect is armed or dangerous (a full search may only be performed under the circumstances outlined in the “Note” just below). Officers may conduct a full-blown search—not just a pat-down—of persons named in the warrant (Officers may, of course, perform a full search of any person should the search be based on consent). Officers may also search, incident to arrest, anyone that they arrest during the search.

A detained person not named on the warrant *may* be thoroughly searched if 1) officers have executed the warrant but have not discovered the named contraband; and 2) the contraband could reasonably be found on the person of the detainee. This rule only applies where the search warrant is executed in a private place.

Under G.S. 15A-254, the officer who executes a search warrant must give to the owner of the premises or vehicle searched a signed receipt listing all items taken during the search. If the owner is not present, the receipt may be left with a person in control of the premises present at the time of the search. If no one is present, the receipt should be affixed to the home or vehicle.

(5) Return of the executed warrant (G.S. 15A-257)

Once the officer executes the search warrant, he or she must, without unnecessary delay, return the warrant to the clerk of the issuing court together with a written inventory of items seized. The officer who executed the warrant must sign and swear to the truth of the

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inventory form. The phrase “unnecessary delay” means that absent special circumstance, the warrant should be returned to the clerk on the date of execution or, if the clerk’s office is closed, the next day it is open.

The warrant must be returned to the clerk of the issuing court whether or not items were seized.<sup>77</sup>

### (6) Disposition of seized property (G.S. 15A-258)

Property seized under a search warrant must be held in the custody of the officer who applied for or who executed the warrant. The officer may use his department’s facilities to store the property. The officer may deliver the property to another law enforcement agency for testing or analyzing the property.

The rules discussed above specifically apply to search warrants. They do not apply to administrative inspection warrants or special inspection warrants issued under G.S. 14-288.11 during riots or states of emergencies.

### 3. Special cases

**NOTE: Show slide, “Special Cases.”**

#### a) Obscenity offenses (G.S. 14-190.20)

Only upon the request of a district attorney or assistant district attorney can an officer apply for a search warrant to search for and seize obscene materials.<sup>78</sup>

#### b) Crime scene search warrant problems

The United States Supreme Court has rejected a “crime scene exception” to the Fourth Amendment’s search warrant requirement. *Mincey v. Arizona*, 437 U.S. 385 (1978); *Flippo v. West Virginia*, 528 U.S. 11 (1999). In *Mincey*, the Court ruled that it was unconstitutional for the police to conduct a warrantless four-day search of a scene where an undercover police officer had been killed. Students should note that the Court recognized that the entry into Mincey’s home was justified given the exigent circumstance of an officer just being shot. Once lawfully inside, the officers were allowed to



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conduct a protective sweep of the premises to check for victims and perpetrators. *Maryland v. Buie*, 494 U.S. 325 (1990). A “sweep,” though, is more limited than a search; once the officer’s protection is assured, a search warrant (or consent) is needed before looking for evidence of a crime.

Officers must note the distinction between a lawful warrantless entry based on exigent circumstances and the right to search the premises entered. As a general rule, law enforcement officers are allowed to make a warrantless entry into a possible crime scene if consent is obtained from one with apparent legal authority to grant consent or exigent circumstances exist.<sup>79</sup>

Exigent circumstances are those that create a reasonably objective belief that absent immediate action, officers could be endangered, or there is an imminent risk that evidence could either be destroyed or removed. Factors to consider when determining whether such circumstances exist to enter and search a home are:

- (1) Whether officers had probable cause to obtain a search warrant before the exigency was created;
- (2) Whether officers had an objectively reasonable belief that destruction or removal of the evidence was imminent;
- (3) The seriousness of the offense for which the officers are searching and
- (4) How long it would have taken to obtain a search warrant.
- (5) Exigent circumstances could also include danger to human life, such as a hostage situation or to find a victim of a recent violent act.<sup>80</sup> *State v. Allison*, 298 N.C. 135, (1979).

**Once this initial sweep for perpetrators and victims is complete, and any imminent risk to evidence controlled, absent valid consent or truly exigent circumstances, an officer should obtain a search warrant before searching further.** The crime scene may be physically secured by officers while a search warrant is sought. Remember, the fact that an officer is at a crime scene does not give him the

automatic right to search for evidence. Consent to search beyond the existence of exigent circumstances should not be presumed because the officers have responded to a call from a resident of private property. Sufficient contact should be made with the person able to give lawful consent and consent obtained.

Officers searching crime scenes may not be sure of the types of evidence that will be found therein. While the Fourth Amendment requires that the items sought under a search warrant must be “particularly described,” the courts will accept a crime scene warrant where, by necessity, the applicant officer cannot be specific. Thus, a general list of items to be seized is acceptable. Robert L. Farb suggests that the following language be used as a guide in this circumstance: “fingerprints, bloodstains, fired and unfired bullets and casings, footwear impressions, trace hair and clothing fibers, physical layout of the premises” and “any and all evidence that may relate to a suspected murder, [including a knife or other weapon].”<sup>81</sup>

c) Anticipatory search warrants

An anticipatory search warrant is a warrant that is issued before all of the facts or events taking place that create the probable cause to search. Essentially, the officers are telling the court what is going to happen in the future and are asking for permission to search once the future events take place. Suppose, for example, the police arrange for a confidential informant to purchase narcotics at a certain location. The police are concerned that in the time from the purchase to obtaining a search warrant, the seller either will not be present or his narcotics will be gone. In such a case, officers could apply for an anticipatory search warrant which would state that on a future date the informant will purchase narcotics at a premise and at that time there will be probable cause to believe that narcotics will be found at the location. Such warrants are authorized in North Carolina provided officers follow strict requirements:

- (1) An anticipatory search warrant must set out explicit, clear, and narrowly drawn triggering events that must occur before execution of the warrant may take place.
- (2) These triggering events, from which probable cause arises, must be (a) ascertainable, and (b) preordained,

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that is, the property is on a sure and irreversible course to its destination.

- (3) A search may not occur unless and until the event occurs.
- (4) The warrant should state on its face, "Anticipatory Search Warrant." *State v. Smith*, 124 N.C.App. 565 (1996).

### d) Searching and seizing electronic equipment

- (1) A search warrant may issue for the search, seizure, and examination of electronic evidence requested in the warrant.
- (2) Search warrants for electronic storage devices typically focus on two primary sources of information:
  - (a) Electronic storage device search warrant – This warrant covers search and seizure of hardware, software, documentation, user notes, and storage media. It also allows for the examination, search, and seizure of data.
  - (b) Service provider search warrant – This warrant covers service records, billings, and subscriber information.
- (3) Other electronic devices which may contain significant evidence of criminal activity are:
  - (a) Wireless telephones
  - (b) Cordless telephones
  - (c) Answering machines
  - (d) Caller ID devices
  - (e) Electronic paging devices
  - (f) Facsimile machines
  - (g) Smart cards & magnetic stripe cards

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- (h) ID card printers
  - (i) Scanners
  - (j) Printers
  - (k) Copiers
  - (l) Compact disk duplicators and labelers
  - (m) Digital cameras/video/audio
  - (n) Electronic game devices
  - (o) Global positioning system
  - (p) Personal data assistants/handheld computers
  - (q) Security systems
  - (r) Vehicle computer devices
  - (s) Storage media
- e) Financial records
- (1) Government access to financial records in a financial institution is limited by the North Carolina Financial Privacy Act, G.S. 53B-1 to 53B-10, and the federal Right to Financial Privacy Act, 12 U.S.C. 3401-3422.
  - (2) Law enforcement can access a customer's financial records held by a financial institution by six methods:
    - (a) Customer authorization. G.S. 53B-4(1).
    - (b) Search warrant. G.S. 53B-4(3).
    - (c) Pending litigation. G.S. 53B-4(8).
    - (d) State grand jury subpoena or court order. G.S. 53B-4(9).

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- (e) Other court order or subpoena which must be served on the customer along with a notice of a right to a hearing. G.S. 53B-4(11).
  - (f) Subpoena issued by a district court for a law enforcement agency investigating a credible report of financial exploitation of a disabled or older adult. G.S. 53B-4(13).
- (3) Further information and detail are available in Chapter 53B of the North Carolina General Statutes and Farb's book.<sup>82</sup>
- f) Search warrants for body cavity searches

A search warrant authorizing a health professional to search a body cavity for concealed drugs is recognized by case law. A credible informer's information may indicate the suspect hides drugs in a balloon or condom in the anal or vaginal cavity. A search warrant may authorize an X-ray procedure to verify presence in a body cavity and also authorize extraction by a health professional.

Occasionally, a drug suspect will try to eat drugs to prevent a seizure. Reasonable force is authorized in order to avoid swallowing, but great care should be used to prevent unintended neck injury. A drug suspect who consumes drugs should be taken immediately to a hospital emergency room to treat a possible overdose.

### J. Administrative Inspections

**NOTE: Show slide, "Administrative Inspections."**

#### 1. General administrative inspection authority

Many state and local agencies are given statutory authority to inspect certain businesses, specified records, and a variety of activities. These inspections may be part of a system or inspections or may be in response to specific information concerning possible administrative violations at a particular location. (G.S. 15-27.2(c)(1).)

Most administrative inspections are accomplished by consent. If consent is not given or not an appropriate option in a particular case,

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then most nonconsensual administrative inspections are conducted by the use of an administrative inspection warrant. (G.S. 15-27.2.)

Administrative inspection warrants are applied for and executed by officials designated to carry out the particular administrative inspection. The process for applying for administrative inspection warrants is explained in G.S. 15-27.2 and Farb's book.<sup>83</sup>

However, these officials applying for administrative inspection warrants are not normally law enforcement officers and may call on law enforcement officers for assistance when they execute the warrant.

If present during an administrative inspection, the officer's responsibility is to stand by and keep the peace, that is, to ensure that the inspection can proceed in an orderly fashion. The officer's role is not to conduct the inspection, but only to ensure the inspection proceeds by the administrative inspection warrant. The statutory provisions related to the execution of search warrants do not apply to administrative inspection warrants. (G.S. 15A-259.) Anyone who willfully interferes with officers entering the premises or with inspectors conducting the inspection may be charged with G.S. 14-223, resisting officers, a misdemeanor.

Evidence of a crime recovered during execution of an administrative inspection warrant is inadmissible in court, G.S. 15-27.2(f) unless the evidence relates to the purpose of the inspection. For example, an inspector is in a home to check for a vermin condition. He enters with an administrative inspection warrant and sees cocaine on the kitchen table. He informs officers of this discovery. May the police use this information to obtain a search warrant? The answer is no.

The statute does *not*, however, prevent the officer from seizing the contraband or from accepting contraband discovered by the inspector.

Most administrative inspectors are given consent to enter a premise by the homeowner or renter. Criminal evidence observed during such a consent entry *may* be the basis for a search warrant or seized under plain view.

### 2. Fire scenes

While fire suppression activities are continuing and government officials retain control of the fire scene on private premises, a warrantless inspection of the fire scene to determine the cause and origin of the fire is permitted. Once the fire suppression activities are

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terminated, or government officials have relinquished control of the fire scene, entry to inspect the premises to determine cause and origin of the fire requires consent, an administrative inspection warrant, or a search warrant.<sup>84</sup>

### 3. Inspections without an administrative inspection warrant

For specific, highly regulated industries and activities, warrantless administrative inspections are authorized.<sup>85</sup>

G.S. 18B-502 authorizes *alcohol law enforcement agents* to conduct warrantless inspections of premises selling alcoholic beverages. This section does *not* apply to other law enforcement officers *unless* their department has contracted to provide alcohol beverage control enforcement services. G.S. 113-136 authorizes marine patrol officers to conduct warrantless inspections of commercial fishing operations and persons transporting or selling seafood products.

### K. Nontestimonial Identification

**NOTE: Show slide, “Nontestimonial Identification.”**

#### 1. Purpose

Nontestimonial identification evidence is physical evidence taken from the body of a person for comparison with evidence found at the crime scene to develop probable cause that this particular suspect committed the offense.

#### 2. Seizing body evidence

**NOTE: Show slide, “Body Evidence.”**

In determining how to seize body evidence from an adult suspect lawfully, the custody status of the suspect and whether the type of evidence sought is body fluids (requiring intrusion into the body), or other types of nontestimonial evidence must be considered.

##### a) Suspect in custody

For a suspect in custody, there are three options in obtaining nontestimonial evidence. Nontestimonial identification orders are not one of the options available when dealing with suspects in custody. The three options are:

(1) Voluntary consent

Voluntary consent is a lawful manner of obtaining any nontestimonial identification evidence, including blood. However, the consent can be withdrawn at any time. Documenting the consent in writing is best because **there may be arguments later about the scope of the consent.** Remember, if the defendant has already appeared before a magistrate, been to a first appearance, or has been indicted, you may also have a right to counsel issue under the Sixth Amendment.

(2) Warrantless seizure incident to lawful custody

This is an area to pursue cautiously. While legally you can seize all kinds of nontestimonial identification evidence (such as fingerprints, hair, fingernail scrapings) other than blood for typing purposes from an adult prisoner without a warrant or court order, and there is no right to refuse, the better option is to obtain a court order. The complications start to arise if the suspect is not cooperative and resists. As a policy matter, the court order is the safest route.

(3) Search warrant

A search warrant is required if you are seeking blood. A search warrant is an option for other types of nontestimonial identification evidence and has many advantages, but the problem is that you are usually seeking the nontestimonial identification evidence to develop probable cause and probable cause must already exist for a search warrant to be issued.

b) Suspect not in custody

For a suspect not in custody, there are also three options. The three options are:

(1) Voluntary consent

As with the suspect in custody above, voluntary consent is always an option, but as discussed above and in the discussion of consent in the search and seizure section, there are limitations with consent.



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(2) Nontestimonial identification order

This option cannot be used to obtain blood but can be used for all other types of nontestimonial evidence from a suspect not in custody. Nontestimonial identification orders are covered in the next section.

(3) Search warrant

As discussed above, a search warrant is required if you are seeking blood from an adult suspect and is an excellent tool for other types of nontestimonial identification evidence if you have probable cause.

3. Nontestimonial identification orders

a) General

(1) Nontestimonial identification orders can be an effective investigative tool if the suspect is not in custody.

(2) Nontestimonial identification orders are only to be used for obtaining nontestimonial identification.

G.S. 15A-279(d) prohibits the use of nontestimonial identification orders as a method of getting a suspect into the station to be interviewed by preventing the use of any statements made during the nontestimonial procedure unless the suspect's attorney is present.

(3) What is nontestimonial evidence?

**NOTE: Show slide, "What Is Nontestimonial Evidence?"**

For nontestimonial identification orders, G.S. 15A-271 provides that nontestimonial evidence includes:

- (a) Fingerprints, palm prints, footprints
- (b) Dental characteristics, tooth impressions
- (c) Hair samples, urine specimens, saliva samples
- (d) Handwriting and voice samples

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- (e) Photographs, measurements, and skin characteristics
  - (f) Lineups
  - (g) Or similar identification procedures requiring the presence of a suspect
- b) When can a nontestimonial identification order be requested?
- (1) The nontestimonial identification order can be requested before the arrest, after the arrest, or before trial. G.S. 15A-272.
  - (2) The nontestimonial identification order cannot be requested if the suspect is in custody. *State v. Welch*, 316 N.C. 578, (1986).
- c) Who can request a nontestimonial identification order?
- A nontestimonial identification order must be requested by a prosecutor. Officers should, therefore, contact their District Attorney's Office when seeking such order.
- d) Who can issue a nontestimonial identification order?
- (1) Any judge can issue a nontestimonial identification order.
  - (2) A magistrate or clerk cannot issue a nontestimonial identification order. G.S. 15A-271
- e) Sufficiency of the affidavit
- (1) The affidavit must show all three of the following:
    - (a) Probable cause to believe a felony offense or a Class A1 or Class 1 misdemeanor has been committed; and
    - (b) Reasonable grounds to suspect that the person named or described in the affidavit committed the offense; and

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- (c) Results of the specific nontestimonial identification procedures will materially aid in determining whether the person named in the affidavit committed the offense. G.S. 15A-273.
- (2) The affidavit form on the reverse side of the application for a nontestimonial identification order (AOC Form AOC-CR-204) is designed to include all three requirements. The Administrative Office of the Courts has separate forms for adult and juvenile suspects. The adult forms are “AOC-CR-204,” and “AOC-CR-205,” and the juvenile forms are “AOC-J-204” and “AOC-J-205.”
- f) The 72-hour rule
  - (1) A nontestimonial identification order must be served at least seventy-two hours before the time designated for the nontestimonial identification procedure to be conducted. G.S. 15A-274.
  - (2) Request for modification of the 72-hour rule:
    - (a) If the nature of the evidence sought makes it likely that delay will adversely affect its probative value, or when it appears likely that the person named in the order may destroy, alter, or modify the evidence sought or may not appear, the prosecutor may request a modification of the 72-hour notice requirement. G.S. 15A-274.
    - (b) The application form includes a section on modification of the 72-hour rule. Facts supporting the reason for modification must be set forth, and the prosecutor must appear before the judge to be duly sworn as to the basis for modification.
    - (c) The person ordered to appear may also request a modification of the time or place if reasonable under the circumstances to do so. G.S. 15A-275.
- g) Service of the nontestimonial identification order

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(1) Service of the nontestimonial identification order must be made by personal delivery to the person ordered to appear. G.S. 15A-277.

(2) Service must be accomplished at least seventy-two hours in advance of the procedure unless the order modifies the 72-hour requirement. G.S. 15A-277.

h) The right to counsel

(1) The right to counsel during nontestimonial identification procedures is set out in G.S. 15A-279(d) and 15A-278(5).

(2) The right:

(a) The right to an attorney is a statutory right unless the Sixth Amendment right to counsel has attached by appearance before a magistrate, indictment, or first appearance.

(b) The statutory right to counsel requires:

i) The advice of the right to counsel.

ii) The right to have counsel present during the procedure.

iii) The appointment of counsel if the person cannot afford to retain counsel.

iv) The suppression of any statement made during the procedure in the absence of counsel.

(3) The role of counsel

(a) Counsel's role is to advise the client not to interfere with the procedure.

(b) If you anticipate problems with an attorney interfering with the procedure, contact the district attorney's office.

(c) The right to counsel can be waived.

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- i) Implementation of the nontestimonial identification order
  - (1) Who may conduct the procedure? (G.S. 15A-279(a))
    - (a) Any law enforcement officer or other person designated by the judge issuing the order.
    - (b) A qualified member of the health profession must extract body fluids authorized by a nontestimonial identification order.
  - (2) Use of force (G.S. 15A-279(b) and (c))
    - (a) Reasonable or necessary force may be used to conduct the procedure.
    - (b) The person cannot be detained longer than is reasonably necessary and in no case, more than six hours unless the person is arrested.
  - (3) Resistance (G.S. 15A-279(e)(f))
    - (a) A person who resists compliance with the order **MAY** be held in contempt by the judge under G.S. 5A-12(a) and 5A-21(b).
    - (b) Resisting compliance with the order is not itself probable cause to arrest.
  - (4) Later nontestimonial identification orders (G.S. 15A-279(f))

A nontestimonial identification order may not be issued against a person previously subjected to a nontestimonial identification order unless based on different evidence that was not reasonably available when the previous order was issued.
- j) Return of the nontestimonial identification order
  - (1) Within ninety days, the order must be returned to the judge who issued it or a judge designated in the order. G.S. 15A-280.

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- (2) The person must set forth an inventory of the products of the procedure.
- (3) Under G.S. 15A-282, a copy of any results from the nontestimonial procedure must be provided to the suspect as soon as available.

### 4. Juvenile nontestimonial identification

a) In dealing with nontestimonial identification of juveniles, you do not have options as you do in dealing with adults. The procedure for obtaining nontestimonial evidence from juveniles is set forth in G.S. 7B-2103, which provides that a nontestimonial identification procedure **SHALL NOT** be conducted on any juvenile without a court order under Article 21 of Chapter 7B of the North Carolina General Statutes unless the procedure falls within one of two statutory exceptions or the matter is transferred to superior court for trial as an adult or originally charged as an adult.

b) The two exceptions to the requirement for a court order prior to a nontestimonial identification procedure are the requirement to fingerprint and photograph certain juveniles pursuant to G.S. 7B-2101 and the requirement to photograph certain juveniles at the time and place of a show-up pursuant to G.S. 15A-284.52(c1). Both of these exceptions will be explained shortly.

c) The criteria for juvenile nontestimonial orders are different.

For a juvenile, the offense must be one which, if committed by an adult, would be a felony. G.S. 7B-2105.

d) When can a juvenile nontestimonial identification order be obtained?

A nontestimonial identification order can be obtained before taking the juvenile into custody or after custody and before the adjudicatory hearing. G.S. 7B-2104.

e) The procedure: The procedure for obtaining and executing a juvenile nontestimonial identification order is the same as for an adult, except for additional requirements set out in G.S. 7B-2105 to 7B-2107, one of which is that juvenile non-testimonial identification orders for blood specimens must be based on probable cause.

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- f) The authority to fingerprint and photograph a juvenile without a court order is addressed by G.S. 7B-2102(a) and (b), which reads as follows:
- (1) A law enforcement officer or agency shall fingerprint and photograph a juvenile who was ten years of age or older at the time the juvenile allegedly committed a nondivertible offense as set forth in G.S. 7B-1701, when a complaint has been prepared for filing as a petition, and the juvenile is in physical custody of law enforcement or the Division of Adult Correction and Juvenile Justice of the North Carolina Department of Public Safety.
  - (2) If a law enforcement officer or agency does not take the fingerprints or a photograph of the juvenile pursuant to subsection (a) of this section or the fingerprints or photographs have been destroyed pursuant to subsection (e) of this section, a law enforcement officer or agency shall fingerprint and photograph a juvenile who has been adjudicated delinquent if the juvenile was ten years of age or older at the time the juvenile committed an offense that would be a felony if committed by an adult.
- g) Penalty for violation
- Violation of the juvenile nontestimonial identification procedures is a Class 1 misdemeanor. G.S. 7B-2109.
- h) Consent
- G.S. 7B-2103 provides that nontestimonial identification procedures **SHALL NOT** be conducted on **ANY** juvenile unless provided for by law. Unlike the adult nontestimonial identification procedure, there is no provision allowing consent in the juvenile procedure.

### L. Interrogation Law

**NOTE: Show slide, “Interrogation Law.”**

A suspect’s spoken, or written statement is important evidence. To lawfully obtain statements from a suspect, officers must understand the various interrogation rights of a suspect. These rights come from the constitution and

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case law interpretations of those constitutional rights, as well as statutes. Failure to follow these rules may result in the exclusion of the defendant's statement from the court.

1. Whenever a suspect gives a written or oral statement to law enforcement officers, the statement is either *inculpatory* or *exculpatory*. An exculpatory statement is one that denies guilt; an inculpatory statement tends to establish guilt.
2. Officers should note that the rules discussed herein relate to questioning by law enforcement officers. With a few exceptions, civilians are not bound by the *Miranda* case or any of the limitations placed on the police by the legislature and the courts. Officers may not, however, make civilians agents of the police in an effort to get a statement where the police are barred from further questioning (Police could not, for example, use store security to question a shoplifting suspect who is under arrest and has just indicated to the police that she wishes to consult with an attorney before talking.)
3. In our justice system, a defendant cannot be forced to testify against himself. Many defendants choose to avail themselves of this right. However, a confession or admission, allows the jury, through the officer who took the statement, to, in effect, "hear" from the defendant. Some cases are won or lost with a statement. This is why it is so important for officers to know and follows these rules.

### M. Constitutional and Statutory Sources of Interrogation Law

Four amendments to the United States Constitution provide the primary limitations on the government's ability to obtain and use statements from a suspect:

#### 1. The Fourth Amendment

A statement obtained during an unlawful arrest or investigative detention is inadmissible under the Fourth Amendment.

#### 2. The Fifth Amendment

The Fifth Amendment provides that: "No person . . . shall be compelled in any criminal case to be a witness against himself. . ." <sup>86</sup> Officers should first note that the Amendment does not prohibit self-incrimination, but only incrimination *compelled* by a government official such as a law enforcement officer. The right not to self-incriminate applies not only to the trial itself but also to most (but not



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all) interrogations of suspects after an arrest. *Miranda v. Arizona*, 384 U.S. 436 (1966). In *Miranda*, discussed at length below, the United States Supreme Court established strict rules for law enforcement to follow before interrogating a suspect in custody.

### 3. The Sixth Amendment

The Sixth Amendment provides that: “In all criminal prosecutions, the accused shall enjoy . . . the Assistance of Counsel for his defense.”<sup>87</sup> The United States Supreme Court has ruled that the right to counsel attaches, or begins, at a “critical stage” of the prosecution. *Kirby v. Illinois*, 406 U.S. 682 (1972).<sup>88</sup> In North Carolina, a critical stage of the prosecution is a defendant’s initial appearance before the magistrate, or the first appearance in **District Court** or his or her indictment, whichever comes first. *State v. Tucker*, 331 N.C. 12 (1992)<sup>89</sup> *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008).

### 4. The Fourteenth Amendment – voluntariness

**NOTE: Show slide, “Voluntariness = Totality of the Circumstances.”**

Contained within the “due process” clause of the Fourteenth Amendment is the judicially created rule that the only voluntary statements are admissible in court. This is true for any statements made to law enforcement, regardless of whether the suspect is in custody or out of custody at the time the statement is made. Courts determine the “voluntariness” issue by applying the “totality of the circumstances” test: given the circumstances of the statement, did the defendant speak or write with an understanding of what he or she was doing? *Mincey v. Arizona*, 437 U.S. 385 (1978)

Examples of factors going into the “totality of the circumstances test” are:

- a) The officer’s conduct during the interrogation
- b) The suspect’s mental and physical condition
- c) The suspect’s prior contact with law enforcement officers
- d) The interrogation environment, including whether the suspect was afforded food, beverages, and if needed, rest
- e) The number of officers present during the interrogation

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- f) Whether the officers used deception or threats or made promises.<sup>90</sup>

In *State v. White*, 291 N.C. 118, 229 (1976), the defendant's inability to read or write did not render an otherwise voluntary confession inadmissible.

A suspect's contention that an alleged "inner voice" made the suspect confess is without legal merit since law enforcement officers were in no way involved with "forcing" the confession. *Colorado v. Connelly*, 479 U.S. 157 (1986). In short, the Courts will not scrutinize a suspect's motivations for confessing; the issue is whether law enforcement officers caused a suspect to confess against his or her free will.

Officers may neither threaten nor use physical abuse to induce a statement.<sup>91</sup> The law also prohibits officers from using veiled threats to urge a suspect to confess (for example, informing a suspect that if he does not confess his wife will be arrested). *Rogers v. Richmond*, 365 U.S. 534 (1961). The law **does**, however, allow officers to "match wits" with the suspect to obtain a confession. Here are some examples of acceptable tactics during an interrogation:

Example #1: Officers inform the suspect that the officers will tell the district attorney that the suspect was cooperative; or

Example #2: Officers request that the suspect tell the truth.<sup>92</sup>

Officers may not, however, promise a reduced charge or sentence if the suspect confesses, or tell the suspect that things will be "harder" for him if he does not confess. *State v. Pruitt*, 286 N.C. 442 (1975).<sup>93</sup>

The fact that officers lie to the suspect about the existence of evidence or witnesses against him **does not** mean the subsequent confession is automatically involuntary. Instead, the court will include the use of deception as one factor in the "totality of the circumstances" test. *State v. Jackson*, 308 N.C. 549 (1983).<sup>94</sup>

6. The *Miranda* decision – custodial interrogation

**NOTE:** Show slide, "*Miranda v. Arizona*."

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court decided that to protect the Fifth Amendment self-incrimination rights of a suspect, law enforcement officers who wish to interrogate the suspect in custody must administer "*Miranda*

## Arrest, Search and Seizure/Constitutional Law

warnings” and obtain a waiver of those rights. The adult *Miranda* warnings and juvenile rights will be discussed later in this section.

- a) A statement obtained during custodial interrogation from a person who is eighteen years of age or older, or who is under 18 but emancipated, is not admissible unless he is informed that:
  - (1) “You (the suspect) have the right to remain silent;
  - (2) What you say will be used against you in court;
  - (3) You have the right to an attorney present during interrogation;
  - (4) You have the right to an appointed lawyer if you cannot afford one.”<sup>95</sup>

A juvenile (in this context, a person under the age of eighteen) in custody must be advised of the warnings listed in G.S. 7B-2101 before questioning. This includes the additional right to have a parent, guardian, or custodian present during questioning.

To conduct a custodial interrogation, officers must not only read the warnings but must also obtain a *waiver* from the suspect of the rights recited in the warnings. The suspect must acknowledge the rights and agree to be questioned anyway. The waiver may be written, oral, or both.<sup>96</sup>

- b) When are *Miranda* warnings required?

**NOTE: Show slide, “When Is *Miranda* Required?”**

- (1) With some exceptions, *Miranda* warnings (and a waiver) are required when two elements are present—custody AND interrogation. *Berkemer v. McCarty*, 468 U.S. 420 (1977); *State v. Braswell*, 78 N.C. 498 (1985). A suspect in custody who is not interrogated should not be read the warnings. Conversely, *Miranda* warnings are not required for a suspect who is being interrogated while not in custody. This rule is of critical importance because officers should not advise suspects of their interrogation rights until and unless those rights exist.

## Arrest, Search and Seizure/Constitutional Law

Officers must be familiar with the legal definition of “custody” and “interrogation” for purposes of the *Miranda* rules. These will be discussed below.

### (2) Custody

A suspect is in “custody” for *Miranda* purposes when he has been formally arrested or when his freedom of movement has been restrained to the extent associated with a formal arrest. *State v. Buchanan*, 352 NC 489 (2001); *Oregon v. Mathiason*, 429 U.S. 492 (1977).<sup>97</sup>

There is a difference between a “seizure” under the Fourth Amendment, and “custody” under the Fifth Amendment. They are not always the same thing. As you learned previously, not all seizures are arrests. A person may not be free to leave yet not be under arrest. For instance, during the typical investigative stop, the suspect is seized, but not under arrest. Take a routine traffic stop as an example. The motorist is “seized” within the meaning of the Fourth Amendment but is not in “custody” for Fifth Amendment purposes. Custody for Fifth Amendment purposes is a restraint on freedom of movement to the level of an arrest. Thus, officers do not have to read *Miranda* warnings during the ordinary traffic stop. An arrest is a more severe intrusion on a person’s liberty than mere detention.

The custody test is an objective one: would a **reasonable person** in the suspect’s position believe that he was under arrest? *Pennsylvania v. Bruder*, 488 U.S. 9 (1989). It is not legally relevant that either the suspect or the officer “believes” that there is custody—the test focuses on whether the words and **conduct** of the officers would lead a reasonable person to believe he or she is under arrest. *State v. Brooks*, 337 N.C. 132 (1994).<sup>98</sup>

The standard for juveniles is whether a reasonable child of that age would have believed themselves to be under arrest or restrained from movement to the degree of arrest. *See J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

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The most obvious example of “custody” is where an officer tells a suspect that she is under arrest. Even without these words, a person can be in custody; for example, suppose an officer handcuffs a suspect and drives her to the police station. This would be taking the suspect into custody in that the suspect’s freedom of movement has been restrained to the extent associated with a formal arrest. Here are some situations where the courts have considered whether the suspect was in custody for purposes of *Miranda*:

- (a) Voluntary encounter – Suspect approached on the street by officers, who ask the suspect his name. Held: no custody. *State v. Farmer*, 333 N.C. 172 (1993);
- (b) Voluntary interview – Suspect voluntarily accompanies officers to the police station for questioning and is never told he is under arrest or not free to leave. Held: no custody. *Stansbury v. California*, 114 S. Ct. 1526 (1994);
- (c) Traffic stop – A motorist was stopped for weaving in and out of the lane. The officer asks the suspect if he has had anything to drink, suspect replies, “two beers.” Held: no custody, since suspect had not yet been arrested. *Berkemer v. McCarty*; 468 U.S. 420 (1984); *State v. Beasley*, 104 N.C. App. 529, (1991).

Stops for traffic violations are not normally considered custodial for *Miranda*. The average motorist knows that the stop will be brief while a citation (or warning) is issued. For example, a reasonable person would not believe she is under arrest for an “ordinary” speeding or stop sign violation situation. Thus, although the motorist is “stopped” or “seized” within the meaning of the Fourth Amendment, she is not in custody for purposes of the Fifth Amendment *Miranda* rules. (*Berkemer v. McCarty*, supra.)

- i) Hospital room interview – *State v. Sweatt*, 333 N.C. 407, 427 S.E.2d 112 (1993). Defendant was interrogated by

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an officer at the hospital while he was being treated for injuries received in an automobile accident. No police guard was placed at the door of his hospital room to prevent him from escaping. They are held: no custody.

- ii) Transportation in police vehicle – *State v. Bromfield*, 332 N.C. 24, (1992). The defendant was approached by officers at the bus station in Raleigh and was told he was not under arrest. Officers asked him if he would come to the Raleigh Police Department. The defendant agreed and later confessed. Held: no custody.

*State v. Hicks*, 333 N.C. 467 (1993). Officers asked a seventeen-year-old defendant to take a polygraph examination. The defendant agreed and was driven to the police station, about an hour from his home. Once there, defendant changed his mind and on three occasions refused to take the test. Officers did not tell the defendant he was not under arrest or offer the defendant a ride home. The defendant later confessed. Held: the defendant in custody.

- iii) Unarrest – *State v. Medlin*, 333 N.C. 280, (1993). The defendant lawfully arrested but later told he was no longer under arrest. The defendant allowed cigarettes and phone access after being told he was no longer under arrest. The defendant later confessed. Held: no custody after the “unarrest.”

- iv) Constant police supervision – *State v. Dukes*, 110 N.C.App. 695, (1993). The defendant, a homicide suspect, was escorted to his trailer by the officers. One officer told the other officer, in the

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defendant's presence, to stay with the defendant and not permit him to change clothing or wash. The defendant was then asked about the death of the victim, and he confessed. They have held: the defendant in custody at the trailer.

- v) Handcuffing – *State v. Greene*, 332 N.C. 565, (1992). The defendant handcuffed to a chair at the police station and told him he was not free to leave. He was held: the defendant in custody.

Greene was “unarrested” after being handcuffed and later questioned. The North Carolina Supreme Court ruled that statements made after the “unarrest” were admissible.

- vi) Suspect in a patrol car – *State v. Washington*, 330 N.C. 188, (1991). The defendant stopped for a traffic violation and ordered to sit in the officer's vehicle. Held by North Carolina Supreme Court: custody.

- vii) Two hour interview at the police station – *State v. Sanders*, 122 N.C. App. 691. The defendant voluntarily came to the police station to be questioned. He was never told he was under arrest. Held: no custody.

- (e) A noncustodial interrogation does not require *Miranda* warnings and a waiver. It is thus to an officer's advantage to keep a suspect out of custody since should the warnings have to be administered, the suspect may choose to exercise his right to silence and/or counsel. Here are some ways to help avoid a finding of custody:

**NOTE: Show slide, “Noncustodial Interrogation.”**

## ***Arrest, Search and Seizure/Constitutional Law***

- i) Inform the suspect that she is not under arrest;
- ii) Do not surround the suspect with officers;
- iii) Do not display weapons during the questioning;
- iv) Inform the suspect that she is free to discontinue the interview and leave at any time; document all facts in your notes that support noncustody;
- v) Allow the suspect to make phone calls, have a cigarette, and have food and beverage; if applicable, offer her a ride home; do not over-supervise the defendant;
- vi) Interview the suspect in an environment familiar to her (note that questioning at the police station is *not* automatically custodial); do not use an interrogation room setting;
- vii) Allow the suspect to have family members or friends present during questioning; (See, e.g., *State v. Allen*, 322 N.C. 176 (1988)).<sup>99</sup>
- viii) If “non-custody” is challenged at a suppression hearing, the officers should encourage the district attorney to insist on detailed “findings of facts.”
- ix) Consider interviewing the person at a neutral place – a coffee shop, etc.

### c) Interrogation

**NOTE: Show slide, “Interrogation.”**

- (1) Interrogation means statements or questions designed to elicit an incriminating response; “questioning initiated



by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Miranda v. Arizona*. Interrogation usually occurs through directly questioning the suspect, but the courts have ruled that officers can engage in the “functional equivalent” of questioning by words not overtly directed toward the suspect. Examples are “words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response . . .” *Rhode Island v. Innis*, 446 U.S. 291 (1980). In *Innis*, the United States Supreme Court decided that no interrogation occurred when officers had a conversation among themselves, in the suspect’s presence, about the dangers of an unrecovered gun.

- (2) The *Miranda* requirement is not charge specific. In other words, if the suspect is in custody, *Miranda* warnings must be given and waived before interrogation concerning the offense charged or any unrelated or uncharged offenses for which the defendant may make an incriminating statement.
- (3) Exceptions to the *Miranda* rule – warnings not required
  - (a) Routine booking questions

Questions designed to further the arrest process are, by definition, not designed to incriminate the suspect. For example, officers must fill out arrest forms which include questions about the physical characteristics of the suspect. In *Pennsylvania v. Muniz*, 496 U.S. 582 (1990), the police arrested a suspect for DWI. At the police station, the suspect, without first being advised of his interrogation rights, was asked his height, weight, eye color, and **his age on his fifth birthday**. The highly intoxicated suspect responded that he did not know how old he was on his fifth birthday. The United States Supreme Court ruled that the suspect’s answers to the first three questions were admissible since they were a legitimate part of the booking process. Muniz’s answer to the last question was, however, suppressed, since the police had no

reason to ask the question other than to get an incriminating response (had *Miranda* been read and waived, the police could, of course, have asked the “fifth birthday” question).

“Routine” booking questions do not include those reasonably likely to elicit an incriminating response. If, for example, a person is arrested for statutory rape, he must be given (and waive) the *Miranda* warnings before being asked his date of birth (since the defendant’s age is an element of the crime). *State v. Locklear*, 531 S.E.2d 853 (2000).

(b) Public safety exception

Even if custodial interrogation occurs, questions involving the location of a dangerous weapon or instrumentality which threatens public safety may be permitted under the public safety exception. *New York v. Quarles*, 467 U.S. 649 (1984).

(c) Spontaneous, volunteered statements that are not the result of custodial interrogation do not require *Miranda* warnings. *State v. Edgerton*, 328 N.C. 319, (1991). In *Edgerton*, the defendant confessed while officers were reading the *Miranda* warnings. The North Carolina Supreme Court ruled that the defendant’s statement was spontaneous and, therefore, admissible.

(d) Custodial or noncustodial questioning by non-law enforcement persons who are not acting as agents of the police or by undercover officers also does not require *Miranda* warnings. *Illinois v. Perkins*, 496 U.S. 292 (1990).

d) What warnings must be given?

- (1) A suspect who is 18 years of age or older, and is entitled to *Miranda* warnings (*i.e.*, he is in a custodial interrogation setting) must be advised of the following:

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**NOTE:** Show slide, “*Miranda* Warnings.”

- (a) You have the right to remain silent,
- (b) What you say may be used in court against you,
- (c) You have the right to have a lawyer present during questioning, and
- (d) You have the right to an appointed lawyer during interrogation if you cannot afford to hire one.

For the juvenile *Miranda* warnings subsection (d) as written above is inapplicable. The juvenile’s ability to afford a lawyer is NOT a factor to be considered or advised. N.C.G.S. 7B-2101 provides that the juvenile must be advised that he has a right to counsel and that one will be appointed for him if he is not represented and wants representation. There is no requirement of indigency or financial need for a juvenile to obtain a court-appointed attorney. Anyone under the age of 18 must also be warned that he has the right to have a parent, guardian, or custodian present during questioning.

- (2) After receiving these warnings, the suspect may not be questioned until he has a lawyer present, or he knowingly and voluntarily waives these rights.
- (3) Interrogation must stop immediately if, at any time during the interrogation, the suspect expresses an unwillingness to continue with questioning or asserts the right to counsel (that is, requests an attorney).
- (4) Even though a small number of sixteen and seventeen-year-olds are considered adults for criminal justice purposes, they are still considered juveniles for the G.S. 7B-2101 warnings. Everyone under the age of 18 **must** be given the additional juvenile warning. *State v. Fincher*, 309 N.C. 1 (1983).
- (5) Juveniles who are sixteen and seventeen are allowed to waive their rights under the law as long as the waiver is done knowingly, willingly, and understandingly.

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Juveniles under the age of sixteen can never waive the right to have a parent, guardian, custodian, or attorney present while being interrogated. Parents, guardians, and custodians may not waive any of the juvenile's rights, regardless of the juvenile's age. G.S. 7B-2101.

- (6) Regardless of whether a sixteen or seventeen-year-old juvenile is being processed through the juvenile court as a juvenile delinquent or through the criminal court as an adult, they must be advised of the juvenile *Miranda* rights in G.S. 7B-2101 prior to any custodial interrogation. *See State v. Fincher*, 309 N.C. 1 (1983).

**NOTE:** Show slide, "Juvenile *Miranda*."

- (7) "When the juvenile is less than 16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian, as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile."<sup>100</sup>

N.C.G.S. 7B-2101 does not apply to a juvenile not in custody, or to a juvenile witness or victim. If any of these conditions change, the warnings must be given, and the proper waiver obtained before questioning.

- (8) The following warnings must be read to anyone under the age of 18 who is in custody before questioning:<sup>101</sup>
- (a) That the juvenile has a right to remain silent;
  - (b) That any statement the juvenile does make can be and may be used against the juvenile;
  - (c) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
  - (d) That the juvenile has a right to consult with an attorney and that one will be appointed for the

juvenile if the juvenile is not represented and wants representation.

e) Waiver of *Miranda* rights

(1) To interrogate an in-custody suspect, the officer must obtain a **knowing, voluntary, and intelligent waiver** from the suspect. **Knowing** relates to whether the suspect has been properly informed of his rights and whether he understands those rights. **Voluntary** relates to whether the waiver was obtained without force or coercion. **Intelligent** refers to the capacity and competency of the suspect to understand his rights and the effect of a waiver of those rights.

(2) Was the suspect properly advised of his rights?

(a) If the *Miranda* warnings are required, the rights should be read literally from the form or card rather than relying on memory.

(b) A signed waiver form is preferred. A person signing a document is presumed to know the contents of that document. If a person refuses to sign but is willing to talk with you, indicate on the form not only that the person refused to sign but also indicated their willingness to talk. If possible, have a witness to the waiver.

(c) *Miranda* warning cards are available free of charge to law enforcement agencies from the North Carolina Justice Academy, ATTN: Legal Department, Post Office Box 99, Salemburg, North Carolina 28385, 910-525-4151.

(3) What constitutes a valid waiver of *Miranda*?

The Fifth Amendment rights are so necessary that the suspect must waive them before any statements he makes during a custodial interrogation may be used in the prosecution. Officers have the burden, in court, of showing that the suspect was administered the *Miranda* warnings, and voluntarily and knowingly waived those rights before being questioned.<sup>102</sup>

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The Supreme Court has held that a suspect, after being read the *Miranda* warnings and acknowledging that he understood them, proceeded to give a statement without explicitly waiving the *Miranda* rights. The Court held this was an implied waiver. The safest practice for officers is to get an explicit waiver. Seek clarification from the suspect if you are not sure whether he is waiving or invoking. On the other hand, if it is clear that the suspect is invoking his rights, interrogation must cease. Officers may not try to convince the suspect to change his mind.

- (a) A person may waive her *Miranda* rights over her attorney's objections if the waiver is knowing, voluntary, and intelligent. An attorney may advise her client, but the decision belongs to the client, not the attorney. *Moran v. Burbine*, 475 U.S. 412, 106 (1986); *State v. Reese*, 319 N.C. 676, (1987).
- (b) If the suspect's decision to waive her rights is ambiguous, questions can be asked to clarify whether or not the suspect wishes to talk. *State v. McKoy*, 332 N.C. 639, (1993).
- (c) If a previous interview violated *Miranda*, subsequent interviews with proper warnings and a valid waiver may be permissible if the interviews are voluntary. Officers should never deliberately violate someone's rights in hopes of getting a confession during a second interrogation. This is risky to the officer in terms of civil liability and puts the statement at risk of exclusion in court. *Oregon v. Elstad*, 470 U.S. 298 (1985); *State v. Hicks*, 333 N.C. 467 (1993); *State v. Barlow*, 330 N.C. 133, (1991). A second interview would not be admissible if the officer intentionally uses a "2-step" process and deliberately interviews without *Miranda*, followed soon after that by interviews with proper warnings. *Missouri v. Seibert*, 542 US 600 (2004).
- f) Invocation of right to silence only

(1) Invocation

A suspect has invoked his right to remain silent when he unequivocally asserted his right to remain silent. “Generally a defendant’s statement that he or she does not want to talk is an unequivocal assertion of the right to remain silent, including a statement, ‘I got nothing to say.’ However, if a defendant simply remains silent or fails to answer some questions while continuing to answer others, generally is not an assertion of the right to remain silent. An unclear statement such as, ‘I’m not sure I want to answer any more questions,’ would not qualify as an assertion. An officer may need to clarify whether the defendant is willing to waive the right to remain silent and the right to counsel before obtaining a valid waiver.”<sup>103</sup> This is the best practice.

Once the suspect invokes his right to remain silent, officers must “scrupulously honor” that request, by immediately ceasing interrogation.

(2) Subsequent interrogation after the request to remain silent

While officers must **scrupulously honor** the suspect’s wish to remain silent, officers may approach again if the suspect invoked the right to silence only.

If the suspect invoked the right to counsel, the rules on subsequent interrogation are different. These rules will be discussed later.

(a) Re-initiation of interrogation after significant period of time

After a “significant period of time” has passed, officer may reinitiate interrogation of a suspect who has invoked his right to remain silence only when they “scrupulously honor” that request. This is true regardless of whether the offense is the one for which the suspect is in custody or an unrelated or uncharged offense for which the suspect may make an incriminating statement. Courts decide whether the officers have scrupulously honored the assertion on a case by

case basis. In *Michigan v. Mosley*, 423 U.S. 96 (1975), the defendant indicated that he did not wish to speak to the officer (but the defendant did not ask for a lawyer). Two hours later, a **different** officer approached Mosley to discuss a **different crime**. The subsequent confession was admissible since the officers had “scrupulously honored” the suspect’s right to remain silent. The North Carolina Supreme Court held illegal a subsequent interrogation that occurred fifteen minutes after the defendant asserted the right to remain silent.<sup>104</sup> If the passage of time is not deemed long enough, the court will find the officer illegally re-initiated interrogation of the suspect after he invoked his right to silence.

Officers should re-administer *Miranda* warnings to the suspect upon beginning the second questioning. *State v. Murphy*, 342 N.C. 813 (1996). The suspect must waive *Miranda* rights before the second questioning may proceed. *Michigan v. Mosley*, 423 U.S. 96 (1975); *State v. Fortner*, 93 N.C.App. 753 (1989).<sup>105</sup>

Fifth Amendment rights apply only while the suspect is in custody. A suspect who invokes the right to silence while in custody loses the benefit of the assertion once he is no longer in custody.

(b) Suspect initiates communication

Once the suspect invokes the right to silence, officers may initiate custodial questions on any criminal matter, whether it be about the case for which the suspect was arrested or any unrelated investigation, if the suspect himself initiates further communication, exchanges, or conversation with the officer about the situation. In such a case, the officer should repeat the *Miranda* rights to the suspect and obtain a waiver before he resumes interrogation. *Oregon v. Bradshaw*, 462 U.S. 1039 (1983).



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g) Invocation of the right to counsel

**NOTE: Show slide, “Invocation of the Right to Counsel.”**

(1) Invocation

Once a suspect in custody unequivocally invokes his *Miranda* right to counsel (asks for an attorney before being questioned), all questioning must cease immediately. Officers *may not* initiate *custodial* interrogation once the suspect indicates that he needs the assistance of counsel. The following have been ruled to be considered requests for counsel: “I want an attorney,” or in response to a question about counsel, “Uh, yeah. I’d like to do that.” However, if a suspect makes an equivocal or unclear request for counsel, officers may continue to ask questions. *Davis v. U.S.*, 512 U.S. 452 (1994).

The *Edwards* rule controls questioning by all law enforcement officers in North Carolina. Once a suspect invokes her *Miranda* right to counsel, all officers in the state are presumed to know of the invocation. *State v. Pope*, 333 N.C. 106 (1992).<sup>106</sup> Officers who intend to interrogate a suspect but who were not present at the time of arrest must determine if the suspect has previously invoked their *Miranda* right to counsel (inquiring of the arresting officer is a logical place to begin such an inquiry).

(2) Subsequent interrogation

Once a suspect has invoked his right to counsel under *Miranda*, officers may re-initiate further custodial interrogation only in one of the following circumstances:

(a) Lawyer present

Once the suspect invokes the right to counsel, officers may initiate custodial questioning on any criminal matter, whether it is about the case for which the suspect was arrested or any unrelated investigation, if the suspect’s lawyer is physically present. *Edwards v. Arizona*, 451

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U.S. 477 (1981); *Arizona v. Roberson*, 486 U.S. 675 (1988). In such a case, the officer should repeat the *Miranda* rights to the suspect and obtain a waiver before he resumes interrogation.

(b) Suspect initiates communication

Once the suspect invokes the right to counsel, officers may initiate custodial questions on any criminal matter, whether it be about the case for which the suspect was arrested or any unrelated investigation, if the suspect himself initiates further communication, exchanges, or conversation with the officer about the situation. In such a case, the officer should repeat the *Miranda* rights to the suspect and obtain a waiver before he resumes interrogation. *Oregon v. Bradshaw*, 462 U.S. 1039 (1983).

(c) Custodial interrogation following a 14-day break in custody

Once the suspect invokes the right to counsel, officers may initiate custodial questioning on any criminal matter, whether it is about the case for which the suspect was arrested or any unrelated investigation, if there has been a break in custody for at least fourteen days or more. In such a case, the officer should repeat the *Miranda* rights to the suspect and obtain a waiver before he resumes interrogation. *Maryland v. Shatzer*, 130 S. Ct. 1213 (2010).

The *Shatzer* rule would apply where, for example, the defendant requested his *Miranda* right to counsel in his first period of custodial interrogation; he is then released from custody for at least fourteen days. He is later taken back into custody for some reason. Officers would not be prohibited from reinitiated interrogation, even though the defendant requested counsel during his first period of custody, so long as a fresh *Miranda* waiver is obtained. Again, there may be Sixth Amendment issues, as addressed later in this lesson plan.

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### (3) Non-custodial interrogation

Officers must remember that the *Miranda* rights to counsel only exist and apply while the suspect is in custody. As with the invocation of the right to silence, Fifth Amendment counsel rights disappear once a suspect is no longer in custody. Thus, if the suspect is out of custody, the protections afforded under *Miranda* no longer apply, and officers may reinitiate questioning without violating the Fifth Amendment and without having to secure a Fifth Amendment waiver. The Sixth Amendment protections will exist; however, if adversarial judicial proceedings have commenced on the charge in question. This will be discussed in further detail later in this lesson plan.

## 7. The Sixth Amendment right to counsel

### a) Attachment of the right

- (1) The Sixth Amendment gives defendants a right to counsel at any *critical stage* of prosecution at or after *adversary judicial proceedings* have begun. *Kirby v. Illinois*, 406 U.S. 682 (1972).
- (2) In North Carolina, adversary judicial proceedings for a felony begin at an initial appearance before a magistrate, at the first appearance in district court (when a judge informs the defendant of the charge and determines whether the defendant has counsel) or when an indictment has been issued, whichever occurs *first*.<sup>107</sup> The mere fact that a warrant has been issued does not trigger the defendant's Sixth Amendment right to counsel unless the person has been indicted. *State v. Stokes*, 150 N.C. App. 211 (2002). The appointment of an attorney on a *civil* matter related to a criminal investigation does not trigger the Sixth Amendment right to counsel. *State v. Adams*, 483 N.C. 156 (1997).
- (3) Once adversarial judicial proceedings have begun—an appearance before a magistrate, indictment, or first appearance in District Court—the Sixth Amendment right to counsel is **attached**. The right stays with the defendant until he is sentenced, found not guilty, or the case is dismissed. ***Whether he is in or out of custody,***

*the defendant has a Sixth Amendment right on the charges for which he has appeared before a magistrate, been indicted, or appeared in District Court.*

Unlike the Fifth Amendment rights during custodial interrogation, which protect the suspect regardless of whether the interrogation concerns the charged offense or unrelated charge, the Sixth Amendment protections are charge-specific, protecting the charge itself once an adversary judicial proceeding has begun.

- b) The Sixth Amendment protections – Massiah rule

**NOTE: Show slide, “Sixth Amendment – Massiah Rule.”**

The Sixth Amendment protects against the government deliberately eliciting information,—interrogation, for example—on the charge after the right has attached. Thus, if a government officer or his agent **deliberately elicit** incriminating information from a suspect after his Sixth Amendment right to counsel has attached, the statement will, absent a valid waiver, be suppressed. *Massiah v. United States*, 377 U.S. 201 (1964).

- (1) For example, in a famous case which informally known as the “Christian burial speech” case officers improperly engaged in the functional equivalent of questioning by telling the defendant, a profoundly religious former mental patient who had invoked his Sixth Amendment right to counsel, that he should lead the officers to the body of the child he had murdered on Christmas Eve so that the parents could give the child a Christian burial. This was a violation of the defendant’s rights due to failure to obtain a valid waiver of the Sixth Amendment right to counsel, which attached to the charge about which the officers were eliciting information. *Brewer v. Williams*, 430 U.S. 387 (1977).
- (2) Officers may not “deliberately elicit” information from a defendant surreptitiously (i.e., use an undercover officer or informant to question the defendant about the charge) once his Sixth Amendment right has attached, whether or not he has invoked that right.

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If a government officer or his agent deliberately elicits incriminating information from a suspect after his Sixth Amendment right to counsel has attached, the statement will, absent a valid waiver, be suppressed. *Massiah v. United States*, 377 U.S. 201 (1964).

- c) The assertion of the Sixth Amendment right to counsel

Once the right to counsel has attached, the defendant may invoke that right. A defendant invokes this right by hiring counsel, obtaining appointed court counsel, or requesting the assistance of counsel.<sup>108</sup>

Unlike the Fifth Amendment *Miranda* rights, which can only be invoked incident to custodial interrogation, the defendant may invoke his Sixth Amendment rights in or out of custody, so long as the rights have attached—at or after an adversarial judicial proceeding on that charge. Further, unlike the Fifth Amendment, where the defendant either invokes or waives his rights to a law enforcement officer, the Sixth Amendment right is often invoked out of the presence of officers, such as when the court appoints an attorney.

- d) Waiver of the Sixth Amendment rights before questioning by law enforcement

(1) Questioning or the functional equivalent of questioning by law enforcement officers or their agents after adversary judicial proceedings have begun is always a critical stage and requires a waiver of rights once the Sixth Amendment right to counsel has attached to the charge about which officers seek to question the defendant.

- (2) Out of custody defendant

Once the Sixth Amendment right to counsel has attached, an officer may still approach out-of-custody defendant overtly (identifying himself or herself as a police officer) and ask if the defendant will waive his Sixth Amendment rights and speak with law enforcement outside the presence of counsel.<sup>109</sup> This is true even though the out-of-custody defendant may have already invoked his Sixth Amendment right to

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counsel (for example, by asking for appointed counsel at his first appearance).<sup>110</sup> See section e), below.

(3) In-custody defendant

If an in-custody defendant has not invoked his Fifth Amendment right to counsel, the officer may approach the defendant overtly, advise him of his rights, and seek a waiver of both his Sixth and Fifth Amendment rights. Officers must be sure they are not barred by the Fifth Amendment from initiating interrogation of an in-custody defendant. Recall that once an in-custody suspect has invoked their Fifth Amendment right to counsel, officers are prohibited from initiated interrogation except in certain limited circumstances discussed in the *Miranda* section of this lesson plan. Thus, so long as the defendant remains in custody, a Fifth Amendment request for counsel effectively prevents officers from approaching to seek a Sixth Amendment waiver and interrogation unless the suspect himself initiated the communication with officers or counsel is present. This will be discussed in more detail in the next section of the lesson plan.

(4) The standard *Miranda* rights form is sufficient to obtain a Sixth Amendment waiver. The courts do not require a different form for waiver of the Sixth Amendment right [*Patterson v. Illinois*, 487 U.S. 285 (1988)]; however, some agencies do use special forms, and it may be prudent to at least include the name of the defendant's attorney or the organization, such as the public defender, on the waiver forms.

e) The initiation of interrogation by officers after the Sixth Amendment right to counsel has been invoked.<sup>111</sup>

When can law enforcement officers initiate interrogation about the charge on which the Sixth Amendment has attached, and for which the defendant has invoked the right to counsel?

(1) Even if the defendant has invoked the Sixth Amendment right to counsel, officers may still initiate interrogation, assuming there is no Fifth Amendment bar to the officers approaching defendant. Officers must

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obtain a valid waiver for any statement to be used against the defendant.<sup>112</sup>

- (a) For example, suppose a defendant arrested for burglary refuses to talk to the officers but does not ask for a lawyer. Thus, the suspect did not invoke his Fifth Amendment right to counsel. The defendant appears in District Court and is appointed a public defender. The Sixth Amendment right is attached, due to the adversarial judicial proceeding; the right has been invoked with the appointment of counsel. The next day, officers arrest the defendant on an unrelated car theft under investigation. Officers obtain a *Miranda* waiver, and the defendant confesses to stealing the car.

Was the questioning proper? Yes.

In this scenario, the defendant invoked his Sixth Amendment right to counsel on the burglary charge. Since there is no Fifth Amendment bar to approaching the defendant, officers may initiate questioning about the burglary if they obtain a Sixth Amendment waiver on that charge.

While case law is not clear, it would appear that a second attempt to initiate interrogation after a refusal to waive counsel would be questionable.<sup>113</sup>

- (b) Remember, for purposes of applying these rules, the Sixth Amendment right to counsel is offense-specific; it **does not** apply to **uncharged** crimes. *State v. Harris*, 111 N.C. App 58 (1993). For example, in *Texas v. Cobb*, 532 U.S. 162 (2001), the United States Supreme Court decided that officers may seek to question the defendant about matters relating to, but not charged in, the indictment. In *Cobb*, the defendant was indicted for burglary and was appointed an attorney. Law enforcement officers later approached Cobb to discuss two murders that occurred during the burglary. (Cobb had

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not been indicted on the murders.) Cobb confessed to the murders. The United States Supreme Court upheld the admission of the confession because Cobb did not have Sixth Amendment rights as to those crimes.

### (2) Suspect initiates communication

Even if the defendant has invoked the Sixth Amendment right to counsel, officers may interrogate if the defendant approaches the police. However, a valid waiver must first be obtained for those statements to be admissible in court.

The interrogation would be permissible even if an in-custody defendant invoked his Fifth Amendment right to counsel. Recall that officers may reinstate interrogation under the Fifth Amendment if the suspect initiates the communication with the officers.

### (3) Use of undercover officers and informants

- (a) Even if Sixth Amendment rights have attached, undercover officers (or agents of the police) may be planted inside of a jail cell **to listen** in the event the defendant confesses to the crime for which she stands indicted. *Kuhlmann v. Wilson*, 447 U.S. 436 (1986).<sup>114</sup>
- (b) Neither the undercover officer nor a jailhouse informant may question the defendant about any charges where Sixth Amendment rights have attached. *U.S. v. Henry*, 447 U.S. 264 (1980).<sup>115</sup>
- (c) Undercover officers or jailhouse informants **may** question the suspect about unrelated, uncharged crimes. *Miranda* warnings do not have to be read in such a circumstance. *Illinois v. Perkins*, 496 U.S. 292 (1990).

**NOTE: Show slide and refer students to Bob Farb's Summary of the US Supreme Court's ruling in *Montejo v. Louisiana*.**

- 8. Applying the Fifth Amendment and Sixth Amendment rules together – Questions for the class



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**NOTE:** These questions are designed to make the students think about the interrogation rights of a suspect. The questions show how the Fifth Amendment rights and the Sixth Amendment rights may exist independently or at the same time. Officers may analyze the rules to determine if they may initiate interrogation with the suspect consistent with these rules. Ask students if the suspect has Fifth or Sixth Amendment rights, or both, or neither, in the following fact patterns:

- a) Officers arrest suspect on an arrest warrant. The suspect is to see magistrate in the morning. Answer: Fifth Amendment rights.

Since the suspect is in custody, his Fifth Amendment rights attached to interrogations concerning any offense. The Sixth Amendment right has not attached to the specific charge for which suspect was arrested since the charge has not passed an adversary judicial proceeding (i.e., initial appearance before the magistrate).

- b) Suspect sees magistrate the next morning, is then released. Answer: Sixth Amendment rights.

No Fifth Amendment rights since the defendant is not in custody. Sixth Amendment right attached to the charge due to the initial appearance before the magistrate.

- c) Suspect sees magistrate, goes back to jail. Answer: Fifth and Sixth Amendment rights.

Fifth Amendment rights have attached regarding interrogations on any charge since the defendant is back in custody. Sixth Amendment right has attached to the specific charge for which there was an initial appearance before the magistrate.

- d) The suspect appears in District Court, refuses an attorney, goes back to jail. Answer: Fifth and Sixth Amendment rights.

Fifth Amendment rights since the defendant remains in custody. Sixth Amendment rights are still attached but have not yet been invoked since the defendant did not ask for any attorney.

- e) The suspect appears in District Court, released on bail. Answer: Sixth Amendment rights.

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Fifth Amendment rights no longer attached since the defendant is out of custody. Sixth Amendment rights are still attached. Remember, once attached; they remain with the charge until the final disposition.

- f) Suspect's case dismissed by District Court, district attorney re-indicts. Answer: Sixth Amendment rights.

Fifth Amendment rights no longer attached since the defendant is out of custody. Sixth Amendment rights are attached due to the indictment, which is an adversary judicial proceeding.

- g) Harry indicted for a drug sale. Officers go to Harry's house to arrest based on an arrest order in the indictment. Once inside, officers see Joe, Jane, and Harry in possession of narcotics. Answer: Harry has Fifth and Sixth Amendment rights; Joe and Jane have Fifth Amendment rights.

Harry's Fifth Amendment rights attached to interrogation concerning any offense since he is in custody. Harry's Sixth Amendment right attached to the drug charge since that charge was indicted (adversary judicial proceeding).

Joe and Jane have Fifth Amendment protections against interrogation since they are in custody, but no Sixth Amendment rights since their charges did not pass any adversary judicial proceeding.

Use the fact pattern in "g" when answering "h," "i," and "j."

- h) Officers let Joe go home after he agrees to work as an informant. Answer: no interrogation rights.

No Fifth Amendment rights since he is out of custody.

- i) Harry sees the magistrate and then is returned to jail. Answer: Fifth and Sixth Amendment rights.

Harry's Fifth Amendment rights attached to interrogation concerning any offense, since he is in custody. Harry's Sixth Amendment right attached to drug charge, since that charge was indicted (adversary judicial proceeding).

- j) Harry is released from jail pending trial. Answer: Sixth Amendment rights.

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No Fifth Amendment right, since he is out of custody. His Sixth Amendment right attached to the indictment and remains with the charge until final disposition.

- k) Carol is asked by officers to come to the police facility to talk about an arson case. The officers tell her that she is free to leave at any time. Answer: no interrogation rights.
- l) Carol confesses, is indicted, hires a lawyer, and is released. Answer: Sixth Amendment rights.

Sixth Amendment right attached when the charge was indicted. She invoked that right by hiring an attorney. No Fifth Amendment rights since she is not in custody.

Under the *Montejo* ruling, an officer could approach and attempt an interrogation. Officer uses the *Miranda* card to obtain a Sixth Amendment waiver from Carol.

- m) Police question Carol about an unrelated embezzlement investigation while her arson case is pending. Answer: permissible, as Carol's Sixth Amendment rights are offense-specific.
- n) Tom is arrested for possession of cocaine. He asks for an attorney when *Miranda* is read to him. He goes to District Court and then back to jail. Answer: Fifth and Sixth Amendment rights.

Fifth Amendment rights attached due to custodial interrogation. Tom invoked his right to counsel. Tom's Sixth Amendment rights attached since the charge went before an adversary judicial proceeding.

So long as Tom remains in continuous custody, officers may be barred by the Fifth Amendment from approaching him to ask questions on any offense, unless Tom initiates the communication with officers, or the attorney is present.

- o) Tom is released after appearing in District Court. Answer: Sixth Amendment rights. Officers may approach but use a waiver.

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- p) Jill is arrested for possession of marijuana. She does not ask for a lawyer when questioned by the police. Jill goes to District Court, is appointed a lawyer, and then goes right back to jail. Answer: Fifth and Sixth Amendment rights.

Under the *Montejo* ruling, an officer could approach and attempt an interrogation. Even though Jill has Fifth Amendment rights since she is in custody, she has not yet invoked those rights (she did not “lawyer-up” at the first interrogation). Therefore, officers are not barred by the Fifth Amendment rules from initiating interrogation. Officers can use the *Miranda* card to obtain a Sixth Amendment waiver.

9. Electronic recording of custodial interrogations at a place of detention
- a) G.S. 15A-211 requires electronic recording of custodial interrogations at a place of detention for investigations related to any Class A, B1, or B2 felony and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury.
- b) The statute also requires electronic recording of all custodial interrogations of juveniles in criminal investigations conducted at any place of detention; this provision is not limited to specific offenses.
- c) This recording requirement applies when the custodial interrogation takes place at a jail, police or sheriff’s station, correctional or detention facility, holding facility for prisoners, or other facilities where persons are held in custody in connection with criminal charges.
- d) The recording may be an audio or visual recording. A visual and audio recording shall be simultaneously produced whenever reasonably feasible. In its “entirety” means the beginning of when a person is advised of their rights and continues with all questioning until the conclusion of the interrogation.

### N. Eyewitness Identification

“The 2007 North Carolina General Assembly passed the Eyewitness Identification Reform Act (House Bill 1625). This Act requires that certain steps be taken to administer line-ups in criminal investigations conducted in

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North Carolina. The materials in this document are provided to help law enforcement officers to comply with this law.”<sup>116</sup>

1. Definition of terms
  - a) Types of identification procedures

**NOTE: Show slide, “Identification Procedures.”**

(1) Eyewitness

An eyewitness is defined as “a person, including a law enforcement officer, whose identifications by sight of another person may be relevant in a criminal proceeding.”<sup>117</sup>

(2) Filler

“A person or a photograph of a person who is not suspected of an offense and is included in a line-up.”<sup>118</sup>

(3) Independent administrator

“A line-up administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the line-up is the suspect.”<sup>119</sup>

(4) Lineup

Line-ups can be conducted with photographs or live individuals.

(a) Photo lineup

“A procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.”<sup>120</sup>

(b) Live lineup

“A procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.”<sup>121</sup>

(5) Show-up

A show-up is “a procedure in which an eyewitness is presented with a single live suspect for the purpose of determining whether the eyewitness is able to identify the perpetrator of a crime.”<sup>122</sup>

- (a) “A show-up may only be conducted when a suspect matching the description of the perpetrator is located in close proximity in time and place to the crime, or there is reasonable belief that the perpetrator has changed his or her appearance in close time to the crime, and only if there are circumstances that require the immediate display of a suspect to an eyewitness.
- (b) A show-up shall only be performed using a live suspect and shall not be conducted with a photograph.
- (c) Investigators shall photograph a suspect at the time and place of the show-up to preserve a record of the appearance of the suspect at the time of the show-up procedure.”<sup>123</sup>
- (d) It is permissible to conduct a show-up with a juvenile. *See In re Stallings*, 318 N.C. 565 (1986). Investigators must photograph any juvenile ten years-of-age or older at the time of the show-up who is reported to have committed common-law robbery or any non-divertible offense in G.S. 7B-1701.<sup>124</sup> Any other juvenile who is part of a show-up shall not be photographed during a show-up unless there is a non-testimonial order allowing it.<sup>125</sup>

A juvenile below the age of ten may still be subjected to a show-up without a non-testimonial identification order. *See In re Stallings*, 318 N.C. 565 (1986). It is just that they may not be photographed on the show-up without a non-testimonial identification.

b) Other definitions related to eyewitness identification

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(1) In-court identification

Testimony by a witness at a trial or in a court proceeding that she observed at the time and place of the crime. The identification of the defendant as the person committing the crime is a key element of proof for the prosecution, which makes the in-court identification often crucial to a case.

(2) Out-of-court identification

Testimony by a witness at a trial or in a court proceeding that the witness selected the defendant at an identification procedure held before trial, such as a lineup, show-up, or photographic identification.

(3) Unduly suggestive

An identification procedure that improperly focuses on suspicion or attention on the suspect and encourages the witness to pick the defendant. Suggestiveness could be in the way the procedure is conducted, the comments of officers conducting the procedure, or a variety of other forms. An example of undue suggestiveness would be a lineup where the participants are of a different race from the suspect. Along this line, suppose a robbery victim describes the suspect as having a wandering eye. Placing the suspect in a lineup with fillers who do not have that condition is suggestive (one solution to the problem would be to have all lineup participants cover one eye).

(4) Reliable identification

An identification procedure that is suggestive may still be reliable and admissible in court. For example, a one-on-one show-up is suggestive, but if done properly, it will not be deemed “unduly suggestive.” Since a show-up occurs almost immediately after the crime (before the victim’s memory has faded), the show-up may be a reliable identification procedure. Reliability is determined by several factors, which include:

(a) Opportunity to view

- (b) Degree of attention
  - (c) Accuracy of description
  - (d) Level of certainty
  - (e) Time between the crime and the confrontation
- (5) Independent basis or origin

If the witness participated in an illegal or “unduly suggestive” or unreliable out-of-court identification procedure, the witness might still be able to make an in-court identification of the defendant. To do this, the in-court testimony should be based upon recollection from the time of the crime rather than an irreparable improper identification based upon the suggestive procedure.

2. The impact and importance of perception

Perception is a dynamic process of interpreting sensory data. This process is affected by many factors. Personal differences among individuals are influenced by physical factors, emotional states, prejudice and bias, sexual differentiation, education, and previous experience. Environmental factors also influence perception, as do a variety of other factors.

Eyewitness testimony is often closely scrutinized by attorneys, especially where there are inconsistencies among multiple eyewitnesses. Even though there may be reasonably valid explanations for the differences in an identification (such as one of the eyewitnesses being color-blind and calling the green jacket the wrong color), inconsistencies may reduce the credibility of the eyewitness testimony. Therefore, it is helpful to identify the inconsistencies before the eyewitness testifies.

3. Legal concerns

- a) The two primary constitutional concerns in eyewitness identification cases are:
  - (1) Due process (under the Fifth and Fourteenth Amendments)



(2) Right to counsel (under the Sixth Amendment)

b) There are also some statutory concerns that arise primarily from the North Carolina General Statutes related to nontestimonial identification (G.S. 15A-271 to 15A-282) and juvenile nontestimonial identification (G.S. 7B-2103 to 7B-2109),<sup>126</sup> as well as the “Eyewitness Identification Reform Act” (G.S. 15A-284).

c) To determine if eyewitness identification evidence is admissible in court, the courts generally apply a three-part analysis. *Neil v. Biggers*, 409 U.S. 188 (1972).<sup>127</sup>

(1) **Step One:** Is the identification procedure unduly suggestive?

(a) **If No:** If the identification procedure conducted out-of-court is not unduly suggestive, then testimony concerning both the out-of-court and an in-court identification will be allowed.

(b) **If Yes:** If the identification procedure is suggestive, then proceed to Step Two.

(2) **Step Two:** Did the out-of-court identification procedure cause an unreliable identification of the defendant?

(a) **If No:** If the out-of-court procedure is reliable, then testimony regarding both the out-of-court and in-court identifications will be admitted.

(b) **If Yes:** If the identification procedure is unreliable, then proceed to Step Three.

(3) **Step Three:** If the identification procedure is both unduly suggestive and unreliable, is there still an independent basis or origin for an in-court identification?

(a) **If No:** If no independent basis exists, then testimony will not be permitted regarding the out-of-court identification, and an in-court identification will not be allowed.

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- (b) **If Yes:** If an independent basis is shown, then only an in-court identification will be permitted. Testimony concerning the out-of-court identification will not be admitted.
  - d) Another legal concern is the right to counsel
    - (1) The statutory right to counsel

If an eyewitness identification procedure is conducted under a nontestimonial identification order (this would usually apply to a lineup conducted when the defendant is not in custody), the person ordered to appear has a statutory right to counsel under G.S. 15A-279(d).
    - (2) The Sixth Amendment right to counsel<sup>128</sup>
      - (a) In North Carolina, the Sixth Amendment right to counsel attaches at an appearance before a magistrate, at first appearance, or when an indictment is issued, whichever occurs first. *State v. Nations*, 319 N.C. 318 (1987). Once the Sixth Amendment right to counsel attaches, a LIVE, in-person lineup may not be conducted without the defendant's attorney present, unless the defendant voluntarily waives the presence of his or her attorney.
      - (b) Neither the Sixth Amendment right to counsel nor the statutory right to counsel apply to photographic identification procedures such as a photo array, or photo lineup procedure where the defendant is not physically present.
      - (c) The role of the attorney is to advise his client and observe the procedure, not to interfere with the procedure. If you are dealing with an attorney that you anticipate will interfere, discuss the matter with your legal advisor or district attorney's office before the procedure to determine the best course of action.
4. Conducting eyewitness identification procedures

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**NOTE: Practical exercises in the use of these procedures are included in the “Criminal Investigation” topic area of BLET.**

- a) Conducting a show-up

**NOTE: Show slide, “Show-Up.”**

- (1) A show-up is a one-on-one viewing between a victim or eyewitness and the suspect. The nature of this procedure is viewed with caution by the courts due to the risk of being overly suggestive and the risk of misidentification resulting from an officer’s influence. Any show up must be conducted as close in time to the offense as possible. The show-up should take place near the scene of the crime and not at a law enforcement agency.

If the suspect is merely being detained and not transported, it is preferable to have the victim or witness transported to view the suspect. Of course, in certain circumstances, this may be impractical (ex. critically injured eyewitnesses), necessitating transporting the suspect to the witness’s location.

- (2) As with any identification procedure, the officer must be cautious not to say anything that would be suggestive or influence the witness in making an identification, i.e., “we found the person who hurt you.”

- b) Conducting a live and/or photo lineup

Article 14A of NC General Statutes Chapter 15A is entitled the “Eyewitness Identification Reform Act.” It was enacted into law in 2007, “to help solve crime, convict the guilty, and exonerate the innocent in criminal proceedings by improving procedures for eyewitness identification of suspects.”<sup>129</sup>

**NOTE: Show slide, “Lineup.”**

Photo lineups are also called “photo arrays.” Most lineup procedures are conducted as photo lineups rather than live lineups.

- (1) A lineup (live or photo) must be conducted by an independent administrator or by an alternative method

approved by the North Carolina Criminal Justice Education and Training Standards Commission.

- (2) “Individuals or photos shall be presented to witnesses sequentially, with each individual or photo presented to the witness separately, in a previously determined order, and removed after being viewed before the next individual or photo is presented.
- (3) Before a lineup, the witness shall be instructed that:
  - (a) The perpetrator might or might not be presented in the lineup,
  - (b) The lineup administrator does not know the suspect’s identity,
  - (c) The eyewitness should not feel compelled to make an identification,
  - (d) It is as important to exclude innocent persons as it is to identify the perpetrator, and
  - (e) The investigation will continue whether or not an identification is made.

The eyewitness shall acknowledge the receipt of the instructions in writing. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the acknowledgement.

- (4) In a photo lineup, the photograph of the suspect shall be contemporary and, to the extent practicable, shall resemble the suspect’s appearance at the time of the offense.
- (5) The lineup shall be composed so that the fillers generally resemble the eyewitness’s description of the perpetrator, while ensuring that the suspect does not unduly stand out from the fillers. In addition,
  - (a) All fillers selected shall resemble, as much as practicable, the eyewitness’s description of the

- perpetrator in significant features, including any unique or unusual features.
- (b) At least five fillers shall be included in a photo lineup, in addition to the suspect.
  - (c) At least five fillers shall be included in a live lineup, in addition to the suspect.
  - (d) If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates shall be different from the fillers used in any prior lineups.
- (6) If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup or photo array for each eyewitness.
  - (7) In a lineup, no writings or information concerning any previous arrest, indictment, or conviction shall be visible or made known to the eyewitness.
  - (8) In a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.
  - (9) In a live lineup, all lineup participants must be out of view of the eyewitness prior to the lineup.
  - (10) Only one suspect shall be included in a lineup.
  - (11) Nothing shall be said to the eyewitness regarding the suspect's position in the lineup or regarding anything that might influence the eyewitness's identification.
  - (12) The lineup administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given lineup is the perpetrator. The lineup administrator shall separate all witnesses in order to discourage witnesses from conferring with one

another before or during the procedure. Each witness shall be given instructions regarding the identification procedures without other witnesses present.

- (13) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning the person before the lineup administrator obtains the eyewitness's confidence statement about the selection. There shall not be anyone present during the live lineup or photographic identification procedures who knows the suspect's identity, except the eyewitness and counsel as required by law.
- (14) Unless it is not practical, a video record of live identification procedures shall be made. If a video record is not practical, the reasons shall be documented, and an audio record shall be made. If neither a video nor audio record is practical, the reasons shall be documented, and the lineup administrator shall make a written record of the lineup.
- (15) Whether video, audio, or in writing, the record shall include all of the following information:
  - (a) All identification and nonidentification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's confidence statement. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the results and shall also sign the notation.
  - (b) The names of all persons present at the lineup.
  - (c) The date, time, and location of the lineup.
  - (d) The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.
  - (e) Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.

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- (f) The sources of all photographs or persons used.
  - (g) In a photo lineup, the photographs themselves.
  - (h) In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup.”<sup>130</sup>
- (16) Alternative methods for identification
- (a) Independent administrator is not used
    - i) “In lieu of using an independent administrator, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified by the North Carolina Criminal Justice Education and Training Standards Commission.
    - ii) Any alternate method shall be carefully structured to achieve neutral administration and to prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure.”<sup>131</sup>
    - iii) Other alternatives may be used when an independent administrator is not available as long as the requirements of the Eyewitness Identification Reform Act are followed.
  - (b) “Alternative methods may include any of the following:
    - i) Automated computer programs that can administer the photo lineup directly to an eyewitness and prevent the administrator from seeing which photo the witness is viewing until after the procedure is completed.

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- ii) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to an eyewitness until after the procedure is completed.
  - iii) Any other procedures that achieve neutral administration.”<sup>132</sup>
- (17) Compliance or noncompliance with the statutory requirements may be used in court to consider motions to suppress an eyewitness’s identification, claims of eyewitness misidentification, and reliability of eyewitness identifications.

### III. Conclusion

#### A. Summary

**NOTE: Show slides, “Training Objectives.”**

1. Name and describe, in writing, the three (3) sources of law.
  - a) Constitutional law
  - b) Statutory law
  - c) Common law
2. State how the First Amendment affects the law enforcement function.
3. State the criminal and civil consequences law enforcement officers may face as it relates to violating a citizen’s constitutional rights.
4. Identify how law enforcement authority is affected by subject matter and territorial jurisdiction.
5. State the definitions of “reasonable suspicion” and “probable cause.”
6. State the North Carolina statutory requirements for:
  - a) G.S. 15A-401 – making a warrantless arrest



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- b) G.S. 15A-404 – a citizen detention
  - c) G.S. 15A-405 – assistance to enforcement officers by private persons to effect arrest or prevent escape
7. State the role of law enforcement as it relates to ~~in~~ the issuance of various forms of criminal process.
  8. Identify the following police-citizen encounters:
    - a) Voluntary contact
    - b) Investigative detention
    - c) Arrest
  9. State the statutory procedures officers must follow after making an arrest.
  10. State the statutory requirements for conducting an arrest with a warrant.
  11. Identify the appropriate level of force when given fact scenarios involving deadly and non-deadly force situations.
  12. State the scope of the following warrantless searches:
    - a) Consent searches of persons, premises, or vehicles
    - b) Searches based on probable cause and exigent circumstances
    - c) Searches and seizures based on the plain view doctrine
  13. State the legal requirements for conducting searches of motor vehicles.
  14. Identify the legal requirements governing preparation and execution of a search warrant for a suspect's premises, vehicle, or person.
  15. Identify the special search warrant concerns in obscenity, crime scene, and financial crime situations.
  16. Identify the situations when only a District Attorney's Office may apply for a warrant or order.

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17. Identify the legal concepts of “custody” and “interrogation” as they relate to the requirements of the United States Supreme Court decision, *Miranda v. Arizona*.
18. Recite the four (4) *Miranda* warnings, as well as the additional juvenile warning under G.S. 7B-2101.
19. Identify and explain the exceptions to the *Miranda* requirement.
20. State how non-custodial interview techniques can be used to obtain lawful confessions.
21. State how the Fifth Amendment and Sixth Amendment rights protect suspects during interrogation by law enforcement officers.
22. Identify the procedures for conducting a photographic lineup under the North Carolina Eyewitness Identification Reform Act.

This block of instruction explored the fundamental laws of our country. You learned that the constitution requires you to conduct reasonable searches and seizures. You reviewed the laws concerning arrest warrants and search warrants and learned about various searches and seizures that can be conducted with either reasonable suspicion or probable cause. You also learned how excessive force is unreasonable under the Fourth Amendment while at the same time learning how to use appropriate force to make an arrest, as well as to protect yourself and others. Additionally, you reviewed protections afforded to suspects during interrogation, including the Fifth Amendment rights during custodial interrogation, and Sixth Amendment rights to counsel that protect a charge during various stages of prosecution, along with various statutes. Finally, you observed how various state statutes serve to protect the suspect’s due process rights. The North Carolina’s Identification Reform Act is one such example, requiring you to follow certain procedures in conducting identification, to avoid being unduly suggestive in the manner in which you conduct the procedure.

- B. Questions from Class

**NOTE: Show slide, “Questions.”**

- C. Closing Statement

The material discussed in this block of instruction is the basis of criminal procedure and is the foundation on which much of the other legal instruction contained in this course rests. A clear understanding and proper application of the legal principles offered in this block of instruction is essential to your

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effective performance as a law enforcement officer. Without such an understanding and application, there is a substantial risk that evidence you collect will be excluded, that civil damages will be imposed against you, or even that you will be criminally prosecuted. You will use this material every day as a law enforcement officer, and a firm grasp of this material will be one of the keys to your success.

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### **NOTES**

- <sup>1</sup> Nolo's Plain-English Law Dictionary.
- <sup>2</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 14-20.
- <sup>3</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 160.
- <sup>4</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 160.
- <sup>5</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 23.
- <sup>6</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 22.
- <sup>7</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 159.
- <sup>8</sup> *State v. Eagle*, 2022-NCCOA-680, \_\_ N.C. App. \_\_ (2022).
- <sup>9</sup> *Florida v. Bostick*, 501 U.S. 429, 437 (1991).
- <sup>10</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 28.
- <sup>11</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 36.
- <sup>12</sup> *Illinois v. Wardlow*, 528 U.S. 119 (2000).
- <sup>13</sup> *State v. Blackstock*, 165 N.C. App. 50 (2004).
- <sup>14</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 44.
- <sup>15</sup> N.C.G.S. § 15A-401(c) (2020).
- <sup>16</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 37.
- <sup>17</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 37.
- <sup>18</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 24 and 64.
- <sup>19</sup> N.C.G.S. § 15A-404 (2020).
- <sup>20</sup> N.C.G.S. § 7B-1900, *et seq.* (2020).
- <sup>21</sup> N.C.G.S. § 15A-401(a)(1) (2020).
- <sup>22</sup> N.C.G.S. § 15A-401(a)(2) (2020).

<sup>23</sup> N.C.G.S. § 15A-401(c)(2) (2020).

<sup>24</sup> N.C.G.S. § 15A-303 (2020).

<sup>25</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 80.

<sup>26</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 67.

<sup>27</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 69.

<sup>28</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 69.

<sup>29</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 60.

<sup>30</sup> *Lange v. California*, 579 U.S. 486, 141 S. Ct. 2011 (2021).

<sup>31</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 73.

<sup>32</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 73.

<sup>33</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 73.

<sup>34</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 73.

<sup>35</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 73.

<sup>36</sup> N.C.G.S. § 15A-501 (2020).

<sup>37</sup> N.C.G.S. § 7B-1901 (2020).

<sup>38</sup> See N.C.G.S. § 7B-1901 (2020).

<sup>39</sup> See N.C.G.S. §§ 15A-505; 7B-3100, 7B-3101 (2020); N.C. Session Law 2019-186.

<sup>40</sup> N.C.G.S. § 7B-3100 (2020).

<sup>41</sup> N.C.G.S. § 15A-503 (2020).

<sup>42</sup> Sharps and Hess.

<sup>43</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 173.

<sup>44</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 173.

<sup>45</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 361.

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- <sup>46</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 175-182.
- <sup>47</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 175-182.
- <sup>48</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 175.
- <sup>49</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 182.
- <sup>50</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 181.
- <sup>51</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 181.
- <sup>52</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 182.
- <sup>53</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 183.
- <sup>54</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 183.
- <sup>55</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 186.
- <sup>56</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 199.
- <sup>57</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 199.
- <sup>58</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 200-201.
- <sup>59</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 201.
- <sup>60</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 201.
- <sup>61</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 201.
- <sup>62</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 201.
- <sup>63</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 203.
- <sup>64</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 205-206.
- <sup>65</sup> *State v. Johnson*, 627 S.E.2d 488 (2006).
- <sup>66</sup> *State v. Stone*, 362 N.C. 50 (2007).
- <sup>67</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 66-73.

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- <sup>68</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 218.
- <sup>69</sup> N.C.G.S. § 15A-285 (2020).
- <sup>70</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 233.
- <sup>71</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 229-231.
- <sup>72</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 372.
- <sup>73</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 372-376.
- <sup>74</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 365.
- <sup>75</sup> N.C.G.S. § 15A-249 (2020).
- <sup>76</sup> N.C.G.S. § 15A-251(2) (2020).
- <sup>77</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 397.
- <sup>78</sup> N.C.G.S. § 14-190.20 (2020).
- <sup>79</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 66-73.
- <sup>80</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 217-218.
- <sup>81</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 368-369.
- <sup>82</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 196-197.
- <sup>83</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 413-416, 425-428.
- <sup>84</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 235, 354, 489-492.
- <sup>85</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 425.
- <sup>86</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 5.
- <sup>87</sup> United States Constitution, Sixth Amendment.
- <sup>88</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 664-665.
- <sup>89</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 664-665.
- <sup>90</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 664-665.

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- <sup>91</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 664-665.
- <sup>92</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 664-665.
- <sup>93</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 664-665.
- <sup>94</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 534.
- <sup>95</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 534.
- <sup>96</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 542.
- <sup>97</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 594.
- <sup>98</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 587-588.
- <sup>99</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 598.
- <sup>100</sup> N.C.G.S. § 7B-2101 (2020).
- <sup>101</sup> N.C.G.S. § 7B-2101 (2020).
- <sup>102</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 542.
- <sup>103</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 543-544.
- <sup>104</sup> *State v. Murphy*, 342 NC 813 (1996).
- <sup>105</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 620.
- <sup>106</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 521, 628.
- <sup>107</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 550-557.
- <sup>108</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 552.
- <sup>109</sup> *See Montejo v. Louisiana*, 556 U.S. 778 (2009).
- <sup>110</sup> Farb, “The United States Supreme Court Ruling in *Montejo v. Louisiana*.”
- <sup>111</sup> Farb, “The United States Supreme Court Ruling in *Montejo v. Louisiana*.”
- <sup>112</sup> Farb, “The United States Supreme Court Ruling in *Montejo v. Louisiana*.”
- <sup>113</sup> Farb, “The United States Supreme Court Ruling in *Montejo v. Louisiana*.”



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- <sup>114</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 652.
- <sup>115</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 652.
- <sup>116</sup> North Carolina Department of Justice, Eyewitness Identification Reform Act.
- <sup>117</sup> N.C.G.S. § 15A-284.52(a)(1) (2020).
- <sup>118</sup> N.C.G.S. § 15A-284.52(a)(2) (2020).
- <sup>119</sup> N.C.G.S. § 15A-284.52(a)(3) (2020).
- <sup>120</sup> N.C.G.S. § 15A-284.52(a)(7) (2020).
- <sup>121</sup> N.C.G.S. § 15A-284.52(a)(6) (2020).
- <sup>122</sup> N.C.G.S. § 15A-284.52(a)(8) (2020).
- <sup>123</sup> N.C.G.S. § 15A-284.52(c1) (1)-(3) (2020).
- <sup>124</sup> N.C.G.S. § 15A-284.52(c4) (2020).
- <sup>125</sup> *See* N.C.G.S. §§ 15A-284.52(c4); 7B-2103 (2020).
- <sup>126</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 557.
- <sup>127</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 557.
- <sup>128</sup> Farb, *Arrest, Search and Investigation in North Carolina*, 559.
- <sup>129</sup> N.C.G.S. § 15A-284.51 (2020).
- <sup>130</sup> N.C.G.S. § 15A-284.52(b)(2)-(15) (2020).
- <sup>131</sup> N.C.G.S. § 15A-284.52(c) (2020).
- <sup>132</sup> N.C.G.S. § 15A-284.52(c)(1)-(3) (2020).

## ***Communication Skills for Law Enforcement Officers***

BLET: 06J **Draft iv, 4**

TITLE: COMMUNICATION SKILLS FOR LAW ENFORCEMENT OFFICERS

Lesson Purpose: To provide the basic law enforcement student with effective verbal/nonverbal communication skills.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives with information received during the instructional period:

1. Demonstrate speaking plainly, using clear diction and grammar while utilizing voice commands to project control and direct actions.
2. Identify how your body language affects your verbal and nonverbal communication skills.
3. Identify at least three (3) strategies to enhance a person's active listening skills.
4. State how recognizing ethnic diversity in the population can increase effective and respectful communication skills within an ever-changing diverse population.

Hours: Eight (8)

Instructional Method: Conference, Practical Exercise

Testing Requirement(s): End of block test, Practical Exercise

Training Environment(s): Classroom, Practical Exercise Area

Materials Required: Audio-visual classroom equipment  
Handouts  
Video recording equipment or audio tape recorder  
Video:  
*Communication Skills for Law Enforcement Officers*,  
NCJA (Re-issued January 1, 2008)

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Date Reviewed: January 2018

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## ***Communication Skills for Law Enforcement Officers***

### **TITLE: COMMUNICATION SKILLS FOR LAW ENFORCEMENT OFFICERS - Instructor Notes**

1. This lesson plan must be presented by an instructor currently certified by the North Carolina Criminal Justice Education and Training Standards Commission as a General Instructor.
2. There are a large number of practical exercises within this lesson. Instructors need to possess excellent communication and facilitation skills to teach the block and properly facilitate the exercises.
3. The videotaping of all BLET practical exercises enhances their use. Videotaping should especially occur in this block to properly facilitate the learning.
4. Conducting the practical exercises:
  - a) Practical Exercise #1, “Using Emphasis in Sentence Structure.”
    - (1) This exercise is designed to help students use the appropriate word emphasis in sentence structures.
    - (2) Pass out the handout to all students.
    - (3) Have students read the top segment to themselves and practice changing the word emphasis.
    - (4) Select individual students to read parts of the second segment aloud to the class.
    - (5) Discuss the differences and reinforce the changes in meaning.
  - b) Practical Exercise #2, “Using Variety in Sentence Structure.”
    - (1) This exercise is designed to help students use a variety of pitch, volume, and expression in sentence structures.
    - (2) Have one student read the first passage aloud with no expression. Record the reading and play it back for the students to hear.
    - (3) Have another student read the second passage using a variety of pitch, volume, and pauses. Record the reading and play it back for the students to hear.

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- (4) The word “caprice” means a sudden and impulsive change of mind — the word “contrived” means showing the effects of planning or devising.
- c) Practical Exercise #3, “Testing for Nasal Twang.”
  - (1) Have the students hold their noses and say, “ee-ah-ee-ah-oo” (sounds like the words from “Old MacDonald Had A Farm”).
  - (2) Their noses should not vibrate. If their noses do vibrate, then they have some nasality.
  - (3) The only sounds in the English language that should be nasal are m, n, and ng.
- d) Practical Exercise #4, “Do You Articulate or Mumble?”
  - (1) Have the students read the attached verses, emphasizing the consonants and good diction.
  - (2) Record a student reciting them and play it back for emphasis.
  - (3) The student(s) should be surprised that what felt like an over-exaggeration of consonants comes through on the tape as good clear articulation.
- e) Practical Exercise #5, “Directing Others.”
  - (1) Have the students read the attached phrases, emphasizing strong voice projection.
  - (2) Pay particular attention to students who might use a rising inflection.
  - (3) Record some of the students giving strong, assertive commands.
- f) Practical Exercise #6, “Attitudes and Nonverbal Communications.”
  - (1) Divide class into groups of four (4).
  - (2) Write the following attitudes and situations on index cards to distribute for the exercise:
    - (a) Attitudes
      - (1) Happy-go-lucky

## ***Communication Skills for Law Enforcement Officers***

- (2) Depressed
  - (3) Angry
  - (4) Superior, larger than life ego
- (b) Situations
- (1) Group discussion on their long-term professional goals.
  - (2) Group discussion on their financial situation.
  - (3) Group discussion on their relationship with their parents/family.
  - (4) Group discussion on their personal motor vehicles.
  - (5) Group discussion on the last meal they ate.
- (3) Assign each person a particular attitude to assume throughout the exercise; ask them to convey the attitude *nonverbally*. They should not tell the other members of the group what their “attitudes” are.
- (4) At the end of the exercise, each person in the group should attempt to decide which person was assigned what attitude.
- (5) Then discuss the accuracy of the predictions.
- g) Practical Exercise #7, “Which Is Which?”
- (1) Pass out the appropriate handout to each student.
  - (2) Give them several minutes to indicate their choices.
  - (3) Then discuss the correct answers.
- h) Practical Exercise #8, “Nonassertive, Assertive or Aggressive?”
- (1) Pass out the appropriate handout to each student.
  - (2) Give them several minutes to indicate their choices.
  - (3) Then discuss and demonstrate the correct answers.
- i) “Excessive Force” practical exercise



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- (1) Pass out the “Excessive Force” handout to the students. Students should be given fifteen minutes to complete the scenario. After reading the scenario, students should answer the below questions.
  - (2) Engage in a class discussion asking the following questions:
    - (a) What impact can a negative attitude against a group of people have on our behavior?
    - (b) Is your partner displaying implicit bias or racial bias?
    - (c) Does your partner’s attitude toward African Americans factor into his behavior?
    - (d) Using your knowledge of bias, what elements are evident in this scenario?
5. To promote and facilitate law enforcement professionalism, three ethical dilemmas are listed below for classroom discussion. During this block of instruction, instructors must provide students with each ethical dilemma listed below. Sometime during the lecture, instructors should “set the stage” for the dilemma before taking a break. Instructors are encouraged to develop additional dilemmas as needed.
- a) You are on a DWI Checking Station when you here a fellow officer say: “Hey Bozo, move your \*&^%%! car off my %\$^^&% highway!” What will your response be?
  - b) Upon initial contact with a citizen, an officer is met with an aggressive attitude. The officer responds by mirroring the behavior to show he will not be intimidated and telling the person, “Calm down, or you’re going to jail!” What should be done?
  - c) In many cultures, “saving face” is of vital importance and could open or close communication from the outset. Your partner immediately intimidates the person to keep control of the situation. What will you do?

## ***Communication Skills for Law Enforcement Officers***

TITLE: COMMUNICATION SKILLS FOR LAW ENFORCEMENT OFFICERS

### I. Introduction

**NOTE: Show slide, “Communication Skills for Law Enforcement Officers.”**

#### A. Opening Statement

“As officers you will be constantly required to interact with people in order to get things done. Unless you can communicate in such a way that people will understand and respond to you, your road will be a rough one. Communication is an officer’s prime tool with which he can guide, organize, motivate, change, and also effectively understand what another person really wants.

When we think of communication, most of us think almost at once of words or talk. Communication is much more than mere words; we must remember that words are no more than symbols which make possible the transmission of meanings. Communication is a function of common meanings, the overlapping of the perceptual fields of the communicator and communicatee.

The way in which you communicate with others has a direct effect on the way in which they respond to you. Good communication skills can often prevent a potentially explosive situation. ‘Reading’ people involves observing their behavior, being aware of their tone of voice, and actively listening to their words. You must ‘tune in’ to the people around you.”<sup>1</sup>

#### B. Training Objectives

**NOTE: Show slides, “Training Objectives.”**

1. Demonstrate speaking plainly, using clear diction and grammar while utilizing voice commands to project control and direct actions.
2. Identify how your body language affects your verbal and nonverbal communication skills.
3. Identify at least three (3) strategies to enhance a person’s active listening skills.
4. State how recognizing ethnic diversity in the population can increase effective and respectful communication skills within an ever-changing diverse population.

#### C. Reasons

## ***Communication Skills for Law Enforcement Officers***

“To be effective, officers must utilize communication skills that involve hearing verbal messages, perceiving nonverbal messages, and responding verbally and nonverbally to heard and *perceived* messages. To ensure that these communication skills become an integral part of your techniques as an officer, you must practice them frequently.”<sup>2</sup> There will be numerous opportunities for you to practice these techniques as you complete your basic training experience. You will be interacting with other students, instructors, officers from differing agencies, role players, and other citizens. Take advantage of these opportunities to work on more effective communication skills.

Being able to communicate and diffuse potentially explosive situations may be a major lifesaving strategy for you. Many police personnel can speak of events when their “gift of gab” kept them out of a physical confrontation with a highly charged individual. Being able to talk on different levels with the variety of people you will encounter in your “routine” working day will be paramount to your success in this profession.

**NOTE: Show slide, “Diffusing a Situation,” and tell a personal story of diffusing a situation.**

**NOTE: Show video, *Communication Skills for LEOs* – “Vehicle Stop Re-enactment.” Ask students how they believed the trooper behaved, both verbally and nonverbally. Write and discuss their answers on the flip chart.**

### II. Body

#### A. General Speaking Strategies

**NOTE: Show slide, “Speaking Strategies.”**

1. Speak plainly using clear diction and grammar.

Officers are expected to understand and correctly utilize the English language when dealing with the populace. Succinctly verbalizing words and phrases enhances your communication skills. Avoid stuttering, if possible, and avoid using incomplete sentences.

2. Check your vocal qualities:<sup>3</sup>
  - a) “Does every word and every sentence you speak sound like every other? Or do you vary the pitch and emphasis depending on the tense?”

## ***Communication Skills for Law Enforcement Officers***

**NOTE: Show slide, “Using Emphasis in Sentence Structure,” and conduct practical exercise #1, “Using Emphasis in Sentence Structure.”<sup>4</sup> (Refer to Instructor Notes)**

**NOTE: Show slide, “Using Variety in Sentence Structure,” and conduct practical exercise #2, “Using Variety in Sentence Structure.”<sup>5</sup> (Refer to Instructor Notes)**

- b) Do you sound tired or bored? Or energetic and interested?
- c) Is your tone tight? Nasal? Breathy?

**NOTE: Show slide, “Testing for Nasal Twang,” and conduct practical exercise #3, “Testing for Nasal Twang.”<sup>6</sup> (Refer to Instructor Notes)**

- d) Do you mumble? Or can your consonants be distinctly heard?

**NOTE: Show slide, “Do You Articulate or Mumble?” and conduct practical exercise #4, “Do You Articulate or Mumble?”<sup>7</sup> (Refer to Instructor Notes)**

- e) Do you speak so softly that people often can’t hear you?
- f) Do you have a machine-gun delivery – so rapid that people sometimes miss what you say?
- g) Do you speak so slowly that people have trouble waiting for you to finish your sentences?
- h) Do all your sentences, even declarative ones, have an upward intonation as if you are asking a question? Do you sound hesitant and unsure? Or do you sound confident in what you are saying?

The way you speak sends a message to people. Is it the message you intend to send?

3. Avoid using “slang” terms.

There may be times when officers use “slang” terms to build rapport with individuals on the street. But for the most part, officers should talk using proper English.

4. Never use profanity.

Using **any** profanity (cuss words) with the citizenry is very offensive and unprofessional. It is the primary complaint that citizens make when reporting improper behavior to your supervisors or internal

## ***Communication Skills for Law Enforcement Officers***

affairs. Regardless of the way an individual is addressing you or talking with you, do not succumb to the temptation to use their words.

5. **Generally,** Address individuals by “Sir” and “Ma’am.” **by their name**

Officers should address the persons **by their name when** they are interviewing, citing, arresting, and giving general information ~~to as~~ “Sir” or “Ma’am.” If you know an individual’s last name, then it is appropriate to refer to them as “Mr. or Mrs. Jones.” Addressing them in this manner shows respect and can diffuse charged individuals.

6. Smile and nod when listening to individuals.

“Smiling and occasional nodding function as encouragers in a conversation, reassuring the other person that you are friendly, interested, *approachable*, and listening. If you usually listen impassively, try nodding occasionally. Do not overdo it. An occasional single nod of the head encourages people to say more; successive nods get them to stop.”<sup>8</sup>

7. Utilize your voice commands to project control and direct actions.

Many times an officer will have to give appropriate voice commands to direct individuals to take action. Examples:

- a) Commanding citizens to stay away from a crime scene.
- b) Commanding suspects to stay in their cars during a high-risk vehicle stop.
- c) Moving individuals while you are directing traffic.
- d) Directing multiple suspects during a raid or residential search.

Being able to continuously project your voice is the key to directing others. “Breathing is what supports the voice. If your breath is shallow and irregular, your voice will be thin and weak. What is needed is an efficient and regular use of breath: not breathiness for the first few words and running out of breath by the end.”<sup>9</sup>

Having a rising inflection in your voice may make you sound unsure of what you are saying. This will be reflected as weak and non-commanding. When you give a verbal command to an individual, it should be direct, somewhat loud, and authoritative.

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**NOTE: Show slide, “Directing Others,” and conduct practical exercise #5, “Directing Others.”<sup>10</sup> (Refer to Instructor Notes)**

### B. Verbal/Nonverbal Communication

**NOTE: Show slide, “Verbal/Nonverbal Communication.”**

“A police officer observes his surroundings and judges what he sees. Different behaviors, individuals, and objects make the police officer form suspicions of different degrees. Does somebody walk too fast? Does somebody walk too slowly? Does somebody look around too much? Does somebody look around too little? Does somebody seem to be nervous? Is this a person the police know from before? How does a person behave when he looks at a police officer, does he look too long, too short – or does he avoid looking at all?”<sup>11</sup>

From the receiver’s point of view, your message is conveyed in one of several aspects. Those aspects are content, voice, and other nonverbals. The content of what you are verbalizing accounts for 7-10% of what the receiver processes. The content of our message is composed of our words and our credibility.

However, being right never convinced anyone particularly of our voice when other nonverbals say something differently. The voice that carries our message accounts for 33-40% of what the receiver processes as he or she hears it. The message we are attempting to deliver doesn’t get distorted in what we are saying but in how we say it. If there’s a contradiction between content and voice, which should the receiver believe? The voice is a window of a subject’s intentions. It’s not what you say, but it’s how you say it.

Other nonverbal clues account for 50-60% of how the receiver processes the message you are delivering. One’s body language can tell the receiver a much different message than the content of the message. If there is a contradiction, people will believe the other nonverbal and body language clues.<sup>12</sup>

1. Officer verbal/nonverbal cues – how you relate to others

**NOTE: Show slides, “How You Relate to Others.”**

“Upon hearing and listening to the message, receivers generate a response regarding how they received, interpreted, and understood the message. For instance, the message could generate a series of verbal and nonverbal reactions, including a return message, smile, frown, punch, and/or gunshot. The communication process continues until one or all participants find a suitable point for conclusion.”<sup>13</sup>

## ***Communication Skills for Law Enforcement Officers***

- a) “Nonverbal cues such as clothing, body posture, eye contact and physical aggression are significant forms of communication that generate and dictate much action within the criminal justice system.”<sup>14</sup>
- b) “Interpretation and analyses of nonverbal communication pose particular obstacles due to the greater amount of subjectivity involved.”<sup>15</sup>
- c) “Officers are expected to consider the continuum of force in their attempts to adequately interpret and respond to suspect behavior.”<sup>16</sup>
- d) “The perception aspect of the laws surrounding deadly force involves officers interpreting nonverbal and sometimes verbal cues.
- e) Failure to react accordingly could result in death, civil and criminal litigation, and the officer’s dismissal from the force.”<sup>17</sup>
- f) “There are a wide array of variables that can influence an interaction, including the class and status of partners, sexual orientation, age, ethnicity, and individual style.”<sup>18</sup>
- g) “In addition, there are cultural variances in the proper tone of conversation, the kind of touch allowed (if any), and the appropriate personal distance between men and women.
- h) There are also cultural differences in the level of appropriate intimacy in the topic and in the expectations of response.”<sup>19</sup>
- i) “In order to deal competently with communication differences, people need to learn as much as possible about the expectations of the groups with which they interact.”<sup>20</sup>

“Every time we verbally give a message to someone, we also impart a nonverbal message. In some instances, the nonverbal component may stand alone.”<sup>21</sup> “Therefore, no discussion of communication would be complete without consideration of nonverbal communication, which includes body movements, the intonations or emphasis we give to words, facial expressions, and the physical distance between the sender and receiver.”<sup>22</sup>

## ***Communication Skills for Law Enforcement Officers***

2. Suspect verbal/nonverbal cues – how others relate to you

**NOTE: Show slide, “How Others Relate to You.”**

“In order to deal competently with communication differences, people need to learn as much as possible about the expectations of the groups with which they interact. They also need to learn to recognize indicators of power differences and understand that they have evolved as the result of group history. Communicators should not take such changes personally and should always keep their interactions respectful and professional.”<sup>23</sup>

- a) “Power and status differences

**NOTE: Show slides, “Power and Status Differences.”**

- (1) Groups with subordinate status have developed specialized ways of communication based on their past interactions with members of the dominant group.”<sup>24</sup>
- (2) “Including, diverting communication away from potentially dangerous topics
- (3) Remaining silent when offensive statements are made
- (4) Downplaying or ignoring differences
- (5) Ridiculing self
- (6) Confronting
- (7) Educating others
- (8) Imposing a psychological distance through verbal and nonverbal strategies
- (9) Avoiding communication altogether.”<sup>25</sup>

- b) Reaction to emotionally charged situations

**NOTE: Show slide, “Reaction to Emotionally-Charged Situations.”**

- (1) “Understanding how individuals react to miscommunication and how to resolve



## ***Communication Skills for Law Enforcement Officers***

miscommunication should be of utmost importance to criminal justice practitioners.”<sup>26</sup>

- (2) “Recognize an emotional flare – Realizing that you are faced with an emotional conflict is the first step to getting it under control.
- (3) Pause and calm down before reacting – Take a deep breath and think for a moment so you aren’t tempted to say something that you will regret later.”<sup>27</sup>

### 3. Paralanguage

**NOTE: Show slide, “Paralanguage.”**

“Paralanguage refers to vocal characteristics such as inflection, tone, accent, rate, pitch, volume, and vocal interrupters.”<sup>28</sup> The manner of speaking communicates as much as the words; it just does not communicate the same thing in every culture.

#### a) Voice characteristics

**NOTE: Show slide, “Voice Characteristics.”**

“Voice characteristics also play a decisive role in communication. The way one utilizes one’s voice gives adequate hint about a person’s nature and his [or her] attitude.”<sup>29</sup>

#### (1) Volume

- (a) “There cannot be any rigidity about volume, but one should be audible. One should be conscious enough to raise or lower one’s volume depending on the audience as well as the acoustics of the room.”<sup>30</sup>
- (b) “A voice which is high pitched usually becomes thin and tight.
- (c) Our pitch usually rises often during moments of anger and stress. Whereas it becomes slow during moments of despair.

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- (d) We often tend to mispronounce words when we speak fast.
- (e) Moreover, a fast delivery reflects our nervousness and loosens our control over the audience.”<sup>31</sup>

### (2) Translation

“Your ONVs [other nonverbals] must harmonize with your voice. If your voice is calming, your demeanor has to be calming. Otherwise, people will not believe what you say. Remember, 93 percent of your success with people has to do with your delivery and only the slightest percent has to do with *what* you say.”<sup>32</sup>

- (a) “Content – You have to know what you are talking about.”<sup>33</sup> “You must decide precisely what it is you want and need to communicate.
- (b) Coding – Coding is merely putting your message into words. This involves thinking of those words as a code that reflects your meaning.”<sup>34</sup>
- (c) “Sending – Once you know your meaning and have chosen the words for it, it’s time to transmit it, whether by phone or in person, using your voice and other nonverbals (facial expressions, body language, etc.).
- (d) Decoding – Decoding is the responsibility of the hearer, but how well he decodes is in direct proportion to the effectiveness of the content, coding, and sending – yours. His decoding is also affected by your demeanor and carriage (voice and body language), external noise (cars, planes, phones, people, etc.) and his own internal noise (what I call ‘brain damage,’ or any other influence he may be under).”<sup>35</sup>

### b) Word choices

**NOTE: Show slide, “Word Choices.”**

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The kind of words used is often a clear reflection of the officers' style. This is particularly true for the aggressive approach because it uses especially negative language and demanding statements.

Verbal stereotypes – “Professional law enforcement officers are expected to exercise greater restraint in their response to such words than the average citizen. Profanity, name-calling, and obscene gestures directed toward officers do not, standing alone, constitute fighting words.”<sup>36</sup>

- (1) “Verbal stereotypes are removed by non-utilization of demeaning annoying formulas: Hey, you over there!
- (2) Avoiding phrases such as: You’re not right, I contradict you, you’re lying;
- (3) Avoiding from the communication slogans without any meaning: It is necessary to draw the conclusion, we will act firmly, relentlessly, we are committed to;”<sup>37</sup>
- (4) “Avoid wording in jargon and slang or use set expressions which show antipathy and lead to distrust.
- (5) Such expressions are used by offenders, black market traders, but local policeman, even if they know the meaning, they need to avoid their use.”<sup>38</sup>

#### 4. Nonverbal communication – nonverbal cues

“Nonverbal behavior includes all communicative acts except speech.”<sup>39</sup> “It also includes bodily contact, posture, physical appearance, direction of gaze, and the paralinguistic variables of emotional tone, timing, and accent.”<sup>40</sup>

**NOTE: Show slide, “Nonverbal Cues.”**

##### a) Silence

“Effective communication does not mean ceaseless talk. Strong messages and impression are conveyed even without making any sound. Most speaking situations require inclusion of silence and pauses in communication.”<sup>41</sup>

## ***Communication Skills for Law Enforcement Officers***

“This enables us to think and allows listeners to digest our ideas. A split second silence is a blessing both for the speaker as well as the listener. These short silences are more meaningful than various non-words such as ‘ah,’ ‘um,’ ‘umph,’ and ‘oomph’s.”<sup>42</sup>

b) Lack of eye contact

“Cultures vary in how long people make eye contact, how intensely, when, what part of the body is looked at, and how much blinking is done. Some cultures consider extended direct eye contact as a sign of honesty while others see it as disrespectful.”<sup>43</sup>

“The most expressive part of our bodies, eyes reveal truthfulness, intimacy, concern, naughtiness, joy, surprise, curiosity, affection, and love. People who do not look at each other while talking or listening can be suspected of being secretive. Hence, the dexterous use of eyes in almost all communicative situations is very important.”<sup>44</sup>

c) Facial expression

“An effective communication should ensure a cooperative and not a competitive atmosphere, where one wants to dominate over others. Our facial expression should regulate our feelings in a way that it serves the required functions. One may often have to hide one’s genuine feelings at times.”<sup>45</sup>

d) Interruption

“Be an active listener. Listen to all that the witness has to say before you respond. Do not interrupt or finish sentences for the person. Listen for feelings as well as for facts. Create an open and receptive atmosphere with your body language.”<sup>46</sup>

e) Gesture and posture

“Gestures and postures also contribute to effective communication. Various hand movements and standing and walking positions may lend meaning even without a speaker’s intention.”<sup>47</sup>

f) “Personal space

## ***Communication Skills for Law Enforcement Officers***

Personal space or zones of territory also vary across cultures, class, and gender. Generally, if a person invades the space of another, it may cause discomfort, but people in some cultures prefer to stand closer than others. High contact is desirable in Latin American, African, Arabian, and southern European cultures, while noncontact or low contact is preferred by Asian and northern European cultures.”<sup>48</sup>

g) Movement

“Movement while speaking can also vary. In some cultures, people may walk away and return to emphasize agreement. In others, individuals talking to authority figures are expected to stand still and upright.”<sup>49</sup>

**NOTE: Show video, *Communication Skills for LEOs* – “Body Language Cues.”**

**NOTE: Show video, *Communication Skills for LEOs* – “Mixed Messages.”**

**NOTE: Show slide, “Attitudes and Nonverbal Communications” and conduct practical exercise #6, “Attitudes and Nonverbal Communications.”<sup>50</sup> (Refer to Instructor Notes)**

5. Other nonverbal communication points

- a) “Anthropologist Edward Hall contends that definite distances should be maintained between people for different purposes and that these distances vary according to culture. Hall states, that when you get too close to an individual, you violate his or her ‘personal space bubble.’”<sup>51</sup>

(1) Intimate location<sup>52</sup>

**NOTE: Show slide, “Intimate Location.”**

This close phase of intimate distance is used for intimate conversations.

(2) Personal location<sup>53</sup>

**NOTE: Show slide, “Personal Location.”**

This distance is kept for normal casual interactions.

(3) Moderate location

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**NOTE: Show slide, “Moderate Location.”**

- (a) “The moderate location brings participants close enough to allow a gentle touch of an arm or shoulder if appropriate.”<sup>54</sup>

Generally the distance at which we transact impersonal business.

- (b) “The moderate location leaves space from 18 to 48 inches between the questioner and the individual being questioned.”<sup>55</sup>

- (4) Conversation location

4 to 6 feet<sup>56</sup>

**NOTE: Show slide, “Conversation Location.”**

“The conversation location is where the participants are situated in a safe location just outside physical reach. This location leaves about four to six feet between the participants. In the conversation location, no obstructions should exist between the questioner and the individual being questioned.”<sup>57</sup>

**NOTE: Show video, *Communication Skills for LEOs* – “Proxemics.”**

- b) Body orientation/postures

“Postures are defined as a position of the body or of body parts. Early research indicated that postures communicate attitudinal states and general affect as opposed to the very specific emotions communicated by face and voice. These attitudinal and general affective states include liking versus disliking, orientation (closed or open), and attention (direct or indirect).”<sup>58</sup>

**NOTE: Show slide, “Body Orientation/Postures.”**

**NOTE: Explain that every movement should not be interpreted rigidly.**

“For example, body orientation - the degree to which a person’s shoulders and legs are turned in the direction of rather

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than away from another interactant - is associated with attitude toward the interactant.

- (1) The least direct orientation occurs for disliked interactants, whereas more direct orientation occur for liked others.

**NOTE: Show slide, "Open Arms."**

- (2) Open arms and legs in a seated position generally communicate a more positive attitude and openness.<sup>59</sup>

**NOTE: Show slide, "Arms on Hips."**

- (3) Arms on hips or arms crossed in front of ones' body are oftentimes related to more negative attitudes.<sup>60</sup>

### 6. Interpreting body movements

Several studies have indicated that angry body movements are more expanded, fast, and had more action. They also tend to be jerkier, stiffer, and harder than the other emotions.<sup>61</sup>

- a) There are several indicators that express an aggressive component associated with anger to include:<sup>62</sup>

**NOTE: Show slide, "Hostile Cues."**

- (1) Facial grimaces
- (2) Punching motions with fists
- (3) Head tilted back
- (4) Arms on hips
- (5) Low-intensity smile on face

- b) The officer's role and voice has to harmonize. Any conflict between the officer's body language and voice could lead to disastrous results. Explain things to people as we would explain it to ourselves.<sup>63</sup>
- c) Officers must be open and unbiased, hear literally, interpret accurately, and respond appropriately. Paraphrase back to them

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what you heard to de-escalate situations. We interpret by paraphrasing.<sup>64</sup>

- d) To accomplish this, we must keep our egos in check. As ego goes up, power and safety goes down. As ego goes away, power and safety rise. We must take our egos out of the conversation.<sup>65</sup>
  - e) “Although officers must often assume stances that are required to preserve safety during encounters with the public, care must be taken to avoid mannerisms needlessly provide negative reactions from citizens. Resting a hand on the butt of a weapon is one example of such behavior.
  - f) Profanity – The use of profanity is never appropriate.
  - g) Demeaning remarks – Any form of address that ridicules a citizen or expresses contempt is never appropriate.
  - h) Explaining what law officers do – The most simple form of courtesy and communication is explaining what you as a law officer are doing and why.”<sup>66</sup>
7. Understanding the difference between nonassertive, assertive and aggressive behaviors

Officers will encounter a variety of situations and people in their daily activities. Most people will display one (1) of the following basic types of behavior. You, too, will fluctuate between all three (3) categories, depending upon who you are communicating with.

**NOTE: Show video, *Communication Skills for LEOs* – “Hostile Cues.”**

- a) Definitions

**NOTE: Show slide, “Behavior Styles.”**

- (1) “*NONASSERTIVE* behavior is passive and indirect. It communicates a message of inferiority. By being nonassertive, we allow the wants, needs, and rights of others to be more important than our own. Nonassertive behavior helps create ‘win-lose’ situations. A person behaving nonassertively will lose while allowing others to win (or at best be disregarded).



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Following this road leads to being a victim, not a winner.

- (2) *AGGRESSIVE* behavior is more complex. It can be either active or passive. Aggression can be direct or indirect, honest or dishonest—but it always communicates an impression of superiority and disrespect. By being aggressive we put our wants, needs, and rights above those of others. We attempt to get our way by not allowing others a choice. Aggressive behavior is usually inappropriate because it violates the rights of others. People behaving aggressively may ‘win’ by making sure others ‘lose’—but in doing so, set themselves up for retaliation. No one likes a bully.
  - (3) *ASSERTIVE* behavior is active, direct, and honest. It communicates an impression of self-respect and respect for others. By being assertive we view our wants, needs, and rights as equal with those of others. We work toward ‘win-win’ outcomes. An assertive person wins by influencing, listening, and negotiating so that others choose to cooperate willingly. This behavior leads to success without retaliation and encourages honest, open relationships!<sup>67</sup>
- b) It’s important to be able to recognize the differences between the terms both verbally and nonverbally.

**NOTE: Show slide, “Which Is Which?” and conduct practical exercise #7, “Which Is Which?”<sup>68</sup> (Refer to Instructor Notes)**

**NOTE: Show slide, “Nonassertive, Assertive, or Aggressive?” and conduct practical exercise #8, “Nonassertive, Assertive, or Aggressive?”<sup>69</sup> (Refer to Instructor Notes)**

- C. Active Listening
  1. Active listening

**NOTE: Show slide, “Active Listening.”**

This is a nonjudgmental method of de-escalating others.<sup>70</sup> Mike Helms, supervisor overseeing one of the FBI’s Hostage Negotiation Teams, stated this technique is essential in de-escalating highly emotional subjects.<sup>71</sup> In addressing the importance of this technique,

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he said, “You have to be able to get through the emotions so you can get to the story.”<sup>72</sup> In other words, we must seek to understand before we seek to be understood. It is difficult to make effective decisions without a good understanding of issues impacting the situation.

**NOTE: Show slide, “Active Listening Skills.”**

The following specific active listening skills (A.L.S.) should not be viewed as anything magical or obscure. However, each of them can and should be practiced often to effectively utilize them when you have the time, distance, and cover to safely use this de-escalation method. These techniques also assist in building rapport by showing empathy through the utilization of nonjudgmental listening techniques covered in this block of instruction. It should also be noted that your tone of voice is five times more important than what you say.<sup>73</sup> Active listening involves the following techniques:

a) Paraphrasing

**NOTE: Show slide, “Paraphrasing.”**

“Paraphrasing is basically summarizing what the subject said by putting meaning into your own words. This technique helps create empathy and rapport because it demonstrates you are listening. Also, this is a good way to clarify content, check perceptions, and highlight issues. In addition, paraphrasing helps in the process of obtaining additional information by asking open-ended questions and then paraphrasing.”<sup>74</sup> “For example saying, ‘Are you saying..?’ or, ‘Are you telling me..?’

b) Reflecting or mirroring

**NOTE: Show slide, “Reflecting or Mirroring.”**

Reflecting or mirroring involves repeating the subject’s last word or phrase as a question. This is a great method to give very exact feedback. In addition, it asks for more intelligence without guiding the direction. It also gets intelligence when you don’t have enough to ask a question. One example of mirroring could be, if the suspect says ‘the way she acts just tears me up.’<sup>75</sup> Then you would say, “tears you up?”<sup>76</sup>

c) Open-ended questions

**NOTE: Show slide, “Open-Ended Questions.”**

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“Open-ended questions are simply questions that can’t be answered with a ‘yes’ or ‘no’ response. This approach gets intelligence without a bunch of questions. Additional benefits include: conveying an interest in listening, giving more freedom of responses, and drawing out longer responses. We can ask who, what, when and where to accomplish this. Another example could be by saying, ‘tell me more about...’ or ‘I’d like to hear more about...’ This helps the process of getting the subject thinking and focusing on his/her feelings. Again, this is important to help dissipate aggressive and/or depressive emotions to start getting the subject back into a more rational mindset.”<sup>77</sup>

- d) Minimal encouragers

**NOTE: Show slide, “Minimal Encourages.”**

“Minimal encouragers are words or even sounds such as ‘uh huh.’ These sounds demonstrate you are still listening without interfering with the flow of the conversation. This also encourages the subject to continue talking by indicating you are actively present in the conversation.”<sup>78</sup>

- e) Silence

**NOTE: Show slide, “Effective Pauses (Silence).”**

“Silence can be an effective technique if it serves your purpose. Most people, specifically from western societies, are not comfortable with silence and tend to talk to fill it. Another use of this technique is to use silence just before and immediately after making an important point.”<sup>79</sup>

- f) “I” message<sup>80</sup>

**NOTE: Show slide, “I’ Message.”**

The “I” message is when the officer says something like, “I feel offended when you curse because I’m not used to that type of strong language.” This allows the other person to know how the officer feels and conveys information in a non-threatening way.

- g) Emotional labeling<sup>81</sup>

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**NOTE: Show slide, “Emotional Labeling.”**

Emotional labeling is when the officer says something like, “It appears that you’re upset.” This method is recommended to be used early on and used to label as many emotions as reasonably possible.

### 2. Steps to effective listening

**NOTE: Show slide, “Eye Contact.”**

- a) Keep eye contact using the following methods:<sup>82</sup>
  - (1) Face the speaker and make eye contact
  - (2) Put aside distractions
- b) Be attentive, but relaxed to include:<sup>83</sup>

**NOTE: Show slide, “Attentive.”**

- (1) Once you establish eye contact, relax
- (2) Continue brief eye contact, but do not stare
- (3) Attend to the other person’s communication by being present and attentive to their speech
- c) Keep an open mind by using the following methods:<sup>84</sup>

**NOTE: Show slide, “Keep an Open Mind.”**

- (1) Listen without judging
- (2) Do not jump to conclusions
- (3) Do not interrupt
- (4) Let the person finish their thought or statement
- d) Visualize what the speaker is saying by using the following methods:<sup>85</sup>

**NOTE: Show slide, “Visualize.”**

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- (1) Create a mental picture of what the speaker is saying
  - (2) Visualizing helps you stay focused
  - (3) Do not rehearse what you are going to say while the other person is talking
  - (4) Remember keywords and phrases
  - (5) Concentrate on what the speaker is saying
  - (6) If your mind starts to drift, refocus yourself and remember the reason you are listening
- e) Avoid interrupting

**NOTE: Show slide, “Avoid Interrupting.”**

- (1) “Interrupting sends a variety of messages. It says:
    - (a) I’m more important than you are.
    - (b) What I have to say is more interesting, accurate or relevant.
    - (c) I don’t really care what you think.
    - (d) I don’t have time for your opinion.
    - (e) This isn’t a conversation, it’s a contest, and I’m going to win.
  - (2) We all think and speak at different rates. If you are a quick thinker and an agile talker, the burden is on you to relax your pace for the slower, more thoughtful communicator – or for the guy who has trouble expressing himself.”<sup>86</sup>
- f) Ask questions only to ensure understanding using the following methods:<sup>87</sup>

**NOTE: Show slide, “Ensure Understanding.”**

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- (1) Don't interrupt the flow of conversation to divert the conversation in another direction. You may miss something important the speaker was about to say.
  - (2) If your question has diverted the speaker, make a mental note to get back to the original thought.
- g) Show empathy for the speaker using the following methods:<sup>88</sup>

**NOTE: Show slide, "Empathy."**

- (1) As stated previously in this lesson plan, empathy is understanding the other person's situation.
  - (2) Empathy takes energy and concentration.
  - (3) Empathy assists in building rapport and facilitates open and truthful conversation.
- h) Provide feedback using the following methods:<sup>89</sup>

**NOTE: Show slide, "Feedback."**

- (1) Reinforce your understanding of the speaker's situation by reflecting his/her feelings. For example, "this sounds like a terrible ordeal for you" or "I can see that you are confused."
- (2) You can also provide feedback by nodding as the speaker is talking.
- (3) Occasionally paraphrase the speaker's message to assure understanding.

### **D. Cultural Awareness**

**NOTE: Show slide, "Cultural Awareness."**

"In American culture, asking questions is the simplest way of gathering information. However, within some cultures, it is considered rude. This can be especially problematic for criminal justice personnel with investigative roles. For instance, in some Native American cultures, asking questions, especially of elders, is impolite and will not likely elicit a response."<sup>90</sup>

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“Conflict management is another important skill for criminal justice personnel. Conflict is handled differently by various cultural groups.”<sup>91</sup>

### 1. Community outreach

**NOTE: Show slide, “Community Outreach.”**

“One means by which criminal justice agencies might gain familiarity with communication patterns, and values and deeds of diverse populations is the establishment of community outreach or liaison programs.”<sup>92</sup>

- a) “These initiatives are intended to minimize the cultural and organizational distance between police officers and their publics.
- b) This is particularly important in immigrant communities, where newcomers are reluctant to report crime.
- c) Law enforcement agencies can overcome the fear and reticence by mounting a friendly presence in such communities.
- d) They attempt to overcome language barriers by offering translation services, multilingual emergency/telephone hotlines, and community justice alliances.”<sup>93</sup>
- e) “Such collaborative efforts attempts to break the ‘us vs. them’ mentality so common to criminal justice personnel.
- f) The initiatives seek to foster trusting, positive relationships between criminal justice agencies and their diverse publics.”<sup>94</sup>

### 2. Communication competence for criminal justice professionals

**NOTE: Show slide, “Communication Competence.”**

This next section includes generalizations of common traits and characteristics regarding various ethnic groups based on studies and observations. However, officers should be aware that individuals within any particular ethnic group may or may not conform with any or all of the observed traits. “Competent communication is about developing a shared reality or negotiating mutual meanings, rules, and outcomes that are ‘positive.’ It has been said that effective communication is primarily about minimizing misunderstanding, but communication is seldom perfect.”<sup>95</sup> “The problem occurs when we

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are exposed to foreign cultures. For example, in Greece, waving at someone, and in the Middle East beckoning someone with fingers are insults. When a Brazilian taps his head, he is indicating that he is going through a thinking process, but the same gesture stands for 'crazy' in other places. Tapping the nose also has different interpretations: it means 'keep it secret' in Britain, but a warning signal in Italy. The British hiss when they want to show extreme disapproval, whereas in Japan, hissing is an expression of social deference."<sup>96</sup>

### a) Miscommunication

**NOTE: Show slide, "Miscommunication."**

"Miscommunication is the basis for some interpersonal conflict and the cause for some criminal injustice."<sup>97</sup>

- (1) When interacting with Latino offenders, officers should be direct and to the point. Officers should expect to see more reactions from Latinos due to them generally being more immediate and vocal in communication.<sup>98</sup>
- (2) "Sometimes the dialogue sounds more intimidating than it really is."<sup>99</sup>

### b) Barriers to effective communication

**NOTE: Show slide, "Barriers to Effective Communication."**

"The ability to speak a second (or third) language is becoming increasingly important for criminal justice professionals, particularly since language is a primary identifying feature of a culture."<sup>100</sup>

### c) Facial expressions and eye contact

**NOTE: Show slide, "Facial Expressions and Eye Contact."**

"It is considered rude in some cultures (e.g., in many Asian cultures) to look someone in the eye, and some cultures consider it respectful to maintain limited eye contact. Americans, however, consider eye contact as a sign of respect."<sup>101</sup>



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- (1) “For example, Asians and Pacific Islanders deflect direct eye contact during conversation as a sign of patient listening and deference. These groups therefore consider staring to be impolite and confrontational.
- (2) In contrast, people in many Western cultures value direct eye contact as a sign of sympathy or respect. Looking elsewhere is seen as disinterest or evasiveness.”<sup>102</sup>

d) Silence

**NOTE: Show slide, “Silence.”**

- (1) “Silence makes many Americans nervous. Citizens from the northeast are taught to finish other people’s sentences, to interrupt, and to leap immediately into any space in a conversation.
- (2) Similarly, some racial or ethnic populations, such as African Americans or Italians, are known for loud, expressive dialogues. Rather than being markers of impoliteness, these represent speech pattern or learned cultural behaviors.
- (3) In contrast, many Native American and Asian peoples are taught to wait a space after another person has stopped talking. The length of the silence reflects the importance they give to the other person’s words. In a meeting between individuals from these cultures, we might observe a significant cultural clash in communication with some populations feeling they have no room to present their concerns because others are imposing their point of view through aggressive communication.”<sup>103</sup>

e) Touch

**NOTE: Show slide, “Touch.”**

“Touching is also viewed differently by low contact and high contact cultures. Touching includes kissing, embracing, hugging, hand shaking, and general touch. Touching varies not only by culture but by the gender and status of the persons in

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the interaction, the timing of the interaction, and the private or public location of the interaction.”<sup>104</sup>

### f) Tone of voice

**NOTE: Show slide, “Tone of Voice.”**

- (1) “Officers should always be aware of their tone of voice and use it to their advantage.
- (2) The voice should never betray anger, contempt, sarcasm, or other inflections that are likely to provoke opposition.”<sup>105</sup>
- (3) “Arabs tend to speak louder than people from other cultures. To Arab listeners a higher volume indicates strength and sincerity, while speaking too softly implies that the speaker lacks confidence or is timid.
- (4) On the other hand, speaking softly is much appreciated by Asians.
- (5) South Koreans avoid talking loudly in any situation, as it is considered rude and unbecoming since it tends to draw attention to one’s self.”<sup>106</sup>

### g) Gestures

**NOTE: Show slide, “Gestures.”**

“Kinesics behavior, or body movement, includes gestures, hand, arm and leg movements, facial expressions, eye contact and stance or posture.”<sup>107</sup>

- (1) “Hand gestures [can] translate directly into words. For instance, putting index finger to lips indicates a ‘shhh...’ requesting silence.”<sup>108</sup>
- (2) “In the United States, making a circle with the thumb and index finger while extending the other fingers indicates ‘okay.’ However, in Japan and Korea, it indicates money.
- (3) African-Americans and people from Mediterranean countries, the Middle East, and South America tend to

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be animated speakers and use hand gestures liberally, while in many Asian countries, such as Japan and China, excessive use of gestures is not encouraged.”<sup>109</sup>

3. Key principles when dealing with people from other cultures

**NOTE: Show slide, “Key Principles When Dealing with People from Other Cultures.”**

“Cultures tend to differ in the importance to which context influences the meaning that individuals take from what is actually said or written in light of who the other person is. Countries such as China, Korea, Japan, and Vietnam are high-context cultures. They rely heavily on nonverbal and subtle situational cues in communicating with others.

**NOTE: Show slide, “Other Cultures.”**

- a) What is not said may be more significant than what is said.
- b) A person’s official status, place in society, and reputation carry considerable weight in communications.”<sup>110</sup>
  - (1) Effective speaking requires that efforts be made to suspend judgment of others’ differences.
  - (2) And to understand why other kinds of people behave as they do.<sup>111</sup>
    - (a) Euro-Americans

**NOTE: Show slide, “Euro-Americans.”**

- i) “Tend to avoid disclosing much personal information. Although this tendency may be more descriptive of males than female Euroamericans.”<sup>112</sup>
  - ii) “Euroamericans are careful to take turns when they talk, and they tend to be impatient with people who talk too much or too long.
  - iii) They also tend to avoid arguing.”<sup>113</sup>
- (b) Latino

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**NOTE: Show slide, “Latino.”**

- i) “Latinos are very expressive when they speak.”<sup>114</sup>
- ii) “Socializing and being friendly are very important to typical Latinos. Arguing or disagreeing in public is considered rude and disrespectful; instead,
- iii) Latinos prefer to appear agreeable and courteous.”<sup>115</sup>
- iv) “They value conformity, obedience, and respect for authority.”<sup>116</sup>
- v) “Traditional gender roles are strongly encouraged. Males are expected to fill the roles of husband, father, and provider and be responsible and brave; females are expected to be protected, stay closer to home, and nurture and support their families.”<sup>117</sup>

(c) African American

**NOTE: Show slide, “African American.”**

- i) “The African American style of speaking tends to be intense, expressive, distinctive, forceful, assertive, and openly emotional.”<sup>118</sup>
- ii) African Americans view interpersonal questions in a social setting to be an improper and intrusive style of communicating.
- iii) They are less restrained, modest, and subdued by Asian Americans or Euro-Americans in their public presentations.
- iv) They often strive to make their own personal communication style a statement about their individuality.

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### (d) Asian American<sup>119</sup>

**NOTE: Show slide, “Asian American.”**

- i) A high context culture who tend to hide or mask much of their own emotions when they communicate.
- ii) In contrast to the Euro-American style, the Japanese feel uncomfortable when a speaker looks them straight in the eye.

### (e) Native American<sup>120</sup>

**NOTE: Show slide, “Native American.”**

- i) A high context co-culture who communicate in soft spoken and indirect manner.
- ii) Native Americans avoid sustained and direct eye contact when speaking.
- iii) Native Americans are less dramatic and animated in their normal communications.
- iv) They rely extensively on nonverbal cues when they communicate.

### (f) Middle Eastern American<sup>121</sup>

**NOTE: Show slide, “Middle Eastern American.”**

- i) Middle Eastern Americans are sensitive to others’ perceptions of them and strive to be perceived positively.
- ii) They highly value speaking.
- iii) They place content and logical presentation second to rhythm of language and the sounds of words as they compose their messages.

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- iv) They tend to be collectivistic; place a relatively high value on power, rank, and status; and slightly reflect a feminine value orientation.
- c) Use tactical communication.

**NOTE: Show slide, “Tactical Communication.”**

- (1) Being street savvy is having the ability to become who you have to be to effectively handle the call—adapt, adapt, adapt!
- (2) Not enough anymore to be competent or right under pressure; officers must look and sound professional
- (3) Don’t say “calm down!” – do it
- (4) Deflecting verbal abuse

- (a) “Say what you want, DO what I say.”<sup>122</sup>

The only actual power a person has is the power of verbal protest.

Must understand violators will use verbal challenge to challenge power.

- (b) “I’ve got the last ACT; you’ve got the last WORD.”<sup>123</sup>

- (c) “Know your own weaknesses”<sup>124</sup> and what pushes your buttons so that you don’t get caught up in the verbal confrontation.

- (d) Get rid of your personal face.<sup>125</sup>

- i) Now the person you are facing only sees your uniform

- ii) Become an officer representing your department, our state laws, our Constitution, etc.<sup>126</sup>

- iii) Forget your ego<sup>127</sup>

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- d) Remember the importance of the family.

**NOTE: Show slides, “Importance of Family.”**

- (1) In many cultures, the father is the head of the family.
  - (a) Important to address him or elder
  - (b) If in a domestic situation, when the woman is questioned, be aware of the additional discomfort, all family members will feel. Make sure you explain to the father what you are doing.
  - (c) Many cultures attempt to handle problems within the family, so they will not want police involvement.
  - (d) If at all possible, do not ask a child to translate, especially in Asian cultures.
- (2) In many cultures, the family support system is extended.
  - (a) Native Americans – Aunts and uncles are often the disciplinarians
  - (b) Great respect for elders
    - i) In India, elders held in great esteem
    - ii) In China, elders and dead family members respected
  - (c) In India, men avoid touching women; they consider it sexual molestation. If officers must touch, be sure to explain.

- e) Cross-cultural communication

**NOTE: Show slide, “Cross-Cultural Communication.”**

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“To be successful in understanding the nuances of cultural diversity, justice system personnel must be afforded the opportunity to understand the dynamics of cross-cultural communication.

- (1) Thus, there is a need to develop an awareness of communicative, analytical, and interpretive skills that will aid in maintaining communications with both the current and changing populations.
- (2) The process of understanding how to communicate with other cultures often begins with an understanding of how our behavior is perceived by other people.
- (3) Thus, it is important that some time be spent on discussing the ways in which our presentation of self can facilitate or inhibit our communication with others.”<sup>128</sup>

#### 4. Officer survival and safety

**NOTE: Show slide, “Officer Survival and Safety.”**

“It is not uncommon for justice system personnel to be cultural, ethnic, religious, or gender structures with which they come into contact as being dysfunctional because of the differences in the way in which communication occurs between cultures and among individuals within the culture. For example, many police officers are at a loss to understand the extended family structures commonly found among some of the racial and ethnic groups with which they come into contact. To help officers understand the importance of other cultures’ extended family structures, it might be of value to discuss how the officers feel when they hear that another officer has been injured or killed.

- a) Cross-cultural training

**NOTE: Show slide, “Cross-Cultural Training.”**

In developing tactics that are specific to [criminal] justice personnel, it is necessary to understand who they are and to some extent how they have been socialized.

- b) In other words, it is necessary to be sensitive to the social and psychological characteristics of the audience.”<sup>129</sup>



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### c) Citizen complaints

“In the wake of growing complaints that police have long targeted African Americans for unwarranted interrogations and traffic stops, ‘racial profiling’ has emerged in the media to describe an alleged police propensity to stop, search, and arrest minorities at rates far out of proportion to their numbers.”<sup>130</sup>

- (1) “When people do not trust the police, they are less likely to report crimes and more likely to perceive injustice.
- (2) Likewise, when police do not understand the groups that they are there to serve, they have difficulty recognizing crimes and understanding behavior.”<sup>131</sup>

### 5. Responding to possible hate crime offenses

**NOTE: Show slide, “Hate Crimes.”**

- a) In the past several years, bias or hate-motivated incidents have increased throughout the country. Every hour in the United States, somebody commits a hate crime.<sup>132</sup> Bias-motivated criminal acts not only have a devastating effect on the individual victim but also threaten the democratic foundations of our society. Also, tensions and pressures are generated within the neighborhoods affected. A hate crime targets, not just the victim or victims directly involved, a hate crime is meant to send a message to all other individuals of that same race, religion, disability, nationality/ethnicity, or sexual orientation – a message of an offensive nature, of hatred.

As law enforcement officers, you must acknowledge the obligation not only to investigate the criminal acts but also to recognize and respond in a supportive manner to the emotional trauma experienced by the victims, families, and citizens of the community which have witnessed and suffered from such incidents.

### b) Definitions

**NOTE: Show slides, “Hate Crime Definitions.”**

- (1) Bias – “A bias offense is any act based on race, color, religion, disability, national origin, political affiliation,

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marital status, sexual orientation, gender, veteran status, or age that creates an intimidating and/or hostile educational, living, or working environment by unreasonable and substantially interfering with an individual's or group's safety, security, work, or academic performance. Acts include language and/or behaviors."<sup>133</sup>

- (2) Hate crime – A “criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender or gender identity.”<sup>134</sup>
- (3) Disability – A person who has a physical or mental impairment that substantially limits one or more major life activities. This includes people who have a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability. The ADA also makes it unlawful to discriminate against a person based on that person's association with a person with a disability.
- (4) Disability bias – “A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments/challenges.”<sup>135</sup>
- (5) Ethnicity and/or national-origin bias – “A preformed negative opinion or attitude toward a group of persons of the same race or national origin who share common or similar traits, languages, customs, and/or traditions.”<sup>136</sup>
- (6) Racial bias – “A preformed negative opinion or attitude toward a group of persons who possess common physical characteristics including, but not limited to, color of skin, eyes, and/or facial features.”<sup>137</sup>
- (7) Religious bias – “A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being.”<sup>138</sup>

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(8) Sexual orientation bias – “A preformed negative opinion or attitude toward a group of persons based on, but not limited to, their sexual attraction toward and responsiveness to members of the opposite sex.”<sup>139</sup>

c) What is hate crime/bias crime?

Hate crime/bias crime are generic terms used to describe incidents of violence or crimes perpetrated against persons solely because of their race, religion, national origin/ethnicity, sexual orientation, or disability. “The victim of a hate crime may be an individual, a business, an institution, or society as a whole. In 2014, the nation’s law enforcement agencies reported that there were 6,727 victims of hate crimes. Of these victims, 46 were victimized in 17 separate multiple-bias incidents.”<sup>140</sup>

d) How do we identify hate violence incidents?<sup>141</sup>

Of the hate crime offenses reported in 2014, approximately one-quarter of them involved destruction/damage/vandalism, one-quarter of them involved a simple assault, twelve percent involved an aggravated assault, one-quarter involved intimidation, and the remaining offenses included additional crimes against persons and property.

e) Criteria for identifying bias incidents:

**NOTE: Show slide, “Identifying Hate Crimes.”**

- (1) The motivation of the perpetrator
- (2) The absence of a regular or typical motive
- (3) The victim’s perception of the incident
- (4) The display of offensive symbols, words or acts
- (5) “The date and time of occurrence (corresponding to a holiday of significance to the victim group or offender group, i.e., Hanukkah, Martin Luther King Birthday, Chinese New Year, Hitler’s birthday, anniversary of Gordan Kahl’s death, etc.)

## ***Communication Skills for Law Enforcement Officers***

- (6) A common sense review of the circumstances surrounding the incident (consider the totality of the circumstances)
    - (a) The groups or individuals involved in the attack
    - (b) The manner and means of the attack
    - (c) Any similar incidents in the same area or against the same victim
  - (7) Statements by perpetrator (Example – Statements of hatred toward the victim, his or her kind of people)<sup>142</sup>
  - (8) Would the incident have occurred if the victim and offender were of the same race, religion, sexual orientation, ethnicity, or disability?
- f) Who are the perpetrators?

Perpetrators of hate violence can come from any neighborhood, any city, any state, or any country. Half of all the hate crimes in the nation are committed by people between the ages of 15 and 24.<sup>143</sup> The offenders' criminal actions are generally motivated, in whole or in part, by a specific bias. Currently, there are 917 hate groups operating across the country, including neo-Nazis, Klansmen, white nationalists, neo-Confederates, racist skinheads, black separatists, border vigilantes, and others.<sup>144</sup> According to the Southern Poverty Law Center, there are presently thirty-two hate groups present in North Carolina.<sup>145</sup>

**NOTE: Show slide, “Excessive Force Practical Exercise,” and conduct “Excessive Force” practical exercise.” (Refer to Instructor Notes)**

### III. Conclusion

#### A. Summary

During this block of instruction, we have practiced reciting sentences using correct diction and grammar and learned the importance of effective voice commands to direct and persuade individuals to respond. We discussed in-depth body language signals and ways to communicate nonverbally. We learned how to “actively listen” and the value of being able to “tune in” when an individual is talking. We also listed principles that will aid in the effective

## ***Communication Skills for Law Enforcement Officers***

communication when dealing with individuals who have culturally different backgrounds.

**NOTE: Show slides, “Training Objectives.”**

1. Demonstrate speaking plainly, using clear diction and grammar while utilizing voice commands to project control and direct actions.
2. Identify how your body language affects your verbal and nonverbal communication skills.
3. Identify at least three (3) strategies to enhance a person’s active listening skills.
4. State how recognizing ethnic diversity in the population can increase effective and respectful communication skills within an ever-changing diverse population.

B. Questions from Class

**NOTE: Show slide, “Questions.”**

C. Closing Statement

Being able to effectively communicate with a variety of individuals is the cornerstone, the foundation for your success as a law enforcement officer. You must attempt to make every contact you have with your fellow officers and the citizenry a positive contact. This isn’t always possible, especially during a tense or dangerous situation, but you need to be aware of how you project and how others will “read” your movements and gestures, and then you will need to be able to defend any actions you take. Think about it . . . How do you want them to remember you?

## *Communication Skills for Law Enforcement Officers*

### NOTES

- <sup>1</sup> Cloutier, 4.
- <sup>2</sup> Cloutier, 4.
- <sup>3</sup> Ross and Dewdney, 26.
- <sup>4</sup> Ross and Dewdney, 26.
- <sup>5</sup> Ross and Dewdney, 27.
- <sup>6</sup> Ross and Dewdney, 28.
- <sup>7</sup> Ross and Dewdney, 29.
- <sup>8</sup> Ross and Dewdney, 25.
- <sup>9</sup> Ross and Dewdney, 29.
- <sup>10</sup> Ross and Dewdney, 29.
- <sup>11</sup> Holgersson and Gottschalk, 371.
- <sup>12</sup> Thompson and Jenkins, 115.
- <sup>13</sup> McNamara and Burns, 37.
- <sup>14</sup> McNamara, 38.
- <sup>15</sup> McNamara, 38.
- <sup>16</sup> McNamara, 38.
- <sup>17</sup> McNamara, 38.
- <sup>18</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,  
42.
- <sup>19</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,  
42.
- <sup>20</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,  
42.

## ***Communication Skills for Law Enforcement Officers***

- <sup>21</sup> Robbins and Judge, 357.
- <sup>22</sup> Robbins and Judge, 357.
- <sup>23</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,  
42.
- <sup>24</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,  
43.
- <sup>25</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,  
43.
- <sup>26</sup> McNamara and Burns, 40.
- <sup>27</sup> “Defuse Emotionally Tense Situations,” 1.
- <sup>28</sup> McNamara and Burns, 38.
- <sup>29</sup> Mishra, 31.
- <sup>30</sup> Mishra, 31.
- <sup>31</sup> Mishra, 32.
- <sup>32</sup> Thompson and Jenkins, 119.
- <sup>33</sup> Thompson and Jenkins, 99.
- <sup>34</sup> Thompson and Jenkins, 99.
- <sup>35</sup> Thompson and Jenkins, 99-100.
- <sup>36</sup> Thompson, 28.
- <sup>37</sup> Leuca, 9.
- <sup>38</sup> Leuca, 9.
- <sup>39</sup> Mandal, 418.
- <sup>40</sup> Mandal, 418.
- <sup>41</sup> Mishra, 34.

## ***Communication Skills for Law Enforcement Officers***

- <sup>42</sup> Mishra, 35.
- <sup>43</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,  
44.
- <sup>44</sup> Mishra, 34.
- <sup>45</sup> Mishra, 33.
- <sup>46</sup> Wallace and Roberson, 157.
- <sup>47</sup> Mishra, 34.
- <sup>48</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,  
44.
- <sup>49</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,  
44.
- <sup>50</sup> Floyd, 72.
- <sup>51</sup> Wallace and Roberson, 157-158.
- <sup>52</sup> Wallace and Roberson, 158.
- <sup>53</sup> Wallace and Roberson, 158.
- <sup>54</sup> Wallace and Roberson, 158.
- <sup>55</sup> Wallace and Roberson, 158.
- <sup>56</sup> Wallace and Roberson, 158.
- <sup>57</sup> Wallace and Roberson, 158.
- <sup>58</sup> Matsumoto, Hwang, and Frank, 387.
- <sup>59</sup> Matsumoto, Hwang, and Frank, 387.
- <sup>60</sup> Matsumoto, Hwang, and Frank, 387.
- <sup>61</sup> Matsumoto, Hwang, and Frank, 389.
- <sup>62</sup> Matsumoto, Hwang, and Frank, 389.



## *Communication Skills for Law Enforcement Officers*

- <sup>63</sup> Thompson, 10.
- <sup>64</sup> Thompson, 20.
- <sup>65</sup> Thompson, 8.
- <sup>66</sup> Wallace and Roberson, 22.
- <sup>67</sup> Lloyd, 5-7, 37-38.
- <sup>68</sup> Lloyd, 6-7.
- <sup>69</sup> Lloyd, 37-38.
- <sup>70</sup> Baughman, 7.
- <sup>71</sup> Helms, January 22, 2016.
- <sup>72</sup> Helms, January 22, 2016.
- <sup>73</sup> Baughman, 7.
- <sup>74</sup> Baughman, 6.
- <sup>75</sup> Baughman, 6.
- <sup>76</sup> Baughman, 6.
- <sup>77</sup> Baughman, 6.
- <sup>78</sup> Baughman, 7.
- <sup>79</sup> Baughman, 7.
- <sup>80</sup> Baughman, 7.
- <sup>81</sup> Baughman, 7.
- <sup>82</sup> Schilling, para 2.
- <sup>83</sup> Schilling, para 2.
- <sup>84</sup> Schilling, para 2.

## *Communication Skills for Law Enforcement Officers*

- <sup>85</sup> Schilling, para 2.
- <sup>86</sup> Schilling, para 2.
- <sup>87</sup> Schilling, para 2.
- <sup>88</sup> Schilling, para 2.
- <sup>89</sup> Schilling, para 2.
- <sup>90</sup> The Criminology and Criminal Justice Collective of Northern Arizona University, 49.
- <sup>91</sup> The Criminology and Criminal Justice Collective of Northern Arizona University, 50.
- <sup>92</sup> The Criminology and Criminal Justice Collective of Northern Arizona University, 292.
- <sup>93</sup> The Criminology and Criminal Justice Collective of Northern Arizona University, 292.
- <sup>94</sup> The Criminology and Criminal Justice Collective of Northern Arizona University, 292.
- <sup>95</sup> The Criminology and Criminal Justice Collective of Northern Arizona University, 40.
- <sup>96</sup> Mishra, 34.
- <sup>97</sup> McNamara and Burns, 35.
- <sup>98</sup> McNamara and Burns, 35.
- <sup>99</sup> McNamara and Burns, 35.
- <sup>100</sup> McNamara and Burns, 39.
- <sup>101</sup> McNamara and Burns, 28.
- <sup>102</sup> Wallace and Roberson, 67.
- <sup>103</sup> The Criminology and Criminal Justice Collective of Northern Arizona University, 44.

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44. <sup>104</sup> The Criminology and Criminal Justice Collective of Northern Arizona University,

<sup>105</sup> Wallace and Roberson, 22.

<sup>106</sup> Dhanesh, 16-11 through 16-12.

<sup>107</sup> Dhanesh, 16-11.

<sup>108</sup> Dhanesh, 16-11.

<sup>109</sup> Dhanesh, 16-11, para 6.

<sup>110</sup> Robbins and Judge, 374.

<sup>111</sup> Kearney, Plax, and Waldeck, Chapter 3, 49.

<sup>112</sup> Kearney, Plax, and Waldeck, Chapter 3, 52.

<sup>113</sup> Kearney, Plax, and Waldeck, Chapter 3, 52.

<sup>114</sup> Kearney, Plax, and Waldeck, Chapter 3, 54.

<sup>115</sup> Kearney, Plax, and Waldeck, Chapter 3, 54.

<sup>116</sup> Kearney, Plax, and Waldeck, Chapter 3, 54.

<sup>117</sup> Kearney, Plax, and Waldeck, Chapter 3, 54.

<sup>118</sup> Kearney, Plax, and Waldeck, Chapter 3, 53.

<sup>119</sup> Kearney, Plax, and Waldeck, Chapter 3, 55.

<sup>120</sup> Kearney, Plax, and Waldeck, Chapter 3, 56-57.

<sup>121</sup> Kearney, Plax, and Waldeck, Chapter 3, 57-61.

<sup>122</sup> Thompson, 4.

<sup>123</sup> Thompson, 4.

<sup>124</sup> Thompson, 5.

<sup>125</sup> Thompson, 22.

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<sup>126</sup> Thompson, 6.

<sup>127</sup> Thompson, 6.

<sup>128</sup> The Criminology and Criminal Justice Collective of Northern Arizona University, 263.

<sup>129</sup> The Criminology and Criminal Justice Collective of Northern Arizona University, 264.

<sup>130</sup> Toth, Crews, and Burton, 34.

<sup>131</sup> Toth, Crews, and Burton, 258.

<sup>132</sup> National Crime Prevention Council, para 1.

<sup>133</sup> University of Mary Washington, para 5.

<sup>134</sup> Federal Bureau of Investigation, Hate Crimes, para 4.

<sup>135</sup> University of Mary Washington.

<sup>136</sup> University of Mary Washington.

<sup>137</sup> University of Mary Washington.

<sup>138</sup> University of Mary Washington.

<sup>139</sup> University of Mary Washington.

<sup>140</sup> Federal Bureau of Investigation, 2014 Hate Crime Statistics, para 1.

<sup>141</sup> Federal Bureau of Investigation, 2014 Hate Crime Statistics.

<sup>142</sup> Snyder, 11.

<sup>143</sup> National Crime Prevention Council, para 11.

<sup>144</sup> The Southern Poverty Law Center, para 5.

<sup>145</sup> The Southern Poverty Law Center, map.

## ***Juvenile Laws and Procedures***

BLET: 11AA **Draft iv, xi-xii, 60, 87, 90, 93-94; AOC handout updated**

TITLE: JUVENILE LAWS AND PROCEDURES

Lesson Purpose: To acquaint students with specific responsibilities for line officers in juvenile matters.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives in accordance with information received during the instructional period:

1. Discuss the roles of the Department of Social Services (DSS) and Juvenile Justice as it relates to law enforcement encounters with juveniles regarding the following circumstances:
  - a) Law enforcement investigations
  - b) Duties and powers of agencies and individuals involved in child neglect, dependency, and abuse cases
2. Correctly identify the laws that apply to the protection of abused, neglected, and dependent juveniles.
3. Verbally explain the role of law enforcement and Juvenile Justice in handling delinquency proceedings and appropriate actions, to include types of custody as it relates to interacting with juveniles.
4. Identify the three (3) types of juvenile offenders and related offenses for undisciplined juveniles:
  - a) Truancy
  - b) Beyond parental control
  - c) Runaway juvenile
5. Thoroughly discuss the following legal issues and obligations of law enforcement when handling juveniles:
  - a) Role of the officer
  - b) Jurisdiction over delinquent juveniles

## ***Juvenile Laws and Procedures***

- c) Screening of delinquency and undisciplined complaints by juvenile intake services
- d) Nontestimonial identification order
- e) Juvenile records and confidentiality

Hours: Eight (8)

Instructional Method: Lecture

Testing Requirement(s): End of block test

Training Environment(s): Classroom

Materials Required: Audio-visual classroom equipment  
Current edition of *North Carolina Criminal Law and Procedure* that includes N.C. General Statutes: Chapter 7B, 14, 15A, 90, 110, 143, 160  
Handouts

References: 42 C.F.R. § 2.11, *et seq.* (2020).

45 C.F.R. § 164.500, *et seq.* (2020).

*E.W. v. Dolgos*, 884 F.3d 172 (4th Cir. 2018).

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*Graham v. Florida*, 560 U.S. 48 (2010).

*In the Matter of D.A.C.*, 225 N.C. App. 547, 552 (2013). *See also J.D.B. v. North Carolina*, 546 U.S. 261 (2011).

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*J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

*Jones v. Mississippi*, No. 18-1259 (April 22, 2021).

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*Miller v. Alabama*, 567 U.S. 460 (2012).

*Montgomery v. Louisiana*, 577 U.S. 190 (2016).

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North Carolina, General Statutes. (2020) 7B-200, “Jurisdiction.”

North Carolina, General Statutes. (2020) 7B-201, “Retention and termination of jurisdiction.”

North Carolina, General Statutes. (2020) 7B-301, “Duty to report abuse, neglect, dependency, or death due to maltreatment.”

North Carolina, General Statutes. (2020) 7B-302, “Assessment by director; access to confidential information; notification of person making the report.”

North Carolina, General Statutes. (2020) 7B-303, “Interference with assessment.”

North Carolina, General Statutes. (2020) 7B-307, “Duty of director to report evidence of abuse, neglect; investigation by local law enforcement; notification of Department of Health and Human Services.”

North Carolina, General Statutes. (2020) 7B-308, “Authority of medical professional in abuse cases.”

North Carolina, General Statutes. (2020) 7B-309, “Immunity of persons reporting and cooperating in an assessment.”

North Carolina, General Statutes. (2020) 7B-310, “Privileges not grounds for failing to report or for excluding evidence.”

North Carolina, General Statutes. (2020) 7B-400, “Venue.”

North Carolina, General Statutes. (2020) 7B-500, “Taking a juvenile into temporary custody; civil and criminal immunity.”

North Carolina, General Statutes. (2020) 7B-501, “Duties of person taking juvenile into temporary custody.”

North Carolina, General Statutes. (2020) 7B-503, “Criteria for nonsecure custody.”

North Carolina, General Statutes. (2020) 7B-504, “Order for nonsecure custody.”

North Carolina, General Statutes. (2020) 7B-601, “Appointment and duties of guardian ad litem.”

North Carolina, General Statutes. (2022) 7B-1501, “Definitions.”

North Carolina, General Statutes. (2020) 7B-1600, “Jurisdiction over undisciplined juveniles.”



North Carolina, General Statutes. (2020) 7B-1601, “Jurisdiction of delinquent juveniles.”

North Carolina, General Statutes. (2020) 7B-1602, “Extended jurisdiction over a delinquent juvenile under certain circumstances.”

North Carolina, General Statutes. (2020) 7B-1603, “Jurisdiction in certain circumstances.”

North Carolina, General Statutes. (2020) 7B-1604, “Limitations on juvenile court jurisdiction.”

North Carolina, General Statutes. (2020) 7B-1700, “Intake services.”

North Carolina, General Statutes. (2020) 7B-1701, “Preliminary inquiry.”

North Carolina, General Statutes. (2020) 7B-1702, “Evaluation.”

North Carolina, General Statutes. (2020) 7B-1703, “Evaluation decision.”

North Carolina, General Statutes. (2020) 7B-1704, “Request for review by prosecutor.”

North Carolina, General Statutes. (2020) 7B-1705, “Review of determination that petition should not be filed.”

North Carolina, General Statutes. (2020) 7B-1706, “Diversion plans and referral.”

North Carolina, General Statutes. (2020) 7B-1800, “Venue.”

North Carolina, General Statutes. (2020) 7B-1801, “Pleading and process.”

North Carolina, General Statutes. (2020) 7B-1802, “Petition.”

North Carolina, General Statutes. (2020) 7B-1803, “Receipt of complaints; filing of petition.”

North Carolina, General Statutes. (2020) 7B-1804, “Commencement of action.”

North Carolina, General Statutes. (2020) 7B-1805, “Issuance of summons.”

North Carolina, General Statutes. (2020) 7B-1900, “Taking a juvenile into temporary custody.”

North Carolina, General Statutes. (2020) 7B-1901, “Duties of person taking juvenile into temporary custody.”

North Carolina, General Statutes. (2020) 7B-1902, “Authority to issue custody orders; delegation.”

North Carolina, General Statutes. (2020) 7B-1903, “Criteria for secure or nonsecure custody.”

North Carolina, General Statutes. (2020) 7B-1904, “Order for secure or nonsecure custody.”

North Carolina, General Statutes. (2020) 7B-1905, “Place of secure or nonsecure custody.”

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North Carolina, General Statutes. (2020) 7B-2000, “Juvenile’s right to counsel; presumption of indigence.”

North Carolina, General Statutes. (2020) 7B-2100, “Role of the law enforcement officer.”

North Carolina, General Statutes. (2020) 7B-2101, “Interrogation Procedures.”

North Carolina, General Statutes. (2020) 7B-2102, “Fingerprinting and photographing juveniles.”

North Carolina, General Statutes. (2020) 7B-2103, “Authority to issue nontestimonial identification order where juvenile alleged to be delinquent.”

North Carolina, General Statutes. (2020) 7B-2104, “Time of application for nontestimonial identification order.”

North Carolina, General Statutes. (2020) 7B-2105, “Grounds for nontestimonial identification order.”

North Carolina, General Statutes. (2020) 7B-2107,  
“Nontestimonial identification order at request of juvenile.”

North Carolina, General Statutes. (2020) 7B-2108,  
“Destruction of records resulting from nontestimonial  
identification procedures.”

North Carolina, General Statutes. (2020) 7B-2109, “Penalty for  
willful violation.”

North Carolina, General Statutes. (2020) 7B-2200, “Transfer of  
jurisdiction of a juvenile under the age of 16 to superior court.”

North Carolina, General Statutes. (2020) 7B-2200.5, “Transfer  
of jurisdiction of a juvenile at least 16 years of age to superior  
court.”

North Carolina, General Statutes. (2020) 7B-2201,  
“Fingerprinting and DNA sample from juvenile transferred to  
superior court.” See also, N.C.G.S. § 15A-226.3A (2020).

North Carolina, General Statutes. (2020) 7B-2202, “Probable  
cause hearing.”

North Carolina, General Statutes. (2020) 7B-2203, “Transfer  
hearing.”

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of proof in adjudicatory hearing.”

North Carolina, General Statutes. (2020) 7B-2501,  
“Dispositional hearing.”

North Carolina, General Statutes. (2020) 7B-2503,  
“Dispositional alternatives for undisciplined juveniles.”

North Carolina, General Statutes. (2020) 7B-2506,  
“Dispositional alternatives for delinquent juveniles.”

North Carolina, General Statutes. (2020) 7B-2901,  
“Confidentiality of records.”

North Carolina, General Statutes. (2020) 7B-3000, “Juvenile  
court records.”

North Carolina, General Statutes. (2020) 7B-3001, “Other  
records relating to juveniles.”

North Carolina, General Statutes. (2020) 7B-3101, “Notification of schools when juveniles are alleged or found to be delinquent.”

North Carolina, General Statutes. (2020) 7B-3500, “Who may petition.”

North Carolina, General Statutes. (2020) 7B-3507, “Legal effect of final decree.”

North Carolina, General Statutes. (2020) 7B-4001, “(For effective date - see note) Governor to execute Compact; form of Compact.”

North Carolina, General Statutes. (2020) 14-27.31, “Sexual activity by a substitute parent or custodian.”

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North Carolina, General Statutes. (2020) 14-316.1, “Contributing to delinquency and neglect by parents and others.”

North Carolina, General Statutes. (2020) 14-318.2, “Child abuse a misdemeanor.”

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North Carolina, General Statutes. (2020) 15A-279, “Implementation of order.”

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North Carolina, General Statutes. (2020) 15A-401, “Arrest by law-enforcement officer.”

North Carolina, General Statutes. (2020) 15A-505, “Notification of parent and school.”

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North Carolina, General Statutes. (2020) 90-21.20, “Reporting by physicians and hospitals of wounds, injuries and illnesses.

North Carolina, General Statutes. (2020) 110-85, “Legislative intent and purpose.”

North Carolina, General Statutes. (2020) 110-105.3, “Child maltreatment.”

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North Carolina, General Statutes. (2020) 115C-380, “Penalty for violation.”

North Carolina, General Statutes. (2020) 143-1015, “Dissemination of missing person data by law-enforcement agencies.”

North Carolina, General Statutes. (2020) 143B-1010 through 143B-1020.

North Carolina, General Statutes. (2020) 153A-142, “Curfews.”

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*State v. Barnes*, 154 N.C. App. 111, 117 (2002).

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*State v. Worley*, 13 N.C. App. 198 (1971).

*Tennessee v. Garner*, 471 U.S. 1 (1985).

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## ***Juvenile Laws and Procedures***

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Date Revised: July 2023

## ***Juvenile Laws and Procedures***

### TITLE: JUVENILE LAWS AND PROCEDURES – **Instructor Notes**

1. This lesson plan must be presented by an instructor currently certified by the North Carolina Criminal Justice Education and Training Standards commission as a General Instructor **or a Professional Lecturer**.
2. The instructor must be knowledgeable in juvenile law, procedures, developmental theories, and the dynamics of child abuse and neglect.
3. Instructors are encouraged to invite a Child Protective Service Worker and a Juvenile Court Counselor to explain their specific responsibilities to students. The goal of an integrated juvenile justice system should be promoted throughout the block.
4. AOC juvenile forms can be obtained from the following website: [www.nccourts.org](http://www.nccourts.org).
5. Section III directs instructors to ask the following questions. They are designed for students to solve in small groups.

It is important to emphasize to the class that when there is a suspicion or belief of neglect or abuse, it must be reported to the local county Department of Social Services (DSS). This is required by statute.

Officer discretion is the first link of diverting any juvenile from entering into the juvenile justice system. Discretionary factors that determine whether or not to charge a juvenile with a delinquent or undisciplined offense should be protection of the public's safety, seriousness of the offense, previous history with the juvenile, parental responsibility, and the juvenile's attitude and remorsefulness. These factors also should apply in conjunction with statutory requirements when a request for secure custody is requested. Agencies may also have policies that impact officer discretion.

#### A. **Neglect**

You respond on a reported case of two young children home alone. Upon arrival, you find a seven year old child and a three year old child home alone. What do you do?

- (1) Speak with the children. Do not show any disapproval and assess for any need for medical assistance and children's mental capacity.
- (2) Check the house. Make sure there are no other children in danger in the house.
- (3) Be observant to any possible hazards as you check the house. Examples: matches, open flames, children were locked in the house, is there a phone, or dangerous chemicals available to children.



- (4) Ask children who was looking after them. Try to locate responsible guardian.
- (5) Contact DSS and stand by for them. Contact with DSS should be made as soon as the responding officer has made sure that the children are safe, and there are no officer safety concerns.
- (6) Document events in report.
- (7) Work with DSS on investigation and possible criminal charges.

**B. Abuse**

You respond to a school, and a guidance counselor advises you that an eighth grader, age thirteen, has told her he/she is afraid of his/her father because he beats him/her. You are told the child has bruising on the back and legs. What do you do?

Remember: When a child is in school, the school must act to protect the safety of the child.

- (1) Ask the counselor about the child; does the child have a behavior problem, are they credible, what do they know about the family. Have they had any contact with the family? Do other children in school have any information?
- (2) Contact DSS. Contacting DSS is mandated by statute.
- (3) Ask to speak to the child. Ask the school personnel whether the parents or other responsible party has been notified and whether they have given consent to have the child interviewed by law enforcement. Keep some school personnel, guidance counselor, assistant principal, or principal with you while speaking with the child. Ask the child what has happened. Ask to see injuries, but do not examine any private areas or areas the child would be uncomfortable showing you. You may want assistance from a school nurse if available. Remember, you are not a doctor.
- (4) Assist DSS upon their arrival.
- (5) Photographs may be required. While photographs of the scene may be taken with consent of a person having the authority to consent or with a search warrant, photographs of a child may be taken by DSS, by other medical experts, or by court order. No photographs of private areas should be taken by law enforcement officers.
- (6) Document investigation in report.

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- (7) Work with DSS on recommendation of possible criminal charges.
- (8) You could be asked to assist with a custody order. Some departments require this investigation be handled by a juvenile investigator.

### **C. Nontestimonial Identification Order**

You investigate a housebreaking and larceny. As a result of your investigation, you find the point of entry is a ground floor, back bedroom window, which was broken, and where fingerprints were found. A video game system, gun, and cash were stolen. As you further your investigation, several children in the neighborhood tell you that a fifteen year old boy named John had bragged about doing this. You speak with John and his parents in a noncustodial interview in his house. John denies this crime, but his parents tell you he just came home with a video system just like the one reported stolen. John refuses to tell you where he got it. There is no serial number, so you are not completely sure if it is the same system. You have exhausted all investigative leads except for comparing fingerprints. What do you do?

Remember: John, John's parents, or John's legal counsel cannot permit you to obtain John's fingerprints for comparison.

- (1) You need a nontestimonial identification order (NTO).
- (2) You must consult with the assistant district attorney or the district attorney, who must then make an application for the order to the District or Superior Court. Once the order is approved and issued, it must be served. After the suspect has complied with the order and the prints have been obtained, the comparison can be made to the prints on the window.
- (3) If the prints match, hold as evidence, pending court action.
- (4) If the prints do not match and no court action is pending, destroy the juvenile's prints only.

Remember: You need reasonable grounds to obtain fingerprints, but if you need to obtain a blood sample, you must have probable cause. G.S. 7B-2105(b) provides that blood may be obtained from a juvenile if the court orders it based on an affidavit containing facts that rise to the level of probable cause. The statute requires probable cause for a felony offense, reasonable grounds to suspect the juvenile, and material aid in determining whether the juvenile committed the offense

## ***Juvenile Laws and Procedures***

as a result of the procedure. All three things are required for the blood specimen as well, but they each must meet a probable cause standard.

### D. **Interview and Interrogation**

You are on routine patrol, and you observe a stolen car occupied by two teenage males. You stop the vehicle, at which point both subjects run from you. After a short foot chase, both subjects are in custody. You would like to interview both subjects, and you learn one is fifteen years old and the other is sixteen years old. What do you do?

Remember: The rules for custodial interviews of juveniles are different from adults.

- (1) Law enforcement is required to give the *Miranda* warning to all juveniles.
- (2) The fifteen year old juvenile has the right to have his parent, guardian, custodian, and attorney present and **cannot** waive his right to have one or more of those individuals present while speaking to the officer. Do not engage in a custodial interview any person less than sixteen years old without a parent, guardian, custodian, or attorney present.
- (3) The sixteen year old juvenile also has the right to have his parent, guardian, or custodian present, in addition to the other *Miranda* rights. A person sixteen or seventeen years or old **may** waive their right to having a parent, guardian, custodian, or attorney present and choose to speak to the officer without those individuals present. Any waiver must be done knowingly, willingly, and understandingly.

Remember: A parent, guardian, or custodian cannot waive a child's right for them.

### E. Other Sample Questions

- (1) **Question:** Officer Smith sees juvenile (age 14) assault another juvenile at a football game. It is 10:30 p.m. on Friday. Juvenile is carrying a concealed knife. What do you do?

**Answer:** See 7B-1900(1)

Taking juvenile into temporary custody - if grounds exist to arrest an adult in identical circumstances under 15A-401(b).

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7B-1901

Duties of person taking juvenile into custody.

7B-1903(b)(2)

Criteria for secure or nonsecure custody when juvenile is charged with misdemeanor at least one element of which is assault on a person and juvenile is a danger to persons.

If you have knowledge of danger - then explain to court counselor.

- (2) **Question:** Officer Jones is called to the drug store where the manager is holding juvenile (age 15) shoplifter (concealment of merchandise) and cannot locate mother. What do you do?

**Answer:** 7B-1900(1)  
See 15A-401(b)

Taking into temporary custody

7B-1901

Duties of person taking temporary custody

- (3) **Question:** Officer Lane takes larceny report. Suspect believed to be juvenile (age 10) next door. What do you do?

**Answer:** See 7B-2101

Applies only if the juvenile (any person less than eighteen, who is not emancipated, in the military, or married) is in custody

- (4) **Question:** Officer Johnson discovers runaway juvenile (age 15) from his city/next city/next county/next state. What do you do?

**Answer:** See 7B-1903(a)(1)  
and (b)(7)

In state (juvenile resides in NC)

7B-4001

Out of state juvenile  
Criteria for secure/non-secure custody

Interstate Commission  
for Juveniles Rules

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- (5) **Question:** Officer Bessick discovers a thirteen year old, “cutting school.” What do you do?
- Answer:** See 7B-1901(a)(2)          Duties - temporary custody
- (6) **Question:** Officer Lyons discovers unattended 7-year-old outside of housing project at 4 a.m. What do you do?
- Answer:** See 7B-301 and 302          Duty to report
- 7B-101 (9)                          Definitions  
and (15)
- (7) **Question:** Officer Smith responds to domestic disturbance involving juvenile (age 14) and his/her mother. Mother says, “Take him to jail; I can’t do anything with him!” What do you do?
- Answer:** See 7B-1900(2)                  Undisciplined
- 7B-1901                                  Duties of temporary custody
- (8) **Question:** Officer Davie responds to home to investigate possible child abuse/neglect. No one will answer the door. Officer hears very young child crying inside. What do you do?
- Answer:** See Statute on                  Exposing a child under 8  
Urgent Necess-                          without proper supervision to  
ity (15A-285); also                      danger of fire when locked or  
consider                                      confined in dwelling, building  
14-318    or enclosure.
- Class 1 misdemeanor.
- (9) **Question:** Officer Ayers has investigative reports and memoranda concerning juvenile (age 15) as possible sex offender. Detective from neighboring county wishes to obtain copy of those reports for local investigative purposes. What do you do?
- Answer:** See 7B-3001(b)(5)              Release of records. This only  
applies to *law enforcement*  
*records*, not juvenile court  
records.

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7B-3100(a)

Disclosure of information about juveniles (if a petition related to the reports has been filed)

- (10) **Question:** Parent requests officers to assist in returning runaway seventeen year old daughter from boyfriend's home. The daughter has not been home in thirty hours. What do you do?

**Answer:** See 7B-1501(27)  
7B-1901  
7B-1903

Undisciplined  
Duties-temporary custody  
Secure/non-secure custody

- (11) **Question:** Parent reports that their sixteen year old daughter did not come home from her after school job. She is four hours overdue. What do you do?

**Answer:** Enter her into the National Crime Information Center (NCIC) or the National Missing and Unidentified Persons System ("NamUs").

- (12) **Question:** DSS contacts your police department and requests assistance in determining whether a juvenile (age 13) has been neglected or abused. What do you do?

**Answer:** See 7B-302(e) Investigation by DSS director

- (13) **Question:** Wife complains to Officer Timmons that husband has snatched child and is planning to leave the state. What do you do?

**Answer:** If no custody order - have equal rights to the child

6. To promote and facilitate law enforcement professionalism, three ethical dilemmas are listed below for classroom discussion. During this course of instruction, instructors must provide students with each ethical dilemma listed below. Sometime during the lecture, instructors should "set the stage" for the dilemma before taking a break. Instructors are encouraged to develop additional dilemmas as needed.
- a) Upon taking a thirteen year old juvenile into custody, your partner advises her of her juvenile rights. After doing so, your partner begins to ask questions of the juvenile without her parents being present. What will you do?
  - b) After taking a juvenile into custody for common law robbery, you snap a photo and take fingerprints as part of the booking process. After finishing the

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processing, you realize you have turned in cards and photos you obtained without a court order. What will you do?

- c) While on patrol late at night, you find a teenager sleeping behind a building. After interviewing the individual, you discover that she has run away from home because her stepfather physically abuses her. She begs you not to tell her parents where she is. What will you do?

# ***Juvenile Laws and Procedures***

TITLE: JUVENILE LAWS AND PROCEDURES

## I. Introduction

**NOTE: Show slide, “Juvenile Laws and Procedures.”**

### A. Opening Statement

Regardless of what type of law enforcement agency employs you after completing BLET, you will probably encounter a matter involving a juvenile. A juvenile’s first delinquent offense may be his/her only crime if we handle the juvenile according to law while using good judgment. You may save the life of a juvenile by your referral or investigation of the abuse or neglect. As in any facet of law enforcement, knowing the law and knowing who to contact will make you more effective with juvenile encounters.

During this class, sections of the juvenile law that pertain to law enforcement officers will be reviewed, such as definitions contained in the law, roles of law enforcement officers, and taking temporary custody of juveniles. Procedures involving delinquent, undisciplined, neglected, and abused children will also be reviewed.

### B. Training Objectives

**NOTE: Show slides, “Training Objectives.”**

1. Discuss the roles of the Department of Social Services (DSS) and Juvenile Justice as it relates to law enforcement encounters with juveniles regarding the following circumstances:
  - a) Law enforcement investigations
  - b) Duties and powers of agencies and individuals involved in child neglect, dependency, and abuse cases
2. Correctly identify the laws that apply to the protection of abused, neglected, and dependent juveniles.
3. Verbally explain the role of law enforcement and Juvenile Justice in handling delinquency proceedings and appropriate actions, to include types of custody as it relates to interacting with juveniles.
4. Identify the three (3) types of juvenile offenders and related offenses for undisciplined juveniles:



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- a) Truancy
  - b) Beyond parental control
  - c) Runaway juvenile
5. Thoroughly discuss the following legal issues and obligations of law enforcement when handling juveniles:
- a) Role of the officer
  - b) Jurisdiction over delinquent juveniles
  - c) Screening of delinquency and undisciplined complaints by juvenile intake services
  - d) Nontestimonial identification order
  - e) Juvenile records and confidentiality

### C. Reasons

Law enforcement officers may respond to calls in which they find that a juvenile is neglected, dependent, or abused. An understanding of the procedures which must be followed, such as whom to contact, what agencies should be involved, and how to handle the investigation, is vital to the safety and health of juveniles in this state. Juvenile victims, because of their vulnerability, are best served by a team effort involving all agencies charged with their protection. Although in separate agencies, cooperation among knowledgeable and dedicated professionals ensures that children in this state will be protected.

Law enforcement officers may also be responsible for investigating juveniles for the commission of offenses that would be crimes if they were adults. Handling the juvenile offender is different in purpose, philosophy, and procedure. The juvenile justice system is separate from the adult system, requiring officers to know and follow unique rules and procedures applicable to juveniles. It is essential that officers understand and conform to the objectives that the juvenile justice system seeks to achieve. With the knowledge gained through the study of this section, officers should be able to deal legally and effectively with juveniles.

## II. Body

## ***Juvenile Laws and Procedures***

### A. Juvenile Justice Law History and Philosophy

**NOTE: Show slide, “Juvenile Justice Law History and Philosophy.”**

The Division of Social Services (DSS) promotes self-reliance and self-sufficiency and works to prevent abuse, neglect, dependency, and exploitation of vulnerable individuals, children, and their families. Each county has a local office dedicated to meeting several community needs, including child welfare and protective services. In your role as a law enforcement officer, you will often have to work with DSS partners to address the needs of juveniles and families you interact with. We will start today by discussing DSS and your role in this process.

Before we begin, let’s note a clear distinction between DSS and Juvenile Justice. While we will discuss both today, and both deal with families and youth, DSS generally addresses the behavior of adults that results in the abuse, neglect, or dependency of the children in their care. They focus on cases of neglect and abuse, and they aim to protect children. By contrast, Juvenile Justice focuses on the behavior of juveniles. They also aim to keep juveniles safe, but they also specifically address the inappropriate or delinquent behavior of the juvenile. Therefore, the first part of our discussion today will focus on the role of adults in juveniles’ lives and their behavioral deficiencies. The second part of our discussion will focus on the behavior of and corrective actions for juveniles.

**NOTE: Ask the class to respond to the question, “Why do we treat juveniles differently than adults?” Lead a discussion to include issues of delinquent, undisciplined, abuse, and neglect matters.**

### B. Abused, Neglected and Dependent Juveniles

**NOTE: Show slide, “Abused Juvenile.”**

#### 1. Definitions

##### a) Abused juvenile<sup>1</sup>

Any juvenile less than eighteen years of age who is a minor victim of human trafficking under N.C.G.S. § 14-43.15 or whose parent, guardian, custodian, or caretaker:

- (1) Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

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- (2) Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
- (3) Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
- (4) Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile:
  - (a) First degree rape, as provided in G.S. 14-27.1;
  - (b) Statutory rape of a child by an adult offender, as provided in G.S. 14-27.23;
  - (c) First degree statutory rape, as provided in G.S. 14-24;
  - (d) First degree statutory sexual offense, as provided in G.S. 14-27.29;
  - (e) Second degree rape, as provided in G.S. 14-27.22;
  - (f) First degree sexual offense, as provided in G.S. 14-27.26;
  - (g) Statutory sexual offense with a child by an adult offender, as provided in G.S. 14-28;
  - (h) Second degree sexual offense, as provided in G.S. 14-27.27;
  - (i) Sexual activity with a student, as provided in G.S. 14-27.32;
  - (j) Sexual act by a custodian, as provided in G.S. 14-31;
  - (k) Crime against nature, as provided in G.S. 14-177;

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- (l) Incest, as provided in G.S. 14-178;
  - (m) Preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5;
  - (n) Employing or permitting the juvenile to assist in a violation of the obscenity laws, as provided in G.S. 14-190.6;
  - (o) Dissemination of obscene material to the juvenile, as provided in G.S. 14-190.7 and G.S. 14-190.8;
  - (p) Displaying or disseminating material harmful to the juvenile, as provided in G.S. 14-190.14 and 14-190.15;
  - (q) First and second degree sexual exploitation of the juvenile, as provided in G.S. 14-190.16 and G.S. 14-190.17;
  - (r) Promoting the prostitution, as provided in G.S. 205.3;
  - (s) Taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
  - (t) Unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14;
- (5) Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;
- (6) Encourages, directs, or approves of delinquent acts involving moral turpitude (acts which evidence a depraved mind or disregard for acceptable societal standards) committed by the juvenile. Such acts have been held to include fraud, larceny, prostitution, and perjury;

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- (7) Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) against the child.

Examples of child abuse: incest, broken bones, burns, bites, bruises, cuts, severe anxiety related to abuse, etc.

b) Caretaker

“Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile’s health and welfare means a stepparent, foster parent, an adult member of the juvenile’s household, an adult relative entrusted with the juvenile’s care, a potential adoptive parent during a visit or trial placement with the juvenile in the custody of a department, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile’s health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by a Department of Health and Human Services.”<sup>2</sup>

Persons who have the responsibility for the care of a juvenile in a child care facility (i.e., “day care centers”) are defined as “caregivers” and regulated under Chapter 110 of the General Statutes.<sup>3</sup> Alleged child maltreatment at these facilities is investigated through a team effort between the North Carolina Department of Health and Human Services, the local Department of Social Services, and local law enforcement.<sup>4</sup>

c) Custodian

“The person or agency that has been awarded legal custody of a juvenile by a court.”<sup>5</sup>

**NOTE: Show slide, “Dependent.”**

d) Dependent juvenile

“A juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile’s care or supervision (ii) or the juvenile’s parent,

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guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement."<sup>6</sup>

e) Director

"The director of the county department of social services in the county where the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14."<sup>7</sup>

f) Juvenile

"A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States."<sup>8</sup>

**NOTE: Show slide, "Neglected."**

g) Neglected juvenile

"Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team pursuant to Article 27A of this Chapter; or who lives in an environment injurious to the juvenile's welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who has been placed for care or adoption in violation of law."<sup>9</sup>

For purposes of determining a juvenile's neglected status, the statute allows for consideration of whether the juvenile lives in a home where another juvenile has died from abuse or neglect or a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

The statute also defines "serious neglect" as that conduct, behavior, or inaction of the juvenile's parents, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or

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inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.<sup>10</sup>

h) Reasonable efforts

“The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.”<sup>11</sup>

i) Safe home

“A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.”<sup>12</sup>

2. Juvenile court jurisdiction

**NOTE: Show slide, “Juvenile Court Jurisdiction.”**

a) “The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent.”<sup>13</sup>

b) Juvenile court has jurisdiction over parent or guardian of a juvenile who has been adjudicated abused, neglected, or dependent, as long as they have been properly served with a summons (N.C.G.S. § 7B-406).<sup>14</sup> Jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

3. Retention of jurisdiction by the juvenile court

**NOTE: Show slide, “Retention of Jurisdiction by the Juvenile Court.”**

Once jurisdiction has been obtained, it will continue until one of the following conditions is met:<sup>15</sup>

a) Until terminated by the court, or

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- b) Until the juvenile reaches eighteen years of age, or
  - c) Until emancipation.
4. Conducting child abuse and neglect investigations

**NOTE: Show slide, “Conducting Child Abuse and Neglect Investigations.”**

Homes in which abuse allegations are made are potentially dangerous and should be approached with great caution. Depending on the severity of the allegation, a request for law enforcement’s assistance to accompany a DSS worker is often to provide security and protection for the worker conducting an investigation. Should you be called upon to conduct an abuse/neglect investigation, you will find the following on-line resources helpful:

*Law Enforcement Response to Child Abuse*, U.S. Department of Justice, 2014. Available at: <https://www.ojjdp.gov/pubs/243907.pdf>

*North Carolina Protocol for Investigating Sexual Abuse Allegations in Child Care Facilities*, 2007. Available at: <https://www2.ncdhhs.gov/info/olm/manuals/dss/csm-60/man//pdfdocs/CS1420.pdf>

- C. The Roles of the Department of Social Services and Law Enforcement
  - 1. Law enforcement investigations

**NOTE: Show slide, “Law Enforcement Investigations.”**

- a) Emergency (life-threatening) or non-emergency investigations:

“102,718 children with investigated reports of possible abuse and neglect in North Carolina from July 2018 to June 2019.”<sup>16</sup>  
To identify at-risk children, prevent abuse or neglect and further abuse or neglect, and protect all children in North Carolina, officers must take these matters very seriously and thoroughly investigate all claims of abuse or neglect.

**NOTE: Show slide, “Emergency or Non-Emergency Investigations.”**

If a law enforcement officer receives and responds to a call regarding an alleged abused, neglected, or dependent juvenile, the following are steps that should be taken to address the situation.



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- (1) Provide necessary medical assistance.
- (2) Notify the Department of Social Services immediately if there is cause to believe the juvenile is abused, neglected, or dependent. This should become a team effort when the social worker arrives.
- (3) If applicable, notify the juvenile investigator(s) as directed by agency policy.
- (4) Take child into temporary custody if necessary and applicable.<sup>17</sup>
- (5) Crime scenes should be handled the same as any other—protect and/or gather evidence, photograph injuries, and so forth. However, consent of a party with authority to give consent, or a search warrant, may be required to conduct a crime scene search.
- (6) Conduct interviews. Additional training may be needed to conduct a child interview to protect the statement as evidence in court. If your agency works with a child advocacy center, contact should be made with the center to conduct a forensic interview in instances of alleged sexual abuse.
- (7) Answering complaints.
  - (a) The initial approach should be made in an objective and professional manner.
  - (b) Explain to complainant that the health and safety of the child is being considered.
  - (c) Show concern and sympathy.
  - (d) When there is refusal by a parent to enter, probable cause is needed that there is a crime being committed unless entry is warranted to save life or prevent serious bodily harm. If at any time cooperation is denied by a parent, caretaker, or custodian, you may NOT enter the home unless you have:

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- i) An arrest warrant if the subject resides in the home, or
- ii) A search warrant covering the home,
- iii) Reasonable belief exists that you need to make a warrantless entry to save a life or prevent serious bodily harm.<sup>18</sup>

Neighbors and others may have to be interviewed to establish this probable cause. Many times there is not a complainant to interview. Once probable cause is established, then the Department of Social Services should obtain a nonsecure custody order and take custody of the child.

### (8) Interference with assessment

If a person obstructs or interferes with an assessment required by 7B-302, following a report of abuse, neglect, or dependence, the Director is authorized to file a petition to request an order from the Court directing a named person to cease the obstruction or interference.<sup>19</sup> The petition must specify the conduct which is alleged to constitute the obstruction and must be verified.<sup>20</sup>

Acts which constitute obstruction of or interference with an investigation include refusal to do any of the following:

- (a) Disclose whereabouts of the juvenile;<sup>21</sup>
- (b) Allow the Director access to the juvenile or information and records upon request;<sup>22</sup>
- (c) Or allow the Director to arrange for medical or other evaluation of the juvenile by an expert.<sup>23</sup>
- (d) Any other conduct which makes it impossible for DSS to carry out its duty to investigate is also deemed to constitute obstruction or interference.<sup>24</sup>

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- i) The Court has the power to order a person named in such a petition to cease the acts which are found to constitute obstruction (which may consist of an order to perform by the Court's directives).<sup>25</sup>
- ii) Except in cases wherein it is alleged that a juvenile needs immediate protection or assistance, a respondent (the person named in the petition) is given notice of a hearing, which is to be held within five working days from the date of service of the petition.<sup>26</sup> At such a hearing, the Court determines whether the obstruction or interference indeed exists and enters its orders accordingly.<sup>27</sup>
- iii) In cases wherein it is alleged that a juvenile needs immediate protection or assistance, the Director may seek an ex parte order from the Court.<sup>28</sup> An ex parte order is one which is entered without first allowing the respondent an opportunity to be heard or to hear the evidence which supports the allegations against them.<sup>29</sup> The Court must find probable cause to believe that the juvenile is at risk of immediate harm and that the respondent is interfering with or obstructing the Director's ability to investigate and determine the juvenile's condition, in order to issue an ex parte order.<sup>30</sup> If the Court so finds, then an ex parte order directing the respondent to comply accordingly may be entered. In such a case, a hearing must be scheduled within ten days after the entry of the order to determine whether the order should remain in effect (or to enter a new order, depending on any change in circumstances).<sup>31</sup>

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- iv) A person who fails to comply with any orders of the Court issued under this section may be subject to civil or criminal contempt proceedings.
- (e) Upon completing the investigation, facts should be discussed with the case worker keeping in mind what is best for the child.<sup>32</sup>

If the decision is to remove the child, the social worker will obtain the petition and nonsecure order, and the officer will serve those along with a civil summons.<sup>33</sup> If an arrest of the perpetrator(s) is warranted, the officer should decide whether a warrantless arrest under G.S. 15A-401(b) is permitted or whether an arrest warrant will need to be obtained.<sup>34</sup>

- (f) To have a complete picture about a child and/or family, it is essential that agencies share their expertise, knowledge, and information.<sup>35</sup> North Carolina General Statute § 7B-3100 permits designated agencies to share relevant information about juveniles who are abused, delinquent, neglected, dependent, and/or undisciplined.<sup>36</sup> The information which is shared is confidential in that it should be withheld from public inspection.<sup>37</sup> Disclosure of protected or confidential information about juveniles may violate state or federal law, so officers must be careful to secure this information and retain it in a place where the public, or any unauthorized person, cannot inspect it.<sup>38</sup>

Almost all information can be shared except mental health information or substance abuse treatment information.<sup>39</sup> The information which is shared is to be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile.<sup>40</sup>

- 2. Duties and powers of agencies and individuals involved in child neglect, dependency, and abuse cases

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**NOTE: Show slide, “Duties and Powers of Agencies and Individuals Involved in Child Neglect, Dependency, and Abuse Cases.”**

- a) Each county has established protective services for juveniles alleged to be abused, neglected, or dependent, and each has specific procedures for handling complaints during and after business hours.
- b) Duty to report

**NOTE: Show slide, “Duty to Report.”**

There are several statutes that create a duty to report condition involving juveniles: G.S. 7B-301, G.S. 110-105.4, G.S. 90-21.20, and G.S. 14-318.6.

- (1) Duty to report under G.S. 7B-301

Every person has a legal duty to report facts which lead the person to suspect that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment. Any person or institution who has cause to suspect any of these circumstances to exist must report the case to the Director of the Department of Social Services (DSS), intake services of DSS, in the county where the juvenile resides or is found.<sup>41</sup>

The general rule is that such a report may be made orally, by telephone, or in writing. In your role as a law enforcement officer, you should provide your address and telephone number to DSS and complete any departmentally required reports. Your report shall include (where known) information regarding the juvenile’s name, age, address, and current whereabouts; his or her parents’ (or guardian’s or caretaker’s) name and address; the names and ages of other juveniles in the home; the nature and extent of the suspected injury or condition; and any other relevant information which would facilitate DSS response.<sup>42</sup>

The duty to report under G.S. 7B-301 applies to all persons. With one exception, no privileged relationship, such as a physician/patient or attorney/client, excuses a failure to report suspected abuse, neglect, or

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dependency, even if the knowledge is acquired in an official professional capacity. It is only in a case wherein an attorney acquires such knowledge from their client during representation in the abuse, neglect, or dependency case that grounds exist not to report the suspected condition.<sup>43</sup>

Because the way G.S. 7B-301 is written, the duty to report under this statute has been interpreted to only apply if the person has reason to suspect:

- (a) A juvenile is a minor victim of human trafficking under G.S. 14-43.15;
- (b) A juvenile is dependent as defined in the juvenile code;
- (c) A juvenile has died as the result of maltreatment; **or**
- (d) A juvenile is abused or neglected (as those terms are defined in G.S. 7B-101) by their **parent, guardian, custodian, or caretaker.**<sup>44</sup>

In other words, if a person had reason to suspect a juvenile was abused or neglected by someone *other than* their parent, guardian, custodian, or caretaker, G.S. 7B-301 did not require the person to report it. Because of this gap in reporting, the North Carolina General Assembly enacted G.S. 14-318.6 to expand the duty to report.

### (2) Duty to report under G.S. 14-318.6

Under G.S. 14-318.6, any person eighteen years of age or older who knows or should reasonably know that a juvenile is or has been the victim of a violent offense, sexual offense, or misdemeanor child abuse under 14-318.2 must immediately report the case to the appropriate law enforcement agency in the county where the juvenile resides or is found.<sup>45</sup>

The report may be made orally or by telephone. The report must contain the following information, if

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known: the name, address, and age of the juvenile; the name and address of the juvenile's parent, guardian, custodian, or caretaker; the name, address, and age of the person who committed the offense against the juvenile, the location where the offense was committed; the names and ages of other juveniles present or in danger; the present whereabouts of the juvenile, if not at the home address; the nature and extent of any injury or condition resulting from the offense or abuse; and any other information which the person believes might be helpful in establishing the need for law enforcement involvement. The person making the report must give their name, address and telephone number.<sup>46</sup>

In addition, if any law enforcement officer, as a result of this report, finds evidence that a juvenile may be abused, neglected, or dependent as defined in G.S. 7B-101, the law enforcement officer must make an oral report as soon as practicable to the director of DSS and then make a subsequent written report of the findings to the director of DSS within forty-eight hours after discovery of the evidence.<sup>47</sup>

Violent offense is defined in the statute as “[a]ny offense that inflicts upon the juvenile serious bodily injury or serious physical injury by other than accidental means.”<sup>48</sup>

**Under the statute, if *any person* eighteen year of age or older knows or reasonably should know that *any person* has committed a sexual offense or violent offense against a juvenile, there is a duty to report it to law enforcement.** Misdemeanor child abuse under G.S. 14-318.2 only applies to parents of a child less than sixteen years of age or a person providing care to or supervision of a child less than sixteen years of age.

The statute does not require a report if the attorney-client privilege or any of the privileges contained in G.S. §§ 8-53.3, 8-53.7, 8-53.8, or 8-53.12 would prevent it.

- (3) Duty to report under G.S. 110-105.4

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Where a report is received of child sexual abuse in a day care facility or home, DSS must notify the State Bureau of Investigation (SBI) within twenty-four hours or on the next work day. If, during any other investigation of alleged abuse as cited above, it is discovered that child sexual abuse may have occurred in a day care facility, then DSS must immediately notify the SBI, which may then form a task force to investigate the case.<sup>49</sup>

(4) Duty to report under G.S. 90-20.21

Additionally, physicians and hospitals must report to the appropriate law enforcement agency recurrent illness or serious physical injury to any child under the age of eighteen where the illness or injury appears to be the result of non-accidental trauma.<sup>50</sup>

c) Assessment by Department of Social Services<sup>51</sup>

**NOTE: Show slide, “Assessment by Department of Social Services.”**

When a report is received, DSS must make a prompt and thorough investigation to ascertain the facts, the extent of abuse or neglect, and the risk of harm to the juvenile, to determine whether to provide protective services or file a petition. DSS has several options, which include immediate removal of the juvenile from the home, arrangement for protective services in the home, and filing of a petition in District Court. Protective services workers are authorized to assume temporary custody of an abused or neglected juvenile where warranted.

d) Law enforcement assistance

**NOTE: Show slide, “Law Enforcement Assistance.”**

In conducting investigations, DSS may consult with state or local law enforcement officers. Officers are required to assist in the investigation and evaluation of the seriousness of any report upon request of DSS.

DSS is authorized to make written demand for any information or reports, whether or not confidential, which may be relevant to the protective services case.<sup>52</sup> Any public or private agency



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or individual must provide access to such information and reports upon their request unless the information is protected by attorney-client privilege or otherwise exempt from disclosure by federal law.<sup>53</sup>

If a law enforcement agency believes that release of the information will jeopardize the state's right to prosecute or a defendant's right to a fair trial or will undermine an ongoing or future investigation, the agency may seek an order from the court to prevent disclosure of the information.<sup>54</sup> Such actions are to be given immediate priority on the trial and appellate court dockets. Most communities use the multi-disciplinary team approach in dealing with abuse, neglect, dependent cases as well as cases involving the death of a child.

Special circumstances – infant abandonment:<sup>55</sup> When a parent abandons an infant less than seven days of age by voluntarily delivering the infant to, a law enforcement officer who is on duty or at a police station or sheriff's department or an emergency medical service worker who is on duty or at a fire or emergency medical services station without expressing an intent to return for the infant, that parent cannot be prosecuted for abandonment of the child or for unlawful surrender of the child.

When an infant is taken into temporary custody under 7B-500(b) or (d), that individual shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services or a local law enforcement agency. Anyone who takes an infant into temporary custody under section 7B-500(b) or (d) may ask about the parents' identities and any relevant medical history but must also tell the parent that there is no requirement to provide information.<sup>56</sup>

- e) Duty of DSS investigation by local law enforcement/district attorney<sup>57</sup>

**NOTE: Show slide, "DSS Investigation by Local Law Enforcement/District Attorney."**

The Department of Social Services (Director) is required to make an immediate oral report and a subsequent written report to the District Attorney and the appropriate local law enforcement agency if he (the Director) finds evidence that a

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juvenile may have been abused (according to the Juvenile Code definition) within forty-eight hours of receiving the report of abuse.

The law enforcement agency must immediately initiate and coordinate a criminal investigation with the DSS investigation. This investigation must be initiated no later than 48 hours after receipt of the information from DSS. The District Attorney shall decide whether to prosecute after completion of the investigation.

In cases wherein DSS receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the procedure to be followed is the same as in cases of alleged abuse described above.

If DSS receives a report that a juvenile has been abused or neglected in a day care facility or home, the Director must notify the Department of Health and Human Resources (DHR), the Division of Child Development, within twenty-four hours or on the next working day of receipt of the report.

- f) Authority of medical professional<sup>58</sup>

**NOTE: Show slide, "Authority of Medical Professional."**

Any physician or administrator of a hospital, clinic, or other medical facility to which a juvenile is brought for medical attention as a result of suspected abuse, shall have the right, when authorized by the chief district judge, to retain physical custody of the juvenile for medical treatment. DSS must be notified in these instances, and they are required to immediately begin an assessment. The time limit is twelve hours, which gives the Department of Social Services' social worker time to obtain a nonsecure order.

- g) Immunity for reporting and cooperating persons<sup>59</sup>

**NOTE: Show slide, "Immunity for Reporting and Cooperating Persons."**

Any person who makes a report pursuant to the statute cooperates with DSS in a protective services inquiry or investigation, or testifies in any judicial proceeding resulting

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from such investigation is immune from civil or criminal liability that might otherwise be imposed, provided that the person was acting in good faith.

### 3. Criminal statutes

**NOTE: Show slide, “Criminal Statutes.”**

#### a) Felony child abuse

A parent or any other person providing care to or supervision of a child less than sixteen years of age who:

- (1) Intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child;<sup>60</sup> (Class B2 felony)
- (2) Intentionally inflicts any serious physical injury to the child or who intentionally commits an assault upon the child which results in any serious physical injury;<sup>61</sup> (Class D felony)
- (3) Commits, permits, or encourages any act of prostitution with or by the juvenile;<sup>62</sup> (Class D felony)
- (4) Commits or allows the commission of any sexual act upon a juvenile;<sup>63</sup> (Class D felony)
- (5) Willfully acts or whose grossly negligent omission in the care of the child shows a reckless disregard for human life and results in serious bodily injury to the child;<sup>64</sup> (Class E felony)
- (6) Willfully acts or whose grossly negligent omission in the care of the child shows a reckless disregard for human life and results in serious physical injury to the child;<sup>65</sup> (Class G felony)

**“Serious bodily injury”** is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or

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protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.<sup>66</sup>

**“Serious physical injury”** means physical injury that causes great pain and suffering and includes serious mental injury.<sup>67</sup>

- b) Misdemeanor child abuse

**NOTE: Show slide, “Misdemeanor Child Abuse.”**

“Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of a Class A1 misdemeanor.”<sup>68</sup>

- c) Contributing to delinquency and neglect by parents and others

**NOTE: Show slide, “Contributing to Delinquency and Neglect by Parents and Others.”**

“Any person who is at least 18 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected”<sup>69</sup> is guilty of a Class 1 misdemeanor.

The purpose of this statute is to “protect children from wrongful influence of adults,” and it is not necessary to prove that the child was delinquent.<sup>70</sup> The evidence must support a finding that the juvenile could have been adjudicated delinquent for a conviction to stand, but it is not a requirement that the child be found delinquent by a court. The age of the juvenile either at the time of the alleged offense or when the condition causing the juvenile to be delinquent, neglected, abused, or undisciplined governs and must be considered when making charging decisions.

Juveniles alleged to be abused or neglected must be less than eighteen years of age for this statute to apply. Juveniles alleged

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to be delinquent must be less than eighteen years of age and at least six years old for this statute to apply. Jurisdiction for juveniles alleged to be undisciplined extends to include sixteen through seventeen-year-olds in all undisciplined matters except mandatory school attendance.<sup>71</sup>

- d) Taking indecent liberties with a student<sup>72</sup>

**NOTE: Show slide, “Taking Indecent Liberties with a Student.”**

“Indecent liberties” means: willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student. For the purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. § 14-27.20.”<sup>73</sup>

If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the victim and defendant were present together in the same school (a school at which the student is enrolled and the school personnel is employed or volunteers) but before the victim ceases to be a student, the defendant is guilty of a Class I felony.<sup>74</sup>

If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, or coach, and who is less than four years older than the victim, takes indecent liberties with a student, the defendant is guilty of a Class I felony.<sup>75</sup>

- e) Intercourse and sexual offenses with certain victims (including sexual activity with a student and sexual activity by a substitute teacher or custodian)

**NOTE: Show slides, “Intercourse and Sexual Offenses with Certain Victims.”**

- (1) “If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal

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intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student.”<sup>76</sup>

- (2) “A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class I felony.”<sup>77</sup>
- (3) A defendant who has assumed a position as a parent or guardian of a minor, or who is an employee of any institution having custody of a minor, engages in vaginal intercourse or commits a sex act with the minor, they are guilty of a Class E felony.<sup>78</sup>

#### 4. Venue, pleadings, petitions

**NOTE: Show slide, “Venue, Pleadings, and Petitions.”**

While law enforcement may be involved in investigating criminal conduct involving juveniles, including neglect or abuse, all proceedings to protect the juvenile alleged to be abused, neglected, or dependent are brought by DSS by a petition and summons filed in the clerk’s office in the district where a juvenile resides or is present.<sup>79</sup>

#### 5. Temporary custody

**NOTE: Show slide, “Temporary Custody.”**

If necessary, a juvenile may be taken into temporary custody by law enforcement or a social services worker if there are grounds to believe the juvenile is being abused, neglected or is dependent and the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order.<sup>80</sup> Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. **Personal care and supervision means close, constant supervision by the law enforcement officer who took the child into temporary custody. It does not mean that the juvenile can be placed in a room alone or**

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**given to someone else to care for and watch.** Law enforcement and the Department of Social Services should operate as a team under these circumstances.

A person who takes a juvenile into custody without a court order must:<sup>81</sup>

- a) “Notify the juvenile’s parent, guardian, custodian or caretaker that juvenile has been taken into temporary custody and
- b) Advise the parent, guardian, custodian, or caretaker of the right to be present with the juvenile until a determination is made as to the need for nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile.
- c) Release the juvenile to the parent, guardian, custodian, or caretaker if the person having the juvenile in temporary custody decides that continued custody is unnecessary.
- d) The person having temporary custody shall communicate with the director of the department of social services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge or person delegated authority pursuant to G.S. 7B-502 for a determination of the need for continued custody.”<sup>82</sup> It is important that the law enforcement officer know local custom and policy of the jurisdiction he is serving to obtain a petition and nonsecure custody order. Each judicial district may vary procedurally in this process.
- e) “A juvenile taken into temporary custody under this Article shall not be for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday or legal holiday, unless:
  - (1) A petition or motion for review has been filed by the director of the social services, and
  - (2) An order for nonsecure custody has been entered by the court.”<sup>83</sup>

### 6. Nonsecure custody

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**NOTE: Show slide, “Nonsecure Custody.”**

As we begin this discussion, keep in mind that this section is referring to DSS custody, not the custody of the Department of Public Safety – Juvenile Justice. In this section, we discuss actions taken to keep a juvenile safe from harm. These are generally actions taken by DSS under their authority and that of the court. Custodial actions as a result of a juvenile being adjudicated delinquent or undisciplined actions, akin to adult detention, will be discussed later.

When there is a nonsecure custody order, the court must first consider the release of the juvenile to the parent, relative, guardian, custodian, or other responsible adult.<sup>84</sup> If the court issues a nonsecure custody order, law enforcement serves the order and the person designated in the nonsecure custody order to take custody of the child takes custody of the child. A copy of the order must be given to the juvenile’s parent, guardian, custodian, or caretaker.<sup>85</sup> An order for nonsecure custody is made only when there is a reasonable factual basis to believe that the matters alleged in the petition are true, and:

- a) “The juvenile has been abandoned.
- b) The juvenile has suffered physical injury or sexual abuse, or serious emotional damage as defined by G.S. 7B-101(1)e.
- c) The juvenile is exposed to substantial risk of physical injury or sexual abuse because the parent, guardian, custodian or caretaker
  - (1) Has created conditions likely to cause injury or abuse, or
  - (2) Has failed to provide, or is unable to provide adequate supervision or protection.
- d) The juvenile is in need of medical treatment to cure or to alleviate or to prevent suffering serious physical harm, which may result in death or disfigurement or substantial impairment of bodily functions, **and** the juvenile’s parent, guardian, custodian or caretaker is unwilling or unable to provide or consent to the medical treatment.
- e) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order.



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- f) The juvenile is a runaway and consents to nonsecure custody.”<sup>86</sup>

In North Carolina, when a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem (GAL), or special representative, to specifically represent the interests of the juvenile.<sup>87</sup> In cases of dependency, the court can choose to appoint a GAL, but it is not required.<sup>88</sup> A GAL is tasked with assessing the facts of the case and determining the needs of the juvenile.<sup>89</sup> The guardian is also responsible for finding resources for the juvenile and assisting with court proceedings.<sup>90</sup> The GAL has the authority to obtain information and reports that are necessary to their representation, and law enforcement must assist in supplying requesting information.<sup>91</sup> Law enforcement officers who are investigating these types of cases may need to consult with the GAL.

### 7. Kidnapping by a parent

**NOTE: Show slide, “Kidnapping By a Parent.”**

- a) For any type of action (civil or criminal) to be brought in cases wherein it is alleged that one parent has “snatched” or kidnapped his or her child, there must first be an enforceable and valid court order in place governing custody of the child. Until such an order is entered, either parent may take the child to any geographical location of the parent’s choosing.
- b) Law enforcement officers who respond to complaints from aggrieved parents should always determine whether any court orders exist which establish custody rights of the parents. This is easily accomplished by asking the complaining parent what, if any, court action has taken place before the immediate incident of alleged child snatching. If no valid court orders exist, then the officer has no authority to force either spouse to comply with the wishes of the other in these situations. Officers should explain to the complaining parent that it will be necessary for the parent to seek the advice of a family law attorney. Resolution of these issues cannot be handled by law enforcement officers but must take place under the statutes and procedures governing domestic relations and child custody.
- c) In cases where a complaining parent alleges that the snatching parent has violated an existing custody order, officers should not attempt to enforce such orders without further direction

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from the issuing court. The custody statutes provide a remedy and specify the process whereby the aggrieved parent can seek redress. An officer should never take a child away from one parent and give it to the other parent without explicit authority from the court.

- d) When any federal or state court has awarded custody of a child under the age of sixteen years, then it shall be a felony for any person to take or transport (or cause to be taken or transported) the child from any point within the State to any point outside the limits of the State or to keep the child outside the limits of the State.<sup>92</sup> Keeping a child outside the State limits in violation of a court order for a period over seventy-two hours is prima facie evidence of the offender's intent to violate the custody order at the time he took the child from the State.<sup>93</sup>

Persons convicted of a violation of this statute shall be punished as Class I felons.<sup>94</sup>

### 8. Missing children

**NOTE: Show slide, "Missing Children."**

North Carolina law requires a local law enforcement agency receiving a missing person report from a parent, spouse, guardian, or legal custodian to immediately enter this report in the federal NCIC national missing persons file.<sup>95</sup> The local law enforcement agency must also immediately notify all of its on-duty officers and initiate a statewide broadcast to other agencies to be on the lookout for the missing person. A copy of the missing person report must also be sent to the North Carolina Center for Missing Persons.<sup>96</sup>

The North Carolina Center for Missing Persons recommends the following procedure upon receipt of a missing child report:

- a) Complete the missing person report form (PIN IR-209)<sup>97</sup> and advise parents to contact the N.C. Center for Missing Persons on the toll-free line, 1-800-522-KIDS (5437).
- b) Determine if emergency measures are necessary if the missing child appears in danger or under a disability.<sup>98</sup>
- c) Make an immediate entry into the Division of Criminal Information Network (DCIN)/NCIC files of missing persons,

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with a notation for disabled persons - EMD;<sup>99</sup> on those disappearing involuntarily - EMI;<sup>100</sup> on those disappearing under threatening circumstances – EME;<sup>101</sup> all others under eighteen years old should be entered as juveniles - EMJ.<sup>102</sup>

- d) A copy of the message should be directed to the North Carolina Center for Missing Persons.<sup>103</sup>
- e) Missing persons who are located should be cleared out of DCIN/NCIC and the North Carolina Center for Missing Persons.<sup>104</sup>

### D. Undisciplined and Delinquent Juveniles

**NOTE: Show slide, “Undisciplined and Delinquent Juveniles.”**

While the treatment of juveniles in the criminal justice system has changed and evolved, the role of the State in the protection of children has become fundamental. In the 1800s, children were often viewed as property, and discipline was not regulated. If children broke the law, they were jailed with adult prisoners. Over time, society found that children required different treatment and protections, and the duties of the government were expanded. Several reform movements have transformed the roles and duties of the states in the area of juvenile justice.

These changes were brought about largely due to advances in developmental psychology and improvements in our understanding of adolescent brain development. Juveniles are not “little adults” – they are distinctly different in terms of their ability to control impulses, think long-term, and understand consequences. They also possess tremendous potential for change. For these reasons, a separate justice system has been developed.

Juvenile justice services have become centralized and standardized. At the same time, there has been a continuing emphasis on community decision-making in the area of delinquency prevention.

As we advance through this section, keep in mind our earlier discussion on DSS and Juvenile Justice. DSS largely focuses on the behavior of adults, while this section, Juvenile Justice, will focus on the behavior of juveniles.

In North Carolina, juveniles who are proven to be undisciplined or delinquent are not convicted or found guilty but instead adjudicated delinquent or undisciplined. The standard of proof in cases involving delinquency is beyond a reasonable doubt, which is the same as that for other criminal charges. In

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cases where a juvenile is alleged to be undisciplined, the court must find the allegations proven by clear and convincing evidence.<sup>105</sup> The juvenile court then has discretion to fashion a judgment for the juvenile that can include treatment, supervision, and in some cases, out-of-home placement or commitment. This is called the disposition. Juvenile court records are not a public record.<sup>106</sup>

**NOTE: Show slides, “Delinquency Prevention and Understanding Juveniles.”**

1. Delinquency prevention and understanding juveniles
  - a) Adolescence is a particularly challenging and turbulent developmental stage, even under the best of circumstances. The youth you may encounter often have mental health and substance use disorders, and adolescence can be a period where poor decisions and choices can have life-changing consequences.<sup>107</sup>
  - b) One of the reasons that adolescents can be frustrating is that they often are impulsive or fail to plan. Brain research, brain scans (e.g., MRI), and other developmental science research offer this explanation: The area of the brain that coordinates impulse control is the last part of the brain to develop, so teens are less well-equipped to engage in planning ahead.<sup>108</sup>
  - c) “One interpretation is that in teens, the parts of the brain involved in emotional responses fully online [mature], or are even more active than in adults, while the parts of the brain involved in keeping emotional, impulsive responses in check are still reaching maturity. Such a changing balance might provide an explanation for the youthful appetite for novelty [new experiences], and the tendency to act on impulse—without regard for risk.”<sup>109</sup>
  - d) Much of the behavior exhibited by juveniles who are found to be delinquent is behavior that is not abnormal for adolescence.<sup>110</sup>
  - e) Without minimizing the fact that criminal behavior is unacceptable, we can recognize the processes that lead up to it, and use that knowledge to seek program alternatives that help adolescents identify errors in their thought processes and see other options to their behavior.<sup>111</sup>

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- f) A key cognitive development during adolescence is relativity<sup>112</sup> - the ability to see things in relative terms, as opposed to absolute, black-or-white terms. Adolescents are more likely to question others' assertions and less likely to accept facts as absolute truths. Adolescents' belief that everything is relative can become so overwhelming that they become extremely skeptical. The very same teenager who can compose a mature and thoughtful answer to a philosophical question posed in social studies class might respond impulsively when he is with his friends or in the heat of the moment. If a juvenile offender has a mental health or substance abuse problem, this may make them all the more vulnerable to poor decision-making.
- g) The bottom line is normal adolescence can be a time of risk-taking, poor decision-making, and lack of attention to long-term consequences. Since the adolescent brain is not fully developed, we should expect that they will behave "immaturely."<sup>113</sup>
- h) During adolescence, an individual is transitioning to independent thinking and living. This is a critical task as adolescents are gearing up for adult responsibilities. They are on their way, but are not there yet and need structure, safety, support, and guidance to achieve a healthy, successful transition to adulthood.<sup>114</sup>
- i) This brain science formed the basis of a line of cases from the U.S. Supreme Court which emphasize that interrogation and sentencing of juveniles must be done through a lens that acknowledges the developmental differences of children and youth from adults.<sup>115</sup>

**NOTE: Show slides, "Establishing Rapport with Juveniles."**

- 2. Establishing a rapport with juveniles
  - a) It is important for officers to establish rapport with juveniles. First, rapport can help ease or prevent community tensions by allowing juveniles to see officers as people rather than cogs in a machine. This rapport can also encourage communication between juveniles and officers, and this can be effective in crime prevention and crime solving. Finally, you want to encourage the community to report crime and see law

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enforcement as allies. Establishing good relationships with youth is a key step in this process.

- b) Establishing rapport with juveniles starts by developing a helping relationship versus an adversarial relationship. This helping relationship begins with the building of a strong alliance. This alliance allows both the officer and the juvenile to believe that they are on the same side (as opposed to being “out to get him” or “trying to catch him messing up”).<sup>116</sup>
- c) “Most of you already know how to develop relationships with other people; you have been developing relationships with others all your lives and new relationships with other trainees since your basic training class began. However, developing a working alliance with court-involved youth can be more challenging. Some youth may see you as enforcing rules or laws that they deem unfair. In addition, many of the juveniles we serve have been exposed to years of abuse at the hands of those (parents or guardians) who were supposed to love and, at the least, protect them from harm, and so they may be wary of adults and reluctant to drop their guard.”<sup>117</sup> As a law enforcement officer, you have an additional obstacle; your uniform. Your uniform is often the first thing people will notice about you, and, for youth, in particular, it can be very intimidating and serve to remind them of your powerful role and their relative lack of power and control.
- d) This can cause otherwise cooperative youth to close down when faced with a uniformed officer. Keeping this in mind, and going out of your way to otherwise convey your desire to form a relationship and to be approachable, can help mitigate this effect. Be aware of your surroundings, as well. A juvenile who is at home, and thus feels more comfortable and in control, may have less of a reaction to your uniform and presence than a youth who is at school and therefore already sensitive to a power imbalance.
- e) Keep in mind that a relationship requires both parties to feel comfortable and equal. While it is true that you will always hold the power in any interaction with a youth because of your status as an officer, it is also true that the youth knows this. As a result, engaging in a power struggles only serves to undermine your role. Make sure to allow a juvenile to feel

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respected and valued, and thus allow them a sense of control, and you will be far more effective.<sup>118</sup>

- f) Despite the obstacles, developing a healthy alliance with court-involved youth is almost always possible.
- g) Many of the communication skills you have learned or will learn are designed to promote a good rapport between you and juveniles. These skills are very helpful, but only if they are used with an attitude toward the youth that reflects the following key elements: empathy, genuineness, and positive regard.<sup>119</sup>
  - (1) “**Empathy** refers to our ability (and willingness) to understand another person’s thoughts, feelings, and struggles from their point of view. Simply put, it involves ‘taking a walk in another person’s shoes.’ This can be hardest to do when a youth is frustrated and angry, and especially when their anger and frustration is directed at **you**. However, a bond (an alliance) will be strengthened if you are mature enough to remain calm and non-defensive at such moments and remain able to focus your energies on putting yourselves in their shoes and communicating that, instead of reacting defensively to their insults or verbal attacks.
  - (2) **Genuineness** means keeping it real. Genuineness requires that you are comfortable enough in your skin (that is, that you have both self-awareness and self-acceptance) to avoid hiding behind a professional role. It means that in your work with youth, you can express healthily obvious feelings and thoughts with the youth. However, genuineness requires not only that we are honest and authentic around people; it also means that we are willing to engage and share how we honestly see things.
  - (3) **Positive regard** flows from the first two attitudes. It is an attitude of concern that is embodied by the following two questions posed by Carl Rogers, the psychologist credited with

first recognizing the significance of the therapeutic alliance. The first is, 'Do we tend to treat individuals as persons of worth, or do we subtly devalue them by our attitudes and behavior?' The second asks, 'Is our philosophy one in which respect for the individual is uppermost?' Rogers argued, and research has maintained, that an attitude of caring and acceptance of the juvenile results in greater change in their attitudes and behavior. Adopting an attitude of caring and of acceptance, then, is in everybody's best interests."<sup>120</sup>

- h) Several other strategies can be useful as you seek to form a working alliance with youth. These are finding common ground, identifying strengths, and establishing trust.<sup>121</sup>
- (1) **Finding common ground:** "Ask questions about the juvenile's home, school, friends, likes and dislikes, or recent public events to find something that you have in common. You may not like to feel that you have a lot in common with most juvenile delinquents, but all human beings have experiences in common. It can be helpful to identify this common ground to develop the kind of relationship that is most likely to set the conditions for change. It does not have to be a deep or profound shared experience or interest: you may both be Carolina fans, for example. Perhaps you both hate broccoli, and neither of you knows how to swim. The object here is to begin to build a bridge between you and the juvenile."<sup>122</sup>
  - (2) **Looking for Signs of Strength:**<sup>123</sup> Especially with juveniles, we spend a lot of time concentrating on the deficiencies that these young people bring with them. Most of them are behind in school; some are violent; many have substance abuse problems, etc. But to build a helping relationship, it is important for you to be able to see the juvenile as a person who has assets, and value and worth as a person.



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- (3) **Identify Strengths**: “In addition to helping you become aware of the juvenile’s assets, identifying strengths allows you to build a relationship by pointing out to the juvenile that you are aware of their positive qualities or behaviors, and that you have noticed signs of strength. Paying attention to positive behavior increases the incidence of positive behavior. One cautionary note: it is not helpful, and can be very destructive, to ‘make up’ or pretend to see strengths that are not there. Always be truthful.”<sup>124</sup>
- (4) **Trust**:
- (a) “This brings us to the last component of building the helping relationship: trust. According to the American Heritage College Dictionary, trust is ‘a firm reliance on the integrity, ability or character of a person; one in which confidence is placed.’
- (b) Trust develops as the cumulative effect of one-on-one day-to-day relationships. Trust is won or lost by how well you know yourself, how open you are to letting others see your real self, how consistent you are, and how well you show your interest in others. Trust builds over time because it must be earned; it cannot be assumed or mandated. Few people will risk exposing their problems until a trusting relationship is created. Common attributes that build trust are being committed to a goal, caring deeply about those you serve, being competent, having honesty and integrity, and acknowledging your own mistakes.
- (c) To build trust, you must show consistency in decision making, listen in a way that shows respect for the other person, listen in a way that shows you value the other person, behave so that the other person knows that you are

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working for their best interest. Building trust involves a level of practical openness and sharing.”<sup>125</sup>

- (d) “Sadly, while it takes some time to build trust, it takes only a moment or two to lose it. It is important to avoid saying anything to a juvenile that you do not mean. The worst thing you can do in a helping relationship is to be untrustworthy. It is better to say that you do not agree with what the juvenile says than to pretend that you do.
- (e) Remember: [some] delinquent juveniles are not trusting of adults, especially adults in positions of authority. Conversely, they may be all too trusting of peers or those adults that they perceive as anti-authority or rebellious in some way. If you lie to them, you reconfirm the stereotype they already [may] have, of someone who is trying to trick them or ‘con’ them or let them down in some way. You might also strengthen in them the anti-social view that ‘everybody does what’s convenient instead of what’s right if they can get away with it.’”<sup>126</sup>

### 3. Definitions

**NOTE: Show slides, “Definitions.”**

#### a) Community-based program

“A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile’s family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.”<sup>127</sup>

#### b) Delinquent juvenile

- (1) Any juvenile who, while less than eighteen years of age but at least sixteen years of age, commits a crime or

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infraction under State law or under an ordinance of local government, excluding all violations of the motor vehicle laws under Chapter 20 of the General Statutes, or who commits indirect contempt by a juvenile as defined by G.S. 5A-31.<sup>128</sup> Juveniles who are emancipated before age eighteen are tried as an adult, and juveniles may still be transferred, and sometimes must be transferred, from district court to superior court to be tried as an adult for certain felonies.<sup>129</sup>

- (2) “Any juvenile, while less than 16 years of age but at least 10 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws, or who commits indirect contempt by a juvenile as defined in 5A-31.”<sup>130</sup> Juveniles who are emancipated are tried as an adult, and juveniles may still be transferred, and sometimes must be transferred, from district court to superior court to be tried as an adult for certain felonies committed at ages thirteen, fourteen and fifteen.<sup>131</sup>
- (3) The definition of a delinquent juvenile between ages eight and ten would be a special exemption from the general definition of a vulnerable juvenile. For any offense committed that was a class H or below felony or any misdemeanor, any juvenile under the age of ten would be treated as a vulnerable juvenile. If a child between eight and ten committed a felony that was a class G or above or had previously been adjudicated, then they are still handled through the delinquency process.<sup>132</sup>
- (4) “Any juvenile who, while less than 10 years of age but at least 8 years of age, commits a crime or an infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws, and has been previously adjudicated delinquent.”<sup>133</sup>
- (5) “In the case of a juvenile with a suspected mental illness, developmental disability, or intellectual disability that has been adjudicated delinquent, the court shall order that the Juvenile Justice Section of the

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Division of Adult Correction and Juvenile Justice of the Department of Public Safety make a referral for a comprehensive clinical assessment or equivalent mental health assessment, unless the court finds a comprehensive clinical assessment or equivalent mental health assessment has been conducted within the last 45 days before the adjudication hearing. An assessment ordered by a court under this subsection shall evaluate the developmental, emotional, behavioral, and mental health needs of the juvenile.”<sup>134</sup>

(6) Commitment of a juvenile delinquent<sup>135</sup>

**NOTE: Show slides, “Commitment of a Juvenile Delinquent.”**

- (a) Any juvenile, while at least sixteen years of age but less than seventeen years of age, committed to the Division shall not exceed:
- i) The juvenile’s twenty-first birthday if he or she has been committed to the Division for the following offenses:
    - First degree murder
    - First-degree forcible rape
    - First-degree statutory rape
    - First-degree forcible sexual offense
    - First-degree statutory sexual offense if committed by an adult
  - ii) The juvenile’s twentieth birthday if she or he has been committed to the Division for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than one of the offenses listed above.
  - iii) The juvenile's nineteenth birthday if he or she has been committed to the

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Division for an offense other than one of the offenses that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

- (b) Any juvenile, while at least seventeen years of age, commitment to the Division shall not exceed:
  - i) The juvenile's twenty-first birthday if he or she has been committed to the Division for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult; or
  - ii) The juvenile's twentieth birthday if the juvenile has been committed to the Division for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

**NOTE: Show slides, "Definitions."**

- c) Detention

"The secure confinement of a juvenile under a court order."<sup>136</sup>

- d) Detention facility

"A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities."<sup>137</sup>

- e) Emancipated minor<sup>138</sup>

A juvenile who is sixteen or seventeen years of age, who has been a resident of the same county or federal territory in North Carolina for six months, may petition the court in that county for a judicial decree of emancipation. A married juvenile is also emancipated.<sup>139</sup> Emancipation has the legal effect of allowing the juvenile to make contracts and conveyances, to sue and be sued, and to transact business as if an adult. The juvenile's parent, guardian, or custodian is relieved of all legal

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duties and obligations to the juvenile. The decree is irrevocable.

f) Judge

“Any district court judge.”<sup>140</sup>

g) Juvenile consultation

“The provision of services to a vulnerable juvenile and to the parent, guardian, or custodian of a vulnerable juvenile pursuant to G.S. 7B-1706.1. Juvenile consultation cases are subject to confidentiality laws provided in Subchapter III”<sup>141</sup> of Chapter 7B of the General Statutes.

h) Juvenile court

“Any district court exercising jurisdiction”<sup>142</sup> under N.C.G.S. Chapter 7B.

i) Juvenile court counselor

“A person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.”<sup>143</sup> Juvenile court counselors shall “provide and coordinate multidisciplinary service referrals for the prevention of juvenile delinquency and early intervention for juveniles, including vulnerable juveniles who are in receipt of juvenile consultation services. If the juvenile court counselor has cause to suspect that a juvenile who is receiving services pursuant to this subdivision is abused, neglected, or dependent, the juvenile court counselor shall make a report to the director of social services as required by G.S. 7B-1700.1.”<sup>144</sup>

j) Post-release supervision

“The supervision of a juvenile who has been returned to the community after having been committed to the Division [of Adult Correction and Juvenile Justice (“DACJJ”)] for placement in a youth development center.”<sup>145</sup>

k) Probation

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“The status of a juvenile who has been adjudicated delinquent is subject to specified conditions under the supervision of a juvenile court counselor, and may be returned to the court for violation of those conditions during the period of probation.”<sup>146</sup>

l) Protective supervision

“The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a juvenile court counselor.”<sup>147</sup>

m) Teen court program

“A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile’s peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.”<sup>148</sup> In communities that have teen courts, the law enforcement officer may make a referral directly to this resource without making a complaint to Court Services.

n) Undisciplined juvenile

(1) “A juvenile who, while less than sixteen 16 years of age but at least 10 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile’s parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

(2) A juvenile who is sixteen or seventeen years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile’s parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.”<sup>149</sup>

o) Vulnerable juvenile

“Any juvenile who, while less than 10 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, **or within the**

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**boundaries of a military installation**, including violation of the motor vehicle laws, and is not a delinquent juvenile.”<sup>150</sup>

p) Youth development center

“A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Division [of Adult Correction and Juvenile Justice].”<sup>151</sup>

4. Jurisdiction over undisciplined juveniles

**NOTE: Show slide, “Jurisdiction over Undisciplined Juveniles.”**

a) Juvenile court has exclusive original jurisdiction over any case involving a juvenile who is alleged to be undisciplined. The age at the time of the offense governs.

Jurisdiction continues until:<sup>152</sup>

- (1) Terminated by order of the court.
- (2) The juvenile reaches eighteen years of age, or
- (3) The juvenile is emancipated.

The court has jurisdiction over the parent, guardian, or custodian of a juvenile if they have been properly served with a proper summons.<sup>153</sup>

b) Dispositional alternatives for undisciplined juveniles

Officers should be aware of alternatives for undisciplined juveniles. The court will assess the juvenile’s best interest in these situations, how much care and supervision the juvenile needs, and what kind of programs or resources are available.

**NOTE: Show slide, “Dispositional Alternatives for Undisciplined Juveniles.”**

- (1) Require that the juvenile be supervised in the juvenile’s own home;
- (2) Place the juvenile in the custody of a parent, guardian, relative, private agency, or some other suitable person;



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- (3) Place the juvenile in the custody of the county department of social services;
- (4) Place the juvenile under the protective supervision of a juvenile court counselor for a period of up to three months.<sup>154</sup>

The court may also excuse the juvenile from compliance with compulsory school attendance if the court finds “suitable alternative plans,” such as vocational or special education, special placement, or some other terms.

**NOTE: Show slide and refer students to handout, “Conditions of Protective Supervision for Undisciplined Juveniles.”**

5. Conducting investigations involving juveniles
  - a) Undisciplined offenses

**NOTE: Show slide, “Undisciplined Offenses.”**

- (1) Truancy

In North Carolina, every parent, guardian, or custodian of a child between the ages of seven and sixteen years shall require that child to attend school continuously when the school is in session. After three unexcused absences, the principal shall notify the parent, guardian, or custodian that the child has excessive absences. After six unexcused absences, the principal shall notify the parents by mail that they may be in violation of the “compulsory Attendance Law.” After ten unexcused absences in a school year, the principal shall confer with the student and parent to determine whether the parent has made a good faith effort to comply with the law. If determined that the parent has not made a good faith effort to comply with the law, the local district attorney and department of social services will be notified.<sup>155</sup>

Truancy under N.C.G.S. § 115C-378 is a Class 1 misdemeanor charge levied against the parent, guardian, or custodian of the juvenile, not the juvenile themselves.<sup>156</sup>

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### (2) Beyond parental control

**NOTE: Show slide, “Beyond Parental Control.”**

When a juvenile is beyond parental control, the parent is unable or unwilling to maintain discipline and control over their child. It may be necessary to take custody of the juvenile under these conditions, but he or she cannot be detained in a secure custody facility. Under such circumstances, taking the juvenile into temporary custody may be appropriate to facilitate resources for the juvenile, including emergency counseling services, emergency mental health services, referral to a shelter care facility, etc. Communicating with DSS or Court Services to assist with finding resources is appropriate. However, when taking a juvenile into temporary custody, a decision must be made within twelve hours as to whether a nonsecure custody order is needed or whether the juvenile can be returned to their parents once all parties have calmed down.<sup>157</sup>

### (3) Curfews

**NOTE: Show slide, “Curfews.”**

North Carolina law allows cities and counties to impose curfews on persons of any age less than eighteen.<sup>158</sup> The cities or counties have the authority to pass local ordinances, dictating when and how a curfew is enforced. Law enforcement officers in those jurisdictions have the authority to enforce these local ordinances. It should be noted that secure detention is NOT an option for a juvenile merely in violation of a city or county juvenile curfew. You should check to see if the municipalities or the county/counties in your jurisdiction have curfew ordinances. Municipalities and counties also have the ability to impose curfews in connection with a declared state of emergency.<sup>159</sup>

Violations of emergency curfews are treated differently than noted above.

### (4) Runaway juveniles

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**NOTE: Show slide, “Runaway Juveniles.”**

“Each year, an estimated 1.6 million children and youth (ages 12-17) experience homelessness without a parent or guardian.”<sup>160</sup> Juveniles have many reasons for leaving home, including abuse, neglect, family conflict, and mental health or substance abuse issues.<sup>161</sup> Juveniles who run away or are forced out of their homes are at special risk for dangerous circumstances. The National Center for Missing and Exploited Children estimates that nearly one in seven runaways in 2018 were likely sex trafficking victims.<sup>162</sup> Runaways may experience violence; many turn to drugs or alcohol and they may become involved with criminal activity. Therefore, it is important for law enforcement to take cases of runaway youth seriously. Below are the steps to take for a proper investigation into a runaway juvenile.

- (a) Information should be taken and an investigation report made without any delay in cases involving juveniles.
- (b) Gather the facts as in any investigation.
- (c) Inform the complainant of the procedure to be followed in trying to locate their child.<sup>163</sup>
  - i) There is a twenty-four hour wait on runaways to place them in the National Crime Information Center (NCIC). However, they can be entered as a missing person upon notification. If the juvenile has not been placed in custody after twenty-four hours, their designation may be changed from a missing person to a runaway if appropriate.
  - ii) Check any possible locations, as suggested by the complainants.
  - iii) Advise the complainant that a message (DCIN) will be sent to out-of-town

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locations to which they believe the child is headed.

- iv) Advise them the child will be placed in the NCIC files.
- v) Advise the complainants that they can contact the National Center for Missing and Exploited Children for further information or assistance.

Explicit promises should NOT be made to the complainants about whether the NCIC entry will be successful in locating the child.

- (5) Advise complainant of the law on runaway juveniles
  - (a) If located in jurisdiction, he or she will be returned to them.<sup>164</sup>
  - (b) If the child refuses to return home, he or she could be placed in a group or runaway home or confined in a juvenile detention facility.<sup>165</sup>
  - (c) Sometimes, parents may refuse to take child. However, parents must provide food, clothing, and shelter until age eighteen under the neglect statute.<sup>166</sup> They cannot refuse to provide for the child. Under such circumstances, a referral to DSS is appropriate if the parent continues to refuse to take their child.
  - (d) For runaways that make their way out-of-state, they will fall under the Interstate Compact on Juveniles (“ICJ”). Any officer in the country may take custody of a juvenile subject to an ICJ warrant. Any warrants under the ICJ must be entered into NCIC per the ICJ Rules.<sup>167</sup> Also, an officer in this State may take temporary custody of a juvenile if there are reasonable grounds to believe the juvenile has run away from home for a period of twenty-four hours or more (and therefore is undisciplined as defined in our

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statutes). An officer may be able to confirm this by checking in NCIC to see if the juvenile has been entered as a runaway. Out-of-state juveniles may be placed in a secure juvenile facility, if required by the compact or ordered by the court, until their return.<sup>168</sup> In the event an officer takes custody of an out-of-state juvenile pursuant to an ICJ warrant or otherwise, Court Services should be contacted to assist in arranging for secure custody and eventual return to the state of origin.

### E. Law Enforcement Procedures in Delinquency Proceedings

#### 1. Role of the law enforcement officer

**NOTE: Show slide, “Role of the Officer.”**

- a) “A law enforcement officer who takes a juvenile into temporary custody should select the appropriate course of action to the situation.”<sup>169</sup> That ensures the protection of public safety and meets the needs of the juvenile.

The officer may:

- (1) Release the juvenile, with or without first counseling the juvenile;
  - (2) Release the juvenile to the juvenile’s parents, guardian, or custodian;
  - (3) Refer the juvenile to community resources;
  - (4) Seek a petition; or
  - (5) Seek a petition and request a custody order.”<sup>170</sup>
- b) Release the juvenile with or without first counseling the juvenile;
- c) Conducting parent-juvenile conferences

**NOTE: Show slide, “Conducting Parent-Juvenile Conferences.”**

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### (1) Counseling

While counseling between parents, guardians, custodians, and delinquent or undisciplined juveniles is best left to professionals, such as social workers or psychologists, there may be times when law enforcement officers will need to facilitate discussions between the parties. “Counseling” is defined as guidance using psychological methods and various techniques of personal interview.<sup>171</sup> While officers are not trained in these techniques, and should never attempt to utilize professional methods, officers can interact with the parties in a way to establish and enable open dialog. Officers can listen, reflect, clarify issues, ask questions, and help the parent and juvenile better understand each other. This communication can be an important step in working towards a resolution.

### (2) Preparation for the initial non-custodial conference

(a) Most children who are taken into custody are released to their parent, guardian, or custodian. Prior to releasing the juvenile back to the parent, it is important to ensure that the parties are communicating effectively.

(b) Officers should be careful to pick a comfortable location for a meeting between the juvenile and the parent, guardian, or custodian. A private, safe location such as an office at the police station may be an ideal meeting place. If the juvenile has been arrested, it may be best to meet in the location of the arrest.

Under ideal conditions, an office is the best place. The atmosphere is controlled. It is more secure and less dangerous than the home. There is more privacy and fewer distractions such as TV, other children, animals, or neighbors that could be in the home.

(c) Suggested procedure for the initial meeting

i) Insist on privacy.

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- ii) Sit down, be relaxed, do not be in a hurry, explain the reason for having their child in custody, and the purpose of the meeting.
- iii) Law enforcement need to be careful that they are not in a situation that would qualify as a custodial interrogation. This is more challenging with youth because age is a factor. If the juvenile makes statements in this setting that can be used against them, they will be suppressed if the juvenile is not read his or her rights.

Alternately, law enforcement can tell the parent what they believed happened without eliciting a statement from the juvenile.

- iv) Confirm the information that the juvenile has given.
- v) Ask the parents if they are experiencing any problems with the child or if they have any information that would be helpful such as any previous arrests, his or her emotional health, his or her school work, or any other information that helps you make your disposition.
- vi) If appropriate, discuss criteria for diverting the child from court. Officers should explain that in appropriate situations, they may have the authority to divert the case and require other remedial measures. Officers should also discuss the possibility that a victim or the State may wish to seek a petition instead of diversion. Officers should discuss the role of the court counselor and that the family may be contacted by one to discuss the case.

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- vii) To determine whether diversion is appropriate, officers should consider the nature of the offense, the age of the juvenile, the history or previous record, if any, of the juvenile, the willingness of the juvenile and parents to participate in alternative programs and the availability of resources for the family.
  - viii) Officers should also explain that if the juvenile refuses to participate in the diversion requirements, or fails to complete any requirements, a petition may still be sought and the case may be sent to court. Whenever the facts confirm that the juvenile has violated the law—whatever the disposition—an arrest record and juvenile contact report should be made and maintained in the proper place in the department’s records according to departmental rules.
  - ix) The officer should notify the juvenile/family that they intend to file a complaint and should expect to be contacted by Juvenile Justice.
- d) Release the juvenile to the juvenile’s parent, guardian or custodian;

**NOTE: Show slide, “Release to Parent, Guardian, or Custodian.”**

Provide parents’/guardians’/custodians’ contact information for appropriate resources, including community mental health agencies, DSS, or the local Juvenile Court Counselor’s Office.

- e) Refer the juvenile to community resources; dispositional alternatives for delinquent juveniles

**NOTE: Show slides, “Dispositional Alternatives for Delinquent Juveniles.”**

If an officer refers a juvenile to appropriate community resources, he or she should notify the local Juvenile Court Counselor’s office so that a consultation note can be made in



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the event the juvenile returns to the system in a more formal manner.

- (1) Officers should also be aware of alternatives for juveniles adjudicated delinquent. Law enforcement officers can choose not to file a complaint, instead referring the youth to appropriate local resources. The courts must select a disposition designed to meet the needs and best interests of the juvenile, and to protect the public, based on the following:<sup>172</sup>
  - (a) The seriousness of the offense;
  - (b) The need to hold the juvenile accountable;
  - (c) The importance of protecting the public safety;
  - (d) The degree of culpability indicated by the circumstances of the case;
  - (e) The rehabilitative and treatment needs of the juvenile, as indicated by a needs assessment.
  
- (2) Depending on the court's determination of the above factors, they may fashion a disposition that best suits the needs of the juvenile and the public. Depending on the severity of the offense, the nature of the adjudication, and the history of the juvenile, the court may order various requirements. These include, but are not limited to:
  - (a) Require the juvenile to be supervised in their own home by the department of social services, a juvenile court counselor, or another person; be placed in the custody of a parent, guardian, custodian, relative, or private agency; or be placed in the custody of the department of social services.
  - (b) Order the juvenile to cooperate in a community-based program, including treatment programs or residential treatment programs;

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- (c) Order the juvenile to perform community service;
  - (d) Order the juvenile to pay restitution;
  - (e) Regular or intensive probation;
  - (f) Order the juvenile to participate in the victim-offender reconciliation program;
  - (g) Order the juvenile to submit to house arrest;
  - (h) Order the juvenile to cooperate with a wilderness program;
  - (i) Order the juvenile to be confined to a juvenile detention facility or group home or placement in a youth development center.<sup>173</sup>
- f) Seek a petition; or
  - g) Seek a petition and request a custody order.
- (1) Non-custodial interview guidelines

**NOTE: Show slides, “Non-Custodial Interview Guidelines.”**

Officers must recall that when they interrogate an individual in a custodial setting, *Miranda* warnings are required to be given. When a juvenile is interrogated in custody, juvenile *Miranda* warnings must be given, which include additional rights. When an interrogation occurs in a non-custodial setting, *Miranda* warnings are not required.

Officers should be cognizant of the factors a court may use to determine whether an individual is in custody for the purpose of *Miranda* warnings. The courts will assess whether a reasonable person in the “position of the questioned individual would believe himself to be in custody or that he had been deprived of his freedom of action in some significant way.”<sup>174</sup> When it comes to juveniles, since age is a factor in the custody analysis, this changes to a reasonable child standard – would a

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reasonable child of that age believe he or she is under arrest or restrained from movement to the degree of arrest?<sup>175</sup>

Some factors the court may consider include, but are not limited to:<sup>176</sup>

- (a) Language used by the officer, including advising the juvenile that they are not under arrest or are free to leave;
  - (b) How many officers participate in the interrogation;
  - (c) The age of the juvenile;
  - (d) The time, place and nature of the interrogation;
  - (e) The extent to which the defendant was restrained or free to leave;
  - (f) The presence of weapons;
  - (g) The use of locked doors;
  - (h) Whether handcuffs were applied;
  - (i) The use of posted guards.
- (2) Questioning of juveniles in the school setting

**NOTE: Show slide, “Questioning of Juveniles in the School Setting.”**

The North Carolina Court of Appeals has provided additional guidance for what constitutes custodial interrogation in the context of questioning juveniles at school.<sup>177</sup>

The presence of a school resource officer (SRO) or other law enforcement officer while a student is questioned by a school official weighs heavily on the scale when determining whether what otherwise might appear to be a voluntary encounter is actually custodial

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interrogation but it does not alone determine whether it is custodial interrogation.

While an interview by a school officer that features heavy SRO involvement or direction will often qualify as a custodial interrogation, the courts look at the presence and involvement of the SRO along with other factors to determine if the situation is “custodial” and if the juvenile is being subjected to “interrogation.”<sup>178</sup> No one single factor is controlling.<sup>179</sup>

(a) Custody in the school setting

The courts look at the following factors to determine if the juvenile was in custody when questioned in the school setting:<sup>180</sup>

i) Traditional indicators of arrest

If the student was handcuffed, transported in a police car, subjected to a search of his or her person or belongings, or otherwise bodily restrained, this is a strong indicator of custody.

ii) The location of the interview

If the interview was conducted in a location that a reasonable child might consider confining this tends to show custody. On the other hand, if the interview was held in a place where the child is likely to feel comfortable and at ease, this tends to show the child was not in custody.

iii) The length of the interview

A long drawn out questioning tends to show the child was in custody, whereas a very brief questioning does not. Other relevant factors include whether the child was offered a place to sit or offered

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common courtesies such as food, water and bathroom breaks.

- iv) The student's age

The younger the student the more sensitive the student will be to circumstances that could be considered coercive.

- v) What the student is told about the interview

If the student is informed he or she is free to leave, that answering questions is not required, or is offered an opportunity to call a parent or guardian, then this tends to show that the student was not in custody. On the other hand, if the student is not informed about the nature of the interview and is not told whether his or her presence is compulsory or mandatory, this weighs in favor of a finding that the student was in custody. A student is in custody if he or she is expressly told not to leave.

- vi) The people present during the interview; and.

If the student is questioned in the presence of multiple SROs, other law enforcement officials, or even by numerous school officials, this tends to show the juvenile was in custody. On the other hand, if a parent, guardian, or other person who can advocate for the child (such as a guidance counselor) is present or nearby during the interview, this weighs against a finding of custody.

- vii) The purposes of the questioning

If the interview was the result of specific

criminal suspicion directed toward the student, this weighs in favor of a finding of custody. On the other hand, if the interview is a disciplinary investigation into the breaking of school rules and its result is unlikely to involve the criminal justice system, this weighs against a finding of custody.

(b) Interrogation in the school setting

The courts look at the following factors to determine if questioning in the school setting constitutes interrogation:<sup>181</sup>

- i) The nature of the questions asked (interrogative or mandatory);

If the questions were mostly open-ended, this weighs against a conclusion that the interview was an interrogation. On the other hand, if the questions are accompanied by imperative statements suggesting compliance is mandatory (e.g. “you have to tell me the truth”), this supports the conclusion that the questioning was an interrogation. The tone of voice, volume, and body language used by the questioner are also relevant here.

- ii) The willingness of the juvenile’s responses; and

If the juvenile makes a wholly unsolicited or spontaneous statement, such a statement is unlikely to be made in the context of interrogation. On the other hand, if the juvenile expresses hesitancy or reluctance to answer, claims ignorance of a subject, or must be coaxed into answering, this weighs in favor of a finding of interrogation.

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- iii) The extent of the SROs involvement.

If the SRO was not present for the entirety of the questioning or for significant portions of it, the absence of the officer can weigh against the conclusion that the questioning qualified as an interrogation. On the other hand, if the SRO directs the questioning, either by leading it or participating heavily in it, this weighs in support of the conclusion that the questioning was interrogation. A custodial interrogation can occur even when the SRO is present while a student is interviewed by school officials but does not ask questions.

- (3) Interrogation procedures

**NOTE: Show slide, “Interrogation Procedures.”**

A law enforcement officer who wishes to conduct a custodial interrogation of a juvenile must follow the governing statutory procedures. Officers must be cognizant that juvenile *Miranda* warnings contain extra elements not contained in adult warning, and juveniles have different rights depending on their ages.

- (a) As with any case wherein an officer conducts a custodial interrogation, the officer must properly advise the juvenile of his or her constitutional rights, as required by the United States Constitution, by giving *Miranda* warnings. In addition to the usual *Miranda* warnings, the interrogating officer must advise the juvenile of the additional statutory right to have a parent, guardian, or custodian present during questioning.

“Any juvenile in custody must be advised prior to questioning:

- i) That the juvenile has the right to remain silent;

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- ii) That any statement the juvenile does make can be and may be used against the juvenile;
- iii) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
- iv) That the juvenile has the right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.”<sup>182</sup>
- v) There is no requirement that a juvenile show financial need before counsel is appointed. Juveniles are presumed indigent, and counsel must be provided if requested.<sup>183</sup>

**NOTE: Distribute juvenile rights warning cards. Show slide and refer students to “Juvenile *Miranda* Warning” handout.”**

- (b) Officers must be very careful to check the age of any juvenile before a custodial interrogation, as the rights of the juvenile are specific to age. The required warnings must be given whenever officers arrest (or otherwise take into custody) and wish to question a person who is less than eighteen, who is not a member of the armed forces or emancipated by marriage or court order. If the juvenile is sixteen or older, the juvenile may waive his or her rights (i.e., choose not to invoke the protections guaranteed him or her via his or her rights) and make a statement without a parent, guardian, custodian, or attorney present.<sup>184</sup>
- (c) When a juvenile is under the age of sixteen, the juvenile must have a parent, guardian, custodian, or attorney present for any admission or confession to be admissible.



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- (d) To obtain a valid waiver of a juvenile's rights, an interrogating officer must not only advise the juvenile of those rights, the officer must also be able to show that the juvenile understood his or her rights and voluntarily, knowingly, and understandingly waived his or her rights. Officers are not required to explain the juvenile's rights in any greater detail than *Miranda* requires, even in cases involving juveniles.<sup>185</sup> Officers should be careful to document why they believe a waiver is knowingly, voluntarily, and understandingly made.

If a court finds that a waiver was not made knowingly, voluntarily, and understandingly, then any statement made by the juvenile under the custodial interrogation cannot be admitted in evidence. The court will consider all of the circumstances surrounding the statement when making its determination, including the interrogating officers' conduct before and during the interview, the juvenile's age and physical and mental condition (including any intoxication or influence of alcohol/drugs), the length of the interview, and the environment in which the interview took place (e.g., closed, locked door in small room in the police department).

- (e) If the juvenile indicates in any manner and at any stage of the questioning that the juvenile does not wish to be questioned further, the officer shall cease questioning.<sup>186</sup>
- (f) An officer who wishes to conduct a custodial interrogation of a juvenile should consider the following suggestions:
- i) Always use the printed card to advise *Miranda* to ensure the rights are read accurately.

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- ii) Use a written waiver of rights form. Read everything to the juvenile and have him or her follow along with you and initial each section so that you will later be able to show that the juvenile understood and acknowledged his or her understanding of his or her rights.
- iii) All custodial interrogations of a juvenile in criminal investigations conducted in a place of detention must be electronically recorded in its entirety, from the time when the juvenile is advised of the *Miranda* rights until completion of the interview.<sup>187</sup> The electronic record may be an audio recording or a visual recording. Whenever feasible, an audio and visual recording should be “simultaneously produced.” A place of detention is a “jail, police or sheriff’s station, correctional or detention facility, holding facility for prisoners, or other facility where persons are held in custody in connection with criminal charges.”<sup>188</sup>
- iv) Keep meticulous notes regarding the interview. Note beginning and end times, the interview environment, the juvenile’s physical and apparent mental/emotional condition, the juvenile’s answers to all of your questions (including questions regarding his or her background, date of birth, family, address, and so on – the juvenile’s ability to respond correctly and recognition of his or her circumstances will help to show his or her understanding), your conduct (including what you said), and the like.

(4) Notification of parent and school

**NOTE: Show slide, “Notification of Parent and School.”**

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**NOTE: The language of N.C.G.S. § 15A-505, which forms the basis of this part of the lesson, is only applicable in the event the minor is charged as an adult and processed like an adult.<sup>189</sup> After December 1, 2019, this will be a very rare occurrence. If a minor/juvenile is being processed through the juvenile justice system, the officer should only make the notifications required by N.C.G.S. § 7B-1901 upon taking temporary custody of the juvenile, if that is warranted. The juvenile court counselor will be responsible for any additional notifications.**

A law enforcement officer who *charges* a minor with a criminal offense must notify the minor's parent or guardian of the charge, as soon as practicable, in person or by telephone. In cases where a minor is criminally *charged* with a felony, except in cases for charges falling under Chapter 20 of the General Statutes, the officer must also notify the principal of any school the charged juvenile attends. The notification must be made as soon as practicable, but within five days either by telephone or in person. This will only occur if the minor falls under the bar to juvenile court jurisdiction that is triggered by a criminal conviction prior to the new offense (G.S. 7B-1604(b), referred to as "once an adult, always an adult"). Otherwise, all felonies that trigger this school notification will fall under the original jurisdiction of the juvenile court and school notification will be done only by the Juvenile Court Counselor, pursuant to G.S. 7B-3101.

If the minor is taken into custody, the law enforcement officer or his or her immediate superior (according to departmental policy) must notify a parent or guardian in writing that the minor is in custody within twenty-four hours of the minor's *arrest*. The officer or his or her immediate supervisor must also notify any school the person attends. The notification must be in writing and must be made within five days of the person's arrest.

If the parent or guardian of the minor cannot be found, then the officer or his or her immediate superior must notify the minor's next of kin of the minor's arrest as soon as practicable.

No notification to the parent or guardian by the officer is required for a minor who is either charged or in custody if:<sup>190</sup>

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- (a) The minor is emancipated.
- (b) The minor is not taken into custody and has been charged with a motor vehicle moving violation for which three or fewer points are assessed, except offenses involving impaired driving, or
- (c) The minor has been charged with a motor offense that is not a moving violation.

In cases where a juvenile petition is filed ~~is~~ alleging an offense that would be a felony if committed by an adult, ~~a~~ juvenile case is transferred to superior court, or the court issues an order requiring a condition of school attendance, a juvenile court counselor is responsible ~~of~~ for notifying the principal of the school the juvenile attends. Law enforcement is not legally authorized to make school notifications in juvenile cases.<sup>191</sup>

- (5) Fingerprints and photographs

**NOTE: Show slide, “Fingerprints and Photographs.”**

- (a) A law enforcement officer or agency shall fingerprint and photograph a juvenile.<sup>192</sup>
  - i) Who was ten years old or older;
  - ii) At the time of allegedly committing a nondivertible offense;
  - iii) A complaint has been prepared for filing as a petition, and
  - iv) The juvenile is in the physical custody of law enforcement or DACJJ.

In the very limited circumstances described above, the North Carolina General Statutes mandate the fingerprinting and photographing of juveniles. If law enforcement wishes to fingerprint or photograph a juvenile

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when statutes do not mandate, then law enforcement must seek a nontestimonial identification order from the court. Nontestimonial identification orders, as well as the consequences of failing to secure a nontestimonial identification order for these procedures, will be covered later in this lesson plan.

- (b) If a law enforcement agency does not take fingerprints of a juvenile under the above section or the prints have been destroyed, the officer must fingerprint and photograph a juvenile:<sup>193</sup>
  - i) Who has been adjudicated delinquent;
  - ii) Who was ten years old or older at the time the offense was committed; and
  - iii) The offense would be a felony if committed by an adult.
- (c) All fingerprints and photographs must be made in proper format for transfer to the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI). After a juvenile who is ten years or older has been adjudicated delinquent of a felony, the fingerprints must be sent to the SBI and placed in the Automated Fingerprinting Identification System (AFIS) to be used for all investigative and comparison purposes.<sup>194</sup> Other than this electronic file, fingerprints and photographs must be maintained separately from any juvenile record. They are not public record, must be withheld from inspection and are not eligible for expunction.<sup>195</sup>
- (d) If a juvenile is fingerprinted and photographed, the custodian of records must destroy them at the earlier of the following:<sup>196</sup>
  - i) A petition is not filed within one year of the photographing or fingerprinting.

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The court does not find probable cause.

- ii) Juvenile is not adjudicated delinquent of a felony or misdemeanor.
  - iii) Consult your departmental policy and refer to the “Fingerprinting and Photographing Arrestee” block of instruction for further information.
- (e) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted, and the juvenile’s fingerprints shall be sent to the SBI. A DNA sample shall be taken from the juvenile if any of the offenses for which the juvenile is transferred include murder, rape and other sex offenses, assault with a deadly weapon inflicting serious bodily injury, kidnapping, armed robbery, and various other offenses.<sup>197</sup>
- (f) An officer also must photograph certain juveniles during a “show-up.” If the juvenile is ten years of age or older at the time of the show-up and is alleged to have committed a nondivertible offense or common-law robbery the investigating officer must photograph the juvenile.<sup>198</sup> A photograph is required at these show-ups. Photographing a juvenile at a show-up under any other circumstances is not authorized without a nontestimonial identification order.

### 2. Nontestimonial identification order

**NOTE: Show slides, “Nontestimonial Identification Order.”**

Except for the exceptions for fingerprinting and photographing of juveniles mentioned above, nontestimonial identification procedures shall not be conducted on a juvenile without a court order unless the juvenile has been charged as an adult or transferred to superior court for trial as an adult. A nontestimonial identification order (NTO) may be issued by any judge of district or superior court on request of a prosecutor. Any law enforcement officer who wishes to conduct

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nontestimonial identification must first consult with the district attorney or assistant district attorney, who must then make application for the order to a District or Superior Court Judge.<sup>199</sup>

The request for a nontestimonial identification order can be made before taking the juvenile into custody or before an adjudicatory hearing.<sup>200</sup> A juvenile may also request a nontestimonial identification order if they are alleged to have committed an offense that would be a felony if committed by an adult.<sup>201</sup> Nontestimonial evidence includes fingerprints, hair samples, blood or urine specimens, saliva, photographs or lineups, or other physical evidence obtained through identification procedures that require the presence of the juvenile.

- a) To secure a nontestimonial identification order from the court for anything but a blood specimen, an officer must establish:
  - (1) “That there is probable cause to believe that an offense has been committed that would be a felony if committed by an adult;
  - (2) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and
  - (3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense.
  
- b) A nontestimonial identification order to obtain a blood specimen from a juvenile may be issued only on the following grounds:
  - (1) That there is probable cause to believe that an offense has been committed that would be a felony if committed by an adult;
  - (2) That there is probable cause to believe that the juvenile named or described in the affidavit committed the offense, and
  - (3) That there is probable cause to believe that obtaining a blood specimen from the juvenile will be of material aid in determining whether the juvenile named in the

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affidavit committed the offense.”<sup>202</sup>

- c) No statement may be taken from the juvenile during a nontestimonial identification procedure unless the juvenile has counsel present.<sup>203</sup>
- d) Officers must be careful not to willfully violate any of the provisions involving nontestimonial identification orders of juveniles, as a violation is a Class 1 misdemeanor.<sup>204</sup>
- e) Destruction of NTO records

**NOTE: Show slide and distribute handout, “Destruction of NTO Records.”**

While law enforcement must maintain evidence in criminal cases, there are instances where results of nontestimonial identification orders must be destroyed. These include:<sup>205</sup>

- (1) If no petition is filed against the juvenile;
- (2) If the juvenile is not adjudicated delinquent or convicted following a transfer to superior court;
- (3) If a juvenile under the age of thirteen is adjudicated delinquent for an offense that would be less than a felony if committed by an adult.

In cases where a juvenile thirteen years of age or older is adjudicated delinquent for an offense that would be a felony if committed by an adult, or a case is transferred to and results in conviction in superior court, all results of nontestimonial identification orders must be retained.

- 3. Screening of delinquency, undisciplined, and vulnerable complaints by juvenile intake services

**NOTE: Show slide, “Screening of Delinquency and Undisciplined Complaints by Juvenile Intake Services.”**

- a) Primary inquiry

The purpose of juvenile intake services is to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true, whether or not it’s within the



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jurisdiction of the juvenile court (meets proper age and offense type requirements), whether or not the facts warrant court action, and to obtain assistance from community resources when court referral is not necessary or allowed.”<sup>206</sup> The juvenile court counselor does not engage in investigation but can refer the complaint to law enforcement.

- (1) “When a complaint is received against a juvenile at least ten 10 years of age, the juvenile court counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the juvenile court counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, the juvenile court counselor, without further inquiry, shall refuse authorization to file the complaint as a petition.
- (2) When a complaint is received against a juvenile less than ten 10 years of age, the juvenile court counselor shall make a preliminary determination as to whether the juvenile is a vulnerable juvenile or is within the jurisdiction of the court as a delinquent juvenile. If the juvenile court counselor determines the juvenile is within the jurisdiction of the court as a delinquent juvenile, the juvenile court counselor shall proceed with the complaint pursuant to subsection (a) of this section. If the juvenile court counselor determines the juvenile is a vulnerable juvenile, the juvenile court counselor shall handle the complaint as a juvenile consultation for a vulnerable juvenile.”<sup>207</sup>

b) **Nondivertible offenses**

The juvenile court counselor shall authorize the complaint to be filed as a petition if the juvenile court counselor finds reasonable grounds to believe that the juvenile has committed a nondivertible offense.<sup>208</sup> The juvenile court counselor may also decide to not file a petition and handle the complaint as a juvenile consultation for a vulnerable juvenile, or handle the complaint in some other manner authorized by Article 17.<sup>209</sup>

Nondivertible offenses include:<sup>210</sup>

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**NOTE: Show slide, “Nondivertible Offenses.”**

- (1) Murder
- (2) First-degree rape or second degree rape
- (3) First-degree sexual offense or second degree sexual offense
- (4) Arson
- (5) Felony violations of Article 5, Chapter 90
- (6) First-degree burglary
- (7) Crime against nature, or
- (8) Any felony involving the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon.

c) Evaluation of complaint<sup>211</sup>

Intake counselors conduct several assessments to survey the needs of the juvenile, the present issues, and to determine the best course of action, including any needed referrals.

d) Complaint evaluation decision

If the complaint is approved for filing as a juvenile petition, it is transmitted to the clerk of superior court.<sup>212</sup>

If the intake counselor decides not to file a petition or the complaint will be handled as a juvenile consultation, the complainant and victim must be notified immediately in writing with reasons for the decision as well as notice of the complainant’s and victim’s right to have the decision reviewed by the prosecutor.<sup>213</sup>

“Any complaint not approved for filing as a juvenile petition or handled as a juvenile consultation shall be destroyed by the juvenile court counselor after holding the complaint for a temporary period to all review as provided in G.S. 7B-1705. If the juvenile court counselor determine that a complaint should

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be handled as a juvenile consultation, the juvenile court counselor shall obtain referral information.”<sup>214</sup>

e) Diversion plan/referral<sup>215</sup>

Unless the offense is nondivertible, the juvenile court counselor, after finding legal sufficiency, may divert the juvenile to:

- (1) An appropriate public/private resource
- (2) A restitution program
- (3) Community service
- (4) Victim/offender mediation
- (5) Counseling
- (6) A teen court program

**NOTE: Show slide and refer students to handout, “Teen Court Program and Diversion Plans.”**

As part of the diversion plan, the juvenile court counselor may serve a vulnerable juvenile under a juvenile consultation which explains the role of Court Services, the parents, and the juvenile as well as the conditions required of the juvenile. The juvenile consultation services cannot exceed six months. An extension of juvenile consultation services may be made for up to three months at the approval of the chief court counselor. As part of case management services, the juvenile court counselor shall provide screenings, assessments, community resources, and programming to the juvenile and the parent, legal guardian, or custodian. If at any time during the six months, the counselor feels that the juvenile has failed to comply with the terms of the contract, a petition/complaint may be filed.

In any case in which a juvenile has allegedly committed an offense that would be an infraction or misdemeanor if committed by an adult, the juvenile may also be referred to teen court. Cases cannot be referred to teen court if the juvenile is alleged to have committed an offense involving driving while impaired, a Class A1 misdemeanor, an assault in which a

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weapon was used, or a controlled substance offense other than simple possession of a Schedule IV drug or alcohol.

### 4. Petition and summons by Juvenile Court Services

**NOTE: Show slide, “Petition and Summons by Juvenile Court Services.”**

- a) All petitions must contain the name, date of birth, physical address of the juvenile, and the name and physical address of the juvenile’s parent, guardian, or custodian. It should contain facts which invoke jurisdiction as well as a statement asserting the facts which support every element of the offense.<sup>216</sup> The petition cannot contain information on more than one juvenile, so separate petitions must be done for each juvenile involved in an incident. The petition and juvenile summons alleges an offense committed by a juvenile and a time to appear in court for hearing.
- b) Your local juvenile court counselor can provide additional information on how to file a petition. Some districts permit officers to drop off reports and later return to sign a completed complaint. Others require the officer to complete the complaint. A good working relationship with your local office will help you best proceed with complaint filing.

**The petition does not authorize taking physical custody of the juvenile.<sup>217</sup>**

**NOTE: Show slide and distribute handouts, “Juvenile Petition,” “Juvenile Contact Report and “N.C. Juvenile Delinquency Process.” Copies of petitions can be obtained from the following website: [www.nccourts.org](http://www.nccourts.org)**

- c) Filing the petition

**NOTE: Show slide, “Filing the Petition.”**

The juvenile court counselor draws the petition, and if a counselor is not available, a clerk of court may assist. The action against the juvenile is commenced after the petition is filed in the clerk’s office or verified and accepted by a magistrate if the clerk’s office is not open and the situation is an emergency requiring a custody order.<sup>218</sup>

- d) Summons

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**NOTE: Show slide, “Summons.”**

Immediately after a petition has been filed alleging that a juvenile is undisciplined or delinquent, the clerk must issue a summons. The summons and petition must be personally served on the parent, guardian, or custodian and juvenile not less than five days before the hearing. The summons must give the juvenile and his or her parent, guardian, or custodian notice of the nature and purpose of the proceeding, notice of the right to counsel, and how to seek the appointment of counsel and information concerning the possible outcomes of an adjudicatory hearing. The parent, guardian, or custodian must also be advised that they must attend the scheduled hearings and bring the juvenile to each hearing, and that failure to do so may result in proceedings for contempt of court.<sup>219</sup>

Even though a person may know about the petition, a proper summons must be served for the court to retain jurisdiction over the person. The summons is directed to the person who is being ordered to appear and must be properly delivered under statute, by a person authorized to serve it.<sup>220</sup>

5. Seek a petition and request custody order
  - a) Temporary custody

As is the case with abused, neglected, or dependent juveniles, juveniles who are undisciplined or delinquent can also be taken into temporary, secure, or nonsecure custody in certain circumstances.

**NOTE: Show slide, “Temporary Custody.”**

- (1) Officers are authorized to take juveniles into temporary custody without court orders in certain circumstances. Temporary custody is the taking of physical custody and providing personal care and supervision until a decision is reached regarding the disposition of the incident, which may include obtaining a court order for secure or nonsecure custody.<sup>221</sup> Law enforcement officers are permitted to take the following types of juveniles into temporary custody:
  - (a) Delinquent<sup>222</sup>

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If grounds exist for the arrest of an adult under identical circumstances under G.S. 15A-401(b), the statute which governs arrests.

(b) Undisciplined juvenile

If there are reasonable grounds to believe that the juvenile is an undisciplined juvenile.

(c) Absconder

If there are reasonable grounds to believe that the juvenile is an absconder (one who has escaped custody) from a residential facility operated by the Division or from another approved detention facility. This is usually confirmed through an NCIC report. Not only can law enforcement officers detain these juveniles, but juvenile court counselors, personnel of the Division, and members of various facilities can also detain these individuals.

**NOTE: Show slide, “Amount of Force.”**

- (2) An officer who attempts to take a juvenile into temporary custody is bound by the same restrictions as one who attempts to take an adult into custody under similar circumstances. An officer may use only that amount of force which is reasonably necessary to accomplish the intended purpose (i.e., to take temporary custody where authorized).<sup>223</sup>

Merely handcuffing, at school, a very young (10 yrs.) unarmed and compliant juvenile suspected of a misdemeanor simple assault, who poses no threat to the officer or others has been held to be excessive force.<sup>224</sup>

Deadly force cannot be used to prevent escape or effect custody of a juvenile when the juvenile presents no imminent threat of death or serious injury to officers or third person.<sup>225</sup>

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- (3) Duties of officers taking juveniles into temporary custody without court order<sup>226</sup>

**NOTE: Show slides, “Duties of Officers Taking Juveniles into Temporary Custody without Court Order.”**

A juvenile who is taken into temporary custody without a court order shall not be held for more than twelve hours, or for more than twenty-four hours if any of the twelve hours falls on a Saturday, Sunday, or local holiday, unless a petition has been filed by an intake counselor and an order for secure or nonsecure custody has been entered.

An officer who takes a juvenile into temporary custody without a court order, under one of the circumstances enumerated above, must proceed as follows:

- (a) Notify the juvenile’s parent, guardian, or custodian that the juvenile has been taken into custody and advise the person of his or her right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent shall not be grounds to release the juvenile.
- (b) Release the juvenile to his or her parent, guardian, or custodian if the officer decides that continued custody is unnecessary.
- (c) If the juvenile is not released (as provided for in (b) above), the officer should communicate with a juvenile court counselor, who shall decide for filing the petition and the need for continued custody.
- (d) An officer who takes a juvenile into temporary custody after the juvenile has absconded from a youth development center or juvenile detention facility (as described above) must contact Court Services to arrange for an order for secure custody and transportation of the juvenile to the nearest juvenile detention facility. The officer

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must also contact the administrator of the facility from which the juvenile absconded. That administrator will be responsible for returning the juvenile to that facility.

b) Secure and nonsecure custody orders

**NOTE: Show slide, “Nonsecure and Secure Custody Orders.”**

(1) Authority to issue custody orders

“Any district court judge may issue secure and nonsecure custody orders. The chief district court judge may also delegate the court’s authority to the chief court counselor or their staff by administrative order filed in the office of the clerk of superior court. The administrative order shall specify which persons may be contacted for approval of a secure or nonsecure custody order. The Chief district court judge shall not delegate the court’s authority to detain or house juveniles in holdover facilities pursuant to G.S. 7B-1905 or G.S. 7B-2513.

Any superior court judge may issue a secure custody order pursuant to G.S. 7B-1903 when a juvenile matter that has been transferred to superior court is remanded to district court pursuant to G.S. 7B-2200.5(d).”<sup>227</sup> “The prosecutor shall provide the chief court counselor or his or her designee with a copy of the joint motion prior to submitting the motion to the court. The superior court shall expunge the superior court record in accordance with G.S. 15A-145.8 at the time of remand, and, if the juvenile meets the criteria established in G.S. 7B-1903, may issue an order for secure custody upon the request of a prosecutor. The prosecutor shall provide a copy of any secure custody order issued to the chief court counselor or his or her designee, as soon as possible and no more than 24 hours after the order is issued.”<sup>228</sup> Officers should be aware of local procedures.

(2) Criteria for nonsecure custody<sup>229</sup>

When there is a request for nonsecure custody, the court must first consider release of the juvenile to the



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juvenile's parent, guardian, custodian, or other responsible adult. An order for nonsecure custody must only be made when there is a reasonable factual basis to believe the matters alleged in the petition are true and that:

- (a) The juvenile is a runaway and consents to nonsecure custody, or
  - (b) The juvenile meets one or more of the criteria for secure custody, but the court finds it in the best interest of the juvenile that the juvenile be placed in a nonsecure placement.
- (3) Criteria for secure custody

**NOTE: Show slides, "Criteria for Secure Custody."**

When a secure custody order is requested, the court may order secure custody only where the court finds there is a reasonable factual basis to believe that the juvenile committed the offense alleged in the petition and one of the following circumstances exists:<sup>230</sup>

- (a) The juvenile is charged with a felony, and it is demonstrated that the juvenile is a danger to property or persons.
- (b) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person, (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon, or (iii) is charged with impaired driving or driving by a person less than twenty-one years old after consuming alcohol or drugs.
- (c) The juvenile who has been properly notified has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post release supervision.

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- (d) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.
- (e) There is reasonable cause to believe the juvenile should be detained for the juvenile's protection because the juvenile has recently suffered or attempted self-inflicted physical injury. The period of custody in these instances is limited to twenty-four hours to determine the need for inpatient hospitalization.
- (f) The juvenile is alleged to be undisciplined because he or she is a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody, and the court finds that secure custody for up to twenty-four hours (excluding weekends and holidays) is necessary to evaluate the juvenile's medical or psychiatric needs and determine possible treatment, or to facilitate a reunion with the parents, guardian, or custodian. The court counselor/law enforcement officer will work to provide all medical/mental health history that can be obtained to the secure custody facility.
- (g) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice. In these cases, the juvenile must be brought to court as soon as possible and not held more than twenty-four hours, excluding weekends and holidays.
- (h) The juvenile is an absconder from any residential facility operated by DACJJ or any detention facility in this State or any comparable facility in another state.

When a juvenile has been adjudicated delinquent, the court can order secure custody pending a dispositional hearing or pending placement.

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The court may order secure custody for a juvenile who's alleged to have violated the conditions of probation or post-release supervision, but only if the juvenile is alleged to have committed acts that damage property or injure persons.

If criteria is met for secure custody, the court can enter an order directing an officer or other authorized person to assume custody of the juvenile and take him or her to the place designated in the order.

If the court finds there is a need for a medical or psychiatric evaluation of the juvenile, the juvenile is under ten years of age and does not have a pending delinquency charge, a law enforcement officer or other person assuming custody under the custody order cannot use physical restraints during transport unless the officer or other person assuming custody determines the restraints are necessary for the safety of the officer, the person assuming custody or the juvenile.<sup>231</sup>

- (4) The Division of Adult Correction and Juvenile Justice has incorporated the use of the Detention Assessment Tool (DAT) for every request for secure custody to ensure uniformity of the decision-making process for placing juveniles in detention and that appropriate conditions of confinement are being used.

**NOTE: Show slide, "Factors Used to Determine Need for Secure Custody."**

Factors used to determine the need for secure custody include:<sup>232</sup>

- (a) Seriousness of the crime
- (b) That the offense meets the criteria as set out in N.C.G.S. § 7B-1903
- (c) Supervision history with the Division

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- (d) Aggravating circumstances such as the use of a weapon, injury to the victim, number of offenses at the time of the incident, gang membership, prior referrals to detention, etc.
- (e) Mitigating circumstances such as available alternatives to detention, parent or other responsible adult available and willing to provide appropriate supervision, or no prior delinquent offenses.

### 6. Order for secure and nonsecure custody

**NOTE: Show slide, “Order for Secure and Nonsecure Custody.”**

A custody order must be in writing and direct a law enforcement officer or other authorized person to assume custody. The parent and child must be given a copy. Copies of the order and petition should be given to the person, agency, or detention facility where the juvenile is to be placed.<sup>233</sup>

A juvenile can be taken into secure custody based on a Division of Criminal Information Network (DCIN) message that a juvenile petition and a secure custody order related to the juvenile are on file in a particular county. Copies of the petition and order must be sent to the detention facility within seventy-two hours.<sup>234</sup> Best practice would be to contact your local juvenile court counselor before taking a juvenile into custody. The North Carolina Department of Public Safety (NCDPS) would prefer to have copies of all petitions and orders before, or immediately upon, intake. Your local court counselor will assist you in coordinating this communication.

#### a) Place of secure or nonsecure custody

**NOTE: Show slides, “Place of Secure and Nonsecure Custody.”**

##### (1) Nonsecure custody<sup>235</sup>

If a relative of the juvenile is not willing or able to provide care/supervision of the juvenile, the court may place the juvenile in nonsecure custody with a department of social services or person designated in the order for temporary residential placement in a licensed foster home or other authorized home; a

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facility operated by a department of social services; or any other home/facility approved by the court. Officers should become familiar with what nonsecure resources are available in their jurisdiction.

(2) Secure custody<sup>236</sup>

A juvenile may be temporarily detained in a juvenile detention facility approved by the Juvenile Justice Section of DACJJ.<sup>237</sup> In such cases, keep the following in mind:

- (a) Juveniles often have extreme reactions to secure custody that differ from adults. Juveniles have less impulse control and understanding of consequences and less control over their emotions. They may have an emotional outburst or completely withdraw. While these behaviors can be normal reactions to trauma, officers should not hesitate to consult for medical treatment if the circumstances warrant. Additionally, officers should keep in mind the principles of establishing rapport and verbal de-escalation when the juvenile begins to demonstrate a strong reaction.
- (b) Officers should not make promises they cannot keep. Once a juvenile is in custody, the court will determine future actions. Juveniles often hold on to the promises officers make, and this can further their trauma later on when their expectations are not met. Additionally, this can undermine the juvenile's trust in law enforcement during future interactions.
- (c) When delivering a juvenile to a detention center, expect to be required to surrender your weapon. No weapons are allowed in any NCDPS facility.
- (d) When a juvenile is transported, all medication, medical equipment, and/or components of health care needed to maintain the health and safety of the juvenile should be obtained. If, upon arrival at a detention center, the facility

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staff accepting the juvenile observes health concerns requiring evaluation, a request for law enforcement to transport the juvenile to a medical facility for medical clearance will be required.

- (e) Remain at the facility until the juvenile's initial search has been completed, in case contraband is found in his or her possession.

**NOTE: Show slide and distribute handout, "Juvenile Detention Centers," and review with students. Also, advise students that DACJJ policy is that when a law enforcement officer transports a juvenile, they may take the juvenile to the closest state-operated facility or their county's assigned detention center if those facilities are designated in the secure custody order. However, if a specific facility is designated in the secure custody order, the law enforcement officer or other person with custody must transport the juvenile to that specific facility.**

- b) Secure or nonsecure custody hearings<sup>238</sup>

**NOTE: Show slide, "Secure or Nonsecure Custody Hearings."**

No later than five calendar days after placing a juvenile in secure custody or seven calendar days in nonsecure custody, a hearing must be held either on the merits or to determine the need for further custody. If the initial custody order was entered by a juvenile court counselor under delegated authority, the juvenile must have a hearing on the need for continued custody on the next regularly scheduled session of district court in the city or county where the custody order was entered.

A hearing to determine the need for continued secure custody shall be held no more than ten calendar days following the issuance of a secure custody order on remand of the matter from superior court. A hearing may not be continued or waived. Subsequent hearings on the need for continued secure custody shall be held. The district court has authority to modify any secure custody order following the issuance of that order by the superior court as set forth in the general statutes.

Once a juvenile is placed in secure custody, the earliest he or she will be released is after he or she has had a secure custody

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hearing in front of a judge. Juveniles will not be released to his or her parent/guardian without a custody hearing.

### 7. Jurisdiction over delinquent juveniles

**NOTE: Show slide, “Jurisdiction Over Delinquent Juveniles.”**

- a) The court has exclusive original jurisdiction over any case involving a juvenile who is alleged to be delinquent. Jurisdiction continues until terminated by order of the court, or:<sup>239</sup>
  - (1) The juvenile reaches eighteen years of age if the offense occurred before the juvenile reached age sixteen; or
  - (2) The juvenile reaches nineteen years of age if the offense occurred at age of sixteen; or
  - (3) The juvenile reaches twenty years of age if the offense occurred while the juvenile was seventeen years old.

Special conditions for expanded jurisdiction for Class A – Class E felony offenses committed to a youth detention center for an offense committed at ages thirteen, fourteen, and fifteen may apply, in addition to the above rules.

- b) Transfer of jurisdiction to superior court

The vast majority of cases involving a juvenile originate in juvenile court. While most cases will be retained in juvenile court, some more serious cases can, and some must be transferred to superior court where a juvenile will be treated as an adult for prosecutorial purposes. If a juvenile was at least thirteen years of age but less than sixteen at the time the juvenile committed an offense that would have been any felony other than a Class A felony if committed by an adult, the juvenile may be transferred to superior court for trial as an adult.<sup>240</sup> All Class A felony offenses committed at age thirteen, fourteen and fifteen must be transferred to superior court following a finding of probable cause in juvenile court.

If a juvenile is sixteen or older at the time of committing an offense that would be a Class A, B1, B2, C, D, E, F, or G

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felony, the juvenile shall be transferred to superior court for trial as an adult following a finding of probable cause or a finding of the return of an indictment in the juvenile proceeding unless the prosecutor declines to prosecute in superior court after either: (1) providing notice to the juvenile and a finding by the court that a bill of indictment has been returned against the juvenile charging the commission of an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult, or (2) providing notice, hearing, and a finding of probable cause that the juvenile committed an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.<sup>241</sup>

“The prosecutor may decline to prosecute in superior court a matter that would otherwise be subject to mandatory transfer pursuant to subsection (a) of this section if the juvenile has allegedly committed an offense that would be a Class D, E, F, or G felony if committed by an adult. If the prosecutor declines to prosecute the matter in superior court, jurisdiction over the juvenile shall remain in juvenile court following a finding of probable cause pursuant to G.S. 7B-2202. Prior to adjudication, the prosecutor may choose to transfer the matter pursuant to subsection (a) of this section if the juvenile has allegedly committed an offense that would be a Class D, E, F, or G felony if committed by an adult.”<sup>242</sup>

If the offense committed is a Class H or I felony, the court has discretion to transfer the matter to superior court following a finding of probable cause in the juvenile proceeding.<sup>243</sup>

**NOTE: Show slide, “Probable Cause and Transfer Hearings.”**

For matters in which the court has discretion to transfer a case to superior court (all felonies other than Class A felonies committed at ages thirteen, fourteen, and fifteen and H and I felony offenses committed at ages sixteen and seventeen), the court of original jurisdiction must have a probable cause hearing and transfer hearing to determine whether the transfer is proper.<sup>244</sup>

(1) Probable cause hearings<sup>245</sup>

In all felony cases where a juvenile is thirteen, fourteen, or fifteen years of age when the offense is committed



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and in all felony cases where a juvenile is alleged to have committed a Class H or Class I felony at age sixteen or seventeen, the court shall conduct a probable cause hearing. The hearing must be conducted within fifteen days of the date of the juvenile's first appearance but may be continued for good cause, and the juvenile shall be represented by counsel. The purpose of the hearing is to determine whether there is probable cause to believe an offense was committed and that the juvenile committed it. If probable cause is found, the court can proceed to an adjudication if a transfer to superior court is not requested. If a motion for transfer is made, then the court must proceed to a transfer hearing. If probable cause is not found for any offense, the court must dismiss the proceeding. If probable cause is found only for a lesser included offense that would constitute a misdemeanor if committed by an adult, the court must proceed to an adjudicatory hearing.

A probable cause hearing may also be held in matters that allege Class A – Class G felony offenses committed at ages sixteen and seventeen. In these matters only, a probable cause hearing must be held within ninety days of the juvenile's first appearance. Transfer is required on a finding of probable cause in any of these matters. Alternatively, the prosecutor can choose to seek an indictment in these matters. If the juvenile receives notice and the court finds that an indictment has been returned prior to the ninety day deadline for a probable cause hearing, then the case must be transferred to superior court, and a probable cause hearing is not required.

### (2) Transfer hearings<sup>246</sup>

The purpose of a transfer hearing is for the court to determine whether “the protection of the public and the needs of the juvenile” will be best served by having the case heard in superior court.<sup>247</sup>

## 8. Juvenile records and confidentiality

**NOTE: Show slide, “Juvenile Records.”**

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There has been an effort to balance appropriate confidentiality and appropriate disclosure in cases involving juveniles. All records of juvenile cases involving abuse, neglect or dependency will be maintained by the clerk of court and can be inspected by the person named in the petition as the juvenile, the guardian ad litem, the county department of social services, the juvenile's parent, guardian, custodian, or an attorney for the juvenile or the juvenile's parent, guardian, or custodian.<sup>248</sup>

When a juvenile is in protective custody with the department of social services, those records are maintained at the department and may be inspected only by the juvenile's guardian ad litem; the juvenile; a district or superior court judge presiding over a civil matter involving the juvenile; a district or superior court judge presiding over a criminal or delinquency matter; or the parent, guardian, custodian, or caretaker.<sup>249</sup>

Juvenile court records in delinquency, undisciplined cases, delinquency cases, or any cases in which a vulnerable juvenile is receiving juvenile consultation services are also maintained by the clerk of court and can only be inspected by the juvenile or their attorney, the juvenile's parent, guardian, custodian, or authorized representative of those persons, the prosecutor, court counselors, probation officers, or anyone with a valid court order.<sup>250</sup> A prosecutor may share information with magistrates and law enforcement officers sworn in North Carolina but cannot allow them to make any copies of the records.<sup>251</sup>

Juvenile court counselor records are also confidential and can only be accessed by the juvenile and their attorney, the juvenile's parent, guardian, or custodian or authorized representative of those persons, professionals at DACJJ who are directly involved in the juvenile's case, and juvenile court counselors.<sup>252</sup> Other people can only access the records if a court issues an order allowing that access.

Effective October 1, 2017, amended N.C.G.S. § 7B-3001(a) and N.C.G.S. §7B-3001(a1) permit law enforcement consultations before filing a complaint. Juvenile court counselors shall share, upon request, information from the court counselor's record related to the juvenile's delinquency record or prior consultations with law enforcement. This information can only be shared under the condition that the law enforcement officer making the request is an officer sworn in North Carolina and is conducting an investigation that could lead to the filing of a juvenile complaint. Law enforcement officers are not permitted to

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receive copies of the record, and any information the officer obtains must be kept confidential and separate from other records.

**NOTE: Show slide, “Law Enforcement Records.”**

The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without a court order:<sup>253</sup>

- a) The juvenile or the juvenile’s attorney;
- b) The juvenile’s parent, guardian, or custodian, or that person’s authorized representative;
- c) The district attorney or prosecutor;
- d) Court counselors;
- e) Law enforcement officers sworn in this state.

### 9. Discussion Questions

**NOTE: Refer to the “Instructor Notes” section for hypothetical questions and have students formulate answers in groups of 2-4.**

**NOTE: Show slide, “Hypothetical Questions,” and discuss the hypothetical questions with the students.**

## IV. Conclusion

### A. Summary

During this block we have defined terms used in juvenile law; covered procedures utilized by law enforcement officers in dealing with juveniles including temporary custody, obtaining secure and non-secure custody orders, interrogation, and obtaining nontestimonial identification orders; covered the function of the juvenile court and court counselors; covered the officer’s role and protective services’ role in handling abused and neglected juveniles; covered dealing with complaints of missing juveniles; and covered procedures for holding conferences with the juvenile and his or her parents.

**NOTE: Show slides, “Training Objectives.”**

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1. Discuss the roles of the Department of Social Services (DSS) and Juvenile Justice as it relates to law enforcement encounters with juveniles regarding the following circumstances:
  - a) Law enforcement investigations
  - b) Duties and powers of agencies and individuals involved in child neglect, dependency, and abuse cases
2. Correctly identify the laws that apply to the protection of abused, neglected, and dependent juveniles.
3. Verbally explain the role of law enforcement and Juvenile Justice in handling delinquency proceedings and appropriate actions, to include types of custody as it relates to interacting with juveniles.
4. Identify the three (3) types of juvenile offenders and related offenses for undisciplined juveniles:
  - a) Truancy
  - b) Beyond parental control
  - c) Runaway juvenile
5. Thoroughly discuss the following legal issues and obligations of law enforcement when handling juveniles:
  - a) Role of the officer
  - b) Jurisdiction over delinquent juveniles
  - c) Screening of delinquency and undisciplined complaints by juvenile intake services
  - d) Nontestimonial identification order
  - e) Juvenile records and confidentiality

### B. Questions from Class

**NOTE: Show slide, “Questions.”**

### C. Closing Statement

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All officers should be competent in effectively dealing with juveniles. We cannot just pass all situations to a juvenile officer or unit. The officer that fully understands juvenile law and procedures is more valuable to his/her agency, community, and profession.

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### **NOTES**

<sup>1</sup> N.C.G.S. § 7B-101(1) (2020).

<sup>2</sup> N.C.G.S. § 7B-101(3) (2020).

<sup>3</sup> N.C.G.S. §§ 110-85, *et seq.* (2020).

<sup>4</sup> N.C.G.S. § 110-105.3(c) (2020).

<sup>5</sup> N.C.G.S. § 7B-101(8) (2021).

<sup>6</sup> N.C.G.S. § 7B-101(9) (2020).

<sup>7</sup> N.C.G.S. § 7B-101(10) (2020).

<sup>8</sup> N.C.G.S. § 7B-101(14) (2020).

<sup>9</sup> N.C.G.S. § 7B-101(15) (2021).

<sup>10</sup> N.C.G.S. § 7B-101(19a) (2020).

<sup>11</sup> N.C.G.S. § 7B-101(18) (2020).

<sup>12</sup> N.C.G.S. § 7B-101(19) (2020).

<sup>13</sup> N.C.G.S. § 7B-200 (2020).

<sup>14</sup> N.C.G.S. § 7B-200(b) (2020).

<sup>15</sup> N.C.G.S. § 7B-201 (2020).

<sup>16</sup> Prevent Child Abuse North Carolina, 2021.

<sup>17</sup> N.C.G.S. § 7B-500 (2020).

<sup>18</sup> N.C.G.S. § 15A-285 (2020).

<sup>19</sup> N.C.G.S. § 7B-303 (2020).

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<sup>20</sup> N.C.G.S. § 7B-303 (2020).

<sup>21</sup> N.C.G.S. § 7B-303 (2020).

<sup>22</sup> N.C.G.S. § 7B-303 (2020).

<sup>23</sup> N.C.G.S. § 7B-303 (2020).

<sup>24</sup> N.C.G.S. § 7B-303 (2020).

<sup>25</sup> N.C.G.S. § 7B-303 (2020).

<sup>26</sup> N.C.G.S. § 7B-303 (2020).

<sup>27</sup> N.C.G.S. § 7B-303 (2020).

<sup>28</sup> N.C.G.S. § 7B-303 (2020).

<sup>29</sup> N.C.G.S. § 7B-303 (2020).

<sup>30</sup> N.C.G.S. § 7B-303 (2020).

<sup>31</sup> N.C.G.S. § 7B-303 (2020).

<sup>32</sup> N.C.G.S. § 7B-303 (2020).

<sup>33</sup> N.C.G.S. § 7B-303 (2020).

<sup>34</sup> N.C.G.S. § 7B-303 (2020).

<sup>35</sup> N.C.G.S. § 7B-303 (2020).

<sup>36</sup> N.C.G.S. § 7B-303 (2020).

<sup>37</sup> N.C.G.S. § 7B-303 (2020).

<sup>38</sup> N.C.G.S. § 7B-303 (2020).

<sup>39</sup> *See* 45 C.F.R. §§ 164.500, *et seq.*; 42 C.F.R. §§ 2.11, *et seq.* (2020).

<sup>40</sup> N.C.G.S. § 7B-303 (2020).

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<sup>41</sup> N.C.G.S. § 7B-301 (2020).

<sup>42</sup> N.C.G.S. § 7B-301 (2020).

<sup>43</sup> N.C.G.S. § 7B-301 (2020).

<sup>44</sup> N.C.G.S. § 7B-301 (2020).

<sup>45</sup> N.C. Session Law 2019-245.

<sup>46</sup> N.C. Session Law 2019-245.

<sup>47</sup> N.C. Session Law 2019-245.

<sup>48</sup> N.C.G.S. § 14-318.6(a)(5) (2020).

<sup>49</sup> N.C.G.S. § 110-105.4 (2020).

<sup>50</sup> N.C.G.S. § 90-21.20 (2020).

<sup>51</sup> N.C.G.S. § 7B-302 (2020).

<sup>52</sup> N.C.G.S. § 7B-302(e) (2020).

<sup>53</sup> N.C.G.S. § 7B-302(e) (2020).

<sup>54</sup> N.C.G.S. § 7B-302(e) (2020).

<sup>55</sup> N.C.G.S. §§ 14-322.3, 7B-500 (2020).

<sup>56</sup> N.C.G.S. § 7B-500 (2020).

<sup>57</sup> N.C.G.S. § 7B-307 (2020).

<sup>58</sup> N.C.G.S. § 7B-308 (2020).

<sup>59</sup> N.C.G.S. § 7B-309 (2020).

<sup>60</sup> N.C.G.S. § 14-318.4(a3) (2020).

<sup>61</sup> N.C.G.S. § 14-318.4(a) (2020).



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- <sup>62</sup> N.C.G.S. § 14-318.4(a1) (2020).
- <sup>63</sup> N.C.G.S. § 14-318.4(a2) (2020).
- <sup>64</sup> N.C.G.S. § 14-318.4(a4) (2020).
- <sup>65</sup> N.C.G.S. § 14-318.4(a5) (2020).
- <sup>66</sup> N.C.G.S. § 14-318.4(d)(1) (2020).
- <sup>67</sup> N.C.G.S. § 14-318.4(d)(2) (2020).
- <sup>68</sup> N.C.G.S. § 14-318.2 (2020).
- <sup>69</sup> N.C.G.S. § 14-316.1 (2020).
- <sup>70</sup> *State v. Worley*, 13 N.C. App. 198 (1971).
- <sup>71</sup> N.C.G.S. §§ 7B-101, ~~7B-1501 (2020)~~.
- <sup>72</sup> N.C.G.S. § 14-202.4 (2020).
- <sup>73</sup> N.C.G.S. § 14-202.4(d)(1) (2020).
- <sup>74</sup> N.C.G.S. § 14-202.4(a) (2020).
- <sup>75</sup> N.C.G.S. § 14-202.4(b) (2020).
- <sup>76</sup> N.C.G.S. § 14-27.32 (2020).
- <sup>77</sup> N.C.G.S. § 14-27.32 (2020).
- <sup>78</sup> N.C.G.S. § 14-27.31 (2020).
- <sup>79</sup> N.C.G.S. § 7B-400, *et seq.* (2020).
- <sup>80</sup> N.C.G.S. § 7B-500 (2020).
- <sup>81</sup> N.C.G.S. § 7B-501 (2020).
- <sup>82</sup> N.C.G.S. § 7B-501 (2020).

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- <sup>83</sup> N.C.G.S. § 7B-501 (2020).
- <sup>84</sup> N.C.G.S. § 7B-503 (2020).
- <sup>85</sup> N.C.G.S. § 7B-504 (2020).
- <sup>86</sup> N.C.G.S. § 7B-503 (2020).
- <sup>87</sup> N.C.G.S. § 7B-601 (2020).
- <sup>88</sup> N.C.G.S. § 7B-601 (2020).
- <sup>89</sup> N.C.G.S. § 7B-601 (2020).
- <sup>90</sup> N.C.G.S. § 7B-601 (2020).
- <sup>91</sup> N.C.G.S. § 7B-601 (2020).
- <sup>92</sup> N.C.G.S. § 14-320.1 (2020).
- <sup>93</sup> N.C.G.S. § 14-320.1 (2020).
- <sup>94</sup> N.C.G.S. § 14-320.1 (2020).
- <sup>95</sup> N.C.G.S. § 143B-1010 through 143B-1020.
- <sup>96</sup> N.C.G.S. § 143-1015 (2020).
- <sup>97</sup> North Carolina Department of Public Safety, “Missing Person/Runaway Juvenile Report.”
- <sup>98</sup> North Carolina Department of Public Safety, “Missing Persons.”
- <sup>99</sup> North Carolina Department of Public Safety, “Missing Persons.”
- <sup>100</sup> North Carolina Department of Public Safety, “Missing Persons.”
- <sup>101</sup> North Carolina Department of Public Safety, “Missing Persons.”
- <sup>102</sup> North Carolina Department of Public Safety, “Missing Persons.”
- <sup>103</sup> North Carolina Department of Public Safety, “Missing Persons.”

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<sup>104</sup> North Carolina Department of Public Safety, “Missing Persons.”

<sup>105</sup> N.C.G.S. § 7B-2409 (2020).

<sup>106</sup> N.C.G.S. § 7B-3000 (2020).

<sup>107</sup> North Carolina Department of Public Safety, “Adolescent Development,” 5.

<sup>108</sup> North Carolina Department of Public Safety, “Adolescent Development,” 5-8.

<sup>109</sup> North Carolina Department of Public Safety, “Adolescent Development,” 5-8.

<sup>110</sup> North Carolina Department of Public Safety, “Adolescent Development,” 5-8.

<sup>111</sup> North Carolina Department of Public Safety, “Adolescent Development,” 5-8.

<sup>112</sup> North Carolina Department of Public Safety, “Adolescent Development,” 10-11.

<sup>113</sup> North Carolina Department of Public Safety, “Adolescent Development,” 10-11.

<sup>114</sup> North Carolina Department of Public Safety, “Adolescent Development,” 5.

<sup>115</sup> *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), *Montgomery v. Louisiana*, 577 U.S. 190 (2016), *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), *Jones v. Mississippi*, No. 18-1259 (April 22, 2021).

<sup>116</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills,” 10.

<sup>117</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills,” 10.

<sup>118</sup> North Carolina Department of Public Safety, “Verbal De-escalation for Juvenile Justice,” 13.

<sup>119</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills,” 11-12.

<sup>120</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills,” 11-12.

## ***Juvenile Laws and Procedures***

<sup>121</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills, 12-13.

<sup>122</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills, 12-13.

<sup>123</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills, 12-13.

<sup>124</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills, 12-13.

<sup>125</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills, 12-13.

<sup>126</sup> North Carolina Department of Public Safety, “Basic Individual Counseling Skills, 15.

<sup>127</sup> N.C.G.S. § 7B-1501(3) (2022).

<sup>128</sup> N.C.G.S. § 7B-1501(7)(b) (2022).

<sup>129</sup> N.C.G.S. § 7B-1604; 7B-220.5 (2020).

<sup>130</sup> N.C.G.S. § 7B-1501(7)(a) (2022).

<sup>131</sup> N.C.G.S. § 7B-1604; 7B-2200 (2020).

<sup>132</sup> N.C.G.S. § 7B-1501(7)(c) (2022).

<sup>133</sup> N.C.G.S. § 7B-1501(7)(d) (2022).

<sup>134</sup> N.C.G.S. § 7B-250(a2) (2021).

<sup>135</sup> N.C.G.S. § 7B-2513(a2) and (a3) (2021).

<sup>136</sup> N.C.G.S. § 7B-1501(8) (2022).

<sup>137</sup> N.C.G.S. § 7B-1501(9) (2022).

<sup>138</sup> N.C.G.S. § 7B-3500, 7B-3507 (2020).

<sup>139</sup> N.C.G.S. § 7B-3509 (2020).

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- <sup>140</sup> N.C.G.S. § 7B-1501(15) (2022).
- <sup>141</sup> N.C.G.S. § 143B-805(1a) (2021).
- <sup>142</sup> N.C.G.S. § 7B-1501(18) (2022).
- <sup>143</sup> N.C.G.S. § 7B-1501(18a) (2022).
- <sup>144</sup> N.C.G.S. § 143B-831 (2021).
- <sup>145</sup> N.C.G.S. § 7B-1501(21) (2022).
- <sup>146</sup> N.C.G.S. § 7B-1501(22) (2022).
- <sup>147</sup> N.C.G.S. § 7B-1501(24) (2022).
- <sup>148</sup> N.C.G.S. § 7B-1501(25) (2022).
- <sup>149</sup> N.C.G.S. § 7B-1501(27) (2022).
- <sup>150</sup> N.C.G.S. § 143B-805(20a) (2021).
- <sup>151</sup> N.C.G.S. § 7B-1501(29) (2022).
- <sup>152</sup> N.C.G.S. § 7B-1600 (2020).
- <sup>153</sup> N.C.G.S. § 7B-1805 (2020).
- <sup>154</sup> N.C.G.S. § 7B-2503 (2020).
- <sup>155</sup> N.C.G.S. § 15C-378 (2020).
- <sup>156</sup> N.C.G.S. § 115C-380 (2020).
- <sup>157</sup> N.C.G.S. §§ 7B-1900, 7B-1901 (2020).
- <sup>158</sup> N.C.G.S. § 160A-198 (2020) and 153A-142 (2020).
- <sup>159</sup> N.C.G.S. §§ 166A-19.22, 166A-19.31 (2020).
- <sup>160</sup> National Center on Homelessness and Poverty.

## ***Juvenile Laws and Procedures***

<sup>161</sup> National Center on Homelessness and Poverty.

<sup>162</sup> National Center for Missing and Exploited Children.

<sup>163</sup> North Carolina State Bureau of Investigation, Division of Criminal Information Network, *Module 1- DCIN/NCIC General Inquiries*, 20.

<sup>164</sup> N.C.G.S. § 7B-4001 (2020), “(For effective date - see note) Governor to execute Compact; form of Compact;” N.C.G.S. § 7B-1903 (2020); Interstate Commission for Juveniles-ICJ Rules.

<sup>165</sup> N.C.G.S. § 7B-4001 (2020), “(For effective date - see note) Governor to execute Compact; form of Compact;” N.C.G.S. § 7B-1903 (2020); Interstate Commission for Juveniles-ICJ Rules.

<sup>166</sup> N.C.G.S. § 7B-101(15) (2020).

<sup>167</sup> Interstate Commission for Juveniles-ICJ Rules, Rule 7-104.

<sup>168</sup> Interstate Commission for Juveniles-ICJ Rules.

<sup>169</sup> N.C.G.S. § 7B-2100 (2020).

<sup>170</sup> N.C.G.S. § 7B-2100(1) through (5) (2020).

<sup>171</sup> Merriam-Webster.com.

<sup>172</sup> N.C.G.S. § 7B-2501 (2020).

<sup>173</sup> N.C.G.S. § 7B-2506 (2020).

<sup>174</sup> *In the Matter of, D.A.C.*, 225 N.C. App. 547, 552 (2013).

<sup>175</sup> *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

<sup>176</sup> *In the Matter of, D.A.C.* See also *J.D.B. v. North Carolina*, 546 U.S. 261 (2011); *State v. Barnes*, 154 N.C. App 111, 117 (2002).

<sup>177</sup> *In re D.A.H.*, No. COA20-212, 2021-NCCOA-135 \_\_\_\_ N.C. App. \_\_\_\_ (N.C. Ct. App. Apr. 20, 2021).

<sup>178</sup> *In re D.A.H.*, at 20, 22 (slip opinion).

## ***Juvenile Laws and Procedures***

<sup>179</sup> *In re D.A.H.*, at 31 (slip opinion).

<sup>180</sup> *In re D.A.H.*, at 24-28 (slip opinion).

<sup>181</sup> *In re D.A.H.*, at 29-31 (slip opinion).

<sup>182</sup> N.C.G.S. § 7B-2101 (2020).

<sup>183</sup> N.C.G.S. § 7B-2000 (2020).

<sup>184</sup> N.C.G.S. § 7B-2101 (2020).

<sup>185</sup> *State v. Flowers*, 128 N.C. App. 697 (1998).

<sup>186</sup> N.C.G.S. § 7B-2101 (2020).

<sup>187</sup> N.C.G.S. § 15A-211(b) (2020).

<sup>188</sup> N.C.G.S. § 15A-211 (2020).

<sup>189</sup> N.C.G.S. §§ 7B-3000, 7B-3101 (2020).

<sup>190</sup> N.C.G.S. § 15A-505 (2020).

<sup>191</sup> N.C.G.S. § 7B-3101 (2020).

<sup>192</sup> N.C.G.S. § 7B-2102(a) (2020).

<sup>193</sup> N.C.G.S. § 7B-2102(b) (2020).

<sup>194</sup> N.C.G.S. § 7B-2102(c) (2020).

<sup>195</sup> N.C.G.S. § 7B-2102(d) (2020).

<sup>196</sup> N.C.G.S. § 7B-2102(e) (2020).

<sup>197</sup> N.C.G.S. § 7B-2201 (2020). *See also*, N.C.G.S. § 15A-226.3A (2020).

<sup>198</sup> N.C.G.S. § 15A-284.52 (2020).

<sup>199</sup> N.C.G.S. § 7B-2103 (2020).

## ***Juvenile Laws and Procedures***

- <sup>200</sup> N.C.G.S. § 7B-2104 (2020).
- <sup>201</sup> N.C.G.S. § 7B-2107 (2020).
- <sup>202</sup> N.C.G.S. § 7B-2105 (2020).
- <sup>203</sup> N.C.G.S. § 15A-279(d) (2020).
- <sup>204</sup> N.C.G.S. § 7B-2109 (2020).
- <sup>205</sup> N.C.G.S. § 7B-2108 (2020).
- <sup>206</sup> N.C.G.S. § 7B-1700 (2020).
- <sup>207</sup> N.C.G.S. § 7B-1701(b) (2021).
- <sup>208</sup> N.C.G.S. § 7B-1701(a) (2021).
- <sup>209</sup> N.C.G.S. § 7B-1701(b) (2021).
- <sup>210</sup> N.C.G.S. § 7B-1701(a) (2021).
- <sup>211</sup> N.C.G.S. § 7B-1702 (2021).
- <sup>212</sup> N.C.G.S. § 7B-1703 (2020).
- <sup>213</sup> N.C.G.S. § 7B-1703(c) (2021).
- <sup>214</sup> N.C.G.S. § 7B-1703(c) (2021).
- <sup>215</sup> N.C.G.S. § 7B-1706 (2020).
- <sup>216</sup> N.C.G.S. § 7B-1802 (2020).
- <sup>217</sup> N.C.G.S. § 7B-1800 through 1803 (2020).
- <sup>218</sup> N.C.G.S. § 7B-1804 (2020).
- <sup>219</sup> N.C.G.S. § 7B-1805 (2020).
- <sup>220</sup> N.C.G.S. § 7B-1805(d) (2020). See also, *In the Matter of Jessica Mitchell*, 126 N.C. App. 432 (1997).



## ***Juvenile Laws and Procedures***

<sup>221</sup> N.C.G.S. § 7B-1900 (2020).

<sup>222</sup> N.C.G.S. § 15A-401(b) (2020).

<sup>223</sup> *E.W. v. Dolgos*, 884 F.3d 172 (4<sup>th</sup> Cir. 2018).

<sup>224</sup> *E.W. v. Dolgos*.

<sup>225</sup> *See Tennessee v. Garner*, 471 U.S. 1 (1985).

<sup>226</sup> N.C.G.S. § 7B-1901 (2020).

<sup>227</sup> N.C.G.S. § 7B-1902 (2021).

<sup>228</sup> N.C.G.S. § 7B-2200.5 (2021).

<sup>229</sup> N.C.G.S. § 7B-1903 (2020).

<sup>230</sup> N.C.G.S. § 7B-1903 (2020).

<sup>231</sup> N.C.G.S. § 7B-1903 (2020).

<sup>232</sup> N.C.G.S. § 7B-1805(b)(1-6) (2020).

<sup>233</sup> N.C.G.S. § 7B-1904 (2020).

<sup>234</sup> N.C.G.S. § 7B-1904 (2020).

<sup>235</sup> N.C.G.S. § 7B-1905 (2020).

<sup>236</sup> N.C.G.S. § 7B-1905 (2020).

<sup>237</sup> Session Law 2019-186.

<sup>238</sup> N.C.G.S. § 7B-1906 (2021).

<sup>239</sup> Session Law 2017-57, 16D.4(b), N.C.G.S. § 7B-1601 (2020).

<sup>240</sup> N.C.G.S. § 7B-2200 (2020).

<sup>241</sup> N.C.G.S. § 7B-2200.5(a) (2021).

## ***Juvenile Laws and Procedures***

<sup>242</sup> N.C.G.S. § 7B-2200.5(a1) (2021).

<sup>243</sup> N.C.G.S. § 7B-2200.5 (2020).

<sup>244</sup> N.C.G.S. § 7B-2203 (2020).

<sup>245</sup> N.C.G.S. § 7B-2202 (2020).

<sup>246</sup> N.C.G.S. § 7B-2203 (2020).

<sup>247</sup> N.C.G.S. § 7B-2203(b) (2020).

<sup>248</sup> N.C.G.S. § 7B-2901(a) (2020).

<sup>249</sup> N.C.G.S. § 7B-2901 (2020).

<sup>250</sup> N.C.G.S. § 7B-3000 (2021).

<sup>251</sup> N.C.G.S. § 7B-3000 (2020).

<sup>252</sup> N.C.G.S. § 7B-3001(c) (2020).

<sup>253</sup> N.C.G.S. § 7B-3001(b) (2020).

**CONDITIONS OF PROTECTIVE SUPERVISION FOR UNDISCIPLINED JUVENILES  
(G.S. 7B-2504)**

The court may place a juvenile on protective supervision pursuant to G.S. 7B-2503 so that the juvenile court counselor may (i) assist the juvenile in securing social, medical, and educational services and (ii) visit and work with the family as a unit to ensure the juvenile is provided proper supervision and care. The court may impose any combination of the following conditions of protective supervision that are related to the needs of the juvenile, including:

- (1) That the juvenile shall remain on good behavior and not violate any laws;
- (2) That the juvenile attend school regularly;
- (3) That the juvenile maintain passing grades in up to four courses during each grading period and meet with the juvenile court counselor and a representative of the school to make a plan for how to maintain those passing grades;
- (4) That the juvenile not associate with specified persons or be in specified places;
- (5) That the juvenile abide by a prescribed curfew;
- (6) That the juvenile report to a juvenile court counselor as often as required by a juvenile court counselor;
- (7) That the juvenile be employed regularly if not attending school; and
- (8) That the juvenile satisfy any other conditions determined appropriate by the court. (1979, c. 815, s. 1; 1998-202, s. 6; 2001-490, s. 2.20.)

## WAIVER OF RIGHTS

*After reading and explaining the rights of a person in custody, the officer must also ask for a waiver of those rights before any questioning. The following waiver questions must be answered affirmatively, either by express answer or by clear implication. Silence alone is not a waiver.*

1. Do you understand each of these rights I have explained to you? (Answer must be YES.)
2. Having these rights in mind, do you now wish to answer questions? (Answer must be YES.)
3. Do you now wish to answer questions without a lawyer present? (Answer must be YES.)

*If the person being questioned is under 18, the following question must also be asked:*

4. Do you now wish to answer questions without your parent, guardian, or custodian present? (Answer must be YES. But note that if the person is under 16 and the parent, guardian, or custodian is not present, a lawyer MUST be present.)

## CUSTODIAL INTERROGATION OF JUVENILES

A person in custody who is under the age of 18 years, and is not a member of the armed forces of the United States, or married, or emancipated by court decree at the time the crime was committed is entitled to receive the juvenile version of the rights advice and waiver, even though the person is prosecuted as an adult because he has reached his 16th birthday.

A person in custody **who has not reached his 16th birthday** cannot be questioned unless either a parent, guardian, custodian, or attorney is present at the time of the questioning. If an attorney is not present in such case, the officer must also advise the parent, guardian, or custodian of the juvenile's rights, but a rights waiver must be obtained from the juvenile in all cases.

Roy Cooper, Attorney General  
Published by the North Carolina Justice Academy 12/01/2015

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#### ADULT RIGHTS WARNING

*Persons 18 years old or older who are in custody must be given this advice of rights before any questioning.*

1. You have the right to remain silent.
2. Anything you say can be and may be used as evidence against you in court.
3. You have the right to talk with a lawyer before questioning and to have a lawyer with you while you are being questioned.
4. If you want a lawyer before or during questioning but cannot afford to hire a lawyer, one will be appointed to represent you at no cost before any questioning.

#### JUVENILE RIGHTS WARNING

*Persons in custody who have not yet reached their 18th birthday (and are not members of the armed forces of the United States, or are not married, or are not emancipated by court decree) must be given this version of the advice of rights before any questioning.*

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STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

County

IN THE MATTER OF

Name And Address Of Juvenile

JUVENILE PETITION
(ABUSE/NEGLECT/DEPENDENCY)

Juvenile's Date Of Birth Age Race Sex

G.S. 7B-101, -400, -402

Name Of Petitioner

Condition Alleged

Abused Neglected Dependent

I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:

- 1. The juvenile named above resides in the district at the address shown above, was found in the district as alleged herein, or venue exists pursuant to G.S. 7B-400(a) or (b).
2. The information required by G.S. 50A-209 is set out in the Affidavit As To Status Of Minor Child (AOC-CV-609), which is attached hereto and incorporated herein by reference.
3. The names, addresses, and telephone numbers of the juvenile's parents, guardian, custodian, or caretaker are as follows:

Table with 4 columns: Name, Relationship/Title, Address, Telephone No.

4. The juvenile is an abused juvenile, neglected juvenile, or dependent juvenile, as alleged more specifically below: (Check only the blocks that apply.)

- A. The juvenile is an ABUSED JUVENILE, in that:
1. the juvenile's parent, guardian, custodian, or caretaker has inflicted or allowed to be inflicted on the juvenile a serious physical injury by other than accidental means.
2. the juvenile's parent, guardian, custodian, or caretaker has created or allowed to be created a substantial risk of serious physical injury to the juvenile by other than accidental means.
3. the juvenile's parent, guardian, custodian, or caretaker has used or allowed to be used upon the juvenile cruel or grossly inappropriate devices or procedures to modify behavior.
4. the juvenile's parent, guardian, custodian, or caretaker has committed, permitted, or encouraged the commission of a sex or pornography offense by, with, or upon the juvenile in violation of the criminal law.
5. the juvenile's parent, guardian, custodian, or caretaker has created or allowed to be created serious emotional damage to the juvenile.
6. the juvenile's parent, guardian, custodian, or caretaker has encouraged, directed, or approved of delinquent acts involving moral turpitude committed by the juvenile.
7. the juvenile is a minor victim of human trafficking under G.S. 14-43.15.

Specifically, on or about (date or time period) : (State facts supporting allegations that the juvenile is an abused juvenile as indicated above. Attach additional pages if necessary.)

(See reverse side for additional allegations)

- B. The juvenile is a **NEGLECTED JUVENILE**, in that the juvenile:
- 1. does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker.
  - 2. has been abandoned.
  - 3. is not provided necessary medical care.
  - 4. is not provided necessary remedial care.
  - 5. lives in an environment injurious to the juvenile's welfare.
  - 6. has had his/her custody unlawfully transferred under G.S. 14-321.2.
  - 7. has been placed for care or adoption in violation of law.
  - 8. is a minor victim of human trafficking under G.S. 14-43.15.

Specifically, on or about (date or time period) \_\_\_\_\_: (State facts supporting allegations that the juvenile is a neglected juvenile as indicated above. Attach additional pages if necessary.)

- C. The juvenile is a **DEPENDENT JUVENILE**, in that:
- 1. the juvenile needs assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision.
  - 2. the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement.

Specifically, on or about (date or time period) \_\_\_\_\_: (State facts supporting allegations that the juvenile is a neglected juvenile as indicated above. Attach additional pages if necessary.)

I request the Court to hear the case to determine whether the allegations are true and whether the juvenile is in need of the care, protection, or supervision of the State.

**VERIFICATION**

Being first duly sworn, I say that I have read this Petition and that the same is true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe it to be true.

<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		Name And Address Of Petitioner
Date	Signature Of Person Authorized To Administer Oaths	Signature Of Petitioner
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Magistrate		
<input type="checkbox"/> Notary	Date My Commission Expires	Telephone No.
<b>SEAL</b>	County Where Notarized	<input type="checkbox"/> Director <input type="checkbox"/> Authorized Representative Of Director _____ County Department of Social Services

**SIGNATURE OF ATTORNEY (if applicable)**

Date	Signature Of Attorney	Name And Address Of Attorney

**WITNESS(ES)**

Name	Address	Telephone No.

**STATE OF NORTH CAROLINA**

NC-JOIN No.

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
District Court Division

**IN THE MATTER OF**

Name And Address Of Juvenile

**JUVENILE PETITION  
(DELINQUENT)**

G.S. 7B-1501(7), -1801, -1802

Juvenile's Date Of Birth

Age

Race

Sex

Category Of Offense

Name Of Complainant

**Felony, Class \_\_\_\_\_**

**Misdemeanor, Class \_\_\_\_\_, Or Infraction**

Offense Code

Offense In Violation Of G.S.

Physical Address Of Offense, If Applicable

Date Of Offense

Time Of Offense

AM

PM

I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:

1. The juvenile named above committed a delinquent act in this district while under the age of eighteen (18).
2. The names, addresses, and telephone numbers of the juvenile's parents, guardian, or custodian are as follows:

Name	Relationship/Title	Address	Telephone No.

3. The juvenile is a delinquent juvenile as defined by G.S. 7B-1501(7) in that on or about the date of the offense shown above and in the county named above, the juvenile did unlawfully, willfully  and feloniously (State facts supporting every element of alleged offense.)

(See reverse side for ADDITIONAL FACTS AND CIRCUMSTANCES)



**ADDITIONAL FACTS AND CIRCUMSTANCES**

I request the Court to hear the case to determine whether the allegations are true and whether the juvenile is within the jurisdiction of the Court as a delinquent juvenile.

**VERIFICATION**

Being first duly sworn, I say that I have read the allegations in the petition and that the same are true to my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe them to be true.

<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		<i>Signature Of Complainant</i>	
<i>Date</i>	<i>Signature Of Person Authorized To Administer Oaths</i>	<i>Title Or Relationship To Juvenile</i>	
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate		<i>Agency (if applicable)</i>	<i>Telephone No.</i>
<input type="checkbox"/> Notary	<i>Date My Commission Expires</i>	<i>Address</i>	
<b>SEAL</b>	<i>County Where Notarized</i>	<i>City, State, Zip</i>	

**WITNESS(ES)**

Name	Address	Telephone No.

*Date Complaint Received By Division Of Juvenile Justice Of The Department Of Public Safety*

**15-DAY EXTENSION OF TIME TO FILE PETITION**

Pursuant to G.S. 7B-1703, at the discretion of the undersigned chief court counselor, the time to file a petition in the above captioned case is extended 15 days.

<i>Date</i>	<i>Name Of Chief Court Counselor</i>	<i>Signature Of Chief Court Counselor</i>
-------------	--------------------------------------	---

**DECISION OF COURT COUNSELOR REGARDING THE FILING OF THE PETITION**

<input type="checkbox"/> 1. Approved for Filing <input type="checkbox"/> 2. Not Approved for Filing <input type="checkbox"/> a. Closed <input type="checkbox"/> b. Diverted and Retained	<i>Date</i>	<i>Time</i> <input type="checkbox"/> AM <input type="checkbox"/> PM
	<i>Name Of Court Counselor Giving Telephonic Approval</i>	
	<i>Name And Title Of Person Receiving Telephonic Approval</i>	
<i>Date</i>	<i>Signature Of Court Counselor</i>	<i>Signature Of Person Receiving Telephonic Approval</i>

**Post-Diversion Approval For Filing Of Petition**

<input type="checkbox"/> Approved for Filing	<i>Date</i>	<i>Signature Of Court Counselor</i>
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**REVIEW BY PROSECUTOR OF DECISION NOT TO APPROVE FOR FILING**

The undersigned prosecutor conducted a review pursuant to G.S. 7B-1704 and 7B-1705 of the court counselor's determination not to approve the complaint for filing and hereby  authorizes  does not authorize the complaint to be approved for filing.

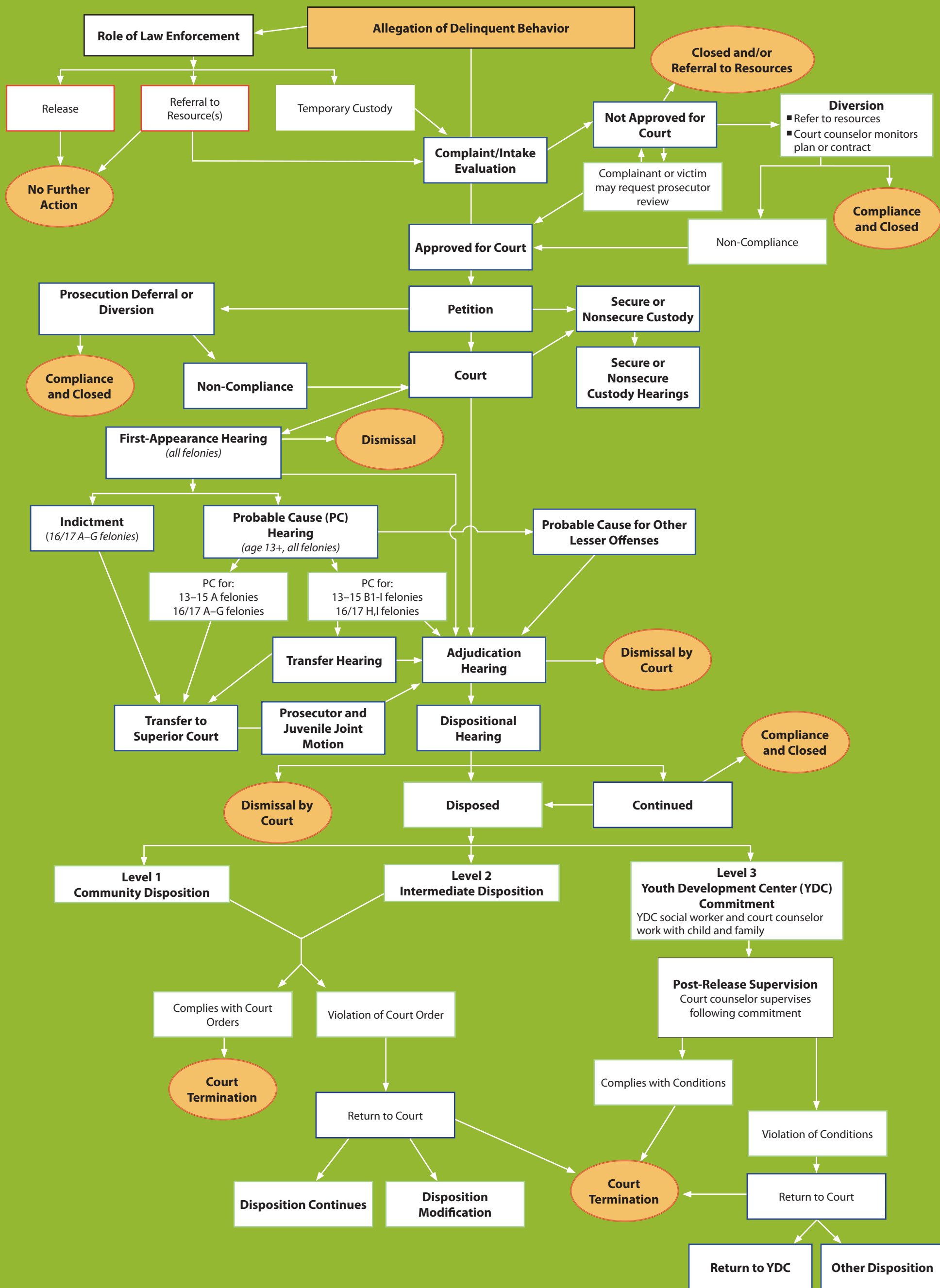
<i>Date Of Review</i>	<i>Date Petition Filed (if applicable)</i>	<i>Name Of Prosecutor (type or print)</i>	<i>Signature Of Prosecutor</i>
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# Juvenile Contact Report

Use to Record the Handling of Juveniles Who Commit Criminal Offenses

<b>AGENCY INFO.</b>	Agency Name			ORI NC	Date/Time of Contact Mo Date Year Hrs.			OCA				
	<input type="checkbox"/> Taken <input type="checkbox"/> Prints <input type="checkbox"/> Photos	Fingerprint Card Check Digit # (CKN)		Contact Tract	Residence Tract		Juvenile Contact Number					
<b>SUBJECT INFORMATION</b>	Name (Last, First, Middle)				D.O.B.	Age	Race	Sex	Place of Birth	Country of Citizenship		
	Current Address				Phone		Occupation		<input type="checkbox"/> Resident <input type="checkbox"/> Unknown <input type="checkbox"/> Non-Resident			
	Employer's Name/School				Address				Phone			
	Also Known As (Alias Names)				Hgt	Wgt	Hair	Eye	Skin Tone	Consumed Drug/Alcohol <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk		
	Scars, Marks, Tattoos			Social Security #		OLN and State		Misc. # and Type				
	Parent / Guardian			Address				Phone				
<b>CONTACT INFO.</b>	If Armed, Type of Weapon			<input type="checkbox"/> On-View <input type="checkbox"/> Juvenile Court Summons <input type="checkbox"/> Temporary Custody Order			Place of Contact					
	Charge # 1	<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (If not reporting agency)			Statute #	Warr. Date Mo Date Yr			
	Charge # 2	<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (If not reporting agency)			Statute #	Warr. Date Mo Date Yr			
	Charge # 3	<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (If not reporting agency)			Statute #	Warr. Date Mo Date Yr			
<b>VEH. INFO.</b>	VYR	Make	Model	Style	Color	Lic/Lis	Vin					
	Vehicles 1. <input type="checkbox"/> Left at Scene <input type="checkbox"/> Secured <input type="checkbox"/> Unsecured   Date/Time _____ Hrs _____ 2. <input type="checkbox"/> Released to other at owners request <input type="checkbox"/> Name of Other _____ 3. <input type="checkbox"/> Impounded <input type="checkbox"/> Place of storage _____   Inventory on File? _____											
<b>REFERRAL</b>	<input type="checkbox"/> Handled within department and released <input type="checkbox"/> Referred to other police agency <input type="checkbox"/> Referred to juvenile court authorities <input type="checkbox"/> Referred to community agency or program: Social Services _____ Teen Court _____ Mental Health _____ Other: _____											
	<b>Status Codes</b> L - Lost   S - Stolen   R - Recovered   D - Damaged   Z - Seized   B - Burned   C - Counterfeit / Forged   F - Found (Check "OJ" column if recovered for other jurisdiction)											
<b>DRUGS AT TIME OF CONTACT</b>	DCI	Status	Quantity	Type Measure	Suspected Type			Check up to 3 types of activity for each				
								Possess	Buy	Sale	Mfg.	Importing
<b>COMPLAINANT</b>	Name: Complainant <input type="checkbox"/> Victim <input type="checkbox"/>				Address				Phone:			
	<b>NARRATIVE</b> _____ _____ _____ _____ _____											
<b>STATUS</b>	Contacting Officer Signature/ID#			SRO Yes _____ No _____	Date/Time Submitted Mo Date Yr Hrs.			Supervisor Signature				
	Case Status: <input type="checkbox"/> Further Inv. <input type="checkbox"/> Inactive <input type="checkbox"/> Closed		Case Disposition: <input type="checkbox"/> Cleared By Contact / No Supplement Needed <input type="checkbox"/> Juvenile Contact / No Investigation			Juvenile Signature						

# N.C. JUVENILE DELINQUENCY PROCESS



## Juvenile Detention Centers

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Seven NCDPS juvenile detention centers are operational across North Carolina. Additionally, the Juvenile Justice section monitors and supports five county-operated juvenile detention centers.

Juvenile detention centers are secure, temporary facilities where a juvenile will stay while waiting to go to court or until a placement can be arranged. Juveniles are placed in detention by court order pending hearing, disposition or placement. Prior to adjudication, statute requires that the court review the need for continued secure custody so juveniles have frequent court appearances where alternatives to detention are considered. Youths are typically housed in a detention center closest to their home county. The centers receive admissions through assigned regions or catchment areas.

Juveniles transferred to Superior Court for trial as adults are housed in juvenile detention pending trial if they are not released on bond. Juvenile detention centers provide quality services and programs for juveniles based on their individual needs, to give youths opportunities for positive behavioral change and development. Juvenile detention centers provide a safe, secure, controlled and humane environment for juveniles and staff. All detention centers are co-ed and are staffed to provide appropriate oversight by same-sex staff members.

Upon admission to a juvenile detention center, each youth receives a mental health screening. More comprehensive mental health and substance abuse assessments are completed when screening indicates a need. A medical screening is conducted, with urgent or emergent follow-up medical services. These screenings assist the Division in more appropriately serving the youth in its care.

During a short-term stay at one of the Division's detention centers, youths are provided with basic educational services that mirror the course of study adopted by the N.C. Department of Public Instruction. Treatment programming and services offered at each detention center varies according to the needs of the youth.

Source: <https://www.ncdps.gov/juvenile-justice/juvenile-facility-operations/juvenile-detention-centers#dillon>

<b>Center Name</b>	<b>Address</b>	<b>Phone/Fax</b>	<b>Manager</b>	<b>Beds</b>
<b>Alexander Regional Juvenile Detention Center</b>	928 NC Highway 16 S. Taylorsville, NC 28681	828-632-1141 828-632-1151	Kimberly Cowart	24
<b>Cabarrus Regional Juvenile Detention Center</b>	822 McWhorter Road Concord, NC 28027	704-720-0807 704-793-1153	Angela Wilson	30
<b>Cumberland Regional Juvenile Detention Center</b>	1911 Coliseum Drive Fayetteville, NC 28306	910-486-1399 910-486-1411	Gene Hallock	18
<b>Dillon Regional Juvenile Detention Center</b>	100 Dillon Drive Butner, NC 27509	919-575-3166 919-575-0005	Casey Reece	36
<b>New Hanover Regional Juvenile Detention Center</b>	3830 Juvenile Center Road Castle Hayne, NC 28429	910-675-0594 910-675-2542	Elderwin Reed	18
<b>Pitt Regional Juvenile Detention Center</b>	451 Belvoir Road Greenville, NC 27834	252-830-6590 252-830-3355	Kimberly Dupree	18
<b>Wake Regional Juvenile Detention Center</b>	700 Beacon Lake Drive Raleigh, NC 27610	919-212-3104 919-212-3112	Jonathan Manley	24
<b>Durham County Youth Home</b>	2432 Broad Street Durham, NC 27704	919-560-0840 919-560-0843	Angela Nunn	14
<b>Guilford County Juvenile Detention Center</b>	15 Lockheed Court Greensboro, NC 27409	336-641-2600 336-641-2603	Doug Logan	44
<b>Madison County Juvenile Detention Center</b>	348 Medical Park Drive Marshall, NC 28753	828-649-2721 828-649-2485	Buddy Harwood	19
<b>Mecklenburg County Juvenile Detention Center</b>	5235 Spector Drive Charlotte, NC 28269	704-336-8100	Gary L. McFadden	72
<b>Brunswick County Juvenile Detention Center</b>	70 Stamp Act Drive Bolivia, NC 28422	910-253-2760 910-253-2471	Terri Ferguson	12

## TEEN COURT PROGRAM AND DIVERSION PLANS

### Teen Court Program (G.S. 7B-1706(c))

(c) If a teen court program has been established in the district, the juvenile court counselor, upon a finding of legal sufficiency, may refer to a teen court program, any case in which a juvenile has allegedly committed an offense that would be an infraction or misdemeanor if committed by an adult. However, the juvenile court counselor shall not refer a case to a teen court program if the juvenile is alleged to have committed any of the following offenses:

- (1) Driving while impaired under G.S. 20-138.1, 20-138.2, 20-138.3, 20-138.5, or 20-138.7, or any other motor vehicle violation;
- (2) A Class A1 misdemeanor;
- (3) An assault in which a weapon is used; or
- (4) A controlled substance offense under Article 5 of Chapter 90 of the General Statutes, other than simple possession of a Schedule VI drug or alcohol.

G.S. 7B-1706 Page 2

(d) The juvenile court counselor shall maintain diversion plans and contracts entered into pursuant to this section to allow juvenile court counselors to determine when a juvenile has had a complaint diverted previously. Diversion plans and contracts are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, and shall be withheld from public inspection or examination. Diversion plans and contracts shall be destroyed when the juvenile reaches the age of 18 years or when the juvenile is no longer under the jurisdiction of the court, whichever is longer.

(e) No later than 60 days after the juvenile court counselor diverts a juvenile, the juvenile court counselor shall determine whether the juvenile and the juvenile's parent, guardian, or custodian have complied with the terms of the diversion plan or contract. In making this determination, the juvenile court counselor shall contact any referral resources to determine

## **DESTRUCTION OF NTO RECORDS**

### **Destruction of records resulting from nontestimonial identification procedures (G.S. 7B-2108)**

The results of any nontestimonial identification procedures shall be retained or disposed of as follows:

- (1) If a petition is not filed against a juvenile who has been the subject of nontestimonial identification procedures, all records of the evidence shall be destroyed.
- (2) If the juvenile is not adjudicated delinquent or convicted in superior court following transfer, all records resulting from a nontestimonial order shall be destroyed. Further, in the case of a juvenile who is under 13 years of age and who is adjudicated delinquent for an offense that would be less than a felony if committed by an adult, all records shall be destroyed.
- (3) If a juvenile 13 years of age or older is adjudicated delinquent for an offense that would be a felony if committed by an adult, all records resulting from a nontestimonial order may be retained in the court file. Special precautions shall be taken to ensure that these records will be maintained in a manner and under sufficient safeguards to limit their use to inspection by law enforcement officers for comparison purposes in the investigation of a crime.
- (4) If the juvenile is transferred to and convicted in superior court, all records resulting from nontestimonial identification procedures shall be processed as in the case of an adult.
- (5) Any evidence seized pursuant to a nontestimonial order shall be retained by law enforcement officers until further order is entered by the court.
- (6) Destruction of nontestimonial identification records pursuant to this section shall be performed by the law enforcement agency having possession of the records. Following destruction, the law enforcement agency shall make written certification to the court of the destruction. (1979, c. 815, s. 1; 1994, Ex. Sess., c. 22, s. 28; 1998-202, s. 6.)

# STUDENT EVALUATION OF INSTRUCTORS

## Criminal Justice Standards Division

Post Office Drawer 149  
Raleigh, NC 27602  
(919) 661-5980  
Fax (919) 779-8210

## Sheriffs' Standards Division

Post Office Box 629  
Raleigh, NC 27602  
(919) 779-8213  
Fax 662-4515

Form F-17  
(Rev. 6/11)

**Instructor** \_\_\_\_\_

**Institution/Agency** \_\_\_\_\_

**Block of Instruction** \_\_\_\_\_ **Date** \_\_\_\_\_

**VALUES**      **UNACCEPTABLE**                      **ACCEPTABLE**  
**1=POOR**      **2 = FAIR**      **3 = GOOD**                      **4 = EXCELLENT** **5 = SUPERIOR**

Please circle the appropriate value adjacent to each question.

### Instructor Qualities

- |     |                             |   |   |   |   |   |
|-----|-----------------------------|---|---|---|---|---|
| 1.  | Appearances.                | 1 | 2 | 3 | 4 | 5 |
| 2.  | Gestures.                   | 1 | 2 | 3 | 4 | 5 |
| 3.  | Verbal Pauses               | 1 | 2 | 3 | 4 | 5 |
| 4.  | Grammar                     | 1 | 2 | 3 | 4 | 5 |
| 5.  | Pronunciation               | 1 | 2 | 3 | 4 | 5 |
| 6.  | Enunciation                 | 1 | 2 | 3 | 4 | 5 |
| 7.  | Voice                       | 1 | 2 | 3 | 4 | 5 |
| 8.  | Rate - Too Fast or Too Slow | 1 | 2 | 3 | 4 | 5 |
| 9.  | Eye Contact                 | 1 | 2 | 3 | 4 | 5 |
| 10. | Enthusiasm                  | 1 | 2 | 3 | 4 | 5 |

**SUBTOTAL**    \_\_\_\_\_



**SUBTOTAL BROUGHT FORWARD**

— — — — —

**II Organization and Presentation**

- 1. Were the major objectives of the course made clear? 1 2 3 4 5
- 2. How well was the class presentation planned and organized? 1 2 3 4 5
- 3. Was the course material clearly explained? 1 2 3 4 5
- 4. Did test questions fairly reflect the course content? 1 2 3 4 5
- 5. Was class time well used? 1 2 3 4 5
- 6. Do you feel that your questions were adequately answered by the instructor? 1 2 3 4 5
- 7. Do you believe the instructor encouraged relevant student involvement in the class? 1 2 3 4 5
- 8. Did the instructor react to student viewpoints different from his in a positive manner? 1 2 3 4 5
- 9. How would you describe the instructor's attitude in class toward you, the student? 1 2 3 4 5
- 10. How would you rate the instructor's quality and use of training aids? 1 2 3 4 5

**TOTAL ACROSS**    \_\_\_+\_\_\_+\_\_\_+\_\_\_+\_\_\_

**CUMULATIVE TOTAL** \_\_\_\_\_

**INSTRUCTOR RATING FORMULA:**

**CUMULATIVE TOTAL ÷ 20 = INSTRUCTOR RATING**   

Comments

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## ***Alcohol Beverage Control (ABC) Laws and Procedures***

BLET: 16U Draft vi, vii

TITLE: ALCOHOL BEVERAGE CONTROL (ABC) LAWS AND PROCEDURES

Lesson Purpose: To familiarize the student with Alcohol Beverage Control (ABC) laws and alcohol-related offenses that you may come into contact with as a law enforcement officer.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives by the information received during the instructional period:

1. Define, in writing, the following terms as found in G.S. 18B-101:
  - a) Alcoholic beverage
  - b) Nontaxpaid alcoholic beverage
  - c) Malt beverage
  - d) Unfortified wine
  - e) Fortified wine
  - f) Spirituous liquor
  - g) Mixed beverage
  - h) Sale
  - i) Premises
2. State the circumstances under which different types and amounts of alcoholic beverages can be purchased, possessed or consumed on public or private premises.
3. Identify the circumstances under which different types and amounts of alcoholic beverages can be possessed and consumed in a motor vehicle.
4. Name other possible criminal activities that may be associated with alcohol-related offenses.

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

5. Given a hypothetical alcohol-related problem, correctly complete a citation for the appropriate violation and discuss the proper evidence handling procedures.

Hours: Four (4)

Instructional Method: Lecture, Practical Exercise

Testing Requirement(s): End of block test, Practical Exercise

Training Environment(s): Classroom

Materials Required: Audio-visual classroom equipment  
Chapter 18B of the General Statutes (as found in *North Carolina Criminal Law and Procedure*)  
Handout  
Samples of alcoholic beverages (See Instructor Notes)

References: Chapter 18B of the North Carolina General Statutes contains the Alcoholic Beverage Control Laws. That chapter is included in *North Carolina Criminal Law and Procedure* (The LexisNexis Group, Charlottesville, Va.) and is also reprinted and sold separately by the State ABC Commission.

North Carolina ABC Commission. "ABC Commission North Carolina – About the ABC Commission." Accessed October 2020. <http://www.abc.nc.gov/About>.

North Carolina ABC Commission. "ABC Commission North Carolina – General Permit Division." Accessed October 2020. <http://www.abc.nc.gov/Permit>.

North Carolina Department of Public Safety. "About ALE." Accessed October 2020. <https://www.ncdps.gov/our-organization/law-enforcement/alcohol-law-enforcement/about-ale>.

North Carolina Department of Transportation. "North Carolina Driver Handbook." Last modified April 2018. Accessed October 2020. <https://www.ncdot.gov/dmv/license-id/driver-licenses/new-drivers/Documents/driver-handbook.pdf>.

North Carolina, General Statutes. (2020) 14-290, "Dealing in lotteries."

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

North Carolina, General Statutes. (2020) 14-292, “Gambling.”

North Carolina, General Statutes. (2020) 14-313(b), “Youth access to tobacco-derived products, vapor products, and cigarette wrapping papers.”

North Carolina, General Statutes. (2022) 18B-101, “Definitions.”

North Carolina, General Statutes. (2020) 18B-102, “Manufacture, sale, etc., forbidden except as expressly authorized.”

North Carolina, General Statutes. (2020) 18B-111, “Nontaxpaid alcoholic beverages.”

North Carolina, General Statutes. (2020) 18B-203, “Powers and duties of the Commission.”

North Carolina, General Statutes. (2020) 18B-300, “Purchase, possession and consumption of malt beverages and unfortified wine.”

North Carolina, General Statutes. (2020) 18B-301, “Possession and consumption of fortified wine and spirituous liquor.”

North Carolina, General Statutes. (2020) 18B-302, “Sale to or purchase by underage persons.”

North Carolina, General Statutes. (2020) 18B-304, “Sale and possession for sale.”

North Carolina, General Statutes. (2020) 18B-305, “Other prohibited sales.”

North Carolina, General Statutes. (2020) 18B-401, “Manner of transportation.”

North Carolina, General Statutes. (2020) 18B-501, “Local ABC officers.”

North Carolina, General Statutes. (2020) 18B-502, “Inspection of licensed premises.”

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

North Carolina, General Statutes. (2020) 18B-503, “Disposition of seized alcoholic beverages.”

North Carolina, General Statutes. (2020) 18B-504, “Forfeiture.”

North Carolina, General Statutes. (2020) 18B-505, “Restitution.”

North Carolina, General Statutes. (2020) 18B-700, “Appointment and organization of local ABC boards.”

North Carolina, General Statutes. (2020) 18B-701, “Powers and duties of local ABC officers.”

North Carolina, General Statutes. (2020) 18B-703, “Merger of local ABC operations.”

North Carolina, General Statutes. (2020) 18B-1004, “Hours for sale and consumption.”

North Carolina, General Statutes. (2020) 18B-1005, “Conduct on licensed premises.”

North Carolina, General Statutes. (2020) 20-138.1, “Impaired driving.”

North Carolina, General Statutes. (2020) 20-138.3, “Driving by person less than 21 years old after consuming alcohol or drugs.”

North Carolina, General Statutes. (2020) 20-138.7, “Transporting an open container of alcoholic beverage.”

North Carolina, General Statutes. (2020) Article 2, “State administration;” Article 3, “Sale, possession, and consumption;” Article 4, “Transportation;” Article 10, “Retail activity.”

Sellers, Robert D. “ABC Laws Lesson Plan.” North Carolina Alcohol Law Enforcement Division, February 1995.

*State v. Eisen*, 16 N.C. App. 532, 535. 192 S.E. 2d 613, 615, (1972).

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

The Law Dictionary. "Consideration." (2020) Accessed October 2020. <https://thelawdictionary.org/consideration/>.

United States Department of Health and Human Services. "Underage Drinking Fact Sheet." Last modified October 2010. Accessed October 2020. [https://archives.nih.gov/asites/report/09-09-2019/report.nih.gov/nihfactsheets/Pdfs/UnderageDrinking \(NIAAA\).pdf](https://archives.nih.gov/asites/report/09-09-2019/report.nih.gov/nihfactsheets/Pdfs/UnderageDrinking(NIAAA).pdf).

Wayword, Inc. "Shot House." December 29, 2006. Accessed October 2020. [https://www.waywordradio.org/shot\\_house\\_3/](https://www.waywordradio.org/shot_house_3/).

Revised By: Marie Hartwell Evitt  
Associate Attorney General  
North Carolina Department of Justice

Date Revised: January 2016

Revised By: Jennifer H. B. Fisher, M.S.  
BLET Curriculum Coordinator  
North Carolina Justice Academy

Date Revised: July 2017  
July 2019  
January 2020

Content Revision By: Jennifer Fisher  
Instructor/Developer  
North Carolina Justice Academy

Date Revised: July 2020  
July 2022  
January 2023

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

### **TITLE: ALCOHOL BEVERAGE CONTROL (ABC) LAWS AND PROCEDURES – Instructor Notes**

1. This lesson plan must be presented by an instructor currently certified by the North Carolina Criminal Justice Education and Training Standards Commission as a General Instructor.
2. Instructors are required to display a variety of alcoholic beverage containers while teaching definitions.
3. The lesson plan focuses on ABC law violations for which a patrol officer most likely will make an arrest. The outline includes statutory citations for these alcohol offenses. It is essential that each student has a copy of Chapter 18B of the North Carolina General Statutes. That chapter is included in *North Carolina Criminal Law and Procedure*.
4. Completing Alcohol Enforcement Related Citations Practical Exercise

In conjunction with the classroom instruction on citations, students are to complete the practical exercise with the following scenarios. Students should be given several practice attempts to complete the citation. Students should, after sufficient practice, be able to complete a citation thirty minutes. A time limit of thirty minutes has been established because the average time to complete a citation is about fifteen minutes. After the exercise, the practical exercise evaluation form must be retained in each student's permanent file. Two practice scenarios have been provided, and one final scenario.

- a) You have been invited by a friend to go with him and his twenty-year-old son to a football game in Chapel Hill. While at the friend's off-campus motel room, you observe him mix and give to his son a drink containing spirituous liquor.
- b) While on patrol, you observe a vehicle weaving down the road at 28 mph in a 45 mph zone. You stop the vehicle and arrest the **20-year-old** driver for **no operators license**. ~~DWI. After the arrest, you observe in the back seat of the car one 750 ml. bottle of Jack Daniels, four 1.75 liter bottles of Tanqueray gin, and three 750 ml. bottles of Dewar's Scotch. None of the seals on any of the bottles are broken.~~ **After the arrest, you observe, in the back seat of the car, one bottle of Jack Daniels whiskey, with the seal broken. However, the driver does not positively test for any alcohol consumption.**
- c) You observe a clerk in a convenient store, which has an off-premises malt beverage permit, sell a six-pack of Miller beer to an intoxicated lady. Upon questioning the clerk, she tells you she knew the lady was drunk, but felt sorry

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

for her because she recently lost her husband to whom she had been married for 50 years.

5. To promote and facilitate law enforcement professionalism, three ethical dilemmas are listed below for classroom discussion. Instructors must provide students with each ethical dilemma listed below. During the lecture, instructors should “set the stage” for the dilemma before taking a break. Instructors are encouraged to develop additional dilemmas as needed.
  - a) If a twenty-year-old is found holding a beer at a local high school football game played on a field owned or leased by the local board of education, would it be acceptable to allow this person to throw out the beer and leave the game? Why?
  - b) After a trial, seized alcoholic beverages should be sold or destroyed, returned to the owner, or held for further proceedings. Would it be unethical for the officer to keep some of the alcohol if it was ordered destroyed? Why not?
  - c) A fellow officer conducted a traffic stop and seized a large amount of unopened alcohol from a 19-year-old driver, including two cases of beer and several bottles of spiritous liquor. Instead of charging the underage driver, the officer takes possession of the alcohol and asks you to come over after the shift and help him dispose of the alcohol while watching a football game. What would you do?



## ***Alcohol Beverage Control (ABC) Laws and Procedures***

TITLE: ALCOHOL BEVERAGE CONTROL (ABC) LAWS AND PROCEDURES

### I. Introduction

**NOTE: Show slide, “Alcohol Beverage Control Laws and Procedures.”**

#### A. Opening Statement

The most widely used drug in our society today is alcohol. Alcohol is not only an adult problem. Its use remains prevalent among today’s teenagers despite the fact it is illegal. “Underage drinking is a leading contributor to death from injuries, which are the main cause of death for people under age 21.”<sup>1</sup> Law enforcement officers deal with alcohol-related problems on a routine basis. Most of the violations of Chapter 18B of the North Carolina General Statutes, Regulation of Alcoholic Beverages, which law enforcement encounter involve the unlawful purchase, possession, transportation, and consumption of alcoholic beverages. Driving while impaired and other offenses related to driving are found in Chapter 20, Motor Vehicle Laws, of the North Carolina General Statutes. Chapter 14, Criminal Laws, contains a few offenses based on alcohol-related misconduct.

#### B. Training Objectives

**NOTE: Show slides, “Training Objectives.”**

1. Define, in writing, the following terms as found in G.S. 18B-101:
  - a) Alcoholic beverage
  - b) Nontaxpaid alcoholic beverage
  - c) Malt beverage
  - d) Unfortified wine
  - e) Fortified wine
  - f) Spirituous liquor
  - g) Mixed beverage
  - h) Sale
  - i) Premises

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2. State the circumstances under which different types and amounts of alcoholic beverages can be purchased, possessed or consumed on public or private premises.
3. Identify the circumstances under which different types and amounts of alcoholic beverages can be possessed, consumed in a motor vehicle.
4. Name other possible criminal activities that may be associated with alcohol-related offenses.
5. Given a hypothetical alcohol-related problem, correctly complete a citation for the appropriate violation and discuss the proper evidence handling procedures.

### C. Reasons

**NOTE: Show slide, “Having a Working Knowledge of ABC Laws.”**

To enforce North Carolina’s Alcoholic Beverage Control (ABC) laws, officers must have a solid working knowledge of not only these ABC laws but also the different alcohol products on the market and how these products are classified under the law.

Law enforcement officers should understand the problems associated with enforcing the laws in and around licensed and unlicensed outlets. You should know what statutes can be enforced both in licensed premises as well as in illegal operations such as “shot houses.” A “shot house” is a place where alcohol is illegally sold by the drink.<sup>2</sup> Moreover, it is essential that officers be familiar with alcohol offenses and how to write the appropriate charge.

## II. Body

### A. Overview of the ABC System

**NOTE: Show slide, “Overview of the ABC System.”**

#### 1. Chapter 18B – ABC Laws

The purpose of Chapter 18B is to establish a uniform system of control over alcoholic beverages in North Carolina. The General Statutes make it unlawful “for any person to manufacture, sell, transport, import, deliver, furnish, purchase, consume or possess any alcoholic beverage except as authorized” in the statutes.<sup>3</sup>

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

While there are 13 Articles in Chapter 18B, most law enforcement officers rely primarily on the following articles:<sup>4</sup>

- Article 2 – State Administration;
- Article 3 - Sale, Possession, and Consumption;
- Article 4 - Transportation;
- Article 10 - Retail Activity.

**NOTE: Show slide, “NCGS 18B.” Refer the students to the handout and tell the students that you will be referring to this handout throughout the lesson plan.**

2. Regulation of the ABC System
  - a) North Carolina ABC Commission

**NOTE: Show slide, “North Carolina ABC Commission.”**

The North Carolina Alcoholic Beverage Control Commission (NC ABC Commission) is an independent state agency housed in the NC Department of Public Safety that provides uniform control over the sale, purchase, transportation, manufacture, consumption and possession of all alcoholic beverages in the state.<sup>5</sup> The ABC Commission “reviews and processes all permit applications for retail activity (restaurants, grocery stores, convenience stores, etc.). The division also processes applications for Special One-Time permits, which are issued to tax-exempt non-profit or political organizations for fundraising events and Limited Special Occasion permits for individuals or groups hosting functions (wedding receptions, company parties, etc.).”<sup>6</sup> Also, the Commission “reviews and processes all permit applications for commercial activity involving malt beverage and wine products. All malt beverage and wine products sold in North Carolina are approved in this division.”<sup>7</sup> Lastly, the Commission holds the authority to issue permits and impose sanctions against licensed ABC establishments throughout the state.<sup>8</sup>

- b) North Carolina Alcohol Law Enforcement (ALE) special agents

**NOTE: Show slide, “North Carolina Alcohol Law Enforcement.”**

“ALE is the lead enforcement agency for the state’s alcoholic beverage control, lottery and tobacco laws. As such, ALE

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

special agents target problem ABC-licensed and illegal establishments that serve as havens for violence, drugs, gang activity, organized crime, money laundering and other criminal activity.”<sup>9</sup>

- c) Local ABC boards

**NOTE: Show slide, “Local ABC Boards.”**

A local city or county ABC board consists of three or five members<sup>10</sup> unless a local act provides otherwise, or the Board is a merged system<sup>11</sup> and is responsible for operating its ABC stores and employing or contracting for local ABC officers for the enforcement of ABC laws locally.<sup>12</sup>

- d) Local ABC officers

**NOTE: Show slide, “Local ABC Officers.”**

Local ABC boards must hire ABC officers or contract with local law enforcement agencies for the enforcement of ABC laws.<sup>13</sup> Local ABC officers have countywide territorial jurisdiction (a city ABC officer may be subject to limitations included in the local act governing that city ABC system) and may make arrests for any criminal offense.<sup>14</sup> All local ABC officers, ALE special agents and contracted local law enforcement agencies have the authority to inspect licensed premises within their territorial jurisdiction.<sup>15</sup> Alcohol law enforcement agents are also authorized to be on the premises to the extent necessary to enforce the provisions of Article 68 of Chapter 143 of the General Statutes.<sup>16</sup>

Local law enforcement officers **under contract** with a local ABC Board may make arrests for ABC violations in their presence and issue citations or criminal summons for violations if they have probable cause that such a violation was committed, whether it occurred in their presence or not.<sup>17</sup>

What are the different types of alcoholic beverages? Why is it important to know the difference (decide if a violation has occurred, decide how to draft a warrant or citation, testify in court, etc.)?

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Legal definitions are an intricate part of the vocabulary of law enforcement officers. Knowing the proper word to use in reports, warrants, or citations is a necessary part of a law enforcement officer's role in the criminal justice system.

### 3. Definitions

**NOTE: Show slide, "Definitions."**

#### a) Alcoholic beverage

Alcoholic beverage is "any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages."<sup>18</sup> This includes an alcohol consumable which is defined as "any manufactured and packaged ice pop, gum-based, or gelatin-based food product containing at least one-half of one percent (0.5%) alcohol by volume"<sup>19</sup>

#### b) Nontaxpaid alcoholic beverage

Nontaxpaid alcoholic beverage means "any alcoholic beverage upon which the taxes imposed by the United States, this State, or any other territorial jurisdiction in which the alcoholic beverage was purchased have not been paid."<sup>20</sup>

#### c) Malt beverage

Malt beverage "means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine as defined by this Chapter, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage."<sup>21</sup>

#### d) Unfortified wine

Unfortified wine "means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

contained in the base wine and produced in accordance with the regulations of the United States.”<sup>22</sup>

e) Fortified wine

Fortified wine “means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.”<sup>23</sup>

**NOTE: A close examination of the label will reveal if the beverage meets the definition of a malt beverage or wine. So-called “coolers” are not always wine. Likewise, some “beers” may be a non-alcoholic beverage since they may contain less than one-half of one percent (0.5%) alcohol by volume.**

f) Spirituous liquor

Spirituous liquor “means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.”<sup>24</sup>

**NOTE: Generally, the tightest restrictions apply to those beverages classified as a fortified wine, spirituous liquor, and mixed beverages.**

g) Mixed beverage – means either of the following:

- (1) “A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.
- (2) A premixed cocktail served from a closed package containing only one serving.”<sup>25</sup>

h) Premises

Premises means “a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the

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permittee has control of the property through a lease, deed, or other legal process.”<sup>26</sup>

i) Sale

Sale “means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.”<sup>27</sup>

B. ABC Offenses

1. Sell/give

**NOTE: Show slide, “Sell/Give.”**

a) It is unlawful for any person to sell or give alcoholic beverages to a person under twenty-one years of age.<sup>28</sup>

b) Sell to intoxicated persons

It is unlawful for any person to knowingly sell or give alcoholic beverages to an intoxicated person or to knowingly buy alcoholic beverages for someone who has been refused the right to purchase such beverages.<sup>29</sup>

c) Refusal

An employee of a permittee may refuse the sale or service of alcoholic beverages to any person who is intoxicated.<sup>30</sup>

2. Possession and consumption

**NOTE: Show slide, “Possession and Consumption.”**

Generally – Purchase, possession, and consumption of malt beverage and unfortified wine by a twenty-one-year-old for their use are permitted except as otherwise provided by Chapter 18B.<sup>31</sup> “It is lawful for any person at least 21-years-old to possess for lawful purposes any amount of fortified wine and spirituous liquor at his home or temporary residence, such as a hotel room.”<sup>32</sup>

a) Hours of consumption

**NOTE: Show slide, “Hours of Consumption.”**

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

- (1) A person may not consume any alcoholic beverage before 7:00 a.m. or after 2:30 a.m. on licensed premises.<sup>33</sup> Consumption may continue on licensed premises for a half-hour after sales are required to stop at 2:00 a.m.<sup>34</sup>
- (2) A person may not consume on licensed premises before noon on Sunday.<sup>35</sup> No local ordinances are allowed to restrict Sunday afternoon consumption in establishments having brown-bagging or mixed beverages permits.<sup>36</sup>

b) Hours of sale

**NOTE: Show slide, “Hours of Sale – 18B Article 10.”**

- (1) Sales of alcoholic beverages are allowed on licensed premises only after 7:00 a.m. and before 2:00 a.m. Monday through Saturday.<sup>37</sup> Sales may not begin until after noon on Sunday but may continue until 2:00 a.m.<sup>38</sup>
- (2) A city or county may prohibit sales of malt beverages, unfortified wine, and fortified wine after 12:00 noon on Sunday, but such prohibition is not applicable to a place which also has a brown-bagging or mixed beverage permit (i.e., so by ordinance can prohibit sale from noon on Sunday to 7:00 a.m. on Monday).<sup>39</sup>

**NOTE: Mention that these local ordinances are called “Blue Laws.”**

c) Off-premises

It is unlawful for any person to consume alcoholic beverages on the premises of a business having only an off-premises permit for the kind of alcoholic beverage being consumed.<sup>40</sup>

**NOTE: Emphasize the definition of “premises.”**

**NOTE: Show slides, “ABC Permit” and “Temporary Permit.” Instructors are also encouraged to obtain and distribute other copies of ABC permits to students.**

d) Conduct on a licensed premise



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**NOTE: Show slide, “Conduct on a Licensed Premise.”**

Upon a licensed premise, any fighting, violation of the controlled substances laws, gambling, or prostitution statutes, or any other disorderly conduct or other unlawful acts can be enforced by a local law enforcement officer under this statute.<sup>41</sup>

e) Local ordinance

A city or county may adopt an ordinance regulating or prohibiting:

**NOTE: Show slide, “Local Ordinances.” Tell the students to familiarize themselves with their local ordinances regarding ABC violations since some cities/towns have more strict provisions.**

(1) The consumption of malt beverages and unfortified wine on public streets by persons who are not occupants of motor vehicles and on property owned or occupied by that city or county.<sup>42</sup>

(2) The possession of open containers of malt beverages and unfortified wine on public streets by persons who are not occupants of motor vehicles and on property owned, occupied, or controlled by that city or county; and<sup>43</sup>

(3) “The possession of malt beverages and unfortified wine on public streets, alleys, or parking lots which are temporarily closed to regular traffic for special events.”<sup>44</sup>

f) Unlawful possession or use

N.C.G.S. 18B-301(f) provides specific examples of unlawful acts which violate the general prohibitions against manufacturing, selling, transporting, importing, delivering, furnishing, purchasing, consuming, or possessing certain alcoholic beverages. It is unlawful for any person to:

**NOTE: Show slide, “Unlawful Possession or Use.”**

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- (1) “Any person to consume fortified wine, spirituous liquor, or mixed beverages or to offer such beverages to another person at any of the following places:
  - (a) Unless a consumer tasting authorized by G.S. 18B-1114.7 is being conducted, on the premises of an ABC store.
  - (b) Upon any property used or occupied by a local board.
  - (c) On any public road, street, highway, or sidewalk, unless a consumer tasting authorized by G.S. 18B-1114.7 is being conducted.
- (2) Any person to display publicly at an athletic contest fortified wine, spirituous liquor, or mixed beverages;”<sup>45</sup>
- (3) “Any person to permit any fortified wine, spirituous liquor, or mixed beverages to be possessed or consumed upon any premises not authorized by this Chapter;”<sup>46</sup>
- (4) “Any person to possess or consume any fortified wine, spirituous liquor, or mixed beverages upon any premises where such possession or consumption is not authorized by law, or where the person has been forbidden to possess or consume that beverage by the owner or other person in charge of the premises;”<sup>47</sup>
- (5) “Any person to possess on any of the premises described in subsections [(1)] (a) through (c) a greater amount of fortified wine or spirituous liquor than authorized by this Chapter.”<sup>48</sup>

G.S. 18B-301(a) allows a person of the proper age to possess for lawful purposes any amount of fortified wine and spirituous liquor at his home or temporary residence.
- (6) “Any person to possess on his person or consume malt beverages or unfortified wine upon any property owned or leased by a local board of education and used by the local board of education for school purposes. Provided,

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however, the prohibition in G.S. 18B-102(a) and this subdivision shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board.”<sup>49</sup>

### 3. Possession

**NOTE: Show slides, “Possession.”**

- a) It is unlawful for a person under the age of twenty-one to purchase, attempt to purchase, possess, or consume alcoholic beverages in North Carolina.<sup>50</sup>

**NOTE: Show slide and refer to handout, “G.S. 18B-302.”**

- b) If the person is nineteen or twenty and the alcoholic beverage was possessed, or consumed, is a malt beverage or unfortified wine, then the person may be charged with a Class 3 misdemeanor.<sup>51</sup>

- c) Aid and abet

It is unlawful for any person to aid and abet in the unlawful purchase or possession of alcoholic beverages.<sup>52</sup>

- (1) By underage person

Any person who is under the lawful age to purchase and who aids or abets another in possessing, attempting to possess, purchasing, attempting to purchase, or consuming an alcoholic beverage shall be guilty of a Class 2 misdemeanor.<sup>53</sup>

- (2) By person over lawful age

Any person who is over the lawful age to purchase and who aids or abets another in possessing, attempting to possess, purchasing, attempting to purchase, or consuming an alcoholic beverage shall be guilty of a Class 1 misdemeanor.<sup>54</sup>

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- d) Fraudulent/altered driver's license
  - (1) Fraudulent

It is unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed or to obtain or attempt to obtain permission to purchase alcoholic beverages using a fraudulent or altered driver's license or identification document.<sup>55</sup>

**NOTE: Show slides with valid NC driver's licenses and fake licenses.**

- (2) It is unlawful to use or attempt to use a driver's license or other identification document issued to another person to obtain or attempt to obtain alcoholic beverages. Any person who allows his driver's license or ID to be so used violates this law.<sup>56</sup>
- (3) Acceptable ID's

**NOTE: Show slide, "Acceptable ID's."**

The only acceptable form of identification for purchasing alcoholic beverages in North Carolina is a valid driver's license, North Carolina special identification card, passport, and military identification card.<sup>57</sup>

The North Carolina Division of Motor Vehicles of the North Carolina Department of Transportation issues color-coded driver's licenses to indicate, at a glance, the age of the individual possessing the license.

- (a) Applicants twenty-one years old or older are issued drivers licenses and special identification cards that are printed in a horizontal format.
- (b) Applicants under the age of twenty-one are issued drivers licenses and special identification cards that are printed in a vertical format.
- (c) If the driver is between the ages of fifteen and eighteen, then the bottom of the photograph on the license will be outlined with a red bar and

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then a yellow bar. Those bars will contain the dates the driver will turn eighteen and twenty-one.

- (d) If the driver is over the age of eighteen, but less than twenty-one, then the bottom of the photograph on the license will be outlined with a red bar. The bar will contain the date when the driver will turn twenty-one.<sup>58</sup>

**NOTE: Show slide, “To Order Driver’s License Guide.”**

**NOTE: Instructors should obtain a current ID or Driver’s License Checking Guide and show students.**

**NOTE: Instructors should attempt to obtain actual falsified ID or driver’s licenses to show students.**

- e) Nontaxpaid alcoholic beverages

“No person may possess, transport or sell any amount of nontaxpaid alcoholic beverages except as authorized by ABC law.”<sup>59</sup> This ABC law is often misunderstood since it is legal to produce malt beverage and unfortified wine for personal use. Please note that it is legal to possess homebrewed malt beverages and unfortified wine, but it is **not** legal to sell.<sup>60</sup>

- C. Possession and Consumption of Alcoholic Beverages in a Motor Vehicle
  - 1. Driving by underage after consuming

**NOTE: Show slide, “Driving by Underage After Consuming.”**

“It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or a controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.”<sup>61</sup>

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### 2. Transportation

**NOTE: Show slide, “Transportation.”**

a) Taxi

It is unlawful for a person operating a for-hire vehicle to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying customer.<sup>62</sup>

b) Open containers

It is unlawful for the driver of a motor vehicle to transport fortified wine or spirituous liquor in other than the original closed container (i.e., the seal may not be broken on the bottle).<sup>63</sup>

Additionally, no person may drive a motor vehicle on a highway or the right-of-way of a highway:

- (1) With an open container of alcoholic beverage after drinking;<sup>64</sup>
- (2) While consuming alcohol or while alcohol remains in the body;<sup>65</sup>
- (3) It is unlawful for a passenger to possess (unless in unopened manufacturer’s original container) or consume an alcoholic beverage while in passenger’s area of the motor vehicle while the motor vehicle is on the highway or right-of-way of a highway.<sup>66</sup> An exception is that a passenger may possess and consume an alcoholic beverage in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; in the living quarters of a motor home or house car; or in a house trailer.<sup>67</sup>

“If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, “passenger area of a motor vehicle” means the area designed to seat the driver and passengers in any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the

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area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area.”<sup>68</sup>

c) Nontaxpaid liquor

It is unlawful to transport any amount of nontaxpaid liquor in a motor vehicle, boat, airplane, or other conveyances. Vehicles used in such transportation are subject to forfeiture.<sup>69</sup> Please refer to your departmental policy for more information on forfeitures relating to this statute.

3. Court proceedings

a) Completing a citation

b) Waivable offenses may change with each session of the North Carolina General Assembly. Therefore, the most current list can be found on [www.nccourts.org](http://www.nccourts.org). Click on the FAQ, Courts, Trial Division, then Court Costs, to find the link to the various lists.

c) Disposition of seized alcoholic beverages

(1) Storage

Officers who seize alcoholic beverages as evidence of an ABC law violation are responsible for storing this evidence until the trial or administrative hearing unless some other disposition is authorized.<sup>70</sup>

(2) Disposition

Before trial, a judge may order the seized evidence to be stored, destroyed or sold.<sup>71</sup> After trial, a judge may order the seized alcoholic beverage to be sold, destroyed, returned to the owner, or held for further proceedings.<sup>72</sup>

d) Restitution

The court may order a person convicted of an ABC law violation to make restitution to any law enforcement agency for reasonable expenses incurred in purchasing alcoholic

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beverages from that person or his agent as part of an investigation leading to his conviction.<sup>73</sup>

### D. Other Laws Associated with Alcohol-Related Offenses

#### 1. Lottery laws

**NOTE: Show slide, “Lottery Laws.”**

“Except as provided in Chapter 18C of the General Statutes or in connection with a lawful raffle as provided in Part 2 of this Article, if any person shall open, set on foot, carry on, promote, make or draw, publicly or privately, a lottery, by whatever name, style or title the same may be denominated or known; or if any person shall, by such way and means, expose or set to sale any house, real estate, goods, chattels, cash, written evidence of debt, certificates of claims or any other thing of value whatsoever, every person so offending shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed two thousand dollars (\$2,000). Any person who engages in disposing of any species of property whatsoever, including money and evidence of debt, or in any manner distributes gifts or prizes upon tickets, bottle crowns, bottle caps, seals on containers, other devices or certificates sold for that purpose, shall be held liable to prosecution under this section. Any person who shall have in his possession any tickets, certificates or orders used in the operation of any lottery shall be held liable under this section, and the mere possession of such tickets shall be prima facie evidence of the violation of this section. This section shall not apply to the possession of a lottery ticket or share for a lottery game being lawfully conducted in another state.”<sup>74</sup>

#### 2. Gambling

**NOTE: Show slide, “Gambling.”**

“Except as provided in Chapter 18C of the General Statutes or in Part 2 or Part 4 of this Article, any person or organization that operates any game of chance or any person who plays at or bets on any game of chance at which any money, property or other thing of value is bet, whether the same be in stake or not, shall be guilty of a Class 2 misdemeanor. This section shall not apply to a person who plays at or bets on any lottery game being lawfully conducted in any state.”<sup>75</sup> A game of chance is “determined entirely or in part by lot or mere luck, and in which judgment, practice, skill or adroitness have honestly no office at all, or are thwarted by **chance**.”<sup>76</sup>



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### 3. Tobacco laws

**NOTE: Show slide, “Tobacco Laws.”**

- a) “If any person shall distribute, or aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall purchase tobacco products or cigarette wrapping papers on behalf of a person under the age of 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties.”<sup>77</sup>
- b) “If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful for an employee to purchase or accept receipt of tobacco products or cigarette wrapping papers when required in the performance of the employee's duties.”<sup>78</sup>

**NOTE: Show slide, “Tobacco Charging Language.” Review handout with students.**

#### E. Practical Exercises

**NOTE: Show slide, “Practical Exercise.” Instructions on how to conduct this practical exercise is covered in the “Instructor Notes” section of the lesson plan. Instructors are required to obtain and make copies of the “N.C. Uniform Citation” and conduct the exercise, “Completing Alcohol Enforcement Related Citations.” It may be useful for students to refer to statute verbiage found in Chapter 18-B.**

**NOTE: Show slides, “Scenario.”**

### III. Conclusion

#### A. Summary

Every law enforcement officer should be familiar with ABC laws.  
Proficiency in ABC law can aid you in your investigations of other crimes

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such as DWI, homicides, domestic violence, traffic crashes, etc. Understanding these laws is one tool in your toolbox that can help you conduct thorough investigations. Often, alcoholic beverages are a common denominator for crimes being committed, and it can be a catalyst in the determining factors of those crimes. During this block of instruction, we discussed several ABC terms and the many types of criminal offenses involving alcoholic beverages.

**NOTE: Show slides, “Training Objectives.”**

1. Define, in writing, the following terms as found in G.S. 18B-101:
  - a) Alcoholic beverage
  - b) Nontaxpaid alcoholic beverage
  - c) Malt beverage
  - d) Unfortified wine
  - e) Fortified wine
  - f) Spirituous liquor
  - g) Mixed beverage
  - h) Sale
  - i) Premises
2. State the circumstances under which different types and amounts of alcoholic beverages can be purchased, possessed or consumed on public or private premises.
3. Identify the circumstances under which different types and amounts of alcoholic beverages can be possessed, consumed in a motor vehicle.
4. Name other possible criminal activities that may be associated with alcohol-related offenses.
5. Given a hypothetical alcohol-related problem, correctly complete a citation for the appropriate violation and discuss the proper evidence handling procedures.

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

B. Questions from Class

**NOTE: Show slide, “Questions.”**

C. Closing Statement

Although ABC laws are technical, with proper training and experience, all law enforcement officers can become familiar with these laws and apply them properly.

**NOTES**

<sup>1</sup> United States Department of Health and Human Services.

<sup>2</sup> Wayword, Inc.

<sup>3</sup> N.C.G.S. § 18B-102 (2020).

<sup>4</sup> N.C.G.S. § Article 2 (2020).

<sup>5</sup> North Carolina ABC Commission, “ABC Commission North Carolina – About the ABC Commission.”

<sup>6</sup> North Carolina ABC Commission, “ABC Commission North Carolina – General Permit Division.”

<sup>7</sup> North Carolina ABC Commission, “ABC Commission North Carolina – General Permit Division.”

<sup>8</sup> N.C.G.S. § 18B-203 (2020).

<sup>9</sup> North Carolina Department of Public Safety.

<sup>10</sup> N.C.G.S. § 18B-700(a) (2020).

<sup>11</sup> N.C.G.S. § 18B-703 (2020).

<sup>12</sup> N.C.G.S. § 18B-701 (2020).

<sup>13</sup> N.C.G.S. § 18B-501(a) and (f) (2020).

<sup>14</sup> N.C.G.S. § 18B-501(c) (2020).

<sup>15</sup> N.C.G.S. § 18B-502(c) (2020).

<sup>16</sup> N.C.G.S. § 18B-502(c) (2020).

<sup>17</sup> N.C.G.S. § 18B-501(f), N.C.G.S. § 15A-401(b)(1), N.C.G.S. § 15A-302 (2020).

<sup>18</sup> N.C.G.S. § 18B-101(4) (2020).

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

<sup>19</sup> N.C.G.S. § 18B-101(4a) (2022).

<sup>20</sup> N.C.G.S. § 18B-101(11) (2020).

<sup>21</sup> N.C.G.S. § 18B-101(a) (2020).

<sup>22</sup> N.C.G.S. § 18B-101(15) (2020).

<sup>23</sup> N.C.G.S. § 18B-101(7) (2020).

<sup>24</sup> N.C.G.S. § 18B-101(14) (2020).

<sup>25</sup> N.C.G.S. § 18B-101(10)(a) through (b) (2020).

<sup>26</sup> N.C.G.S. § 18B-101(12a) (2020).

<sup>27</sup> The Law Dictionary.

<sup>28</sup> N.C.G.S. § 18B-302(a) and (a1) (2020).

<sup>29</sup> N.C.G.S. § 18B-305(a) and (b) (2020).

<sup>30</sup> N.C.G.S. § 18B-305(a) and (b) (2020).

<sup>31</sup> N.C.G.S. § 18B-300(a) (2020).

<sup>32</sup> N.C.G.S. § 18B-301(a) (2020).

<sup>33</sup> N.C.G.S. § 18B-1004(a) (2020).

<sup>34</sup> N.C.G.S. § 18B-1004(a) (2020).

<sup>35</sup> N.C.G.S. § 18B-1004(c) (2020).

<sup>36</sup> N.C.G.S. § 18B-1004(d) (2020).

<sup>37</sup> N.C.G.S. § 18B-1004(a) (2020).

<sup>38</sup> N.C.G.S. § 18B-1004(c) (2020).

<sup>39</sup> N.C.G.S. § 18B-1004(d) (2020).

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

- <sup>40</sup> N.C.G.S. § 18B-300(b) (2020).
- <sup>41</sup> N.C.G.S. § 18-B-1005(a) (2020).
- <sup>42</sup> N.C.G.S. § 18B-300(c)(1) (2020).
- <sup>43</sup> N.C.G.S. § 18B-300(c)(2) (2020).
- <sup>44</sup> N.C.G.S. § 18B-300(c)(3) (2020).
- <sup>45</sup> N.C.G.S. § 18B-301(f)(1)-(2) (2020).
- <sup>46</sup> N.C.G.S. § 18B-301(f)(3) (2020).
- <sup>47</sup> N.C.G.S. § 18B-301(f)(4) (2020).
- <sup>48</sup> N.C.G.S. § 18B-301(f)(5) (2020).
- <sup>49</sup> N.C.G.S. § 18B-301(f)(7) (2020).
- <sup>50</sup> N.C.G.S. § 18B-302(b)(1-3) (2020).
- <sup>51</sup> N.C.G.S. § 18B-302(i) (2020).
- <sup>52</sup> N.C.G.S. § 18B-302(c)(1-2) (2020).
- <sup>53</sup> N.C.G.S. § 18B-302(c)(1) (2020).
- <sup>54</sup> N.C.G.S. § 18B-302(c)(2) (2020).
- <sup>55</sup> N.C.G.S. § 18B-302(e)(1-2) (2020).
- <sup>56</sup> N.C.G.S. § 18B-302(e)(3-5) and (f) (2020).
- <sup>57</sup> N.C.G.S. § 18B-302(d)(1) (2020).
- <sup>58</sup> North Carolina Department of Transportation.
- <sup>59</sup> N.C.G.S. § 18B-111 (2020).
- <sup>60</sup> N.C.G.S. § 18B-304(a) (2020).

## ***Alcohol Beverage Control (ABC) Laws and Procedures***

<sup>61</sup> N.C.G.S. § 20-138.3 (2020).

<sup>62</sup> N.C.G.S. § 18B-401(b) (2020).

<sup>63</sup> N.C.G.S. § 18B-401(a) (2020).

<sup>64</sup> N.C.G.S. § 20-138.7(a)(1) (2020).

<sup>65</sup> N.C.G.S. § 20-138.1(a)(2) (2020).

<sup>66</sup> N.C.G.S. § 20-138.7(a1) (2020).

<sup>67</sup> N.C.G.S. § 20-138.7(a2) (2020).

<sup>68</sup> N.C.G.S. § 20-138.7(f) (2020).

<sup>69</sup> N.C.G.S. § 18B-504(a)(1) (2020).

<sup>70</sup> N.C.G.S. § 18B-503(a) (2020).

<sup>71</sup> N.C.G.S. § 18B-503(b)(1-4) (2020).

<sup>72</sup> N.C.G.S. § 18B-503(c)(1-4) (2020).

<sup>73</sup> N.C.G.S. § 18B-505 (2020).

<sup>74</sup> N.C.G.S. § 14-290 (2020).

<sup>75</sup> N.C.G.S. § 14-292 (2020).

<sup>76</sup> *State v. Eisen*.

<sup>77</sup> N.C.G.S. § 14-313(b) (2020).

<sup>78</sup> N.C.G.S. § 14-313(c) (2020).

## ***Motor Vehicle Laws***

BLET: 17AJ **Draft AOC forms updated**

TITLE: MOTOR VEHICLE LAWS

Lesson Purpose: To familiarize the student with the motor vehicle laws of North Carolina so that violations can be recognized and responses can be made to citizen inquiries.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives by the information received during the instructional period:

1. Identify the following motor vehicle law violations:
  - a) Driver license provisions
  - b) Registration and vehicle plate requirements
  - c) Equipment safety inspection provisions
  - d) Passenger restraint laws
  - e) Vehicle operation
  - f) Driving while impaired
2. Identify basic practices and procedures related to obtaining chemical analyses, including blood or breath tests.
3. Respond to citizen inquiries by explaining provisions relating to motor vehicle law.
4. Respond to citizen inquiries by explaining court and Division of Motor Vehicles (DMV) procedures relating to violations.
5. State legal issues and basic practices relating to establishing and conducting checking stations.

Hours: Twenty (20)

Instructional Method: Lecture, Discussion

Testing Requirement(s): End of block test



## ***Motor Vehicle Laws***

Training Environment(s): Classroom

Required Equipment and  
Training Aids:

Audio-visual classroom equipment  
Chapter 20 of the General Statutes (as found in *Motor Vehicle Laws of North Carolina*)  
Handouts  
Representation of driver's licenses and permits  
Video:  
*Motor Vehicle Laws*, North Carolina Justice Academy  
Video Production Unit (Revised January 2019) (40  
minutes)

References:

49 C.F.R. § 234.225.

~~General Assembly of North Carolina. Session Law 2021-128,  
House Bill 692.~~

*Motor Vehicle Laws of North Carolina Annotated*.  
Charlottesville, VA: The LexisNexis Group, 2020.

National District Attorneys Association. "Commercial Drivers' Licenses: A Prosecutor's Guide to the Basics of Commercial Motor Vehicle Licensing and Violations." Last modified 2012. Accessed February 2022. [https://cdn.ymaws.com/mcaamn.org/resource/resmgr/Files/TSRP/CDL\\_Monograph.pdf](https://cdn.ymaws.com/mcaamn.org/resource/resmgr/Files/TSRP/CDL_Monograph.pdf).

North Carolina Department of Transportation. "Commercial Driver License Manual." Last modified July 2017. Accessed February 2022. <https://www.ncdot.gov/dmv/license-id/driver-licenses/new-drivers/Documents/commercial-driver-manual.pdf>.

North Carolina Department of Transportation. "North Carolina 2018 Traffic Crash Facts." Last modified August 12, 2019. Accessed February 2022. <https://connect.ncdot.gov/resources/safety/Crash%20Data%20and%20TEAAS%20System/Crash%20Data%20and%20Information/2018.pdf>.

North Carolina, General Statutes. (1985) 14-3.1, "Infraction defined; sanctions."

North Carolina, General Statutes. (2003) 15A-302, "Citation."

North Carolina, General Statutes. (2021) 20-4.01, "Definitions."

North Carolina, General Statutes. (1999) 20-4.18, “Definitions.”

North Carolina, General Statutes. (2021) 20-7, “Issuance and renewal of drivers licenses.”

North Carolina, General Statutes. (2015) 20-16, “Authority of Division to suspend license.”

North Carolina, General Statutes. (2021) 20-17.8, “Restoration of a license after certain driving while impaired convictions; ignition interlock.”

North Carolina, General Statutes. (2021) 20-37.6, “Parking privileges for handicapped drivers and passengers.”

North Carolina, General Statutes. (2018) 20-37.16, “Content of license; classifications and endorsements; fees.”

North Carolina, General Statutes. (2015) 20-53.4, “Registration of mopeds: certificate of title.”

North Carolina, General Statutes. (2019) 20-63, “Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates, First in Freedom plates, or National/State Mottos plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.”

North Carolina, General Statutes. (1997) 20-67, “Notice of change of address or name.”

North Carolina, General Statutes. (2008) 20-115.1, “Limitations on tandem trailers and semitrailers on certain North Carolina highways.”

North Carolina, General Statutes. (2021) 20-121.1, “Operation of a low-speed vehicle, mini-truck, or modified utility vehicle on certain roadways.”

North Carolina, General Statutes. (1997) 20-123, “Trailers and towed vehicles.”

North Carolina, General Statutes. (2017) 20-127, “Windows and windshield wipers.”

North Carolina, General Statutes. (2017) 20-129, “Required lighting equipment of vehicles.”

North Carolina, General Statutes. (2017) 20-135.2A, “Seat belt use mandatory.”

North Carolina, General Statutes. (2016) 20-135.3, “Seat belt anchorages for rear seats of motor vehicles.”

North Carolina, General Statutes. (2021) 20-135.4, “Certain automobile safety standards.”

North Carolina, General Statutes. (2007) 20-137.1, “Child restraint systems required.”

North Carolina, General Statutes. (2009) 20-137.3, “Unlawful use of a mobile phone by person under 18 years of age.”

North Carolina, General Statutes. (2017) 20-137.4, “Unlawful use of a mobile phone.”

North Carolina, General Statutes. (2012) 20-137.4A, “Unlawful use of mobile phone for text messaging or electronic mail.”

North Carolina, General Statutes. (2019) 20-140.4, “Special provisions for motorcycles and mopeds.”

North Carolina, General Statutes. (2019) 20-142.1, “Obedience to railroad signal.”

North Carolina, General Statutes. (2019) 20-142.3, “Certain vehicles must stop at railroad grade crossing.”

North Carolina, General Statutes. (2019) 20-157, “Approach of law enforcement, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire fighting equipment; parking, etc., near law enforcement, fire department, or rescue squad vehicle or ambulance.”

North Carolina, General Statutes. (1999) 20-157.1, “Funeral processions.”

North Carolina, General Statutes. (2021) 20-179.3, “Limited driving privilege. [Effective until June 1, 2022]”

North Carolina, General Statutes. (2021) 20-183.4C, “When a vehicle must be inspected; 10-day temporary license plate.”

North Carolina, General Statutes. (2015) 20-309, “Financial responsibility prerequisite to registration; must be maintained throughout registration period.”

North Carolina, General Statutes. (2014) 143B-903, “Collection of traffic law enforcement statistics.”

North Carolina, General Statutes. (2016) 143B-1023, “North Carolina Blue Alert System established.”

*State v. Mack*, 81 N.C. App. 578 and 85 N.C. App. 500.

United States Department of Transportation. “Traffic Safety Facts – 2009 Data.” National Highway Traffic Safety Administration. Last modified September 23, 2010. Accessed February 2022. <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811387>.

Wagner, I. “Automobile Registrations in the United States in 2020, By State.” Last modified December 2021. Accessed February 2022. <https://www.statista.com/statistics/196010/total-number-of-registered-automobiles-in-the-us-by-state/>.

Wagner, I. “Total Number of Licensed Drivers in the U.S. in ~~2019~~ 2020, by State.” Last modified March 2021. Accessed February 2022. <https://www.statista.com/statistics/198029/total-number-of-us-licensed-drivers-by-state/>.

Study Assignments: The student outline should be read before class.

Revised By: Isaac T. Avery, III (Retired)

Date Revised: July 2013

Revised By: Dave Shick  
Associate Attorney General  
Law Enforcement Liaison Section

Jennifer H. B. Fisher, M.S.  
BLET Curriculum Coordinator  
North Carolina Justice Academy

Date Revised: January 2014

## ***Motor Vehicle Laws***

Revised By: Jennifer H. B. Fisher  
Instructor/Developer  
North Carolina Justice Academy

Date Revised: July 2014  
January 2015  
July 2015  
January 2016  
July 2016  
July 2017  
January 2018  
August 2018  
January 2019  
July 2019  
January 2020

Content Revision By: Jarrett McGowan  
Associate Attorney General  
North Carolina Department of Justice

Date Revised: July 2020

Content Revision By: Jennifer H. B. Fisher  
Instructor/Developer  
North Carolina Justice Academy

Date Revised: January 2021  
July 2022  
January 2023  
**July 2023**

## ***Motor Vehicle Laws***

### **TITLE: MOTOR VEHICLE LAWS – Instructor Notes**

1. This lesson plan must be presented by an instructor currently certified by the North Carolina Criminal Justice Education and Training Standards Commission as a General Instructor.
2. Because of the length and complexity of the material, students should come to class, having previously read the student outline.
3. This is a difficult block of instruction, and examples must be provided by the instructor to clarify the material. For that reason, only a person familiar with Motor Vehicle Law should be used to teach this block, especially one who can encourage and answer questions.
4. Each student must have a copy of Chapter 20 of the General Statutes, and should be encouraged to refer to the statutes as the material is being covered.
5. Several Administrative Office of the Courts (AOC) forms are referenced throughout this lesson. The current versions of AOC forms can be obtained from the AOC webpage at <http://www.nccourts.org/Forms/FormSearch.asp>. The following forms are provided as handouts.

AOC-CVR-11	Limited Driving Privilege Indefinite Pretrial Revocation
AOC-CVR-10	Limited Driving Privilege Pretrial Revocation
AOC-CVR-9	Petition for Limited Driving Privilege Pretrial Revocation
Commercial Drivers License Handout	
Uniform Policies Relating to Traffic Offenses	
NOL v. DWLR	
Implied Consent Offenses (flow chart)	
DMV-S784	Pre-Charge Chemical Analysis Request and Sample
DMV-S784A	Rights of Person Who Requests a Pre-Charge Chemical Analysis and Sample
10A N.C.A.C. 41B.0501-503	Rules for Alcohol Screening Test Devices
AOC-CVR-1/DHHS-3907	Affidavit and Revocation Report of Charging Officer
DHHS 4081	Rights of Person Requested to Submit to Chemical Analysis
DHHS 3181	Affidavit and Revocation Report of Chemical Analyst (Blood Test)
SBI-5	Request for Examination of Physical Evidence
DHHS 3176	Sample Affidavit and Revocation Report of Chemical Analyst (Blood Test) (SBI)
AOC-CR-155	Search Warrant for Blood or Urine in DWI Cases
AOC-CR-206	Inventory of Items Seized Pursuant to Search
AOC-CR-306	Speeding
AOC-CR-323	Officer's Affidavit for Seizure and Impoundment and Magistrate's Order
ENF-176	Officer's Notification to DMV of Seizure and Impoundment

## ***Motor Vehicle Laws***

AOC-CR-324	Prosecutor's Notice of Forfeiture Hearing
AOC-CR-330	Non-Defendant Owner's Petition/Application for Release of Seized Motor Vehicle Acknowledgment
AOC-CR-331	Bond to Secure Return of Motor Vehicle for Proceeding or Hearing on Petition for Release
AOC-CR-332	Order on Non-Defendant Owner's Petition/Application for Release of Seized Motor Vehicle
AOC-CR-333	Defendant Owner's Petition for Release of Seized Vehicle (Defendant Had No Impaired Driving License Revocation) and Order
AOC-CR-334	Lienholder's Petition for Release of Seized Motor Vehicle Notice or Hearing/Waiver and Order
AOC-CR-335	Order Forfeiting Motor Vehicle After Hearing (DWI Seizure)
AOC-CR-336	Order Releasing Seized Motor Vehicle to Defendant or Motor Vehicle Owner after Disposition of Criminal Charges
AOC-CR-337	Motion for Continuance and Order (DWI or Commercial DWI Involving Motor Vehicle Forfeiture) and Sample
AOC-CR-339	Prosecutor's Explanation of Dismissal or Reduction
AOC-CVR-2	Revocation Order When Person Present
AOC-CVR-3	Revocation Order When Person Not Present
AOC-CVR-4	Drivers License Pickup Order
AOC-CVR-5	Request for Hearing to Contest License Revocation
AOC-CVR-7	Revocation Report to Division of Motor Vehicles
AOC-CVR-8	Affidavit-No License
AOC-CVR-12	Affidavit and Revocation Report of Law Enforcement Officer for Provisional Licensee
AOC-CVR-15	Notice of (I) Process for Revocation of Provisional License and (II) Right to Challenge Revocation (New 10/12)
AOC-CR-310C	Impaired Driving Judgment
AOC-CR-311	Impaired Driving-Determination of Sentencing Factors
AOC-CR-312	Limited Driving Privilege – Impaired Driving
AOC-CR-313	Limited Driving Privilege – Willful Refusal
AOC-CR-318	Limited Driving Privilege – Felony Conviction
AOC-CR-340	Limited Driving Privilege – Ignition Interlock Required
National Highway Traffic Safety (NHTSA) "The Visual Detection of DWI Motorists" – used to identify conduct that is consistent with a nighttime driver having an alcohol concentration of 0.08 or more. Copies are available on the NHTSA webpage, and all students should have a copy: <a href="http://www.nhtsa.gov/staticfiles/nti/pdf/808677.pdf">www.nhtsa.gov/staticfiles/nti/pdf/808677.pdf</a> .	

6. Additional training aids and statistics can be obtained from the DMV webpage at <http://www.ncdot.org/dmv/> and the Governor's Highway Safety webpage at <https://www.ncdot.gov/initiatives-policies/safety/ghsp/Pages/default.aspx> and Highway Safety Research Center <http://www.hsrc.unc.edu/crash/howto.cfm>.

## ***Motor Vehicle Laws***

7. To promote and facilitate law enforcement professionalism, three ethical dilemmas are listed below for classroom discussion. At their discretion, instructors must provide students with each ethical dilemma listed below. Sometime during the lecture, instructors should “set the stage” for the dilemma before taking a break. Instructors are encouraged to develop additional dilemmas as needed.
- a) You conduct a traffic stop for a DWI violation. Upon approaching the window, you realize it’s your brother operating the car. What will you do?
  - b) You conduct a vehicle stop involving the chief’s wife. She was speeding 52 in a 35 mph zone. What will you do?
  - c) While on patrol, you observe a couple who is lost. They make an illegal U-turn. What will you do?



## ***Motor Vehicle Laws***

TITLE: MOTOR VEHICLE LAWS

### I. Introduction

**NOTE: Show slide, “Motor Vehicle Laws.”**

#### A. Opening Statement

**NOTE: Show slide, “Statistics.” Instructors should update statistics. Crash data can be obtained from the North Carolina Department of Transportation at <https://connect.ncdot.gov/resources/safety/Pages/Crash-Data.aspx>.**

In 2020, there were 3.3 million vehicles registered in North Carolina.<sup>1</sup> In ~~2019~~ **2020**, there were over ~~seven~~ **7.6** million licensed drivers.<sup>2</sup> 281,685 crashes occurred with 1,442 people killed, and 125,454 people were injured.<sup>3</sup> National Highway Traffic Safety Administration (NHTSA) reports that motor vehicle crashes are the leading cause of death for individuals ages four to thirty-four. How many of you know of a close relative or friend who has been severely injured or killed? How many do not? The need for enforcement of motor vehicle laws becomes very apparent. Without the proper understanding of these laws, enforcement is impossible, and the harm associated with the violations goes unchecked. On the other hand, enforcement of these laws will reduce death, injury, and the costs to society.

#### B. Training Objectives

**NOTE: Show slides, “Training Objectives.”**

1. Identify the following motor vehicle law violations:
  - a) Driver license provisions
  - b) Registration and vehicle plate requirements
  - c) Equipment safety inspection provisions
  - d) Passenger restraint laws
  - e) Vehicle operation
  - f) Driving while impaired
2. Identify basic practices and procedures related to obtaining chemical analyses, including blood or breath tests.

## ***Motor Vehicle Laws***

3. Respond to citizen inquiries by explaining provisions relating to motor vehicle law.
4. Respond to citizen inquiries by explaining court and Division of Motor Vehicles (DMV) procedures relating to violations.
5. State legal issues and basic practices relating to establishing and conducting checking stations.

### C. Reasons

The law enforcement officer must know the laws governing motor vehicle operation better than the motorist on the highway. Without this knowledge, the motoring public is no safer than they would be without enforcement. The laws are made for the public's safety. Enforcement should serve the same purpose.

Motor vehicle law also has a unique method of enforcement, which is different from most other criminal law. Most motor vehicle offenses, other than licensing, registration, and the more serious offenses are infractions. "An infraction is a noncriminal violation of the law not punishable by imprisonment. **Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a penalty of not more than one hundred dollars (\$100.00).**<sup>4</sup> ~~but only by a monetary penalty [N.C.G.S. § 14-3.1].~~ An officer may not arrest a person for an infraction but may only issue a citation or obtain a criminal summons. However, a nonresident who is from a state which is not a member of the nonresident violator compact which contains the agreement to comply with the citation may be taken to the magistrate and required to post a bond.<sup>5</sup> When issues someone a citation, the law enforcement officer shall provide a copy of the citation to the person cited.<sup>6</sup> If the person cited refuses to accept the citation from the law enforcement officer, it does not constitute grounds for arrest or for requiring that the defendant post a bond.<sup>7</sup> Infractions are handled like misdemeanors. The first trial is before a district court judge, and then the offender can appeal to the superior court for a jury trial.

**NOTE: Show slide, "Non-Resident Violator Compact."**

There are other times in which a person may not be arrested for violation of the motor vehicle code, even though the offense is a misdemeanor. Forty-four states and the District of Columbia have entered into an agreement called the Non-Resident Violator Compact (NRVC).<sup>8</sup> The agreement says that if a driver from one member state is stopped in another member state, for an offense which does not require mandatory revocation of the person's driver license, the law enforcement officer will not arrest the non-resident but will issue the non-resident a citation and allow the non-resident to proceed on his/her way.

## ***Motor Vehicle Laws***

The non-resident must sign the citation and agree to dispose of the citation. If the non-resident fails to appear, then DMV will notify the non-resident's home state, and the home state will revoke the person's driver license until the person complies with the citation. North Carolina will also suspend the non-resident's privilege to drive in North Carolina. North Carolina drivers will be allowed the same right to sign and proceed on their way when stopped in other member states. The states that are not members of the NRVC are listed on the inside of the citation book cover.

The Driver License Compact (DLC) is an agreement among the states to report motor vehicle convictions to the state that issues the driver license so that each driver will have one complete record.<sup>9</sup> The state issuing the driver license takes action against the license based upon the out-of-state conviction that the law allows.

North Carolina DMV may revoke the driver license of a North Carolina resident for a conviction in another state for the offenses of exceeding a stated speed limit of fifty-five miles per hour or more by more than fifteen miles per hour, driving while license suspended or revoked, careless and reckless driving, engaging in pre-arranged speed competition, engaging willfully in speed competition, hit-and-run driving resulting in damage to property, unlawfully passing a stopped school bus, illegal transportation of alcoholic beverages, and the offenses included in N.C.G.S. § 20-17 and any serious traffic violation that involves a commercial motor vehicle and is not otherwise required to be kept under this subsection.<sup>10</sup>

**NOTE: Show slide and refer to the “DLC/NRVC” handout.**

Voluntary compliance with the Motor Vehicle Code is encouraged through the loss of driver license, as well as a jail sentence or fine or penalty, as a method of encouraging compliance with the law. First, if a driver who is charged with any motor vehicle offense fails to appear in court, DMV will revoke the driver license until the driver appears and answers the charges. Second, convictions for motor vehicle offenses may result in driver license being taken away either for the one offense or based upon an accumulation of driver license points.

**NOTE: Show slide, “Vehicle Stops.”**

Students need to remember that there are legal standards which that must be met before taking enforcement action and that these standards apply to enforce the motor vehicle laws. Those standards include reasonable suspicion to stop a vehicle or seize a person and probable cause to arrest a person. There are certain exceptions to these general rules, such as a vehicle can be stopped without suspicion at a properly established roadblock. These legal concepts will be explained more fully in the block of instruction on Arrest, Search, and

Seizure/Constitutional Law. Just remember that these concepts do apply here also.

Because of the concern about racial profiling, the General Assembly requires that larger police agencies record each vehicle stop made. Small agencies are exempt. The information is reported to the Division of Criminal Information Network (DCIN) by the officer using a confidential number. DCIN posts the statistics on the Department of Justice webpage. Stops made at roadblocks or checking stations need not be reported, except when those stops result in a warning, search, seizure, arrest, or any of the other activities described in subdivisions (4) through (14) of N.C.G.S. § 143B-903(c).<sup>11</sup> Check with your agency on how the reporting is accomplished.

## II. Body

### A. Terms and Definitions

**NOTE: Show slide, “Terms and Definitions.”**

#### 1. Introduction

The definitions that are used for the Motor Vehicle Code are found at General Statute §20-4.01. Definitions. Even if the standard use of a word is different, when determining the application of the Motor Vehicle Code, the term must be applied as defined. For example, the term “highway” usually denotes a road that is intended for higher speeds or outside the city. However, the definition in Chapter 20 says that a highway and a street are the same. There is no definition of “road,” so only street or highway should be used when applying the Motor Vehicle Code.

The term as defined applies anytime the term is used “Unless the context requires otherwise.” The defined words and phrases are used to determine the meaning of cognates or associated words or phrases. For example, the definition of the term “drive” is used to define its cognates associate terms of “driver” or “drove,” neither of which are defined.

**NOTE: The students should each have a copy of the Motor Vehicle Code. If they do not, then a copy from a Motor Vehicle Code book or the General Assembly webpage can be provided. See <http://www.ncga.state.nc.us/gascripts/statutes/Statutes.asp>. The students should be instructed to turn in the Motor Vehicle Law book to N.C.G.S. § 20-4.01 and an overview of the definitions given, pointing out the most important ones to be discussed in class. An exercise for testing their understanding of the terms should be given.**

When subparts are counted, there are more than one hundred defined terms and phrases. These definitions are amended from time to time. The term “accident” has been replaced with the term “crash.” When called to the scene of a “10-50,” an officer investigates a “crash” and files a DMV-349, which is a crash report.

There are six definitions that are used throughout the Motor Vehicle Code and this lesson plan and need to be understood. These are: Division or Division of Motor Vehicles (DMV), operator or driver, vehicle, motor vehicle, street, or highway, and public vehicular area (PVA).”

2. Division (or DMV) refers to the Division of Motor Vehicles, which is a division of the North Carolina Department of Transportation.<sup>12</sup> ~~N.C.G.S. § 20-4.01(6).~~ There is no “Department of Motor Vehicles.” The Commission of Motor Vehicles is the Head of DMV and is responsible for administering and enforcing the Motor Vehicle Code. The Commission is authorized to make rules, regulations, and policies necessary to carry out the Motor Vehicle Code.<sup>13</sup> The Commission is a peace officer with the authority to enforce the Motor Vehicle Code.<sup>14</sup>

**NOTE: Show slide, “Operator.”**

3. The definition of operator is found in N.C.G.S. § 20-4.01(25). An operator is “a person in actual physical control of a vehicle which is in motion or which has the engine running.”<sup>15</sup> ~~“Actual physical control of a vehicle which is in motion or which has the engine running.”~~

Circumstantial evidence, “passed out under the wheel and engine off,” may be sufficient to show the person was an operator.<sup>16</sup> Driver is defined as the operator of a vehicle.<sup>17</sup>

The words drive and operate are not defined but derive their meanings from the definition of operator. Drive and operate have the same meaning. That is, the vehicle is in motion, or the engine is running.

**NOTE: Show slide, “Vehicles.”**

4. N.C.G.S. § 20-4.01(49) defines a vehicle as, “every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles and electric assisted bicycles shall be deemed vehicles and every rider of a bicycle or an electric assisted bicycle upon a highway shall be subject to the provisions of this Chapter

applicable to the driver of a vehicle except those which by their nature can have no application.”<sup>18</sup>

This definition excludes trains and devices propelled by human power. Bicycles are propelled by human power, but the definition specifically includes bicycles, except for such motor vehicle laws that cannot apply (such as minimum speed limits). Although not a vehicle, laws applying to vehicles do apply to persons riding or driving animals, except those that by their very nature cannot [N.C.G.S. § 20-171].<sup>19</sup> (The ~~Driving While Impaired (DWI)~~ **impaired driving** law, however, does not **include** apply to a horse [N.C.G.S. § 20-138.1(e)].)<sup>20</sup>

**NOTE: Show slide, “Mobility Impairment Device.”**

“The term [vehicle] shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement.”<sup>21</sup> [N.C.G.S. § 20-4.01(49)]. The term “vehicle” shall not include an electric personal assistive mobility device (e.g., Segway, as defined in N.C.G.S. § 20-4.01(7b)) or a personal delivery device, as defined in N.C.G.S. § 20-4.01(28a).<sup>22</sup>

Although Driver License Law applies only to motor vehicles, many traffic laws apply to all vehicles. For laws other than Driver License Law, it is essential to know whether the law applies to vehicles or only to motor vehicles.

**NOTE: Show slide, “Motor Vehicle.”**

5. Motor vehicle is defined in N.C.G.S. § 20-4.01(23) as “every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. Except as specifically provided otherwise, this term shall not include mopeds and electric assisted bicycles.”<sup>23</sup> The important things to note about the definition of a motor vehicle are the following:
  - a) It applies to any vehicle that is self-propelled. That means any vehicle that can move itself based on some power source other than human power. The vehicle is not required to be propelled by gasoline; electric cars (or golf carts) are motor vehicles. However, a bicycle is not a motor vehicle because it is not propelled by some external force. It should be noted, however,

that the vehicle is a motor vehicle if it is self-propelled, even if the source of propulsion is not operating. For example, if the motor in a car is not working or has even had some of its components removed, it is still a motor vehicle because that is what it was designed to be, and that design has not changed.

Also, vehicles designed to run upon the highways that are pulled by motor vehicles are themselves motor vehicles. This includes trailers of all kinds and mobile homes when being towed on a highway.

- b) Fuel cell electric vehicle – “A four-wheeled motor vehicle that does not have the ability to be propelled by a gasoline engine and that meets each of the following requirements:
  - (1) Is made by a manufacturer primarily for use on public streets, roads, and highways and meets National Highway Traffic Safety Administration standards included in 49 C.F.R. § 571.
  - (2) Has not been modified from original manufacturer specifications with regard to power train or any manner of powering the vehicle.
  - (3) Uses hydrogen and a fuel cell to produce electricity on board to power an electric motor to propel the vehicle.
  - (4) Is rated at not more than 8,500 pounds unloaded gross vehicle weight.
  - (5) Has a maximum speed capability of at least 65 miles per hour.”<sup>24</sup>
  
- c) Plug-in electric vehicle – “A four-wheeled motor vehicle that does not have the ability to be propelled by a gasoline engine and that meets each of the following requirements:
  - (1) Is made by a manufacturer primarily for use on public streets, roads, and highways and meets National Highway Traffic Safety Administration standards included in 49 C.F.R. § 571.
  - (2) Has not been modified from original manufacturer specifications with regard to power train or any manner of powering the vehicle.

- (3) Is rated at not more than 8,500 pounds unloaded gross vehicle weight.
- (4) Has a maximum speed capability of at least 65 miles per hour.
- (5) Draws electricity from a battery that has all of the following characteristics:
  - (a) A capacity of not less than four kilowatt hours.
  - (b) Capable of being recharged from an external source of electricity.”<sup>25</sup>
- d) Another major element of the definition is the moped exemption. A moped is a vehicle with two or three wheels, no external shifting device, and a motor (which does not exceed fifty cubic centimeter piston displacement) that cannot propel the vehicle at more than thirty miles per hour on a level surface. If the vehicle qualifies, it is not a motor vehicle, but it is still a vehicle. (There is a separate section on motorcycles and mopeds, Section IV.) [The Motor Vehicle Code, N.C.G.S. § 20-4.01 (27j) refers to the revenue laws for the definition of a moped.<sup>26</sup> Some laws only apply to motor vehicles while other laws apply to all vehicles, including motor vehicles, mopeds, bicycles, and animals.

**NOTE: Show slide, “Highway or Street.”**

- 6. Highway or street is defined by N.C.G.S. § 20-4.01(13): highway or street – “The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms ‘highway’ and ‘street’ and their cognates are synonymous.”<sup>27</sup> The term highway is used in a broad sense, to include all the property included within the right-of-way. Thus a sidewalk (230 N.C. 361), ditch, or even a shoulder of the ditch is considered part of the highway for the motor vehicle statutes.<sup>28</sup> Driving a motor vehicle on sidewalks is prohibited. Since most statutes, including the Driver License Law, are applicable on highways, it means that a person may be charged with an offense even if he is not on the paved portion of the roadway itself. The term roadway is used to refer to “that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate



roadways the term ‘roadway’ as used herein shall refer to any such roadway separately but not to all such roadways collectively.”<sup>29</sup>

The second part of the definition further qualifies the meaning of highway. It states that a highway must be “open to the use of the public as a matter of right for **the purposes of** vehicular traffic.”<sup>30</sup> This element of the definition excludes roads under construction, as well as roads that are not owned or maintained by a government. Private roads are not streets or highways for motor vehicle laws because they are not open “as a matter of right.”

**NOTE: Show slide, “PVA.”**

7. While most motor vehicle laws apply only on streets or highways, motor vehicles are driven in many areas that are not open as a matter of right, such as parking lots, beaches, gated subdivisions. For safety reasons, there must be rules for all areas where vehicles and people are present. Therefore, some of the motor vehicle laws apply on streets or highways and public vehicular areas (PVA). The definition of public vehicular area in N.C.G.S. § 20-4.01(32) has several parts:
  - a) A public vehicular area **is defined** as “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 (This inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, Section 13).
  - b) The area is a beach area used by the public for vehicular traffic.

- c) The area is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public.
- d) The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area by N.C.G.S. § 20-219.4.”<sup>31</sup>

Case law has applied this PVA definition to specific areas and said that a PVA includes:

- (1) An area that is not open for vehicular traffic all the time but is at the time of the offense (e.g., a ball field used for parking at a special event).<sup>32</sup>
- (2) The area between the front of the store and the parking lot.<sup>33</sup>
- (3) The parking lot at a bar that had an ABC permit as a private club was a PVA, even though there was testimony that the parking lot was for members only.<sup>34</sup>
- (4) Before the 2006 amendments that expanded the definition of PVA to include any area within the State used by the public for vehicular traffic at any time, the court of appeals had said that presence of a “No Trespassing” sign does not make the PVA a private road, but it is some evidence that it is private.<sup>35</sup>

An officer who is investigating a potential Motor Vehicle Code violation that was committed in a place other than a street or highway must be prepared to prove that the area where the offense occurred falls within the definition of PVA.

**NOTE: Show slide, “Video.” Play video, *Terms and Definitions*.**

- B. Driver Licenses and the Authorization to Drive
  - 1. Definitions of driver license

**NOTE: Show slide, “Driver Licenses.”**

- (a) A license **is defined** as “any driver’s license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:

- (1) Any temporary license or learner's permit;
- (2) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
- (3) Any non-resident's operating privilege.<sup>36</sup>

One thing to note here is that licenses include not only driver licenses issued by DMV, but also the various permits defined later in this section.

- (b) A driver license does not allow the driver to operate all vehicles under all circumstances. North Carolina has limited licenses for a young person, classes of regular driver license, which allow operation of certain types of vehicles and commercial driver licenses that allow operation of certain types of commercial motor vehicles. Even a license for the class of vehicle may require special endorsements. A driver must show certain training or skill to obtain an endorsement to operate a motor vehicle that is more difficult to operate. DMV may also place reasonable restrictions on operators for safety reasons. For example, a person who cannot pass the DMV eye test will be restricted to operating a motor vehicle while wearing eyeglasses.

Also, note that the signature and photo appearing on the license is confidential and may only be released by the DMV for law enforcement purposes **or to the State Chief Information Officer for purposes of collecting government data or the State Board of Elections in connection with its official duties.**<sup>37</sup> DMV may not release personal information for non-law enforcement purposes except by the federal Driver's Privacy Protection Act of 1994.<sup>38</sup>

- (c) The definition of license also includes the privilege to drive. This element of the definition is important when a driver has been convicted of an offense that requires a license revocation but does not have a North Carolina driver license. If so, such a person cannot legally drive in North Carolina, nor can the driver obtain a North Carolina driver license while the North Carolina driving privilege is revoked. Such a person is subject to being charged with driving while license revoked (DWLR), even though the driver never actually held a license.<sup>39</sup>
- (d) A driver license also includes the non-resident's privilege to drive, using an out-of-state license. For example, a person from

another state who does not have a North Carolina driver license, but who is convicted of DWI in North Carolina will have the North Carolina driving privilege revoked and could not legally drive in North Carolina. The driver's out-of-state license cannot be revoked by North Carolina, although it may be revoked by the driver's home state. The driver just may not use the out-of-state license to drive in North Carolina when his or her privilege to drive is revoked by North Carolina DMV. If North Carolina DMV revokes the driver's privilege to drive, the driver can be charged with driving while license revoked, even though he never held a license in North Carolina.<sup>40</sup> If North Carolina DMV has NOT revoked the driving privilege, but the non-resident's home state has revoked the license, the proper charge is No Operator's License (NOL).

- (e) When a person's driver license is revoked, in limited circumstances, the law allows the person to go to court and obtain a Limited Driving Privilege (LDP). This document is a court order authorizing a person to drive during a period of revocation. The LDP may restrict the driver to specified times, vehicles, or highways. Because the driver is revoked, any violation of the LDP is considered driving while license revoked.

**NOTE: Show slides and refer to "Limited Driving Privilege" (AOC-CVR-9, AOC-CVR-10, and AOC-CVR-11) forms. Also, see AOC-CR-306 (Speeding), AOC-CR-312 (DWI LDP), AOC-CR-313 (Refusal LDP), AOC-CR-318 (Felony conviction LDP), and AOC-CR-340 (Ignition Interlock LDP).**

Copies of AOC forms can be obtained at AOC's webpage at <http://www.nccourts.org/Forms/FormSearch.asp>.

## 2. Requirements for a driver license

**NOTE: Show slide, "Driver License Requirements."**

- (a) Unless exempt, any person who drives a motor vehicle on a street or highway in North Carolina must have been issued a valid North Carolina driver license. A person in charge of a motor vehicle, when requested by an officer in uniform, must produce the license.<sup>41</sup> The driver license requirements apply only to motor vehicles and only when operated on a street or highway. There are numerous permits, privileges, and licenses which authorize driving in North Carolina. These include:

- (1) **Temporary** driving certificate – allows driving for sixty days while DMV determines whether to renew a license,<sup>42</sup>
  - (2) Instruction permit which allows a person under age eighteen to drive in a driver education program,<sup>43</sup>
  - (3) Limited learners permit, limited provisional license and full provisional license – for persons under age eighteen<sup>44</sup>
  - (4) Class A, B, and C regular driver licenses – allows driving of non-commercial motor vehicles,<sup>45</sup>
  - (5) Class A, B, and C commercial driver license (CDL) – allows driving of commercial motor vehicles,<sup>46</sup> and
  - (6) Limited driving privileges – issued by a court, and allows restricted driving for persons who have been convicted of motor vehicle offenses which result in the revocation of the person’s driver license.<sup>47</sup>
- b) Also, restrictions may be placed upon a driver license by DMV, and endorsements of the driver license may be required to drive certain types of motor vehicles (e.g., motorcycles).
- (1) Age – for some learners permits a person must be sixteen, for others a person must be fifteen, and for others, fourteen and one-half; for a regular Class C license, a person must be sixteen years old; for a regular Class A or B license, a person must be eighteen.<sup>48</sup> A person must be twenty-one for a Class A, B, or C commercial driver license, except for school bus drivers.<sup>49</sup> A driver license for a person under age 21 will have a different background or border than for a person twenty-one or older and will have a vertical format that distinguishes them from the usual horizontal format.<sup>50</sup>

A person age eighteen may obtain a CDL for intra-state operation only [~~N.C.G.S. § 20-37.13(a)~~].<sup>51</sup>
  - (2) Must be mentally and physically able to safely drive a motor vehicle.

- (a) Persons who have been adjudged incompetent are normally not allowed to obtain a license until this legal disability has been removed. Even after the disability is removed, DMV must still ensure that the applicant is not suffering from a disability that will prevent him from exercising reasonable and ordinary control over a motor vehicle [N.C.G.S. § 20-9].
- (b) Physical disability is also a basis for denying an applicant's right to take a driving test. The most obvious disability is blindness, and the law requires that the applicant pass a vision test. Other physical handicaps are not as clear-cut [N.C.G.S. § 20-7, 20-9].

(3) Must know the rules-of-the-road [N.C.G.S. §20-7(c)], for the type of license or permit desired.

(4) Must pay the fee [N.C.G.S. § 20-7(i)].

(5) "To demonstrate physical and mental ability, a person must pass an examination. The examination may include road tests, vision tests, oral tests, and, in the case of literate applicants, written test, as the Division may require. The tests must ensure that an applicant recognizes the handicapped international symbol of access, as defined in G.S. 20-37.5."<sup>52</sup>

(6) Must have the ability to drive the class of vehicle for which he or she is to be licensed.

(7) Must furnish proof of financial responsibility (insurance) [N.C.G.S. § 20-7(c1)].

### 3. Who cannot be licensed?

**NOTE: Show slide, "Who Cannot Be Licensed?"**

Some people are specifically prohibited from receiving a license from DMV [N.C.G.S. § 20-9], and they are:

- a) Any person whose license is suspended or revoked and the period of revocation is not over;

- b) Any person who habitually uses narcotic drugs or barbiturates, or is a habitual drunkard;
- c) Any person with a physical or mental disability or disease that may prevent such person from exercising reasonable and ordinary control over a motor vehicle, or who is unable to understand highway warnings or direction signs.
- d) Any persons who have lost their driving privileges in another state for an offense that would have caused them to lose their licenses in this State had the offense been committed in this State.

4. Who is exempt from the license requirement? [N.C.G.S. § 20-8].

**NOTE: Show slide, “Who Is Exempt from the License Requirement?”**

The following are exempt from having a North Carolina driver license:

- a) Persons driving armed forces’ vehicles during military service. Also, a United States Supreme Court case [254 U.S. 51] holds that states may not require a federal employee to have a state driver license while the employee is on federal business. The case is presumably broader than the statute because the statute limits its coverage to federally owned vehicles. Also, the case applies to all federal employees, while the statute is limited to military personnel [N.C.G.S. § 20-8(1)].
- b) Any person driving a farm tractor or road machine on a highway temporarily [N.C.G.S. § 20-8(2)]. N.C.G.S. § 20-10, however, prohibits youth under age 14 from driving farm equipment on the highways unless the youth is engaged in farming operations, and the highway is adjacent to or runs in front of the land upon which the youth lives.
- c) Any person who is at least 16 years of age and while operating a moped [N.C.G.S. § 20-8(7)].
- c) Non-residents licensed in other states and countries may operate commercial and non-commercial motor vehicles in this state so long as they are at least 16 years old and are authorized in their home state to drive the class of vehicle they are driving. Non-residents driving in North Carolina must abide by all the restrictions that are placed on their licenses by their home states. Military personnel and their spouses fall within this exemption [N.C.G.S. § 20-8(3)]. A non-resident who has not

yet reached age 16 is prohibited from driving in North Carolina even if the youth's home state permits it. Drivers from Canada and Mexico may operate commercial motor vehicles in North Carolina using a Canadian or Mexican CDL. Drivers from other countries can obtain a non-resident CDL from DMV [N.C.G.S. § 20-37.14]. Drivers from Mexico are also authorized to drive with a federally-issued Mexican CDL.

- (1) An International Driver License is NOT recognized by North Carolina and does NOT authorize a person to drive. The International Driver License is issued by the driver's country to the residence and translates the home country's driver license into another language and is not an authorization to drive unless the driver has a valid license from his or her home country. The American Automobile Association (AAA) and the American Automobile Touring Alliance (AATA) are the only entities authorized to issue an International Driver License for United States' residents to drive outside the United States. If presented with an International Driving Permit, an officer should also request the driver license from the home country.
- (2) After a person establishes residence in North Carolina, the person may operate on a license valid in another state for up to 60 days. After that, a North Carolina license must be obtained [N.C.G.S. § 20-7(a)].
- (3) The definition of non-resident is keyed to the definition of resident. It reads, "Non-resident – any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or a foreign country." [N.C.G.S. § 20-4.01(24)].

**NOTE: Show slide, "Out-of-State License."**

- (4) The definition of resident is as follows – "Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State." [N.C.G.S. § 20-4.01(34)]. One of the elements of the definition is that the person resides in the state, and the courts decide this question based on the person's intent. A person may claim an intention to



return to South Carolina, but if the person performs sufficient acts that a resident of this state would normally do, a court could find that the person intended to be a North Carolina resident. The factors a court will often consider in deciding this issue include:

**NOTE: Show slide, “Residency Considerations.”**

- (a) Length of time in North Carolina;
  - (b) Whether the person votes in North Carolina;
  - (c) Whether he buys or rents a residence;
  - (d) What kind of place he rents;
  - (e) Whether he spends his vacation here;
  - (f) Whether he registers his car here;
  - (g) Whether he pays income or property tax here;
  - (h) Where he retains church membership;
  - (i) Where he banks.
- (5) To assist in proving the intention of a person, the definition provides that a person who stays in North Carolina for more than six (6) months is presumed to be a resident. This definition covers college students. After a student has maintained an address in North Carolina for six (6) months, it is presumed that the student is a resident. This presumption can be overcome with proper evidence, but if the student can show nothing, the court should find the student to be a resident. There is an exception for persons who have been in North Carolina for over six (6) months but are on a temporary purpose. Persons fitting that category might be construction workers living in a motel or rooming house with a family in another state, or perhaps students in dormitories.
- (6) As a practical matter, however, many students will want to be declared residents for in-state tuition purposes.

- (7) Note, also, that the mere fact that a person registers a car in North Carolina is not proof that he is a resident, but if allowed to register to vote, the person is a resident and must obtain a North Carolina driver license.
- (8) Statutory proof of residency is found in N.C.G.S. § 20-7 (b3) and (b4).

5. Types of licenses and permits

**NOTE: Show slide, “Types of Licenses and Permits.”**

- a) Young drivers – Learner’s permits and provisional licenses

**NOTE: Show slide, “Learner’s Permit.”**

- (1) Instruction permits are issued to students enrolled in an approved driver education class. They are distributed by driver education representatives and presumably should be used only in the presence of the driver education instructor. This permit may be issued to persons who are age 14 and one-half [N.C.G.S. § 20-7(m), N.C.G.S. § 20-88.1].

- (2) Graduated Driver License Law – N.C.G.S. § 20-11

For any person under age 18 to obtain a license or a permit to drive, the law provides for three (3) levels of licensing. Each level has its restrictions on operation.

The law also provides that the school must provide a driving eligibility certificate that shows the young person is in school and making satisfactory progress toward graduation, or the lack of a driver license will create a hardship. Also, if a child is expelled from school for enumerated conduct, DMV will revoke his/her driver license [N.C.G.S. § 20-11].

- (a) Limited learner’s permit
  - i) A person who is at least age 15 and under age 18 may obtain a limited learner’s permit if the person passes a driver education course, passes a written test by DMV, and has a driving eligibility certificate or a high school diploma or its equivalent.

- ii) Level 1 restrictions apply:
- Have permit in possession
  - Have a supervising driver in the front seat (a licensed driver for five (5) years who is a parent, grandparent, guardian, or a responsible person approved by parent, guardian or DMV)
  - No other person in the front seat
  - For the first six (6) months, the driver may only drive between 5 a.m. and 9 p.m. – after first six (6) months, may drive anytime
  - All persons in a vehicle must be in seatbelts or child safety restraints
  - Shall not use a mobile telephone or related technology, such as a camera, electronic mail, music, the Internet, or games while the vehicle is in motion. The exemption for this statute, which is important to know, is that if the driver is utilizing the mobile telephone to do any of the following regarding an emergency:<sup>53</sup>
    - An emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency; or

- The motor vehicle operator's parent, legal guardian, or spouse.
- (b) Limited provisional license
- i) A person who is at least age 16 and under age 18 may obtain a limited provisional license if the person has held a limited learner's permit for at least 12 months, has not been convicted of a motor vehicle moving violation or seatbelt infraction or mobile telephone infraction during the preceding six (6) months, passes a road test administered by DMV and has a driving eligibility certificate or a high school diploma or its equivalent.
  - ii) Level 2 restrictions apply:
    - Have the license in possession
    - May drive without a supervising driver:
      - From 5 a.m. to 9 p.m.
      - When driving directly to and from work
      - When driving to and from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member
    - When driving without a supervising driver, no more than one (1) passenger under age 21 in the vehicle, the limit does not apply to passengers who are members of the license holder's immediate family or whose

primary residence is the same household as a license holder. However, if a family or household member under age 21 is a passenger, no other under age 21 passengers who are not immediate family or members of the license holder's household may be in the vehicle.

- Drive anytime with a supervising driver seated beside the license holder in the front seat, but the supervising driver need not be the only other front seat passenger
- All persons in the vehicle must use seatbelts or child safety restraints
- Shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the vehicle on a public street or highway or public vehicular area

(c) Full provisional license

- i) A person who is at least 16 but less than 18 may obtain a full provisional license if the person has held a limited provisional license by DMV for at least six (6) months, has not been convicted of a motor vehicle moving violation or seatbelt infraction during the preceding six (6) months and has a driving eligibility certificate or a high school diploma or its equivalent and has completed a driving log detailing a minimum of 12 hours as the operator of a motor vehicle of a class for which the driver is listed. The log must show at least six hours of the required driving occurred during nighttime hours. The

driving log must be signed by the supervising driver for any hours driven outside the provisions and submitted to the Division at the time the applicant seeks to obtain a full provisional license.

ii) Level 3 restrictions:

Level 1 and 2 restrictions do not apply to a full provisional license. The driver is given full driving privileges except for the use of a mobile phone or similar technology while driving unless an emergency exists.

(d) Graduated driver license violations

i) A violation of seat belt use and passenger limits constitute violations of the graduated licensing law and are to be cited under N.C.G.S. § 20-11.

ii) Violations of driving without a supervising driver and violating the night restriction constitute driving without a license and are to be cited under N.C.G.S. § 20-7(a).

iii) Violations of using the mobile phone restriction are to be cited under N.C.G.S. § 20-137.3.

(e) Motorcycle endorsement

To obtain a motorcycle learner's permit, an applicant shall pass a vision test, a road sign test, and a knowledge test specified by the Division. An applicant who is less than 18 years old shall successfully complete the North Carolina Motorcycle Safety Education Program Basic Rider Course or any course approved by the Commissioner consistent with the instruction provided through the Motorcycle Safety Instruction Program established under N.C.G.S. § 115D-72. The holder of a

motorcycle learner's permit may not drive a motorcycle with a passenger.

- i) A person who is at least 16 years old but less than 18 years old and has a full provisional license issued by the Division.
- ii) A person who is at least 18 years old and has a license issued by the Division.

(f) Out-of-state exception

A person who is at least 16-years-old but not 18-years-old who is a (1) resident of another state, (2) has an unrestricted license, and (3) became a resident of this state may obtain the following:

**NOTE: Show slide, "Temporary Permit."**

Temporary driver permit – If the person has not completed a driver's education program that meets the requirements of the Superintendent of Public Instruction but is currently enrolled in a driver's education program, the person is eligible to obtain a temporary permit. A temporary permit is valid for the period specified by the permit (will end no later than ten (10) days after the expected completion date of the driver's education program). The driver must have the permit in his or her possession and operate only the type or class of vehicle specified, and DMV may impose restrictions on time of driving, supervision, and passenger limitation [N.C.G.S. § 20-11].

(g) Expiration

A limited learner's permit or a limited provisional license both expire upon the driver's eighteenth (18<sup>th</sup>) birthday. A full provisional license expires on the date set by DMV.

- (3) Provisional licensee – "A person under the age of 18 years." [N.C.G.S. § 20-4.01(31a)]. Provisional licenses

are subject to revocation by DMV for a second or subsequent moving violation occurring within 12 months [see N.C.G.S. § 20-13]. Also, when a provisional licensee is charged with misdemeanor motor vehicle offense, an immediate 30- day pretrial revocation must be imposed. [N.C.G.S. § 20-13.3].

- (a) This revocation does not apply to infractions, only “criminal moving violations,” which are misdemeanors. The most common misdemeanors are listed on the back of AOC-CVR-12 and include speeding in excess of 15 miles per hour (mph) over the posted limit, speeding over 80 mph, reckless driving, etc. Alcohol-related offenses, such as driving while impaired or driving after consuming by a person under age 21 are misdemeanors, but because the young person’s driver license is revoked by N.C.G.S. § 20-16.5, this revocation does not apply.

**NOTE: Show slide, “AOC-CVR-12 and AOC-CVR-15.”**

- (b) There are two (2) ways to implement the revocation. If the young person is not arrested but cited for the misdemeanor, then the officer must tell the driver that their license is subject to being revoked and hand the driver an AOC-CVR-15. The officer may then allow the young driver to leave. The officer must complete the Revocation Report (AOC-CVR-12) and turn it into the Clerk of Superior Court, who will notify the driver by mail of the revocation.
- (c) The second way to handle this revocation is for the young driver to be arrested for the moving criminal violation and taken for an initial appearance before the magistrate. The officer must complete the Revocation Report (AOC-CVR-12) and present it to the magistrate, who will revoke the young person’s license at that time.
- (d) No matter who revokes the driver license, the Clerk of Superior Court, or the magistrate, the driver license is not seized. The young person is



told not to drive for 30 days. DMV must be notified of the revocation within two (2) business days, so at some point, it is entered on the young person's driving record and available to an officer who subsequently stops the driver. At the end of the 30 days, the young person's driver license is automatically reinstated. There is no fee charged.

- b) Driver licenses for adults – Regular licenses (non-commercial)
  - (1) There are three (3) classes of regular driver licenses. They are the regular Class “A,” “B,” and “C.” The license authorizes the holder to operate certain vehicles based upon weight, load, and type of vehicle. The purpose of this system is to assure that the driver has been tested on the size, weight, and type of vehicle for which the license is issued. The vehicles are also divided into classes. Also, a motorcycle learner's permit or motorcycle endorsement is required to operate a motorcycle.

**NOTE: Show slide, “N.C. Regular Driver License.” Instructors may want to have the students remove their licenses and look at the type of license and vehicles which may be operated plus any endorsements or restrictions.**

- (2) Classes of motor vehicles

**NOTE: Show slide, “Motor Vehicle Classes.”**

Each type of authorizes a person to drive one (1) or more class of vehicle. A North Carolina driver license will list the class of vehicle the driver is authorized to operate, but an officer must know the types of vehicles to know if the person is lawfully operating it. Vehicles are generally classified by the vehicle weight and whether the vehicle is a single or combination vehicle. The classes of vehicles will also determine whether the vehicle is a commercial motor vehicle and require a commercial driver license. Commercial vehicles and driver licenses will be discussed in the next section.

- (a) Class A motor vehicle – “A combination of motor vehicles that meets either of the following descriptions:

- i) Has a combined [gross vehicle weight rating] GVWR rating of at least 26,001 pounds and includes as part of the combination a towed unit [trailer] that has a GVWR of at least 10,001 pounds.
  - iii) Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit [trailer] that has a GVWR of at least 10,001 pounds.” [N.C.G.S. § 20-4.01(2a)].
- (b) Class B Motor Vehicle – “any of the following:
  - i) A single motor vehicle that has a GVWR of at least 26,001 pounds.
  - ii) A combination of motor vehicles that includes as part of the combination a towing unit [tractor] that has a GVWR of at least 26,001 pounds and a towed unit [trailer] that has a GVWR of less than 10,001 pounds.” [N.C.G.S. § 20-4.01(2b)].
- (c) Class C Motor Vehicle – “any of the following:
  - i) A single motor vehicle not included in Class B.
  - ii) A combination of motor vehicles not included in Class A or Class B.” [N.C.G.S. § 20-4.01(2c)].
- (d) Gross Vehicle Weight Rating (GVWR)

GVWR is “the value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units.” [N.C.G.S. § 20-4.01(12f)]. The GVWR is found on the plate on the power unit, usually on the door, or on a plate of the trailer. The GVWR is the weight specified on the plate and not the actual weight. The fact that the trailer is

empty but has a GVWR of more than 26,001 pounds still makes the vehicle a Class A vehicle. The GVWR can also be determined by the Vehicle Identification Number (VIN). DMV Inspectors have books issued by manufacturers specifying the meaning of the VIN.

- (3) Vehicles that can be driven with regular driver licenses
  - (a) *Regular Class A driver license* – Regular Class A license allows a licensee to drive:

**NOTE: Show slide, “Regular Class A Driver License.”**

- i) A Class A motor vehicle that is exempt under N.C.G.S. § 20-37.16 from the commercial requirements; [see N.C.G.S. § 20-37.16(e) for exempt vehicles].
  - ii) A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds;
  - iii) All vehicles which may be operated on a regular Class B driver license; and
  - iv) All vehicles which may be operated under a regular Class C driver license [N.C.G.S. § 20-7(a)].
- (b) *Regular Class B driver license* – Regular Class B license allows a licensee to drive:

**NOTE: Show slide, “Regular Class B Driver License.”**

- i) Any Class B motor vehicle that is exempt under N.C.G.S. § 20-37.16 from the commercial driver license requirements; and
- ii) All vehicles which may be operated using a regular Class C driver license [N.C.G.S. § 20-7(a)].

- (c) *Regular Class C driver license* – Regular Class C license allows a licensee to drive:

**NOTE: Show slide, “Regular Class C Driver License.”**

- i) A Class C motor vehicle that is not a commercial motor vehicle; and
  - ii) When operated by a volunteer member of a fire department, rescue squad, or emergency medical services (EMS) in the performance of duty, a Class A or B firefighting, rescue, or EMS motor vehicle or a combination of these vehicles [N.C.G.S. § 20-7(a)].
  - iii) A combination of noncommercial motor vehicles that have a GVWR of more than 10,000 pounds but less than 26,001 pounds. This subdivision does not apply to a Class C license holder less than 18 years of age.
- (4) Restrictions for all driver licenses (CDL and regular) are numbered:

**NOTE: Show slide, “Restrictions.”**

- 0. None
- 1. Corrective lenses
- 2. 45 mph speed limit/no interstate driving
- 3. Daylight driving only
- 4. NC Intrastate only-CDL
- 5. Wrecker only
- 6. Mobile home transport only
- 7. Outside mirrors
- 8. No tractor-trailer (noted on the license as an “O” as the restriction code)
- 9. Other-as shown on the license
- 10. Accompanied by a driver licensed for class shown (permit)
- 11. Accompanied by a licensed parent or guardian
- 12. Drive 6 a.m. to 8 p.m. only
- 13. Automatic transmission
- 14. Passenger Class B and C (noted on the license as an “M” as the restriction code)

15. Passenger Class C (noted on the license as an “N” as the restriction code)
16. Graduated license level 1 restriction
17. Graduated license level 2 restriction
18. No passenger
19. Blood alcohol concentration (BAC) 0.04
20. BAC 0.04 and ignition interlock
21. BAC 0.02
22. BAC 0.02 and ignition interlock
23. Ignition interlock only
51. Wheel knob
52. Power steering
53. Seat cushion \_\_\_\_ inches
54. Outside rearview mirrors
55. Power brakes
56. Raised seat
57. Foot control extensions
58. Full hand controls
59. Left foot pedal
60. Pedal extensions
61. Booster brakes
62. Cond. Rest. / Ignition interlock
63. Classified C only
66. \_\_\_\_ miles radius of home
67. To/from work
68. To/from work/as needed
69. No interstate driving
70. Drive to/from church, store, doctor
71. Licensed driver accompanied over \_\_\_\_ miles
72. No beltline driving
73. Driving only with license # \_\_\_\_
76. No weekend driving
77. To/from work weekdays only
78. No driving 10 p.m. to 6 a.m.
81. Artificial leg
82. Hearing aid
83. Conditional restoration
84. Probation agreement

(5) Endorsement

**NOTE: Show slide, “Endorsement.”**

There is only one (1) endorsement authorized. It is an “M” endorsement which is required to operate a motorcycle. The endorsement may appear on a young

person's driver license, a regular driver license, or a commercial driver license. No matter what type or class of license a person has, the "M" endorsement is required to operate a motorcycle legally. An endorsement may be obtained after passing a road and written test designed to test skill and knowledge of motorcycle operation [N.C.G.S. § 20-7(a)]. A person, less than 18 years of age, must pass a motorcycle safe driving course and may not drive a motorcycle with a passenger [N.C.G.S. § 20-7(a1)].

(6) Revocations and suspensions

**NOTE: Show slide, "Revocations and Suspensions."**

- (a) Definitions – Revocations and suspensions mean the same thing – the termination by DMV of a licensee's or permittee's privilege to drive any vehicle [N.C.G.S. § 20-4.01(36), (47)]. Disqualification means the driver loses the privilege to drive a CMV but may obtain a regular Class C license [N.C.G.S. § 20-17.5]. A revocation will always result in a disqualification. Disqualifications will be discussed in the Commercial Driver License section. This section deals with revocations. Whether a revocation is mandatory or discretionary is determined by whether the statute says DMV shall or may revoke the license.
- i) If it is mandatory, the person must lose the license; DMV has no choice in the matter.
- ii) If it is discretionary, the person is entitled to a hearing before DMV and may attempt to convince the hearing officer that the license should not be revoked. The hearing officer usually has the right to impose probation instead of a period of suspension. Also, the person has a right to a hearing in superior court, but the superior court may decide only if the person was convicted of the offense for which the revocation is being

imposed, and if DMV had the authority to suspend under the statutes. The superior court does not have the discretion that the DMV has, nor may it substitute its judgment for that of the hearing officer [N.C.G.S. § 20-25]. Officer may be required to testify before a DMV hearing officer and in superior court upon an appeal.

(b) Mandatory revocation by DMV

**NOTE: Show slide, “Ways Your License May Be Revoked.”**

- i) By conviction in a court of an offense listed in N.C.G.S. § 20-17. These offenses are:
- Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.
  - Impaired driving under 20-138.1.
  - Impaired driving under N.C.G.S. § 20-138.2, if the driver’s alcohol concentration level was .04 or higher.
  - Any felony in the commission of which a motor vehicle is used.
  - Failure to stop and render aid in violation of N.C.G.S. § 20-166(a) or (b).
  - Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.
  - Conviction, within twelve months, of (i) two (2) charges of reckless driving offenses. (ii) two

(2) charges of aggressive driving, or (iii) one (1) or more charges of reckless driving and one (1) or more charges of aggressive driving.

- Conviction upon one (1) charge of aggressive or reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.
- Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a driver license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.
- Any offense set forth under N.C.G.S. § 20-141.4 [Death by vehicle and injury by vehicle].
- Conviction of assault with a motor vehicle.
- A second or subsequent conviction of transporting an open container of alcoholic beverage [N.C.G.S. § 20-138.7].
- A second or subsequent offense for driving a commercial motor vehicle after consuming alcohol [N.C.G.S. § 20-138.2A].



- A conviction of driving a school bus, school activity bus, or child care vehicle after consuming alcohol [N.C.G.S. § 20-138.2B].
  - A conviction of malicious use of an explosive or incendiary device to damage property [N.C.G.S. § 14-49(b)]; making a false report concerning a destructive device in a public building [N.C.G.S. § 14-69.1(c)]; perpetrating a hoax concerning a destructive device in a public building [N.C.G.S. § 14-69.2(c)]; possessing or carrying a dynamite cartridge, bomb, grenade, mine, or powerful explosive on education property [N.C.G.S. § 14-69.2(b1)]; or causing, encouraging, or aiding a minor to possess or carry a dynamite cartridge, bomb, grenade, minor, or powerful explosive on educational property [N.C.G.S. § 14-269.2(c1)].
  - A second or subsequent conviction of larceny of motor fuel [N.C.G.S. § 14-72.5]. A conviction for violating N.C.G.S. § 14-72.5 is a second or subsequent conviction if, at the time of the current offense the person has a previous conviction under N.C.G.S. § 14-72.5 that occurred in the seven (7) years immediately preceding the date of the current offense.
- ii) Other N. C. statutes which revoke a driver license
- Habitual DWI [N.C.G.S. § 20-138.5].

- Prearranged racing [N.C.G.S. § 20-141.3].
- Driving while license revoked or after notification [N.C.G.S. § 20-28].
- A conviction of a moving violation while revoked [N.C.G.S. § 20-28.1].
- Speeding over 15 mph over the limit, if also going in excess of 55 mph or speeding in excess of 80 mph [N.C.G.S. § 20-16.1].
- Conviction of a person under age of 21 driving a motor vehicle on a highway or public vehicular area with alcohol or a controlled substance remaining in his body [N.C.G.S. § 20-138.3]. N.C.G.S. § 20-13.2 requires that the revocation be one (1) year.
- Purchasing or attempting to purchase an alcoholic beverage by a person under the legal age to do so [N.C.G.S. § 18B-302(b) and N.C.G.S. § 20-17.3].
- Aiding or abetting an underage person to purchase or attempt to purchase or to possess an alcoholic beverage by a person who is also under the lawful age to purchase the alcoholic beverage [N.C.G.S. § 18B-302(c)(1) and N.C.G.S. § 20-17.3].
- Obtaining or attempting to obtain an alcoholic beverage by a person under the legal age to do so by using or attempting to use:

- A fraudulent or altered driver license; or
  - A fraudulent or altered identification document other than a driver license; or
  - A driver license issued to another person; or
  - An identification document other than a driver license issued to another person [N.C.G.S. § 18B-302(e) and N.C.G.S. § 20-17.3].
- Permitting the use of your driver license (no matter what your age) by an underage person who purchases or attempts to purchase or possess an alcoholic beverage [N.C.G.S. § 18B-302(f) and N.C.G.S. § 20-17.3].
- iii) Ways other than by convictions in North Carolina courts.
- Willful refusal to submit to a chemical analysis as required by the DWI law [N.C.G.S. § 20-16.2(d)].

**NOTE: Show slide, “Failure to Comply.”**

- Failure to comply with an out-of-state citation from a state which is a member of the Non-Resident Violator Compact (see page 6) [N.C.G.S. § 20-4.18 to 20-4.20].
- Failure to appear to answer any charge of violating the Motor

Vehicle Code. The revocation remains in effect until the restoration fee is paid [N.C.G.S. § 20-7(i1)] to the clerk of court [N.C.G.S. § 20-24.2].

- Failure to pay fine, costs, penalty, or fees for any motor vehicle offense [N.C.G.S. § 20-24.1].
- Failure to have insurance when in a crash [N.C.G.S. § 20-279.5(b)].
- Failure to pay a judgment arising out of a vehicle crash [N.C.G.S. § 20-279.13].
- Conviction of any felony and the driver refuses probation or whose probation is revoked [N.C.G.S. § 20-15.1; 15A-1331A].
- Willful failure to pay child support [N.C.G.S. § 50-13.12, N.C.G.S. § 110-142.2(a)(1)].
- Failure to complete court-ordered community service [N.C.G.S. § 20-17(b)(2)].

c) Permissive revocations by DMV

**NOTE: Show slide, “Permissive Revocations.”**

In addition to the mandatory action, there are offenses for which the DMV may revoke a person’s driver license. If the DMV’s action is discretionary, the person has a right to a hearing and a right to appeal to superior court. These rights are not available if the action is mandatory [N.C.G.S. § 20-25 and N.C.G.S. § 20-16(d)].

Under N.C.G.S. § 20-141.3, DMV may suspend a person's driver license for a conviction of willful (but not prearranged, which is mandatory) racing. Other discretionary suspension offenses are listed in N.C.G.S. § 20-16 and are as follows:

- (1) “Has, under the provision of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;
- (2) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;
- (3) Has committed an offense in another state, which if committed in the State would be grounds for suspension or revocation;
- (4) Has been convicted of illegal transportation of alcoholic beverages;
- (5) Has been convicted of impaired instruction under G.S. 20-12.1;
- (6) Has violated on a military installation a regulation of that installation prohibiting conduct substantially similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;
- (7) Has, within a period of 12 months, been convicted of (i) two or more charges of speeding in excess of 55 and not over 80 miles per hour, (ii) one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour, or (iii) one or more charges of aggressive driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour.

## ***Motor Vehicle Laws***

- (8) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour.
- (9) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or
- (10) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.”<sup>54</sup>

**NOTE: Show slide, “Out-of-State Convictions.”**

- (a) DMV may revoke a driver license if the driver is convicted in another state of any offense listed in N.C.G.S. § 20-17.
- (b) DMV may also revoke a driver license if the driver is convicted in another state of any offense listed in N.C.G.S. § 20-26(a). Those offenses are:
  - i) Exceeding a 55 mph speed limit by over 15 mph;
  - ii) Driving while license is revoked;
  - iii) Reckless driving;
  - iv) Prearranged racing;
  - v) Willful (but not prearranged) racing;
  - vi) Hit-and-run;
  - vii) Passing a stopped school bus; or
  - viii) Illegal transportation of alcoholic beverages.

- d) Federal court convictions

## ***Motor Vehicle Laws***

**NOTE: Show slide, “Federal Court Convictions.”**

A conviction for an offense involving impaired driving before a federal magistrate or district court judge will be treated in the same manner as a conviction in a state court [N.C.G.S. § 20-23.2]. The most common conviction involves drivers who are in the armed forces and are charged on a military base.

An offense involving impaired driving is defined by N.C.G.S. § 20-4.01(24a) and includes “any of the following offenses:

- (1) Impaired driving under G.S. § 20-138.1.
- (2) Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.
- (3) First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving under or a substantially similar offense under previous law.
- (4) An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.
- (5) A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
- (6) Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
- (7) Habitual impaired driving under G.S. 20-138.5

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.”

- e) Loss of license under the point system.

**NOTE: Show slide, “Loss of License under the Point System.”**

- (1) In addition to the loss of license for committing certain of the more serious offenses, a driver license may be revoked under the point system. A driver receives a specified number of points for a conviction of the offenses listed in N.C.G.S. § 20-16. If a driver receives 12 points in a three-year period, DMV may revoke the driver license. Since most motor vehicle violations are specifically listed, that is no problem. The only one of real interest is the catch-all phrase “all other moving violations.”
- (2) A different and more stringent points schedule is applied if the offense occurs while operating a commercial motor vehicle (CMV).
- (3) Driver license points are assigned as of the date of the offense, rather than the date of conviction. If a driver receives twelve or more points within three (3) years based upon the offense date, the driver license may be revoked. Therefore, postponing the trial will not help a driver avoid a suspension under the point system [N.C.G.S. § 20-16(c)]. Upon reinstatement, a driver will be revoked for the accumulation of eight (8) or more points within three (3) years following the reinstatement of the license.
- (4) No driver license points are given except for “final convictions.” A final conviction does not include a conviction where the defendant receives a prayer for judgment continued (PJC). However, a third or subsequent PJC within five years shall be treated by DMV as a “conviction” and driver license points will be assigned [N.C.G.S. § 20-4.01(4a)]. Driver license points are assigned for convictions of persons who are licensed or required to be licensed. This includes offenses committed by persons driving on a limited driving privilege or driving without a driver license.
- (5) Points are assigned only for convictions occurring in North Carolina and not for out-of-state convictions.



## ***Motor Vehicle Laws***

- (6) Offenses for which the person's license is revoked do not result in points being assigned, because the license is revoked.
- (7) The point system used for driver license purposes is different from the point system used by insurance companies.
- (8) In case of a licensee convicted of two (2) or more traffic offenses committed at the same time (e.g., speeding and failing to stop for a siren), the licensee shall be assessed points for one (1) offense only. If the offenses involved have a different point value, the licensee shall be assessed for the offense having the greater point value.
- (9) Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been revoked because of convictions for a traffic offense, any points that might previously have been accumulated in the driver's record shall be canceled. (Removal of driver license points does not apply to revocation for failure to appear.)
- (10) DMV may also give any licensee who has accumulated as many as seven (7) points (or any licensee who has accumulated as many as four (4) points within three years immediately following reinstatement of his license after a period of suspension or revocation) an opportunity to attend a driver improvement clinic approved by DMV and, upon successful completion of the course taken at the clinic, three (3) points shall be deducted from the licensee's conviction record; provided, that only one (1) deduction of points shall be made on behalf of any licensee within five years.
- (11) Driver license points (assigned by DMV)
  - 5 Passing a stopped school bus
  - 5 Aggressive driving
  - 4 Reckless driving
  - Hit-and-Run, property damage only
  - Following too close
  - Driving on the wrong side of the road
  - Illegal passing

## ***Motor Vehicle Laws***

- Failure to yield the right-of-way to pedestrian pursuant to N.C.G.S. § 20-158(b)(2)b.
- Failure to yield the right-of-way to bicycle, motor scooter, or motorcycle
- 3 Running through a stop sign
- Speeding in excess of 55 mph
- Failing to yield the right-of-way
- Running through a red light
- No driver license or license expired more than one (1) year
- Failure to stop for siren
- Driving through safety zone
- No liability insurance
- Failure to report accident where such report is required
- Speeding in a school zone in excess of the posted school zone speed limit
- 2 Failure to properly restrain a child in a restraint or seat belt
- 2 All other moving violations
- 1 Littering pursuant to N.C.G.S. § 14-399 when the littering involves the use of a motor vehicle

### (12) DMV procedures

4 Points: DMV mails warning letter.

7 Points: DMV may request the driver to attend a driving clinic; an opportunity to attend a driver improvement clinic to remove 3 points from the record (once only in 5 years) [N.C.G.S. § 20-16].

12 Points: DMV has the authority to suspend license (in three (3) years immediately following any suspension, the driver shall be under an 8-point system).

Suspension: 1<sup>st</sup> – 60 days or less; 2<sup>nd</sup> – 6 months or less; 3<sup>rd</sup> and subsequent – 1 year or less.

**NOTE: Show slide, “Insurance Points.”**

- f) Insurance companies are allowed to assign points and increase insurance rates based upon convictions, revocations by DMV, and at-fault crashes. The insurance point system differs from the driver license point system. Questions about insurance

## ***Motor Vehicle Laws***

points may be referred to the Department of Insurance, Consumer Services Division at 1-800-546-5664, or <http://www.ncdoj.com/Consumer>.

- g) Revoked drivers

**NOTE: Show slide, “Revoked Drivers.”**

Limited driving privileges (LDP) are issued in court by a judge (not DMV) to revoked drivers if a statute allows an LDP for the revocation imposed. If the driver is revoked for more than one (1) reason, the LDP will not be issued unless all the reasons for the revocation allow an LDP. The LDP is a court order which restricts driving as outlined in the court order. Instead of a driver license, the driver will present the stopping officer with the court order. Driving outside the limits is illegal, and a charge of driving while license revoked is appropriate. Officers will usually not be involved in a hearing to issue an LDP but will be required to testify during hearings of persons charged with violating the LDPs. Limited driving privileges relating to DWI offenses will be discussed during your instruction on DWI. [N.C.G.S. § 20-16.1; 20-20.1; 20-179.3; N.C.G.S. § 15A-1331A; N.C.G.S. § 110-142.29(c)].

**NOTE: Show slides, “Limited Driving Privilege Forms.” Review the “Limited Driving Privilege” forms (AOC-CVR-9, AOC-CRV-10, and AOC-CVR-11). Also, see AOC-CR-306 (Speeding), AOC-CR-312 (DWI LDP), AOC-CR-313 (Refusal LDP), AOC-CR-318 (Felony conviction DLP) and AOC-CR-340 (Ignition Interlock LDP).**

Copies of AOC forms can be obtained at AOC’s webpage at <http://www.nccourts.org/Forms/FormSearch.asp>.

- h) Commercial driver license

**NOTE: Show slides, “Commercial Driver License.”**

- (1) Commercial motor vehicles provide over two-thirds of the shipping required by the American industry and employ over 1.5 million drivers.<sup>55</sup> Buses transport passengers and school buses transport students. The consequences of allowing untrained or reckless drivers can be catastrophic. A commercial driver license (CDL) is required to drive a commercial motor vehicle (CMV). In 1986, the Commercial Motor Vehicle Safety Act (CMVSA) was enacted by Congress to require a CMV

driver to demonstrate knowledge and skills for the CMV being driven. North Carolina enacted a comparable law to implement the CMSVA in 1989. There are numerous federal regulations governing hours of operation, physical fitness requirements for the driver and CMV equipment requirements for the vehicle. These federal regulations are enforced by the North Carolina Highway Patrol troopers who perform motor carrier enforcement duties. The Highway Patrol officers who perform these motor carrier enforcement duties can stop a CMV to perform an inspection or to check a drivers' logbook. Other officers do not have this authority. When an officer has a question about the competence of a driver or the safety of a CMV, contacting a North Carolina High Patrol Officer who performs motor carrier enforcement duties may be appropriate. [N.C.G.S. § 20-376 – 20-398].

(2) Commercial motor vehicle (CMV)

Certain of Class A, B, and C vehicles are defined to be commercial motor vehicles or CMVs and require a commercial driver license or CDL to operate. Any of the following motor vehicles that are designed for use to transport passengers or property (even if they are empty at the time) are CMVs. Neither a provisional license nor regular adult driver license allows a person to drive a CMV. A CDL is required, and many times, additional endorsements are required:

- (a) A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a CVWR of at least 10,001 pounds.
- (b) A Class B motor vehicle.
- (c) A Class C motor vehicle that meets either of the following descriptions:
  - i) Is designed to transport 16 or more passengers, including the driver.
  - ii) Is transporting hazardous materials and is required to be placarded by 49 CFR,

## ***Motor Vehicle Laws***

Part 172, Subpart F of the Code of Federal Regulations.

**NOTE: Refer to handouts.**

The fact that a vehicle displays a North Carolina license tag with the word “commercial” may indicate the vehicle is a commercial motor vehicle. DMV will only issue commercial tags to vehicles with GVWR of 26,001 pounds or more. Private passenger tags are issued for vehicles with GVWR of less than 7,000 pounds. Vehicles with a GVWR of 7,000 or 26,000 pounds will bear the words “weighted.” [N.C.G.S. § 20-63(b)]. The GVWR, number of passengers, or cargo of hazardous materials controls whether the vehicle is a commercial motor vehicle and not the tag. The “commercial” tag is a trigger for the officer to check the registration and to look for a commercial driver license.

**NOTE: Show slide, “Video.” Play video, *Classes of Motor Vehicles*.**

(3) Exempt vehicles

~~“The requirements for a commercial driver license do not apply to the following commercial motor vehicles. A regular Class A or B license may be required to operate lawfully:~~ **vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:**

**NOTE: Show slide, “Exempt Vehicles.”**

- (a) ~~Vehicles used for personal use, such as recreational vehicles;~~
- (a) Vehicles owned or operated by the Department of Defense, including the National Guard, while driven by active-duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes;
- (b) Any vehicle when used as firefighting or emergency equipment **for the purpose of**

## Motor Vehicle Laws

preserving life or property or to execute governmental functions, **including, but not limited to, necessary maintenance, training, or required operation for official business of the department.**

Fire**fighting** and emergency equipment are exempted from being a commercial vehicle under N.C.G.S. § 20-37.16(e); however, as stated above, non-volunteer (paid) members of a fire or emergency department still need to obtain a regular driver license for the class driven (i.e., A, B, or C).

- (c) A farm vehicle that meets all of the following criteria:
  - i) **Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use;**
  - ii) **Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm;**
  - iii) **Is not used in the operations of a for-hire motor carrier. ~~of a common or contract motor carrier; and~~**
  - iv) **Is used within 150 miles of the farmer's farm**

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation." [N.C.G.S. § 20-37.16(e)].

- ~~(e) — Vehicles transporting personal property when the operator has not been hired, if rented for 30 days or less (U-Haul, Ryder, etc.)~~

- (4) Vehicles that may be driven with CDLs

- (a) *Class A CDL* – Allows a licensee to drive:

**NOTE: Show slide, "Class A CDL License."**

## ***Motor Vehicle Laws***

- i) Any Class A motor vehicle;
- ii) Any Class B motor vehicle;
- iii) Any Class C motor vehicle; and
- iv) Any motor vehicle which may be operated under a regular Class A, B, or C and Class B or C CDL [N.C.G.S. § 20-37.16(b)].

(b) *Class B CDL* – Allows a licensee to drive:

**NOTE: Show slide, “Class B CDL License.”**

- i) Any Class B motor vehicle;
- ii) Any Class C motor vehicle;
- iii) Any vehicle which may be operated by a regular Class B or C driver license and a Class C CDL.

(c) *Class C CDL* – Allows a licensee to drive:

**NOTE: Show slide, “Class C CDL License.”**

- i) Any Class C motor vehicle [N.C.G.S. § 20-37.16(b)].
- ii) Any vehicle which may be operated by using a regular Class C driver license [N.C.G.S. § 20-7(a)].

(5) Endorsements and restrictions will be noted on the license in the following categories:

**NOTE: Show slide, “Endorsements and Restrictions.”**

- (a) “H” – Authorizes a CDL holder to drive vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded;

## ***Motor Vehicle Laws***

- (b) “M” – Authorizes a CDL holder to drive motorcycles;
  - (c) “N” – Authorizes a CDL holder to drive tank vehicles not carrying hazardous materials;
  - (d) “P” – Authorizes a CDL holder to drive vehicles carrying passengers;
  - (e) “S” – Authorizes a CDL holder to drive school buses
  - (f) “T” – Authorizes a CDL holder to drive double trailers;
  - (g) “X” – Authorizes a CDL holder to drive tank vehicles carrying hazardous materials;<sup>56</sup>
- (6) Restrictions<sup>57</sup>

In addition to the restriction authorized for a regular driver license (e.g., eyeglasses), other common restrictions for CDL holders, include:

- (a) “E” – Restricts a CDL holder to drive a vehicle with only an automatic transmission.
- (b) “K” – Intrastate driving only – CDL holder does not comply with Federal requirements and cannot engage in interstate “out-of-state” driving.
- (c) “L” – Restricts a CDL holder to only drive a vehicle without air brakes;
- (d) “O” – Restricts Class A drivers to no tractor-trailers;
- (e) “Z” – Restricts a CDL holder to only drive a vehicle with no full air brakes (air over hydraulic system).
- (f) “X” – Restricts the CDL holder to having no cargo in the CMV tank vehicle.



## ***Motor Vehicle Laws***

Although a driver may have a CDL for a particular vehicle based upon a GVWR, the proper endorsement is also required to operate lawfully.

- (7) School buses and activity buses

**NOTE: Show slide, “School/Activity Bus.”**

The driver of a school bus occupied by one (1) or more child passengers must be at least 18 years old and have a Class “A,” “B,” or “C” CDL and a school bus driver’s certificate. A CDL issued to an under age 21 school bus driver only authorizes driving a school bus or school activity bus, not any other commercial motor vehicle. The operator of a school activity bus may use an A, B, or C CDL and a certificate or a license appropriate for the class of vehicle being driven. A regular Class C may be used if the bus has seats for less than 16 passengers, including the driver [N.C.G.S. § 20-218(a)].

- (8) Disqualification:

**NOTE: Show slide, “CMV Disqualification.”**

A “disqualification” is “a withdrawal of the privilege to drive a commercial motor vehicle.”<sup>58</sup> Disqualification does not revoke the privilege to obtain a regular Class C driver license. A “revocation” will result in the loss of a CDL and the right to obtain regular driver license [N.C.G.S. § 20-17.4 and 20-17.5].

- (a) DMV is required to disqualify a person from driving a commercial motor vehicle for ten (10) days for a conviction of driving a commercial motor vehicle after consuming alcohol in violation of N.C.G.S. § 20-138.2A.
- (b) DMV is required to disqualify a person from driving a commercial motor vehicle for one (1) year for any of the following:
- i) The first conviction of N.C.G.S. § 20-138.1, driving while impaired, that occurs while a person was driving a noncommercial motor vehicle.

## ***Motor Vehicle Laws***

- ii) The first conviction of N.C.G.S. § 20-138.2, driving a commercial motor vehicle while impaired.
  - iii) The first conviction of N.C.G.S. § 20-166, hit and run, involving a person driving a commercial motor vehicle.
  - iv) A first conviction of a felony, the commission of which occurred during the use of a commercial motor vehicle.
  - v) A second or subsequent conviction for driving after consuming in a commercial motor vehicle [N.C.G.S. § 20-138.2A].
  - vi) Refusal to submit to a chemical test when charged with an implied consent offense, as defined in N.C.G.S. § 20-16.2 that occurred while the person was driving a commercial motor vehicle.
  - vii) A civil license revocation under N.C.G.S. § 20-16.5, or a substantially similar revocation obtained in another jurisdiction, while the person was either driving a commercial vehicle or holding a CDL.
  - viii) The first conviction of vehicular homicide or vehicular manslaughter while operating a commercial motor vehicle.
  - ix) Driving a commercial motor vehicle during a period when the CDL is revoked, suspended, canceled, or the driver is otherwise disqualified from operating a commercial motor vehicle.
- (c) A person who has been disqualified from driving a CMV for a conviction or refusal described in subsections (1)-(5) who, as a result of a separate incident, is subsequently convicted of an offense or commits an act requiring

disqualification under subsection (1)-(5), is disqualified for life. DMV may adopt guidelines for reducing such a lifetime revocation to ten (10) years.

- (d) A person is disqualified from driving a CMV for life if the person uses the CMV in the commission of any felony involving the manufacture, distribution, or dispensing of controlled substances, or possession with intent to manufacture, distribute, or dispense a controlled substance.
- (e) A person is disqualified from driving a CMV for three (3) years if the person is convicted of an offense or commits an act requiring disqualification under subsections (1)-(5), and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.
- (f) A person is disqualified from driving a CMV for sixty days if that person is convicted of two (2) serious traffic violations, or 120 days if convicted of three (3) or more serious traffic violations, committed in the commercial motor vehicle arising from separate incidences occurring within three years. A serious traffic violation is “a conviction of one of the following offenses when operating a commercial motor vehicle:
  - i) “Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted limit.
  - ii) Careless and reckless driving.
  - iii) A violation of any State or local law relating to motor traffic control, other than a parking violation, arising in connection with a fatal accident.
  - iv) Improper or erratic lane changes.

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- v) Following the vehicle ahead too closely.
  - vi) Driving a commercial motor vehicle without obtaining a commercial driver license.
  - vii) Driving a commercial motor vehicle without a commercial driver license in the driver's possession.
  - viii) Driving a commercial motor vehicle without the proper class of commercial driver license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported.
  - ix) Unlawful use of a mobile telephone under G.S. § 20-137.4A or Part 390 or Part 392 of Title 49 of the Code of Federal Regulations while operating a commercial motor vehicle."<sup>59</sup>
- (g) A person who drives a CMV while disqualified is disqualified for an additional period as follows:
- i) For a first offense, a period equal to the current disqualification period,
  - ii) For a second offense, a period equal to two (2) times the current disqualification period,
  - iii) For a third offense, a lifetime disqualification is imposed.
- (h) A person who is disqualified from driving a CMV may obtain a regular Class C license unless the basis of the disqualification also results in revocation.

### 6. Medical review

**NOTE: Show slide, "Medical Review."**

## ***Motor Vehicle Laws***

A driver who is unable to operate a vehicle due to physical or emotional reasons safely may be reported to the medical review branch of DMV in Raleigh. The driver's condition will be reviewed by doctors, and DMV will decide whether to revoke the person's license [N.C.G.S. § 20-9(g)].

### 7. Driver license offenses (elements of offenses)

**NOTE: Show slide, "Elements of Offenses."**

Some driver license violations are either misdemeanors or felonies, as opposed to infractions.

#### a) Driving without license [N.C.G.S. § 20-7(a)]. [NOL]

**NOTE: Show slide and refer to the handout of AOC's "Uniform Policies Relating to Traffic Offenses" (Mandatory and Waived Court Appearances) and Uniform Citation.**

**NOTE: Show slide, "Driving without License."**

#### (1) No operator's license (NOL) elements:

It is unlawful for a person to:

- (a) operate
- (b) a motor vehicle
- (c) on a highway
- (d) unless the person has a valid driver license for the class of vehicle that is being operated.

#### (2) If a person has a valid license, but it does not permit the operation of the class of vehicle being operated, an officer should charge this violation [NOL].

#### (3) If the person has a regular license, but it has expired, and the person was operating a non-CMV, the person may be acquitted of the charge if a valid license, issued no more than 30 days after the license expired, is produced in court. The 30 days are counted from the license expiration date, not the date of the offense [N.C.G.S. § 20-35]. Also, a driver must carry a regular license while operating a non-CMV motor vehicle.

NOL can be charged for failing to carry the license [N.C.G.S. § 20-7(a)]. It is a defense to this charge if the driver produces in court a license issued to the driver that was valid at the time of the offense, as long as the license authorizes driving the type of vehicle the driver was operating [N.C.G.S. § 20-35]. A driver operating a CMV must possess a CDL. NOL can be charged for failing to possess the license [20-37.12]. It is a defense to this charge if the driver produces in court a CDL issued to the driver at the time of the offense [20-37.12(f)]. In all of the above situations, the officer is authorized to charge the defendant with the offense, even though the defendant may be able to get the case dismissed when it comes to court.

- (4) A license, issued to a person in a reserve component of the armed forces and that expires while that person is stationed outside N.C. shall be considered valid until 60 days after release from active duty, except that no license shall be considered valid more than 18 months after the date of expiration [N.C.G.S. § 20-7(f)].
- b) Operating in violation of a driver license restriction (NOL) [N.C.G.S. § 20-7(e)].

**NOTE: Show slide, “Operating in Violation of a Driver License Restriction.”**

- (1) Elements:  
It is unlawful for a person to operate:
  - (a) a motor vehicle
  - (b) on a highway
  - (c) with a driver license that contains restrictions imposed by DMV
  - (d) if the person is not complying with the restrictions noted on the driver license.
- (2) A driver who does not comply with the restrictions on the license must be charged with NOL in violation of N.C.G.S. § 20-7(a). There are two (2) exceptions. If the restriction on the license is that the driver only operates

a vehicle with an ignition interlock (Restrictions 20, 22, or 23), then the charge is driving while license revoked (DWLR) [N.C.G.S. § 20-17.8(f)]. Also, a violation of the terms of a limited driving privilege must be charged with DWLR in violation of N.C.G.S. § 20-28, because the driver is revoked except when operating as required by the limited driving privilege [N.C.G.S. § 20-16.1(b)(4)].

- c) Driving while license is revoked [N.C.G.S. § 20-28(a)]. (DWLR)

**NOTE: Show slide, “Driving While License Is Revoked.”**

- (1) Elements:

A person guilty of this offense:

- (a) drives
  - (b) a motor vehicle
  - (c) on a highway
  - (d) knowing
  - (e) that his or her driver’s license is revoked.
- (2) It is important to remember that the license must have been revoked by the previous action of the North Carolina DMV, and the defendant must have had actual or constructive notice of the revocation. Conviction in a court of an offense for which revocation is required is notice because the court requires the license to be surrendered [N.C.G.S. § 20-24(a)]. Otherwise, notice must be given by DMV by mailing to address contained in DMV records. The notice is presumed to be received after five days [N.C.G.S. § 20-48]. The current definition of license should make the offense applicable to persons never licensed who had their privilege to drive revoked as well as to non-residents who have had their privilege to drive in this state revoked by DMV [N.C.G.S. § 20-23.1].

## ***Motor Vehicle Laws***

- (3) A non-resident whose license was revoked by the state of residence and not North Carolina DMV should be charged with NOL and not DWLR.
- (4) If a person's license was revoked but the revocation period has expired, and the person has not paid the reinstatement fee, the proper charge is no operator's license (NOL) [N.C.G.S. § 20-7].
- (5) A person who is revoked pursuant to N.C.G.S. § 20-16.5 [30-day civil revocation] for refusing the implied consent breath or blood test or having a test result of 0.08 or more [0.04 or more in CMV], who has failed to pay the fee to the clerk is charged with DWLR but may be punished for NOL [N.C.G.S. § 20-16.5(e) and 20-28(a1)].
- (6) A person whose license is revoked for DWI, DWI in a CMV, driving after drinking by a person under age 21, or second offense of driving a commercial motor vehicle, school bus, school activity bus or child care vehicle, and who fails to obtain a certificate of completion of court-ordered treatment or education will have his/her revocation period extended and must be charged with DWLR even after the initial revocation period has expired [N.C.G.S. § 20-17.6].
- (7) A person convicted of any moving offense while the person's license is revoked will have the driver license revoked for an additional year for a first offense, two (2) years for a second offense, and permanently for the third offense [N.C.G.S. § 20-28.1].
- (8) A person whose license is permanently revoked can re-apply for a license after three (3) years [N.C.G.S. § 20-19(i); 20-28(c); 20-28.1(c) unless the person is revoked for habitual DWI [N.C.G.S. § 20-138.5(d)], in which case a person may re-apply after ten (10) years. DMV is not required to give any permanently revoked person a license.

**NOTE: Show slide and refer to the handout, "NOL vs. DWLR."**

- d) Failure to be licensed to operate a commercial motor vehicle [CMV].



## ***Motor Vehicle Laws***

**NOTE: Show slide, “Failure to be Licensed to Operate A Commercial Motor Vehicle.”**

(1) Elements

It is unlawful for any person to:

- (a) operate
- (b) a commercial motor vehicle
- (c) on a highway
- (d) without having been issued a commercial driver license with applicable endorsements valid for the vehicle being driven [N.C.G.S. § 20-37.12(a)].

- (2) This offense is a Class 3 misdemeanor, and upon conviction, the defendant shall be fined not less than \$250.00 for the first offense and not less than \$500.00 for a second or subsequent offense [N.C.G.S. § 20-37.21(a)].

e) Failure to carry CDL or CDL permit

**NOTE: Show slide, “Failure to Carry CDL or CDL Permit.”**

(1) Elements:

It is unlawful for any person to:

- (a) operate
- (b) a CMV
- (c) on a highway
- (d) without in his immediate possession, a commercial driver license, or CDL permit with applicable endorsements valid for the vehicle being driven [N.C.G.S. § 20-37.12].

- (2) “Immediate” possession means the driver has it in the vehicle. If the driver forgot the CDL, it is a violation, but it may now be a defense that the driver was licensed

## ***Motor Vehicle Laws***

at the time. A violation of this section is a Class 3 misdemeanor punishable by a fine of not less than \$250.00 for a first offense and not less than \$500.00 for a second or subsequent offense [N.C.G.S. § 20-37.21(a)].

**NOTE: Show slide, “Driving A CMV While CDL Is Revoked or in Violation of Out-Of-Service Order.”**

f) Driving a CMV while CDL is revoked or in violation of out-of-service order.

(1) Elements:

It is unlawful for any person to:

- (a) to drive
- (b) a CMV
- (c) on the highways
- (d) in violation of an out-of-service order [N.C.G.S. § 20-37.12(b)].

(2) An “out-of-service order”

These out-of-service orders are issued for a mechanical or loading condition, which is likely to cause a crash. The orders not entered into a database that is generally available to all law enforcement [N.C.G.S. § 20-381]. A violation of this statute is a Class 3 misdemeanor punishable by a fine of not less than \$250.00 for the first offense and not less than \$500.00 for a second or subsequent offense. [N.C.G.S. § 20-37.21(a)].

g) Driving during the disqualification period.

**NOTE: Show slide, “Driving During Disqualification Period.”**

Elements:

It is unlawful to:

(1) drive

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- (2) a CMV
  - (3) on a highway
  - (3) while his or her commercial driver's license is disqualified [N.C.G.S. § 20-28(d)].
- h) Failure to notify DMV of his/her name or address change

**NOTE: Show slide, "Failure to Notify DMV of Change of Address."**

- (1) Elements:  
It is unlawful for:
    - (a) the holder of a driver license
    - (b) to fail to secure a duplicate license with his/her correct name or address listed on it
    - (c) within 60 days
    - (d) after his/her name or address changes.
  - (2) Note that the motorist must get a duplicate if his address changes, but this is not required if the change is by governmental action without a real change of residence location.
- i) General driver license violations [N.C.G.S. § 20-30].

**NOTE: Show slide, "General Driver License Violations."**

- (1) Elements  
It is unlawful for:
  - (a) any person to display or cause to be displayed or have in his or her possession
  - (b) a driver license, learner's permit, special identification card
  - (c) knowing the same

## ***Motor Vehicle Laws***

(d) to be fictitious or to have been canceled, revoked, suspended, or altered [N.C.G.S. § 20-30(1)].

(2) Elements

It is unlawful for:

- (a) any person to counterfeit, sell, lend to, or, knowingly permit the use of, by one not entitled to it
- (b) a driver license, learner's permit or special identification card [N.C.G.S. § 20-30(2)].

(3) Elements

It is unlawful to:

- (a) make a color photograph photocopy or reproduce
- (b) a driver license, learner's permit or special identification card
- (c) unless authorized to do so by the Commissioner of DMV [N.C.G.S. § 20-30(6)]. [It is lawful to make a black and white copy of a driver license.]

(4) Elements

It is unlawful to:

- (a) display or to represent as one's own
- (b) a drivers license, learner's permit or special identification card
- (c) not issued to the person who displays it [N.C.G.S. § 20-30(3)].

(5) Elements

It is unlawful to:

- (a) possess
- (b) more than one (1) CDL or a CDL and a regular driver license [N.C.G.S. § 20-30(8)].

Note that every CDL, other than the most recent, should be seized—even out-of-state CDLs—by the charging officer or judicial official. If the driver has a CDL and a regular driver license, the regular driver license should be seized.

- (6) Elements [N.C.G.S. § 20-32].

It is unlawful to:

- (a) cause or knowingly permit
- (b) a minor (under 18 years old)
- (c) to drive
- (d) a motor vehicle
- (e) upon a highway
- (f) unless the minor is properly licensed to do so.

- (7) Elements [N.C.G.S. § 20-34].

It is unlawful for:

- (a) a person to authorize or knowingly permit
- (b) a motor vehicle owned by the person or under the person's control
- (c) to be driven
- (d) by any person who has no legal right to do so or in violation of the Uniform Driver's License Act of N.C.G.S. § Chapter 20, Article 2.

8. Special identification cards

## ***Motor Vehicle Laws***

**NOTE: Show slide, “Special Identification Cards,” and show the class a special identification card.**

Special identification cards may be issued to any resident of North Carolina under N.C.G.S. § 20-37.7, but they do not entitle the person to whom they are issued to operate a motor vehicle. Although the special identification cards are similar in size, shape, and design to a driver license, they are to be used only for identification purposes. Cards issued to persons under 21 years of age will be printed in a vertical format. A person whose driver license is revoked may still obtain a special identification card to use when identification with a photograph is required.

It is unlawful to use a false or fictitious address in any application for a special identification card or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application [N.C.G.S. § 20-37.8]. The holder of a special identification card must apply for a new card within 60 days of any change of his or her name and address [N.C.G.S. § 20-37.9].

### C. Titling of a Motor Vehicle

**NOTE: Show slide, “Titling.”**

1. A Vehicle Identification Number (VIN) is assigned to each motor vehicle. There is a public number on the dashboard or door and a secret copy on the frame. This number is used on the title and registration to identify a specific vehicle. It is a felony to willfully deface, remove, destroy, cover, or alter this number [N.C.G.S. § 20-109].
2. Transfer title – To transfer title of a vehicle to another individual, the owner must in the presence of a notary public execute an assignment and warranty of title on the reverse of the certificate of title [N.C.G.S. § 20-52]. A person selling a vehicle must deliver the signed title to the buyer of the vehicle at the time the vehicle is delivered [N.C.G.S. § 20-72]. A person to whom a vehicle is transferred must apply to DMV for a new certificate of title. The application for a new certificate of title must be submitted within 28 days after the vehicle is transferred [N.C.G.S. § 20-73].
3. Failure to disclose damage to a vehicle – It is a Class 2 misdemeanor for a person who transfers a motor vehicle who knows or reasonably should have known that the vehicle had been damaged by a collision or other occurrence to the extent that the cost to repair the vehicle

exceeds 25% of the fair market value, or that the vehicle is or was a flood vehicle, a reconstructed vehicle or a salvage vehicle, to fail to disclose this information. The disclosure must be made in writing before the transfer of any vehicle up to 5 model years old [N.C.G.S. § 20-71.4(a)].

It is a Class 2 misdemeanor for any person to remove a title or to support documents to any vehicles from this state with the intent of concealing damage (or damage which has been repaired) occurring as a result of a collision or other occurrence [N.C.G.S. § 20-71.4(d)].

4. Possession of an altered, forged, false, or blank title document or a facsimile thereof is a Class I felony. Possession of a title assigned in blank is a Class 2 misdemeanor [N.C.G.S. § 20-71 and 20-72].

D. Registration and Insurance of Vehicles

**NOTE: Show slide, “Registration and Insurance.”**

1. Who must register the motor vehicle?

The owner of a motor vehicle, motorcycle, trailer, or semi-trailer that is intended to be operated on a highway in North Carolina must register it with the DMV and obtain registration plates, a registration certificate, and a certificate of title unless it is specifically exempt or under temporary registration plates. In a few instances (dealing with common carriers or farmers), the lessee of the vehicle instead of the owner may register it [N.C.G.S. § 20-50(a)]. Even though the owner is required to register the vehicle, it is unlawful for any person to operate a vehicle that does not have a valid license tag attached to the rear [N.C.G.S. § 20-63(d)] or to operate a vehicle which is not registered [N.C.G.S. § 20-111(1)].

The registration of a vehicle must be renewed annually. The registration may be renewed using a renewal sticker issued by the DMV. Registration of private passenger cars is on a staggered basis by month, and the plate or sticker is good until the end of the month and for 15 days after that [N.C.G.S. § 20-66(g)]. DMV shall furnish county assessors registration lists for tax assessment purposes [N.C.G.S. § 20-50.3].

2. Vehicles exempt from registration

The following vehicles are EXEMPT from registration and do not need a license plate of any kind:

## ***Motor Vehicle Laws***

**NOTE: Show slide, “Exempt from Registration.”**

- a) Vehicles that are driven on a highway only to cross the road from one (1) property to another [N.C.G.S. § 20-51(2), (8)].
- b) Husbandry implements, farm tractors, road construction vehicles or maintenance machinery, or other vehicles that are not self-propelled and are used for off-highway projects may be transported from project to project [N.C.G.S. § 20-51(3)], and rubber-tired farm tractors and trailers and implements of husbandry transporting farm material to or from farm to market if such vehicle does not exceed 35 mph [N.C.G.S. § 20-51(5)]. Agricultural spreaders are also exempt [N.C.G.S. § 20-51(16)].
- c) A vehicle owned and operated by the United States government [N.C.G.S. § 20-51(4)].
- d) Trailers pulled by a properly licensed motor vehicle when used by a farmer or his agent to haul unginning cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, all vegetables, fruits, greenhouse and nursery plants and flowers, Christmas trees, livestock, live poultry, animal waste, pesticides, seeds, fertilizers or chemicals purchased or owned by the farmer or tenant for personal use in implementing husbandry, irrigation pipes, loaders, or equipment owned by the farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis [N.C.G.S. § 20-51(6)].
- e) Tobacco-hauling trailers, when used by a farmer or his agent or employee when handling tobacco in connection with the pulling, tying, or curing thereof [N.C.G.S. § 20-51(7)].
- f) Devices generally known as “tow dollies,” which are designed for towing private passenger motor vehicles or vehicles not exceeding 5000 pounds gross weight [N.C.G.S. § 20-51(10)].
- g) Devices generally called converter gear or dollies consisting of a tongue attached to either a single or tandem axle upon which is mounted a fifth wheel and which is used to convert a semitrailer into a full trailer for the purpose of being drawn behind a truck tractor and semitrailer [N.C.G.S. § 20-51(11)].



## ***Motor Vehicle Laws***

- h) Motorized wheelchairs or similar vehicles not exceeding 1000 pounds gross weight when used for pedestrian purposes by a handicapped person with a mobility impairment as defined in N.C.G.S. § 20-37.5 [N.C.G.S. § 20-51(12)].
- i) Electric personal assistive mobility devices defined in N.C.G.S. § 20-4.01(7b) as “a self-balancing nontandem two-wheeled device, designed to transport one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less” [N.C.G.S. § 20-51(14); N.C.G.S. § 20-4.01(7a)].
- j) Any vehicle registered in another state and operated temporarily in North Carolina by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities to restore utility services in an emergency outage [N.C.G.S. § 20-51(13)].
- k) Any vehicle used for Department of Agriculture and Consumer Services (DA&CS) supervised agricultural quarantine programs that is designed for off-highway work, is properly identified approved by the DMV, and is driven or moved on the highway to go to or from non-highway projects and the operator possesses a DA&CS identification card [N.C.G.S. § 20-51(15)].

### 3. Grounds for refusing to register a vehicle

**NOTE: Show slide, “Grounds for Refusing to Register a Vehicle.”**

DMV will refuse to register a vehicle if:

- a) The application has false or fraudulent information, or the applicant has failed to provide the required information or additional information as requested by DMV, or that the applicant is not entitled to a certificate of title or registration [N.C.G.S. § 20-54(1)].
- b) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways [N.C.G.S. § 20-54(2)].
- c) DMV has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or issuance of a certificate of title would constitute fraud

## ***Motor Vehicle Laws***

against the rightful owner or another person having a valid lien against the vehicle [N.C.G.S. § 20-54(3)].

- d) The vehicle registration is currently in a state of suspension or revocation [N.C.G.S. § 20-54(4)], except in such cases to abide by ignition interlock installation requirements of N.C.G.S. § 20-17.8.
- e) The required fee has not been paid, including any additional registration fees or taxes under N.C.G.S. § 20-91(c) [N.C.G.S. § 20-54(5)].
- f) The vehicle is not in compliance with the inspection requirements of Chapter 20 or a civil penalty assessed as a result of the failure of the vehicle to comply with inspection has not been paid [N.C.G.S. § 20-54(6)]. [Effective October 1, 1996]
- g) The owner does not have the required financial responsibility (usually a liability insurance policy) [N.C.G.S. § 20-309].
- h) Taxes on the vehicle are delinquent [N.C.G.S. § 20-50.4] (and court-ordered child support has not been paid effective Dec. 1, 1996) [N.C.G.S. § 20-50.4].
- i) The driver has his registration revoked [N.C.G.S. § 20-54.1].
- j) The vehicle is a golf cart [N.C.G.S. § 20-4.01(12b)] or utility vehicle [N.C.G.S. § 20-4.01(48c)]. Notwithstanding the provisions of N.C.G.S. § 20-54, cities and counties may, by ordinance, require the registration of golf carts [G.S 153A-245; 160A-300.6], and there are some local laws authorizing operation of a utility vehicle on a highway.

- 4. Location of registration tag and carrying of the registration card

**NOTE: Show slide, “Location of Registration Tag and Carrying of Registration Card.”**

A valid, current registration (license) plate must be on the rear of the motor vehicle (if the state issues two (2) tags, then it must be on the front and back). The registration card must be carried in the vehicle to which it is assigned. [N.C.G.S. § 20-57(c) and 20-63(d)].

- 5. Temporary registration of motor vehicles

## ***Motor Vehicle Laws***

**NOTE: Show slide, “Temporary Registration of Motor Vehicles.”**

Vehicles are exempt from North Carolina regular registration requirements when displaying the following types of plates:

- a) Manufacturer’s or dealer’s plates – Dealer’s plates may be displayed only on a motor vehicle that meets all of the following requirements:
  - (1) Is part of the inventory of the dealer;
  - (2) Is not consigned to the dealer;
  - (3) Is covered by liability insurance;
  - (4) Is not used by the dealer in another business in which the dealer is engaged; and
  - (5) Is driven on a highway by a person (i) who has a demonstration permit to test-drive the vehicle and carries the permit while driving the vehicle; (ii) is an officer or sales representative of the dealer and is driving the vehicle for business purposes of the dealer; (iii) is an employee of the dealer and is driving the vehicle in the course of employment; (iv) is an employee of the dealer or contractor of the dealer and is driving the vehicle within a 20-mile radius of a place where the vehicle is being repaired or prepared for sale; (v) is an employee of the dealer or contractor of the dealer and is transporting the vehicle to or from an auction or to the dealer’s established salesroom; or (vi) is an officer, sales representative, or other employee of a franchised motor vehicle dealer or is an immediate family member of an officer, sales representative, or other employee of a franchised motor vehicle dealer. The demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. The permit may be renewed for one (1) additional 96 hour period.

If a card or permit is not in possession of the operator, it must be maintained on file at the dealer’s address and be produced within 24 hours upon the request of law enforcement.

A dealer may not lend, rent, lease, or otherwise place a dealer tag at the disposal of a person except as authorized above [N.C.G.S. § 20-79(d)]. A person driving a motor vehicle with a dealer tag who is not authorized to do so is guilty of an infraction. Also, DMV should be informed because DMV can fine the dealer and rescind all dealer tags.

- b) Temporary registration plates – Persons who purchase a vehicle may use temporary plates on the vehicle. These temporary plates are issued by the dealer and are valid only if permanent plates are applied for and are valid only until (1) the permanent plates arrive or (2) the sales contract is rescinded. After these plates have been used for 30 days, they are invalid and must be destroyed by the vehicle owner regardless of whether permanent plates have been issued. [Under limited circumstances, a buyer may obtain a second 30-day tag (e.g., the title is lost by the dealer, etc.)]. [N.C.G.S. § 20-79.1]. The numbers on these tags are not entered into the DMV database. DMV sells these temporary thirty-day tags in bundles to dealers who issue them. The dealer who issued the tag will not appear on the tag but will be on the paperwork selling or leasing the motor vehicle.
- c) Transporter plates – Persons who transport vehicles for manufacturers or to repair or for other specified reasons may be issued a transporter plate. This plate is issued to a business or dealer and not to individuals. [N.C.G.S. § 20-79.2].
- d) Non-residents
  - (1) Residents of other states may operate their vehicles on North Carolina highways if the vehicle is properly registered in their home state. Many other states may only have a date of expiration, a dealer’s name, or the words “Tag Applied For” on some temporary tags. Also, some states do not require tags for trailers. Such trailers of non-residents can be lawfully operated within North Carolina.
  - (2) When non-residents move into North Carolina and become residents, they technically are no longer exempt from registration. By specific agreement, new residents coming from some states have 60 days, others have six

(6) months, and others have until their present tags expire to register in North Carolina.

Non-residents may register their vehicles in North Carolina, and non-resident businesses must register the vehicles used in the business in North Carolina [N.C.G.S. § 20-83].

- (3) The problem in enforcing this statute will be one of determining residence, and the comments in the “Driver License Law” section on the determination of residence apply here.

**NOTE: Show slide, “Summary of License Plate Reciprocity.” Instructors should inform students about DMV’s “Summary of License Plate Reciprocity” for vehicles licensed in foreign states and have one available to review.**

**NOTE: Show slide, “Video.” Play video, *Registration Laws*.**

6. Required documentation to register a vehicle:

**NOTE: Show slide, “Required Documentation to Register A Vehicle.”**

- a) Certificate of insurance called “Proof of Financial Responsibility” with an insurance company licensed to do business in North Carolina in the minimum amounts of \$30,000/\$60,000/\$25,000, unless self-insured or has filed a financial security bond or a financial security deposit [N.C.G.S. § 20-279.1, 20-309].
- b) Document showing ownership – If the application is for a new vehicle purchased from a manufacturer or dealer, the application must include the manufacturer’s “certificate of origin” that is properly assigned to the applicant. If the vehicle was acquired in another jurisdiction, the application must include evidence of ownership as is required by the laws of that jurisdiction, or if no such evidence of ownership is required by the laws of the other jurisdiction, a notarized bill of sale from the transferor is required [N.C.G.S. § 20-52].
- c) The motor vehicle must have a current equipment inspection and, in certain counties, a current emissions inspection. If the registration is for a newly purchased vehicle, a title fee and sales tax must be paid. For renewal of the registration, a registration fee and county vehicle property taxes must be paid.

7. Types of license plates

**NOTE: Show slide, “Types of License Plates.”**

There are several license plates issued by DMV, and there are different colors and designs. North Carolina’s basic design is a blue graphic of the Wright Brothers’ flight upon a white background. The numbers of the basic plate use an ABC-123 system and are either blue or red. The date that the plate expires will be on the tag or will be shown by a decal. This sticker is issued annually. Although the tag expires on the last day of the month indicated on the month sticker, it is lawful to drive the vehicle until the 15<sup>th</sup> day of the following month. [N.C.G.S. § 20-66(g)].

Also, there are more than 200 groups and organizations who have obtained authorization from the General Assembly to have a special registration plate issued for their members. Usually, 300 applications must be received by DMV before the specially designed plate will be issued. These groups change from time to time. A list can be found at N.C.G.S. § 30-79.4. A special plate will be of a different color or background but will contain letters and numbers, and the vehicle to which the plate is assigned will be in the DMV database. The expiration stickers are required for these license plates also.

The most common tags are:

- a) Private passenger tag is issued to motor vehicles, passenger cars and trucks with a weight of up to 7,000 lbs. These may be the basic plate or specialized and individualized plates. All of these plates require validation stickers unless specifically exempted.
- b) “Weighted” tag will be issued for vehicles that weigh more than 7,000 up to 26,000 lbs.
- c) “Commercial” tag is for a vehicle with a weight of 26,001 lbs. or more.
- d) Permanent tags are issued to vehicles owned by a government. Yellow tags are issued to state vehicles and orange background with black letters tags to city and county government vehicles.
- e) “Farmer” tags are issued for vehicles used for farming and related businesses. Trucks and truck tractors displaying “farmer” plates must be used primarily for transporting

## ***Motor Vehicle Laws***

products and supplies for the applicant's farm and not hauling for hire.

- f) A permanent tag may be issued for Class A and Class B vehicles. The owner must pay an annual registration fee but is not required to have a year sticker, but the license plate will include the words "permanent" on it. [N.C.G.S. § 20-88(1)].

It is unlawful to operate a vehicle with a gross weight exceeding its gross declared weight; e.g., a pick-up truck with a private passenger tag cannot weigh more than 7,000 pounds when the vehicle weight and weight of its load are added together [N.C.G.S. § 20-88(k)].

- 8. Grounds for canceling registration (does not include cancellation of special tags, or dealer's tags, which have other special grounds for cancellation)

**NOTE: Show slide, "Grounds for Cancelling Registration."**

DMV will cancel a registration if:

- a) The vehicle is unsafe, unfit to be operated, or improperly equipped [N.C.G.S. § 20-110(a)].
- b) The registration card or license plate has been improperly used. This includes giving, lending, or borrowing of a license plate to use it on a motor vehicle other than that for which it was issued [N.C.G.S. § 20-110(b); 20-111(3)].
- c) The vehicle is found to have been stolen or embezzled or that granting the registration or certificate of title would constitute fraud against the rightful owner of a person having a valid lien on the vehicle [N.C.G.S. § 20-110(i)].
- d) The registration application has a false or fraudulent statement or that the holder of the certificate of title was not entitled to the issuance of the certificate, title, or registration [N.C.G.S. § 20-110(h)].
- e) The registration of the vehicle is suspended or revoked under the motor vehicle laws of this time [N.C.G.S. § 20-110(j)].
- f) The vehicle has been transferred to a person who has filed to get a new certificate of title for the vehicle as required by N.C.G.S. § 20-73 [N.C.G.S. § 20-110(l)].

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- g) The owner of the vehicle does not have a liability insurance policy or any other evidence of financial responsibility [N.C.G.S. § 20-309; 20-311].
- 9. Seizure of license plates and registration cards

**NOTE: Show slide, “Seizure of License Plates and Registration Cards.”**

- a) Law enforcement officers would have no direct role in the refusal of the DMV to register a vehicle and relatively little role in the revocation of a registration. They should know of the grounds, however, so that they may inform the DMV in appropriate cases.
  - b) A law enforcement officer is authorized to seize a certificate of title, registration card, permit, license, or registration plate if the officer has electronic or other notification from the DMV that the item has been revoked or canceled, or otherwise has probable cause to believe that the item has been revoked or canceled under any law or statute. If a criminal proceeding relating to a certificate of title, registration card, permit, or license is pending, the law enforcement officer in possession of that item shall retain the item pending the entry of a final judgment by a court with jurisdiction. If there is no criminal proceeding pending, the law enforcement officer shall deliver the item to DMV.
  - c) Any law enforcement officer who seizes a registration plate must report the seizure to DMV within 48 hours of the seizure and shall return the registration plate, but not a fictitious registration plate, to DMV within ten (10) business days of the seizure. [N.C.G.S. § 20-45(c) and (d)]. The officer’s agency should have procedures in place, or the tag can be returned to a DMV license and theft officer. Do not turn seized tags into the private license tag offices, only DMV offices.
  - d) Stolen license tags or tags registered to another vehicle should be seized and handled as other stolen property by returning to DMV after the case is concluded.
- 10. Transfer of registration plates to another vehicle [N.C.G.S. § 20-64].

**NOTE: Show slide, “Transfer of Registration Plates to Another Vehicle.”**



## ***Motor Vehicle Laws***

- a) Registration plates may be transferred to another vehicle belonging to the same owner and if the vehicle is in the same category within the meaning of N.C.G.S. § 20-87 and N.C.G.S. § 20-88. Such a transfer requires an application to the DMV and payment of a transfer fee and such additional fees as may be due if the vehicle to which the plates are being assigned requires a higher registration fee than the vehicle to which the plates were last assigned. An owner cannot transfer a license plate between vehicles unless the owner has sold the vehicle to which DMV assigns the plate. The owner has 20 days, from the date the license plate was last used on the vehicle to which it was assigned, to apply for a transfer to a new vehicle [N.C.G.S. § 20-72]. Transfers of a license plate, however, may take up to 30 days before the transfer shows in the computer; therefore, the officer should use discretion in taking any enforcement action based on the information presented and their best judgment.
- b) If the vehicle belonging to the same owner is NOT of like category within N.C.G.S. § 20-87 and N.C.G.S. § 20-88, the owner must surrender the plates to the DMV and receive a new plate of the proper category, and the unexpired portion of the fee originally paid for the surrendered plate will be credited toward the fee charged for the new plate of the proper category.
- c) Upon death of the owner of a registered vehicle, such registration shall continue in force as a valid registration until the end of the year for which the license is issued, unless ownership of the vehicle is passed to any other person other than the surviving spouse before the end of the year [N.C.G.S. § 20-64(e)].
- d) The owner or transferor of a registered vehicle who surrenders the registration plate to the DMV may secure a refund for the unexpired portion of the plate, prorated every month, if the annual fee for the registration plate is \$60.00 or more. This refund may not exceed one half of the annual license fee [N.C.G.S. § 20-64(f)].
- e) The owner of a registered vehicle must immediately remove the license tags when the title of the vehicle is assigned to another person [N.C.G.S. § 20-72].

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- f) A person selling a vehicle must deliver the signed title to the buyer of the vehicle at the time the vehicle is delivered [N.C.G.S. § 20-72].
- g) Possession of a title assigned in blank is a misdemeanor [N.C.G.S. § 20-72]. Possession of an altered or forged or falsified certificate of title or registration card is a Class I felony [N.C.G.S. § 20-71].

### 11. Lost or stolen tag

**NOTE: Show slide, “Lost or Stolen Tag.”**

- a) An officer who is approached by a person who has lost or had stolen the vehicle license tag or has a sign in the window of the vehicle indicated “Lost Tag NCC-000” should stop the vehicle and issue citation for failing to display tag [G.S 20-63(d)].
- b) The owner must purchase a new tag by completing an affidavit of lost or stolen tag at a DMV tag office and pay a \$15.00 fee. The tag number of the missing tag will then be entered into DMV records as lost or stolen, and the owner is protected from its illegal use at a later date. The owner will receive a new tag for the motor vehicle.

### 12. Insurance – financial responsibility [N.C.G.S. § 20-311 and 20-313].

**NOTE: Show slide, “Insurance.”**

It is unlawful to operate or to allow the operation of a motor vehicle in North Carolina unless the vehicle is properly insured as required by law. When DMV receives notice of a lapse in insurance coverage, a letter of notice is sent to the owner. The owner has ten (10) days to respond. The failure to respond results in the indefinite revocation of the registration until there is a response. Records from DMV which show that the vehicle was not properly insured at the time of the violation shall be prima facie evidence that the required insurance was not in effect.

If the response confirms there is a lapse in insurance, the owner must:

- a) Pay a \$50.00 civil penalty if there were no other lapses in the previous three-year period, a \$100.00 civil penalty if there was one (1) lapse, and a \$150.00 civil penalty if there were two (2) or more lapses.

## ***Motor Vehicle Laws***

- b) Certify to DMV he has insurance effective on the date of the response;
- c) Certify to DMV that he did not operate the vehicle in question during the insurance lapse with knowledge of the lapse; and
- d) Certify to DMV that the vehicle in question was not involved in a motor vehicle crash during the insurance lapse.
- e) A response that establishes that, during the lapse, the owner-operated the vehicle knowing there was no coverage or that the vehicle was involved in a crash results in both the penalty and revocation of thirty days.
- f) After being notified of revocation, an owner who does not return the vehicle's registration plate and card to the DMV is guilty of a Class 2 misdemeanor. A law enforcement officer can seize the revoked registration card and plate [N.C.G.S. § 20-311].
- g) DMV will indicate on the record and "insurance stop." This means that the registered vehicle's insurance has lapsed. Enforcement action may be taken based upon this DMV notation.

### 13. Confidential license plate and fictitious driver licenses

**NOTE: Show slide, "Confidential License Plate and Fictitious Driver Licenses."**

- a) Private passenger tags may be issued to law enforcement vehicles. Also, "confidential" tags may be issued at the request of the head of the law enforcement agency. When an inquiry of the registered owner of a vehicle with a confidential tag is made, the DCIN and DMV records will indicate "not in file."
- b) Fictitious tags and drivers licenses can also be issued by DMV when requested by the Director of the State Bureau of Investigation (SBI). DMV will create a fictitious name and address for officers engaged in undercover activities [N.C.G.S. § 20-39.1].

### 14. Registration and insurance offenses (Elements of Offenses)

**NOTE: Show slides, "Registration and Insurance Offenses."**

## ***Motor Vehicle Laws***

Registration and insurance law violations are misdemeanors and are not infractions.

a) Failure to carry registration card [N.C.G.S. § 20-57(c)].

(1) Elements:

It is unlawful to:

- (a) operate
- (b) a registered motor vehicle
- (c) without having the registration card in the vehicle.

(2) A person charged with this offense can have his case dismissed if he produces in court a registration card for the vehicle he was driving that was valid at the time of his arrest.

b) Failure to display registration card [N.C.G.S. § 20-57(c)].

Elements:

It is unlawful for:

- (1) an operator
- (2) of a registered motor vehicle
- (3) to fail to display the registration card
- (4) upon demand of any peace officer or officer of DMV.

c) Failure to display a plate on the rear of the vehicle [N.C.G.S. § 20-63(d)].

Elements:

It is unlawful to:

- (1) operate
- (2) a motor vehicle

(3) without the registration plate attached to the rear of such vehicle. Registration plates shall be attached to the front of truck-tractors and may be attached to the front of other motor vehicles which transport substances that may adhere to the plate to cover or discolor it or motor vehicles which have a loading device that may damage the plate. Vehicles with an age of 35 years or more from the date of manufacture may display a license plate of the year of manufacture, but a current registration plate and registration must be maintained in the vehicle and produced upon the request of any person. This statute also covers vehicles displaying a handmade paper tag with the words “Lost Tag” on it. The owner must purchase a new tag by completing an affidavit of lost or stolen tag at a DMV tag office and pay a fee. The tag will then be entered into DMV records as lost or stolen, and the owner is protected from its illegal use at a later date.<sup>60</sup>

d) Refusal to clean plates [N.C.G.S. § 20-63(e)].

Elements:

It is unlawful for:

- (1) an owner, agent of an owner, or operator
- (2) of a registered motor vehicle
- (3) to refuse to clean the vehicle’s registration plate
- (4) so that the numbers are readily distinguishable
- (5) after having been requested to do so
- (6) by a “proper officer.”

e) Operating with false number(s) on plate [N.C.G.S. § 20-63(f)].

Elements:

It is unlawful for any person to:

- (1) willfully

## ***Motor Vehicle Laws***

- (2) operate
  - (3) a motor vehicle
  - (4) with a registration plate that has been repainted, altered, or forged.
- f) Altering registration plates [N.C.G.S. § 20-63(g)].

### Elements:

- (1) It is unlawful for:
  - (a) an operator
  - (b) of a motor vehicle
  - (c) to willfully
  - (d) mutilate; bend; twist; cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint; enamel; emboss; stamp; print; perforate; or alter or add to or cut off
  - (e) any part or portion of a registration plate or the figures or letters thereon.
- (2) It is unlawful for:
  - (a) an operator
  - (b) of a motor vehicle
  - (c) to willfully
  - (d) place, deposit, or cause to be deposited
  - (e) oil, grease, or any substance
  - (f) on a registration plate
  - (g) to cause dust to adhere to the plate.
- (3) It is unlawful for:

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- (a) an operator
  - (b) of a motor vehicle
  - (c) to willfully
  - (d) deface, disfigure, change, or attempt to change
  - (e) any letter or figure on a registration plate.
- (4) It is unlawful for:
- (a) an operator
  - (b) of a motor vehicle
  - (c) to willfully
  - (d) display a registration plate in any position except the horizontal, upright position.
- (5) It is unlawful for:
- (a) an operator
  - (b) of a motor vehicle
  - (c) to willfully
  - (d) cover or cause to be covered
  - (e) any part or portion of a registration plate or the figures thereon
  - (f) by any device designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control system using cameras.
- (6) It is unlawful to intentionally cover any number or registration renewal sticker, making the number or sticker illegible.
- (7) It is unlawful to operate a vehicle if any frame or transparent/tinted cover makes a number, name of state

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number/month on the plate illegible, penalized as an infraction.

N.C.G.S. § 20-63 does not indicate whether these offenses would apply to persons operating motor vehicles not registered in North Carolina. Given the purpose of the statute [to aid law enforcement by ensuring easy identification of vehicles], it seems logical to apply them to any motor vehicle on North Carolina highways.

- g) Operation of unregistered vehicle [N.C.G.S. § 20-111(1)].

Elements:

It is unlawful for:

- (1) a person to operate or for an owner to permit operation of
- (2) a vehicle
- (3) required to be registered
- (4) on a highway
- (5) which is not registered OR, which does not have attached to it a current registration plate.

- h) Improper display of registration card or plate [N.C.G.S. § 20-111(2)].

Elements:

- (1) It is unlawful for a person:
  - (a) To display or cause or permit to be displayed or to have in possession
  - (b) Any registration card, certificate of title or registration number plate knowing the same to be fictitious (or)
  - (c) That the person knows is canceled, revoked, suspended or altered (or)



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(2) It is unlawful for a person to:

- (a) willfully
- (b) display
- (c) an expired license or registration plate
- (d) on a vehicle
- (e) knowing the same to be expired

i) Borrowing or lending registration plate [N.C.G.S. § 20-111(3)].

Elements:

It is unlawful for a person to:

- (1) give, lend, or borrow
- (2) a registration plate
- (3) to use the plate on a vehicle
- (4) different from the vehicle for which it was issued.

j) Use of a false or fictitious name or address [GS 20-111(5)].

Elements:

It is unlawful to:

- (1) use a false or fictitious name or address
- (2) in an application for the registration of any vehicle
- (3) or for a certificate of title
- (4) or for any renewal or duplicate thereof
- (5) or to knowingly make a false statement
- (6) or knowingly to conceal a material fact
- (7) or otherwise, commit fraud in any such application.

## ***Motor Vehicle Laws***

### E. Size, Weight, Equipment and Inspection Laws

**NOTE: Show slide, “Size, Weight, Equipment and Inspection Laws.”**

The general rule of N.C.G.S. § 20-115 is that it is a misdemeanor to drive or move a vehicle on a highway if the vehicle is wider, longer, or heavier than the statute allows.<sup>61</sup> Similarly, it is an infraction to drive or move (or if you are an owner, to knowingly permit the driving of) a vehicle on a highway if it is not equipped with all the equipment required by statute.<sup>62</sup> The statute specifically states that cities and counties may not authorize any exceptions to that rule unless a statute specifically authorizes an exception. One (1) such statute is N.C.G.S. § 20-119, which permits cities to authorize vehicles exceeding the size or weight limits to be driven on city streets if good cause is shown, and a permit is issued by the city. A law enforcement officer may ask to see the permit, and failure to abide by any restrictions on the permit is a misdemeanor. This statute also states that the North Carolina Department of Transportation has this same authority concerning state-maintained roads. The discussion of size, weight, and equipment rules here is selective. It covers most of the areas that a passenger car would have to comply with, but it generally does not cover the numerous technical size, weight, and equipment provisions that apply to larger commercial or farm vehicles.

#### 1. Height, length, and width restrictions [N.C.G.S. § 20-116].

**NOTE: Show slide, “Height Limitations.”**

- a) The maximum width of a vehicle or the load thereon is 102 inches (except for some buses, trucks hauling tobacco, boats and boat trailers, and twin trailers).
- b) The maximum height of a vehicle is 13 feet, 6 inches, and North Carolina is not required to raise bridges that are lower than this height.

**NOTE: Show slide, “Length Limitations.”**

- c) The maximum length for a vehicle having two (2) or more axles is 40 feet (except for some buses),
  - (1) Recreational vehicles and vehicles owned or leased by State, local, or federal government, when used for official law enforcement or emergency management purposes, may not exceed 45 feet, excluding bumpers and mirrors and for a combination of vehicles is 60 feet.

## ***Motor Vehicle Laws***

- (2) A combination of one semitrailer of not more than 53 feet and a truck tractor may exceed the 60-foot maximum length. In addition, N.C.G.S. § 20-115.1 authorizes “twin-trailers” to be operated on interstate and certain other highways, provided that no trailer or semi-trailer operated in this combination shall exceed 28 feet in length unless it is a 1982 or older year model trailer or semi-trailer in which case that trailer or semi-trailer may be up to 28.5 feet.
- (3) Vehicle combinations used for transportation in motorsports competition events may not exceed 90 feet in length. N.C.G.S. § 20-115.1 includes other allowances and limitations that exist for interstate and federal-aid highways. The authorized routes for your area can be determined by contacting the local Department of Transportation officials.
- (4) Vehicles used by municipalities for removal of refuse and street rubbish shall not exceed three trailers and a motor vehicle. Such combinations shall not exceed a total length of 50 feet, inclusive of bumpers.

### 2. Weight restrictions [N.C.G.S. § 20-118].

#### **NOTE: Show slide, “Weight Restrictions.”**

The maximum gross weight allowed on a North Carolina highway is 80,000 pounds. The weight limits are quite technical, and enforcement of these provisions is left almost entirely to weigh station personnel. Nevertheless, officers should be aware that it is unlawful for a person to operate a vehicle on a highway over the maximum allowable gross vehicle weight or axle load when the maximum allowable gross vehicle weight or axle load is posted by signs. However, when the vehicle must use the highway to reach its destination and the destination is located solely on that particular highway, a vehicle over the maximum allowable gross vehicle weight or axle load may use the highway to reach its destination [N.C.G.S. § 20-116(h)]. Highways that are open for large truck traffic are often designated “truck routes” to assist truckers in complying with this law.

### 3. Equipment

#### **NOTE: Show slides, “Equipment.”**

## ***Motor Vehicle Laws***

- a) Tires – Spikes or studs are prohibited unless the studs project 1/16” or less from the tire’s surface [N.C.G.S. § 20-122(b)]. Tires on motor vehicles must be safe. A tire is unsafe if it
- (1) Exposed tire cord;
  - (2) Has visible tread separation or chunking;
  - (3) Has less than 2/32” tread at two (2) or more locations around the circumference of the tire in two (2) adjacent major tread grooves; or
  - (4) Has tread wear indicators that are in contact with the roadway at two (2) or more locations around the circumference of the tire in two (2) adjacent major tread grooves [N.C.G.S. § 20-122.1(a)].
  - (5) A motor vehicle of at least 10,001 pounds is subject to a more stringent requirement of the depth of the tread [N.C.G.S. § 20-122.1(a1)].

A person charged with driving with unsafe tires has 15 days to correct the problem, and if he does so, the case will be dismissed [N.C.G.S. § 20-122.1].

- b) Steering mechanism – The steering mechanism on every motor vehicle must be maintained in good working condition, to enable the operator to control the vehicle’s movements and to maneuver it safely [N.C.G.S. § 20-123.1].
- c) Speedometer – Any self-propelled motor vehicle which operates on a highway is required to have a properly working speedometer. A violation of this provision will be considered an infraction, punishable by a \$25.00 fine. No driver license points, insurance points, or premium surcharge is to be assessed for any violation of this law [N.C.G.S. § 20-123.2]. DMV will record a violation of N.C.G.S. § 20-123.2 on a driver’s driving record if it is a result of a reduced speeding charge, and such a reduction may not occur if the charge was speeding more than 25 mph over the posted limit.
- d) Brakes – Brakes must be sufficient to control the movement of and to stop the vehicle and in good working order. Further, there must be two (2) independent means of applying the brake

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(i.e., foot brake and emergency brake) [N.C.G.S. § 20-124(a),(c)].

- e) Horn – Every motor vehicle must have a horn capable of being heard for 200 feet. Sirens, bells, etc. are allowed only on certain vehicles such as police, fire, rescue squads, etc. It is unlawful for anyone not specifically mentioned in the statute to have a warning siren, etc. It is also unlawful to make unnecessary or unreasonable use of a horn, except when used as a reasonable warning [N.C.G.S. § 20-125].
- f) Turn signals – Motor vehicles manufactured after 1953 must have a mechanical or electrical turn signal. Turn signals must be visible to both the front and rear for a distance of 200 feet [N.C.G.S. § 20-125.1(a)].

Turn signals are not required on motorcycles or trailers of less than 4,000 pounds if the trailer does not obscure the turn signals of the towing vehicle from a driver approaching from the rear and within 200 feet [N.C.G.S. § 20-125.1(c),(d)].

- g) Mirrors – All motor vehicles required to be registered must have an inside rearview mirror; however, pickup trucks and certain other vehicles with outside rearview mirrors are exempt from the inside mirror requirement [N.C.G.S. § 20-126(a)].
  - (1) Vehicles manufactured after 1965, if required to be registered, must have a least one (1) outside rearview mirror mounted on the driver's side of the vehicle [N.C.G.S. § 20-126(b)]. Motorcycles must have a rearview mirror, which provides an undistorted and unobstructed view of at least 200 feet to the rear [N.C.G.S. § 20-126(c)].
  - (2) Every bus, truck and truck tractor weighing 10,001 pounds or more shall be equipped with two (2) rearview mirrors, one (1) on each side, firmly attached to the outside of the motor vehicle. Only one (1) outside mirror shall be required on the driver's side, on trucks that are so constructed that the driver also has to view the rear using an interior mirror. In a driveway-tow away operation, a vehicle shall have at least one (1) mirror providing a clear view to the rear, and if the interior mirror does not provide the clear view, an additional mirror shall be attached to the left side of the

vehicle to provide a clear view to the rear [N.C.G.S. § 20-117.1].

- h) Window tinting – Windshields may only be tinted along the top of the windshield, and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. AS1 is written on the windshield and may be seen easier from inside the vehicle looking out [N.C.G.S. § 20-127(b)]. There are no exceptions to this requirement [N.C.G.S. § 20-127(c)]. Other vehicle windows may be tinted if the tinting complies with the following restrictions:
- (1) The total light transmission of the tinted window must be at least 35%. A window that by use of an approved light meter measures a total light transmission of more than 32% is conclusively presumed to meet this restriction [N.C.G.S. § 20-127(b)(1)].
  - (2) The light reflectance of the window must be 20% or less [N.C.G.S. § 20-127(b)(2)].
  - (3) Any material used to tint the window must be non-reflective and must be a color other than red, yellow, or amber [N.C.G.S. § 20-127(b)].
  - (4) Tinting standards do not apply to:
    - (a) Excursion passenger vehicles as defined in N.C.G.S. § 20-4.01(27e);
    - (b) Motor homes as defined in N.C.G.S. § 20-4.01(27k);
    - (c) Ambulances as defined in 20-4.01(27a);
    - (d) The rear window of a property-hauling vehicle as defined in N.C.G.S. § 20-4.01(31);
    - (e) Limousines;
    - (f) Law enforcement vehicles;
    - (g) Multipurpose vehicles window, behind the driver of the vehicle;

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- (h) A window of a vehicle registered in another state and which meets the requirements of that state [N.C.G.S. § 20-127(c)].
- (5) An exemption for medical conditions may also be issued by DMV. The driver should produce paperwork from DMV.
- (6) It is a misdemeanor to either apply tint to or to drive with a window that does not meet with the restrictions described above [N.C.G.S. § 20-127(c)]. Approved tint meters are cards that an officer can use to test whether after factory tinting meets the requirements of the law. These tint meters can be obtained from the officer's agency. It is a defense that the tint was removed within 15 days of the charge, and the window now meets state standards.<sup>63</sup>
- i) Windshield wipers – “A vehicle that is operated on a highway and has a windshield shall have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper shall be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers shall be in good working order.”<sup>64</sup>
- j) Muffler and exhaust – Muffler (or other exhaust system) must be in good working order and must prevent “excessive or unusual noise, annoying smoke, and smoke screens.” Muffler “cut-outs” are prohibited [N.C.G.S. § 20-128]. Visible air contaminants from a gasoline-powered vehicle for longer than five seconds is prohibited. A driver must be given 30 days to have the vehicle repaired before a citation is issued [N.C.G.S. § 20-128.1].
- k) Lights

**NOTE: Show slide, “Lights.”**

- (1) Front and rear lights – Front white and rear red lights are required [N.C.G.S. § 20-129(b),(d),(g)]. If a vehicle is being driven, lights must be turned on when a person cannot be seen on the highway at 400 feet and from sunset to sunrise. And at any time when windshield wipers are required, other than intermittently, and

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environmental conditions prevent seeing a person at 500 feet [N.C.G.S. § 20-129(a)]. Two (2) headlights are required, one (1) on each side of the vehicle, except motorcycles [N.C.G.S. § 20-131(d)].

- (2) Parking lights – Vehicles parking on highways at times when lights are required must have at least one (1) light visible for 500 feet in each direction unless a city ordinance relieves motorists of that duty where there are sufficient streetlights to make the parking lights unnecessary [N.C.G.S. § 20-134].
- (3) Tag light – A light that illuminates the registration plate (tag) to be readable for 50 feet to the rear of a vehicle is required by N.C.G.S. § 20-129(d). The tag light must be white [N.C.G.S. § 20-129.1(9); 20-129(d)].
- (4) Failure to dim lights – It is an infraction to fail to dim your headlights when meeting another vehicle or when following another vehicle at 200 feet or less [N.C.G.S. § 20-181].
- (5) Improperly adjusted headlights – Improperly adjusted headlights are a violation of N.C.G.S. § 20-131. However, a person who is charged with having improperly adjusted headlights, auxiliary driving lights, rear lights or turn signals, or having such lights which are not bright enough, may have the case dismissed in court if the person brought the lights into compliance with the law within 48 hours of the charge [N.C.G.S. § 20-133(b)].
- (6) White or clear lights on the rear of the vehicle – It is unlawful to drive a motor vehicle in forward motion on a highway while displaying white or clear lights on the rear of the vehicle except for the tag light. It is permissible to use backup lights when the vehicle is in reverse gear or while backing [N.C.G.S. § 20-130.3].
- (7) Brake lights – “No person shall sell or operate on the highways of the State any motor vehicle manufactured after December 31, 1955, and on or before December 31, 1970, unless it shall be equipped with a stop lamp on the rear of the vehicle. No person shall sell or operate on the highways of the State any motor vehicle



manufactured after December 31, 1970, unless it shall be equipped with stop lamps, one on each side of the rear of the vehicle. No person shall sell or operate on the highways of the State any motorcycle or motor-driven cycle, manufactured after December 31, 1955, unless it is equipped with a stop lamp on the rear of the motorcycle or motor-driven cycle.

- i) The stop lamps shall emit, reflect, or display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake.
  - ii) The stop lamps may be incorporated into a unit with one or more other rear lamps.”<sup>65</sup>
- (8) Spotlights, auxiliary driving lights, and electronically modulated headlights – Only two spotlights are allowed on the front of a motor vehicle (only one on a motorcycle) and none on the rear. Spotlight beams must not cross the centerline of the highway or extend more than 100 feet in front of the vehicle [N.C.G.S. § 20-130(a)]. Motor vehicles can be equipped with no more than two auxiliary driving lights, and they must be on the front of the vehicle [N.C.G.S. § 20-130(b)]. Electronically modulated headlights are allowed only on motorcycles, law enforcement, and fire department vehicles, county fire marshals and emergency management coordinators vehicles, public and private ambulances, and rescue squad emergency service vehicles [N.C.G.S. § 20-130(d)].
- (9) Mail/newspaper carriers – A motor vehicle operated by a rural mail carrier or by a newspaper delivery person must operate a flashing amber light at any time the vehicle is being used for delivery [N.C.G.S. § 20-134(b)].
- (10) Trailers – Trailers are required to have either lights and reflectors depending upon the weight and length [N.C.G.S. § 20-129.1].

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- l) Fuel tank – No part of a fuel tank or container or intake pipe shall project beyond the sides of a vehicle [N.C.G.S. § 20-117.1(b)].
- m) Safety glass – It is unlawful to knowingly drive a motor vehicle that was manufactured after January 1, 1936, unless such vehicle is equipped with safety glass, whenever glass is used in doors, windows, wings or partitions; or for a dealer to sell a vehicle manufactured after January 1, 1963, to be operated on the highways unless it be so equipped. The section shall not apply if the vehicle was previously registered in another state by the owner while the owner was a resident of that state [N.C.G.S. § 20-135].
- n) Safety belts – Every new vehicle registered in this state and manufactured, assembled, or sold after January 1, 1964, shall at the time of registration be equipped with at least two (2) sets of seat belts for the front seat. Every new vehicle registered in this state and manufactured, assembled or sold after July 1, 1962, shall be equipped with sufficient anchorage units for attaching two (2) sets of seat safety belts for the rear seat of the vehicle. Such seat belts shall be of such construction, design, and strength of not less than 5,000 pounds for each belt, and must be approved by the Commissioner of DMV. This shall only apply to passenger vehicles of nine (9) passenger capacity or less, except motorcycles, and it shall not apply to passenger vehicles having a capacity of fewer than two (2) passengers in the front seat [N.C.G.S. § 20-135.2, 20-135.3].
- o) Smokescreens – It is unlawful to drive, operate, equip, or have any other motor vehicle which has a device capable of being used for the purpose of discharging, creating or causing, in any manner, to be discharged or emitted, either from itself or from the automobile or other such device, whether the same is attached to any such motor vehicle, or detached therefrom. This offense is a Class I felony [N.C.G.S. § 20-136].
- p) Television, computer, or video players, monitors, and screens – It is unlawful to drive a motor vehicle upon a public street or public vehicular area while viewing any television, computer, or video player which is located forward of the back of the driver's seat and which is visible to the driver while operating the motor vehicle. Certain exemptions exist for the use of GPS and navigational system displays, as well as for law enforcement officers and emergency personnel using

computers or mobile data terminals in the performance of their official duties. The prohibitions do not apply to a vehicle lawfully parked or stopped [N.C.G.S. § 20-136.1].

- q) Airbags – Airbags are installed by the manufacturer. It is expensive to replace an airbag once it has been deployed. A vehicle owner will not know if an airbag was replaced or some other item is placed in the space in the car. The legislature made it a Class 1 misdemeanor to install or reinstall any object in place of an airbag, other than an airbag [N.C.G.S. § 20-136.2].
- r) Altered height vehicles – ~~Any four-wheeled vehicle designed principally for carrying passengers on public roads and highways~~ “A private passenger automobile shall not be operated upon any highway or public vehicular area if, by alteration of the suspension, fram, or chassis, the height of the front fender is 4 or more inches greater than the height of the rear fender. For the purposes of this subsection the height of the fender shall be a vertical measurement from and perpendicular to the ground, through the centerline of the wheel, and to the bottom of the fender.”<sup>66</sup>

4. Loading of vehicle

**NOTE: Show slide, “Loading of Vehicle.”**

- a) Secure load required – Any vehicle driven or moved upon a highway must be so constructed or loaded as to prevent any of its load from falling, blowing, dropping, sifting, leaking, or otherwise escaping. However, this section does not apply to sand used to secure traction or water used to clean the roadway, nor shall it be used to restrict in any way the transportation of seed cotton, poultry, livestock, silage, or other feed grain used in feeding poultry or livestock. When hauling stone, rock, gravel, or a similar substance, a truck with a GVWR of more than 7500 pounds must have a tarp covering the load. Smaller vehicles are not required to have a tarp if they are loaded in such a manner so that the stone, rock, etc., do not fall out of the vehicle [N.C.G.S. § 20-116(g)].
- b) Flag or light required – If the load extends more than 4 feet beyond the rear of the vehicle, during daylight hours, a red or orange flag at least 18 inches square must be attached to the load to be visible at all times. From sunset to sunrise, there

must be a red or amber light at the end of such a load, that is visible under normal conditions at least 200 feet to the rear. Except for forestry products or utility poles, a load may never extend more than 14 feet beyond the rear of the bed of the vehicle [N.C.G.S. § 20-117].

- c) Load extends beyond the front of the vehicle – No load shall extend more than three (3) feet beyond the front wheels of a vehicle or the front bumper if it has one [N.C.G.S. § 20-116(f)].
- d) Load extends beyond the side of the vehicle – No passenger-type vehicle shall be loaded, so the load extends beyond the line of the fenders on the left side and no more than six (6) inches on the right-side [N.C.G.S. § 20-116(b)].

5. Trailers and towed vehicles

**NOTE: Show slide, “Trailers and Towed Vehicles.”**

- a) Attached to the towing vehicle – “No trailer or semitrailer or towed vehicle may be operated over the highways of the State unless such trailer or semitrailer or other towed vehicle **be** firmly attached to the rear of the towing unit, and unless so equipped that it will not snake, but will travel in the path of the vehicle drawing such trailer or semitrailer or other towed vehicle, which equipment shall at all times be kept in good condition.

In addition to the requirements **of subsections (a) and (b) of this section**, the towed vehicle must be attached to the towing unit **by means of using** safety chains or cables which shall be sufficient strength to hold the gross weight of the towed vehicle in the event the primary towing device fails or becomes disconnected while being operated on the highways of this State if the primary towing attachment is a ball hitch. **Trailers and semitrailers having locking pins or bolts in the towing attachment to prevent disconnection, and the locking pins or bolts are of sufficient strength and condition to hold the gross weight of the towed vehicle, need not be equipped with safety chains or cables unless their operation is subject to the requirements of the Federal Motor Carrier Regulations.** <sup>2267</sup>

Semi-trailers in combinations of vehicles that are equipped with fifth wheel assemblies that include locking devices need not be equipped with safety chains or cables.”<sup>68</sup>

- b) The number of trailers – Generally, a motor vehicle may tow only one trailer or towed vehicle. However, there are several exceptions to this for certain garbage pickup trailers, farm trailers, etc. An officer should consult the statute for the technical requirements of each exception [N.C.G.S. § 20-123(a)].
- c) Lights and reflectors – Depending upon the weight and/or length of the trailer, “stop” or brake lights, clearance lights, or reflectors are required [N.C.G.S. § 20-129.1].

6. Inspection

**NOTE: Show slides, “Inspection.”**

- a) Every motor vehicle or trailer (except trailers of less than 4,000 pounds and house trailers), which is required to be registered in North Carolina, must pass a vehicle safety inspection, including motorcycles [N.C.G.S. § 20-183.2(b)(2)]. (Only historic vehicles and school buses are exempt from this statute.) In counties that require emissions inspections, a vehicle must pass an emissions inspection as well as a safety inspection [N.C.G.S. § 20-183.2(b)]. Diesel-powered vehicles and motorcycles are exempt from emissions inspections.
- b) Tinted windows – All vehicles with after factory window tinting must have them inspected to ensure that they meet the requirements listed under the “Equipment Section.” The vehicles that the window tinting restrictions do not apply to, as listed in the “Equipment Section,” are not required to get the window tint inspection [N.C.G.S. § 20-127]. Violation of this section is a Class 2 misdemeanor [N.C.G.S. § 20-176(c)].
- c) General rule – It is unlawful to operate a motor vehicle that is required to be registered in North Carolina unless it has a currently valid electronic inspection authorization [N.C.G.S. § 20-183.8 (a)]. This offense is an infraction.
- d) How inspection law is enforced – The safety and emissions inspection operates in conjunction with the vehicle registration law. In order to be allowed to renew the registration for a

vehicle, the owner must have the vehicle inspected (both safety and emissions, if required) within 90 days of the expiration date on the vehicle registration sticker and no later than the last day of the month in which the registration on the vehicle expires [N.C.G.S. § 20-183.4C(a)(6) and (7)]. If the driver is operating a vehicle with an expired registration, then the driver may also be guilty of failing to a current valid inspection. Inspection stickers are no longer issued for vehicles registered in North Carolina. A check of DMV registration records will be required.

- e) It is unlawful to allow an electronic inspection authorization to be issued to a vehicle owned or operated by that person, knowing that the vehicle was not inspected before the electronic inspection authorization was issued or not inspected properly [N.C.G.S. § 20-183.8(a)(2)]. This is an infraction.
- f) It is unlawful to issue an electronic inspection authorization, knowing or have reasonable grounds to know an inspection was not performed or was improperly performed [N.C.G.S. § 20-183.8(a)(3)]. This is an infraction.
- g) Forging an inspection sticker or receipt, or buys, sells, issues, or possesses a forged inspection sticker or an electronic inspection authorization is a Class I Felony [N.C.G.S. § 20-183.8(c)].
- h) Defenses:
  - (1) It is a defense to an expired inspection charge if the owner presents evidence that he had the vehicle inspected within 30 days after the month of the expiration of the sticker or the electronic inspection authorization. This only applies to vehicles subject to safety inspection and not emissions inspection [N.C.G.S. § 20-183.8(b)(4)].
  - (2) The vehicle was continuously out of state for at least the 30 days preceding the date the electronic inspection authorization issued to the vehicle expired, and a current electronic inspection authorization was obtained within ten (10) days after the vehicle returned to this state [N.C.G.S. § 20-183.8(b)(1)].

- (3) The vehicle displays a dealer license plate or transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last ten (10) days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or an inspection station [N.C.G.S. § 20-183.8(b)(2)].
  - (4) A new resident has ten (10) days after the vehicle is registered with DMV [20-183.4C].
  - (5) A resident who purchases a used vehicle out of state has ten (10) days after the vehicle is registered with DMV to have the vehicle inspected [N.C.G.S. § 20-183.4C].
- i) When a vehicle must be inspected<sup>69</sup>
- (1) A new vehicle must be inspected before it is delivered to the purchaser at retail. **An inspection is not required if previously inspected by an affiliated dealership and the inspection occurred either within 180 days from the date of sale or within 300 miles from the mileage recorded at the date of sale.**
  - (2) A used vehicle must be inspected before it is offered for sale at retail **in this State by a dealer although this does not apply to a used vehicle offered for sale in this State by an auctioneer pursuant to the judgment or order of any court, on behalf of receivers, trustees, administrators, executors, guardians, governmental entities, or other persons, appointed by acting under a judgment or order of any court.**
  - (3) A vehicle that has already been inspected under North Carolina law must be inspected by the last day of the month in which the registration on the vehicle expires.
  - (4) Unless the Commissioner of the DMV has authorized otherwise, a vehicle owned by a new resident of this State must have the vehicle inspected before transferring the registration on the vehicle from the resident's former home state to this State.
  - (5) Unless the Commissioner of the DMV has authorized otherwise, a resident who purchases a new or used

vehicle from out of state must have the vehicle inspected before it is registered with the DMV.

- (6) A new or used vehicle acquired from a retailer or a private sale in this State and already registered with DMV, with either a new or transferred registration, must be inspected when the current registration expires unless it has received a passing inspection within the previous 12 months.

- j) Change of name or address<sup>70</sup>

Elements:

It is unlawful for:

- (1) ~~the owner~~
- (2) ~~of a registered motor vehicle~~
- (3) ~~to fail to notify DMV of the old and new addresses or old and a new name~~
- (4) ~~within 60 days of an address change.~~

“A person whose address [or name] changes from the address [or name] stated on a certificate of title or registration card must notify the Division of the change within 60 days after the change occurs. The person may obtain a duplicate certificate of title or registration card stating the new address [or name] but is not required to do so. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.”<sup>71</sup>

- k) Re-inspection

If the vehicle fails inspection, the scope of re-inspection is the same as the original inspection unless the vehicle is presented for re-inspection within 60 days of failing the original inspection. If the vehicle is presented within the 60-day time limit, then the inspection is limited to the equipment that failed the original inspection. If the vehicle failed emission inspection, the inspection is limited to the portion of the inspection that the vehicle failed and any other portion of the



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inspection that would be affected by repairs made to correct the failure [N.C.G.S. § 20-183.3(c)].

See N.C.G.S. § 20-183.7 for the fees for performing inspections and issuance of electronic inspection authorizations.

**NOTE: Show slide, “Video.” Play video, *Equipment and Inspection Laws*.**

F. Mopeds, Motorcycles, Specialty Vehicles, and Wheelchairs

**NOTE: Show slide, “Mopeds, Motorcycles, Specialty Vehicles, and Wheelchairs.”**

1. Mopeds

**NOTE: Show slide, “Moped.”**

A moped is defined as a vehicle with two (2) or three (3) wheels, no external shifting device, and a motor that does not exceed 50 cc piston displacement and which cannot propel the vehicle more than 30 mph on a level surface [N.C.G.S. § 4.01(27)(j)]. Mopeds have been given a special status in the law. For example:

- a) Not a motor vehicle – The definition of motor vehicles excludes mopeds; thus, any statute applying only to motor vehicles does not apply to mopeds [N.C.G.S. § 20-4.01(23)].
- b) Not a motorcycle – The definition of motorcycle excludes mopeds. Thus, motorcycle statutes do not apply to mopeds [N.C.G.S. § 20-4.01(27)(j); 20-129(c)].
- c) Helmets required – Just as motorcycle operators and passengers, moped operators and passengers must wear helmets when operating it on a highway or public vehicular area [N.C.G.S. § 20-140.4]. The helmet must be properly fastened and of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218. The helmet must have a DOT sticker permanently installed by the manufacturer, indicating it was DOT approved. The failure to have the “retention strap properly secured” is a violation of the helmet law. The operator is responsible for being sure the passenger complies with the helmet law. If either the operator or a passenger fails to comply with the helmet law, the operator receives the ticket. The passenger does not receive a ticket for failing to wear a helmet.

- d) No driver license required – By stating that a moped is not a motor vehicle, the law automatically provides that the operator does not need a driver license because only operators of motor vehicles must have licenses. Nevertheless, the legislature added a specific statute stating that operators of mopeds (who are over 16) need not have a driver license [N.C.G.S. § 20-8(7)].
- e) Age limit – Persons under 16 years old are specifically prohibited from operating a moped on a highway or public vehicular area [N.C.G.S. § 20-10.1], and there is no permit to allow such operation. Persons under 16 may operate a moped only on private property.
- f) Registration – “Mopeds shall be registered with the Division. The owner of the moped shall pay the same base fee and be issued the same type of registration card and plate issued for a motorcycle. In order to be registered with the Division and operated upon a highway or public vehicular area, a moped must meet the following requirements:
  - (1) The moped has a manufacturer’s certificate of origin.
  - (2) The moped was designed and manufactured for use on highways or public vehicular areas.”<sup>72</sup>
  - (3) Whenever an applicant for the registration of a moped is unable to present a manufacturer’s certificate of origin for the moped, the applicant must submit an affidavit stating why the applicant does not have the manufacturer’s certificate of origin and attesting that that applicant is entitled to registration. Upon receipt of the application and accompanying affidavit, the Division shall issue the applicant a registration card and plate. The Division may not require the applicant to post a bond as required under subsection (b) of this section. A person damaged by the issuance of the registration card does not have a right of action against the Division.
  - (4) At the time of registration, the owner shall provide proof of financial responsibility [insurance] for the moped.<sup>73</sup>

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- g) Lights – Unlike motorcycles, mopeds are treated as bicycles and must have head and taillight on only at night and only when operated on a street or highway.
- h) Mirror – The requirement for mirrors applies to motor vehicles and motorcycles but does not apply to mopeds [N.C.G.S. § 20-126].
- i) The number of passengers – Can only carry the number of persons it as designed to carry; more than likely, only the driver and one (1) passenger will be lawful [N.C.G.S. § 20-140.4(a)(1)].

In summary, moped operators are not required to have a license, although the owners are required to register the vehicle. The rules of the road that apply only to motor vehicles do not apply to them. But the sections that apply to all “vehicles” do apply to mopeds. For example, they must be driven on the right side of the highway, stop for red lights, and the operator may not be impaired, etc.

- j) Examples – There are some ambiguous points on mopeds that need to be clarified, however.
  - (1) When does a moped become a motorcycle or a motor vehicle? A moped loses its preferred status if its motor is larger than 50 cc or if it is capable of propelling the vehicle at a speed of over 30 mph on a level surface, or has an external shifting device. The law here is simple, but proving it is more complex. Some problems that could arise are: (1) What if the vehicle is going down a hill? (2) What if the vehicle is also being pedaled? (3) What if the wind is helping the vehicle? If a moped is traveling at 50 mph on level ground, it is no problem to prove that the motor was propelling it at over 20 mph. But if it is going down a steep hill at 35 mph, the point is much harder to prove. In any case, if the vehicle is not exempt, it must satisfy all the statutes regulating motor vehicles and motorcycles.
  - (2) What offenses apply to operators of mopeds? Offenses which apply to all vehicles. Among those are DWI, reckless driving, hit-and-run, etc.

## ***Motor Vehicle Laws***

- (3) In summary, mopeds are treated as vehicles (i.e., a bicycle) unless it goes faster than 30 mph on level ground, or a motor of 50 cc or more, or has an external gear shifting device, then it is treated as a motor vehicle (i.e., a motorcycle).

### 2. Motorcycles

**NOTE: Show slide, “Motorcycles.”**

- a) Motorcycles are vehicles that have a saddle for use by the rider and are designed to travel on three or fewer wheels in contact with the ground (except tractors, certain utility vehicles and three-wheeled vehicles used by law enforcement agencies) [N.C.G.S. § 20-4.01(27)(h)].
- b) Autocycles are “three-wheeled motorcycle that has a steering wheel, pedals, seat safety belts for each occupant, antilock brakes, completely or partially enclosed seating that does not require the operator to straddle or sit astride, and is otherwise manufactured to comply with federal safety requirements for motorcycles.”<sup>74</sup>
  - (1) “To drive an autocycle, a person shall have a regular drivers license.”<sup>75</sup>
  - (2) “Unless the operator and all passengers thereon wear on their heads, with a retention strap properly secured, safety helmets of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218. This subdivision shall not apply to an operator of, or any passengers within, an autocycle that has completely enclosed seating or is equipped with a roll bar or roll cage.”<sup>76</sup>
  - (3) Autocycles shall be equipped with seat safety belts for the front seats, the same construction, design, and strength requirements as motor vehicles.<sup>77</sup>
  - (4) The autocycle shall also be equipped with sufficient anchorage units at the attachment points for attaching seat safety belts for the rear seats that meet the same construction, design, and strength requirements for anchorage units in motor vehicles.<sup>78</sup>

## ***Motor Vehicle Laws***

- c) Motorcycle operator must comply with the following rules:
- (1) Endorsement – An operator must have a valid driver license with an “M” endorsement or learner’s permit when operated on a street or highway [N.C.G.S. § 20-7(a)(1)].
  - (2) Lights – Both headlight and taillight must be on at all times when in operation on the street or highway or a public vehicular area [N.C.G.S. § 20-129(c),(d)].
  - (3) Mirror – Have a rearview mirror when operated on a street or highway [N.C.G.S. § 20-126].
  - (4) Helmet required – Be operated only when the operator and all passengers wear helmets, including those in a sidecar when operated on a street or a public vehicular area [N.C.G.S. § 20-140.4(a)]. The helmet must be properly fastened and of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218. The helmet must have a DOT sticker permanently installed by the manufacturer, indicating it was DOT approved. The failure to have the “retention strap properly secured” is a violation of the helmet law. The operator is responsible for being sure the passenger complies with the helmet law. If either the operator or a passenger fails to comply with the helmet law, the operator receives the ticket. The passenger does not receive a ticket for failing to wear a helmet.
  - (5) The number of passengers – Be operated only with the number of passengers for which the vehicle is designed when operated on streets and highways and public vehicular areas.
  - (6) Use of travel lane – A motorcycle is entitled to full use of a lane. Motorcycles can be operated no more than two (2) abreast in a single lane [N.C.G.S. § 20-146.1(b)].
  - (7) HOV lanes – Motorcycles can use the High Occupancy Vehicle lanes [N.C.G.S. § 20-146.2(a)(1)].

## ***Motor Vehicle Laws***

- (8) Modulated headlamps – Motorcycles can be equipped with and use electronically modulated headlamps [N.C.G.S. § 20-130(d)].

**NOTE:** Show slide, “Video.” Play video, *Motorcycles and Mopeds*.

### 3. Low-speed vehicles

**NOTE:** Show slide, “Low-Speed Vehicles.”

A low-speed vehicle is “a four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but less than 25 miles per hour.”<sup>79</sup> “A low-speed vehicle may be operated only on the streets and highways where the posted speed limit is 35 miles per hour or less. **A mini-truck or modified utility vehicle may be operated only on streets and highways where the posted speed limit is 55 miles per hour or less; provided, a modified utility vehicle may not be operated on any street or highway having four or more travel lanes unless the posted speed limit is 35 miles per hour or less. This subdivision** ~~This~~ does not prohibit a low-speed vehicle, mini-truck, or modified utility vehicle from crossing a road or street at an intersection where the road or street being crossed has a posted speed limit of more than 35 miles per hour.”<sup>80</sup>

“The operation of a low-speed vehicle, mini-truck, or modified utility vehicle is authorized with the following restrictions:

- a) ~~Shall be registered and insured.~~<sup>81</sup>
- b) **A low-speed vehicle or mini-truck shall be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, windshield wipers, speedometer, seat belts, and a vehicle identification number. Any such required equipment shall be maintained in proper working order.**<sup>82</sup>
- c) ~~It shall have~~ **A modified utility vehicle shall be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, windshield wipers, speedometer, seat belts, and a vehicle identification number. ~~At~~ Any such** required equipment shall be maintained in proper working order. If a modified utility vehicle does not have a vehicle identification number, upon application by the owner, the Division shall assign a vehicle identification number to the modified utility vehicle prior to

registration. The operator of and all passengers on a modified utility vehicle that is not equipped with a windshield and windshield wipers shall wear a safety helmet, with a retention strap properly secured, that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.<sup>83</sup>

- d) A low-speed vehicle, mini-truck, or modified utility vehicle shall be registered and insured in accordance with G.S. 20-50 and G.S. 20-309.
- e) Notwithstanding the provisions of any other subdivision of this section, the Department of Transportation may prohibit the operation of low-speed vehicles, mini-trucks, or modified utility vehicles on any road or highway if it determines that the prohibition is necessary in the interest of safety.
- f) ~~Low speed vehicles must comply with the safety standards in 49 C.F.R. § 571-500.~~
- g) Regardless of age, a mini-truck shall not qualify as an antique vehicle or historic vehicle as defined in G.S. 20-79.4(b).<sup>84</sup>

4. Wheelchairs and similar devices

**NOTE: Show slide, “Wheelchairs and Similar Devices.”**

- a) “Handicapped” means a person with a mobility impairment who, as determined by a licensed physician, fits into certain specified categories of mobility impairment under N.C.G.S. § 20-37.5(2).
- b) Definition of vehicle – The term “vehicle” as defined by N.C.G.S. § 20-4.01(49) does not include a “device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement.”<sup>85</sup>
- c) Exemption

A person with a mobility impairment as defined in N.C.G.S. § 20-37.5 who operates a motorized wheelchair or similar

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vehicle not exceeding 1,000 pounds gross weight in order to provide that person with the mobility of a pedestrian, is subject to all the laws, ordinances, regulations, rights and responsibilities which would otherwise apply to a pedestrian but is not subject or any other law, ordinance or regulation otherwise applicable to motor vehicles [N.C.G.S. § 20-175.5].

- d) Application of rules of the road – Operators of these devices are not subject to DWI, reckless driving, hit-and-run, etc., because these devices are not classified as “vehicles” under the law. An operator may be held civilly responsible, but has not committed a criminal offense. If the device is operated by a non-mobility impaired person or the device fails to meet other criteria exempting it from classification as a “vehicle” (goes faster than 15 mph), then statutes that apply to vehicles and motor vehicles would apply.

### 5. Electric personal assistive mobility device

**NOTE: Show slide, “Electric Personal Assistive Mobility Device.”**

- a) Definition – An Electric Personal Assistive Mobility Device is defined as “a self-balancing non-tandem two-wheeled device, designed to transport one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.” [N.C.G.S. § 20-4.01(7b)].
- b) Not a vehicle – The definition of “vehicle” does not include an electric personal assistive mobility device [N.C.G.S. § 20-4.01(49)].
- c) Where can operate – “An electric personal assistive mobility device may be operated on public highways with posted speed limits of 25 miles per hour or less, sidewalks, and bicycle paths. A person operating an electric personal assistive mobility device on a sidewalk, roadway, or bicycle path shall yield the right-of-way to pedestrians and other human-powered devices. A person operating an electric personal assistive mobility device shall have all the rights and duties of a pedestrian including, the rights and duties outlined in Part 11 of this Article” [N.C.G.S. § 20-175.6(c)].
- d) Local ordinances – Municipalities may, by ordinance, regulate the time, place, and manner of the operation of electric personal assistive mobility devices within their respective



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jurisdictions but shall not prohibit their use [N.C.G.S. § 20-175.6(d)].

- e) Application of rules of the road – Operators of these devices are not subject to DWI, reckless driving, hit-and-run, etc., because these devices are not classified as “vehicles” under the law. An operator may be held civilly responsible, but has not committed a criminal offense.

**NOTE: Show slide, “All-Terrain Vehicle.”**

- 6. An all-terrain vehicle (ATV) [N.C.G.S. § 20-4.01(1c)] is “a motorized vehicle 50 inches or less in width that is designed to travel on three or more low-pressure tires and manufactured for off-highway use. The terms ‘all-terrain vehicle’ or ‘ATV’ do not include a golf cart or a utility vehicle, as defined in this section, or a riding lawn mower.”
  - a) ATVs have specific operating restrictions [20-171.15 – 20-171.26] that pertain to age, passengers, vehicle equipment, personal safety equipment (helmets and eye protection), and violations of operating such a vehicle. The law is very specific based upon the size of the engine, the purpose of the operation, and where the ATV is being operated.
  - b) These prohibitions include operating without eye protection and a helmet on highways or PVAs for everyone and off-road by persons under age 18 or under age 16 on the beach;
  - c) Cannot operate while under the influence of a controlled substance or alcohol; cannot operate in a careless or reckless manner; cannot operate on a public street, road or highway unless simply crossing; cannot operate on an interstate or limited access highway; cannot operate during darkness or times of reducing visibility without headlamps or tail lamps.
  - d) A person may drive an ATV across a highway but may not otherwise operate the ATV on the highway or highway right of way unless the operator is performing the duties of a law enforcement officer, fireman, rescue squad, or emergency medical services and employees of natural gas utilities.
  - e) There are also many local laws allowing local government employees to operate an ATV. See GS. 20-171.24 and 20-171.25. Another exception is if the ATV is being used for farming, hunting, or trapping purposes [N.C.G.S. § 20-171.22].

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Limited exceptions also exist for law enforcement officers and fire, rescue, and emergency medical services personnel, utility workers, and contractors, as well as employees of some designated municipalities and counties.

- f) Trespassing occurs when an ATV is operated on another person's land without consent [N.C.G.S. § 14-159.3].

**NOTE: Show slide, "Golf Carts."**

- 7. Golf carts – "A vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour" [N.C.G.S. § 20-4.01(12b)].
  - a) Registration – DMV is prohibited from registering a golf cart [N.C.G.S. § 20-54(8)].
  - b) Highway use – Cities and counties are authorized to pass ordinances regulating and on any public street, road, or highway where the speed limit is 35 miles per hour or less within its municipal limits or on any property owned or leased by the city. By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts [N.C.G.S. § 160A-300.6; 153A-245].
  - c) Minimum age – No person less than 16 years of age may operate a golf cart on a public street, road, or highway, and the city or county may not change this age limit [N.C.G.S. § 160A-300.6; 153A-245].
  - d) No ordinance – If the city or county has not enacted an ordinance, then a golf cart may not be operated on a street or highway. Even with an ordinance, the golf cart may not be operated on a highway with speed more than 35 miles per hour, except to cross. Without an ordinance, the golf cart operator must possess a valid license, have insurance, required equipment for a motor vehicle, etc., if the golf cart is operated on a street or highway.

**NOTE: Show slide, "Modified Utility Vehicle."**

- 8. Modified utility vehicle – "A ~~four-wheeled~~ motor vehicle that (i) is ~~upfitted (and not just manufactured)~~ or **upfitted** for off-road use by a

licensed manufacturer, dealer, or person or business otherwise engaged in vehicle manufacturing or modification **for off-road use with equipment required by G.S. 20-121.1(2a), except a vehicle identification number, and (ii) has four wheels, an overall length of 110 inches or greater, an overall width of 58 inches or greater, an overall height of 60 inches or greater, a maximum speed capability of 40 miles per hour or greater, and does not require an operator or passenger to straddle a seat.** ~~Modified utility vehicles are often used for general maintenance, security, agricultural, or horticultural purposes.~~ “A ‘Modified utility vehicle’ does not include an all-terrain vehicle, golf cart, **or utility vehicle**, as defined in this section, or a riding lawn mower.” [N.C.G.S. § 20-4.01(27)(g2)]. **Modified utility vehicles are often used for general maintenance, security, agricultural, or horticultural purposes.**

- a) Registration –A modified utility vehicle is required to be insured and registered with the DMV. A modified utility vehicle must be equipped with the common safety features associated with a motor vehicle, such as headlamps, stop lamps, turn signal lamps, tail lamps, speedometer, and seat belts. Additionally, any person operating or riding in a modified utility vehicle without a windshield and windshield wipers must wear a safety helmet with a retention strap properly secured that complies with Federal Motor Vehicle Safety Standards.
- b) Highway use – The operation of modified utility vehicles on any street or highway having four or more travel lanes where the posted speed limit is greater than 35 miles per hour is prohibited.

**NOTE: Show slide, “Bicycle.”**

- 9. Bicycle – “A non-motorized vehicle with two or three wheels tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled” [N.C.G.S. § 20-171.1].
  - a) “It shall be unlawful for any parent or legal guardian of a person below the age of 16 to knowingly permit that person to operate or be a passenger on a bicycle unless at all times when the person so engaged he or she wears a protective bicycle helmet of good fit fastened securely upon the child’s head with the straps of the helmet” [N.C.G.S. § 20-171.9(a)].

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- b) It is unlawful for a parent, or legal guardian of a person below the age of 16 knowingly permit that person to be a passenger on a bicycle unless the child can maintain an erect, seated position and is properly seated alone on a saddle seat. For any child who weighs less than 40 pounds or is less than 40 inches tall, the child must be secured to a restraining seat [N.C.G.S. § 20-171.9(b)].
- c) Bicycle racing is prohibited on a highway unless approved by State or local authorities [N.C.G.S. § 20-171.2].

### **NOTE: Show slide, “Personal Delivery Device/PDD/Delivery Robots.”**

- 10. Personal delivery device/PDD/delivery robots – A personal delivery device is “an electronically powered device intended for transporting cargo that is equipped with automated driving technology that enables device operation with or without the remote support and supervision of a human and that does not exceed (i) a weight of 500 pounds, excluding cargo, (ii) a length of 40 inches, and (iii) a width of 30 inches” [N.C.G.S. § 20-4.01(28a)].

PDDs are not included in the term “motor vehicle” unless they exceed a weight of 750 pounds, excluding cargo, exceed a length of 40 inches (3.3 feet) when not linked with other devices, and exceed a width of 36 inches (3 feet) [N.C.G.S. § 20-286(10)]. Therefore, the motor vehicle laws, such as the requirement to have a driver’s license to operate the device, do not apply to PDDs that are within the specifications described above.

- a) Only business entities (such as a corporation or limited liability company) may operate a PDD in a pedestrian area, such as a sidewalk, at 10 miles per hour or less, or on the shoulder of a highway at 20 miles per hour or less [N.C.G.S. § 20-175.7-8].
- b) An operator of a PDD is defined as any person that is 16 years of age or older that is responsible for the monitoring and operation of the PDD, and is authorized by the business entity that owns the PDD to operate the device [N.C.G.S. § 20-175.7-8].
- c) PDDs may not be operated on a highway with a speed limit greater than 35 miles per hour and may only be operated on a highway in order to cross a highway or to travel along a highway when there is no available or accessible sidewalk [N.C.G.S. § 20-175.7-8].

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**NOTE: Show slide, “Additional Requirements – PDD.”**

- d) N.C.G.S. § 20-175.8 outlines additional requirements to operate a PDD to include the following:
  - (1) Requiring that the device must be monitored by an operator who is able to exercise remote control over the device.
  - (2) Requiring that all traffic and pedestrian control devices and signs are obeyed.
  - (3) Requiring the device to yield the right of way to all human pedestrians.
  - (4) Requiring that the device not unreasonably interfere with any vehicle or pedestrian.
  - (5) The device must not transport hazardous materials as defined under federal law.
  - (6) The device must be equipped with a marker clearly stating the contact information of the owner.
  - (7) The device must be equipped with a breaking system allowing the device to come to a controlled stop.
  - (8) The device must be equipped with front and rear lights when operating at night that are visible from at least 500 feet on all sides of the device.

### **G. Operation of Vehicles – Rules of the Road**

The Motor Vehicle Code provides for specific rules that vehicle operators must follow. The failure to follow the rules is the overwhelming cause of death and injuries on the highways. This section will discuss these rules and the offenses charged when the rules are violated.

**NOTE: Show slide, “Video.” Play video, *Rules of the Road*.**

- 1. Occupant restraint systems – Seatbelts/child restraint systems

**NOTE: Show slide, “Restraint Systems.”**

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The use of seatbelts and child safety restraints saves lives and reduces injuries. The National Highway Traffic Safety Administration states that research has shown that when used properly, the use of lap/shoulder seat belts reduce the risk of fatal injury to front-seat occupants (age 5 and older) of passenger cars by 45 percent and the risk of moderate to critical injury by 50 percent.<sup>86</sup> When riding in a vehicle, the vehicle and the passengers are both traveling at the same speed. When the vehicle stops, due to striking an object, unless restrained, the body of the passengers continues traveling at the original speed until it strikes the windshield or steering wheel. The trauma caused by the second impact causes injury or death. When properly restrained, the passengers' body avoids the second impact.

- a) Child restraint systems [N.C.G.S. § 20-137.1].

**NOTE: Show slide, "Child Restraint Systems."**

- (1) Elements:
  - (a) "Every driver
  - (b) who is transporting one or more passengers of less than 16 years of age
  - (c) shall have all such passengers properly secured in a child passenger restraint system or seat belt which meets federal standards at the time of its manufacture."

This statute is not limited to streets, highways, or PVA's. It also applies to private property.

- (2) "A child of less than eight years of age and less than 80 pounds shall be properly secured in a weight-appropriate child passenger restraint system. In vehicles equipped with an active passenger-side front airbag, if the vehicle has a rear seat, a child less than five years of age and less than 40 pounds in weight shall be properly secured in a rear seat, unless the child restraint system is designed for use with airbags. If no seating position equipped with a lap and shoulder belt to properly secure the weight-appropriate child passenger restraint system is available, a child less than eight years of age and between 40 and 80 pounds may be restrained by a properly fitted lap belt only."<sup>87</sup>

- (3) This law does not apply:<sup>88</sup>
  - (a) unless the child is occupying a seating position where seat safety belts are required by federal law or regulation;
  - (b) to ambulances or other emergency vehicles; or
  - (c) if all seating positions equipped with child passenger restraint systems or seat safety belts are occupied.
- (4) The penalty upon conviction for this infraction shall not exceed \$25.00 plus court costs, even when more than one child is not restrained. No insurance points shall be assessed, but two driver license points are assessed. A ~~person~~ **driver** cannot be convicted of failing to secure a child less than eight years old if a child passenger restraint system is obtained before court.<sup>89</sup>
- (5) The proper installation of a child safety seat is necessary to assure a child is protected. National Highway Traffic Safety Administration (NHTSA) has a certification program that is taught to officers, nurses, social workers, and others interested in reducing child fatalities. A certified technician who assists a parent in properly installing a child safety seat cannot be held liable except for willful or wanton misconduct or gross negligence [N.C.G.S. § 20-137.5(c)(1)].
- (6) This statute requires any child of fewer than sixteen years of age to be in a child safety seat or a seatbelt, no matter where the child is seated—front seat or back seat.
  - b) Seat belt law [N.C.G.S. § 20-135.2A].

**NOTE: Show slide, “Seat Belt Law.”**

Elements:

- (1) It is an infraction for:
  - (a) driver or any person 16 years of age or older

- (b) to occupy the front or back seat of a motor vehicle manufactured, with seat belts in compliance with Federal Motor Vehicle Safety Standard No. 208
  - (c) while the vehicle was in forward motion
  - (d) on a street or highway (not on a PVA)
  - (e) without having a safety belt properly fastened about his body.
- (2) Punishment: Each front seat violation carries a penalty of a \$25.50 fine and court costs. Each back seat violation carries a penalty of a \$10.00 fine and no court costs.<sup>90</sup> No driver license or insurance points are assessed.<sup>91</sup> Failure of a rear seat passenger cannot be used to justify the stop of a vehicle (i.e., it is a secondary enforcement action taken after any other violation has occurred).<sup>92</sup>
- (3) The date that federal law required motor vehicles to be manufactured with seat belts ranges from January 1, 1968, for passenger vehicles to January 1, 1982, for forward control vans. The officer should inspect the vehicle. If the seat belts were removed, then the driver can be charged. If it never had them, then he cannot. If equipped with a shoulder harness and seat belt, then both must be used. Even though equipped with seat belts, some persons are exempt:
- (a) A person less than 16 years of age – the proper charge is a violation, on the driver, of child restraint laws.<sup>93</sup>
  - (b) A person with a medical or physical condition which prevents appropriate restraint with a safety belt who is operating a non-commercial motor vehicle.
  - (c) A person with a professionally certified mental phobia against wearing vehicle restraints, who is operating a non-commercial motor vehicle.



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- (d) A rural letter carrier of the United States Postal Services while performing his or her duties as a rural carrier.
  - (e) A newspaper delivery person while engaged in the delivery of newspapers along the person's specified route.
  - (f) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 mph.
  - (g) An occupant of a vehicle registered and licensed as a property-carrying vehicle by N.C.G.S. § 20-88 while being used for agricultural purposes in intrastate commerce. (A vehicle which has a farm weighed or commercial tag and being used for agricultural or commercial purposes at the time the operator is stopped.)
  - (h) An occupant of a motor vehicle not required to be equipped with seat belts under federal law.
  - (i) Any occupant of a motor home other than the driver and front-seat passengers.
  - (j) Any occupant, while in the custody of a law enforcement officer, being transported in the backseat of a law enforcement vehicle.
  - (k) Any passenger of a residential garbage or recycling truck during collection rounds or while traveling to loading or unloading locations.
- c) Children under 16 years of age in pickup truck bed [N.C.G.S. § 20-135.2B].

**NOTE: Show slide, "Children under 16 Years of Age in Pickup Truck Bed."**

This law applies statewide.

- (1) Elements:

## ***Motor Vehicle Laws***

It is unlawful:

- (a) to transport
  - (b) a child under 16 years of age
  - (c) in the open bed or open cargo area
  - (d) of a vehicle
- (2) An “open bed or cargo area” is one without permanent overhead restraining construction.
- (3) There are exceptions to transporting a child in such a manner:
- (a) An adult is present and supervising the child in the bed or cargo area;
  - (b) The child is secured by a seat belt that is installed to support a load strength of not less than 5000 lbs. for each belt;
  - (c) An emergency exists;
  - (d) The vehicle is being operated in a parade;
  - (e) The vehicle is being operated in an agricultural enterprise, including providing transportation to and from the principal place of the agricultural enterprise.
- (4) This offense is an infraction, and the penalty is a \$25 fine or less, no court costs, no insurance, or driver license points assessed.

The driver must still comply with child safety restraint law.

- d) Overloaded or overcrowded vehicle [N.C.G.S. § 20-140.2].

**NOTE: Show slide, “Overloaded or Overcrowded Vehicle.”**

Elements:

It is unlawful to:

## ***Motor Vehicle Laws***

- (1) operate
- (2) a motor vehicle
- (3) on a highway or public vehicular area
- (4) that is so loaded with passengers or property, or both
- (5) as to obstruct the operator's view of the highway or public vehicular area, including intersections, or so as to impair or restrict otherwise.

### 2. Distracted driving – Texting and cell phone use

**NOTE: Show slides, “Distracted Driving.”**

Operating a motor vehicle requires a driver to multi-task, steering, looking in mirrors, looking at the roadway, etc. When talking on a cell phone or texting is added, the driver is not able to focus as well on all the requirements for safe driving. As a result, more crashes occur. The legislature has restricted the use of certain electronic devices to reduce distractions, especially for young drivers.

- a) Unlawful use of a mobile phone by persons under 18 years of age [N.C.G.S. § 20-137.3].
  - (1) No person under the age of 18 years of age shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the vehicle is in motion.
  - (2) Exceptions are allowed when ~~communicating with~~ **using a mobile phone for the sole purpose of communicating with** a parent, legal guardian, or spouse; or regarding an emergency **situation**, an emergency response operator, a hospital, physician's office, health clinic, a **public or privately owned ambulance company or service**, a fire department, or a law enforcement agency.
  - (3) The penalty for a violation is an infraction with a fine of \$25.00, with no assessments of driver license points, insurance surcharge, or court costs.

- b) Unlawful use of a mobile telephone while operating a school bus [N.C.G.S. § 20-137.4].
  - (1) No person shall operate a public, private, or parochial school bus or school activity bus on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone.
  - (2) Exceptions are allowed if the bus is stationary or in an emergency situation.
  - (3) The penalty for a violation is a Class 2 misdemeanor and a fine of not less than \$100.00, with no assessment of driver license points or an insurance surcharge.
  
- c) Unlawful use of a mobile telephone for text messaging or electronic mail [N.C.G.S. § 20-137.4A].
  - (1) “It shall be unlawful for any person to operate a vehicle on a public street or highway or public vehicular area while using a mobile telephone to:
    - (a) Manually enter multiple letters or text in the device as a means of communicating with another person; or
    - (b) Read any electronic mail or text message transmitted to the device or stored within the device, provided that this information shall not apply to any name or number stored in the device nor to any caller identification information.”<sup>94</sup>
  - (2) Exceptions are allowed if the vehicle is lawfully parked or stopped; the operator while in the performance of official duties is a law enforcement officer, a member of a fire department, or the operator of a public or private ambulance service; for a GPS or wireless communication device being used to transmit or receive data as part of a digital dispatch system; or for voice-operated technology.

## **Motor Vehicle Laws**

(3) The penalty for a violation is an infraction punishable by a fine of \$100.00 and no driver license points, or insurance surcharge shall be assessed; except if the violation occurs while operating a school bus, it is a Class 2 misdemeanor punishable by a fine of not less than \$100.00 and court costs.

d) Unlawful use of a mobile phone in a commercial motor vehicle unless hands-free [N.C.G.S. § 20-137.4A(a1)].

(1) “It shall be unlawful for any person to operate a commercial motor vehicle subject to Part 390 or 392 of Title 49 of the Code of Federal Regulations on a public street or highway or public vehicular area while using a mobile telephone or other electronic device in violation of those Parts. Nothing in this subsection shall be construed to prohibit the use of hands-free technology.

(2) Exceptions. – **The provisions of this section shall not apply to:**

(a) ~~are the same as above: if the vehicle~~ **The operator of a vehicle** is lawfully parked or stopped.

(b) **Any of the following while in the performance of their official duties:** ~~the operator while in the performance of official duties~~ is a law enforcement officer, a member of a fire department, or the operator of a public or private ambulance. ~~service;~~

(c) **The use of factory-installed or aftermarket global positioning systems (GPS)** or wireless communication device ~~being~~ used to transmit or receive data as part of a digital dispatch system.

(d) **The use of** voice operated technology.”<sup>95</sup>

(3) A violation is an infraction punishable by a fine of \$100.00 and no driver license points, or insurance surcharge will be assessed; except, if the violation occurs while operating a school bus, it is a Class 2 misdemeanor punishable by a fine of not less than \$100.00 and court costs.<sup>96</sup>

## ***Motor Vehicle Laws***

### 3. Signs, marks, and markings

**NOTE: Show slide, “Regulatory Signs and Warning Signs.”**

- a) The Department of Transportation or the city for city streets is authorized to post signs, marks, or markings controlling vehicle and pedestrian traffic. These control devices must comply with the manual on Uniform Traffic Control Devices for Streets and Highways, published by the United States Department of Transportation, and any supplement to that manual adopted by the North Carolina Department of Transportation. Signs on private property or public vehicular areas are not required to comply with the Uniform Sign manual [N.C.G.S. § 136-30].
- b) Signs on private property and public vehicular areas (PVA)
  - (1) Stop signs, yield signs in PVAs are not enforceable under N.C.G.S. § 20-158 for failing to stop or yield. Speed limit signs within parking lots are not enforceable under N.C.G.S. § 20-141 as a posted speed limit. These statutes apply only to signs posted by a government. The signs and signals at entrances and exits to PVAs, when the signs or lights are authorized and installed by the city, county, or state, can be enforced. Crashes caused by failing to obey the signs can result in a charge such as reckless driving, exceeding a safe speed, or failing to decrease speed to avoid a crash.
  - (2) No parking signs and fire lane signs must be of the type approved by the state and authorized by an ordinance to be enforceable.
  - (3) Handicapped signs must be an above-ground sign of the type approved by the state’s manual of signs, R 7/8. It is enforceable under the authority of N.C.G.S. § 20-37.6. If only the wheelchair emblem is painted in the parking space, without the posted sign present, the statute is not enforceable.

### 4. Starting, stopping, turning and parking

**NOTE: Show slide, “Starting, Stopping, Turning and Parking.”**

## ***Motor Vehicle Laws***

Because intersecting highway increases the danger of vehicle collisions, signs controlling vehicle operation are posted at or near intersections. An exact determination of the location of vehicle and motor vehicle actions may be necessary for crash investigations and determining violations of law. These actions often involve intersections.

An intersection is defined as “the area embraced within the prolongation of the lateral curblines or, if none, the lateral edge of roadway lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.” [N.C.G.S. § 20-4.01(16)].

To “enter” means to go from the outside to the inside.

- a) Entering intersections
  - (1) When stopping is required at intersections

**NOTE: Show slide, “When Stopping is Required at Intersections.”**

- (a) Vehicles are required to come to a stop at both stop signs and stop lights when they are red, and flashing red lights. Vehicles facing a traffic signal that is emitting a steady red circular light shall not enter the intersection while the traffic signal is emitting a steady red circular light in the direction of traffic approaching an intersection.
- (b) An exception is where, after coming to a completed stop, a vehicle may make a right turn, if not prohibited by a sign and yielding the right-of-way to pedestrians and other traffic using the intersection; and to pedestrians who are moving towards the intersection, who are in reasonably close proximity to the intersection,

and who are preparing to cross in front of the traffic that is required to stop at the red light.

- (c) Another exception is for motorcycle operators who wait for three (3) minutes, provided there are no other vehicles or pedestrians at or approaching the intersection.
- (d) Flashing red lights, in legal effect, are treated as stop signs. The vehicle must first stop and then may proceed when the way is clear, yielding to vehicles having the right-of-way. Failure to do either element, stopping or yielding, is a violation of the law [N.C.G.S. § 20-158].
- (e) This statute applies only on streets and highways, but not on public vehicular areas (i.e., mall parking lots). It does apply to stop signs and traffic lights at entrances and exits to public vehicular areas when they are authorized and installed by the city or state.

(2) Railroad crossings with a blue sign

**NOTE: Show slide, “Railroad Crossings with Blue Sign.”**

- (a) Railroads, unlike streets and highways, are private property owned by the railroad company. Unless the railroad company has given consent, it is unlawful for a person or vehicle to cross any railroad tracks except at a designated railroad grade crossing. [14-280.1]
- (b) Federal code 49 CFR § 234.309 requires that every public railroad grade crossing post an Emergency Notification Sign (ENS). The ENS is commonly referred to as the “blue sign” in the rail industry. If any activity occurs on the railroad track, such as a vehicle blocking the track, law enforcement officers engaging in a manhunt on the track, or along the railroad right of way or any other time, people are on the tracks, train traffic needs to be stopped, IMMEDIATELY. It is dangerous to be on the tracks or along the railroad right of way because



trains travel up to 80 mph, cannot turn, and take up to a mile or more to stop. The quickest way to stop train traffic is to call the telephone number on the “blue sign” and report the crossing identification number to the train dispatcher. The dispatcher will stop or slow train traffic until the tracks can be cleared. The same telephone number is used to report malfunctioning or damaged bells, lights, or crossing gate equipment.

**NOTE: Show slide, “Blue Signs with Multiple Telephone Numbers for Various Railroad Companies.”**

It is important to understand that each railroad company has individual emergency telephone numbers. Unlike our National 911 public safety emergency number, there is no universal emergency number for all the railroad companies because railroad companies are private businesses, and each company has their emergency telephone number.

**NOTE: Show slide, “Blue Signs with Crossing Identification Numbers Circled.”**

Each railroad crossing in the United States has a unique six (6) number followed by one (1) letter, crossing identification number. The Crossing ID number corresponds to a physical location along with the vast railroad system and is important information for the railroad dispatcher.

- (c) Because railroad grade crossings have the potential for train and vehicle crashes, the motor vehicle code provides rules for crossing the tracks at a railroad grade crossing. “Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within 50 feet, but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so safely. These requirements apply when:

- i) A clearly visible electrical or mechanical signal device gives warning of the immediate approach of a railroad train or on-track equipment;
  - ii) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train or on-track equipment;
  - iii) A railroad train or on-track equipment approaching within approximately 1500 feet of the highway crossing emits a signal audible from that distance, and the railroad train or on-track equipment is an immediate hazard because of its speed or nearness to the crossing; or
  - iv) An approaching railroad train or on-track equipment is plainly visible and is in hazardous proximity to the crossing.
- (d) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.”<sup>97</sup> The reason that the motor vehicle code requires drivers to stop when an electrical or mechanical device is giving a warning is due to the 20-second rule. Federal regulation requires the railroad company warning system to give a minimum of twenty seconds warning before the train arrives at the highway grade crossing.<sup>98</sup> A train weighing from three million to twenty-two million pounds and traveling at up to sixty miles per hour may be over one-quarter of a mile away and out of sight when the warning is activated. The train cannot swerve and will not be able to stop prior to arriving at the crossing. Driving across the tracks after the lights or bells

are activated or under or around the gates as they are closing is unlawful and can be deadly.

- (e) “When stopping as required at a railroad crossing, the driver shall keep as far to the right of the highway as possible and shall not form two lanes of traffic unless the roadway is marked for four or more lanes of traffic” [GS 20-142.1].
- (f) “When a stop sign is erected at a highway crossing of a railroad, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such grade crossing and shall proceed only upon exercising due care” [GS 20-142.2].
- (g) “Before crossing at grade any track or tracks of a railroad, the driver of any school bus, any activity bus, any motor vehicle carrying passengers for compensation, any commercial motor vehicle listed in 49 CFR § 392.10, and any motor vehicle with a capacity of 16 or more persons shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for any approaching train or on-track equipment and shall not proceed until it can be done so safely. Upon proceeding, the driver of the vehicle shall cross the track in a gear that allows the driver to cross the track without changing gears, and the driver shall not change gears while crossing the track or tracks.

Except for school buses and activity buses, the provisions of this section shall not require the driver of a vehicle to stop:

- i) At railroad tracks used exclusively for industrial switching purposes within a business district.

- ii) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.
  - iii) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train or on-track equipment, when the gate or flashing signal does not indicate the approach of a train or on-track equipment.
  - iv) At an abandoned railroad grade crossing, which is marked with a sign indicating that the rail line is abandoned.
  - v) At an industrial or spur line railroad grade crossing marked with a sign reading 'Exempt' erected by or with the consent of the appropriate State or local authority."<sup>99</sup>
- (h) A person who intends to move any crawler-type tractor, crane, or roller or any equipment or structure having a normal operating speed of five or fewer miles per hour across any tracks at a railroad crossing must give notice to a superintendent of the railroad and give the railroad time to provide protection at the crossing. Before crossing the railroad tracks that have not been posted as "exempt," the person operating or moving the vehicle or equipment must:
- i) Stop the vehicle or equipment not less than 15 feet nor more than 50 feet from the nearest rail of the railroad;
  - ii) While stopped, shall listen and look in both directions along the track for any approaching train and signals indicating the approach of a train; and
  - iii) Shall not proceed until the crossing can be made safely.

- iv) No crossing shall be made when a warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car [GS 20-142.4].
- (3) Blocking intersection, crosswalk, or railroad crossing

**NOTE: Show slide, “Blocking Intersection, Crosswalk, or Railroad Crossing.”**

“No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed” [GS 20-142.5].

- (4) Control of vehicles at places other than intersections

**NOTE: Show slide, “Control of Vehicles at Places Other Than Intersections.”**

When stop signs, flashing red lights, or traffic signals are erected or installed at places other than intersections, the driver is required to obey the traffic control device [N.C.G.S. § 20-158(c)].

- b) Starting, turning, and backing – Unsafe movement offense

**NOTE: Show slide, “Starting, Turning, and Backing.”**

- (1) Turning must be done safely [N.C.G.S. § 20-154(a)] and must be preceded by signals to the pedestrians or other drivers who may be affected [N.C.G.S. § 20-154(b)]. The signals must be given for at least 100 feet, and at least 200 feet if the vehicle is traveling in a speed zone posted for 45 mph or more before the turn. A vehicle that fails to signal before changing lanes, turning into a parking area or street, violates this section if another vehicle or pedestrian may be affected. The other vehicle may be a law enforcement vehicle [362 NC 412]. However, if the only other vehicle is three (3) to four (4) car lengths away, the other vehicle may

not be affected, and the failure to signal is not a violation. [2012 N.C. App. LEXIS 588]. Also, if the vehicle stops at a stop sign at a “T” intersection and there is only one (1) lawful turn, failing to signal is not a violation of this section [360 N.C. 562].

- (2) A right turn shall be made as close as practicable to the right-hand curb or edge of the roadway [N.C.G.S. § 20-153(a)].
- (3) A left turn shall be made from the left-most lane available to that direction of traffic [N.C.G.S. § 20--153(b)].
- (4) Backing or starting must be done safely [N.C.G.S. § 20-154(a)].
- (5) The requirement for safe turning, backing, and stopping (safe movement violation) applies on streets or highways and public vehicular areas [N.C.G.S. § 20-154(a)].
- (6) A driver of any vehicle that makes an unsafe movement which causes a motorcycle operator to change travel lanes or leave that portion of any public street or highway designated as travel lanes shall be responsible for an infraction and shall be assessed a fine of not less than \$200.00. [N.C.G.S. § 20-154(a1)].
- (7) A driver of any vehicle that makes an unsafe movement which results in a crash causing property damage or personal injury to a motorcycle operator or passenger shall be responsible for an infraction and shall be assessed a fine of not less than \$500.00 unless the following applies:
  - (a) The driver makes an unsafe movement and the violation results in a crash causing property damage over \$5,000.00 (or)
  - (b) A serious bodily injury as defined in N.C.G.S. § 20-160.1(b) to a motorcycle operator or passenger

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Shall be responsible for an infraction and shall be assessed a fine of not less than \$750.00. [N.C.G.S. § 20-154(a2)].

### c) Parking

**NOTE: Show slide, “Parking.”**

- (1) As a general rule, parking is a local matter regulated by local ordinance. The local rules and ordinances regulating parking should be studied by each officer. The State Department of Transportation may regulate parking outside the city [N.C.G.S. § 136-18]. A traffic citation can be used as a parking ticket [N.C.G.S. § 15A-302(d)]. The state laws that apply are set out below.
- (2) The mere temporary stopping on the roadway for a necessary purpose (such as a bus stopping to pick up or discharge passengers) is not considered parking by the courts. Some intention to break the continuity of travel is required for parking. “Park” and “leave standing” mean the same thing.
  - (a) Parking of any vehicle on the main-traveled portion of any highway or highway bridge with the speed limit posted less than 45 miles per hour is prohibited, unless the vehicle is so disabled that it is impossible to avoid leaving the vehicle there [N.C.G.S. § 20-161(a)]. This does not apply to a solid waste vehicle while engaged in collecting garbage or recyclable material [N.C.G.S. § 20-161(a1)].
  - (b) Parking on the shoulder of the road is prohibited unless the vehicle is visible for 200 feet in both directions and does not obstruct traffic [N.C.G.S. § 20-161(b)].
  - (c) Vehicles parked on highways from one-half hour after sunset to one-half hour before sunrise must have a white or amber light on the front of the vehicle and a red light on the rear. Both lights must be visible for 500 feet. This requirement is subject to change by a local

ordinance if there are sufficient street lights to make parking lights on vehicles unnecessary [N.C.G.S. § 20-134]. Parked vehicles may not have their bright lights on if the lights face oncoming traffic [N.C.G.S. § 20-161.1].

- (d) Drivers of trucks (excluding pick-up trucks) that are disabled on highways must comply with the United States Department of Transportation rules [N.C.G.S. § 20-161(c)].
- (e) Parking within 15 feet of a fire hydrant or 25 feet of an intersection is prohibited. However, local ordinances can reduce the distance relating to fire hydrants [N.C.G.S. § 20-162].
- (f) Parking within 100 feet of a police, fire, or emergency vehicles engaged in investigating crashes or helping crash victims is prohibited [N.C.G.S. § 20-157(e)].
- (g) Vehicles left unattended on a highway or public vehicular area must have the engine stopped, the brakes set, and if it is on a grade, the front wheels turned to the curb or side of the highway [N.C.G.S. § 20-163].
- (h) It is unlawful to stop, park, or leave standing any vehicle, whether attended or unattended, on any interstate highway or other controlled-access roads, except in an emergency or when directed to do so by a law enforcement officer, or at designated parking areas [N.C.G.S. § 20-140.3(5)].
- (i) It is unlawful to park a vehicle in a designated handicapped parking space unless the vehicle displays a handicapped license plate or placard or disabled veteran tag issued by DMV. The accompanying registration card to the placard must also be in the vehicle. It is unlawful for a person not entitled to do so, to use a handicapped license plate or placard. The person to whom the placard is issued must be the operator of the vehicle or a passenger in the



vehicle. It is unlawful to park to obstruct a curb ramp or curb cut for handicapped persons. The penalty for violation of any of the above handicapped provisions shall be at least \$100.00 but not more than \$250.00. An unlawfully parked vehicle in a handicapped parking space may be towed to allow access to the parking space at the owner's expense.<sup>100</sup>

- (3) There is a presumption in the statutes [N.C.G.S. § 20-162.1] that the registered owner of a car parked it. If the presumption is used, the defendant can rebut it by producing evidence that he did not park the car. Also, if the presumption is used, the maximum fine allowed is \$5.00 (except handicapped parking). Certain counties and cities may charge a different fine because of special legislation passed by the General Assembly.
- (4) A law enforcement officer can move an illegally parked vehicle to the shoulder of the highway. The officer is also authorized to have the vehicle towed if it is impeding traffic or constitutes a hazard, and in such cases, the owner is liable for towing charges [N.C.G.S. § 20-161(d)].

The vehicle can also be towed if it has been illegally parked for 24 hours or more, and again, the owner is liable for the cost [N.C.G.S. § 20-161(e)]. When a vehicle is towed, the officer may give notice by telephone and must give notice by mail to the registered owner. The mailed notice must be given even if the owner is contacted by telephone unless he waives this notice in writing. The notice must be mailed within 24 hours if the vehicle is registered in North Carolina and within 72 hours if the vehicle is not registered in North Carolina. The notice must contain the following information:

- (a) A description of the vehicle;
- (b) The place where the vehicle is stored;
- (c) The violation with which the owner is charged, if any;

- (d) The procedure the owner must follow to have the vehicle returned to him; and
- (e) The procedure the owner must follow to request a probable cause hearing on the towing [N.C.G.S. § 20-219.11]. The officer should attend the hearing. If at the hearing, it is determined that the officer was not legally authorized to tow the vehicle, the law enforcement agency will be liable for the towing bill [N.C.G.S. § 20-219.14].

5. Right-of-way rules

**NOTE: Show slides, “Right-of-Way.”**

a) Yielding right-of-way to others

The right-of-way laws requires vehicles, in several instances, to yield to other vehicles or pedestrians. (These laws apply to all vehicles.)

- (1) Even with the green light, the driver of a vehicle entering an intersection must proceed with “due caution” [N.C.G.S. § 20-158(b)(2)].
- (2) When two (2) vehicles approach an intersection at the same time from different roads, the driver on the left must yield to vehicles on his right [N.C.G.S. § 20-155(a)].
- (3) When a driver is turning left, he must yield to an oncoming vehicle that is within the intersection or so close as to constitute an immediate hazard [N.C.G.S. § 20-155(b)].
- (4) When a pedestrian is crossing at a marked crosswalk or a crosswalk created by an imaginary extension of sidewalks, a driver must yield to the pedestrian [N.C.G.S. § 20-155(c), 20-173(a)].
- (5) When approaching a traffic circle, a driver must yield to any vehicle already in the traffic circle [N.C.G.S. § 20-155(d)].

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- (6) When entering a highway from a private road, alley, building entrance, or driveway, a driver must yield to every vehicle on the highway [N.C.G.S. § 20-156(a)], and he must yield to pedestrians or bicycles on sidewalks or walkways [N.C.G.S. § 20-173(c)].
- (7) When approached by law enforcement, fire, or emergency vehicles which have their warning lights and sirens on, the driver must yield [N.C.G.S. § 20-156(b)].
- (8) When entering an intersection that has a yield sign, the driver must yield to vehicles approaching on the main-traveled highway [N.C.G.S. § 20-158.1].
- (9) Unless the conduct is covered under some other law providing greater punishment, a person who commits the offense of failure to yield under certain circumstances (while approaching or entering an intersection, turning at a stop or yield sign, entering a roadway, upon the approach of an emergency vehicle, or at highway construction or maintenance) shall be fined and the license suspended if the violation results in serious bodily injury but no death. [N.C.G.S. § 20-160.1].
- (10) Failure to heed light or siren of an emergency vehicle
  - (a) Elements:

A person is guilty of this offense:

    - i) while driving a vehicle, upon the approach of one (1) of the following:
      - Law enforcement vehicle
      - Fire department vehicle
      - Public or private emergency service vehicle
      - Rescue squad emergency service vehicle.

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- A vehicle operated by Division of Marine Fisheries of the Department of Environment and Natural Resources that was traveling in response to an emergency, or
  - A vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services that was traveling in response to an emergency
- ii) is giving warning by appropriate light (blue, red, amber, etc.) and by the bell, siren, or exhaust whistle audible under normal conditions from a distance of not less than 1,000 feet; and,
- iii) the driver fails to:
- position the vehicle as near as possible and parallel to the right-hand edge or curb clear of any intersection of streets or highways, or
  - stop his/her vehicle.
- (b) Punishment: Violation is a Class 2 misdemeanor.
- (c) The law enforcement officer must activate both lights and siren to demand the right-of-way.
- (d) “A person who violates this section and causes damage to property in the immediate area of the authorized emergency vehicle or public service vehicle in excess of five hundred dollars (\$500.00), or causes injury to a law enforcement officer, a firefighter, an emergency vehicle operator, an Incident Management Assistance Patrol member, a public service vehicle

operator, or any other emergency response person in the immediate area of the authorized emergency vehicle or public service vehicle is guilty of a Class 1 misdemeanor”<sup>101</sup> [~~N.C.G.S. § 20-157~~].

- (e) “A person who violates this section and causes serious injury or death to a law enforcement officer, a firefighter, an emergency vehicle operator, an Incident Management Assistance Patrol member, a public service vehicle operator, or any other emergency response person in the immediate area of the authorized emergency vehicle or public service vehicle is guilty of a Class **F** felony.”<sup>102</sup>
- (f) This statute does not apply to vehicles on the opposite side of a divided highway from an emergency vehicle.<sup>103</sup>
- (g) This section allows an officer to take the right-of-way and proceed through stoplights, stop signs, and yield signs without stopping or yielding, although this statute does not relieve the drivers of such emergency vehicles of the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect any such driver from the consequence of any arbitrary exercise of such right-of-way [N.C.G.S. § 20-156].

(11) Funeral processions

- (a) “A ‘funeral procession’ means two or more vehicles accompanying the remains of a deceased person, or traveling to the church, chapel, or other location at which the funeral services are to be held, in which the lead vehicle is either a State or local law enforcement vehicle, other vehicle designated by a law enforcement officer or the funeral director, or the lead vehicle displays a flashing amber or purple light, sign, pennant, flag, or other insignia furnished by a funeral home indicating a funeral procession.

- (b) Each vehicle in the funeral procession shall be operated with its headlights illuminated if so equipped, and its hazard warning signal lamps illuminated, if so equipped.
- (c) The operator of the lead vehicle in a funeral procession shall comply with all traffic-control signals, but when the lead vehicle in a funeral procession has progressed across an intersection in accordance with the traffic-control sign or signal, or when directed to do so by a law enforcement officer or a designee of a law enforcement officer or the funeral director, or when the lead vehicle is a law enforcement vehicle which progresses across the intersection while giving appropriate warning by light or siren, all vehicles in the funeral procession may proceed through the intersection without stopping, except that the operator of each vehicle shall exercise reasonable care towards any other vehicle or pedestrian on the highway.”<sup>104</sup>
- (d) “Operators of vehicles in a funeral procession shall drive on the right-hand side of the highway and shall follow the vehicle ahead as closely as reasonable and prudent having due regard for speed and existing conditions.”<sup>105</sup>
- (e) Vehicles proceeding in the opposite direction of the funeral procession may stop out of respect but are not required to do so.<sup>106</sup>
- (f) Vehicles proceeding in the same direction as the funeral procession may not pass the funeral procession unless the highway is marked for two or more lanes of moving traffic in the same direction of the funeral procession.<sup>107</sup>
- (g) “An operator of a vehicle shall not knowingly drive between vehicles in a funeral procession by crossing their path unless directed to do so by a person authorized to direct traffic. When a funeral procession is proceeding through a

steady or strobe-beam stoplight emitting a red light [ ] an operator of a vehicle that is not in the funeral procession shall not enter the intersection knowing a funeral procession is in progress, even if facing a steady or strobe-beam stoplight emitting a green light, unless the operator can do so safely without crossing the path of the funeral procession” [N.C.G.S. § 20-157.1(i)].

- b) Driving on right side of highway, lane and passing laws

**NOTE: Show slide, “Driving on Right Side of Highway, Lane, and Passing Laws.”**

- (1) The general rule is that a person must drive on the right side of the highway when there is sufficient width to do so [N.C.G.S. § 20-146(a), 20-147, 20-148].
- (2) A vehicle must be driven “as nearly as practicable” entirely within a single lane. A driver may not change lanes unless it can be done in safety [N.C.G.S. § 20-146(d)(1)]. The driver who is straddling a lane marker violates this section unless there is an obstruction or other reason not to remain “entirely” within a travel lane. A vehicle that does not cross the centerline or the fog line may be stopped for suspicion of impaired driving for constant and continuous weaving within a lane if other factors are present such as slow speed, at night, near a bar, other cars must swerve, etc. To violate this law, part of the vehicle’s tire must cross over either the center of the highway or centerline or the fog line. The courts will usually give the defendant the benefit of the doubt for driving on top of either line without crossing over it. In order to make a stronger case, the officer should make notes listing how far the vehicle crossed the line (e.g., the width of the tire, both tires, half of the car, etc.), and for how long this action occurred (e.g., five seconds), how many times it occurred and how many other vehicles were in the area.
- (3) There are exceptions for highways of less than four (4) lanes:
  - (a) For overtaking and passing another vehicle traveling in the same direction;

- (b) On highways designated and posted for one-way traffic;
  - (c) If there are three (3) marked lanes of traffic; or
  - (d) If there is an obstruction on the right side of the road, provided, the driver shall yield right-of-way to all vehicles traveling in the opposite direction [N.C.G.S. § 20-146(a)].
- (4) For two-way highways of four (4) lanes or more, no driving to the left of the centerline is permitted except to avoid obstructions or to obey traffic signals [N.C.G.S. § 20-146(c)]. A driver must stay in the right lane if the road has two (2) or more lanes going in the same direction, except when passing or turning left [N.C.G.S. § 20-146(b)]. Where appropriate signs are posted, the law forbids driving in the left lane at less than the posted speed limit if doing so impedes traffic [N.C.G.S. § 20-146(e)]. The law sets out rules for the use of lanes, including rules requiring a change of lanes to be made safely, requiring drivers to obey traffic signals regarding the use of lanes, and specifying when center lanes of highways may be used [N.C.G.S. § 20-146(d)].
- (5) Whenever a passenger vehicle (car, pickup truck, etc. – [N.C.G.S. § 20-4.01(27)] – is towing any other vehicle (includes trailers, other cars, etc.), the driver of the towing vehicle must drive in the right lane except to pass or if there is an obstruction. This requirement applies to multi-lane highways as well as dual-lane highways [N.C.G.S. § 20-147.1].
- (6) High occupancy vehicles (HOV) lanes may be established by the Department of Transportation. The HOV lane may be reserved for buses and vehicles with a specified number of occupants. HOV lanes may always be used by motorcycles, vehicles designed to carry 15 or more passengers, no matter how many actual occupants there are, police, fire, ambulances, and other government vehicles, plug-in electric vehicles, natural gas vehicles, and fuels cell electric vehicles [N.C.G.S. § 20-146.2].



## ***Motor Vehicle Laws***

(7) The Department of Transportation may allow the shoulder to be used for traffic and may change the direction traffic flow in a lane during peak traffic times [N.C.G.S. § 20-146].

c) The laws governing passing are:

**NOTE: Show slide, “Passing Laws.”**

(1) The passing vehicle must pass to the left of the other vehicle (by at least 2 feet) subject to certain exceptions for passing on the right [N.C.G.S. § 20-149(a), 20-150.1].

(2) The passing driver must not return to his proper lane until safely clear of the passed vehicle [N.C.G.S. § 20-149(a)].

(3) The passing driver may, but is not required to sound his horn when passing. If he does so, the passed driver must yield to the right and not increase his speed until the other vehicle passes [N.C.G.S. § 20-149(b), 20-151]. Failure to give way to an overtaking vehicle is a Class 1 misdemeanor when the failure causes a collision resulting in serious bodily injury [N.C.G.S. § 20-149(b)(1)]. Such failure is a Class 2 misdemeanor if it causes bodily injury or property damage [N.C.G.S. § 20-149(b)(2)]. In all other cases, failure to give way is an infraction [N.C.G.S. § 20-149(b)(3)].

(4) Passing is not permitted:

(a) Where the left side of a road is not visible and free of traffic to allow safe passing [N.C.G.S. § 20-150(a)].

(b) Where the driver cannot see for 500 feet because of a hill or curve [N.C.G.S. § 20-150(b)].

(c) If there is a centerline on a hill or curve [N.C.G.S. § 20-150(d)].

## ***Motor Vehicle Laws***

- (d) At a railroad crossing, at all intersections within cities, or marked intersections outside cities [N.C.G.S. § 20-150(c)].
- (d) Where signs or markings placed by the Department of Transportation prohibit passing [N.C.G.S. § 20-150(e)].
- (e) It is prohibited and for a driver of a vehicle to overtake and pass, in the same direction of travel, self-propelled farm equipment (such as a tractor) when the farm equipment is making a left turn or is signaling that it intends to make a left turn. [N.C.G.S. § 20-150(e1)].

The above rules do not apply to one-way streets and left turns into or from alleys, driveways, and private roads [N.C.G.S. § 20-150(f)].

- (f) If the vehicle being passed is stopped to allow pedestrians to cross a street at a marked or unmarked crosswalk [N.C.G.S. § 20-173(b)].
- (5) Passing on the right is permitted only in these circumstances [N.C.G.S. § 20-150.1]:
- (a) If the passed vehicle is in the left turn lane.
  - (b) If there are two (2) or more lanes in the same direction and not occupied by parked vehicles.
  - (c) On two-lane one-way streets.
  - (d) When driving in a lane designating a right turn on a red traffic light.

A driver who passes on the right at times not specifically allowed under N.C.G.S. § 20-150.1 above violates N.C.G.S. § 20-149(a) and should be charged with violating N.C.G.S. § 20-149(a).

- d) Following too closely [N.C.G.S. § 20-152].

**NOTE: Show slide, “Following Too Closely.”**

## ***Motor Vehicle Laws***

(1) Elements:

It is unlawful to:

- (a) drive
- (b) a motor vehicle in
- (c) such a manner as to follow another vehicle
- (d) more closely than is reasonable and prudent
- (e) having due regard for the speed of the vehicle, the amount of traffic, and the highway conditions.

(2) Punishment: A violation is an infraction punishable under N.C.G.S. § 20-176.

- e) Driving on safety zone [N.C.G.S. § 20-160(a)].

**NOTE: Show slide, “Driving on Safety Zone.”**

(1) Elements:

It is unlawful to:

- (a) drive
- (b) any vehicle
- (c) through or over
- (d) a safety zone.

(2) A safety zone is a “traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.” [N.C.G.S. § 20-4.01(39)].

(3) Punishment: A violation is an infraction punishable under N.C.G.S. § 20-176.

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- f) Driving on the sidewalk [N.C.G.S. § 20-160(b)].

**NOTE: Show slide, “Driving on the Sidewalk.”**

- (1) Elements:

It is unlawful to:

- (a) drive
  - (b) a motor vehicle
  - (c) upon a sidewalk or sidewalk area except upon a permanent or temporary driveway.
- (2) There is no definition of a sidewalk, so the standard everyday definition should be used. The statute provides an exemption for persons crossing sidewalks to enter driveways. Note also that this statute covers only motor vehicles, although some local ordinances may forbid operating bicycles and other vehicles on sidewalks.
- (3) Punishment: A violation is an infraction punishable under N.C.G.S. § 20-176.

- g) Driving the wrong way on one-way streets [N.C.G.S. § 20-165.1].

**NOTE: Show slide, “Driving the Wrong Way on One-Way Streets.”**

- (1) Elements:

It is unlawful to:

- (a) willfully
- (b) drive or operate any vehicle
- (c) in the wrong direction
- (d) on a highway or roadway [N.C.G.S. § 20-4.01(38)].
- (e) that has been designated a one-way street

## ***Motor Vehicle Laws***

- (f) and signs have been posted indicating that fact.
- (2) Punishment: A violation is an infraction punishable under N.C.G.S. § 20-176.
- h) Passing stopped school bus [N.C.G.S. § 20-217].

### **NOTE: Show slide, “Passing Stopped School Bus.”**

#### (1) Elements:

A person is guilty of the offense of passing a stopped school bus if:

- (a) while driving any vehicle
- (b) on the same street, highway or public vehicular area
- (c) he fails to bring his vehicle to a complete stop for
- (d) a school bus that:
  - i) is stopped to receive or discharge passengers, and
  - ii) is displaying the mechanical stop signal or flashing red lights.
- (2) A person is guilty of this offense if:
  - (a) while driving a vehicle
  - (b) on a highway or public vehicular area
  - (c) fails to remain stopped until
  - (d) a school bus
  - (e) that has
    - i) displayed its mechanical stop signal or its flashing red stoplights, and

## ***Motor Vehicle Laws***

- ii) stopped to discharge passengers
  - (f) until the school bus has
    - i) withdrawn its stop signal,
    - ii) turned off its flashing red stoplights, *and*
    - iii) started to move.
- (3) This statute applies whether the vehicle is going in the same direction as the school bus or in an opposite direction, except that if the school bus is on the opposite side of an intervening space (including a left turn center lane if the road has at least four (4) lanes, concrete or grass median, etc.), the driver may pass.
- (4) This statute applies to both public school buses and private school buses transporting children or senior citizens, but not Sunday School buses or school activity buses [N.C.G.S. § 20-4.01(27)(n)]. Unless a bus is plainly and visibly marked “school bus” on the front and rear and is painted primarily yellow below the roofline, this statute cannot be applied.
- (5) Punishment: It is a Class 1 misdemeanor for which prayer for judgment continued (PJC) cannot be granted. Any driver who willfully commits this violation and strikes any person shall be guilty of a Class I felony. If the person struck dies, then the punishment is a Class H felony.

### 6. Speeding, eluding arrest, and racing

**NOTE: Show slide, “Speeding, Eluding Arrest, and Racing.”**

#### a) Speeding

**NOTE: Show slide, “Speeding.”**

The general speed law is that no vehicle may be operated at speed greater than is reasonable and prudent for the conditions then existing. The fact that a speed limit sign indicates a faster speed is authorized does not relieve the driver from this requirement.

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- (1) Driving faster than is reasonable and prudent [GS. 20-141(a)].

Elements:

It is unlawful to:

- (a) operate
  - (b) a vehicle
  - (c) on a highway or public vehicular area
  - (d) at a speed that is not reasonable and prudent
  - (e) for the conditions then existing.
- (2) Failure to reduce speed to avoid a crash [N.C.G.S. § 20-141(m)].

Elements:

It is unlawful for:

- (a) the driver
- (b) of a vehicle
- (c) to fail to reduce his speed
- (d) when it was necessary to do so
  - i) to avoid colliding with a person, vehicle, or other conveyance on or entering a highway and
  - ii) to avoid causing injury to any person or property.

The important point to remember here is that the above offenses can occur even if the vehicle is operating within the legal speed limits. The conditions that could dictate slower speeds are weather, traffic, type of area (residential, business, intersection, etc.), and any other

factor that could influence the proper speed. These offenses can occur in a public vehicular area.

b) Posted speed limits

**NOTE: Show slides, “Posted Speed Limits.”**

(1) Speed limit signs

- (a) Must be black letters on a white reflectorized background to be enforceable.
- (b) Signs with a yellow background and black lettering are cautionary and are not enforceable as a posted speed limit. The same is true for speed limit signs posted by a business owner. Exceeding a safe speed is available if the vehicle is driven too fast for the conditions.
- (c) The speed zone represented by a speed limit sign extends from the actual sign to the next sign for the direction of traffic that faces the sign.

(2) Violations of posted speed limits

- (a) Speed limits inside cities are 35 mph unless otherwise posted [N.C.G.S. § 20-141(b)].
- (b) Speed limits outside cities are 55 mph unless otherwise posted [N.C.G.S. § 20-141(b)]. Certain parts of the Interstate system have a 70 mph limit. Speeding in a designated work zone carries a mandatory fine. Work zones must be designated by signs and include a sign stating the penalty for speeding in a work zone [N.C.G.S. § 20-141(j2)].
- (3) Speed limits for a school bus [N.C.G.S. § 20-4.01(27)(n)] with one or more child passengers is 45 mph. The speed limit for a school activity bus [N.C.G.S. § 20-4.01(27)(m)] is 55 mph [N.C.G.S. § 20-218; 20-218.2].
- (4) Reduced speed limits may be established in school zones under N.C.G.S. § 20-141.1.



## ***Motor Vehicle Laws***

- (a) School zone speed limits are effective only when signs are erected giving:
  - i) notice of the school zone
  - ii) the authorized speed limit, and
  - iii) the days and hours when the school zone speed limit applies.
- (b) This can also be done by posting the appropriate signs designating a school zone and the school zone speed limit and using a time clock activated flashing light to indicate when the school zone is in effect.
- (c) No school zone speed limit may be less than 20 mph. An officer charging this offense must be prepared to prove that it occurred during the time of day that the school zone was in effect and on a day during which school was actually in session.
- (d) Good evidence would include:
  - i) testimony of the school principal or other school personnel;
  - ii) the presence of school buses;
  - iii) the presence of school children;
  - iv) the presence of a school crossing guard, etc.

Speed limits can be posted on school grounds also [N.C.G.S. § 20-141(e1)].

- (5) Posted speed limits may be raised or lowered by the proper authorities. In general, the Department of Transportation (DOT) sets speed limits for state roads and the city for roads they maintain. For state roads inside a city, both the DOT and city must agree [N.C.G.S. § 20-141(d),(e),(f)].

## ***Motor Vehicle Laws***

- (6) If the speed limit is other than the statutory limits, the road must be posted, and there must be an ordinance establishing the limit. Proof of the ordinance can be required in court, but it rarely is. Thus, unless unusual circumstances arise, the officer should rely on the posted signs. If there are doubts, consult the police attorney, town attorney, or the assistant district attorney.
- (7) Minimum speeds may also be established provided they are posted, and there is an ordinance passed by the proper authority. On the primary and interstate highway systems, the minimum limits must be set at 40 mph in a speed zone of 55 mph and 45 mph in a speed zone of 60 mph or greater. These limits must be posted to be enforced [N.C.G.S. § 20-141(c),(g)].
- (8) It is unlawful to operate a motor vehicle on a highway at such a slow speed as to impede the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or to comply with the law. This statute does not apply to farm tractors or other motor vehicles operating at reasonable speeds for the type and nature of the vehicle [N.C.G.S. § 20-141(h)]. When appropriate signs have been posted, it is unlawful to operate a motor vehicle in the inside lane, next to the median of a dual-lane highway at speed less than the posted speed limit when such operation impedes the steady flow of traffic (except when preparing for a left turn). Appropriate signs include the designation “Slower Traffic Keep Right” [N.C.G.S. § 20-146(e)].
- (9) Some vehicles (tractors, towed vehicles, etc.) listed in the statutes are not required to comply with the minimum.
- (10) Most speeding offenses apply to all vehicles. The statute that forbids driving so slowly as to impede traffic [N.C.G.S. § 20-141(h)] applies only to motor vehicles.
- (11) The DOT is authorized to establish “pull off” areas for trucks and buses. These are primarily in the mountains and must have signs posted. The failure of a truck, bus,

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or slow-moving vehicle to pull off into one (1) of these areas and let traffic pass is a Class 3 misdemeanor [N.C.G.S. § 136-18.4].

c) Speeding in a work zone

**NOTE: Show slide, “Speeding in a Work Zone.”**

- (1) Speeding in a work zone results in numerous injuries and deaths. For an area to be designated a “work zone,” DOT must post a sign indicating the beginning of the work zone. The speed limit must be posted by a speed limit sign (white with black letters). Department of Transportation is required to post a sign designating the end of the work zone. The work zone is effective even if no one is working at the time.
- (2) A conviction for speeding in a work zone carries a \$250 fine plus court costs. The court will report the speeding to DMV, who will revoke the person’s driver license if it is 15 mph over the limit and over 55 or over 80 mph.

**NOTE: Show slide, “Fleeing from a Law Enforcement Officer.”**

d) The most serious speed-related offense is fleeing from a law enforcement officer.

(1) Elements:

It is unlawful to:

- (a) operate
  - (b) a motor vehicle
  - (c) on a street, highway or PVA
  - (d) while fleeing from or attempting to elude a law enforcement officer
  - (e) who is in the lawful performance of his duties [N.C.G.S. § 20-141.5].
- (2) A violation of this offense is a Class 1 misdemeanor. If a misdemeanor violation of the speeding to elude arrest

statute is the cause of a person's death, then the driver is guilty of a Class H felony.

- (3) The eluding arrest offense becomes a Class H felony (even without injury) if two (2) or more of the following aggravating factors are present:
  - (a) speeding more than 15 mph over the legal speed limit;
  - (b) gross impairment of the person's faculties while driving due to:
    - i) consumption of an impairing substance, or
    - ii) a blood alcohol concentration of 0.14 or more within a relevant time after driving,
  - (c) reckless driving [N.C.G.S. § 20-140].
  - (d) negligent driving leading to an accident causing:
    - i) property damage in excess of \$1000.00, or
    - ii) personal injury;
  - (e) driving while the person's driver license is revoked,
  - (f) driving more than the posted limit on school property or in a school zone during school hours or in a highway work zone [N.C.G.S. § 20-141(j2)],
  - (g) passing a stopped school bus - N.C.G.S. § 20-217,
  - (h) driving with a child under 12 years of age in the vehicle.
- (4) If a person is arrested for a felony speeding to elude arrest charge under this section, then the law

enforcement agency must seize the motor vehicle and deliver the vehicle to the sheriff of the county in which such offense is committed. If delivery is impractical, then the vehicle is to be placed under the sheriff's constructive possession. The vehicle is held by the sheriff pending the trial of the person or persons operating such motor vehicle and charged with a felony offense under this section. The forfeiture statutes provide procedures whereby defendant-owners, and "innocent owners," including lienholders, may petition the court for pre-trial release of the vehicle, pending the outcome of the case. Assuming all the statutory requirements for forfeiture are met, a judge may order the vehicle forfeited once the case is concluded; otherwise, the judge will order the release of the vehicle. The forfeiture hearing may take place at the defendant's sentencing hearing after conviction; at a separate hearing held after defendant is convicted; at a separate hearing after conviction of the defendant; or at a forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense if the order of arrest for failing to appear has not been set aside by the court.

- (5) When any person's death is caused by the driver committing the offense of felony speeding to elude arrest, the punishment for felony speeding to elude arrest is a Class E felony. For example, an officer pursuing the suspect is killed during the pursuit; the violation of this section will be a Class E felony.
- (6) Proof that the driver knew that the officer was pursuing may include the testimony of the use of blue light and siren. Proof of the name of the registered owner of the vehicle is prima facie evidence that the registered owner was the driver. Prima facie evidence is sufficient evidence for the jury to determine the registered owner was the driver.
- (7) Upon conviction of the misdemeanor, DMV will revoke the operator's driver license for up to one (1) year; for a felony conviction, the license is revoked for two (2) years if two (2) aggravating factors are present. A limited driving privilege is authorized after one (1) year. If there are three (3) or more aggravating factors,

## ***Motor Vehicle Laws***

the license is revoked for three (3) years, and no limited driving privilege is allowed.

- e) Altered vehicles

**NOTE: Show slide, “Altered Vehicles.”**

Proof that a motor vehicle was operated upon any street or highway in excess of speed limits, and it was changed or altered in order to increase its potential for speed beyond the original manufacturer’s design; it is prima facie evidence that the registered owner was the operator at the time of the offense [N.C.G.S. § 20-141.2].

- f) Unlawful speed competition racing [N.C.G.S. § 20-141.3].

**NOTE: Show slide, “Unlawful Speed Competition Racing.”**

The statute refers to unlawful speed competition, but most officers refer to these violations as “racing.” There are two (2) types of racing: (1) willful spontaneous racing; and (2) prearranged racing, as well as other related offenses. One point that should be noted in both the willful and prearranged racing offenses is that a violation of the speed limit is not required for the offense of racing to occur.

- (1) Willful racing [N.C.G.S. § 20-141.3(b)].

- (a) Elements:

It is unlawful to:

- i) operate
- ii) a motor vehicle
- iii) on a street or highway
- iv) willfully
- v) in speed competition with another motor vehicle.

- (b) This offense applies to the driver who spontaneously decides to race with another. If a prior agreement to race can be proved,

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prearranged racing should be charged. This offense is a lesser included offense of prearranged racing. The offense is classified as a Class 2 misdemeanor, and DMV may revoke the driver license for one (1) year.

- (2) Prearranged racing [N.C.G.S. § 20-141.3(a)].
- (a) Elements:
- It is unlawful to:
- i) operate
  - ii) a motor vehicle
  - iii) on a street or highway
  - iv) willfully
  - v) in prearranged speed competition with another motor vehicle.
- (b) This offense is different from willful racing only in its requirement that the race is “prearranged.” Motor vehicles used in prearranged racing in violation of this statute should be seized by the law enforcement officers making the arrest and delivered to the local sheriff for sale. The vehicles can be returned if a bond is posted, if the defendant is acquitted, or if the owner can prove that he did not know his vehicle was being used illegally [N.C.G.S. § 20-141.3(g)]. The offense is classified as a Class 1 misdemeanor, and DMV shall revoke the driver license for three (3) years, but the driver may be reinstated after 18 months.
- (3) Permitting use of the vehicle for prearranged racing [N.C.G.S. § 20-141.3(c)].

- (a) Elements:

It is unlawful for:

## ***Motor Vehicle Laws***

- i) a person who owns a motor vehicle or has one under the person's control
    - ii) to authorize or knowingly permit
    - iii) the motor vehicle to be used in prearranged racing with another motor vehicle
    - iv) on a public street, highway, or thoroughfare.
  - (b) A person could be guilty of this offense even if the person did not own the motor vehicle used. A person would not be guilty if the motor vehicle were used for racing without the person's knowledge. A revocation of 3 years must be imposed by DMV. The driver can apply for a license after 18 months.
- (4) Betting on prearranged racing [N.C.G.S. § 20-141.3(c)].
  - (a) Elements:

It is unlawful to:

    - i) place or receive
    - ii) a bet, wager, or other things of value
    - iii) on the outcome of a prearranged race
    - iv) conducted on any public street, highway, or thoroughfare.
  - (b) The offense occurs only if the race being bet on is prearranged. Although the statute does not state that the race must be between motor vehicles, it would probably be so interpreted. A revocation of three (3) years must be imposed by DMV. The driver can apply for a license after 18 months.

### 7. Reckless and aggressive driving [N.C.G.S. § 20-140].



## ***Motor Vehicle Laws***

**NOTE: Show slide, “Reckless and Aggressive Driving.”**

Reckless driving is a misdemeanor and one of the most difficult motor vehicle offenses to define. The outlines below describe the two (2) kinds of reckless driving. Again, where the elements have been discussed before, they are not discussed here.

Reckless driving involves the intentional, willful, or wanton violation of traffic law (204 N.C. 28). Although there are two (2) kinds of reckless driving, a person can be convicted of only one (1) for each occasion in which he drives recklessly, even if his behavior includes both kinds of reckless driving (256 N.C. 430).

- a) Driving carelessly and recklessly in disregard of rights of others [N.C.G.S. § 20-140(a)].

**NOTE: Show slide, “Careless and Reckless.”**

- (1) Elements:

It is unlawful to:

- (a) drive
  - (b) a vehicle
  - (c) on a highway or public vehicular area
  - (d) carelessly and heedlessly
  - (e) in willful or wanton disregard
  - (f) for the rights and safety of others.
- (2) The words “carelessly and heedlessly” probably mean the same thing as “negligently.” Negligence means the doing of an act that a reasonable person would not do or the failure to do something that a reasonable person would do. Mere negligence is not enough to convict a person of reckless driving (204 N.C. 28; 253 N.C. 802), although it may be enough to find the person liable for money damages in civil court. To commit this offense of reckless driving, the negligence must have been committed in willful or wanton disregard of the rights and safety of others. To willfully disregard, the rights of others generally mean to disregard them intentionally.

To wantonly do something, the party must be “conscious of his conduct and, though having no intent to injure, must be conscious from his knowledge of surrounding circumstances and conditions that his conduct will naturally and probably result in injury.”

- b) Endangering persons or property [N.C.G.S. § 20-140(b)].

**NOTE: Show slide, “Endangering Persons or Property.”**

- (1) Elements:

It is unlawful to:

- (a) drives
  - (b) any vehicle
  - (c) on a highway or public vehicular area
  - (d) without due caution and circumspection and
  - (e) at a speed or in a manner
  - (f) so as to endanger or be likely to endanger any persons or property.
- (2) “Without due caution” means without due prudence regarding danger, and “without circumspection” means without looking around. To drive without prudence and without looking where one is going is to drive negligently. Thus, although the language is different from the language in Element (d) under the N.C.G.S. § 20-140(a) offense of reckless driving, the results are the same. The offense contained on the Uniform Traffic Citation is the offense—N.C.G.S. § 20-140(b)—and not 20-140(a).
- (3) A person can commit this offense even though not exceeding the speed limit if the person drives the vehicle in a manner that will endanger others (249 N.C. 228). Similarly, a person can violate the speeding statute [N.C.G.S. § 20-141] and not be guilty of reckless driving. Factors to consider include where the person is driving (i.e., through a schoolyard); weather

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condition (i.e., snow, ice, rain); the extreme rate of speed; and the manner of driving (i.e., no headlights on), whether other vehicles or persons are close by.

(4) Element (d) does not depend on the driver's intent. Instead, if the driver endangers persons or property or drives at a speed or manner that a reasonable person would say could endanger persons or property, the driver can be guilty of this offense, even if the intentions of the driver were good.

c) Reckless driving in a CMV, which has an oversized or overweight load is a separate offense [N.C.G.S. § 20-140(f)].

**NOTE: Show slide, "Reckless Driving in a CMV."**

d) Aggressive driving [N.C.G.S. § 20-141.6].

**NOTE: Show slide, "Aggressive Driving."**

Any person who operates a motor vehicle on a street, highway, or public vehicular area is guilty of aggressive driving if the person:

(1) Violates either N.C.G.S. § 20-141 or N.C.G.S. § 20-141.1, and

(2) Drives carelessly and heedlessly in willful or wanton disregard of the rights or safety of others. To prove a violation of this subsection, the person must have committed two (2) or more of the following offenses while in violation of N.C.G.S. § 20-141 or N.C.G.S. § 20-141.1:

(a) Running through a red light in violation of N.C.G.S. § 20-158(b)(2) or (b)(3), or N.C.G.S. § 20-158(c)(2) or (c)(3).

(b) Running through a stop sign in violation of N.C.G.S. § 20-158(b)(1) or (c)(1).

(c) Illegal passing in violation of G.S 20-149 or N.C.G.S. § 20-150.

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- (d) Failing to yield right-of-way in violation of G.S. 20-155, 20-156, 20-158(b)(4) or (c)(4) or 20-158.1.
- (e) Following too closely in violation of N.C.G.S. § 20-152.

The offense of reckless driving under N.C.G.S. § 20-140 is a lesser-included offense of aggressive driving.

A person convicted of aggressive driving is guilty of a Class 1 misdemeanor.

- 8. Crash: Failing to stop and remain at the scene of a crash – hit and run

**NOTE: Show slide, “Failure to Stop and Remain at the Scene of a Crash.”**

~~The motor vehicle code uses the term “crash” to refer to accidents and collisions~~ A crash refers to “any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous.” [N.C.G.S. § 20-4.01(4c)]. Drivers who know or should know they have been involved in a crash must stop at the scene, exchange identifying and insurance information with other drivers involved, render reasonable medical assistance, and in some cases, await law enforcement officers. The failure to do so is referred to by officers as “hit and run.” A driver must comply with these requirements even if the crash is minor, and no report needs to be filed. A crash involving death, injury of a human being, total property damage \$1,000.00 or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3, is considered a reportable crash. [N.C.G.S. § 20-4.01(33b)] It must be reported to and investigated by law enforcement authorities. Law enforcement is required to furnish the results of the investigation to the DMV [N.C.G.S. § 20-166.1(e)]. When a parked vehicle is involved in a crash, there are special rules which apply, but identifying information must be left on the vehicle, or DMV must be notified.

- a) Hit and run: personal injury–felony [N.C.G.S. § 20-166(a),(b)].
  - (1) Elements:

It is unlawful to:

## ***Motor Vehicle Laws***

- (a) drive
  - (b) any vehicle
  - (c) involved in a crash, and
  - (d) causing serious bodily injury or death, and
  - (e) the driver knows or reasonably should have known that the vehicle is involved in the crash, and
    - i) the driver willfully fails to stop at the scene of the crash; or
    - ii) willfully fails to remain at the scene until authorized to leave by a law enforcement officer; or
    - iii) willfully fails to return to the scene after temporarily leaving to call for an officer or medical assistance.
- (2) Subsection (a) of N.C.G.S. § 20-166 provides that a driver who knows (or reasonably should know) that he or she has been involved in a crash and knows that the crash resulted in injury or death must immediately stop at the scene. The driver must remain at the scene until a law enforcement officer completes the investigation or authorizes the driver to leave, and the driver may not facilitate, allow, or agree to the removal of the vehicle. However, the driver may leave to summon assistance as long as the driver returns within a reasonable period. The duty to remain at the scene applies to all drivers, regardless of who is at fault. This offense is a Class F felony. G.S 20-166(a1) is differentiated from N.C.G.S. § 20-166(a) if the injury is less than death or serious bodily injury resulting from a crash. This offense is a Class H felony.
- (3) N.C.G.S. § 20-166.2 imposes similar requirements upon passengers to not leaving the scene by driving the vehicle away, not facilitating the removal of the vehicle, and providing identification.

## ***Motor Vehicle Laws***

- (4) Any person (including law enforcement officers) rendering aid at the scene of a motor vehicle crash is protected from civil liability for his actions, except for wanton conduct or intentional wrongdoing [N.C.G.S. § 20-166(d)].
- b) Hit and run: personal injury–misdemeanor
  - (1) Elements:

It is unlawful to:

    - (a) drive
    - (b) a vehicle
    - (c) involved in a crash or collision
    - (d) causing personal injury or death, and
    - (e) the person knows or reasonably should have known that the vehicle is involved in the crash or collision, and
      - i) the person fails to give his or her name, address, and driver license and registration numbers to any person struck and the driver or occupants of any vehicle collided with, or
      - ii) the person fails to render reasonable assistance to any person injured in the crash or collision.
  - (2) A violation of the provision is a Class 1 misdemeanor. The offense differs from the felony because of the failure to identify or render assistance. A driver can be charged with both the felony and the misdemeanor arising out of one (1) collision.
- c) Hit and run: property damage or when personal injury is not apparent [N.C.G.S. § 20-166(c),(cl)].
  - (1) Elements:

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It is unlawful for a person to:

- (a) drive
  - (b) a vehicle
  - (c) involved in a crash causing
    - i) only property damage or
    - ii) personal injury or death that is not apparent, and
  - (d) the person knows or reasonably should have known that the vehicle was involved in the crash; and
    - i) the person fails to stop at the scene of the crash, or
    - ii) fails to give his or her name, address, and driver license and registration numbers to any person in any other vehicle involved in the crash, and to any person whose property is damaged in the crash.
- (2) N.C.G.S. § 20-166(c) requires a driver to stop at the scene when the driver knows (or reasonably should know) he or she has been involved in a crash involving only property damage or resulting in injury or death which the driver did not know of or have reason to know of. The driver must also remain with the vehicle at the scene until a law enforcement officer completes the investigation and must not facilitate, allow or agree to the removal of the vehicle until authorized by the officer to do so. An exception exists if doing so places the driver or others at significant risk of injury. When the damage is to property only, or involves death or injury which was not apparent, the driver must give his or her name, address, driver license number, and vehicle license plate number to the driver or occupants of the other vehicle or to any person whose property was damaged. It does not matter who is at fault; all

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drivers have this duty. This offense is a Class 1 misdemeanor.

d) Hit and run: parked vehicles [N.C.G.S. § 20-166(c)].

(1) Elements:

It is unlawful for:

- (a) a driver
- (b) of a motor vehicle
- (c) that collides with another motor vehicle left parked or unattended
- (d) to fail to report to the owner of the motor vehicle
- (e) within 48 hours of the crash
- (f) the following information:
  - i) date, time, and place of the crash
  - ii) driver's name, address, and driver license number, and
  - iii) registration number of the vehicle being operated at the time.

(2) When a note is left on the car, then the damaged vehicle's owner must also be given a report containing the above information, either orally or by certified mail, return receipt requested, within 48 hours [N.C.G.S. § 20-166.1]. If a report is sent by certified mail, a copy of it must be sent to DMV also [N.C.G.S. § 20-166.1]. Failure to follow this statute is a Class 1 misdemeanor.

e) Hit and run: reports and investigation required [N.C.G.S. § 20-166.1(a)].

(1) Elements:

It is unlawful for a person to:



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- (a) drive
  - (b) a vehicle
  - (c) involved in a crash resulting in personal injury or death, or property damage of \$1,000 or more and
  - (d) fails to immediately notify a law enforcement officer
  - (e) by the quickest means of communication.
- f) Investigation by officer [N.C.G.S. § 20-166.1(c)].
- (1) This section requires the appropriate agency to investigate a reportable crash. The officer must make a written report within 24 hours of the crash. The report must contain information on financial responsibility for the vehicle the officer determined to be the at-fault vehicle. If an injured person dies within 12 months as a result of the crash, the officer must file a supplemental report that includes death. The form used is called a DMV 349 – Crash Report.
  - (2) Any report written by a law enforcement officer under this section may be used in any manner, as evidence, or for any other purpose, in any trial, civil or criminal, as permitted under the rules of evidence. These reports are also considered public records and are open to the public for inspection. There is a section in the statute that does not allow reports of non-law enforcement officers to be used in court.

### 9. Vehicular assaults and homicides

- a) Vehicular assault

**NOTE: Show slide, “Vehicular Assault.”**

- (1) Assault with a deadly weapon inflicting serious injury [N.C.G.S. § 14-32].

Elements:

- (a) commits an assault on another
  - (b) with a deadly weapon
  - (c) inflicts serious injury
- (2) Punishment: AWDWISI is a Class E felony with a maximum term of 98 months.
- (3) An assault charge is proper, even if there is no specific intent to injure the victim. Reckless driving resulting in injury to another but not death arising from conduct that shows a disregard of the consequences can be the basis of an assault charge. For example, a driver drank beer and had six (6) or seven (7) joints, drove a vehicle out to a field where people were camping. The driver ran over the victim and caused him to be paralyzed [43 N.C. App. 541]. This conduct supported an assault charge. Racing, extreme cases of speed, reckless driving, or DWI resulting in injury may be sufficient to charge this offense. Allowing a person to ride on outside of the vehicle, and he is injured when he falls off can be AWDWISI [242 NC 59]. The courts say that criminal conduct must be the type that the driver would be guilty of manslaughter if the victim died, but felony assault when the victim lives.
- (4) Serious injury means physical injury, which causes great pain and suffering (29 N.C. App. 24]. Swelling on the back of the skull [5 N.C. App. 635] or a cut nose and knocked-out teeth [N.C. App. 539] have been held to be a serious injury. Usually, hospitalization of any length is enough to show serious injury.

b) Homicides

**NOTE: Show slide, “Vehicular Homicides.”**

There are several offenses which may be charged arising out of an unintentional killing of a person by the driver of an automobile:

- (1) Second-degree murder [N.C.G.S. § 14-17].

(a) Elements:

A person is guilty of this offense if:

- i) the driver kills
- ii) another living human being
- iii) with malice.

(b) Punishment: Second-degree murder is a Class B2 felony carrying a maximum term of 416 months.

(c) Murder of an unborn child may also be charged if a victim was pregnant at the time of the crash [N.C.G.S. § 14-23.2].

(d) Proof of the element of malice can be inferred from the actions of the driver. The actions must show deliberate dangerous driving, which has a high probability of injury or death to others. For example, passing in a no-passing zone, running a red light at 60-70 mph, and an alcohol concentration on two (2) tests of 0.23 and 0.32 was sufficient for second-degree murder (311 N.C. 391). Multiple violations or statements of the offender may be used to prove this element. The fact that the offender is operating a vehicle while his license is revoked (109 N.C. App. 64) or a DWI is pending, is evidence of malice (109 N.C. App. 64; 105 N.C. App. 377).

(2) Involuntary manslaughter [N.C.G.S. § 14-18].

(a) Elements:

A person is guilty of this offense if:

- i) the driver kills
- ii) another living human being
- iii) by an intentional, willful, or wanton violation of a statute designed for the

protection of human life or limb, human life or limb, such as driving while impaired if the impairment causes death (314 N.C. 633),

OR

by engaging in any other conduct in such a reckless and careless manner as to show a thoughtless disregard for consequences or a heedless indifference to the rights and safety of others (204 N.C. 28).

- (b) Punishment: Involuntary manslaughter is a Class F felony carrying a penalty of up to 68 months imprisonment.
  - (c) Involuntary manslaughter of an unborn child may be charged if a victim was pregnant at the time of the crash [N.C.G.S. § 14-23.4].
- (3) Felony death by vehicle [N.C.G.S. § 20-141.4(a)(1)].
- (a) Elements:  
A person is guilty of this offense if:
    - i) the driver unintentionally
    - ii) causes the death
    - iii) of another person
    - iv) while driving while impaired (DWI) or DWI in a CMV and
    - v) the DWI was the proximate cause of the death.
  - (b) Punishment: Punishable as a Class D felony [N.C.G.S. § 20-141.4(b)(2)].
- (4) Misdemeanor death by vehicle [N.C.G.S. § 20-141.4(a2)].

(a) Elements:

A person is guilty of this offense if:

- i) the driver unintentionally
- ii) causes the death
- iii) of another person
- iv) while violating any State law or local ordinance concerning the operation of a vehicle or regulating traffic (other than DWI or DWI in a CMV), and
- v) the violation was the proximate cause of the death.

(b) Punishment: Punishable as a Class A1 misdemeanor, which carries a maximum punishment of 120 days in jail and a fine in the discretion of the court [N.C.G.S. § 20-141.4(b)(5)].

(5) Felony serious injury by vehicle [N.C.G.S. § 20-141.4 (a3)].

(a) Elements:

A person is guilty of this offense if:

- i) the driver unintentionally
- ii) causes serious injury to
- iii) another person
- iv) while DWI or DWI in a CMV and
- v) the DWI was the proximate cause of the serious injury.

(b) Punishment: Punishable as a Class F felony [N.C.G.S. § 20-141.4(b)(4)].

(6) Aggravated felony serious injury by vehicle [N.C.G.S. § 20-141.4(a4)].

(a) Elements:

A person is guilty of this offense if:

- i) the driver unintentionally
- ii) causes serious injury to
- iii) another person
- iv) while DWI or DWI in a CMV and
- v) the DWI was the proximate cause of the serious injury
- vi) and the driver has a previous DWI conviction within seven (7) years of the date of the offense.

(b) Punishment: Punishable as a Class E Felony [N.C.G.S. § 20-141.4(b)(3)].

(7) Aggravated felony death by vehicle [N.C.G.S. § 20-141.4(a5)].

(a) Elements:

A person is guilty of this offense if:

- i) the driver unintentionally
- ii) causes the death of another person
- iii) while engaged in the offense of impaired driving or impaired driving in a CMV and
- iv) the commission of the offense is the proximate cause of the death (and)

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- v) the driver has a previous conviction involving impaired driving within seven (7) years of the date of the offense.
- (b) Punishment: Punishable as a Class D felony [N.C.G.S. § 20-141.4(b)(1)].
- (8) Repeat felony death by vehicle [N.C.G.S. § 20-141.4(a6)].
  - (a) Elements

A person is guilty of this offense if:

    - i) the driver commits the offense of felony death by vehicle or aggravated felony death by vehicle and
    - ii) has a previous conviction of either offense or
    - iii) has a previous conviction of murder or manslaughter based on driving while impaired.
  - (b) Punishment: Punishable the same as if convicted of second-degree murder [N.C.G.S. § 20-141.4(a6)(3)].
  - (c) The death by vehicle offenses are intended to cover killings committed while the offender is operating a vehicle in violation of the law when the violation is not sufficiently reckless or careless to establish involuntary manslaughter.
- 10. Statutes affecting the operation of police and emergency vehicles
  - a) Non-emergency driving

**NOTE: Show slide, “Police Vehicles – Non-Emergency Driving.”**

- (1) N.C.G.S. § 20-168(a) states, in pertinent part, that “The provisions of this Article (Motor Vehicle Act of 1937) applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or

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operated by the State or any political subdivision thereof.”

- (2) In non-emergency driving, officers must comply fully with state traffic law requirements or risk both criminal charges and civil liability. Loss of law enforcement certification may result from certain motor vehicle violations.
- (3) In addition to state (Chapter 20) requirements, there may be local (county and city) laws that impose additional obligations or restrictions concerning the operation of motor vehicles. Violations of local ordinances may also result in criminal or civil liability or both. A violation of department policy would most likely be construed by a court as negligence on the part of the officer, and the supervisor, should he/she not enforce the policy. This would have a significant impact on the liability of both.
- (4) “Negligence Per Se” – A legal term that presumes the operator is responsible for any injuries or death if a crash occurs where a violation of the law was the proximate cause of the crash.

b) Emergency driving

**NOTE: Show slide, “Police Vehicles – Emergency Driving.”**

Definition: “Emergency Response Driving” – Includes pursuit driving, attempting to apprehend violators, responding to calls and/or emergency situations, or any other response where an officer intentionally operates faster than the posted speed limit and/or expects other drivers to yield the right-of-way, or does not strictly follow any other rules of the road during the response activity.

For an operation to be considered or defined “emergency” operation, it must be a “bona fide” emergency. N.C.G.S. § 20-156 prohibits the “arbitrary exercise of the right-of-way privilege.” Therefore, before an operation may qualify as an “emergency,” the reason for the type of response must be logical and reasonable. This is a decision made by the responding officer in most departments, or by policy or general practice, but in any case, may be scrutinized by a jury.



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- (1) Common-Law. Officers have a common law duty to exercise “ordinary care” in the operation of his/her vehicle (or in the conduct of the emergency operation). This “ordinary care” will depend upon all of the existing facts and circumstances that are then known by the officer or officers involved.
  - (2) Statutory Law. Chapter 20 provides officers involved in emergency vehicle operations limited authority to disregard speed limits and right-of-way laws. However, there are limits to this authority.
- c) Exemption from speed laws

**NOTE: Show slide, “Exemption from Speed Laws.”**

N.C.G.S. § 20-145 provides that law enforcement vehicles, fire department vehicles (but not personal vehicles of volunteer fire personnel), rescue squad vehicles, and ambulances are under certain conditions exempt from the speed limit. For law enforcement officers to be exempt, they must be apprehending persons charged with or suspected of violating the law. Neither the blue light nor the siren is required, but both are suggested. The vehicles must, nevertheless, be operated with due regard for the safety of others.

We may have an exception to the “posted” speed limit, but this DOES NOT relieve an officer from “ordinary care,” “reasonable and prudent,” or the “due regard for the safety” clauses. We are accountable for our actions, both in criminal and civil court. Officers must study their agency policy and follow it.

- d) Exemptions from right-of-way

**NOTE: Show slide, “Exemptions from Right-Of-Way.”**

The right-of-way laws require vehicles, in several instances, to yield to other vehicles. (These laws apply to all vehicles.)

- (1) N.C.G.S. § 20-156 requires the public to yield at intersections provided the emergency vehicle is operating a blue light and siren—no blue light and no siren, no exception! Also, a department policy may require the use of headlights or “wig-wag” lights.

Therefore, officers are required to activate blue lights, other lights, and siren to be within policy. It is the officer's responsibility to ensure that the patrol vehicle can proceed safely through an intersection. If the officer's departmental regulations call for the use of additional equipment, such as headlights, flashers, etc., then failing to activate them could be considered "negligence per se" in a civil action.

- (2) N.C.G.S. § 20-156(b) states that this exemption does not relieve an officer from "due regard for the safety..." requirement.
- (3) When approached by law enforcement, fire, or emergency vehicles which have their warning lights and sirens on, the driver (citizen) must yield [N.C.G.S. § 20.156(b)]. However, case law indicates that warnings (lights and sirens) must be such that the citizen driver has the opportunity to stop or yield [96 N.C. App. 480].
- (4) The citizen driver of a vehicle on a highway shall yield the right-of-way to law enforcement and fire department vehicles, public and private ambulances, certain human tissue and organ transporting vehicles, rescue squad emergency vehicles, and county fire marshals' and civil preparedness coordinators' vehicles, when such emergency vehicles are using their blue or red lights and a siren audible for at least 1000 feet.

N.C.G.S. § 20-156 can be thought of as the "right of way" statute in the context of intersections and highway entrances. The statute requires a driver to yield the right-of-way to the covered vehicles that meet the statute's requirement, even if the driver has the green light at the intersection and the covered vehicle does not or if the covered vehicle is attempting to pull onto the highway from a driveway, alley, or private road.

This statute does not relieve the drivers of such emergency vehicles of the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect any such drivers from the consequences of any arbitrary exercise of such right-of-way [20-156].

An “arbitrary exercise” of this right means that a jury can decide if the use of the right-of-way privilege was for a justifiable reason. If a jury were to determine the reason was not justified, then the use would not be protected in a civil action.

(5) “Pull over.”

N.C.G.S. § 20-157 is another right-of-way statute for emergency operations. This statute can be thought of as the “right-of-way” statute in the non-intersection context. It requires, among other things, that drivers “pull over” to the right-hand edge or curb of the road, clear of any intersection, and remain there when approached by a law-enforcement vehicle, fire-department vehicle, private or public ambulance, rescue squad emergency vehicle, Division of Marine Fisheries vehicle, Division of Parks and Recreation vehicle or North Carolina Forest Service vehicle when those vehicles are giving a warning signal by appropriate light and bell, siren or exhaust whistle audible at a distance, not less than 1000 feet. [N.C.G.S. § 20-157(a)]

The driver is required to remain in that position until the covered vehicle has passed them or until they are otherwise directed by law enforcement.

(a) The requirement to “pull-over” does not apply if the driver is traveling in the opposite lanes of travel from the covered vehicle on a four-lane highway with a median divider separating the opposite lane of travel. [N.C.G.S. § 20-157(a)]

(b) “Move over.”

Also, if any of the covered vehicles or any “public service vehicle” are parked within 12 feet of a roadway and are emitting the appropriate emergency light, an approaching driver must, as soon as it is safe:

i) **On a roadway with at least two (2) lanes for traffic proceeding in the direction of the approaching vehicle**

**and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic -** move their vehicle into a lane that is not the nearest lane to the parked or standing authorized emergency vehicle or public service vehicle; or

- ii) **On a roadway with only one (1) lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic –** reduce their speed and be prepared to stop until completely past the emergency or public service vehicle. [N.C.G.S. § 20-157(f)]

As always, the approaching driver may not change lanes unless and until it can be safely done without interfering with traffic. [N.C.G.S. § 20-157(f)]

“Public service vehicle means a vehicle that is (i) is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, (ii) is being used to install, maintain, or restore utility service, including electric, cable, telephone, water, wastewater, communications, and gas, (iii) is being used in the collection of refuse, solid waste, or recycling, or (iv) is a highway maintenance vehicle owned and operated or contracted by the State or a local government and is operating an amber-colored flashing light.”<sup>108</sup>

- e) Use of emergency equipment

**NOTE: Show slide, “Use of Emergency Equipment.”**

The decision to use emergency equipment is determined by the individual officer, either through the interpretation of usual or customary practices, his/her judgment, departmental policy or directives from communicators or other officers. Many departments have response codes specified but leave it up to

the officer to determine when to respond in the manner specified. Again, violations may leave the officer individually liable.

- (1) Use of sirens – It is unlawful for a vehicle to be equipped with or for a person to use a siren on a vehicle unless the vehicle is used for law enforcement purposes, is an ambulance, is a fire-fighting vehicle, or other emergency vehicles. For specific details concerning exactly which vehicles can use a siren, see G. S. 20-125.
- (2) Use of red/blue lights – It is unlawful for a vehicle to be equipped with or for a person to use a red light (other than those required for brake lights, etc.) on a vehicle unless the vehicle is used for law enforcement purposes, is an ambulance, school bus, fire-fighting vehicle or other emergency vehicles. For specific details concerning exactly which vehicles can use a red/blue light, see N.C.G.S. § 20-130.1(a),(b).
- (3) It is unlawful for a person to possess or install a blue light in or on any vehicle, except vehicles used primarily by law enforcement officers, in the performance of their official duties [N.C.G.S. § 20-130.1(c), (d)]. An exception is if the blue light is inoperable and is installed on a registered specially constructed vehicle used for shows, exhibitions, parades, etc. [N.C.G.S. § 20-130.1(c1)].
- (4) Failure to stop for blue/red light and siren – When a law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency vehicle is using its red or blue light(s) and a siren (audible under normal conditions from a distance, not less than 1000 feet), all other vehicles shall pull off to the right as close as possible to the curb or edge, and clear of all intersections, and shall stop and remain there until the emergency vehicle passes or until otherwise directed by a law enforcement officer or traffic officer [N.C.G.S. § 20-157(a)]. This shall not apply to vehicles traveling in the opposite direction on a four-lane limited-access highway, which has a median divider.

Officers charging this offense should immediately after that test the siren on the emergency vehicle to determine whether it can be heard under normal conditions for at least 1000 feet. The easiest way to do this is for the charging officer to measure off and stand 1000 feet from the emergency vehicle and then have someone else turn on the siren. This way, the only witness needed to prove this element of the offense is the charging officer. The driver of the emergency vehicle (or another suitable witness) will also be needed to testify to the remaining elements of the offense. This should not be done until the emergency run is completed.

(5) North Carolina Center for Missing Persons – Blue Alert System

The purpose of the Blue Alert System is to aid in the apprehension of a suspect who kills or inflicts serious bodily injury on a law enforcement officer by providing a statewide system for the rapid dissemination of information regarding the suspect.

The following criteria must be met:

- (a) “A law enforcement officer is killed or suffers serious bodily injury.
- (b) A law enforcement agency with jurisdiction (i) determines that the suspect poses a threat to the public and other law enforcement personnel and (ii) possesses information that may assist in locating the suspect, including information regarding the suspect’s vehicle, complete or partial license plate information, and a detailed description of the suspect, or that a law enforcement officer is missing while on duty under the circumstances warranting concern for the law enforcement officer’s safety.
- (c) The head of a law enforcement agency with jurisdiction recommends the issuance of a blue alert to the [North Carolina] Center [for Missing Persons].”<sup>109</sup>

## ***Motor Vehicle Laws***

The North Carolina Center for Missing Persons works in partnership with radio and television broadcasters, the North Carolina Department of Transportation, and the North Carolina Division of Emergency Management in efforts to disseminate the broadcasted messages statewide promptly.<sup>110</sup>

**NOTE: Show slide, “Civil Liability.”**

- f) Civil liability – If the actions of an officer were “wrong” and can be connected through a causal chain, to the department (the deepest pocket), the State or municipality may be sued.

**NOTE: Show slide, “Supervisory Liability.”**

- g) Supervisory liability – Supervisors and trainers of officers conducting law enforcement vehicle operations may be held liable in state and federal court for their participation in a supervised officer’s negligence or intentional misconduct.

**NOTE: Show slide, “Miscellaneous Provisions Relating to Emergency Vehicles.”**

- h) Miscellaneous provisions relating to emergency vehicles
  - (1) Vehicles which resemble law enforcement vehicles – It is unlawful for a person who is not a law enforcement officer, with the intent to impersonate a law enforcement officer, to operate any vehicle which by its coloration, insignia, lettering, and blue or red light resemble a vehicle owned, possessed, or operated by any law enforcement agency [N.C.G.S. § 20-137.2]. This statute is seldom used by officers since most defendants will only use a blue or red light. It is much more common to charge a defendant with unlawful use of blue or red light (see above). (See also, Impersonation of peace officers, N.C.G.S. § 14-277.)
  - (2) Driving over a fire hose – It is unlawful to drive a motor vehicle over a fire hose or any other firefighting equipment that is being used [N.C.G.S. § 20-157(d)].
  - (3) Blocking firefighting equipment from water supply – It is unlawful to block firefighting equipment from its source of supply, regardless of its distance from the fire [N.C.G.S. § 20-157(d)].

- (4) Following a fire truck – It is unlawful for a vehicle (other than one on official business) to follow a fire-fighting vehicle on a fire call closer than one (1) block (within 400 feet outside of a city) or to drive into or park within one (1) block (within 400 feet outside of a city) of where a firefighting vehicle has stopped to answer a fire alarm [N.C.G.S. § 20-157(b),(c)].
- (5) Parking within 100 feet of emergency vehicle – It is unlawful for the driver of a vehicle (other than one on official business) to park and leave standing a vehicle within 100 feet of law enforcement or fire department vehicles, public or private ambulances, or rescue squad emergency vehicles which are engaged in the investigation of a crash or engaged in rendering assistance to victims of a crash [N.C.G.S. § 20-157(e)].
- (6) Use of amber lights on certain vehicles – All wreckers shall have an amber-colored flashing light, located so as to be clearly visible in all directions for 500 feet, which shall be activated when at the scene of a crash or recovery operation and when towing a vehicle whose width exceeds 96 inches or which exceeds the width of the wrecker. Certain other vehicles may use such a light [N.C.G.S. § 20-130.2]. Rural letter carriers and newspaper delivery vehicles must be equipped with amber operating lights and have them operating at all times. [N.C.G.S. § 20-134(b)].

11. Miscellaneous

**NOTE: Show slides, “Miscellaneous Motor Vehicle Laws.”**

- a) Directing traffic – failure to obey a traffic officer – This statute authorized law enforcement officers and others to direct traffic. No person shall willfully fail to obey any lawful order or direction of any law enforcement officer, which relates to the control of traffic. In addition, this statute also applies to orders and directions of traffic-control officers (if invested by law with authority to direct, control, or regulate traffic), uniformed regular and volunteer firemen and uniformed regular and volunteer rescue squad members at scenes of crashes, fires, or other hazards [N.C.G.S. § 20-114.1(a),(b)].



## ***Motor Vehicle Laws***

Upon compliance with certain strict requirements, a chief of police or sheriff may appoint traffic-control officers (who are not law enforcement officers) to direct, control, or regulate traffic. For specific details concerning the appointment of traffic-control officers, see N.C.G.S. § 20-114.1(c),(d).

- b) The officer's duty to enforce Motor Vehicle Laws – N.C.G.S. § 20-114 and 20-183 make it the duty of law enforcement officers to enforce the Motor Vehicle Laws. N.C.G.S. § 20-183 further provides that an officer stopping a motorist for such a violation outside the corporate limits of a city or town must use a blue light or siren before doing so. Warning tickets are also authorized under certain circumstances.
- c) Traffic laws apply to persons riding animals [N.C.G.S. § 20--171].

The laws applicable to vehicles also apply to persons riding animals or driving an animal-drawn vehicle upon a highway, except those laws which by their nature, can have no application. DWI does not apply to riding a “horse” but does to other animals [N.C.G.S. § 20-138.1(e)].

- d) Driving on roads under construction [G.S 136-26].

It is unlawful to willfully drive on any road which is under construction or closed for repairs if the road is marked by signs, lights, or barriers, etc., as being closed. It is also unlawful to tear down, move, injure, or destroy any such sign, light, or barrier, etc.

- e) Pedestrians
  - (1) “Walk” and “Don’t Walk” signs control were present [N.C.G.S. § 20-172].
  - (2) If traffic control signals are not in place or operation, the driver must yield to pedestrians crossing roadways at marked or unmarked crosswalks [N.C.G.S. § 20-173(a) and (b)]. An unmarked crosswalk is that area within an intersection that also lies within the lateral boundaries of a sidewalk projected across the intersection [272 N.C. 426].

## ***Motor Vehicle Laws***

- (3) Drivers must yield to pedestrians on the sidewalk when entering or emerging from an alley, building entrance, road, or driveway [N.C.G.S. § 20-173(c)].
  - (4) Pedestrians crossing at any point other than marked or unmarked crosswalk must yield to vehicles. Pedestrians must cross in crosswalks and use a pedestrian bridge, if available [N.C.G.S. § 20-174].
  - (5) Pedestrians must walk on the sidewalk or, if none and it is practicable, walk on the left side facing traffic [N.C.G.S. § 20-174(d)].
  - (6) It is unlawful to willfully stand, sit or lie upon a highway in such a manner as to impede the regular flow of traffic [N.C.G.S. § 20-174.1].
  - (7) A person may stand on the shoulder of a highway other than an interstate or controlled access facility to solicit a ride [N.C.G.S. § 20-175(a)].
  - (8) A person may not stand on the right-of-way of a state highway to solicit business or sell items. This law does not apply to city streets or persons licensed by the Department of Transportation [N.C.G.S. § 175(b)].
  - (9) Drivers must exercise due care to avoid hitting a pedestrian even if the pedestrian is not following these rules [N.C.G.S. § 20-174(e)].
- f) False report of a theft of a motor vehicle [N.C.G.S. § 20-102.1].

It is unlawful to knowingly make a false report of the theft of a motor vehicle to a law enforcement officer or DMV.

- g) Receiving or transferring stolen vehicles [N.C.G.S. § 20-106]. It is a felony (Class I) to receive, transfer, or possess a vehicle that the person knows or has reason to believe has been stolen or unlawfully taken. This does not apply to law enforcement officers engaged in the performance of their duties. The possessing and receiving stolen goods statutes found at N.C.G.S. § 14-71 or 14-71.1 also apply to vehicles and are both Class H felonies.

## ***Motor Vehicle Laws***

- h) Fraud in connection with the rental of a motor vehicle [N.C.G.S. § 20-106.1].

It is unlawful (a felony) to rent a motor vehicle with the intent to defraud the owner, to agree in writing to return the vehicle at a certain place or time, and to willfully refuse to return it as agreed or to secrete, convert, sell, or attempt to sell all or any part of the vehicle.

- i) Injuring or tampering with vehicle [N.C.G.S. § 20-107].

It is unlawful to willfully injure or tamper with any vehicle or to break or remove any part(s) from a vehicle without the owner's consent. It is also unlawful, with the intent to steal, commit any malicious mischief, injury, or other crime, to do any of the following:

- (1) Climb into or upon any vehicle, whether in motion or at rest;
- (2) Attempt to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while it is at rest and unattended; or
- (3) Set any vehicle in motion while it is at rest and unattended.

- j) Willful injury to personal property [N.C.G.S. § 14-160].

It is unlawful for a person to wantonly and willfully (not accidentally) injure or damage the personal property (e.g., police car) of another. This law is available to use when a vehicle is intentionally struck during a pursuit. The charge must include whether the damage is more or less than \$200.00. This charge will allow the court to order restitution for damage to a police car.

- k) Use of interstate or controlled-access highways [N.C.G.S. § 20-140.3].

It is unlawful for any person:

- (1) To drive a vehicle over, upon, or across any curb, central dividing section or other separation or dividing line on such highways;

- (2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, separation section, or line on such highways;
- (3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on such highways;
- (4) To drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by public authority;
- (5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of such highway, except in emergencies and when directed to do so by a law enforcement officer, or at designated parking areas [this was also discussed in the section on parking offenses]; or
- (6) To fail to yield the right-of-way when entering the highway to any vehicle already traveling on the highway.
- (7) Law enforcement officers, ambulances, and fire vehicles are specifically authorized to cross the median of divided highways under certain limited circumstances.

1) Blind pedestrians' right-of-way [N.C.G.S. § 20-175.2].

At any place on a street or highway where traffic is not regulated by a traffic officer or by traffic-control signals, all vehicles shall give the right-of-way to any approaching blind person who has a white cane or a white cane with a red tip extended before him at arm's length or who is accompanied by a guide dog.

At any place where the traffic is regulated by traffic-control signals, if they have a white cane or white cane tipped in red extended at arm's length or are accompanied by a guide dog and if the traffic-control signal changes while the blind person is partly across the roadway, all vehicles shall stop and remain

stationary until such pedestrian has completed crossing the roadway.

12. Department of Transportation highway ordinances

**NOTE: Show slide, “Department of Transportation Highway Ordinances.”**

The Department of Transportation (DOT) has the authority to enact rules governing the use of state highways. These are known as general ordinances. A violation of any general ordinance is a Class 1 misdemeanor [N.C.G.S. § 136-18(5)]. The ordinances are published in the North Carolina Administrative Code and are found at 19A NCAC. 2E .0400, et seq. The ordinances prohibit the following conduct:

- a) Piling obstructions on highways or within the right-of-way – .0402.
- b) Depositing mud by a dual-wheel or 4-wheel drive vehicle upon the paved portion of a state highway to create a hazard – .0403.
- c) Highway obstructions, including driveways, headwalls, fences, mailboxes, newspaper delivery boxes, and other obstructions that interfere with traffic or maintenance – .0404.
- d) Moving vehicles which damage the surface or shoulder of the highway without a permit – .0405.
- e) Service of a motor vehicle by a filling station upon the travel portion of a state highway – .0406.
- f) Control and regulation of roadside parks and rest areas –.0407.
- g) Fishing from bridges on any Interstate or other controlled-access highway prohibited – .0408.
- h) Riding animal, operating bicycle, horse-drawn wagon, non-motorized vehicle or moped on an Interstate or fully controlled-access highway prohibited – .0409.
- i) Hitchhiking on Interstate or controlled-access highway prohibited, except in emergency – .0410.
- j) Jumping from bridges where a sign prohibits is unlawful – .0411.

## ***Motor Vehicle Laws***

- k) Parades on highways of the state highway system outside municipalities prohibited – .0413.
- l) Parking vehicles for sale or distribution of goods from the right-of-way of the state highway system prohibited – .0414.
- m) Advertising signs within the highway right-of-way prohibited – .0415.
- n) Private drives or roads intersecting with highways must be approved by DOT – .0416.
- o) Commercial entrances erected within the right-of-way only after permit obtained – .0417.
- p) Fencing within the highway right-of-way prohibited without a permit – .0418.
- q) Cultivating crops and maintaining pastures within the right-of-way without a permit prohibited – .0419.
- r) Construction of utilities within the right-of-way without a permit prohibited – .0420.
- s) Utilities wires or cables over the highways regulated – .0421.
- t) Unlawful to park, stand, or otherwise obstruct a runaway truck ramp – .0422.
- u) Regulation of airport construction – .0423.
- v) Access routes for twin trailers – .0426.
- w) Use of right-of-way as bicycle trails – .0427

### H. DWI and Other Implied Consent Offenses

**NOTE: Show slide, “Implied Consent Offenses.”**

On October 1, 1983, the North Carolina General Assembly passed a comprehensive rewrite of the laws relating to impaired driving. The laws were collectively known as The Safe Roads Act of 1983 and became a new state statute that gave law enforcement a strong weapon in the war against impaired driving. This law replaced an old statute, Driving Under the Influence (DUI), which was very limited in its scope and very weak in its enforcement ability.

## ***Motor Vehicle Laws***

This new legislation had as its centerpiece N.C.G.S. § 20-138.1, Driving While Impaired (DWI), and gave law enforcement a strong weapon for reducing deaths and injuries on the highways.

Since its inception, this law has been modified to continually strengthen and enhance its intended purpose. For example, The Motor Vehicle Driver Protection Act of 2006 strengthened several DWI provisions. During this block of instruction, we will examine this section of law as it relates to law enforcement officers, the more important points which will aid you in removing these dangerous motorists from our highways.

Studies show that for every impaired driver arrested, there are 250 to 2000 impaired drivers at the same time who were not arrested [128 S. Ct. 1581, 1593-4]. Approximately one-third of all fatalities are caused by the impaired driver. Removing impaired drivers from the highways saves lives.

### 1. Terms and definitions

**NOTE: Show slide, “Terms and Definitions.”**

- a) Alcohol – “Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol” [N.C.G.S. § 20-4.01(1a)].

The officer is not required to prove the type of alcohol.

- b) “Alcohol concentration (A/C) – The concentration of alcohol in a person, expressed as either:

**NOTE: Show slide, “Alcohol Concentration.”**

- (1) Grams of alcohol per 100 milliliters of blood; or
- (2) Grams of alcohol per 210 liters of breath
- (3) The results of the defendant’s alcohol concentration determined by a chemical analysis of the defendant’s breath or blood shall be reported to the hundredths [Ex. 0.08]. Any result between hundredths shall be reported to the next lower hundredth [Ex. 0.089 is reported as 0.08].” [N.C.G.S. § 20-4.01(1b)]
- (4) The current breath-testing instrument used in North Carolina is manufactured by Intoximeter, Inc., and called the Intox ECIR II: .08 grams of alcohol per 210

liters of breath OR 100 milliliters of blood. The courts, officers, and others refer to the results of a breath or blood test as a BAC, but the correct term is alcohol concentration or A/C.

- c) Chemical analysis – “A test or tests of the breath, blood, or other bodily fluid or substance of a person to determine the person’s alcohol concentration or presence of an impairing substance, performed in accordance with N.C.G.S. § 20-139.1, including duplicate or sequential analyses.” [N.C.G.S. § 20-4.01(3a)]. (discussed in Section 4 of DWI and Other Implied Consent Offenses of this outline).
- d) Chemical analyst – “A person granted a permit by the Department of Health and Human Services under G.S. 20-139.1 to perform chemical analyses.” [N.C.G.S. § 20-4.01(3b)].

A separate 40-hour course is required to become a chemical analyst. The Forensic Tests for Alcohol (FTA) branch of the Department of Health and Human Services (DHHS) issues the permits for chemical analysts.

- e) Conviction – Conviction includes a guilty verdict, guilty plea, plea of no contest, or anything that would be treated as a conviction under N.C.G.S. § 20-4.01(4a) (officers should consult N.C.G.S. § 20-4.01(4a) directly).

**NOTE: Instructors should consult N.C.G.S. § 20-4.01(4a) directly.**

- f) Impairing substance – “Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person’s physical or mental faculties, or any combination of these substances.” [N.C.G.S. § 20-4.01(14a)].

**NOTE: Show slide, “Impairing Substances.”**

Alcohol is the most prevalent impairing substance, but any substance which impairs meets the definition. The officer is not required to prove the type of substance—but can testify if he knows.

**NOTE: Show slide, “Implied Consent.”**



## ***Motor Vehicle Laws***

- g) Implied consent offense – Any offense involving impaired driving or an alcohol-related offense which is specifically made subject to the implied-consent provisions [N.C.G.S. § 20-16.2(a1)].

Officers should note that N.C.G.S. § 20-16.2(a) provides that you and every other person who drives a vehicle on a highway or public vehicular area in this State agrees to submit to a chemical analysis if charged with an implied-consent offense. If a driver is properly charged with an implied consent offense and refuses to consent to a chemical analysis, then DMV will revoke the person's driver license for one (1) year. This is the procedure used to encourage impaired drivers to take the Intox ECIR II test. It applies only to certain laws known as "implied-consent offenses." The law assumes you consent until you indicate otherwise. DMV will allow you to drive until you refuse to take the test, and if you refuse, your privilege to drive will be revoked.

**NOTE: Show slide, "Offense Involving Impaired Driving."**

- h) An offense involving impaired driving [N.C.G.S. § 20-4.01(24a)]. – A list of offenses that are used in DWI sentencing, N.C.G.S. § 20-179, the Habitual DWI law, N.C.G.S. § 20-138.5, and felony death by vehicle and injury by vehicle statutes, N.C.G.S. § 20-141.6 as the basis for increased punishment. Rather than list these statutes each time, the phrase "offense involving impaired driving" is used. These offenses are any of the following offenses:
- (1) "Impaired driving **under** N.C.G.S. § 20-138.1.
  - (2) ~~Felony Death by Vehicle, Misdemeanor Death by Vehicle, Felony Serious Injury by Vehicle, Aggravated Felony Serious Injury by Vehicle, Aggravated Felony Death by Vehicle~~ [N.C.G.S. § 20-141.4] **Any offense set forth under G.S. 141.4 when conviction is based upon impaired driving** or a substantially equivalent offense under previous law;
  - (3) **First or second degree murder under G.S. 14-17 or involuntary manslaughter under N.C.G.S. § 14-18 when conviction is based on a DWI offense or a substantially equivalent similar** offense under previous law;

## ***Motor Vehicle Laws***

- (4) First and Second Degree Murder [N.C.G.S. § 14-17];
- (5) An offense **committed** in another jurisdiction **which prohibits** substantially **similar conduct prohibited by the offenses in this subsection.**
- (6) A repealed or superseded offense substantially **similar equivalent** to impaired driving, including offenses under former N.C.G.S. § 20-138 (~~DUI and driving with a blood alcohol content of 0.10 or above~~) and **or** N.C.G.S. § 20-139 (~~DUI-Drugs~~). ~~An offense under former N.C.G.S. § 20-140(e) [reckless driving after drinking] is not an offense involving impaired driving [N.C.G.S. § 20-4.01(24a)].~~
- (7) Impaired driving in a commercial motor vehicle (~~CMV~~) under N.C.G.S. § 20-138.2, (~~DWI and DWI in a CMV arising out of one (1) transaction is considered only a single conviction~~). **except that conviction of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.**
- (8) Habitual Impaired Driving under G.S. § **20-138.5**.”
- (9) ~~A driver license with a lower alcohol concentration restriction.~~

~~This definition does not include “driving after consuming alcohol or drugs by a person under age 21,” N.C.G.S. § 20-138.3.~~

**NOTE: Show slide, “Passenger Area of a Motor Vehicle.”**

- i) Passenger area of a motor vehicle – The “area designed to seat the driver and passengers and any area within reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback, or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area” [N.C.G.S. § 18B-401].

This definition is from the ABC laws and is used when referring to transporting alcohol, N.C.G.S. § 18B-401, and the

open container law, N.C.G.S. § 20-138.7. This definition applies only to transporting alcoholic beverages.

**NOTE: Show slide, “Relevant Time after Driving.”**

- j) Relevant time after the driving – “Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.” [N.C.G.S. § 20-4.01(33a)]. This phrase is found in the per se provisions of DWI, N.C.G.S. § 20-138.1(a)(2), and DWI in a CMV, N.C.G.S. § 20-138.2. “Per se” means “by itself” or that if alcohol concentration listed in the statute (0.08 or 0.04 for CMV) is proved, the driver is guilty. The phrase “relevant time after the driving” means that the “per se” limit is proven if a law enforcement officer can show the driver had 0.08 or more at the time he took the test or at the time he drove, or at any other time by extrapolation (0.07 at time of test but was .08 an hour earlier at time drove) the driver is guilty. As long as at least 0.08 of the alcohol concentration was from alcohol the driver drank before or during the time of the driving, the driver is guilty; except that a person who has submitted to a chemical analysis of a blood sample may use the result as rebuttal that he did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

**NOTE: Show slide, “Under the Influence of an Impairing Substance.”**

- k) Under the influence of an impairing substance – “The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance” [N.C.G.S. § 20-4.01(48b)]. Appreciably impaired means noticeably impaired (13 N.C. App. 224).

Proof of impairment is the key to a DWI case. To show proof of impairment, the officer should conduct performance tests and note all observations of the driver.

2. Driving while impaired [N.C.G.S. § 20-138.1].

**NOTE: Show slide, “DWI Elements.”**

- a) Elements in the offense – It is unlawful for a person to:
- (1) Drives

## ***Motor Vehicle Laws***

- (2) Any vehicle [not just a motor vehicle]
- (3) Upon any highway, any street, or any public vehicular area within this State:
  - (a) while under the influence of an impairing substance;
  - OR
  - (b) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration;
  - OR
  - (c) with any amount of a Schedule I controlled substance, as listed in N.C.G.S. § 90-89, or its metabolites in his blood or urine."

- b) It should be noted that N.C.G.S. § 20-138.1 applies to any vehicle except a horse, which was specifically excepted by the statute itself [N.C.G.S. § 20-138.1(e)]. Otherwise, an operator of any vehicle may be charged. Also note that this statute is enforceable on a street, highway, or public vehicular area.
- c) Another point in this statute is that an operator may be deemed impaired in one (1) of two (2) ways. First, by being "under the influence" of an impairing substance, which is ANY impairing substance – not just alcohol. The officer must present evidence of impairment in court, as we will discuss later. Second, if at any relevant time after driving the operator is proven to have an alcohol concentration of 0.08 or more, the driver is guilty. This is called an "illegal per se," not the "legal limit." If the driver's alcohol concentration (A/C) is 0.08 or more, no evidence of impairment needs to be shown. Many judges want to hear evidence of impairment to assure them that the chemical analysis was accurate. Always write notes of evidence of impairment you observe.
- d) An officer is not required to prove the type of substance which was consumed or caused the impairment, or how many

different substances may have been consumed. Just prove that impairment exists as outlined in the elements.

3. DWI procedures

Certain procedures should be followed in a DWI or other implied consent cases. The ability to obtain evidence of a person's alcohol concentration or the presence of drugs requires the officer to be very careful to follow each required step. Otherwise, the results of the analysis may be excluded from evidence.

- a) Preliminary roadside testing [N.C.G.S. § 20-16.3].

**NOTE: Show slide, "Preliminary Roadside Testing."**

- (1) "A law enforcement officer may require the driver of a vehicle to submit to a roadside alcohol screening test within a relevant time after driving if the officer has:
- (a) Reasonable grounds to believe that a driver has consumed alcohol and has:
- i) Committed a moving traffic violation;
- OR
- ii) Been involved in an accident or collision;
- OR
- (b) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under N.C.G.S. § 16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties."
- (2) Preliminary roadside tests must be conducted in a manner prescribed in 10A N.C.A.C. 41B. 0501-.0503 of the North Carolina Administrative Code. This code has been provided for your review.

**NOTE: Show slide and refer students to handout, "Statutory Authority for Alcohol Screening." [N.C.G.S. § 20-16.3].**

Refusal to submit to a roadside screening test will NOT result in the revocation of the person's driver license. The driver must be charged and offered an Intox ECIR II test to lose the license for refusal. Evidence of refusal to take the screening test can be considered by the officer in deciding whether to charge the driver.

- (3) The results of the preliminary roadside test are admissible only to show reasonable grounds to charge DWI or another implied consent offense. It is not admissible to prove a particular alcohol concentration and only whether the result was positive or negative for alcohol.

The results are admissible to show the driver had been drinking when citing the driver for an open container violation or driving after consuming alcohol by a person under the age of 21 or for violating the zero-tolerance requirement of a limited driving privilege [N.C.G.S. § 20-138.7; 20-138.3; 30-179.3(j)]. These laws will be discussed later.

- b) Right to chemical analysis before arrest [N.C.G.S. § 20-16.2(i)].

**NOTE: Show slide, "Right to Chemical Analysis Prior to Arrest."**

Any person may ask for a pre-arrest breath test. This law is not well known, so the request is unusual, and persons who are familiar with the DWI law, such as officers and attorneys, are the drivers who will make this request. Failure to honor this request can result in the loss of the breath test results. A pre-arrest test is authorized as follows:

- (1) A person stopped or questioned by a law enforcement officer during an investigation of an implied consent offense may request a chemical analysis before being arrested or charged.

The driver has this right, but the officer is NOT required to inform the driver of this right.

- (2) If such a request is made, the officer must allow the person to submit to such a test before arrest/charge.

This “pre-charge test” must be administered following the same procedures as a chemical analysis administered after a person is charged with an implied consent offense. The person has no right to a “pre-charge” blood test.

- (3) A request for a “pre-charge” test constitutes the person’s consent to be transported by the law enforcement officer to the place where the chemical test is to be given.
- (4) A “pre-charge” analysis request form must be completed before administering the “pre-charge” test.

**NOTE: Show slide and refer to the handout, “Request for Pre-Charge Chemical Analysis.” [Form DMV-S784]**

It is strongly recommended that this form be completed before transporting the person to the test site.

- (5) If the person refuses to be transported by the law enforcement officer or refuses to be tested once at the testing site, the request is considered withdrawn. Should this occur, the officer should continue with the investigation, and once probable cause is established, charge the violator with the proper implied-consent offense.
- (6) Persons taking a chemical analysis under a “pre-charge” test must be informed of certain rights included on DMV form.

**NOTE: Show slide and refer to the handout, “Rights of Person Requesting to Take Chemical Analysis.” [Form DMV-S784A]**

- (7) The results of the “pre-charge” chemical analysis are admissible in all proceedings where they are relevant, specifically including any implied consent offense. The results will also trigger a 30-day revocation for having an alcohol concentration of 0.08 or more.

If a pre-charge test is given, an additional test is not required if the person is later charged—the pre-charge test result is used.

## ***Motor Vehicle Laws***

4. Chemical analysis of implied consent
  - a) Implied consent [N.C.G.S. § 20-16.2(a)].

**NOTE: Show slide, “Implied Consent.”**

- (1) “Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to submit to a chemical analysis if charged with an implied-consent offense.” These offenses (DWI and any offense made subject to the implied consent law, N.C.G.S. § 20-16.2(a1)) will be discussed in detail later in this section.
- (2) The requirement to submit to the test or be revoked applies only after a person is charged with an implied consent offense. A person is “charged” when arrested or if some criminal process (warrant, summons, or citations) has been issued and signed by the proper official (officer or magistrate) [N.C.G.S. § 15A-302; 20-16.2(a1)].

A driver may legally refuse to test under implied-consent, but in so doing will begin revocation proceedings against his/her privilege to drive. The officer may, however, obtain an A/C by obtaining blood through other means such as a search warrant, or obtaining hospital records if the driver has been involved in a crash.

- (3) Chemical analysis procedures [N.C.G.S. § 20-16.2].
  - (a) An officer who has reasonable grounds (probable cause) to believe that a driver has committed an implied-consent offense may, after arresting or charging, request the driver submit to a chemical analysis.
  - (b) Such a request must be made in the presence of a chemical analyst or a law enforcement officer authorized to administer a breath test (even if the test administered is a blood test). The request must be made after the chemical analyst or the law enforcement officer authorized to administer the test has informed the defendant



both orally and in writing of the following rights:

**NOTE: Show slide, “Rights of Person Charged.”**

- i) The defendant has been charged with an implied-consent offense. The defendant can refuse the test, but the driver license will be revoked for one (1) year and longer under certain circumstances, and an officer can compel the defendant to be tested under other laws.
- ii) The test results, or the fact of refusal, will be admissible in evidence at trial.
- iii) The defendant’s driving privileges will be revoked immediately for at least 30 days: (i) if any test reveals an alcohol concentration of 0.08 or more, (ii) if the defendant was operating a commercial motor vehicle and any test reveals an alcohol concentration of 0.04 or more, or (iii) if the defendant was under age 21 and any test reveals an alcohol concentration above 0.01.
- iv) The defendant may seek his test after his release.
- v) The defendant has the right to call an attorney for advice and select a witness to view the testing procedures after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time the defendant is notified of these rights.

Use Form DHHS-4081. It is not required, although it is strongly preferred that the defendant and a witness (officer) sign the form.

- (c) A law enforcement officer or chemical analyst decides which type of chemical analysis will be administered, be it blood or breath test or both.

If a breath test is given, at least two (2) sequential breath samples must be obtained with reading no greater than 0.02 of each other. All results are admissible in court, but only the lower of the two (2) consecutive results are admissible to prove the per se offense in court. If the defendant provides one (1) breath sample and refuses the second, the results from the analysis of the first breath sample are admissible and the fact that the defendant refused to provide the second sample.

**NOTE: Show slide and refer to “Form DHHS-4081.”**

- (d) If the defendant is unconscious or otherwise incapable of refusing a chemical analysis, it is not required that the officer request the violator submit to the test or inform the person of the rights specified above.

When a person is being treated at a hospital or is unconscious and will not be physically arrested, the officer must complete the charge on the citation and sign it before proceeding with reading implied consent rights or requesting a test. See N.C.G.S. § 20-16.2(a1) for the definition of “charged” for the implied consent law to apply.

- (e) When a blood test is chosen as the type of chemical analysis, only a physician, registered nurse, emergency medical technician, or another qualified person may withdraw the blood sample, and provisions regarding the admissibility and chain of custody of such a sample must be followed by N.C.G.S. § 20-139.1.
- (f) Subsequent tests are allowed to test for drugs. A driver can be requested to submit to a chemical analysis of his or her blood or other bodily fluid in addition to the chemical analysis of the driver’s breath. An officer who believes the driver is impaired by alcohol and drugs may request a breath test and then a blood test.

Before each test, the implied consent rights must be read to the driver. The driver's refusal to submit to either test will result in a 30-day and one-year revocation of the license. See N.C.G.S. § 20-139.1(b5).

- (g) Refusal by a violator to submit to chemical analysis will not alter the officer's right to obtain a blood sample for testing by a search warrant or otherwise [N.C.G.S. § 20-139.1(d1)]. This procedure is available in any case but is usually reserved for cases involving traffic collision resulting in critical injury or death or habitual impaired drivers. The search warrant can require the withdrawal of blood for the seizure of blood from the hospital or hospital records [N.C.G.S. § 90-21.20B].

**NOTE: Show slide and refer to "AOC-CR-155, Search Warrant for Blood or Urine in DWI Cases."**

- (h) Hospitals often withdraw blood and analyze it for alcohol/drug in the treatment of a patient. Should the defendant refuse to consent to a chemical analysis requested by the charging officer in an implied-consent offense, hospital records can be subpoenaed to court to show the concentration of impairing substances [330 NC 587; N.C.G.S. § 90-21.20B].
  - (i) A driver who submits to a chemical analysis may choose a qualified person to administer an additional chemical test or tests. The charging officer must assist the driver in contacting someone to give the test. Allowing the driver to use a telephone is sufficient to satisfy this requirement (27 N.C. App. 704). The failure to provide access to the telephone by the officer or the detention officer in the jail may result in the charges being dismissed, or the results of the officer's requested implied-consent test being suppressed.
- (4) Willful refusal [N.C.G.S. § 20-16.2].

## ***Motor Vehicle Laws***

- (a) If a driver refuses to submit to a chemical analysis, none can be given under the implied consent law. A search warrant, as discussed earlier, may be obtained in injury, death, or habitual cases.
- (b) A willful refusal to submit to a chemical analysis occurs when a violator:

**NOTE: Show slide, “A Willful Refusal.”**

- i) Is aware of the choice to take or to refuse to take the test;
  - ii) Is aware of the time limit within which the test must be taken;
  - iii) Voluntarily elects not to take the test; and
  - iv) Knowingly permits the time limit to expire before electing to take the test.
- (c) A willful refusal also occurs when:
- i) A defendant fails to give a breath sample large enough to analyze (39 N.C. App. 363);
  - ii) A defendant fails to provide a sufficient number of samples to obtain results within 0.02 of each other (78 N.C. App. 609);
  - iii) A defendant refuses to remove a dollar bill from his mouth (95 N.C. App. 380).
- (d) A refusal to submit to a chemical analysis is admissible in any criminal action for an implied-consent offense. The officer is not required to prove the refusal was willful, only that the defendant refused. If a defendant provides one (1) breath sample, then refuses to give a second sample, the result of the first

sample is admissible, as well as the fact of the refusal [N.C.G.S. § 20-139.1(b3)].

- (e) To impose a driver license revocation, the refusal must be, “willful” as outlined above. A willful refusal will result in an immediate 30-day revocation of the defendant’s driver license.
- (f) In addition to the 30-day revocation, DMV will also revoke the license for an additional 12 months. (A limited privilege is possible in the final six (6) months of revocation if certain specified circumstances are met.) The charging officer and chemical analyst are required to immediately send copies of their affidavits to DMV.
- (g) The revocation by DMV for refusing is separate from the revocation for a conviction. They cannot be consolidated. Also, the driver can appeal the revocation by DMV. DMV will provide a hearing, and the driver can appeal to the superior court for a hearing before the judge. When a driver refuses, the charging officer and chemical analyst must save all notes and evidence until both the criminal trial and the refusal proceedings have concluded.

**NOTE: Show slide and refer to flow chart, “Implied Consent Offenses.”**

- (5) Forms to be completed and filed

A chart has been prepared entitled “DWI Process,” which details which forms are to be filed. A copy of this chart is included.

**NOTE: Show slide, “Video.” Play video, *DWI Laws and Procedures*.**

- 5. Other related offenses

**NOTE: Show slides, “Other Related Offenses.”**

## ***Motor Vehicle Laws***

There are several offenses related to impaired driving. Some of these offenses are implied-consent offenses, while others are not. When charging an implied-consent offense, the officer may request a chemical analysis from the defendant, just as discussed in the Driving While Impaired section of this outline.

a) Injured by vehicle

When an impaired driver injures anyone other than the impaired driver, another charge is authorized. When DWI is an element of the offense, the charge is an implied-consent offense.

- (1) Felony serious injury by vehicle [N.C.G.S. § 20-141.4(a3)].
- (2) Aggravated felony serious injury by vehicle [N.C.G.S. § 20-141.4(a4)].
- (3) Assault with a deadly weapon inflicting serious injury (AWDWISI) [N.C.G.S. § 14-32] can also be charged when an impaired driver injures another.

See “**Rules of the Road**” – Vehicular assaults and homicides section.

b) Vehicle death cases

Just as indicated in the “**Rules of the Road**” section, second-degree murder or manslaughter can be charged when a death results from the actions of an impaired driver.

- (1) Second degree murder [N.C.G.S. § 14-17].
  - (a) Elements:

A person is guilty of this offense if:

    - i) the person kills
    - ii) another living human being
    - iii) with malice.

- (b) Punishment: Second-degree murder is a Class B2 felony carrying a maximum term of 416 months.
  - (c) Remember: The death of an unborn child can also be charged [N.C.G.S. § 14-23.2].
  - (d) Proof of the element of malice can be inferred from the actions of the driver. The actions must show deliberate dangerous driving, which has a high probability of injury or death to others. For example, passing in a no-passing zone, running a red light at 60-70 miles per hour, and an alcohol concentration of two (2) tests of 0.23 and 0.32 was sufficient for second-degree murder (311 N.C. 391). Multiple violations or statements of the offender may be used to prove this element. The fact that the offender is driving while license revoked or a DWI is pending is evidence of malice (109 N.C. App. 64; 105 N.C. App. 377).
  - (e) Not specifically an implied consent offense, but when the driver is impaired, charge DWI and obtain a chemical analysis to use in the case.
- (2) Involuntary manslaughter [N.C.G.S. § 14-18].
- (a) Elements:

A person is guilty of this offense if:

    - i) the person kills
    - ii) another living human being
      - by an intentional, willful, or wanton violation of a statute designed for the protection of human life or limb, such as driving while impaired if the impairment causes death (314 N.C. 633),

**OR**

- by engaging in any other conduct in such a reckless and careless manner as to show a thoughtless disregard for consequences or a heedless indifference to the rights and safety of others (204 N.C. 28).
- (b) This is not specifically an implied-consent offense, but when impaired, charge DWI and obtain the chemical analysis to use in this case.
- (c) Remember: The death of an unborn child may also be charged [N.C.G.S. § 14-23.3].
- (d) Punishment: Involuntary manslaughter is a Class F felony carrying a penalty of up to 68 months imprisonment.
- (3) Death by vehicle offenses [N.C.G.S. § 20-141.4].
- (a) These include:
- i) Felony Death by Vehicle
  - ii) Aggravated Felony Death by Vehicle
  - iii) where the DWI violation is the “**proximate cause**” of the death.
- (b) The implied-consent statute applies [N.C.G.S. § 20-16.2(a1) and N.C.G.S. § 20-4.01(24a)]. Also, upon refusal to take the test, a search warrant may be obtained to require the defendant to submit to a blood test [N.C.G.S. § 20-16.2]. Such a procedure is justified in any death case.
- (c) DMV, under N.C.G.S. § 20-17(9) and 20-19(i), must revoke the driver license permanently, but the person can reapply for a license at any time after three (3) years if there are no convictions during the revocation period.



- (d) If practical, the district attorney should be consulted for charging when a death results from a DWI. A warrant or other similar order must be drawn because a citation may not be used to charge a felony.

When determining which vehicular homicide offense to charge, an officer may want to first consult with the DA. Otherwise, the officer must analyze the evidence. DWI and two (2) other violations (speeding and red light) are sufficient, but fewer violations are also sufficient (DWI and DWLR). Charging the most serious is generally the best rule. If impaired, charge DWI and obtain a chemical analysis for use in the murder case.

- (e) When an officer suspects a death has resulted from or may result from a DWI, but is not certain (for example, when the injured person is removed from the scene prior to the officer's arrival), the DWI must be charged so that the implied-consent statute will apply, and the chemical analysis can be obtained. The death charge can be drawn up later. A determination of the victim's condition and chances of survival should be made as soon as possible. When a victim lingers near death, the district attorney should be informed so that the DWI charge will not be tried or otherwise disposed of until the condition of the victim is finally determined.

- c) Impaired instruction [N.C.G.S. § 20-12.1].

- (1) Elements:

“It is unlawful for a person to:

- (a) Serve as a supervising driver under N.C.G.S. § 20-7(l) or N.C.G.S. § 20-11 or as an approved instructor under N.C.G.S. § 20-7(m) in any of the following circumstances:

i) while under the influence of an impairing substance;

**OR**

ii) after having consumed sufficient alcohol to have, at any relevant time after driving, an alcohol concentration of 0.08 or more.

(b) An offense under this section is an implied-consent offense under N.C.G.S. § 20-16.2.”

(2) The driver need not have consumed any impairing substance. The offense occurs if the instructor is impaired.

(3) This is an implied-consent offense.

(4) This is a class 2 misdemeanor [N.C.G.S. § 20-35] punishable by a fine up of to \$1,000 and jail up to 60 days, depending on prior record level. DMV may, but is not required to, revoke the driver license [N.C.G.S. § 20-16(a)(8a)].

d) Impaired driving in a commercial vehicle [N.C.G.S. § 20-138.2].

(1) Elements:

It is unlawful for a person to:

(a) “drives

(b) a commercial motor vehicle (CMV)

(c) upon any highway, any street, or any public vehicular area

(d) while under the influence of an impairing substance;

**OR**

after having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration;

**OR**

With any amount of a Schedule I controlled substance, as listed in N.C.G.S. § 90-89, or its metabolites in his blood or urine.”

- (2) The charge need only read that the defendant drove a commercial vehicle while subject to an impairing substance.
- (3) A commercial motor vehicle is defined in N.C.G.S. § 20-4.01(3d). Even if the driver is not required to have a CDL, the vehicle may still be a CMV.

**NOTE: Remind students to review the Driver License Section for the definition of CMV.**

- (4) This is an implied-consent offense.
  - (5) If the driver is impaired or has an alcohol concentration of 0.08 or more, he should also be charged with DWI under N.C.G.S. § 20-138.1.
  - (6) This offense is a Class 1 misdemeanor but is not a lesser included offense of DWI.
  - (7) A driver convicted of this offense will be disqualified from holding a commercial driver license.
- e) Operating a commercial motor vehicle after consuming alcohol [N.C.G.S. § 20-138.2A].
- (1) Elements:  
It is unlawful for a person to:
    - (a) operating a commercial motor vehicle after consuming alcohol if the person drives a

commercial motor vehicle, as defined in N.C.G.S. § 20-4.01(3d)a. and b.,

- (b) upon any highway, any street or any public vehicular area within the State while consuming alcohol or while alcohol remains in the person's body.”
  - (2) This is an implied-consent offense.
  - (3) The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered and refused an alcohol screening test or chemical analysis.
  - (4) The results of an alcohol screening test or the driver's refusal to submit to one may be used in determining if alcohol was present in the driver's body.
  - (5) If the results of the chemical analysis are 0.04 or more, charge the driver under N.C.G.S. § 20-138.2 and not this offense. If the driver is impaired, charge under both N.C.G.S. § 20-138.1(DWI) and 20-138.2 (DWI in a commercial motor vehicle), but not this offense.
  - (6) For conviction of the first offense, the driver is fined \$100.00, and DMV disqualifies the driver from operating a commercial motor vehicle for ten (10) days. For second or subsequent conviction within seven (7) years, the driver is punished the same as DWI under N.C.G.S. § 20-179, and DMV revokes the license of the driver for one (1) year.
- f) Operating a school bus, school activity bus, or child care vehicle after consuming alcohol [N.C.G.S. § 20-138.2B].
- (1) Elements:  
It is unlawful for a person to:
    - (a) operate

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- (b) a school bus, school activity bus, or child care vehicle, ambulance, other emergency medical services vehicle, firefighting vehicle, or law enforcement vehicle
- (c) upon any highway, any street or any public vehicular area,
  - i) while consuming alcohol or
  - ii) at any time while he has remaining in his body any alcohol previously consumed.
- (2) This is an implied-consent offense.
- (3) These three vehicles are defined, school bus, N.C.G.S. § 20-4.01(27n), school activity bus, N.C.G.S. § 20-4.01(27m), and child care vehicle, N.C.G.S. § 20-4.01(27c).
- (4) The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered and refused an alcohol screening test or chemical analysis.
- (5) The results of an alcohol screening test or the driver's refusal to submit to one may be used in determining if alcohol was present in the driver's body.
- (6) If the driver is impaired, charge under both N.C.G.S. § 20-138.1(DWI). If the vehicle is large enough to be a commercial motor vehicle, also charge under 20-138.2 (DWI in a commercial motor vehicle) if the driver is impaired or has an alcohol concentration of 0.04 or more.
- (7) If the driver is convicted for a first offense, the fine is \$100.00, and DMV will revoke the license of the driver for ten days. A second or subsequent conviction within seven years will be punished as DWI under N.C.G.S. § 20-179, and the revocation period will be one year.

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g) Driving by a person under 21 after consuming alcohol or drugs [N.C.G.S. § 20-138.3].

(1) Elements:

“It is unlawful for:

(a) A person less than 21 years old [N.C.G.S. § 20-138.3].

(b) to drive

(c) a motor vehicle

(d) Applies only to a “motor” vehicle, not vehicles on a highway or public vehicular area

i) while consuming alcohol or

ii) at any time while he has remaining in his/her body any alcohol or controlled substance previously consumed;

iii) but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body, which was lawfully obtained and taken in therapeutically appropriate amounts.”

This is known as “zero per se” because any alcohol concentration above 0.00 is sufficient.

(2) This is an implied-consent offense. An officer may use an alcohol screening device to prove the driver had been drinking. The odor of an alcoholic beverage is insufficient evidence to prove beyond a reasonable doubt the alcohol was remaining in the driver’s body unless the driver refuses a chemical analysis or roadside screening test discussed in this Section F.3.a. of this outline. The odor of alcohol and a statement by the driver that he had been drinking may also be sufficient. The officer is not required to arrest the driver but may cite the driver depending upon agency policy. If the underage driver is impaired, then charge DWI and

process under the regular implied consent procedures. If not impaired, the driver should not be allowed to drive because this will be an additional offense. If under age 18, the parents should be contacted [N.C.G.S. § 15A-505].

- (3) Punishment: Effect When Impaired Driving Offense Also Charged – The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under N.C.G.S. § 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the maximum punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable must be imposed.

If the under age 21 driver is also impaired or has a 0.08 or more, DWI should be charged in addition to the under age 21 violation.

- (4) Limited driving privilege – A person who is convicted of violating this section and whose driver license is revoked solely based on that conviction may apply for a limited driving privilege as provided in N.C.G.S. § 20-179.3. This subsection shall apply only if the person meets the following requirements and would otherwise qualify for a limited driving privilege if convicted of DWI:

- (a) Is 18, 19, or 20 years old on the date of the offense.

“Date of Offense” and not the date of trial.

- (b) Has not previously been convicted of a violation of this section.

- h) Habitual impaired driving [N.C.G.S. § 20-138.5].

- (1) Elements:

A person is guilty of this offense if:

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- (a) “He drives while impaired as defined in N.C.G.S. § 20-138.1 and
- (b) Has been convicted of **three or more offenses involving impaired driving** as defined in N.C.G.S. § 20-4.01(24a) **within 10 years of the date of this offense.**”

**NOTE: The ten (10) years run from conviction date of prior offense to offense date of the current DWI charge.**

- (2) Punishment: A person convicted of violating this section is punished as a Class F felon and must be sentenced to a minimum active term of not less than 12 months. Sentences imposed under this section run consecutively with and commence at the expiration of any sentence being served.
- (3) This is an implied-consent offense.
- (4) A person convicted for this offense may apply for a conditional restoration of his license after ten (10) years.
- (5) A person may be charged with misdemeanor DWI, N.C.G.S. § 20-138.1 before the officer learns of the prior convictions. In such a case, the misdemeanor DWI should be dismissed by the district attorney, and the driver indicted for the felony of habitual DWI, N.C.G.S. § 20-138.5. If the misdemeanor is allowed to remain in the district court and the driver is tried on it, the double jeopardy clause may prohibit trial on the felony DWI.

**NOTE: District attorney must be informed that there is a habitual DWI pending.**

### 6. Transporting alcohol

Transportation of alcoholic beverages [N.C.G.S. § 18B-401; 20-138.2C; 20-138.7].

**NOTE: Show slide, “Transportation of Alcoholic Beverages.”**

There are three (3) statutes that regulate transporting alcoholic beverages. It is illegal to have an open container of alcoholic beverage



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in a motor vehicle on the highway. It is illegal to have an unopened or open container of alcoholic beverage in a Class A or Class B commercial motor vehicle. There are other restrictions also.

a) Possession of an open container of an alcoholic beverage on a highway [N.C.G.S. § 20-138.7(a1)].

- (1) “No person shall
- (2) possess
- (3) an alcoholic beverage
- (4) other than in the unopened manufacturer’s original container,
- (5) or consume an alcoholic beverage,
- (6) in the passenger area of a motor vehicle while the motor vehicle is
- (7) on a highway or right-of-way of a highway.” (vehicle need not be operated, it can be parked).

b) Spirituous liquor, mixed beverages, fortified wine.

Elements:

It is unlawful for:

- (1) a driver or any other person (including passenger)
- (2) to transport (possess while moving); not limited to the highway or PVA
- (3) fortified wine [N.C.G.S. § 18B-101(7)] or spirituous liquor [N.C.G.S. § 18B-101(14)].

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Fortified wine – 17% alcohol or more; spirituous liquor – distilled spirits bought at ABC store, including a mixed drink. This does not include beer or unfortified wine.

- (4) in the passenger area of a motor vehicle
- (5) other than in the manufacturer’s unopened original container. (Previous law required the “cap or seal to be opened or broken.” Now, transportation of a mixed drink or fortified wine in a glass is unlawful.)

The implied-consent statute **does not** apply to either offense.

The impairment or drinking by a driver is irrelevant to this charge.

This charge is found on the citation book cover. This is a Class 3 misdemeanor punishable by a maximum fine of \$200 and maximum jail time of 20 days or both [N.C.G.S. § 18B-401(a)].

There are no driver license points or license revocation.

N.C.G.S. § 20-138.2(c) makes it unlawful for a person to drive a commercial vehicle while having an alcoholic beverage in the passenger area of the vehicle. It applies to open or closed containers of alcohol.

- c) Opened containers [N.C.G.S. § 18B-401(a)].

**NOTE: Show slide, “Opened Containers.”**

- (1) Elements:

It is unlawful for a person to:

- (a) “drive
- (b) a motor vehicle [motor vehicle only]
- (c) on a highway or public vehicular area
- (d) to consume in the passenger area of that vehicle

- (e) any malt beverage [beer] [N.C.G.S. § 18B-101(9)] or unfortified wine.” [table wine] [N.C.G.S. § 18B-101(15)] (i.e., actually drinking beer or unfortified wine)
  - (2) The implied-consent statute **does not** apply to this offense.
  - (3) This charge is found on the citation cover.
  - (4) This is a Class 3 misdemeanor punishable by a maximum fine of \$200 and up to 20 days in jail, or both [N.C.G.S. § 18B-401(a)].
  - (5) The strongest case can be made when the officer sees the driver drink the beer. The odor of alcohol on the breath plus a partially consumed can of beer in the car will be sufficient to charge. This same is true when the beer can is empty, but the beer had been in it recently.
  - (6) If there is a mixed drink in the car, transporting spirituous liquor in an open container should be charged or having an open container of alcohol [N.C.G.S. § 20-138.7(a1)].
- d) Transporting an open container of alcoholic beverage after consuming alcohol [N.C.G.S. § 20-138.7(a)].
- (1) Elements:  
It is unlawful for a person to:
    - (a) “drive
    - (b) a motor vehicle [“motor” vehicle only]
    - (c) on a highway or right-of-way of a highway
    - (d) while there is an alcoholic beverage in the passenger area in other than the unopened manufacturer’s original container;
    - (e) While the driver is consuming alcohol or while alcohol remains in the driver’s body.”

- (2) This is an implied-consent offense.
- (3) The odor of an alcoholic beverage is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body, unless the driver refuses a chemical analysis or roadside screening test discussed in Section F.3.a. of this outline.
- (4) If a roadside screening test was used by provisions of 10A NCAC 41B .0501-.0503, such results or the driver's refusal to submit might be used by the officer, the court, and any administrative agency to determine if alcohol was present in the driver's body at the time of the offense.

If the driver does not appear impaired, and there is no indication that the driver's alcohol content is going up, the officer may cite the driver and not arrest. The officer has the choice. This is the only offense in which the alcohol screening test result can be used to prove more than probable cause.

- (5) If no alcohol screening test was available or used, the driver should be presented to a chemical analyst for testing.  
The driver who refuses to submit to an alcohol screening device will not have his or her license taken by DMV. The driver must be charged with this offense or another implied consent offense and refuse the Intox ECIR II before the license is taken.
- (6) This is not a lesser included offense of 20-138.1 (DWI) and can be charged in addition to 20-138.1 (DWI).  
  
If the driver is under age 21, the officer can charge this offense, DWI, and driving after drinking by an under-age person (N.C.G.S. § 20-138.3). If charged with other offenses, an Intox ECIR II test should be offered. The results of the alcohol screening cannot be used in DWI cases except to prove probable cause.
- (7) Punishment: Effect When Impaired Driving Offense Also Charged – Violation of this section shall be punished as a Class 3 misdemeanor for the first offense and shall be punished as a Class 2 misdemeanor for a

## ***Motor Vehicle Laws***

second or subsequent offense. A fine imposed for a second or subsequent offense may not exceed one thousand dollars (\$1,000). If a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. A violation of this law is a moving violation.

- (8) A second conviction will result in six-month license revocation. A limited driving privilege may be granted by the court.
- e) Possession of an open or closed container of alcoholic beverage while driving a commercial motor vehicle [N.C.G.S. § 20-138.2C].

(1) Elements

It is unlawful for a person:

- (a) “operating
- (b) a commercial motor vehicle while possessing alcoholic beverages if the person drives a commercial motor vehicle, as defined in N.C.G.S. § 20-4.01(3d),
- (c) upon any highway, any street, or any public vehicular area within this State
- (d) while having an open or closed alcoholic beverage
- (e) in the passenger area of the commercial motor vehicle.
- (2) This section shall not apply to the driver of commercial motor vehicle that is also an excursion passenger vehicle, a for-hire passenger vehicle, a common carrier of passengers, or a motor home, if the alcohol beverage is in possession of a passenger or is in the passenger area of the vehicle.”

(3) This is an infraction.

7. Aiding and abetting DWI

**NOTE: Show slide, “Aiding and Abetting DWI.”**

There is no statutory charge of aiding and abetting DWI, but the common law doctrine of aiding and abetting applies. A person who aids and abets another in the driving of a vehicle subject to an impairing substance **is guilty of the same offense** as the person who drives the vehicle and will be punished the same as a Level 5 DWI defendant, regardless of under what level the driver is punished [N.C.G.S. § 20-179(f1)]. Aiding and abetting are derived from common law. To convict someone of aiding and abetting, an officer should be able to prove that:

- a) the defendant owned or was in control of the vehicle,
- b) the defendant was present,
- c) the driver’s conduct was a continuing type of violation, and
- d) the aider and abettor knew of the violation and had an opportunity and failed to stop the violation (227 N.C. 677).  
When the registered owner is seated in the front seat beside the impaired driver, this is sufficient evidence to charge the owner with aiding and abetting.
- e) It is possible that a person encouraging an impaired driver to drive may also commit the offense, but successful prosecutions using that theory are rare.

8. Pretrial release of implied-consent offenders [N.C.G.S. § 15A-534.2].

**NOTE: Show slide, “Pretrial Release of Implied Consent Offenders.”**

- a) As with all arrested individuals, those arrested for implied-consent offenses must be presented to a judicial official (usually a magistrate) for an initial appearance to determine the conditions of their release. If the judicial official determines that the defendant’s mental and physical faculties are impaired to such an extent that the defendant presents:
  - (1) a danger of physical injury to himself or others, or

- (2) a danger of damage to property if released, the judicial official must order the defendant held in custody.
  - b) If the defendant meets all other conditions of pretrial release and a judicial official determines that:
    - (1) the defendant is no longer impaired to the extent of presenting a threat of danger to persons or damage to property; or
    - (2) a sober, responsible adult is willing and able to assume responsibility for the defendant until no longer impaired,
    - (3) **then the defendant must be released.**
    - (4) In the event the defendant's detention is **based upon impairment**, in no event may detention be longer than 24 hours.
    - (5) The defendant must be given access to a telephone, and if deprived of an opportunity to see friends/relatives after the arrest, **the DWI charge may be dismissed** [322 NC 535]. See AOC-CR-270, and 271.
9. Immediate 30-day pretrial license revocation

**NOTE: Show slide, "Immediate 30-Day Pretrial License Revocation."**

- a) If a defendant is lawfully charged with an implied-consent offense and was requested to submit to chemical analysis and;
  - (1) willfully refused to take the test; or
  - (2) had an alcohol concentration of 0.08 or more (0.04 in CMV) or the driver is under age 21, and the test reveals an alcohol concentration of 0.01 or more, the defendant's license (or privilege to drive) will be revoked for 30 days immediately, or from the time the license has been surrendered and until a fee of \$100.00 has been paid to the clerk of court [N.C.G.S. § 20-16.5(j)]. If the defendant fails to pay the fee to the clerk of court, his/her license remains revoked until such fee is paid (even after the 30-day revocation period has expired).

- b) If the defendant is not present at the time a revocation report is filed (such as when a blood test is taken), the clerk must mail a revocation order (form AOC-CVR-3) to the driver by first class mail. This order directs the driver to surrender his/her license to the clerk of court or appear in person to explain why the license cannot be surrendered.

If after five (5) working days of the effective date of the revocation order the driver has not appeared or surrendered his/her license, the clerk will issue a pickup order for the license to the local law enforcement agency or DMV [form AOC-CVR #4], and the license will be revoked for 45 days instead of 30, and the driver must pay the \$100.00 fee.

**NOTE: Show slide and refer to forms, “AOC-CVR-3 and AOC-CVR-4.”**

- c) A driver whose license is revoked under N.C.G.S. § 20-16.5 by a magistrate or clerk may request in writing a hearing to contest the revocation. Such hearing must be held and completed within:
  - (1) three (3) working days if conducted by a magistrate, or
  - (2) five (5) working days if conducted, at the driver’s request, by a district court judge.

Law enforcement officers are not required to appear at the hearing unless they are subpoenaed.

- d) The 30-day revocation and any subsequent hearing relating to the 30-day revocation is independent of the criminal charge. This penalty is a civil revocation of the license and does not affect the criminal trial, either for the driver or the state.
- e) After ten (10) days, a driver may petition the court for a limited driving privilege [AOC-CVR-9].

**NOTE: Show slide and refer to form “AOC-CVR-9.”**

- f) Following the 30-day revocation period, the driver may pay the \$100.00 fee to the clerk of court and have his/her license returned unless the clerk finds the driver is ineligible to use the license (i.e., revoked in other offense); in which case, the clerk shall mail the license to DMV.



The clerk will hold the license for the 30-day or 45-day revocation. Otherwise, it is destroyed, and at the end of the revocation period, DMV issues a new one.

- g) Thirty-day revocations may not appear on DCIN until several days after the revocation period begins. The 30-day revocation can be confirmed by contacting the clerk of superior court in the county where the offense occurred.

An officer who encounters a driver who does not have a license in his possession can charge under N.C.G.S. § 20-7(a), [failure to carry a driver license] then check DCIN at a later date before the court to confirm a 30-day revocation was not in effect and then take proper action.

- h) A limited driving privilege can be granted to a driver who has an otherwise valid license and who receives a 30-day revocation after the expiration of ten (10) days (or for a 45-day revocation, after the expiration of 30 days). The driver must pay a \$100.00 processing fee to the Clerk of Court [N.C.G.S. § 20-20.2].

10. Indefinite pretrial revocation

**NOTE: Show slide, “Indefinite Pretrial Revocation.”**

If the driver has one (1) or more pending offenses for which his driver license had been or is revoked under N.C.G.S. § 20-16.5 (30-day revocation), when the driver is offered the chemical analysis, then the 30-day revocation is changed to an indefinite revocation. The driver license is revoked until all charges are resolved in court. The officer must determine if there are pending charges and put this information on the Affidavit and Revocation Report Form [AOC-CVR-1/ DHHS 3907].

**NOTE: Show slide and refer to form, “AOC-CVR-1/DHHS 3907.”**

11. Punishment for DWI [N.C.G.S. § 20-179].

**NOTE: Show slide, “DWI Punishment.”**

Sentencing for a conviction of DWI (N.C.G.S. § 20-138.1) is exempt from the structured sentencing used for all other crimes. The following is the special system.

## ***Motor Vehicle Laws***

**NOTE: Show slide, “Sentencing Hearing.”**

- a) Sentencing hearing – A person convicted of driving while impaired must be given a sentencing hearing before the judge imposing a sentence. The district attorney must make a reasonable effort to obtain a copy of the defendant’s driving record [N.C.G.S. § 20-179(a)]. Therefore, it is important that the charging officer obtain a copy of such a record, through DCIN, in all DWI investigations.

**NOTE: Show slide, “Factors Used to Determine the Severity of Punishment.”**

- b) The district attorney is also required to present all aggravating and grossly aggravating factors to which they are aware, as well as the results of any chemical analysis conducted. The district attorney will rely heavily upon the charging officer to present this information to the court during testimony and questioning. Therefore, it is important that the officer has a good knowledge of which factors are considered aggravating and grossly aggravating. These factors are used to determine the severity of punishment upon the defendant.
- c) Grossly aggravating factors

**NOTE: Show slide, “Grossly Aggravating.”**

Grossly aggravating factors are four (4) situations that are considered as most severe in the sentencing phase and will result in a jail term for the defendant. The number of these factors present during a case will increase the amount of jail time the defendant receives. An officer should always look for and record these factors for presentation in court.

- (1) An offense involving impaired driving if the conviction date of the prior offense occurred within seven (7) years of the date, the defendant committed the offense for which they are currently being sentenced. Each conviction is a separate grossly aggravating factor.

A copy of the defendant’s driving record sent by DCIN will prove this factor. Remember, the conviction date of the prior offense must be within seven (7) years of the offense date of the current DWI charge.

- (2) Driving by the defendant at the time of the offense while driver license was revoked under N.C.G.S. § 20-28 for an impaired driving offense under N.C.G.S. § 20-28.2(a). N.C.G.S. § 20-28.2(a) lists the “impaired driving license revocations” included within this grossly aggravating factor.

A copy of the defendant’s driving record sent by DCIN will prove this factor.

- (3) Serious injury to another person caused by the defendant’s impaired driving at the time of the offense. (Serious injury is the same type of injury that is used for a charge of assault inflicting serious injury [N.C.G.S. § 14-33]. Treatment at the hospital is strong evidence for this factor.)

Testimony of the victim is the most powerful. An officer’s observation of the extent of the injury can also be used.

- (4) Driving by the defendant while (i) a child under the age of 18 years, (ii) a person with the mental development of a child under the age of 18 years, or (iii) a person with a physical disability preventing unaided exit from the vehicle was in the vehicle at the time of the offense.

This information must be obtained at the time of the offense. Proof can be obtained by asking the driver the age of any child, a certified copy of the birth certificate, subpoena the child or child’s mother to court. The opinion of the officer as to the age is also admissible. The disability of the person must be noted by the officer.

d) Aggravating factors

**NOTE: Show slide, “Aggravating Factors.”**

If no grossly aggravating factors are present, then sentencing is based on the number of aggravating factors present versus the number of mitigating factors present. The defense will present the mitigating factors while the district attorney will, with the assistance of the charging officer, present the aggravating

factors. Again, the officer will need to look for and record these factors for presentation in court—the factors are:

- (1) Gross impairment of the defendant's faculties while driving.
- (2) An alcohol concentration of 0.15 or more within a relevant time after the driving.
- (3) Especially reckless or dangerous driving (more than some reckless or dangerous driving).

This factor requires proof of more than reckless driving. Merely running a red light is not enough; it must show damage to others.

- (4) Negligent driving that led to a reportable crash [property damage over one thousand dollars (\$1000.00) or personal injury].
- (5) Driving by the defendant while the driver license was revoked.
- (6) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under N.C.G.S. § 20-16 or for which the convicted person's license is subject to revocation if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
- (7) A conviction under N.C.G.S. § 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension, if the offense occurred during the same act or transaction as the impaired driving offense.
- (8) A conviction under N.C.G.S. § 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit, if the offense occurred during the same act or transaction as the impaired driving offense.

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- (9) Passing a stopped school bus in violation of N.C.G.S. § 20-217.
  - (10) Any other factor that aggravates the seriousness of the offense.
- e) Mitigating factors

### **NOTE: Show slide, “Mitigating Factors.”**

As discussed earlier, the mitigating factors are presented by the defendant during the trial; however, officers should also note such factors and be able to present them during testimony.

- (1) Slight impairment of the defendant’s faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.
- (2) Slight impairment of the defendant’s faculties, resulting solely from alcohol with no chemical analysis having been available to the defendant.
- (3) Driving at the time of the offense that was safe and lawful except for impairment of the defendant’s faculties.
- (4) A safe driving record with the defendant having no conviction for any motor vehicle offense for which at least four points are assigned under N.C.G.S. § 20-16 or for which the person’s license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
- (5) Impairment of the defendant’s faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

It is not a defense to DWI that the drugs were lawful, but the sentence is reduced.

- (6) The defendant’s voluntary submission to a mental health facility for assessment after being charged with impaired driving, and, if recommended by the facility,

the defendant voluntarily participated in the recommended treatment and maintains 60 days of continuous abstinence from alcohol consumption.

(7) Any other factors that mitigate the seriousness of the offense.

f) Punishment levels

**NOTE: Show slide, “Punishment Levels.”**

The judge will take the factors presented and use them to impose punishment in one (1) of five (5) levels. These levels are as follows:

(1) Aggravated Level One

If the State proves three (3) or more grossly aggravating factors, then the defendant may be fined up to ten (10) thousand dollars (\$10,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 12 months and a maximum term of not more than 36 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. If the defendant is placed on probation, the judge shall impose as requirements that the defendant (i) abstain from alcohol consumption for a minimum of 120 days to a maximum of the term of probation, as verified by a continuous alcohol monitoring system pursuant to subsections (h1) and (h3) of this section, and (ii) obtain a substance abuse assessment and the education or treatment required by N.C.G.S. § 20-17.6 for the restoration of a driver license and as a condition of probation. The judge may impose any other lawful condition of probation.

(2) **Level One.** Punishment is a minimum of 30 days in jail with a maximum of two (2) years and a fine up to \$4,000. The 30 days in jail can be reduced to 10 days if a defendant abstains from alcohol consumption and is monitored by a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, for not less than

120 days. If the State proves that a child under age 18 or a disabled person was in the car, then the judge must impose Level One punishment. Level One must also be imposed if the judge determines two (2) of the grossly aggravating factors are present.

- (3) **Level Two.** Punishment is a minimum of seven (7) days in jail with a maximum of one (1) year and a fine up to \$2,000. The jail time may be reduced to no jail if the defendant abstains from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety. If the State proves that one (1) grossly aggravating factor other than a child under age 18 or a disabled person was in the car, then the judge must impose Level Two punishment.
- (4) Aggravating v. mitigating factors. If no grossly aggravating factors are present, the judge must weigh the aggravating and mitigating factors to determine the appropriate punishment level.
  - (a) **Level Three.** Punishment is a minimum of 72 hours in jail, 72 hours of community service, or any combination of the two and a fine of up to \$1000. If the aggravating factors substantially outweigh the mitigating factors, then Level Three punishment must be imposed.
  - (b) **Level Four.** Punishment is not less than 48 hours in jail, 48 hours of community service, or any combination of the two and a fine of up to \$500. If the aggravating factors are substantially equal to the mitigating factors or if there are enough aggravating and no mitigating factors present, then Level Four punishment must be imposed.
  - (c) **Level Five.** Punishment is not less than 24 hours in jail, 24 hours of community service, or any combination of the two and a fine of up to \$200. If the mitigating factors substantially outweigh the aggravating factors, then Level Five punishment must be imposed.

- g) Assessment and treatment and ADETS
- (1) If a defendant is placed upon probation for DWI, he must be required as a condition of probation to obtain a substance abuse assessment from a mental health agency and may be required to abstain from alcohol for a set period of 30-60 days.
  - (2) The assessment must be obtained within 30 days to determine whether the defendant has a chemical dependency (i.e., drug or alcohol abuse problem).
  - (3) If the assessing agency recommends the defendant participate in a treatment program, the judge may require him to do so. The treatment program may not last longer than 90 days unless the defendant had an alcohol concentration of 0.15 or more, or this was a second or subsequent offense within five (5) years.
  - (4) If no substance abuse is identified, the defendant must attend the Alcohol and Drug Education Traffic School (ADETS).
  - (5) Upon successful completion of alcohol/medical treatment or ADETS, whichever applies, the agency will send a certificate of completion to DMV. The defendant will not be able to get a license back at the end of the revocation period without obtaining a certificate of completion. If his revocation period has ended, but DMV has not received the certificate of completion, the correct charge is DWLR [N.C.G.S. § 20-17.6(b)]. If DMV has received the certificate of completion, and the defendant has not obtained the license, the correct charge is NOL [N.C.G.S. § 20-7].
  - (6) The defendant must pay \$50.00 for the assessment and \$160.00 to either the treatment facility or ADETS.

12. Limited driving privilege

**NOTE: Show slide, “Limited Driving Privilege.”**

**NOTE: Show slide and refer to “Limited Driving Privilege Forms: AOC-CVR-9, AOC-CVR-10, AOC-CVR-11.”**



- a) Eligibility
- (1) A defendant is eligible for a limited driving privilege after being convicted of DWI if at the time of the offense he held a valid driver license or his license had been expired for less than one (1) year; and
  - (2) The defendant did not have a previous impaired driving offense with a conviction date within seven (7) years of the offense date of the current DWI; and
  - (3) The defendant is punished at Levels Three, Four, or Five, and after the DWI offense, the defendant has not been convicted of nor had any unresolved charges lodged for an offense involving impaired driving.
    - (a) An officer who is aware of other pending impaired driving charges against a DWI defendant should notify the district attorney. The officer should also obtain a certified copy of the criminal pleading (i.e., warrant, citation, magistrate's order or summons) in the pending case from the clerk of superior court.
    - (b) If additional impaired driving charges are filed against a DWI defendant who has already been issued a limited driving privilege, the district attorney should be notified so that a judge can be asked to modify or revoke the defendant's limited driving privilege [N.C.G.S. § 20-179(i)].
  - (4) The defendant has obtained a drug or alcohol abuse assessment.
  - (5) The defendant shows proof of insurance.
  - (6) The defendant must pay a \$100.00 processing fee to the Clerk of Court [N.C.G.S. § 20-20.2].
  - (7) A driver who is under age 21 when charged with DWI (even if convicted after reaching age 21) is not eligible for a limited driving privilege [N.C.G.S. § 20-13.2].
- b) Issuance of limited driving privilege

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- (1) **A limited driving privilege is issued in court by a judge and not by DMV.**
- (2) In a DWI case, usually, the presiding judge will determine if a defendant is eligible for a limited driving privilege and, if so, issue one at the trial [N.C.G.S. § 20-179(c)].
- (3) If this is not done, the following judges may issue a limited privilege after the trial date:

The presiding judge at the driver's DWI trial [N.C.G.S. § 20-179.3(c)]; **or**

If the limited driving privilege is applied for after the DWI trial date:

- (a) the presiding judge at the DWI trial if in the judicial district; **or**
- (b) if the conviction was in superior court and the presiding judge is unavailable, the senior regular resident superior court judge; or
- (c) if the conviction was in district court and the presiding judge is unavailable, the chief district court judge [N.C.G.S. § 20-179.3(d)].

### c) Restrictions

- (1) A limited driving privilege contains certain restrictions and conditions to authorize driving. An officer encountering a driver operating a motor vehicle on a limited privilege should note these restrictions and see that they are being followed. Otherwise, the driver should be charged with driving while license revoked [N.C.G.S. § 20-28].

**NOTE: Make clear to students the correct charge is DWLR and not NOL for driving in violation of restriction of limited driving privilege.**

- (2) If the driver had an alcohol concentration of 0.15 or more at the time of the **impaired driving** offense, the trial court must restrict the driver to operating a vehicle equipped with an ignition interlock system and restrict

driving to the place of employment, the school in which enrolled, the court ordered treatment or substance abuse education, or ignition interlock service facility (the judge may order this for any other driver also). An ignition interlock requires the driver to blow a breath sample into an instrument and punch in a code before his vehicle will start. The ignition interlock will be set at 0.02. If the driver has an ignition interlock restriction, it is DWLR to operate a vehicle without one.<sup>111</sup>

- (3) When a driver is charged with N.C.G.S. § 20-28 for violating terms or conditions of a limited privilege and presented to a magistrate, the magistrate will seize the limited driving privilege upon finding probable cause for driving while license revoked. **A law enforcement officer should not seize a limited driving privilege unless ordered to do so by a judicial official.**

The law enforcement officer can hold the limited privilege to the same extent the officer holds onto a person's driver license.

- (4) When a law enforcement officer has probable cause to believe that a person driving pursuant to this limited privilege has consumed greater than 0.02 percent alcohol concentration before or during driving, the officer can require the driver to submit to chemical analysis. If an alcohol concentration of greater than 0.02 is revealed, driving while license revoked should be charged (as well as any other implied consent offense violated). This means that individuals with this type of limited driving privilege can drive after consuming alcohol but he or she with greater than a 0.02 alcohol concentration are in violation.

13. Lower alcohol concentration restrictions upon reinstatement [N.C.G.S. § 20-19(c3)]

**NOTE: Show slide, "Lower Alcohol Concentration Restrictions upon Reinstatement."**

When DMV restores a driver license after a revocation for alcohol-related offenses, DMV must place a condition on the driver license that the driver does not operate the vehicle with an alcohol concentration greater than (1) 0.02 or (2) 0.04 or more, depending upon the offense. This lower-alcohol concentration restriction will

remain on the driver license for various lengths of time, depending upon the type of revocation.

**The reduced alcohol concentration restriction will be printed on the driver license by DMV.** An officer who has reasonable grounds to believe the driver is operating a motor vehicle on the highway in violation of the alcohol concentration condition shall request the driver to submit to a chemical analysis. If the driver refuses to submit to the analysis or has an alcohol concentration over the alcohol concentration condition, the officer must forward an affidavit to DMV. The affidavit form (AOC-CVR-1/DHHS 3907), which is used for 30-day pretrial revocations and other refusals to submit to the Intox ECIR II, is used for this purpose also. DMV is required to revoke the driver license for one (1) year. The one (1) year begins at the end of any remaining period from the original revocation. A violation of the restriction will also be NOL.

**NOTE: Show slide and refer to form “AOC-CVR-1/DHHS3907.”**

14. Ignition interlock program

**NOTE: Show slide, “Ignition Interlock Program.”**

- a) The purpose of the ignition interlock program is to help keep drunk drivers off our roads and to monitor the participants on the program. It allows drivers convicted of DWI to continue driving as long as they are sober. An individual participating in the program can only operate motor vehicles that are equipped with an ignition interlock device.

North Carolina is considered a “hybrid” state, which means a driver can be on the program due to administrative and judicial requirements. Currently, North Carolina has three (3) approved certified service providers that service all participants on the program. The NCDMV Ignition Interlock Unit monitors the participants on the program by reviewing the violation reports received from the approved service providers through a web-based system that electronically forwards the reports to the NCDMV.

- b) What is an ignition interlock device?

An ignition interlock device (IID) is a breath alcohol analyzer connected to the ignition system of a vehicle that measures a driver’s breath alcohol concentration (BAC). If the driver’s

alcohol level exceeds the calibrated level set on the device, then the vehicle will not start. Also, at different times while driving, the driver will be prompted to blow into the device to ensure he or she is not under the influence.

c) Ignition interlock statutes

(1) Restoration of a license after certain driving while impaired convictions; ignition interlock

“This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. § 20-138.1, and **any of the following conditions is met:**

- (a) The person had an alcohol concentration of 0.15 or more.
- (b) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person’s license has been revoked.
- (c) The person was sentenced pursuant to N.C.G.S. 20-179(f3).”<sup>112</sup>

“The results of a chemical analysis, as shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the Division to determine that person’s alcohol concentration.”<sup>113</sup>

(2) When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person’s driver license the following restrictions for **one of the following** periods designated below.

- (a) “One year from the date of restoration if the original revocation period was one year.
- (c) Three years from the date of restoration if the original revocation period was four years.

(c) Seven years from the date of restoration if the original revocation was a permanent revocation.”<sup>114</sup>

(3) Vehicles subject to the requirement

“A person subject to this section shall **designate in accordance with the policies of the Division any registered vehicles owned by that person that the person operates or intends to operate and have the designated vehicles** equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not issue a license to a person subject to this section until presented with proof of the installation of an ignition interlock system in **at least one of the person’s designated vehicles** ~~all registered vehicles owned by the person.~~”<sup>115</sup>

(4) Effect of limited driving privilege

“If the person was eligible for an received a limited driving privilege under 20-179.3 with the ignition interlock requirement contained in N.C.G.S. § 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements” **of the previous section regarding vehicles subject othis requirement** ~~of subsection (e).~~”<sup>116</sup>

(5) Tampering with ignition interlock systems

“Any person who tampers with, circumvents, or attempts to circumvent an ignition interlock device required to be installed on a motor vehicle pursuant to judicial order, statute, or as may be otherwise required as a condition for an individual to operate a motor vehicle, for the purpose of avoiding or altering testing on the ignition interlock device in the operation or attempted operation of a vehicle, or altering the testing results received or results in the process of being received on the ignition interlock device, is guilty of a Class 1 misdemeanor. Each act of tampering, circumvention, or attempted circumvention under this statute shall constitute a separate violation.”<sup>117</sup>

(6) Limited driving privilege

- (a) Definition of limited driving privilege – A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver’s license to drive for essential purposes related to any of the following:
  - i) The person’s employment.
  - ii) The maintenance of the person’s household.
  - iii) The person’s education.
  - iv) The person’s court-ordered treatment or assessment.
  - v) Community service ordered as a condition of the person’s probation.
  - vi) Emergency medical care.
  - vii) Religious worship.
- (b) Ignition interlock required – If a person’s driver’s license is revoked for a conviction of N.C.G.S. § 20-138.1, and the person had an alcohol concentration of 0.15 or more, a judge shall include all of the following in a limited driving privilege order:
  - i) A restriction that the applicant any operate only a designated motor vehicle.
  - ii) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.02. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in

the Department of Administration to ensure that potential vendors are not discriminated against.

- iii) A requirement that the applicant personally activates the ignition interlock system before driving the motor vehicle.

For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove a person's alcohol concentration greater than 0.02, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court.

- d) Traffic stop for ignition interlock drivers

Conducting a traffic stop on a vehicle with an ignition interlock is not different from any other vehicle stop. The officer must have reasonable suspicion that criminal activity has been committed before executing a traffic stop and maintain officer safety when stopping and approaching the vehicle.<sup>118</sup> Also, a traffic stop on a vehicle with an ignition interlock will most likely NOT be for the ignition interlock device itself. However, recognizing a vehicle with an ignition interlock device and understanding a little about the operating system may assist the officer in assessing the stop and applying appropriate charges.

Therefore, when an officer encounters a vehicle with an ignition interlock device, the following steps may be appropriate to apply during the stop.

- (1) Identify/verify a driver with an ignition interlock restricted license.
- (2) Have the driver turn off the vehicle.
- (3) Observe inside the vehicle to determine if an ignition interlock is present.
- (4) After at least three (3) minutes have passed, ask the driver to start the vehicle.



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- (5) If the vehicle starts without the driver having to take a breath test:
  - (a) The vehicle is not installed with an interlock device
    - i) Charge the driver with illegally operating a motor vehicle not equipped with an ignition interlock device; or
    - ii) Charge the driver with Driving While License Revoked
  - (b) The driver has circumvented the interlock device. Charge the driver with Tampering with an ignition interlock device.
- (6) If the vehicle can't start without the driver having to take a breath test:
  - (a) Have the driver take a breath test
  - (b) If the device registers a "pass," the vehicle will start
  - (c) If the device registers a "fail," further testing may be needed
  - (d) Wait five (5) minutes have driver retest
  - (e) Subsequent "fails" device goes into the early recall and will need a retest
  - (f) Investigate for DUI
- (7) If the vehicle with ignition interlock was in a crash or can't be started or encounters other device problems, contact the appropriate service provider.

Refer to North Carolina General Statutes for further details regarding the effect of the violation, right to a hearing, and other administrative details.

**NOTE: Show video, *The Ignition Interlock Program in North Carolina.***

15. Evidence matters/preparation for trial

**NOTE: Show slide, “Evidence Matters/Preparation for Trial.”**

- a) Required evidence

**NOTE: Show slides, “Required Evidence.”**

The officer must build and prepare an implied consent offense case in much the same way any case is built. Since most implied consent cases are tried in the district courts, where the district attorney may be handling numerous cases at once, the charging officer becomes a key player in presenting all relevant information to the judge. To properly present the evidence, the officer must relay the events in chronological order. The officer must also establish reasonable suspicion for the stop, probable cause for the arrest, all evidence of impairment (e.g., driving, walking, talking, performance tests, etc.), and any chemical analysis results available. This section will discuss the legal aspects of preparing the case for trial.

Listed below are the items an officer must establish when presenting an implied offense investigation to the court.

- (1) **The reason for the initial stop.** The officer must justify the reasonable and articulable suspicion (RAS) for stopping the vehicle or contacting the violator (i.e., erratic driving) [440 U.S. 648]. At a DWI trial, the first attack of the charge will determine whether the officer had a valid reason to stop the driver. Reasonable and articulable suspicion (RAS) is defined to mean:

Specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training. Moreover, a court must consider the totality of the circumstances – the whole picture in determining whether reasonable suspicion exists [362 NC 244].

**NOTE: Show slide and refer to the handout, “The Visual Detection of DWI Motorists.” Pamphlet to be obtained at the U.S.D.O.T. webpage at <http://www.nhtsa.gov/staticfiles/nti/pdf/808677.pdf>.**

- (a) The National Highway Traffic Safety Administration sponsored research to identify the most common and reliable indicators of DWI.
- i) The research identified 25 cues presented in four (4) categories:
- Problems maintaining proper lane position
    - Weaving
    - Weaving across lanes
    - Straddling a lane line
    - Drifting
    - Swerving
    - Almost striking a vehicle or another object
    - Turning with a wide radius, or drifting during a curve
  - Speed and braking problems
    - Stopping problems
    - Accelerating for no reason
    - Varying speed
    - Slow speed
  - Vigilance problems
    - Driving without headlights at night
    - Failure to signal a turn or lane change, or signaling inconsistently with actions
    - Driving in opposing lanes or the wrong way on a one-way street
    - Slow response to traffic signals
    - Slow or failure to respond to an officer's signals
    - Stopping in the lane for no apparent reason
  - Judgment problems

Following too closely  
Improper or unsafe lane change  
Illegal or improper turn  
Backing improperly  
Driving on other than the  
designated roadway  
Stopping inappropriately in  
response to an officer  
Inappropriate or unusual  
behavior  
Appearing to be impaired

- ii) It should be noted that one (1) cue does not always establish grounds for a stop: the more cues present during observation, the greater the likelihood that the driver may be intoxicated.

The courts have said that an officer observing a vehicle driving ten (10) mph below the posted speed limit at night with the window down when it was 28 degrees, and a fixed stare was grounds to stop when the officer testified that, based upon his training in the NHTSA visual cues, the facts led him to suspect the driver was impaired [139 N.C. App 627]. Detailed notes of all facts that led the officer to suspect the driver was impaired based upon the officer's training and experience is necessary.

- (2) Constant and continuous weaving within the lane at night is justification for a stop [2012 N.C. LEXIS 413].
- (3) There are times when a stop does not require RAS, such as a roadblock [496 U.S. 444].
- (4) The facts which led the officer to have reasonable grounds to believe the defendant had committed an implied consent offense (i.e., appearance, odor, speech, etc.). Bad driving and an odor of alcohol amount to reasonable grounds or probable cause [263 NC 759]. A careful investigation before an arrest is critical.

- (5) **The effects of the impairing substance upon the defendant's mental and physical faculties.** The officer must prove appreciable (noticeable) impairment (i.e., field sobriety testing, observation of the defendant, etc.) [N.C.G.S. § 20-4.01(48b)]. In no event should the officer ever rely solely upon the results of chemical analysis to convict a defendant.

**NOTE: Upon completion of BLET, it is recommended that students take advanced training such as the Standardized Field Sobriety Tests (SFST) course on the (1) HGN, (2) walk and turn, and (3) one-leg stand.**

- (6) The second issue in a DWI trial is whether there was probable cause for arrest. If the officer did not see the defendant drive, such as a single-vehicle crash, then evidence that the defendant was driving is critical. Circumstantial evidence such as the defendant's statement, is the defendant, the registered owner of the car, injuries to the defendant that are consistent with a vehicle crash, independent witness, etc.
- (7) **Any statements made by the defendant** (including a series of questions which are provided on the DWI report form, that may be asked after arrest and once all Miranda requirements have been met).
- (8) The procedures followed in presenting the defendant to a chemical analyst and requesting the defendant to submit to a chemical analysis.

- b) Procedures followed in conducting the chemical analysis.

**NOTE: Show slide, "Procedures Followed in Conducting the Chemical Analysis."**

- (1) A certified copy of the defendant's driving record transmitted under DCIN procedures.
- (2) The officer must be prepared to testify to the grossly aggravating and aggravating factors present in the case at the sentencing hearing phase of the trial.

- c) Proper record-keeping

**NOTE: Show slide, "Proper Recordkeeping."**

- (1) It is the charging officer's responsibility to obtain and keep all records required in an implied consent offense. Therefore, notes, affidavits, rights forms, and other paperwork should be maintained until the case, and all subsequent appeals have been exhausted. If a central records division in your agency maintains these records for you, then care should be maintained that these reports are properly filed and available when needed.
  - (2) It should be noted that in a traffic crash case involving an implied consent offense, a civil case involving the event may arise many years after the criminal trial is complete. The investigating officer may be called to testify and, therefore, should be able to produce notes and reports at that time.
  - (3) Proper recordkeeping is the cornerstone of having the evidence admitted into trial.
- d) DWI opinion question

**NOTE: Show slide, "DWI Opinion Question."**

The charging officer should expect the district attorney to ask the officer his/her opinion concerning the defendant's degree of impairment.

If the officer believes the defendant was under the influence of an impairing substance at the time of the offense, the response to the question should be:

**"It is my opinion that the defendant had consumed a sufficient quantity of some impairing substance so as to appreciably impair both his/her mental and physical faculties."**

Some officers become confused because, for example, they observed the defendant has slurred speech or is unsteady on his or her feet, but the defendant does not have difficulty following directions. The officer consequently thinks that only the defendant's physical faculties are impaired. Remember that if a defendant's mental faculties are impaired, the impairment will show up in the impairment of the defendant's physical inability to walk or talk. The brain or mental faculties control the body. Alcohol affects mental faculties, which also controls the

physical faculties. If an officer observes impairment, it will be both mental and physical impairment.

16. Forfeiture of vehicle and rights to register [N.C.G.S. § 20-28.2].

**NOTE: Show slide, “Seizure of Vehicles.”**

- a) If a driver is charged with DWI and the driver license is revoked for an impaired driver license revocation (DWI, 30-day revocation, refusal to submit to a chemical analysis, driving after drinking by person under age 21, death by vehicle-based upon DWI, or similar out-of-state or military offense) or the person was driving without a valid driver license and was not covered by an automobile liability policy, the officer shall seize the vehicle. The vehicle should be towed to a location designated by the county school board [N.C.G.S. § 20-28.3].
- b) If the owner is the operator and is convicted of both DWI (or Habitual DWI) and DWLR, the court will order the vehicle forfeited and sold. The proceeds are paid to the school board [N.C.G.S. § 20-28.2].
- c) The charging officer is required to complete the Officer’s Affidavit For Seizure and Impoundment and Magistrate’s Order form [AOC-CR-323] and present it to the magistrate, who will order the vehicle seized or impounded. Within 24 hours, the officer seizing must notify DMV of the seizure. This notification is accomplished through DCIN by notifying the dispatcher for the agency seizing the motor vehicle, who sends the notification. The officer seizing the vehicle must also seize the keys to the vehicle from the driver and place a green sticker on the windshield, indicating that this is a DWI seizure so the wrecker operator will know. Complete and accurate information is required, especially on vehicles registered in another state. DMV will notify the owner, lienholders, and insurance companies of the impoundment.

**NOTE: Show slide and refer to form “AOC-CR-323.”**

- d) If the seized vehicle was damaged in a collision, a crash report, DMV 349, must be completed even if total damages is less than \$1000.00 [N.C.G.S. § 20-4.01(33b)(b.)].
- e) If the driver is not the owner, the owner can bond the car out before trial, if the driver can show that he or she was an

innocent party. An innocent party is a vehicle owner who did not know and who had no reason to know the operator's driver license was revoked, or if the party did know of the revocation, did not give the operator permission to drive. The innocent party must file a police report for unauthorized use and agree to prosecute. N.C.G.S. § 20-28.2(a1)(2). The innocent party must pay towing and storage fees, sign a bond for twice the value of the vehicle, agree to return the vehicle to court at the time of the defendant's trial, and sign an acknowledgment agreeing not to allow the defendant to drive his or her vehicle. An innocent party will not lose his or her vehicle when the defendant is convicted. A person who has previously signed an acknowledgment cannot be an innocent party. The first time a person loans the revoked defendant a car, the owner may get the vehicle back. The second time, the owner will lose the vehicle.

- f) An operator who is convicted of DWI and DWLR, as provided in this Section, will forfeit the right to register a vehicle in his or her name until his or her driver license is restored. The owner of a vehicle who is not an innocent party will also forfeit the right to register the seized vehicle in his or her name until the operator has his or her driver license restored [N.C.G.S. § 20-54.1].

17. Miscellaneous

- a) Prosecutor disclosure requirements [N.C.G.S. § 20-138.4].

**NOTE: Show slide, "Prosecutor Disclosure Requirements."**

- (1) When a defendant is charged with any DWI offense and the district attorney:
  - (a) "enters a voluntary dismissal; or
  - (b) accepts a plea of guilty or no contest to a lesser included offense; or
  - (c) substitutes another charge, by a statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not a case subject to the implied-consent law;



- (d) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in a case subject to the implied-consent law.”

**The district attorney must enter the detailed facts on why such action has been taken. Refer to Form AOC-CR-339, “Prosecutor’s Explanation of Dismissal or Reduction.”**

- (2) General explanations such as “interests of justice” or “insufficient evidence” are not acceptable and do not meet the requirements of this section.

- b) Checking stations and roadblocks [N.C.G.S. § 20-16.3A].

**NOTE: Show slide, “Checking Stations and Roadblocks.”**

- (1) Publicized checking stations are one (1) of the most effective means of deterring impaired drivers. Stuster and Blowers, in 1995, confirmed that frequent, highly publicized checkpoint programs substantially reduced alcohol-related crashes by 10 to 20 percent. A summary of the U.S. literature examined nine (9) studies through the early 1990s and concluded that ‘the accumulated evidence supports the hypothesis that checkpoints reduce impaired driving” (Ross, 1992a).
- (2) Officers must follow the checking station plan or the policy of the agency because checking stations are an exception to the Fourth Amendment requirement that an officer has reasonable articulable suspicion to stop a vehicle. The officer needs no reason other than the vehicle arrived at the checking station. The Constitution limits the purpose for which a checking station may be established. The officer who makes an arrest must be prepared to testify about the checkpoint plan or policy used to establish the checking station and include the programmatic purpose of the checking station and the fact that the officer did not deviate from the checkpoint plan and process. Any deviation or a lack of recall about the checking station may result in the court finding the stop was unconstitutional.

- (3) Checking stations and roadblocks conducted to determine compliance with provisions of Chapter 20 must meet the requirements outlined in N.C.G.S. § 20-16.3A. These requirements are:
  - (a) “Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped to produce driver license, registration, or insurance information.
  - (b) Operate under a written policy that provides the guideline for the pattern, which need not be in writing. The policy may be either the agency’s policy, or if the agency does not have a written policy, it may be the policy of another law enforcement agency, and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested to produce driver license, registration, or insurance information. If officers of a law enforcement agency are operating under another agency’s policy, it must be stated in writing.
  - (c) Advise the public that an authorized checking station is being operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.”
- (4) Officers at the checking station must request every driver who falls within the pattern (every driver, every third driver, etc.) to produce the same information. Unless traffic conditions begin to create a hazard, the pattern for screening cannot be modified. Vehicles that attempt to avoid a checking station may also be stopped [351 NC 921].
- (5) Once the driver is stopped based upon the pattern and requested to provide driver license and registration, an officer who determines there is a reasonable suspicion that an occupant has violated any provision of law may

detain the driver or occupant to investigate further. The operator of any vehicle stopped at a checking station may be requested to submit to an alcohol screening test under N.C.G.S. § 20-16.3 if, during the stop, the officer determines the driver had previously consumed alcohol or has an open container of alcohol in the vehicle. The officer requesting the screening test may consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(6) The placement of checkpoints should be randomly or statistically indicated and not repeatedly placed in the same location.

c) Dram shop provisions [N.C.G.S. § 18B-120].

**NOTE: Show slide, "Dram Shop Provisions."**

(1) Dram shop investigations generally do not involve patrol officers and are generally conducted by a department's Alcohol Beverage Control unit or the North Carolina Alcohol Law Enforcement agency. A good overview of the provision is important for a patrol officer so they may know when to alert the specialist units listed above that an investigation may be in order.

(2) The provision allows a civil suit for damage when:

(a) a person (other than the underage person who bought alcoholic beverages) is injured;

(b) by a vehicle;

(c) driven;

(d) by an underage person who is impaired;

(e) the defendant holds an ABC permit (other than a brown-bagging permit; a special one-time permit, or a commercial permit);

(f) the defendant or his agent or employee sold or furnished alcoholic beverages to the underage person; and

- (g) the person's injury was proximately caused by the underage person's impairment.
- (3) Damages are limited to \$500,000, and this type of suit has a one-year statute of limitations. Defendants may be entitled to "good management practices" defense if they can show things such as asking for identification. This statute provides that there is no liability for failing to serve alcoholic beverages to a person with no ID or to a person who looks underage.

**A person's common-law basis for a lawsuit for sale of an alcoholic beverage to an intoxicated person remains available also.**

### III. Conclusion

#### A. Summary

**NOTE: Show slides, "Training Objectives."**

1. Identify the following motor vehicle law violations:
  - a) Driver license provisions
  - b) Registration and vehicle plate requirements
  - c) Equipment safety inspection provisions
  - d) Passenger restraint laws
  - e) Vehicle operation
  - f) Driving while impaired
2. Identify basic practices and procedures related to obtaining chemical analyses, including blood or breath tests.
3. Respond to citizen inquiries by explaining provisions relating to motor vehicle law.
4. Respond to citizen inquiries by explaining court and Division of Motor Vehicles (DMV) procedures relating to violations.

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5. State legal issues and basic practices relating to establishing and conducting checking stations.

B. Questions from Class

**NOTE: Show slide, "Questions."**

C. Closing Statement

Each year, hundreds of citizens are injured in motor vehicle collisions, and thousands of dollars are lost as a result of this property damage. It is your job as a law enforcement officer to actively enforce all motor vehicle violations because it is these violations that cause a great deal of pain and destruction to many innocent citizens of North Carolina. **Take this section with you into the field and use it as a reference guide so that you may be a valuable member of your agency and community.**

**NOTES**

<sup>1</sup> I. Wagner, “Automobile Registrations in the United States in 2020, By State,” chart.

<sup>2</sup> I. Wagner, “Total Number of Licensed Drivers in the U.S. in 2019, by State,” chart.

<sup>3</sup> North Carolina Department of Transportation, “North Carolina 2018 Traffic Crash Facts, chart.

<sup>4</sup> N.C.G.S. § 14-3.1 (a) (1985).

<sup>5</sup> N.C.G.S. § 20-4.19 (1997).

<sup>6</sup> N.C.G.S. § 15A-302 (b) (2003).

<sup>7</sup> N.C.G.S. § 15A-302 (b) (2003).

<sup>8</sup> N.C.G.S. § 20-4.18 (1999).

<sup>9</sup> N.C.G.S. § 20-4.21 through 20-4.30 (1993).

<sup>10</sup> N.C.G.S. § 20-23 (1993) and 20-26(a) (2015).

<sup>11</sup> N.C.G.S. § 143B-903 (c) (2014).

<sup>12</sup> N.C.G.S. § 20-4.01 (6) (2021).

<sup>13</sup> N.C.G.S. § 20-39 (2015).

<sup>14</sup> N.C.G.S. § 20-49 (2011).

<sup>15</sup> N.C.G.S. § 20-4.01 (25) (2021).

<sup>16</sup> *State v. Mack*.

<sup>17</sup> N.C.G.S. § 20-4.01(7) (2021).

<sup>18</sup> N.C.G.S. § 20-4.01 (49) (2021).

<sup>19</sup> N.C.G.S. § 20-171 (1939).

<sup>20</sup> N.C.G.S. § 20-138.1 (2006).

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- <sup>21</sup> N.C.G.S. § 20-4.01 (49) (2021).
- <sup>22</sup> N.C.G.S. § 20-4.01 (49) (2021).
- <sup>23</sup> N.C.G.S. § 20-4.01 (23) (2021).
- <sup>24</sup> N.C.G.S. § 20-4.01 (12a) (2021).
- <sup>25</sup> N.C.G.S. § 20-4.01 (28b) (2021).
- <sup>26</sup> N.C.G.S. § 105-164.3(22) (2020).
- <sup>27</sup> N.C.G.S. § 20-4.01 (13) (2021).
- <sup>28</sup> N.C.G.S. § 20-160
- <sup>29</sup> N.C.G.S. § 20-4.01 (38) (2021).
- <sup>30</sup> N.C.G.S. § 20-4.01 (13) (2021).
- <sup>31</sup> N.C.G.S. § 20-4.01 (32) (2021).
- <sup>32</sup> 80 N.C. App. 151.
- <sup>33</sup> 112 N.C. App. 232.
- <sup>34</sup> 343 N.C. 61.
- <sup>35</sup> 67 N.C. App. 512.
- <sup>36</sup> N.C.G.S. § 20-4.01 (17) (2021).
- <sup>37</sup> N.C.G.S. § 20-43(a) (2018).
- <sup>38</sup> N.C.G.S. § 20-43.1 (2016).
- <sup>39</sup> N.C.G.S. § 20-28 (2021).
- <sup>40</sup> N.C.G.S. § 20-28 (2021).
- <sup>41</sup> N.C.G.S. § 20-29 (1994).
- <sup>42</sup> N.C.G.S. § 20-7(f)(5) (2021).

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<sup>43</sup> N.C.G.S. § 20-7(m) (2022).

<sup>44</sup> N.C.G.S. § 20-11 (2021).

<sup>45</sup> N.C.G.S. § 20-7 (2022).

<sup>46</sup> N.C.G.S. § 20-37.16 (2018).

<sup>47</sup> N.C.G.S. § 20-16.1 (2004), N.C.G.S. § 20-20.1 (2008), N.C.G.S. § 20-179.3 (2022).

<sup>48</sup> N.C.G.S. § 20-9 (2018).

<sup>49</sup> N.C.G.S. § 20-37.13 (2018).

<sup>50</sup> N.C.G.S. § 20-7(n) (2022).

<sup>51</sup> N.C.G.S. § 20-37.13(a) (2018).

<sup>52</sup> N.C.G.S. § 20-7 (c) (2021).

<sup>53</sup> N.C.G.S. § 20-137.3 (2009).

<sup>54</sup> N.C.G.S. § 20-16 (a) (2015).

<sup>55</sup> National District Attorneys Association.

<sup>56</sup> N.C.G.S. § 20-37.16 (2018).

<sup>57</sup> North Carolina Department of Transportation. “Commercial Driver License Manual.”

<sup>58</sup> N.C.G.S. § 20-4.01 (5b) (2021).

<sup>59</sup> N.C.G.S. § 20-4.01 (41a) (2021).

<sup>60</sup> N.C.G.S. § 20-63 (2019).

<sup>61</sup> N.C.G.S. § 20-115.1 (i) (2008).

<sup>62</sup> N.C.G.S. § 20-115.1 (e) (2008).

<sup>63</sup> N.C.G.S. § 20-127 (e) (2017).



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<sup>64</sup> N.C.G.S. § 20-127 (a) (2017).

<sup>65</sup> N.C.G.S. § 20-129 (g) (2017).

<sup>66</sup> ~~Session Law 2021-128, House Bill 692.~~ N.C.G.S. § 20-135.4 (d) (2021).

<sup>67</sup> ~~N.C.G.S. § 20-123 (b) and (c) (2021).~~

<sup>68</sup> N.C.G.S. § 20-123 (b) and (c) (1997).

<sup>69</sup> N.C.G.S. § 20-183.4C (2021).

<sup>70</sup> N.C.G.S. § 20-67 (a) (1997).

<sup>71</sup> N.C.G.S. § 20-67 (a) (1997).

<sup>72</sup> N.C.G.S. § 20-53.4 (2015).

<sup>73</sup> N.C.G.S. § 20-309 (a) (2015).

<sup>74</sup> N.C.G.S. § 20-4.01 (27) (b) (2021).

<sup>75</sup> N.C.G.S. § 20-7 (a3) (2021).

<sup>76</sup> N.C.G.S. § 20-140.4 (a) (2) (2019).

<sup>77</sup> N.C.G.S. § 20-135.3 (c) (2021).

<sup>78</sup> N.C.G.S. § 20-135.3 (c) (2016).

<sup>79</sup> N.C.G.S. § 20-4.01 (27g) (2021).

<sup>80</sup> N.C.G.S. § 20-121.1 (1) (2021).

<sup>81</sup> N.C.G.S. § 20-121.1 (2021).

<sup>82</sup> N.C.G.S. § 20-121.1 (2021).

<sup>83</sup> N.C.G.S. § 20-121.1 (2021).

<sup>84</sup> N.C.G.S. § 20-121.1 (2021).

<sup>85</sup> N.C.G.S. § 20-4.01 (49) (2021).

<sup>86</sup> United States Department of Transportation. “Traffic Safety Facts – 2009 Data.”

<sup>87</sup> N.C.G.S. § 20-137.1 (2007).

<sup>88</sup> N.C.G.S. § 20-137.1 (2007).

<sup>89</sup> N.C.G.S. § 20-137.1 (2007).

<sup>90</sup> N.C.G.S. § 20-135.2A (e) (2017).

<sup>91</sup> N.C.G.S. § 20-135.2A (f) (2017).

<sup>92</sup> N.C.G.S. § 20-135.2A (d1) (2017).

<sup>93</sup> N.C.G.S. § 20-137.1 (2007).

<sup>94</sup> N.C.G.S. § 20-137.4A (a) (2012).

<sup>95</sup> N.C.G.S. § 20-137.4A (a1) (2012).

<sup>96</sup> N.C.G.S. § 20-137.4A (c) (2012).

<sup>97</sup> N.C.G.S. § 20-142.1 (2019).

<sup>98</sup> 49 C.F.R. § 234.225.

<sup>99</sup> N.C.G.S. § 20-142.3 (b) (2019).

<sup>100</sup> N.C.G.S. § 20-37.6 (f) (1) through (3) (2021).

<sup>101</sup> N.C.G.S. § 20-157 (h) (2019).

<sup>102</sup> N.C.G.S. § 20-157 (i) (2019).

<sup>103</sup> N.C.G.S. § 20-157 (a) (2019).

<sup>104</sup> N.C.G.S. § 20-157.1 (a) through (c) (1999).

<sup>105</sup> N.C.G.S. § 20-157.1 (d) (1999).

<sup>106</sup> N.C.G.S. § 20-157.1 (g) (1999).

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<sup>107</sup> N.C.G.S. § 20-157.1 (h) (1999).

<sup>108</sup> N.C.G.S. § 20-157 (f) (2019).

<sup>109</sup> N.C.G.S. § 143B-1023 (2016).

<sup>110</sup> N.C.G.S. § 143B-1023 (c) (d) and ( (2016).

<sup>111</sup> N.C.G.S. § 20-179.3 (2021).

<sup>112</sup> N.C.G.S. § 20-17.8 (a) (1) through (3) (2021).

<sup>113</sup> N.C.G.S. § 20-17.8 (a) (2021).

<sup>114</sup> N.C.G.S. § 20-17.8 (c) (2021).

<sup>115</sup> N.C.G.S. § 20-17.8 (c1) (2021).

<sup>116</sup> N.C.G.S. § 20-17.8 (d) (2021).

<sup>117</sup> N.C.G.S. § 20-17.8 (A) (2021).

<sup>118</sup> *State v. Stiles*.

# Driver License Agreement (DLA): Combining the Driver License Compact and the Non-Resident Violator Compact (NRVC)

## General Information

America Association of Motor Vehicle Administrators supports the concepts of the Driver License Compact and the Non-Resident Violator Compact, and supports the Compact Executive Board, an entity separate from the association. America Association of Motor Vehicle Administrators supports its activities by providing Secretariat services and having an America Association of Motor Vehicle Administrators Board Advisor in attendance at Compact Executive Board meetings.

The Driver License Compact Commission membership consists of the Compact Administrator, or, its designee, from each jurisdiction that is party to the Compact. The Governing Board of the compacts is charged with directing and supervising its affairs, committees, and publications; promoting its objectives; and supervising disbursement of its funds.

## Driver License Compact

The Driver License Compact is a major step necessary to maximize law enforcement efforts against drunk drivers and other serious traffic offenders. Serious offenses such as drunk driving, vehicle manslaughter, reckless driving, etc., are no less serious when committed in some other jurisdiction than when committed in the driver's home state. The Driver License Compact was created to provide uniformity among the member jurisdictions when exchanging information with other members on convictions, records, licenses, withdrawals, and other data pertinent to the licensing process. Uniformity should ease administrative costs consistent with the concept which forms the basic tenet with the agreement that each driver, nationwide, have only one driver license and one driver control record.

## Non-Resident Violator Compact

The purpose of the Non-Resident Violator Compact is to standardize methods utilized by the various jurisdictions to process non-resident violators receiving citations, and their failure to appear or otherwise failure to comply with outstanding moving traffic summons.

The compact allows participating jurisdictions to inform each other's motor vehicle administrations when a resident of one jurisdiction did not comply with the citation's terms. Once the home jurisdiction motor vehicle administrator receives notice of a resident's citation noncompliance, the procedure for license suspension is initiated.

## Driver License Agreement

The purpose of the Driver License Agreement was to resolve four issues:

1. Valid in one state-only licenses
2. Transmission of Non-Driver License Agreement code withdrawals
3. Original violation costs related to failure to comply
4. The 10-day reporting requirement for convictions.

**DLC/NRVC MEMBER STATUS**

**NRVC**

Georgia  
Massachusetts  
Tennessee

**DLC**

Alaska  
California  
Montana  
Oregon

**BOTH**

Alabama  
Arizona  
Arkansas  
Colorado  
Connecticut  
Delaware  
D. C.  
Florida  
Hawaii \*  
Idaho  
Illinois  
Indiana  
Iowa  
Kansas  
Kentucky \*  
Louisiana  
Maine  
Maryland  
Minnesota  
Mississippi  
Missouri  
Nebraska  
Nevada  
New Hampshire  
New Jersey  
New Mexico  
New York  
North Carolina  
North Dakota  
Ohio  
Oklahoma  
Pennsylvania  
Rhode Island  
S. Carolina  
S. Dakota  
Texas  
Utah  
Vermont  
Virginia  
Washington  
West Virginia  
Wyoming

**NEITHER**

Michigan  
Wisconsin

**STATES NOT YET MEMBERS OF THE DLC COMPACT**

Georgia	Tennessee**
Massachusetts	Wisconsin
Michigan	

**STATES NOT YET MEMBERS OF THE NRVC COMPACT**

Alaska	Montana
California	Oregon
Michigan	Wisconsin

**TOTALS**

<b>3</b>	<b>4</b>	<b>42</b>	<b>2</b>
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\* **Newest Member** -- Hawaii (NRVC) -- Effective Date: January 1, 1996  
 Kentucky (DLC) -- Effective Date: August, 1996  
 \*\* **Inactive** - - Dropped out in 1997

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

**IN THE MATTER OF:**

Name And Address Of Applicant

**PETITION FOR  
 LIMITED DRIVING PRIVILEGE  
 PRETRIAL REVOCATION  
 (IMPLIED-CONSENT OFFENSE)**

G.S. 20-16.5

Race Sex Height Weight

Hair Color Eye Color Date Of Birth Drivers License No. State

Date Of Offense Date Of Revocation If Different From Offense Date

I, the undersigned applicant, request the Court to issue a limited driving privilege to me pursuant to G.S. 20-16.5(p). I certify that:

1. My license was revoked by the District Court Division of the General Court of Justice in the county shown above.
2. I meet all of the eligibility requirements for a limited driving privilege under G.S. 20-16.5(p). (NOTE: See reverse side for eligibility requirements.)
3. I have attached a copy of the revocation order issued in this case.
4. I have attached the required documentation of my need to engage in employment-related driving at times other than 6:00 A.M. to 8:00 P.M. on Monday through Friday.
5. (Check if license revoked indefinitely.) I need a limited driving privilege to overcome undue hardship.

NOTE TO APPLICANT: You may attach any documentation to support your allegation of undue hardship. You may be required to provide additional documentation, which may include a copy of your driving record and/or evidence of financial responsibility (insurance).

Date Signature Of Applicant

**NOTICE OF HEARING**

**Notice To The District Attorney:**

The applicant named above will apply to the district court judge presiding at the date, time and place of hearing shown below for issuance of a limited driving privilege.

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

**CERTIFICATION**

I certify that on this date, I filed a copy of this Petition with the district attorney's office

- in person.  by depositing same in the U. S. mail in an envelope bearing proper postage.  
 Other: \_\_\_\_\_

Date Signature  Deputy CSC  Assistant CSC  
 Clerk Of Superior Court

**WAIVER**

I, the undersigned Prosecutor, waive the statutory requirement of the Clerk to file a copy of this Petition with the District Attorney's office and further waive the right to appear at a hearing on this Petition for limited driving privilege.

Date Name Of Prosecutor (Type Or Print) Signature Of Prosecutor

**NOTE:** The Clerk of Superior Court upon the filing of this Petition with a notice of hearing, should immediately file a copy with the District Attorney's office and sign the certification, unless the Prosecutor waives the right to having this Petition filed with his/her office.

Eligibility requirements pursuant to G.S. 20-16.5(p) are as follows:

If drivers license was revoked for a thirty (30) or forty-five (46) day period:

1. At the time of the alleged offense the defendant held either a valid drivers license or a license that had been expired for less than one year;
2. The defendant does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked or additional convictions of an offense involving impaired driving since being charged for the violation for which the license is currently revoked under 20-16.5;
3. The defendant's license has been revoked for at least ten (10) days if the revocation is for thirty (30) days or thirty (30) days if the revocation is for forty-five (45) days; and
4. The defendant has obtained a substance abuse assessment from a mental health facility and registered for and agreed to participate in any recommended training or treatment program.

If drivers license was revoked indefinitely:

1. At the time of the alleged offense the defendant held either a valid drivers license or a license that had been expired for less than one year;
2. At the time of the alleged offense the defendant had not within the preceding seven (7) years been convicted of an offense involving impaired driving;
3. Subsequent to the alleged offense, the defendant has not been convicted of, or had an unresolved charge lodged against him/her for, an offense involving impaired driving;
4. The defendant must have completed either: (i) thirty (30) days of the period of license revocation for the current offense if the defendant was present when the license was revoked or if the defendant was not present but surrendered his/her license within five (5) working days after the effective date of the revocation order, or (ii) forty-five (45) days of the period of license revocation for the current offense if the defendant was not present when the license was revoked and did not surrender his/her license within five (5) working days of the effective date of the revocation order.
5. The defendant has obtained and filed with the court a substance abuse assessment conducted by one of the entities authorized by the Department of Health and Human Services to conduct assessments; and
6. A limited driving privilege is necessary to overcome undue hardship.

# STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice  
District Court Division

\_\_\_\_\_ County

**IN THE MATTER OF**

Name And Address Of Applicant

**LIMITED DRIVING PRIVILEGE  
PRETRIAL REVOCATION  
(IMPLIED-CONSENT OFFENSE)**

G.S. 20-16.5

Race	Sex	Height	Weight		
Hair Color	Eye Color	Date Of Birth	Drivers License No.	State	
Date Of Offense			Date Of Revocation If Different From Offense Date		

**NOTE:** Use this form only for revocations under G.S. 20-16.5.**FINDINGS**

Upon application of the applicant for a limited driving privilege, the Court finds that:

1. The applicant's license is currently revoked under G.S. 20-16.5.
2. At the time of the alleged offense, the applicant held either a valid drivers license or a license that had been expired for less than one year.
3. On (name date) \_\_\_\_\_, the applicant:  
 surrendered his/her license as defined in 20-16.5(a)(5).  
**OR**  
 demonstrated that he/she was not currently licensed at the time of the offense.
4. The applicant does not have any unresolved pending charges involving impaired driving except for the charge which led to this current revocation under G.S. 20-16.5.
5. The applicant has not had any convictions for an offense involving impaired driving since being charged for the violation for which the license is currently revoked under G.S. 20-16.5.
6. The applicant's drivers license has been revoked for at least  ten (10) days and the minimum period of revocation is thirty (30) days.  thirty (30) days and the minimum period of revocation is forty-five (45) days.
7. The applicant has obtained and filed with this Court a substance abuse assessment; and has registered for and agreed to participate in any recommended training or treatment program.
8. The records of the Division of Motor Vehicles and the Clerk of Superior Court in this county have been searched and there are no other revocations in effect at this time.

**ORDER**

It is ORDERED that the applicant be allowed a limited driving privilege to be effective on the date indicated below to be used in accordance with the restrictions imposed on the reverse side of this form, and to expire on the expiration date specified below. This limited driving privilege is conditioned upon the maintenance of any financial responsibility required by G.S. 20-179.3(l) during the period of this privilege.

Effective Date	Expiration Date	Date
		Signature Of District Court Judge
		Name Of District Court Judge (type or print)

Original - File      Certified Copy - Applicant      Copy - DMV  
(Over)



**RESTRICTIONS**

The driver shall not drink alcohol while driving or drive while any alcohol remains in his/her body. The driver shall not drive while having a controlled substance in his/her body unless such controlled substance was lawfully obtained and taken in therapeutically approved amounts. This limited driving privilege **DOES NOT** include the privilege of operating a commercial motor vehicle as defined in G.S. 20-4.01(3d). Driving when essential for emergency medical care is authorized at any time. Standard working hours are from 6 AM to 8 PM, Monday - Friday.

Essential driving, other than for emergency medical care, is permitted only as follows: *(check only applicable boxes)*

1. Driving is permitted for work-related, religious worship, or educational purposes during standard working hours as follows:

2. Driving is permitted for maintenance of household during standard working hours as follows:

3. Driving is permitted for work-related, religious worship, or educational purposes during nonstandard working hours as follows:

The driver is self-employed and the required documentation for work-related driving is attached.

4. Driving is permitted for community service assignment, Alcohol and Drug Education Traffic School, and substance abuse treatment as follows:

5. Driving is restricted to:

a. any non-commercial vehicle registered in the name of the driver.

b. the following non-commercial vehicle(s): \_\_\_\_\_

The above vehicle shall be equipped with a functioning ignition interlock system of a type approved by the Commissioner of Motor Vehicles and the driver shall personally activate the ignition interlock system before operating the vehicle. The driver may drive to and from any ignition interlock service facility for installation and service purposes.

6. Additional restrictions:  Corrective Lenses  45 M.P.H. Only  Daylight Only

Other: *(specify)*

Name And Address Of ADET School, Community Service Coordinator, Or Mental Health Treatment Facility To Which Driver Assigned

Name And Address Of Employer Or Driver's Place Of Work

**NOTICE/ACKNOWLEDGMENT OF RECEIPT**

I have received a copy of this limited driving privilege which contains the restrictions on my driving privilege. I understand that if I drive with the odor of alcohol on my breath, I may be subject to arrest and loss of this limited driving privilege; I understand that this is my limited license to drive for essential purposes as set out above; that I must keep it in my possession during the period of revocation; that if my drivers license is revoked for any other reason, this limited driving privilege is invalid; that a violation of any restriction imposed in connection with this limited driving privilege constitutes the offense of driving while license revoked under G.S. 20-28.

Date

Signature Of Applicant

**CERTIFICATION**

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

Date

Signature

**n** Deputy CSC  Assistant CSC  Clerk Of Superior Court

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District     Superior Court Division

## IN THE MATTER OF

### LIMITED DRIVING PRIVILEGE INDEFINITE PRETRIAL REVOCATION (IMPLIED-CONSENT OFFENSE)

Name And Address Of Applicant

G.S. 20-16.5

Race	Sex	Height	Weight		
Hair Color	Eye Color	Date Of Birth	Drivers License No.	State	
Date Of Offense			Date Of Revocation If Different From Offense Date		

**NOTE:** Use this form only for revocations under G.S. 20-16.5, and only when the revocation is indefinite.

## FINDINGS

Upon application of the applicant for a limited driving privilege, the Court finds that:

- The applicant's license is currently revoked under G.S. 20-16.5, and the revocation is for an indefinite period.
- At the time of the alleged offense, the applicant held either a valid drivers license or a license that had been expired for less than one year.
- On (name date) \_\_\_\_\_, the applicant:
  - surrendered his/her license as defined in G.S. 20-16.5(a)(5).

**OR**

  - demonstrated that he/she was not currently licensed at the time of the offense.
- At the time of the alleged offense the applicant had not within the preceding seven (7) years been convicted of an offense involving impaired driving.
- Subsequent to the alleged offense, the applicant has not been convicted of, or had an unresolved charge lodged against him/her for, an offense involving impaired driving.
- a. The applicant was present when the applicant's drivers license was revoked for the current offense, and the applicant has completed thirty (30) days of the revocation period.
  - b. The applicant was not present when the applicant's drivers license was revoked for the current offense but surrendered that license within five (5) working days after the effective date of the revocation order, and the applicant has completed thirty (30) days of the revocation period.
  - c. The applicant was not present when the applicant's drivers license was revoked for the current offense and did not surrender that license within five (5) working days after the effective date of the revocation order, and the applicant has completed forty-five (45) days of the revocation period.
- The applicant has obtained and filed with the court a substance abuse assessment conducted by one of the entities authorized by the Department of Health and Human Services to conduct assessments.
- Allowance of a limited driving privilege to the applicant is necessary to overcome undue hardship.
- The records of the Division of Motor Vehicles and the Clerk of Superior Court in this county have been searched and there are no other revocations in effect at this time.

## ORDER

It is ORDERED that the applicant be allowed a limited driving privilege to be effective on the date indicated below to be used in accordance with the restrictions imposed on the reverse side of this form, and to expire on the expiration date shown below. This limited driving privilege is conditioned upon the maintenance of any financial responsibility required by G.S. 20-179.3(l) during the period of this privilege.

**NOTE:** This privilege will expire on the earlier of any date specified in this order or the date on which a final judgment, including appeals, has been entered on all implied consent offenses pending against the applicant on the date of this privilege.

Effective Date	Expiration Date
Date	Name Of District Court Judge (type or print)
	Signature Of District Court Judge

Original - File      Certified Copy - Applicant      Copy - DMV  
 (Over)

**RESTRICTIONS**

The driver shall not drink alcohol while driving or drive while any alcohol remains in his/her body. The driver shall not drive while having a controlled substance in his/her body unless such controlled substance was lawfully obtained and taken in therapeutically approved amounts. This limited driving privilege **DOES NOT** include the privilege of operating a commercial motor vehicle as defined in G.S. 20-4.01(3d). Driving when essential for emergency medical care is authorized at any time. Standard working hours are from 6 AM to 8 PM, Monday - Friday.

Essential driving, other than for emergency medical care, is permitted only as follows: *(check only applicable boxes)*

1. Driving is permitted for work-related, religious worship, or educational purposes during standard working hours as follows:

2. Driving is permitted for maintenance of household during standard working hours as follows:

3. Driving is permitted for work-related, religious worship, or educational purposes during nonstandard working hours as follows:

The driver is self-employed and the required documentation for work-related driving is attached.

4. Driving is permitted for community service assignment, Alcohol and Drug Education Traffic School, and substance abuse treatment as follows:

5. Driving is restricted to:

a. any non-commercial vehicle registered in the name of the driver.

b. the following non-commercial vehicle(s): \_\_\_\_\_

The above vehicle shall be equipped with a functioning ignition interlock system of a type approved by the Commissioner of Motor Vehicles and the driver shall personally activate the ignition interlock system before operating the vehicle. The driver may drive to and from any ignition interlock service facility for installation and service purposes.

6. Additional restrictions:  Corrective Lenses  45 M.P.H. Only  Daylight Only

Other: *(specify)*

Name And Address Of ADET School, Community Service Coordinator, Or Mental Health Treatment Facility To Which Driver Assigned

Name And Address Of Employer Or Driver's Place Of Work

**NOTICE/ACKNOWLEDGMENT OF RECEIPT**

I have received a copy of this limited driving privilege which contains the restrictions on my driving privilege. I understand that if I drive with the odor of alcohol on my breath, I may be subject to arrest and loss of this limited driving privilege; I understand that this is my limited license to drive for essential purposes as set out above; that I must keep it in my possession during the period of revocation; that if my drivers license is revoked for any other reason, this limited driving privilege is invalid; that a violation of any restriction imposed in connection with this limited driving privilege constitutes the offense of driving while license revoked under G.S. 20-28.

Date

Signature Of Applicant

**CERTIFICATION**

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

Date

Signature

Deputy CSC  Assistant CSC  Clerk Of Superior Court

# STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice

District  Superior Court Division

\_\_\_\_\_ County

## STATE VERSUS

## LIMITED DRIVING PRIVILEGE - SPEEDING, RECKLESS DRIVING, AGGRESSIVE DRIVING, LARCENY OF MOTOR FUEL, FELONY SPEEDING TO ELUDE, UNSAFE MOVEMENT, FAILURE TO MOVE OVER, OR PASSING STOPPED SCHOOL BUS - IN-STATE CONVICTIONS

G.S. 14-72.5(c); 20-16(a)(9), (a)(10), (a)(10a), (e1), (e2);  
20-16.1; 20-17(a)(16); 20-141.5(d); 20-154(a2); 20-157(i); 20-217(g1)

Name And Address Of Defendant

Race Sex Height Weight

Hair Color Eye Color Date Of Birth

Drivers License No. And State

Offense(s) For Which Defendant Was Convicted

Date(s) Of Conviction(s)

**NOTE:** Use this form in appropriate circumstances to issue a limited driving privilege when the defendant's license is suspended/revoked under one of the following provisions:

**G.S. 20-16(a)(9)** (speeding, reckless driving, aggressive driving) where at least one of the convictions occurred in NC. If the convictions occurred in multiple NC counties, choose one of the NC case files in which to issue the limited driving privilege. If all of the convictions occurred outside NC (i.e., in another state or in federal court), use AOC-CV-350 and AOC-CV-351.

**G.S. 20-16(a)(10)** (speeding in excess of 75 m.p.h. where maximum speed is less than 70 m.p.h.) where the conviction occurred in NC. If the conviction occurred in another state or in federal court, use AOC-CV-350 and AOC-CV-351.

**G.S. 20-16(a)(10a)** (speeding in excess of 80 m.p.h. where maximum speed is 70 m.p.h.) where the conviction occurred in NC. If the conviction occurred in another state or in federal court, use AOC-CV-350 and AOC-CV-351.

**G.S. 20-16.1(a)** (speeding more than 15 m.p.h. over speed limit at speed in excess of 55 m.p.h., or speeding in excess of 80 m.p.h.) where the conviction occurred in NC. If the conviction occurred in another state or in federal court, use AOC-CV-350 and AOC-CV-351.

**G.S. 20-17(a)(16)** (second or subsequent conviction of larceny of motor fuel under G.S. 14-72.5).

**G.S. 20-141.5(d)** (first felony speeding to elude conviction where only two aggravating factors were present).

**G.S. 20-154(a2)** (unsafe movement resulting in property damage in excess of \$5,000 or serious bodily injury to a motorcycle or bicycle operator or passenger).

**G.S. 20-157(i)** (violation of G.S. 20-157 causing serious injury or death).

**G.S. 20-217(g1)** (first felony conviction under G.S. 20-217). **Applies to offenses committed on or after December 1, 2013.**

## FINDINGS

The defendant has been convicted of the offense(s) shown above and the defendant's drivers license has been suspended/revoked. The Court finds that the defendant is eligible for, and in its discretion concludes that the defendant should be issued, a limited driving privilege.

The Court has been furnished a properly executed form DL-123 and is satisfied that the defendant is financially responsible.

The defendant has executed form DL-123A and is not required to furnish proof of financial responsibility.

## ORDER

It is ORDERED that the defendant be allowed a limited driving privilege to operate a non-commercial motor vehicle under the following conditions and under no other circumstances.

Geographical Restriction

Driving Hours Allowed

Type Of Vehicle

Additional Restrictions:  Corrective Lenses  45 M.P.H. Only  Daylight Only

Other: (specify) \_\_\_\_\_

This limited driving privilege authorizes the defendant to drive only if the defendant's license is suspended/revoked solely for the above referenced offense, and only for the duration of that suspension/revocation or for the period shown below, whichever is shorter. This limited driving privilege is subject to such further orders as the Court may deem necessary and proper.

It is conditioned upon the maintenance of financial responsibility.

Date Of Order

Effective From

To

Name Of Judge (type or print)

Signature Of Judge

## NOTICE/ACKNOWLEDGMENT OF RECEIPT

I have received a copy of this limited driving privilege, which contains the restrictions on my driving privilege.

I understand that this is my limited license to drive; that I must keep it in my possession during the period of suspension/revocation; that if my drivers license is suspended/revoked for any other reason, this limited driving privilege is invalid; and that a violation of any restriction imposed in connection with this limited driving privilege constitutes the offense of driving while license revoked under G.S. 20-28(a).

Date

Signature Of Defendant

## CERTIFICATION

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

Date

Signature

Deputy CSC  Asst. CSC

Clerk Of Superior Court

Original - File Certified Copy - Defendant Copy - DMV

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

## STATE VERSUS

## LIMITED DRIVING PRIVILEGE IMPAIRED DRIVING OR OPEN CONTAINER OR UNDERAGE ALCOHOL VIOLATION (N.C. CONVICTIONS ONLY)

Name And Address Of Defendant

G.S. 20-17.3, 20-179.3, 20-138.3(d), 20-138.7(h)

Race Sex Height Weight

Hair Color Eye Color Date Of Birth Drivers License No. State

Date Of Offense Date Of Conviction

**NOTE:** Use AOC-CV-352 when defendant's license was revoked for a conviction in another state or in a federal court. Use AOC-CR-340 when imposing an ignition interlock restriction.

## FINDINGS

Upon application of the defendant for a limited driving privilege, the Court finds that:

1. The defendant has been convicted of impaired driving under  G.S. 20-138.1;  G.S. 20-138.2;  G.S. 20-138.3; or  the defendant has been convicted of a second or subsequent offense of transporting an open container of alcoholic beverage under G.S. 20-138.7(a); or  the defendant has been convicted under G.S. 18B-302(a1); or  the defendant has been convicted under G.S. 18B-302(c);
2. At the time of the offense, the applicant held either a valid drivers license or a license that had been expired for less than one (1) year;
3. At the time of the offense, the defendant had not within the preceding seven (7) years been convicted of an offense involving impaired driving;
4. Punishment level three, four, or five has been imposed upon the defendant for the offense of impaired driving, or the defendant has been convicted under G.S. 20-138.3, or the defendant has been convicted of a second or subsequent offense under G.S. 20-138.7(a), or the defendant has been convicted under G.S. 18B-302(a1), or the defendant has been convicted under G.S. 18B-302(c);
5. Subsequent to the offense, the defendant has not been convicted of, or had an unresolved charge lodged against the defendant for, an offense involving impaired driving;
6. The records of the Division of Motor Vehicles and the Clerk of Superior Court in this county have been searched, and there are no other revocations in effect at this time;
7. The defendant has obtained and filed with the court a substance abuse assessment;
8. If convicted only under G.S. 20-138.3, the defendant was 18, 19 or 20 years old on the date of the offense and has not previously been convicted of a violation of G.S. 20-138.3; (**NOTE:** Even if the defendant was 18, 19 or 20 years old at the time of the offense, he/she may not receive a limited driving privilege if his/her current conviction was under either (1) G.S. 20-138.1 or (2) both G.S. 20-138.1 and G.S. 20-138.3.)
9.  a. The Court has been furnished a properly executed form DL-123 and is satisfied that the defendant is financially responsible.  
 b. The defendant has executed form DL-123A and is not required to furnish proof of financial responsibility.

## ORDER

It is ORDERED that the defendant be allowed a limited driving privilege to be effective on the date indicated below to be used in accordance with the restrictions imposed on the reverse of this form, and to expire one year from the date on which the Division of Motor Vehicles revokes the defendant's drivers license pursuant to G.S. 20-17(a)(2), G.S. 20-13.2(a), G.S. 20-17(a)(12), or G.S. 20-17.3. This limited driving privilege is conditioned upon the maintenance of any financial responsibility required by G.S. 20-179.3(l) during the period of this privilege.

Effective Date

Date

**NOTE TO DEFENDANT:** This privilege is no longer valid after the revocation period for the offense of which you were convicted has ended, or if your drivers license remains revoked solely because the Division of Motor Vehicles has not obtained a certificate of your completion of a substance abuse treatment program or an alcohol and drug education traffic school.

Signature Of Judge

Name Of Judge (Type Or Print)

**RESTRICTIONS**

The driver shall not drink alcohol while driving or drive while any alcohol remains in his/her body. The driver shall not drive while having a controlled substance in his/her body unless such controlled substance was lawfully obtained and taken in therapeutically approved amounts. This limited driving privilege **DOES NOT** include the privilege of operating a commercial motor vehicle as defined in G.S. 20-4.01(3d). Driving when essential for emergency medical care is authorized at any time. Standard working hours are from 6 AM to 8 PM, Monday - Friday.

Driving other than for emergency medical care is permitted only as follows: *(check only applicable boxes.)*

1. Driving is permitted for work-related, religious worship, or educational purposes during standard working hours as follows:

2. Driving is permitted for maintenance of household during standard working hours as follows:

3. Driving is permitted for work-related, religious worship, or educational purposes during nonstandard working hours as follows.

The driver is self employed and the required documentation for work-related driving is attached.

4. Driving is permitted for community service assignment, Alcohol and Drug Education Traffic School, and substance abuse assessment or treatment as follows:

5. Driving is restricted to:

a. any non-commercial vehicle registered in the name of the driver.

b. the following non-commercial vehicle(s): \_\_\_\_\_

6. Additional restrictions:  Corrective Lenses  45 M.P.H. Only  Daylight Only  
 Other:

Name And Address Of ADET School, Community Service Coordinator, Or Mental Health Treatment Facility To Which Driver Assigned

Name And Address Of Employer Or Driver's Place Of Work

**NOTICE/ACKNOWLEDGMENT OF RECEIPT**

I have received a copy of this limited driving privilege which contains the restrictions on my driving privilege. I understand that if I drive with the odor of alcohol on my breath, I may be subject to arrest and loss of this limited driving privilege; I understand that this is my limited license to drive; that I must keep it in my possession during the period of revocation; that if my drivers license is revoked for any other reason, this limited driving privilege is invalid; that a violation of any restriction imposed in connection with this limited driving privilege constitutes the offense of driving while license revoked under G.S. 20-28; that if community service has been ordered, my willful failure to pay the prescribed fee or complete the community service within the time limit imposed shall result in revocation of this limited driving privilege; and that my willful failure may also result in other action authorized by law for violation of a condition of probation.

Date

Signature Of Defendant

**CERTIFICATION**

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

Date

Signature

Deputy CSC  Assistant CSC  
 Clerk Of Superior Court

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division**STATE VERSUS**

Name And Address Of Applicant

**LIMITED DRIVING PRIVILEGE  
WILLFUL REFUSAL**

G.S. 20-16.2

Race	Sex	Height	Weight		
Hair Color	Eye Color	Date Of Birth	Drivers License No.	State	

Offense Charged	Date Of Refusal
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**FINDINGS**

G.S. 20-17.3, 20-138.3(d), 20-138.7(h), 20-179.3

Upon application for a limited driving privilege, by an applicant whose drivers license was revoked for twelve (12) months for willful refusal to submit to a chemical analysis after being charged with an implied-consent offense, the Court finds that:

- At the time of the refusal, the applicant held either a valid drivers license, or a drivers license that had been expired for less than one (1) year;
- At the time of the refusal, the applicant had not within the preceding seven (7) years been convicted of an offense involving impaired driving;
- At the time of the refusal, the applicant had not in the preceding seven (7) years willfully refused to submit to a chemical analysis under G.S. 20-16.2;
- The implied-consent offense did not involve death or critical injury to another person;
- The underlying charge for which the applicant was requested to submit to a chemical analysis was finally disposed of (a) other than by conviction or (b) by a conviction of impaired driving under G.S. 20-138.1 at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the applicant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which he/she was sentenced, or (c) by a conviction of impaired driving under G.S. 20-138.2;
- Subsequent to the refusal, the applicant has had no unresolved pending charges for, or additional convictions of, an offense involving impaired driving;
- The applicant's drivers license has been revoked for at least six (6) months for the refusal;
- The records of the Division of Motor Vehicles and the Clerk of Superior Court in this county have been searched, and there are no revocations in effect other than a revocation under G.S. 20-16.2 for this willful refusal, and a revocation imposed under G.S. 20-17(a)(2), for the underlying charge;
- The applicant has obtained a substance abuse assessment and has successfully completed any recommended training or treatment program; and has filed with the Clerk a certificate of completion; (*Mandatory for offenses committed on or after December 1, 1997.*)
- The applicant was convicted under G.S. 20-138.1 and had an alcohol concentration of  0.16  0.15 (*use for offenses committed on or after December 1, 2007*) or more; (*If this item is selected, the restrictions in G.S. 20-179.3(g5) apply to the applicant.*)
- a. The Court has been furnished a properly executed form DL-123 and is satisfied that the applicant is financially responsible.  
 b. The applicant has executed form DL-123A and is not required to furnish proof of financial responsibility.

**ORDER**

It is ORDERED that the applicant be allowed a limited driving privilege to be effective from the date of this Order, to be used in accordance with the restrictions imposed in this form, and to expire twelve (12) months from the date on which the Division of Motor Vehicles notified the applicant that the applicant's drivers license was revoked pursuant to G.S. 20-16.2(d). The limited driving privilege is conditioned upon the maintenance of any financial responsibility required by G.S. 20-179.3(l) during the period of this privilege.

Date	Name Of Judge (type or print)	Signature Of Judge
------	-------------------------------	--------------------

Original - File      Certified Copy - Applicant      Copy - DMV  
(Over)

**RESTRICTIONS**

The driver shall not drink alcohol while driving or drive while any alcohol remains in his/her body. The driver shall not drive while having a controlled substance in his/her body unless such controlled substance was lawfully obtained and taken in therapeutically approved amounts. This limited driving privilege **DOES NOT** include the privilege of operating a commercial motor vehicle as defined in G.S. 20-4.01(3d). Standard working hours are from 6 AM to 8 PM, Monday - Friday.

Essential driving is permitted only as follows: *(check only applicable boxes)*

- 1. Driving is permitted:
  - a. for emergency medical care at any time.
  - b. for maintenance of household during standard working hours as follows:
  
  - c. for community service assignment as follows:

2. Driving is permitted for work-related, religious worship, or educational purposes during standard working hours as follows:

3. Driving is permitted for work-related, religious worship, or educational purposes during nonstandard working hours as follows:

The driver is self-employed and the required documentation for work-related driving is attached.

- 4. Driving is restricted to:
  - a. any non-commercial vehicle registered in the name of the driver.
  - b. the following non-commercial vehicle(s): \_\_\_\_\_

The above vehicle shall be equipped with a functioning ignition interlock system of a type approved by the Commissioner of Motor Vehicles and the driver shall personally activate the ignition interlock system before operating the vehicle. The driver may drive to and from any ignition interlock service facility for installation and service purposes.

- 5. Additional restrictions:
  - Corrective Lenses
  - 45 M.P.H. Only
  - Daylight Only
- Other: *(specify)*

Name And Address Of Community Service Coordinator To Which Driver Assigned

Name And Address Of Employer Or Driver's Place Of Work

**NOTICE/ACKNOWLEDGMENT OF RECEIPT**

I have received a copy of this limited driving privilege which contains the restrictions on my driving privilege. I understand that this is my limited license to drive for essential purposes as set out above; that I must keep it in my possession during the period of revocation; that if I drive with the odor of alcohol on my breath, I may be subject to arrest and loss of this limited driving privilege; that if my drivers license is revoked for any other reason, this limited driving privilege is invalid; that a violation of any restriction imposed in connection with this limited driving privilege constitutes the offense of driving while license revoked under G.S. 20-28; that if community service has been ordered, my willful failure to pay the prescribed fee or complete the community service within the time limit imposed shall result in revocation of this limited driving privilege; and that my willful failure may also result in other action authorized by law for violation of a condition of probation.

Date

Signature Of Applicant

**CERTIFICATION**

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

Date

Signature

- Deputy CSC
- Assistant CSC
- Clerk Of Superior Court



STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

LIMITED DRIVING PRIVILEGE
FELONY CONVICTION

Name And Address Of Defendant

G.S. 15A-1331.1; 20-15.1, 20-179.3

Race Sex Height Weight

Hair Color Eye Color Date Of Birth Drivers License No. And State

Offense For Which Defendant Was Convicted Date Of Conviction

FINDINGS

The defendant has been convicted of a felony, and the defendant's drivers license has been forfeited, pursuant to Judicial Findings As To Forfeiture Of Licensing Privileges entered in and made a part of the record in this case. Upon application of the defendant for a limited driving privilege, the Court finds that

- 1. At the time of the forfeiture of the defendant's licensing privileges, the defendant held either a valid drivers license or a drivers license that had been expired less than one year.
2. The defendant:
a. is supporting existing dependent(s).
b. must have a drivers license to be gainfully employed.
c. has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the medical treatment.
3. The Court has been furnished a properly executed form DL-123 and is satisfied that the defendant is financially responsible.
4. The defendant has executed form DL-123A and is not required to furnish proof of financial responsibility.

ORDER

It is ORDERED that the defendant be allowed a limited driving privilege to operate a non-commercial motor vehicle under the following conditions, which the Court has determined will authorize essential driving related to the purposes listed in finding number 2 above, and under no other circumstances.

Geographical Restriction

Driving Hours Allowed Type Of Vehicle

Additional Restrictions: Corrective Lenses 45 M.P.H. Only Daylight Only
Other:

This Limited Driving Privilege authorizes the defendant to drive only if the defendant's license is revoked solely for a felony conviction and was ordered forfeited, and only for the duration of that revocation or for the period shown below, whichever is shorter. This Limited Driving Privilege is subject to such further orders as the Court may deem necessary and proper.

It is conditioned upon the maintenance of financial responsibility.

Date Of Order Signature Of Judge

Effective From To Name Of Judge (Type Or Print)

NOTICE/ACKNOWLEDGMENT OF RECEIPT

I have received a copy of this Limited Driving Privilege which contains the restrictions on my driving privilege. I understand that this is my limited license to drive; that I must keep it in my possession during the period of revocation; that if my drivers license is revoked for any other reason, this Limited Driving Privilege is invalid. Any driving not related to the purposes(s) checked above is unlawful even though done at times and upon routes that may be authorized; and that a violation of any restriction imposed in connection with this Limited Driving Privilege constitutes the offense of driving while license revoked under G.S. 20-28. This limited privilege does NOT authorize the operation of a commercial motor vehicle.

Date Signature Of Defendant

CERTIFICATION

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

Date Signature And Seal Deputy CSC Assistant CSC
Clerk Of Superior Court

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
**n** District **n** Superior Court Division

## STATE VERSUS

## INTERLOCK LIMITED DRIVING PRIVILEGE IMPAIRED DRIVING (N.C. CONVICTIONS ONLY)

Name And Address Of Applicant

G.S. 20-179.3

Race	Sex	Height	Weight
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Hair Color	Eye Color	Date Of Birth	Drivers License No.	State
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Date Of Offense	Date Of Conviction
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**NOTE:** Use AOC-CV-352 when the applicant's license was revoked for a conviction in another state or in a federal court.

### FINDINGS

Upon application of the applicant for a limited driving privilege, the Court finds that:

1. The applicant has been convicted of impaired driving under  G.S. 20-138.1;  G.S. 20-138.2;  G.S. 20-138.3;
2. At the time of the offense, the applicant held either a valid drivers license or a license that had been expired for less than one (1) year;
3. At the time of the offense, the applicant had not within the preceding seven (7) years been convicted of an offense involving impaired driving;
4. Punishment level three, four, or five has been imposed upon the applicant for the offense of impaired driving, or the applicant has been convicted under G.S. 20-138.3;
5. Subsequent to the offense, the applicant has not been convicted of, or had an unresolved charge lodged against the applicant for, an offense involving impaired driving;
6. The records of the Division of Motor Vehicles and the Clerk of Superior Court in this county have been searched, and there are no other revocations in effect at this time;
7. The applicant has obtained and filed with the court a substance abuse assessment;
8. If convicted only under G.S. 20-138.3, the applicant was 18, 19 or 20 years old on the date of the offense and has not previously been convicted of a violation of G.S. 20-138.3; (**NOTE:** Even if the applicant was 18, 19 or 20 years old at the time of the offense, he/she may not receive a limited driving privilege if his/her current conviction was under either (1) G.S. 20-138.1 or (2) both G.S. 20-138.1 and G.S. 20-138.3.)
9. The applicant was convicted under G.S. 20-138.1 and had an alcohol concentration of  0.16  0.15 (use for offenses committed on or after December 1, 2007) or more.
10.  a. The Court has been furnished a properly executed form DL-123 and is satisfied that the applicant is financially responsible.  
 b. The applicant has executed form DL-123A and is not required to furnish proof of financial responsibility.

### ORDER

It is ORDERED that the applicant be allowed a limited driving privilege to be effective on the date indicated below to be used in accordance with the restrictions imposed on the reverse of this form, and to expire one year from the date on which the Division of Motor Vehicles revokes the applicant's drivers license pursuant to G.S. 20-17(a)(2) or G.S. 20-13.2(a). This limited driving privilege is conditioned upon the maintenance of any financial responsibility required by G.S. 20-179.3(l) during the period of this privilege.

Effective Date

Date

**NOTE TO APPLICANT:** This privilege is no longer valid after the revocation period for the offense of which you were convicted has ended, or if your drivers license remains revoked solely because the Division of Motor Vehicles has not obtained a certificate of your completion of a substance abuse treatment program or an alcohol and drug education traffic school.

Signature Of Judge

Name Of Judge (type or print)

Original - File      Certified Copy - Applicant      Copy - DMV  
 (Over)

**RESTRICTIONS**

The driver shall not drink alcohol while driving or drive while any alcohol remains in his/her body. The driver shall not drive while having a controlled substance in his/her body unless such controlled substance was lawfully obtained and taken in therapeutically approved amounts. This limited driving privilege **DOES NOT** include the privilege of operating a commercial motor vehicle as defined in G.S. 20-4.01(3d). Standard working hours are from 6 AM to 8 PM, Monday - Friday.

Essential driving is permitted only as follows: *(check only applicable boxes)*

1. Driving is permitted:

- a. for emergency medical care at any time.
- b. for maintenance of household during standard working hours as follows:
- c. for community service assignment as follows:

2. Driving is permitted for work-related, religious worship, or educational purposes during standard working hours as follows:

3. Driving is permitted for work-related, religious worship, or educational purposes during nonstandard working hours as follows:

The driver is self-employed and the required documentation for work-related driving is attached.

4. Driving is permitted for Alcohol and Drug Education Traffic School and substance abuse assessment or treatment as follows:

5. Driving is restricted to:

- a. The following non-commercial vehicle(s): \_\_\_\_\_, which shall be equipped with a functioning interlock system of a type approved by the Commissioner of Motor Vehicles and the driver shall personally activate the ignition interlock system before operating the vehicle and at any time during the driving as required by the procedures for ignition interlock systems established by the Commissioner of Motor Vehicles. The driver may drive to and from any ignition interlock service facility for installation and service purposes.
- b. The following non-commercial vehicle(s): \_\_\_\_\_, which is owned by the driver's employer and is operated by the driver solely for work-related purposes, and the vehicle owner has filed a written statement with the court authorizing such work-related driving by the driver.

6. Additional restrictions:       Corrective Lenses       45 M.P.H. Only       Daylight Only

Other:

Name And Address Of ADET School, Community Service Coordinator, Or Mental Health Treatment Facility To Which Driver Assigned

Name And Address Of Employer Or Driver's Place Of Work

**NOTICE/ACKNOWLEDGMENT OF RECEIPT**

I have received a copy of this limited driving privilege which contains the restrictions on my driving privilege. I understand that if I drive with the odor of alcohol on my breath, I may be subject to arrest and loss of this limited driving privilege; I understand that this is my limited license to drive for essential purposes as set out above; that I must keep it in my possession during the period of revocation; that if my drivers license is revoked for any other reason, this limited driving privilege is invalid; that a violation of any restriction imposed in connection with this limited driving privilege constitutes the offense of driving while license revoked under G.S. 20-28; that if community service has been ordered, my willful failure to pay the prescribed fee or complete the community service within the time limit imposed shall result in revocation of this limited driving privilege; and that my willful failure may also result in other action authorized by law for violation of a condition of probation.

Date \_\_\_\_\_ Signature Of Applicant \_\_\_\_\_

**CERTIFICATION**

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

Date \_\_\_\_\_ Signature \_\_\_\_\_

Deputy CSC       Assistant CSC  
 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

Address

City

State

Zip

AFFIDAVIT AND REVOCATION REPORT
OF LAW ENFORCEMENT OFFICER
FOR PROVISIONAL LICENSE REVOCATION

G.S. 20-13.3

Table with columns: 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 a criminal moving violation as defined in G.S. 20-13.3(a)(2), in that (list sufficient facts to establish probable cause) \_\_\_
2. A law enforcement officer charged the driver with the criminal moving violation of (give statute for offense) \_\_\_
3. The driver is a provisional licensee under age 18 as defined in G.S. 20-13.3(a)(4).
4. The driver is not subject to a civil revocation pursuant to G.S. 20-16.5.
5. If the criminal moving violation is one for which no initial appearance is required, a law enforcement officer verbally notified the driver that the driver's permit or license is subject to revocation pursuant to G.S. 20-13.3, and a law enforcement officer provided the driver with form AOC-CVR-15 containing notice of the process for revocation and hearing under G.S. 20-13.3.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Law Enforcement Officer

Date

Signature Of Official Authorized To Administer Oaths

Print Name Of Law Enforcement Officer

[in] Magistrate [ ] Deputy CSC [Q] Assistant CSC [Q] CSC

Agency Name

[ ] Notary SEAL

Date My Commission Expires

County Where Notarized

NOTE TO OFFICER: "If a provisional licensee's permit or license is subject to revocation under this section, the law enforcement officer must execute a revocation report. It is the specific duty of the law enforcement officer to make sure that the report is expeditiously filed with a judicial official as required by this section . . . . The judicial official with whom the revocation report must be filed is: (1) The judicial official conducting the initial appearance on the underlying criminal moving violation. [or] (2) The clerk of superior court in the county in which the underlying criminal charge has been brought if no initial appearance is required." G.S. 20-13.3(c) & (c1).

Original - Magistrate/CVR File

**"CRIMINAL MOVING VIOLATIONS"  
UNDER G.S. 20-13.3**

G.S. 20-137.4	<i>Operating a school bus while using a mobile phone</i>
G.S. 20-137.4A	<i>Operating a school bus while using a mobile phone to text or access electronic mail</i>
<b>G.S. 20-138.1*</b>	<b><i>Driving while impaired</i></b>
<b>G.S. 20-138.2*</b>	<b><i>Driving while impaired in a commercial motor vehicle</i></b>
<b>G.S. 20-138.2A*</b>	<b><i>Operating a commercial motor vehicle after consuming alcohol</i></b>
<b>G.S. 20-138.2B*</b>	<b><i>Operating a school bus, school activity bus, or child care vehicle after consuming alcohol</i></b>
<b>G.S. 20-138.3*</b>	<b><i>Operating a motor vehicle by a person less than 21 years old while or after consuming alcohol or drugs</i></b>
<b>G.S. 20-138.5*</b>	<b><i>Habitual impaired driving</i></b>
<b>G.S. 20-138.7(a)*</b>	<b><i>Operating a motor vehicle while there is an open container of alcohol in the passenger area and while the driver is consuming or has consumed alcohol</i></b>
20-140	<i>Reckless driving</i>
20-141(j1)	<i>Speeding more than 15 MPH over limit or speeding over 80 MPH</i>
20-141(j3)	<i>Speeding in a commercial motor vehicle carrying a load that is subject to the permitting requirements of G.S. 20-119 and (i) driving 15 MPH or more over the posted speed or (ii) driving 15 MPH or more over the permit speed</i>
20-141.3	<i>Operating a motor vehicle willfully in a prearranged speed competition, or operating a motor vehicle willfully in speed competition, or allowing one's vehicle to be operated in a prearranged speed competition, or wagering on a prearranged speed competition</i>
<b>20-141.4*</b>	<b><i>Death and injury by vehicle</i></b>
20-141.5	<i>Speeding to elude arrest</i>
20-141.6	<i>Aggressive driving</i>
20-149(b)	<i>Improper operation by an overtaken driver causing a collision resulting in serious bodily injury, bodily injury, or property damage</i>
20-157(a), (h), (i)	<i>Failing to move over for law enforcement or emergency vehicle giving warning signal, or violating G.S. 20-157 and causing damage to property or injury, or violating G.S. 20-157 and causing serious injury or death</i>
20-166(a), (a1), (b), (c), (c1)	<i>Failing to stop and remain after a crash resulting in serious bodily injury or death, or failing to stop and remain after a crash resulting in injury, or failing to provide information or render assistance following a crash, or failing to stop and remain after a crash resulting in damage to property or non-apparent injury</i>
20-166.1	<i>Failing to notify law enforcement or other owner following crash, or failing to provide proof of insurance to DMV upon request</i>
20-166.2	<i>Failing, when a passenger in a vehicle involved in a crash, to remain at the scene, or provide information, or render assistance</i>
20-167.1	<i>Transporting spent nuclear fuel without notifying NCSHP in advance</i>

**NOTE:** An offense indicated by \* is an implied-consent offense that supports a CVR under G.S. 20-16.5.

**STATE OF NORTH CAROLINA**

\_\_\_\_\_ County

**NOTICE OF (I) PROCESS FOR  
REVOCATION OF PROVISIONAL LICENSE  
AND (II) RIGHT TO CHALLENGE REVOCATION**

G.S. 20-13.3(c), (d2)

**REVOCATION OF PROVISIONAL LICENSE**

As required by G.S. 20-13.3(c), you are hereby notified of the following:

1. You have been charged with a "criminal moving violation" as defined in G.S. 20-13.3(a)(2).
2. You are a "provisional licensee" as defined in G.S. 20-13.3(a)(4), meaning that you are a person under the age of 18 who holds a limited learner's permit, a limited provisional license, or a full provisional license issued by the North Carolina Division of Motor Vehicles.
3. You are not subject to a pretrial civil revocation for alcohol-involved driving under G.S. 20-16.5.
4. Because of Nos. 1-3 above, **your limited learner's permit, limited provisional license, or full provisional license is subject to being revoked for at least thirty (30) calendar days** under G.S. 20-13.3.
5. A law enforcement officer will submit a revocation report to the Clerk of Superior Court in the county in which you have been charged, which is the county listed at top of this form.
6. If the clerk determines that a revocation is required by G.S. 20-13.3, **the clerk will mail to you by first-class United States mail an order revoking your limited learner's permit, limited provisional license, or full provisional license.** This order will appear on form AOC-CVR-14.
7. The revocation order will take effect on the fourth day after the clerk places the order in the mail.
8. The order will specify the date and time on which the revocation begins (i.e., the date and time on which you may no longer drive), and the date and time on which the revocation ends (i.e., the date and time on which you may drive again). **YOU WILL BE PROHIBITED FROM DRIVING AT ANY TIME OR FOR ANY PURPOSE DURING THE PERIOD OF THE REVOCATION.**
9. Once you receive it, carefully read the entire order, including the information in the NOTICE section of the order. If you have any questions about your rights and responsibilities under the order, you should consult an attorney licensed to practice law in North Carolina.
10. You have a right to challenge the revocation order, as explained in the next section of this notice and on the back side of this form.

**RIGHT TO CHALLENGE REVOCATION**

As further required by G.S. 20-13.3(c), you are hereby notified of the following:

1. If you receive a revocation order from the Clerk of Superior Court as described above, you have a right to a hearing to challenge the revocation. You are not required to challenge the revocation, however.
2. If you choose not to request a challenge hearing, the revocation simply will remain in effect for the period specified in the clerk's order.
3. If you choose to request a challenge hearing, you must complete and file a written request form, which is form AOC-CVR-16.
4. A copy of form AOC-CVR-16 is available from the Clerk of Superior Court in the county listed at the top of this form. It is also available online by entering "AOC-CVR-16" in the Form Number field at the following web address: <http://www.nccourts.org/Forms/FormSearch.asp>.
5. You must file form AOC-CVR-16 no later than ten (10) days after the beginning date of the revocation. This beginning date will be listed on the revocation order that you receive in the mail from the clerk. You must file the form with the Office of the Clerk of Superior Court in the county listed at the top of this form, or with a magistrate designated by the clerk to receive the form.
6. You must specify on form AOC-CVR-16 the grounds upon which you are challenging the revocation, and the hearing will be limited to the grounds you specify.
7. The hearing will be held by a magistrate unless you request a hearing before a District Court Judge.
8. The revocation will remain in effect during the time leading up to the hearing.
9. For more information on this challenge process, please review the text of G.S. 20-13.3(d2), which appears on the back side of this form.
10. If you have any questions about your rights and responsibilities during the challenge process, you should consult an attorney licensed to practice law in North Carolina.

**SIGNATURE OF LAW ENFORCEMENT OFFICER**

Date

Name Of Officer (Type Or Print)

Signature Of Officer

## PROVISIONAL LICENSE CHALLENGE PROCEDURE

G.S. 20-13.3(d2) provided as follows:

“(d2) Hearing Before Magistrate or Judge If Provisional Licensee Contests Validity of Revocation. - A provisional licensee whose permit or license is revoked under this section may request in writing a hearing to contest the validity of the revocation. The request may be made at the time of the person's initial appearance, or within 10 days of the effective date of the revocation to the clerk or a magistrate designated by the clerk, and may specifically request that the hearing be conducted by a district court judge. The Administrative Office of the Courts must develop a hearing request form for any provisional licensee requesting a hearing. Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district court judge to conduct such hearings. If the provisional licensee requests that a district court judge hold the hearing, the hearing must be conducted within the district court district as defined in G.S. 7A-133 by a district court judge assigned to conduct such hearings. The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within ten working days if the hearing is before a district court judge. The request for the hearing must specify the grounds upon which the validity of the revocation is challenged, and the hearing must be limited to the grounds specified in the request. A witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if the judicial official is not satisfied with the accuracy or completeness of evidence. The provisional licensee contesting the validity of the revocation may, but is not required to, testify in his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under subsection (b) of this section is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the conclusion of the hearing, the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the provisional licensee contesting the revocation and to any other potential party as to any other proceedings, civil or criminal, that may involve facts bearing upon the conditions in subsection (b) of this section considered by the judicial official. The decision of the judicial official is final and may not be appealed in the General Court of Justice. If the hearing is not held and completed within three working days of the written request for a hearing before a magistrate or within ten working days of the written request for a hearing before a district court judge, the judicial official must enter an order rescinding the revocation, unless the provisional licensee contesting the revocation contributed to the delay in completing the hearing. If the provisional licensee requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, the provisional licensee forfeits the right to a hearing.”

**If you have any questions about your rights and responsibilities under this challenge process, you should consult an attorney licensed to practice law in North Carolina.**

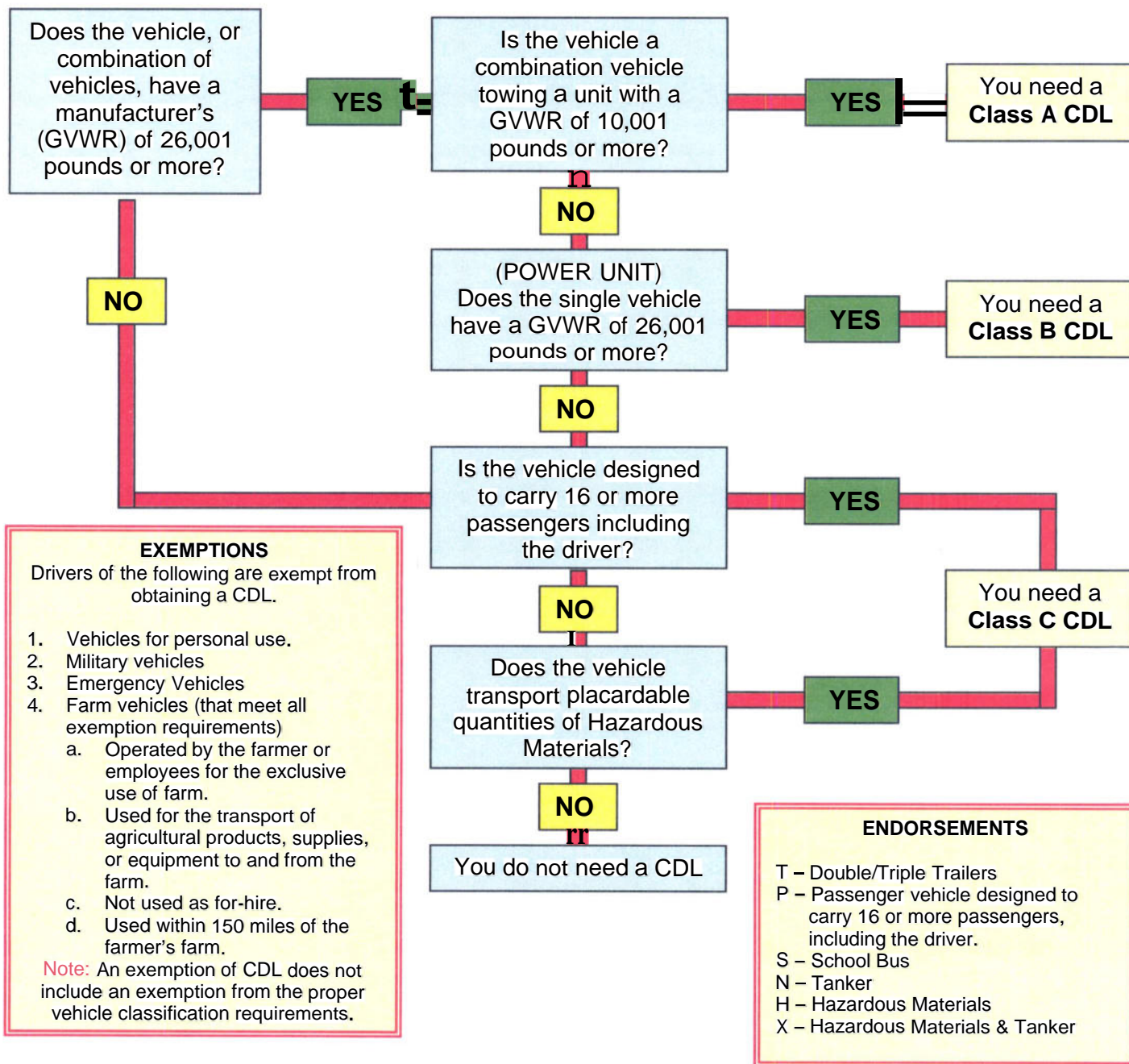
# COMMERCIAL DRIVER'S LICENSE GUIDE

There are three types of commercial driver's license: Class A, B, and C. Drivers of light vehicles, passenger cars and pick up trucks will be issued operator's license providing the vehicle does not transport any Hazardous Materials that are required to be placarded according to the Hazardous Materials Regulations (49 CFR part 172, subpart F). A driver with a class A, B, or C license will be able to drive any vehicle included in that class of license and any vehicle included in a lesser class, except a vehicle for which a specific endorsement is required.

**Class A-** Combination of vehicles with a gross combined weight rating (GCWR) of 26,001 pounds or more, provided the gross vehicle weight rating (GVWR) of the unit being towed is 10,001 pounds or greater.

**Class B-** Single vehicles with a GVWR of 26,001 pounds or more and towing any such unit with a (GVWR) less than 10,001 pounds.

**Class C-** Vehicles with a GVWR less than 26,001 pounds and designed to transport 16 or more passengers, including the driver, or is required to be placarded for Hazardous Materials.





## TRAFFIC OFFENSES FOR WHICH COURT APPEARANCE IS MANDATORY

(Adopted by the Conference of Chief District Court Judges, October 12, 2022, pursuant to G.S. 7A-148)

### Applies To Offenses Committed On Or After December 1, 2022

1. All pleas of **not** guilty.
2. All felonies.
3. Impaired instruction. [G.S. 20-12.1]
4. Tampering with ignition interlock device. [G.S. 20-17.8A]
5. Driving while (license) suspended, revoked, or disqualified, driving while license revoked for impaired drivers license revocation after DMV has sent notification, or failing to appear for two years after date of implied-consent charge. [G.S. 20-28]
6. Driving a commercial motor vehicle without being licensed to do so, or driving a commercial motor vehicle while license suspended, revoked, or subject to a disqualification or out of service order. [G.S. 20-28; G.S. 20-37.12]
7. Possess fictitious, cancelled, revoked, suspended or altered license or identification card, or counterfeit, sell, lend, or permit use of license or identification card by another, or any other violation of G.S. 20-30 or G.S. 20-37.8.
8. Any violation involving false affidavit, or false statement under oath, or perjury. [G.S. 20-17(5); G.S. 20-31; G.S. 20-111(5); G.S. 20-112; G.S. 20-313.1]
9. Selling handicapped parking placards. [G.S. 20-37.6(c3)]
10. Any violation of the vehicle registration laws involving stolen, altered, or fictitious registration plates or certificates, or any violation of the vehicle title laws, except violations under G.S. 20-111(2).
11. Failure to obey directions of a traffic officer, or of a fireman at the scene of a fire. [G.S. 20-114.1]
12. Unlawful use of red or blue lights on vehicle. [G.S. 20-130.1]
13. Importing, manufacturing, selling, installing, etc., a counterfeit supplemental restraint system or nonfunctional airbag, or other component or device that causes a motor vehicle to fail to meet federal motor vehicle safety standards. [G.S. 20-136.2]
14. Driving while texting while operating a school bus. [G.S. 20-137.4A]
15. Driving while subject to an impairing substance. [G.S. 20-138.1]
16. Driving a commercial vehicle while subject to an impairing substance. [G.S. 20-138.2]
17. Operating commercial vehicle after consuming alcohol. [G.S. 20-138.2A]
18. Operating school bus, school activity bus, child care vehicle, ambulance, other emergency medical services vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol. [G.S. 20-138.2B]
19. Driving by person under age 21 while drinking or after having consumed alcohol or controlled substance. [G.S. 20-138.3]
20. Driving with open container after drinking. [G.S. 20-138.7(a)]
21. Careless and reckless driving. [G.S. 20-140(a), (b), (f)]
22. Driving in excess of 80 mph, including in a work zone. [G.S. 20-141; G.S. 20-141(j2)]
23. Exceeding the applicable speed limit by over 15 mph while driving over 55 mph, including in a work zone. [G.S. 20-141(j1); G.S. 20-141(j2)]
24. Racing (prearranged, spontaneous, permitting such use of an owned vehicle, betting on prearranged racing). [G.S. 20-141.3]
25. Death by vehicle. [G.S. 20-141.4]
26. Driving to elude arrest. [G.S. 20-141.5]
27. Aggressive driving. [G.S. 20-141.6]
28. Any violation of G.S. 20-142.1 through G.S. 20-142.5 (railroad grade crossing violations), if the driver is driving a commercial motor vehicle.

29. Failure to give way to the right when being passed proximately causing a collision resulting in serious bodily injury, bodily injury or property damage. [G.S. 20-149(b)(1)-(b)(2)]
30. Unsafe movement resulting in crash causing property damage in excess of \$5,000 or serious bodily injury. [G.S. 20-154(a2)]
31. Failure to stop for approaching emergency vehicles or any violation of G.S. 20-157 causing death, serious injury, injury or property damage. [G.S. 20-157(a), (h), (i)]
32. Failure to yield involving serious bodily injury. [G.S. 20-160.1]
33. Failure to stop, etc. at the scene of an accident, or failure to report such an accident. [G.S. 20-166; G.S. 20-166.1; G.S. 20-166.2]
34. Transporting spent nuclear fuel without notifying Highway Patrol. [G.S. 20-167.1]
35. Passing stopped school bus. [G.S. 20-217]
36. Any violation of the financial responsibility laws, except violations under G.S. 20-313(a). [Chapter 20, Articles 9A and 13]
37. Any violation of the all-terrain vehicle laws. [Chapter 20, Article 3, Part 10C]
38. Violations of motor carrier safety and hazardous material regulations. [G.S. 20-396]
39. Any violation charged in the same citation, warrant, magistrate's order, or summons with a mandatory court appearance violation.

**OTHER POLICIES RELATING TO TRAFFIC OFFENSES:**

1. G.S. 7A-148 provides that the Conference of Chief District Court Judges shall prepare a "uniform schedule" of waivable traffic offenses and otherwise promote the "uniform administration of justice." In accordance with this statutory mandate, all judicial districts must adhere to this schedule, and individual judicial district policies deviating from this schedule are prohibited.
2. Where more than one charge is made on a criminal process or pleading, the defendant shall be fined only for the offense carrying the highest fine. Only one bill of costs will be assessed.
3. When a defendant is charged with multiple offenses arising out of the same event or transaction, only one criminal process or pleading should be used to the greatest extent possible given the limits of the electronic or paper pleadings provided by the North Carolina Administrative Office of the Courts.
4. The traffic offenses waiver list does not apply to littering charges under G.S. 14-399(c) or (c1), if the defendant is charged with a second offense under the subsection.
5. An offense may be waived under No. 45 on the traffic offenses waiver list if it does not otherwise appear on these lists and it is located in one of the following Articles or Parts of Articles in Chapter 20 of the North Carolina General Statutes: Article 2 (G.S. 20-5 through 20-37.02); Article 3, Part 9 (G.S. 20-115 through 20-137.5), Parts 10 and 10A (G.S. 20-138.1 through 20-171.2), and Part 11 (G.S. 20-172 through 20-175); and Article 3A (G.S. 20-183.2 through 20-183.8G).

## TRAFFIC OFFENSES FOR WHICH COURT APPEARANCE MAY BE WAIVED

(on execution of written waiver of appearance and trial, and plea of guilty/responsible)

(Adopted by the Conference of Chief District Court Judges, October 12, 2022, pursuant to G.S. 7A-148)

### Applies To Offenses Committed On Or After December 1, 2022

#### A. Speeding Violations:

- |  |                 |      |       |           |
|--|-----------------|------|-------|-----------|
| 1. Speed over the applicable limit (including a limit imposed by permit on a commercial vehicle) and over 55 mph but not over 80 mph                           | 0-5             | 6-10 | 11-15 |           |
| Costs plus fine of   | \$10            | \$15 | \$30  |           |
| 2. Speed over the applicable limit (including a limit imposed by permit on a commercial vehicle) but 55 mph or under   | 0-5             | 6-10 | 11-15 | 16 & over |
| Costs plus fine of   | \$10            | \$15 | \$30  | \$50      |
| 3. Exceeding a safe speed or exceeding posted speed (where actual speed not specified), except as in No. 22 and No. 23 of mandatory appearances. [G.S. 20-141] | \$ 25 and Costs |      |       |           |
| 4. Speeding in school zone or on school property. [G.S. 20-141(e1); G.S. 20-141.1]   | \$250 and Costs |      |       |           |
| 5. Driving too slowly. [G.S. 20-141(h)]  | \$ 25 and Costs |      |       |           |
| 6. Speeding in a work zone, except as in No. 22 and No. 23 of mandatory appearances. [G.S. 20-141(j2)]   | \$250 and Costs |      |       |           |
| 7. Failure to reduce speed to avoid accident. [G.S. 20-141(m)]   | \$ 50 and Costs |      |       |           |

#### B. Other Violations:

- |  |                             |  |  |  |
|--|-----------------------------|--|--|--|
| 1. Driving without non-commercial drivers license (except when revoked or suspended), or operating motorcycle without proper license endorsement, or knowingly permitting an owned vehicle to be so operated, or violating restrictions on graduated licenses. [G.S. 20-7; G.S. 20-11; G.S. 20-32; G.S. 20-34] | \$ 50 and Costs             |  |  |  |
| 2. Failure to carry license while driving vehicle, or driving with expired non-commercial license. [G.S. 20-7(a), (f)]   | \$ 25 and Costs             |  |  |  |
| 3. Illegal parking in handicapped space. [G.S. 20-37.6]  | \$100 and Costs             |  |  |  |
| 4. Operating vehicle with improper dealer or transporter plates. [G.S. 20-79(e)(1); G.S. 20-79.2(b2)(1)]   | \$100 and Costs             |  |  |  |
| 5. Loaner/Dealer plate violation by driver. [G.S. 20-79.02(e)(1)]  | \$100 and Costs             |  |  |  |
| 6. Loaner/Dealer plate violation by dealer. [G.S. 20-79.02(e)(2)]  | \$250 and Costs             |  |  |  |
| 7. Improper use of temporary registration plates issued by dealers. [G.S. 20-79.1]   | Costs                       |  |  |  |
| 8. Failure to mark certain business vehicles. [G.S. 20-101]  | \$ 25 and Costs             |  |  |  |
| 9. Violation of motor vehicle combination limitation with semitrailer less than 50 feet. [G.S. 20-115.1(h), (i)]   | \$100 and Costs             |  |  |  |
| 10. Violation of motor vehicle combination limitation with semitrailer 50 feet or more. [G.S. 20-115.1(h), (i)]  | \$200 and Costs             |  |  |  |
| 11. Use of darkened windows in motor vehicle. [G.S. 20-127(b)-(d)]   | \$ 50 and Costs             |  |  |  |
| 12. Failure to use headlights when wipers on. [G.S. 20-129(a)(4)]  | \$ 5                        |  |  |  |
| 13. Failure to dim lights. [G.S. 20-131; G.S. 20-181]  | \$ 10 and Costs             |  |  |  |
| 14. Failure to use seat belts in front seat. [G.S. 20-135.2A]  | \$ 25.50 and \$154.50 Costs |  |  |  |
| 15. Failure to use seat belts in rear seat. [G.S. 20-135.2A]   | \$ 10                       |  |  |  |
| 16. Transporting child under 16 in open bed or open cargo area. [G.S. 20-135.2B]   | \$ 25                       |  |  |  |
| 17. Failure to use appropriate child restraint system. [G.S. 20-137.1]   | \$ 25 and Costs             |  |  |  |
| 18. Cell phone use by driver under 18. [G.S. 20-137.3]   | \$ 25                       |  |  |  |
| 19. Driving while texting, except as in No. 14 of mandatory appearances. [G.S. 20-137.4A]  | \$100 and Costs             |  |  |  |
| 20. Transporting alcohol in commercial vehicle. [G.S. 20-138.2C]   | \$ 50 and Costs             |  |  |  |

21. Possession of open container of alcoholic beverage in motor vehicle. [G.S. 20-138.7(a1)] .....	\$ 25 and Costs
22. Failure to wear helmet, or having too many passengers, on or within motorcycle or moped. [G.S. 20-140.4] .....	\$ 25.50 and \$154.50 Costs
23. Lane violations. [G.S. 20-146] .....	\$ 50 and Costs
24. Driving left of center. [G.S. 20-148] .....	\$ 25 and Costs
25. Improper passing, except as in No. 29 of mandatory appearances. [G.S. 20-149(a), (b)(3); G.S. 20-150; G.S. 20-150.1] .....	\$ 50 and Costs
26. Following too closely. [G.S. 20-152] .....	\$ 35 and Costs
27. Improper turn, starting, stopping and/or improper signal. [G.S. 20-153; G.S. 20-154] .....	\$ 25 and Costs
28. Improper turn, starting or stopping that causes motorcycle or bicycle operator to change or leave travel lanes. [G.S. 20-154(a1)] .....	\$200 and Costs
29. Improper turn, starting or stopping that results in crash causing property damage or personal injury to motorcycle or bicycle operator or passenger. [G.S. 20-154(a1)] .....	\$500 and Costs
30. Failure to yield right of way. [G.S. 20-155; G.S. 20-158.1] .....	\$ 35 and Costs
31. Failure to yield right of way to emergency vehicles, except as in No. 31 of mandatory appearances. [G.S. 20-156] .....	\$ 50 and Costs
32. Interfering with or failing to move over for emergency/public service vehicles. [G.S. 20-157(b)-(f)] .....	\$250 and Costs
33. Failure to stop for stoplight or traffic control signal or stop sign. [G.S. 20-158] .....	\$ 50 and Costs
34. Failure to yield to pedestrian. [G.S. 20-158(b)(2)c] .....	\$100 and Costs
35. Driving the wrong way on a one-way street. [G.S. 20-165.1; G.S. 20-169] .....	\$ 50 and Costs
36. Failure to remove from the roadway a vehicle involved in an accident. [G.S. 20-166(c2)] .....	\$ 25 and Costs
37. Violation of bicycle helmet law. [G.S. 20-171.9] .....	\$ 10
38. Violation of vehicle inspection law. [G.S. 20-183.8(a); G.S. 20-384] .....	\$ 25 and Costs
39. Parking and towing violations under G.S. 20-219.2 .....	\$150 and Costs
40. Financial responsibility violations under G.S. 20-313(a) .....	\$ 50 and Costs
41. Any parking violation other than violation of the handicapped parking laws .....	\$ 5 and Costs
42. Violation of the vehicle registration laws, except as in No.10 of mandatory appearances .....	\$ 25 and Costs
43. Height, length, and width violations. [G.S. Ch. 20, Art. 3, Part 9] .....	\$ 25 and Costs
44. Improper vehicle equipment. [G.S. Ch. 20, Art. 3, Part 9] .....	\$ 25 and Costs
45. Any other non-mandatory traffic violation as explained in the "OTHER POLICIES RELATING TO TRAFFIC OFFENSES" below .....	\$ 25 and Costs
46. Intentional or reckless littering under G.S. 14-399(c) .....	\$250 and Costs
47. Unintentional littering under G.S. 14-399(c1) .....	\$ 50 and Costs
48. Violation of local ordinance regulating operation or parking of vehicles .....	\$ 25 and Costs

**OTHER POLICIES RELATING TO TRAFFIC OFFENSES:**

1. G.S. 7A-148 provides that the Conference of Chief District Court Judges shall prepare a "uniform schedule" of waivable traffic offenses and otherwise promote the "uniform administration of justice." In accordance with this statutory mandate, all judicial districts must adhere to this schedule, and individual judicial district policies deviating from this schedule are prohibited.
2. Where more than one charge is made on a criminal process or pleading, the defendant shall be fined only for the offense carrying the highest fine. Only one bill of costs will be assessed.
3. When a defendant is charged with multiple offenses arising out of the same event or transaction, only one criminal process or pleading should be used to the greatest extent possible given the limits of the electronic or paper pleadings provided by the North Carolina Administrative Office of the Courts.
4. The traffic offenses waiver list does not apply to littering charges under G.S. 14-399(c) or (c1), if the defendant is charged with a second offense under the subsection.
5. An offense may be waived under No. 45 on the traffic offenses waiver list if it does not otherwise appear on these lists and it is located in one of the following Articles or Parts of Articles in Chapter 20 of the North Carolina General Statutes: Article 2 (G.S. 20-5 through 20-37.02); Article 3, Part 9 (G.S. 20-115 through 20-137.5), Parts 10 and 10A (G.S. 20-138.1 through 20-171.2), and Part 11 (G.S. 20-172 through 20-175); and Article 3A (G.S. 20-183.2 through 20-183.8G).

The undersigned officer has probable cause to believe that on or about PRiday 2:00 PM on the 13th day of Sept. 2002 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.
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.

- 5. White subject to an impairing substance. G.S. 20-130.1.
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. 20-20.
8. While displaying an expired registration plate on the vehicle and the same to be expired. G.S. 20-111(2).
9. Without displaying thereon a current approved inspection certificate, such vehicle requiring registration in North Carolina. G.S. 20-183.2.
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.
12. By entering an intersection while a stop light was emitting a steady red light for traffic in defendant's direction of travel. G.S. 20-158.
13. By failing to yield right of way in obedience to a duly erected (stop sign) (flashing red light) (yield sign). G.S. 20-158; -158.1.
14. (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a)(1).
15.

And on or about PRiday 2:00 PM on the 13th day of Sept. 2002 in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public; vehicular area) at a speed of 75 mph in a 75 zone.

Date 9/13/02 Signature Of Officer Major M. Harris

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

Date 9/13/02 Signature Of Defendant

NORTH CAROLINA UNIFORM CITATION form containing fields for Defendant Name (manteo), Address (1313 Sour Mash Dr.), License No. (0000000), Social Security No. (OOP XV QQQQ), Vehicle License No. (Raisl Pve R), and Officer Name (Major M. Harris).

Administrative forms including 'PRIOR CONVICTIONS', 'Signature Of Defendant', and 'Signature Of District Court Clerk'.

## **NOL v. DWLR**

### **NOL**

- RESIDENT OF THIS STATE HAS NO OPERATORS LICENSE
- NON-RESIDENT HAS NO LICENSE
- NON-RESIDENT REVOKED BY HOME STATE BUT NOT BY N.C. DMV
- REVOCATION PERIOD IN THIS STATE HAS EXPIRED & LICENSE HAS NOT BEEN REINSTATED (RESIDENT & NON-RESIDENT)
- OPERATING IN VIOLATION OF RESTRICTIONS ON LICENSE (RESIDENT & NON-RESIDENT)

### **DWLR**

- RESIDENT'S DRIVER'S LICENSE IS CURRENTLY REVOKED & PERIOD OF REVOCATION HAS NOT EXPIRED
- NON-RESIDENT'S PRIVILEGE TO DRIVE IS CURRENTLY REVOKED BY N.C. DMV & PERIOD OF REVOCATION HAS NOT EXPIRED
- DRIVING IN VIOLATIONS OF THE RESTRICTIONS ON A LIMITED DRIVING PRIVILEGE
- LICENSE IS REVOKED BY G.S. 20-16.5 (30 DAY REVOCATION), TIME HAS EXPIRED, & DRIVER HAS NOT PAID THE FEE (RESIDENT & NON-RESIDENT)
- LICENSE IS REVOKED FOR DWI (G.S. 20-138.1), DWI IN A CMV (G.S. 20-138.2) OR DRIVING AFTER DRINKING BY PERSONS UNDER AGE 21 (G.S. 20-138.3) & HAVE NOT COMPLETED ADETS OR SUBSTANCE ABUSE TREATMENT & TIME HAS EXPIRED (G.S. 20-17.6).
- VIOLATION OF IGNITION INTERLOCK PROVISIONS (G.S. 20-17.8 OR 20-179.3).

IF DMV COMPUTER SAYS "ELIGIBLE FOR REINSTATEMENT" CHARGE NOL; IF COMPUTER SAYS "SUSPENDED" CHARGE DWLR.

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# LICENSE PLATE RECIPROcity

for

Vehicles Licensed in Foreign States  
And Countries And Operated  
In North Carolina



N.C. Department of Transportation  
Division of Motor Vehicles  
Vehicle Registration Section

Revised 1994

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## Foreword

The State of North Carolina is authorized by law (G.S. 20-4.1 thru G.S. 20-4.12) to exempt nonresidents from the North Carolina licensing requirements for motor vehicles for the same time and to the same extent as like exemptions are granted by other jurisdictions to residents of North Carolina.

The reciprocity that is granted by the other jurisdictions to owners of North Carolina registered vehicles has been obtained and based on this information, the reciprocal privileges to be extended by North Carolina to nonresidents and to nonresidents moving to North Carolina are published in this Reciprocal Guide Booklet. These reciprocal privileges apply only if there is proper registration in the state of registration of the vehicle being operated in North Carolina.

Nothing contained in this Reciprocal Guide shall be construed to permit a bona fide resident of North Carolina to use any registration plate from a foreign state, district or territory, except under the following circumstances.

- (a) Members of armed services returning from overseas are allowed 60 days to obtain home state license for their passenger vehicles that are properly registered by a foreign jurisdiction. When returning from an assignment in another state where there has been a proper registration of the vehicle, North Carolina license required upon expiration of such plate.
- (b) Residents of North Carolina who are carrying on a business in another state may operate into and through North Carolina (interstate) a vehicle which is based and properly licensed in the base-point state.
- (c) When a resident carrier of this State interchanges a properly licensed trailer or semitrailer with another carrier who is a resident of another state, and adequate records are on file in this office to verify such interchanges, the North Carolina licensed carrier may use the trailer licensed in such other state the same as if it were his own during the time the nonresident carrier is using the North Carolina licensed trailer.



## Nonresidents of North Carolina (Passenger Cars)

### (a) *Visitors—Tourists—Students*

Full reciprocity (meaning complete exemption from North Carolina registration) is granted to nonresident visitors, tourists and students. This includes visitors, tourists and students from foreign countries.

### (b) *Commuters—Residents of South Carolina, Virginia and Tennessee*

Residents of South Carolina and Virginia who work in North Carolina but who maintain their residence and domicile in their home state, to which they return each day or each weekend are permitted to use home state plates. Residents of Tennessee working *in* North Carolina must commute daily to be exempt from North Carolina license.

### (c) *Salesmen*

Salesmen entering North Carolina from other states and establishing a residence or headquarters are subject to the same reciprocal provisions as other nonresidents. The basing of a vehicle in this state by a nonresident firm or corporation for the use of a representative who is a resident or who has established a residence or headquarters in North Carolina to represent such firm would make the nonresident subject to the registration of such vehicle in North Carolina.

### (d) *Members of the Armed Services*

Under the Soldiers and Sailors Civil Relief Act, nonresident servicemen are relieved from the payment of motor vehicle license taxes and fees levied by the states in which they may be stationed, "provided that the license fee or excise tax required by the state, territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid." This in effect means that a valid operator's license and registration plate is required from North Carolina (the state of residence) or from the home state (the state of domicile).

Servicemen transferring to North Carolina with their cars not properly registered in their home state, but properly registered in the state where stationed at the time of registration must, upon expiration of the plate then in effect, either register in North Carolina or in the home state. A serviceman may not legally license his car in any state just because he is a member of the military but, only in his home state or in the state where he is stationed.

Members of the armed services returning *from foreign duty* have 30 days in which to exchange foreign tags for home state plates or obtain North Carolina license.

### (e) *Teachers*

Nonresident members of the teaching profession temporarily residing in North Carolina for the purpose of gainful employment, who do not commute to their home state each weekend are subject to the same reciprocal privileges accorded other nonresidents who take up in North Carolina a temporary residence to engage in gainful employment.

## License Plate Reciprocity – Passenger Vehicles

STATES	<b>1</b>	<b>2</b>	<b>m</b>		<b>4</b>
	Domicile in State of Registration Terminated and Permanent Domicile Established in North Carolina	Domicile in State of Registration Not Terminated. Temporary Residence in North Carolina for Gainful Employment	Nonresidents Maintaining Permanent Residence in North Carolina for Seasonal Occupancy Only		Date Plate Expires
			Owner not gainfully employed	Owner gainfully employed	
ALABAMA	30 Days	30 Days	30 Days	30 Days	Staggered
ALASKA	10 Days	10 Days	90 Days	10 Days	Staggered
ARIZONA	30 Days	30 Days	6 Months	30 Days	Staggered
KANSAS	30 Days	90 Days	90 Days	30 Days	Staggered
CALIFORNIA	Until plate expires	Until plate expires	Until plate expires	Until plate expires	Staggered
COLORADO	30 Days	30 Days	90 Days	<b>Immediately</b>	Staggered
CONNECTICUT	60 Days	60 Days	Full Reciprocity	60 Days	Staggered
DELAWARE	Until plate expires	Full Reciprocity	Full Reciprocity	Until plate expires	Staggered
DISTRICT OF COLUMBIA	Until plate expires	Until plate expires	Until plate expires	Until plate expires	March 31
FLORIDA	10 Days	Until plate expires	Until plate expires	10 Days	Staggered
GEORGIA	30 Days	Until plate expires	Full Reciprocity	Until plate expires	May 1
HAWAII	Until plate expires	Until plate expires	Until plate expires	Until plate expires	Staggered
IDAHO	90 Days	90 Days	90 Days	90 Days	Staggered

FULL RECIPROCITY means fully exempt from North Carolina Registration

# License Plate Reciprocity – Passenger Vehicles

STATES	<b>1</b>	Hi	<b>3</b>	11	
	Domicile in State of Registration Terminated and Permanent Domicile Established In North Carolina	Domicile in State of Registration Not Terminated. Temporary Residence in North Carolina for Gainful Employment	Nonresidents Maintaining Permanent Residence in North Carolina for Seasonal Occupancy Only  Owner not gainfully employed	Owner gainfully employed	Date Plate Expires
ILLINOIS	30 Days	60 Days	Full Reciprocity	60 Days	Staggered
INDIANA	60 Days	60 Days	60 Days	60 Days	Staggered
IOWA	Until plate expires	Until plate expires	Full Reciprocity	90 Days	Staggered
KANSAS	90 Days	90 Days	90 Days	90 Days	Staggered
KENTUCKY	Until plate expires	Until plate expires	Full Reciprocity	30 Days	Staggered
LOUISIANA	30 Days	30 Days	30 Days	30 Days	Staggered
MAINE	30 Days	Full Reciprocity	Full Reciprocity	Full Reciprocity	Staggered
MARYLAND	30 Days	30 Days	30 Days	30 Days	Staggered
MASSACHUSETTS	Until plate expires	Until plate expires	Until plate expires	Until plate expires	Staggered
MICHIGAN	90 Days	90 Days	90 Days	90 Days	Staggered
MINNESOTA	60 Days	60 Days	Full Reciprocity	60 Days	Staggered
MISSISSIPPI	30 Days	30 Days	30 Days	30 Days	Staggered
MISSOURI	30 Days	Full Reciprocity	Full Reciprocity	Full Reciprocity	Staggered

FULL RECIPROCITY means fully exempt from North Carolina Registration

## License Plate Reciprocity – Passenger Vehicles

STATES	<b>1</b>	<b>2</b>	<b>3</b>		<b>4</b>
	Domicile in State of Registration Terminated and Permanent Domicile Established <i>in</i> North Carolina	Domicile in State of Registration Not Terminated. Temporary Residence in North Carolina for Gainful Employment	Nonresidents Maintaining Permanent Residence In North Carolina for Seasonal Occupancy Only		Date Plate Expires
			Owner not gainfully employed	Owner gainfully employed	
MONTANA	30 Days	30 Days	Full Reciprocity	No Reciprocity	Staggered
<b>NEBRASKA</b>	<b>Until plate expires</b>	Until plate expires	Full Reciprocity	Full Reciprocity	Staggered
NEVADA	45 Days	45 Days	Until plate expires	45 Days	Staggered
<b>NEW HAMPSHIRE</b>	<b>M</b> Days	Full Reciprocity	Full Reciprocity	Full Reciprocity	Staggered
NEW JERSEY	60 Days	Full Reciprocity	Full Reciprocity	60 Days	Staggered
NEW MEXICO	<b>Until plate expires</b>	Until plate expires	150 Days	30 Days	Staggered
NEW YORK	30 Days	Registration can be maintained	Full Reciprocity	Full Reciprocity	Staggered
NORTH DAKOTA	<b>30 Days</b>	<b>80 Days</b>	<b>Full Reciprocity</b>	<b>M</b> Days	Staggered
OHIO	Until plate expires	Full Reciprocity	Full Reciprocity	Full Reciprocity	Staggered
OKLAHOMA	30 Days	30 Days	30 Days	30 Days	Staggered
OREGON	6 Months	Full Reciprocity	Full Reciprocity	6 Months	Staggered
PENNSYLVANIA	<b>30 Days</b>	Full Reciprocity	Full Reciprocity	Full Reciprocity	Staggered
RHODE ISLAND	30 Days	Full Reciprocity	Full Reciprocity	30 Days	Staggered

FULL RECIPROCITY means fully exempt from North Carolina Registration

## License Plate Reciprocity – Passenger Vehicles

STATES	I	m	fH		II
	Domicile in State of Registration Terminated and Permanent Domicile Established in North Carolina	Domicile in State of Registration Not Terminated. Temporary Residence in North Carolina for Gainful Employment	Nonresidents Maintaining Permanent Residence in North Carolina for Seasonal Occupancy Only		Date Plate Expires
			Owner not gainfully employed	Owner gainfully employed	
SOUTH CAROLINA	30 Days	Full Reciprocity	90 Days	30 Days	Staggered
SOUTH DAKOTA	90 Days	90 Days	90 Days	90 Days	Staggered
TENNESSEE	30 Days	Full reciprocity to daily commuters, otherwise 30 days	30 Days	30 Days	Staggered
TEXAS	30 Days	30 Days	Full Reciprocity	30 Days	Staggered
UTAH	60 Days	80 Days	Full Reciprocity	30 Days	Staggered
VERMONT	6 Months	6 Months	6 Months	6 Months	Staggered
VIRGINIA	30 Days	Full Reciprocity	Full Reciprocity	30 Days	Staggered
WASHINGTON	30 Days	6 Months	6 Months	6 Months	Staggered
WEST VIRGINIA	30 Days	30 Days	30 Days	30 Days	Staggered
WISCONSIN	Until plate expires	Full Reciprocity	Full Reciprocity	<b>Full Reciprocity</b>	Staggered
WYOMING	30 Days	30 Days	120 Days	<b>Immediately</b>	March 1/Staggered

FULL RECIPROCITY means fully exempt from North Carolina Registration

## License Plate Reciprocity – Passenger Vehicles

CANADIAN PROVINCES	<b>I</b>	<b>II</b>	<b>H</b>	<b>4</b>
	Domicile in State of Registration Terminated and Permanent Domicile Established in North Carolina	Domicile in State of Registration Not Terminated. Temporary Residence <i>in</i> North Carolina for Gainful Employment	Nonresidents Maintaining Permanent Residence in North Carolina for Seasonal Occupancy Only  OT: Per not gainfully employed	Owner gainfully employed  Date Plate Expires
ALBERTA	30 Days	30 Days	30 Days	30 Days Staggered
BRITISH COLUMBIA	30 Days	30 Days	30 Days	30 Days Staggered
MANITOBA	3 Months	3 Months	3 Months	3 Months Staggered
NEW BRUNSWICK	30 Days	30 Days	No more than 3 months in any year	30 Days March 31
NEWFOUNDLAND	30 Days	30 Days	90 Days	30 Days Staggered
NORTHWEST TERRITORIES	30 Days	3 Consecutive months	3 Consecutive months	3 Consecutive months Staggered
NOVIA SCOTIA	30 Days	30 Days	90 Days	30 Days Staggered
ONTARIO	30 Days	3 Months	3 Months	3 Months Staggered
PRINCE EDWARD ISLAND	30 Days	30 Days	120 Days	30 Days Staggered
QUEBEC	30 Days	30 Days	6 Months	30 Days Staggered
SASKATCHEWAN	90 Days	90 Days	90 Days	90 Days Staggered
YUKON TERRITORY	30 Days	30 Days	30 Days	30 Days Staggered
CANAL ZONE	30 Days	30 Days	30 Days	30 Days December 31
PUERTO RICO	30 Days	120 Days	30 Days	30 Days Staggered
FOREIGN COUNTRIES	30 Days	30 Days	30 Days	30 Days Staggered

## COMMERCIAL VEHICLES Private and For Hire

(a) *Taxi=Buses*

Full reciprocity when the operation is into or through the State. A pickup and discharge of passengers within North Carolina requires North Carolina license.

(b) *Rental U-Drive-It Passenger Cars, Trailers and Semi-Trailers, Utility Trailers and One-Way and Local Trucks.*

Rental vehicles owned or operated by any nonresident rental owner engaged in the business of renting or leasing or offering for rental or lease such vehicles without drivers for use in intrastate or interstate commerce shall be extended full reciprocity and exempted from registration fees only in instances where:

- 1) Such rental owner has validly licensed all rental vehicles owned by him in the State wherein the rental owner actually resides; provided, that such State affords equal recognition, either in fact or in law to such vehicles licensed in the State of North Carolina and operating similarly within the rental owner's state of residence; and further provided, that such rental owner is not engaged in this State in the business of renting or leasing or offering for rental or lease such rental vehicles; or where
- 2) Such rental owner rents, leases or operates vehicles in North Carolina which are a part of a rental fleet of vehicles and such rental owner has validly licensed in the State of North Carolina a percentage of the total number of vehicles in each such fleet in accordance with the provisions of Article XI of the International Registration Plan.

(c) *Dealer and Intransit Plates*

Out-of-state dealer and intransit plates are recognized in accordance with the legal purpose of such plates in the state of issuance.

(d) *Tractors, Single Trucks and Truck-Tractors*

Interstate Operation: Full Reciprocity to such vehicles properly licensed and based in jurisdictions that are members of the International Registration Plan and proportionally registered in North Carolina or operating on North Carolina's International Registration Plan Temporary 10-Day Trip Permit

Full Reciprocity to such vehicles that are properly registered, licensed and based in jurisdictions that are not members of the International Registration Plan.

Some jurisdictions have third structure taxes or fees required prior to entry into such jurisdiction. North Carolina does not collect these taxes or fees. The carrier must pay direct to jurisdiction requiring same.

Any questions regarding reciprocity with vehicles licensed or based in other jurisdictions should be referred to the Enforcement Section, North Carolina Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, North Carolina 27697-0001, Telephone Number 919-733-7872.

**Intrastate Operation: Full Reciprocity** to such vehicles properly licensed and based in jurisdictions that are members of the International Registration Plan and proportionally registered in North Carolina or operating on North Carolina's International Registration Plan Temporary 10-Day Trip Permit.

**Intrastate Operation Defined**—Movement of a vehicle from one point within jurisdiction to another point within the same jurisdiction regardless of routes traversed.

**Interstate Operation Defined**—Vehicle movement between or through two or more jurisdictions.

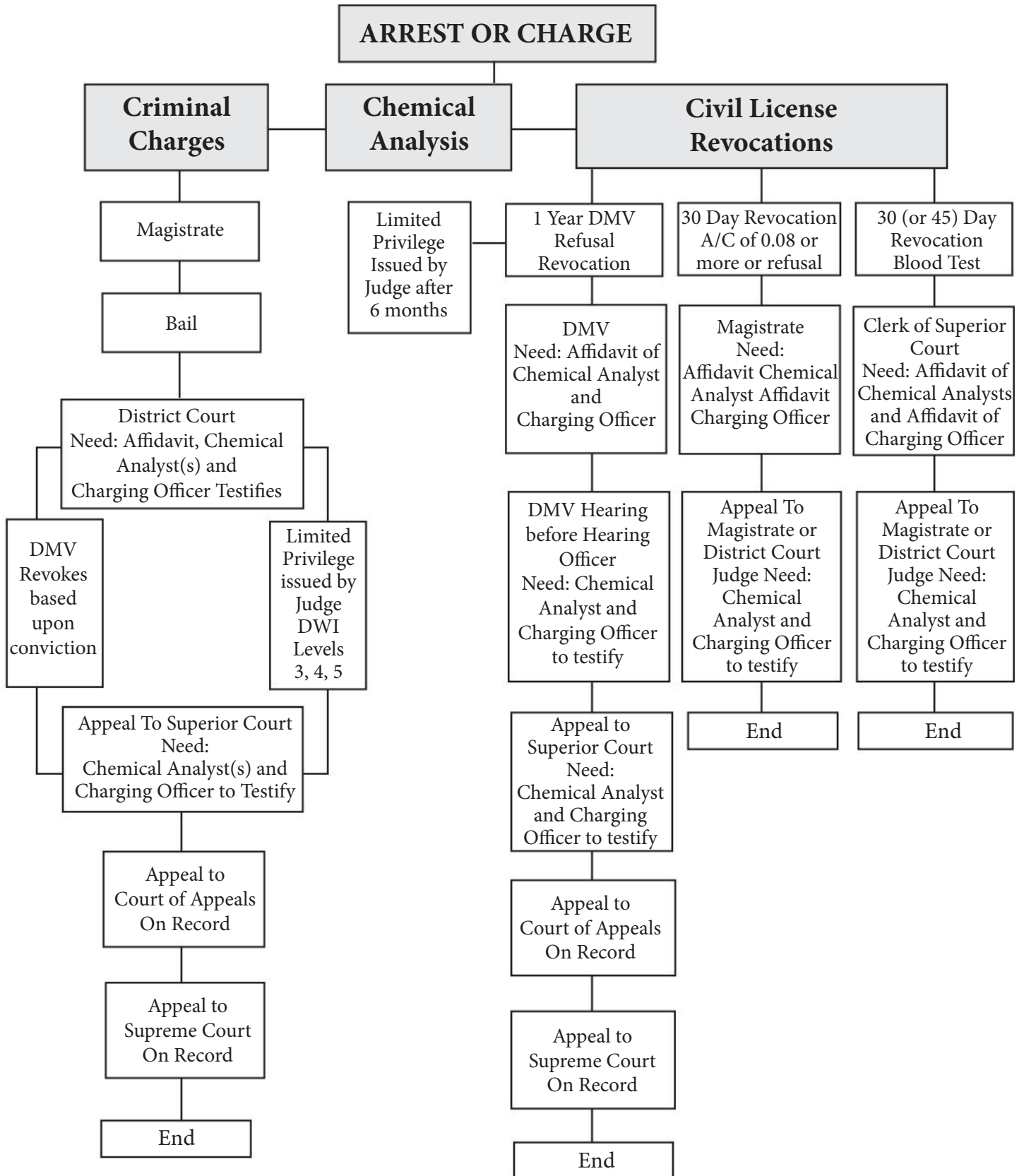
### *30-Day Permits*

Owners of motor vehicles duly registered in a state or territory which are not allowed exemptions under the reciprocity provision desiring to make occasional trips into and through North Carolina may secure a thirty-day permit for one-tenth of the annual fee. This privilege is also extended to nonresidents who wish to operate within the state for a period of thirty days. Only one such permit is allowed for the use of the same vehicle within the same registration year. Should the operation exceed the 30-day period, liability for license shall accrue for the weight indicated in the permit as of the first date of operation and the amount paid for the 30-day permit may be applied to the license fee.

The issuance of a 30-day permit is contingent upon the proper registration of a vehicle in the state of residence of the owner, and the registration certificates would be required as evidence of such registration.



# IMPLIED CONSENT OFFENSES



Defendant driving one minute laughing noot

Driver's Name: <b>Sallu T T Johnson</b>	Driving While Impaired Report (DWIR)	Agency: <b>NCSTIP</b>
DOB: <b>11-11-1975</b>		Officer's Name: <b>X. R. Doe.</b>
Approx. Wt.: <b>160</b> Gender: <b>M</b>	Department of Health and Human Services, Forensic Tests for Alcohol Branch	Officer No.: <b>2517</b>
Minors in Vehicle: <b>No</b>		Case No.: <b>5321231-1</b>
Blood / Breath Results: <b>0.11 / 0.10</b>		DRE Officer: <b>Is/*</b>
Vehicle Crash: <b>No</b> Injuries: <b>No</b>		CUY / county: <b>Roper / vVQShiOfItan</b>
Arrest Date: <b>11/9/16</b> Time: <b>5:45</b> pm		Street / Highway: <b>JLA 564</b>
		Area No.: <b>03</b>

**Initial Observations:** What drew your attention to the vehicle (wide turns, weaving, violations of law, etc.). Unusual driver's actions, blank stare, etc.  
**IT was driving on LLSBH and observed a btrfi Toge4a Travel le-Cf oC c n4dr. 00Fh let+ <> 65 Tmvelled «pp« xima4elu 1Z. 11 te£4 ofcenter. Upon approach, dfrko3\*rv4 vjould look awcuuj token Answervn A AatsHons. Manded rrie ar rX JVy3.**

**Observation of Stop:** Describe vehicle maneuvers during the stop, delays in stopping, unusual manner of parking, etc.:  
**Took approx. 1/2 mile to stop, then yFoppeA letT t-nes on roadtoaj. I naa to motAon 4«r 4hern 4o pull over Fu. Fhejr.**

**General Observation:** Observation of driver, condition of clothing, attitude, speech, ability to follow instruction, etc.:  
**Ptf4cnd«un4- looking s4vaigM. aheady lo xgA lesufe. sh+r 4 + jeans 7 dir+gaie Hiesy b4veFC04. c nA vryito s4 r»g odor on breaMi when Sepajr xbed fvoim cav, Fresh lit cAareTFe.**

**Breath:** Describe the odor of alcohol on driver's breath: **5-JrOKI A**

**Statements:** Any statement made by the driver from time of stop to arrest:  
**lhodJVX, beers earlier- ahired, then said 4 beers later**

**Observation Prior to Arrest:** Describe any difficulty with motor skills, retrieving drivers license, getting out of vehicle, walking, standing, etc.:  
**Stbw rwi venerv4s, Kftd 4o ash Questions ripeafedly for answer**

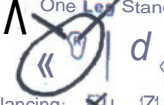
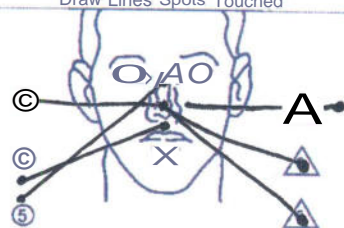
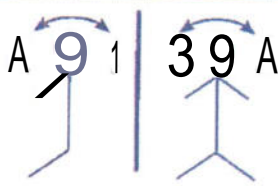
**Odors:** Describe any significant odors other than alcohol:  
**Strongig perTurne in cox**

Si begging 50 to let her go

**Psychophysical Tests** **Roadside xA slop** Time: **5:50**  am  18 pm

Location Performed: **Roadside xA slop**

Horizontal Gaze Nystagmus (HGN)		Walk and Turn Test	
5% Glasses <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Contact Lenses <input type="checkbox"/> Hard <input type="checkbox"/> Soft	Instruction Stage <input type="checkbox"/> Cannot Keep Balance <input checked="" type="checkbox"/> Starts Too Soon	
Tracking Equal? <b>99</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Able to Follow Stimulus? <b>B</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Stops Walking	First 9 Steps <b>5, 6</b> Second 9 steps <b>*ih*</b>
Lack of Smooth Pursuit	Maximum Deviation	Misses Heel to Toe	Steps Off Line <b>5</b>
Onset Prior 45°	Vertical Nystagmus? <b>FI</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Uses Arms To Balance	Actual Steps Taker <b>to</b>
Explain: <b>Used Finger as stimulus</b>		Improper Turn (Describe):	Cannot Do Test (Explain): <b>Did not use small steps</b>

<b>20/30</b> <b>One Leg Stand</b>  Sways While Balancing: <input checked="" type="checkbox"/> L <input checked="" type="checkbox"/> R Uses Arms for Balance: <input checked="" type="checkbox"/> L <input checked="" type="checkbox"/> R Hopping: <input type="checkbox"/> L <input type="checkbox"/> R Puts Foot Down: <input type="checkbox"/> L <input type="checkbox"/> R Type of Footwear: <b>6are-feet</b>	<b>Finger to Nose Test</b> Draw Lines Spots Touched 	<b>Romberg Balance</b> 
	<b>Alcohol Screening Test Device</b> (If test result is 0.08 or greater, wait 5 minutes and administer an additional test) Make / Model: <b>In-Focimeter, Model Infox EA</b> Serial #: <b>0AS5W</b>	<b>Test 1</b> Time: <b>11:01</b> am <b>53</b> pm Result: <b>0.12</b>

wmplekd

Ltcid4, use fhe restroom 3 Aim 15 whiU phoesin A.

Miranda Rights

Driver's Name: **Saluj T. Johnson**

Miranda Rights Advised:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Miranda Rights Waived:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Location:	<b>IS W after JtiC&amp;Stt</b>		Date:	<b>M/S/201A</b>	
			Time:	<b>A:vp n am be pm</b>	

Questionnaire

Were you operation a vehicle?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Were there any mechanical problems with that vehicle?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Describe:	<b>Rome</b>				
Where were you going?	<b>Rome</b>	Where were you coming from?	<b>Friends house</b>		
What street or highway were you on?	<b>US 64</b>	What city are you in now?	<b>Hi yOT Qvth</b>		
Without poking at a watch what time is it now?	<b>n:obpna</b>	What is the date?	<b>T M/A/ 2015</b>		
What is the day of the week?	<b>AAOW day</b>	Actual Time	<b>7:00* prV n am 8 pm</b>	Actual Date	<b>My A/1/Si Actual Day MONd'ft</b>
When did you last eat?	<b>1 0 0</b>	What did you eat?	<b>Hot do, chaps, bee*</b>		
What time did you begin drinking?	<b>1:00 nL am U# pm</b>	Last drink?	<b>5:00</b>	<b>fj am A pm</b>	
What did you drink?	<b>OuLUght</b>				
How many?	<b>fc</b>	What size?	<b>12 oz.</b>	Where?	<b>rWendS Roule</b>
Have you smoked Marijuana lately?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Used any other drug?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
On a scale of 0 to 10, with 0 being completely sober and 10 being completely drunk, where do you fit? (Check one)					
<input type="checkbox"/> 0	<input checked="" type="checkbox"/> <b>LM</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4
<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 7	<input type="checkbox"/> 8	<input type="checkbox"/> 9	<input type="checkbox"/> 10
In your opinion, should you have been operating a vehicle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
Do you have any physical defects?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If so, what?		
Are you sick?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If so, what's wrong?		
Do you limp?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Why do you limp?		
Have you been injured lately?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If so, what type of injury?		
Were you involved in a crash today?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	When did the crash occur?		
Did you get a bump on your head?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Have you had any alcoholic beverage(s) since the crash?		
If so, what?	<b>=</b>				
When?	<b>=</b>				
Have you seen a doctor or dentist intoly?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	If so, who?		
What for?	<b>Anxiety</b>				
When did you last go to sleep?	<b>LOLS-V night</b>				
Are you wearing false teeth?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Are you wearing oral jewelry?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Are you taking medication(s) of any kind?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	How much taken?		
If so, what kind?	<b>ExatCKJC</b>				
Last dose?	<b>10:00</b>	<input checked="" type="checkbox"/> am	<input type="checkbox"/> pm	<b>Today</b>	
Do you have epilepsy?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Do you have diabetes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Do you take insulin?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If so last dose?		
Have you had any ejections of any other drugs lately?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If so, what for?		
What kind of drug?	<b>=</b>				
Last dose?	<b>=</b>				

Passengers			
	Name	Age	Relationship
1.	<b>Lucy/ TohnsOno</b>	<b>Td</b>	<b>Daughter</b>
2.	<b>C C A m e U scene to JSck ufO</b>		
3.			

Witnesses			
	Name	Address	Phone
1.	<b>None</b>		
2.			
3.			

**Notes**  
 SH in my opinion **4e deferw) fitn+ held consumed CK 5uFCien+ yuunify of an impairing substance soVrscpk Her menfaA and phy5icAt {WcuThieS WJtre cupfreA tlvj impaired.**

Driver's Name: _____  DOB: _____ Approx. Wt.: _____ Gender: <input checked="" type="radio"/> M <input type="radio"/> F Minors in Vehicle: <input type="radio"/> Yes <input checked="" type="radio"/> No Blood / Breath Results: 0. _____ Vehicle Crash: <input type="radio"/> Yes <input checked="" type="radio"/> No   Injuries: <input checked="" type="radio"/> Yes <input type="radio"/> No Arrest Date: _____ Time: _____ <input checked="" type="radio"/> am <input type="radio"/> pm	<h2 style="margin:0;">Driving While Impaired Report (DWIR)</h2> <p style="margin:0;"><b>Department of Health and Human Services, Forensic Tests for Alcohol Branch</b></p>	Agency: _____ Officer's Name: _____ Officer No.: _____ Case No.: _____ DRE Officer: _____ City / County: _____ Street / Highway: _____ Area No.: _____
--	--	---

**Initial Observations:** What drew your attention to the vehicle (wide turns, weaving, violations of law, etc.). Unusual driver's actions, blank stare, etc.:

Observation Of Stop: Describe vehicle maneuvers during the stop, delays in stopping, unusual manner of parking, etc.:

**General Observation:** Observation of driver, condition of clothing, attitude, speech, ability to follow instruction, etc.:

Breath: Describe the odor of alcohol on driver's breath:

Statements: Any statement made by the driver from time of stop to arrest:


Observation Prior to Arrest: Describe any difficulty with motor skills, retrieving drivers license, getting out of vehicle, walking, standing, etc.:


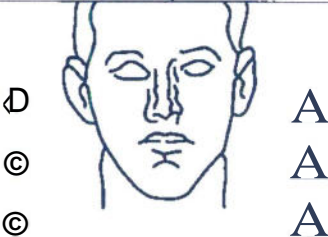
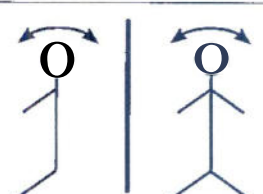
Odors: Describe any significant odors other than alcohol:

**Phase III**

Psychophysical Tests Time: \_\_\_\_\_  am  pm

Location Performed: \_\_\_\_\_

<b>Horizontal Gaze Nystagmus (HGN)</b>	<b>Walk and Turn Test</b>	
<input checked="" type="radio"/> Glasses Remove Glasses <input checked="" type="radio"/> Yes <input type="radio"/> No Tracking Equal? <input checked="" type="radio"/> Yes <input type="radio"/> No Able to Follow Stimulus? <input type="checkbox"/> Yes <input type="checkbox"/> No Lack of Smooth Pursuit Maximum Deviation Onset Prior 45° Vertical Nystagmus? <input type="checkbox"/> Yes <input type="checkbox"/> No Explain: _____	<input checked="" type="radio"/> Contact Lenses <input checked="" type="radio"/> Hard <input type="radio"/> Soft <input checked="" type="radio"/> Yes <input type="radio"/> No Left Eye Right Eye Misses Heel to Toe Steps Off Line Uses Arms To Balance Actual Steps Taken Improper Turn (Describe): _____ Cannot Do Test (Explain): _____	<b>Walk and Turn Test</b> 

<b>One Leg Stand</b>	<b>Optional Tests</b>	<b>Romberg Balance</b>
 Sways While Balancing: <input type="radio"/> L <input type="radio"/> R Uses Arms for Balance: <input type="radio"/> L <input type="radio"/> R Hopping: <input type="radio"/> L <input type="radio"/> R Puts Foot Down: <input type="radio"/> L <input type="radio"/> R Type of Footwear: _____	<b>Finger to Nose Test</b> Draw Lines Spots Touched 	
		<b>Internal Clock</b> Estimated _____ as 30 Seconds

**Alcohol Screening Test Device** (If test result is 0.08 or greater, wait 5 minutes and administer an additional test)

Make / Model	Serial #
Test 1 Time: _____ <input checked="" type="radio"/> am <input type="radio"/> pm Result: 0. _____	Test 2 Time: _____ <input type="radio"/> am <input type="radio"/> pm Result: 0. _____

**Miranda Rights**

**Driver's Name:**

Miranda Rights Advised:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Miranda Rights Waived:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Location:	Date:		Time:	<input type="checkbox"/> am	<input type="checkbox"/> pm

**Questionnaire**

Were you operation a vehicle? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Were there any mechanical problems with that vehicle? <input type="checkbox"/> Yes <input type="checkbox"/> No
Describe:	
Where were you going?	Where were you coming from?
What street or highway were you on?	What city are you in now?
Without looking at a watch, what time is it now?	<input type="checkbox"/> am <input type="checkbox"/> pm What is the date?
What is the day of the week?	Actual Time <input type="checkbox"/> am <input type="checkbox"/> pm Actual Date Actual Day
When did you last eat?	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm
What did you eat?	
What time did you begin drinking?	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm Last drink? <input type="checkbox"/> am <input checked="" type="checkbox"/> pm
What did you drink?	
How many?	What size? Where?
Have you smoked Marijuana lately? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Used any other drug? <input type="checkbox"/> Yes <input type="checkbox"/> No
On a scale of 0 to 10, with 0 being completely sober and 10 being completely drunk, where do you fit? (Check one.)	
<input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input checked="" type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10	
In your opinion, should you have been operating a vehicle? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Do you have any physical defects? <input type="checkbox"/> Yes <input type="checkbox"/> No	If so, what?
Are you sick? <input type="checkbox"/> Yes <input type="checkbox"/> No	If so, what's wrong?
Do you limp? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Why do you limp?
Have you been injured lately? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If so, what type of injury?
Were you involved in a crash today? <input type="checkbox"/> Yes <input type="checkbox"/> No	When did the crash occur? <input type="checkbox"/> am <input type="checkbox"/> pm
Did you get a bump on your head? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Have you had any alcoholic beverage(s) since the crash? <input type="checkbox"/> Yes <input type="checkbox"/> No
If so, what?	How many?
When?	Where?
Have you seen a doctor or dentist lately? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If so, who?
What for?	When?
When did you last go to sleep?	How much sleep did you have?
Are you wearing false teeth? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Are you wearing oral jewelry? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Do you have a glass eye? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Are you taking medication(s) of any kind? <input type="checkbox"/> Yes <input type="checkbox"/> No	How much taken?
If so, what kind?	
Last dose?	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm
Do you have epilepsy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Do you have diabetes? <input type="checkbox"/> Yes <input type="checkbox"/> No
Do you take insulin? <input type="checkbox"/> Yes <input type="checkbox"/> No	If so last dose?
Have you had any injections of any other drugs lately? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If so, what for?
What kind of drug?	Last dose? <input checked="" type="checkbox"/> am <input type="checkbox"/> pm

Passengers			
	Name	Age	Relationship
1.			
2.			
3.			

Witnesses			
	Name	Address	Phone
1.			
2.			
3.			

Notes

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES



**REQUEST FOR PRE-CHARGE CHEMICAL ANALYSIS**

L \_\_\_\_\_  
(FIRST NAME) (MIDDLE NAME) (LAST NAME)

REQUEST THAT A CHEMICAL ANALYSIS TO DETERMINE MY ALCOHOL CONCENTRATION BE ADMINISTERED TO ME BEFORE ANY CRIMINAL CHARGES ARE BROUGHT AGAINST ME FOR AN IMPLIED CONSENT OFFENSE.

I UNDERSTAND THAT THIS REQUEST CONSTITUTES MY CONSENT TO BE TRANSPORTED BY THE INVESTIGATIVE OFFICER TO THE TESTING LOCATION AND THAT THE RESULT OF SUCH CHEMICAL ANALYSIS ADMINSTERED TO ME MAY BE USED IN EVIDENCE IN THE TRIAL OF A CHARGE ARISING OUT OF THIS OCCURRENCE.

\_\_\_\_\_  
(DATE) (TIME) (LOCATION)

\_\_\_\_\_  
(SIGNATURE OF PERSON MAKING REQUEST) (SIGNATURE OF WITNESS)

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
DIVISION OF MOTOR VEHICLES



**REQUEST FOR PRE-CHARGE CHEMICAL ANALYSIS**

I. James Beam Doe  
(FIRST NAME) (MIDDLE NAME) (LAST NAME)

REQUEST THAT A CHEMICAL ANALYSIS TO DETERMINE MY ALCOHOL CONCENTRATION BE ADMINISTERED TO ME BEFORE ANY CRIMINAL CHARGES ARE BROUGHT AGAINST ME FOR AN IMPLIED CONSENT OFFENSE.

I UNDERSTAND THAT THIS REQUEST CONSTITUTES MY CONSENT TO BE TRANSPORTED BY THE INVESTIGATING OFFICER TO THE TESTING LOCATION AND THAT THE RESULT OF SUCH CHEMICAL ANALYSIS ADMINISTERED TO ME MAY BE USED IN EVIDENCE IN THE TRIAL OF A CHARGE ARISING OUT OF THIS OCCURRENCE.

10-02 1:40 am is \*?? gy&ss  
(DATE) (TIME) (LOCATION)

James B. Doe  
(SIGNATURE OF PERSON MAKING REQUEST)  
CS

Major [Signature]  
(SIGNATURE OF WITNESS)

**RIGHTS OF PERSON REQUESTING TO TAKE  
CHEMICAL ANALYSIS TO DETERMINE ALCOHOL  
CONCENTRATION UNDER G.S. 20-16.2(i)**

You have been stopped, detained, or questioned by a law enforcement officer having reasonable grounds to believe that you have been driving or operating a vehicle upon a public highway or public vehicular area while subject to an impairing substance. In the presence of this law enforcement officer you have requested in writing the administration of a chemical analysis to determine your alcohol concentration, but it is first required that you be notified as follows:

1. The test results will be admissible in evidence and may be used against you in any implied consent offense that may arise.
2. Your license will be revoked for at least 30 days if:
  - a. The test reveals an alcohol concentration of 0.08 or more; or
  - b. You were driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
  - c. You are under 21 years of age and the test reveals any alcohol concentration.
3. If you fail to comply fully with the test procedures, the officer may charge you with any offense for which the officer has probable cause, and if you are charged with an implied consent offense, your refusal to submit to the testing required as a result of that charge will result in revocation of your driver's license.

Time \_\_\_\_\_ [ ]a.m.      [ ]p.m.      Date \_\_\_\_\_

---

Signature of Chemical Analyst

---

Signature of Person Requesting Analysis

DMV-S784A  
(Rev. 12/98)

DISTRIBUTION OF COPIES:  
1<sup>ST</sup> - COURT COPY  
2<sup>ND</sup> - DEFENDANT'S COPY  
3<sup>RD</sup> & 4<sup>TH</sup> - ANALYST/OFFICER'S COPY



**Intox EC/IR-II: Subject Test**

**NORTH CAROLINA RALEIGH FTA**

Serial Number: 008686  
Test Date: 09/01/2015

Citation Number: C0160826-6  
Subject's Name: JONES, JAMES K  
Subject's Date of Birth: 11/30/1983  
Subject's Sex: Male  
Driver's License State: NC  
Driver's License Number: 1234567890

Analyst's Name: SMITH, BRIAN  
Permit Number: 1001E  
Effective:  
08/01/2015-08/01/2017

Officer's Name: KUSZAJ, DANIEL J  
Type of Agency: PD  
Agency: DURHAM  
Test Type: Breath Test

Lot Number: AG517501  
Exp Date: 06/24/2017

Test	g/210L	Time
DIAG	Pass	2:07pm
AIR BLK	.00	2:08pm
ACCY CHK	.08	2:08pm
AIR BLK	.00	2:09pm
<b>SUB TEST</b>	<b>.08</b>	<b>2:10pm</b>
AIR BLK	.00	2:11pm
<b>SUB TEST</b>	<b>.08</b>	<b>2:13pm</b>
AIR BLK	.00	2:14pm

**Reported AC: .08 g/210L**

Signature of Chemical Analyst

Court CVR

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)

Form with fields for Last, First, MI, Driver License Number / State, Date of Birth, and 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 privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is 0.08 or more, 0.04 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.

[ ] Blood Sample Taken \_\_\_\_\_ [ ] a.m. [ ] p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, a person qualified to withdraw the blood sample pursuant to N.C.G.S. 20 - 139.1

[ ] Refused Test \_\_\_\_\_ [ ] a.m. [ ] p.m.

Signature of Chemical Analyst Permit Number

DISTRIBUTION OF COPIES:
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3RD - DMV COPY
4TH - ANALYST/OFFICER S COPY
5TH - DEFENDANT S COPY

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
FORENSIC TESTS FOR ALCOHOL BRANCH

PREVENTIVE MAINTENANCE RECORD  
INTOXIMETERS, MODEL INTOX EC/IR II

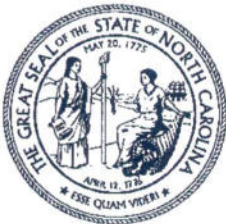
County \_\_\_\_\_ Instrument Location \_\_\_\_\_

Instrument Serial No. \_\_\_\_\_

The preventive maintenance procedures for the Intoximeters, Model Intox EC/IR II to be followed at least once every four months are:

1. Verify the ethanol gas canister displays pressure, or the alcoholic breath simulator thermometer shows 34 degrees, plus or minus .2 degree centigrade;
2. Verify instrument displays time and date;
3. Initiate breath test sequence;
4. Enter information as prompted;
5. Verify instrument accuracy;
6. When "PLEASE BLOW" appears, collect breath sample;
7. When "PLEASE BLOW" appears, collect breath sample;
8. Print test record;
9. Verify Diagnostic Program; and
10. Verify that the ethanol gas canister is being changed before expiration date, or the alcoholic breath simulator solution is being changed every four months or after 125 Alcoholic Breath Simulator tests, whichever occurs first.

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, **20** \_\_\_\_\_ the forgoing preventive maintenance procedures were performed on the instrument indicated above, in accordance with current regulations of the N.C. Department of Health and Human Services, and the instrument is functioning properly.



\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Certificate Number

A signed original of the preventive maintenance record shall be kept on file for at least three years.

REQUEST FOR BLOOD SAMPLE

Pursuant to North Carolina General Statute 20139.1(c) and 20-16.2 the undersigned

charging officer requests Candi Stripes to withdraw  
(physician, registered nurse, or other Qualified person)

a blood sample from the body of 3074 S Beaman Doe  
(person charged)

for the purpose of determining his alcohol concentration.

Major [Signature] Date 9-13-02 Time 2:45 a.m.  
Charging Officer p.m.

## SUBCHAPTER 41B – INJURY CONTROL

### SECTION .0100 – GENERAL POLICIES

#### 10A NCAC 41B .0101 DEFINITIONS

The definitions in G.S. 18B-101, G.S. 20-4.01, G.S. 130A-3 and the following shall apply throughout this Subchapter:

- (1) "Alcoholic Breath Simulator" means a constant temperature water-alcohol solution bath instrument devised for the purpose of providing a standard alcohol-air mixture;
- (2) "Breath-testing Instrument" means an instrument for making a chemical analysis of breath and giving the resultant alcohol concentration in grams of alcohol per 210 liters of breath;
- (3) "Controlled Drinking Program" means a bona fide scientific, experimental, educational, or demonstration program in which tests of a person's breath or blood are made for the purpose of determining his alcohol concentration when such person has consumed controlled amounts of alcohol;
- (4) "Director" means the Director of the Division of Public Health of the Department;
- (5) "Handling Alcoholic Beverages" means the acquisition, transportation, keeping in possession or custody, storage, administration, and disposition of alcoholic beverages done in connection with a controlled-drinking program;
- (6) "Observation Period" means a period during which a chemical analyst observes the person or persons to be tested to determine that the person or persons 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. Dental devices or oral jewelry need not be removed;
- (7) "Permittee" means a chemical analyst possessing a valid permit from the Department to perform chemical analyses, of the type set forth within the permit;
- (8) "Simulator Solution" means a water-alcohol solution made by preparing a stock solution of distilled or American Society for Testing and Materials Type I water and 48.4 grams of alcohol per liter of solution. Each 10 ml. of this stock solution is further diluted to 500 ml. by adding distilled or American Society for Testing and Materials Type I water. The resulting simulator solution corresponds to the equivalent alcohol concentration of 0.08;
- (9) "Verify Instrument Accuracy" means verification of instrumental accuracy of an approved breath testing instrument or approved alcohol screening test device by employment of a control sample from an alcoholic breath simulator using simulator solution and obtaining the expected result or 0.01 less than the expected result as specified in Item (8) of this Rule; or by employment of a control sample from an ethanol gas canister and obtaining the expected result or 0.01 less than the expected result as specified in Item (10) of this Rule. When the procedures set forth for approved breath testing instruments in Section .0300 of this Subchapter and for approved alcohol screening test devices in Section .0500 of this Subchapter are followed and the result specified herein is obtained, the instrument shall be deemed accurate;
- (10) "Ethanol Gas Canister" means a dry gas calibrator producing an alcohol-in-inert gas sample at an accurately known concentration from a compressed gas cylinder. The resulting alcohol-in-inert gas sample corresponds to the equivalent concentration of 0.08.

*History Note:* Authority G.S. 20-139.1(b); 20-139.1(g);  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. November 1, 2007; April 1, 2001; January 1, 1995; January 4, 1994; October 1, 1990; September 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### 10A NCAC 41B .0102 CONSULTANT PANEL AND REVIEW BOARD FEES

*History Note:* Authority G.S. 20-9; 143B-10;

*Eff. December 22, 1980;*  
*Amended Eff. July 1, 2005; January 1, 1990; October 1, 1986;*  
*Repealed Eff. November 1, 2005.*

## **SECTION .0200 - BLOOD ALCOHOL TEST REGULATIONS**

### **10A NCAC 41B .0201 INITIAL PERMIT FOR BLOOD ANALYST**

- (a) Any person desiring an initial permit as a blood analyst shall make written application to the Director.
- (b) In the application, the applicant shall set out his professional qualifications and experience and describe in detail the method intended to be used in performing chemical analyses of blood, the equipment and chemicals to be employed, the names and professional qualifications of any persons who will assist him in any of the incidental phases of the analyses to be made, and the location in and conditions under which the analyses shall be made. The Director shall prepare application forms to assist applicants in presenting the required information in an orderly fashion.

*History Note: Authority G.S. 20-139.1(b);*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

### **10A NCAC 41B .0202 GRANTING PERMITS**

- (a) After receiving the application, the Director shall grant or deny permits to perform chemical analyses of the blood on the basis of his determination of the character and qualifications of the applicant and whether the method of chemical analysis proposed will be sufficiently reliable to meet generally accepted forensic standards.
- (b) If from any application it appears that the chemical analysis of the blood will be done by persons under the supervision of the applicant, the Director shall require each person slated to perform chemical analyses of the blood to submit application. Where the Director is satisfied that the critical professional phases of the analysis will be performed by the applicant and that assistance from others will be incidental phases, he may grant the permit to the applicant.
- (c) Permits granted under this Section shall be granted only to persons performing chemical analyses of blood for law enforcement officers under the provisions of G.S. 20-139.1. The Director may require such documentation or conduct such investigations as may be necessary to insure that applicants for initial or renewal permits meet this requirement before granting permits.

*History Note: Authority G.S. 20-139.1(b);*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. September 1, 1990; July 1, 1985; January 1, 1985;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

### **10A NCAC 41B .0203 APPROVED PERMITS**

- (a) A blood analyst performing chemical analyses of blood in accordance with the description set out in the application for an initial, renewal, or modified permit shall be deemed to be performing such analyses in a manner approved by the Director.
- (b) All initial, modified, and renewal permits shall be valid for a period of two years.

*History Note: Authority G.S. 20-139.1(b);*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. April 1, 1992; September 1, 1990; July 1, 1985;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

### **10A NCAC 41B .0204 MODIFICATION OF PERMIT**

Before making any material alteration in method or procedure for performing chemical analyses of blood, a blood analyst must be granted a modified permit from the Director. The provisions applicable for the granting of initial permits shall govern. When the blood analyst who holds a permit has assistants performing incidental phases of chemical analyses, replacement of these individuals with other assistants shall not be deemed a material alteration of procedure so long as any assistant has the same general qualifications and abilities as the person replaced.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### **10A NCAC 41B .0205 RENEWAL OF PERMIT**

- (a) At least three months prior to the expiration of the permit, a blood analyst desiring to renew the permit must submit written application for renewal to the Director.
- (b) The procedure applicable to the granting of initial applications shall govern the granting of renewal applications.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. January 1, 1985;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### **10A NCAC 41B .0206 DETERMINATION OF RENEWAL OF PERMIT**

- (a) In determining whether to renew the permit of a blood analyst, the Director shall consider whether the method and procedure continues to meet the generally accepted forensic standards for chemical analyses of blood; he shall also take into account evidence available concerning the character and continuing ability of the blood analyst.
- (b) If in acting upon an application for renewal of permit the Director returns the application for additional information, or requests a modification of method, so as to cause a delay in granting the renewal or modified permit, the Director at his discretion may grant the blood analyst a provisional permit under the conditions applicable to the expiring permit. A provisional permit shall be valid for the period stated in the permit, but shall not be issued for a period longer than three months. A provisional permit may be renewed once.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990; July 1, 1985;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### **10A NCAC 41B .0207 EVALUATION OF BLOOD ANALYSTS**

The Director may institute a procedure for periodically testing the competence of blood analysts, which may include supervisory inspections of laboratories in which chemical analyses of blood are being performed.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### **10A NCAC 41B .0208 REVOCATION OF PERMIT**

- (a) If the Director receives unfavorable information concerning the character or ability of any blood analyst, he shall direct an investigation to be made. If the Director becomes satisfied that the unfavorable information is accurate, and that the blood analyst would for this reason no longer be eligible to be granted an initial or renewal permit, he shall

suspend or revoke the permit using the same procedures that are used for the suspension or revocation of permits in G.S. 130A-23.

(b) Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990; December 1, 1987; April 1, 1987; January 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### **10A NCAC 41B .0209 REPORTING OF ALCOHOL CONCENTRATIONS BY BLOOD ANALYSTS**

When performing chemical analyses of blood under the authority of G.S. 20-139.1 and the provisions of these rules, blood analysts shall report alcohol concentrations based on grams of alcohol per 100 milliliters of whole blood.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. October 1, 1986;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

### **SECTION .0300 - BREATH ALCOHOL TEST REGULATIONS**

#### **10A NCAC 41B .0301 APPLICATION FOR INITIAL PERMIT**

(a) Application for an initial permit to perform chemical analysis of a person's breath to determine his alcohol concentration shall be made in writing to the Director. The applicant shall have the endorsement of his supervisor, or his supervisor's representative. The Director shall issue, deny, terminate, and revoke permits for individuals to perform chemical analyses.

(b) Permits shall be granted to individuals who:

- (1) demonstrate the ability to perform chemical analyses accurately and reliably;
- (2) can explain the method of operation of the breath-testing instrument for which he is applying for a permit to operate;
- (3) provide a statement on the application from the applicant's supervisor attesting to the good character of the applicant; and
- (4) are employed by a law enforcement agency, the Forensic Tests for Alcohol Branch or members of its instructional staff, or by some other federal, state, county or municipal agency with the responsibility of administering chemical analyses to drivers charged with implied consent offenses.

(c) Individuals successfully completing a minimum of 35 course hours conducted by the Forensic Tests for Alcohol Branch shall be deemed to have met the requirements of Subparagraphs (b)(1) and (2) of this Rule.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. January 1, 1982;  
Amended Eff. May 1, 2007; October 1, 1993; September 1, 1990; September 1, 1989; January 1, 1985;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### **10A NCAC 41B .0302 LIMITATION OF PERMIT**

(a) Permits shall be limited in scope to the methods or instruments for performing chemical analyses in which the individual applying for a permit has demonstrated competence. This limitation shall be upon the basis of the methods or instruments that received primary emphasis in the particular course of instruction attended by the applicant in the event that successful completion of the course is offered as proof of ability to perform chemical analyses. Initial and renewal permits shall state the date upon which they are to become effective and the date upon which they are to expire. The expiration date shall be no more than 24 months after the effective date.



(b) Permits granted under this Section, initial and renewals, shall be valid only during the period the permittee is employed by a law enforcement agency, the Forensic Tests for Alcohol Branch or a member of its instructional staff, or by some other federal, state, county or municipal agency with the responsibility of administering chemical analyses to drivers charged with implied consent offenses.

*History Note: Authority G.S. 20-139.1(b);  
Eff. January 1, 1982;  
Amended Eff. April 1, 2007; April 1, 1992; September 1, 1990; January 1, 1985; October 1, 1983;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

#### **10A NCAC 41B .0303 RENEWAL OF PERMIT**

The Director shall issue, deny, terminate, and revoke renewal permits for individuals to perform chemical analyses. Where there is a question on the need for a permit, the Director may require the individual to submit a written application for renewal. The applicant shall have the endorsement of his appropriate supervising law enforcement officer, or his designated representative, unless an exception is granted by the Director.

*History Note: Authority G.S. 20-139.1(b);  
Eff. January 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

#### **10A NCAC 41B .0304 CONDITIONS FOR RENEWAL OF PERMIT**

(a) Permits may be renewed at expiration, or at such time prior to expiration as is convenient for the Director, upon demonstration by the permittee of:

- (1) continuing ability to perform accurate and reliable chemical analyses;
- (2) ability to explain the method of operation of the breath-testing instrument for which he is applying for a renewal permit to operate; and
- (3) continued employment by a law enforcement agency, the Forensic Tests for Alcohol Branch or a member of its instructional staff, or by some other federal, state, county or municipal agency with the responsibility of administering chemical analyses to drivers charged with implied consent offenses.

(b) The permittee shall provide a statement on the application from the applicant's supervisor attesting to the good character of the applicant.

(c) Individuals successfully completing a forensic test for alcohol recertification course conducted by the Forensic Tests for Alcohol Branch prior to the expiration of their permits shall be deemed to have met the requirements of Subparagraphs (a)(1) and (2) of this Rule for the renewal of permits.

(d) In addition to meeting the requirements of Paragraph (a) of this Rule, individuals desiring renewal permits, after expiration of their permits, shall successfully complete the following Forensic Tests for Alcohol Branch course requirements prior to the granting of renewal permits:

- (1) Forensic Tests for Alcohol Recertification Course if the permit has been expired less than six months;
- (2) Forensic Tests for Alcohol Operators Course if the permit has been expired six months or longer.

*History Note: Authority G.S. 20-139.1(b);  
Eff. January 1, 1982;  
Amended Eff. May 1, 2007; October 1, 1993; April 1, 1992; September 1, 1990; September 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

#### **10A NCAC 41B .0305 RESERVED FOR FUTURE CODIFICATION**

#### **10A NCAC 41B .0306 TESTING OF EQUIPMENT**

The Director or his representative shall have the authority to verify periodically the condition of all breath-testing instruments used by permittees.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. January 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### **10A NCAC 41B .0307 EVALUATION OF PERMITTEES**

The Director or his representative may at any time examine permittees to determine their continuing ability to perform accurate and reliable chemical analyses.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. January 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### **10A NCAC 41B .0308 REVOCATION OF PERMIT**

(a) If the Director receives unfavorable information concerning the character or ability of any permittee, he shall direct an investigation to be made. If the Director determines, after investigation, that the permittee would no longer be eligible to be granted an initial or renewal permit, he shall suspend or revoke the permit using the same procedures that are used for suspension or revocation of permits in G.S. 130A-23.

(b) Appeals concerning the interpretation and enforcement of the Rules in this Section shall be made in accordance with G.S. 150B.

*History Note:* Authority G.S. 20-139.1(b);  
Eff. January 1, 1982;  
Amended Eff. September 1, 1990; December 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

#### **10A NCAC 41B .0309 QUALIFICATIONS OF MAINTENANCE PERSONNEL**

*History Note:* Authority; G.S. 20-139.1(b2);  
Eff. January 1, 1982;  
Amended Eff. October 1, 1993; April 1, 1992; September 1, 1990; September 1, 1989;  
Repealed Eff. May 1, 2007.

#### **10A NCAC 41B .0310 RESERVED FOR FUTURE CODIFICATION**

#### **10A NCAC 41B .0311 LOG**

*History Note:* Authority G.S. 20-16.5(j); 20-139.1(b);  
Eff. January 1, 1982;  
Amended Eff. April 1, 1992; October 1, 1990;  
Repealed Eff. November 1, 2007.

#### **10A NCAC 41B .0312 RESERVED FOR FUTURE CODIFICATION**

#### **10A NCAC 41B .0313 BREATH-TESTING INSTRUMENTS: REPORTING OF SEQUENTIAL TESTS**

The Department approves breath-testing instruments listed on the National Highway Traffic Safety Administration, Conforming Products List of Evidential Breath Measurement Devices. Instruments are approved on the basis of results of evaluations by the Forensic Tests for Alcohol Branch. Evaluations are not limited in scope and may include any factors deemed appropriate to ensure the accuracy, reliability, stability, cost, and ease of operation and durability of the instrument being evaluated.

*History Note:* Authority G.S. 20-16.5(j); 20-139.1(b);  
Eff. January 1, 1982;

*Amended Eff. May 1, 2007; April 1, 1993; September 1, 1990; March 1, 1989; December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

**10A NCAC 41B .0314      RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 41B .0315      RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 41B .0316      RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 41B .0317      RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 41B .0319      RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 41B .0319      RESERVED FOR FUTURE CODIFICATION**

**10A NCAC 41B .0320      INTOXILYZER: MODEL 5000**

**10A NCAC 41B .0321      PREVENTIVE MAINTENANCE: INTOXILYZER: MODEL 5000**

*History Note:      Authority G.S. 20-139.1(b); 20-139.1(b)(b2);  
Eff. January 1, 1985;  
Temporary Amendment Eff. September 1, 1989 for a period of 180 days to expire on February 28, 1990;  
Amended Eff. November 1, 2007; April 1, 2001; April 1, 1993; April 1, 1992; January 1, 1990;  
March 1, 1989;  
Expired Eff. February 1, 2018 pursuant to G.S. 150B-21.3A.*

**10A NCAC 41B .0322      INTOXIMETERS: MODEL INTOX EC/IR II AND MODEL INTOX EC/IR II  
(ENHANCED WITH SERIAL NUMBER 10,000 OR HIGHER)**

The following operational procedures shall be followed when administering a test using the Intoximeters, Model Intox EC/IR II and Model Intox EC/IR II (Enhanced with serial number 10,000 or higher):

- (1)      Ensure instrument displays time and date;
- (2)      Ensure observation period requirements have been met;
- (3)      Initiate breath test sequence;
- (4)      Enter information as prompted by the instrument;
- (5)      Verify instrument accuracy;
- (6)      When "PLEASE BLOW" appears, collect breath sample;
- (7)      When "PLEASE BLOW" appears, collect breath sample; and
- (8)      Print test record.

If the alcohol concentrations differ by more than 0.02, a third or fourth breath sample shall be collected when "PLEASE BLOW" appears. Sequential tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

*History Note:      Authority G.S. 15A-534.2(d); 20-139.1(b);  
Eff. November 1, 2007;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;  
Amended Eff. April 1, 2020.*

**10A NCAC 41B .0323      PREVENTIVE MAINTENANCE: INTOXIMETERS: MODEL INTOX EC/IR II  
AND MODEL INTOX EC/IR II (ENHANCED WITH SERIAL NUMBER 10,000  
OR HIGHER)**

The preventive maintenance procedures for the Intoximeters, Model Intox EC/IR II and Model Intox EC/IR II (Enhanced with serial number 10,000 or higher) to be followed at least once every four months are:

- (1)      Verify the ethanol gas canister displays at least 51 pounds per square inch (psi) of pressure, or the alcoholic breath simulator thermometer shows 34 degrees, plus or minus .2 degree centigrade;

- (2) Verify instrument displays time and date;
- (3) Initiate breath test sequence;
- (4) Enter information as prompted;
- (5) Verify instrument accuracy;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample;
- (8) Print test record;
- (9) Run diagnostic program and confirm preventive maintenance status of "Pass"; and
- (10) Verify that the ethanol gas canister is being changed before expiration date, or the alcoholic breath simulator solution is being changed every four months or after 125 Alcoholic Breath Simulator tests, whichever occurs first.

A signed original of the preventive maintenance record, or an electronic copy of the signed original of the preventive maintenance record, shall be kept on file at the North Carolina Department of Health and Human Services for three years.

*History Note:* Authority G.S. 15A-534.2(d); 20-139.1(b2);  
 Eff. November 1, 2007;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;  
 Amended Eff. April 1, 2020.

## **SECTION .0400 - CONTROLLED DRINKING PROGRAMS**

### **10A NCAC 41B .0401 APPLICATION OF REGULATIONS**

(a) The regulations of this Section apply to the handling of alcoholic beverages in connection with one or a series of controlled-drinking programs when any aspect of the handling would not be lawful except for the provisions of G.S. 20-139.1(g) and these regulations. If all aspects of the handling of alcoholic beverages in connection with one or a series of controlled-drinking programs may be effected in accordance with North Carolina's laws and regulations of general application pertaining to the regulation of alcoholic beverages, compliance with these regulations is not necessary. In all events, governing provisions of federal law must be met in the handling of alcoholic beverages.

(b) Persons authorized to obtain and possess alcohol exempt from the taxes of the United States and of North Carolina may utilize such alcohol in controlled-drinking programs to the extent authorized by law. Handling of such tax-exempt alcohol shall not be governed by these regulations provided there is compliance with all the other applicable laws of the United States and of North Carolina.

*History Note:* Authority G.S. 20-139.1(g);  
 Eff. February 1, 1976;  
 Readopted Eff. December 5, 1977;  
 Amended Eff. January 1, 1982;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

### **10A NCAC 41B .0402 AUTHORIZATION**

(a) Any person may conduct a controlled-drinking program without special authorization from the Director if such program is either under the supervision of a public agency or institution or presented with the participation of a public employee possessing a valid permit from the Director to perform chemical analyses of breath or blood and participation by the permittee has been authorized by his superiors.

(b) Any other person desiring to conduct a controlled-drinking program under the authority of these regulations must apply for authorization from the Director. The Director may grant the authorization if it appears that the proposed controlled-drinking program or series of programs will be conducted in a manner so as to minimize danger or annoyance to the public on the part of the drinking subjects and that the program or series of programs will in general further the bona fide objectives of the chemical testing programs within this state. Request for such authority shall be submitted so as to reach the Director at least 10 days prior to the proposed controlled-drinking program or the initial program of a proposed series.

*History Note:* Authority G.S. 20-139.1(g);

*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. January 1, 1982;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

#### **10A NCAC 41B .0403 HANDLING ALCOHOLIC BEVERAGES**

- (a) Alcoholic beverage intended for use in a controlled-drinking program authorized under these regulations shall be procured from alcoholic beverage control stores, from the North Carolina Alcoholic Beverage Control Commission, or from retail establishments duly licensed to sell wine or malt beverages. Each purchase shall be covered by a requisition, bill of sale, or other record evidence, showing the date, place of purchase, type of alcoholic beverage, and the quantity.
- (b) An individual procuring alcoholic beverage for use in a controlled-drinking program shall be of lawful age to buy alcoholic beverages.
- (c) Alcoholic beverages required for use in a specific controlled-drinking program shall be procured on the basis of estimated requirements and wherever feasible procured just prior to its use.

*History Note: Authority G.S. 20-139.1(g);*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. September 1, 1990; January 1, 1982;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

#### **10A NCAC 41B .0404 QUANTITY LIMITS**

Any person handling alcoholic beverages in a manner consonant with the bona fide objectives of an authorized controlled-drinking program may possess and transport such alcoholic beverage wherever necessary or desirable in furtherance of the objectives of the program within the quantity limits specified in this Rule. Any person handling alcohol beverages in conjunction with a controlled-drinking program shall handle such beverages in accordance with G.S. 18B-303.

If the cap or seal on any container of alcoholic beverage has been opened or broken, such container may not be transported in the passenger area of a motor vehicle.

*History Note: Authority G.S. 20-139.1(g);*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. September 1, 1990; January 1, 1982;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

#### **10A NCAC 41B .0405 EXCESS OF QUANTITIES**

- (a) Any person responsible for the handling of alcoholic beverages in connection with an authorized controlled-drinking program may procure, possess, and transport alcoholic beverages in excess of the quantities allowed by Rule .0404 of this Section provided the person or his employer holds a valid permit from the North Carolina Alcoholic Beverage Control Commission. Request for such a permit shall be forwarded to the Director, indicating the need for the permit, location of the testing program, the quantity and type alcoholic beverage to be procured and transported, and the name of the agency or individual to whom the permit should be issued.
- (b) Where a series of controlled-drinking programs are proposed, the request for the permit may generally state the nature, extent, and possible locations of such programs and the over-all duration of the series. Permits shall not be valid for more than one year. The Director shall forward such requests to the North Carolina Alcoholic Beverage Control Commission with appropriate recommendations concerning the issuance of each permit.

*History Note: Authority G.S. 20-139.1(g);*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. September 1, 1990; January 1, 1982;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

**10A NCAC 41B .0406 RESTRICTED USE OF ALCOHOLIC BEVERAGES**

- (a) When not being used, all alcoholic beverages shall be stored in a safe place, if possible under lock and key.
- (b) Alcoholic beverages procured for use in a controlled-drinking program shall be used only for this purpose. Malt beverages, unfortified wine, fortified wine or spirituous liquor shall not be given or otherwise administered to anyone under 21 years of age.
- (c) Any person, agency, or institution conducting a controlled-drinking program is authorized to store such quantities of alcoholic beverages as may be required for the conduct of the program.

*History Note: Authority G.S. 20-139.1(g);  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. October 1, 1986; October 1, 1983; January 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

**10A NCAC 41B .0407 RECORDS**

- (a) Any person, agency, or institution acquiring alcoholic beverages for use in a controlled-drinking program pursuant to these Rules shall keep records accounting for the disposition of all alcoholic beverages so acquired. Such records shall be made available for inspection upon the request of any federal or state law enforcement officer with jurisdiction over the laws relating to alcohol or alcoholic beverages.
- (b) As a minimum, records on alcoholic beverages procured for use in controlled-drinking programs will show the following:
  - (1) the date, place, type, and quantity of alcoholic beverages procured;
  - (2) the date and quantities of alcoholic beverages, by type, dispensed for controlled-drinking purposes;
  - (3) a running inventory, showing the quantity of each type alcoholic beverage on hand.

*History Note: Authority G.S. 20-139.1(g);  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990; January 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

**SECTION .0500 - ALCOHOL SCREENING TEST DEVICES**

**10A NCAC 41B .0501 SCREENING TESTS FOR ALCOHOL CONCENTRATION**

- (a) This Section governs the requirement of G.S. 20-16.3 that the Department examine devices suitable for use by law enforcement officers in making on-the-scene tests of drivers for alcohol concentration and that the Department approve these devices and their manner of use. In examining devices for making chemical analyses, the Department finds that at present only screening devices for testing the breath of drivers are suitable for on-the-scene use by law enforcement officers.
- (b) This Section does not address or in any way restrict the use of screening tests for impairment other than those based on chemical analyses, including various psychophysical tests for impairment.

*History Note: Authority G.S. 20-16.3; 20-16.3A;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. April 1, 2007; October 1, 1993; October 1, 1983; January 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

**10A NCAC 41B .0502 APPROVAL: ALCOHOL SCREENING TEST DEVICES: USE**

(a) Alcohol screening test devices that measure alcohol concentration through testing the breath of individuals are approved on the basis of results of evaluations by the Forensic Tests for Alcohol Branch. Devices shall meet the minimum requirements as set forth in the Department specifications for Alcohol Screening Test Devices. Evaluations are not limited in scope and may include any factors deemed appropriate to insure the accuracy, reliability, stability, cost, and ease of operation and durability of the device being evaluated. On the basis of evaluations to date, approved devices are listed in 10A NCAC 41B .0503 of this Section.

(b) When the validity of an alcohol screening test of the breath of a driver administered by a law enforcement officer depends upon approval by the Department of the test device and its manner of use, the test shall be administered as follows:

- (1) The officer shall determine that the driver has removed all food, drink, tobacco products, chewing gum and other substances and objects from his mouth. Dental devices or oral jewelry need not be removed.
- (2) Unless the driver volunteers the information that he has consumed an alcoholic beverage within the previous 15 minutes, the officer shall administer a screening test as soon as feasible. If a test made without observing a waiting period results in an alcohol concentration reading of 0.08 or more, the officer shall wait five minutes and administer an additional test. If the results of the additional test show an alcohol concentration reading more than 0.02 under the first reading, the officer shall disregard the first reading.
- (3) The officer may request that the driver submit to one or more additional screening tests.
- (4) In administering any screening test, the officer shall use an alcohol screening test device approved under 10A NCAC 41B .0503 of this Section in accordance with the operational instructions supplied by the Forensic Tests for Alcohol Branch and listed on the device.

*History Note: Authority G.S. 20-16.3;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. April 1, 2007; April 1, 2001; September 1, 1990; January 1, 1990; October 1, 1983;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

#### **10A NCAC 41B .0503 APPROVED ALCOHOL SCREENING TEST DEVICES: CALIBRATION**

(a) The following breath alcohol screening test devices are approved as to type and make:

- (1) ALCO-SENSOR (with two-digit display), manufactured by Intoximeters, Inc.
- (2) ALCO-SENSOR III (with three-digit display), manufactured by Intoximeters, Inc.
- (3) ALCO-SENSOR IV, manufactured by Intoximeters, Inc.
- (4) ALCO-SENSOR FST, manufactured by Intoximeters, Inc.
- (5) S-D2, manufactured by CMI, Inc.
- (6) S-D5, manufactured by CMI, Inc.
- (7) ALCO-SENSOR III (Enhanced with Serial Numbers above 1,200,000), manufactured by Intoximeters, Inc.
- (8) ALCO-SENSOR FST (Enhanced with Serial Numbers 200,000 and higher), manufactured by Intoximeters, Inc.
- (9) LIFELOC FC10, manufactured by Lifeloc Technologies, Inc.
- (10) INTOXILYZER 500, manufactured by CMI, Inc.
- (11) ALCOVISOR MERCURY, manufactured by PAS International.

(b) The agency or operator shall verify instrument calibration of each alcohol screening test device at least once during each 30 day period of use. The verification shall be performed using an alcoholic breath simulator with a simulator solution in accordance with Paragraph (c) of this Rule or an ethanol gas canister in accordance with Paragraph (d) of this Rule.

(c) Alcoholic breath simulators used exclusively to verify instrument calibration of alcohol screening test devices shall have the solution changed every 30 days or after 25 calibration tests, whichever occurs first.

(d) Ethanol gas canisters used exclusively to verify instrument calibration of alcohol screening test devices shall not be utilized beyond the expiration date on the canister.

(e) Requirements of Paragraphs (b), (c), and (d) of this Rule shall be recorded on an alcoholic breath simulator log or an ethanol gas canister log designed by the Forensic Tests for Alcohol Branch within the North Carolina

Department of Health and Human Services and maintained by the user agency in accordance with the user agency's retention policy.

*History Note:* Authority G.S. 20-16.3; 20-138.7(d);  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. July 1, 2007; November 1, 2005; April 1, 2001; January 1, 1995; January 4, 1994;  
April 1, 1993; January 4, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;  
Amended Eff. April 1, 2020.



TO: KDH-02381 Mon Feb 11, 2002 14:55:58 K35W4A0XCT3Q PAGE 1 OF 3  
 FROM: DMV6 Mon Feb 11, 2002 14:55:56  
 N.C. DRIVER LICENSE SYSTEM

RESPONSE BASED UPON:  
 CUSTOMER ID: PAGES: 7  
 ATTENTION:

DRIVER HISTORY RESPONSE

NAME: **DOE, JAMES BEAVTA**  
 ADDRESS: **13 1/2 Souf? MASH DR.**  
 CITY: KILL DEVIL HL STATE: NC ZIP: 279488183 TOTAL POINTS: 0  
 DOB: **12/22/54** HEIGHT: 5 FT. 06 IN. SEX: M EYES: BLU HAIR: BRO RACE: W  
 PRIMARY LICENSE NO: **000000 0**  
 SECONDARY LICENSE NO: NON-RESIDENT MILITARY: N  
 ORG. ISS.DT: 06-17-91 OS DL NO: OS STATE:

\*\*\* DRIVER LICENSE STATUS: CLS C ACTIVE \*\*\*

CLASS	GRP	TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT	COND	PRIV	RESTR	STATUS
C		R	06-28-00	06-15-05	N	N	N	N		N		ACTIVE

ENDORS: RESTRICT: 1

OCCUR/ CONV/

BEG DATE	END DATE	NATURE OF RECORD OR DIVISION ACTION	POINTS
06-09-99	06-26-00	SUSP: 1 OFFENSE OF DRIVING WHILE IMPAIRED	
01-17-99	06-09-99	CONV: (625)DRIVING WHILE IMPAIRED COURT: CURRITUCK COUNTY COURT, NC COURT: AOC #: 99CR 000162 CITATION ID: 08799998	LIM PRIV
02-09-99	06-15-05	ORG ISS: ID EN: RS:	
01-17-99	02-19-99	SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)	
01-17-99	01-17-99	CONV: (028)30 DAY CIVIL REVOCATION(CONVICTION) COURT: CURRITUCK COUNTY COURT, NC COURT: AOC #: 99CR 000162 CITATION ID: 08799998	
06-20-98	08-31-98	CONV: (313)SPEEDING ( 48 MPH IN A 35) COURT: DARE COUNTY COURT, NC COURT: AOC #: 98IF 003501 CITATION ID: C8372934	2
12-18-97	06-15-00	DUP ISS: CLS C EN: RS:0	
06-17-96	06-15-00	DUP ISS: CLS C EN: RS:0	
12-21-95	06-15-00	DUP ISS: CLS C EN: RS:0	
06-02-95	06-15-00	REN ISS: CLS C EN: RS:0	
04-22-93	06-15-95	DUP ISS: CLS C EN: RS:	
09-09-92	03-09-93	SUSP: SPEEDING OVER 75 MPH	
07-17-92	09-09-92	CONV: (313)SPEEDING ( 82 MPH IN A 55) COURT: CURRITUCK COUNTY COURT, NC COURT: AOC #: CITATION ID: 03952989	

06-17-91 06-15-95 ORG ISS: CLS C EN: RS:

05-17-91 11-17-92 ORG ISS: CLS C PRMT EN: RS:11

\*\*

CERTIFIED A TRUE COPY OF THE D/L RECORD OF THE PERSON NAMED HEREIN AS APPEARS ON THE AUTOMATED SYSTEM OF DMV. G.S.20-26(B).

\* END OF MESSAGE \*

File No.

# SEARCH WARRANT FOR BLOOD OR URINE IN DWI CASES

## IN THE MATTER OF

Name \_\_\_\_\_

Date 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 \_\_\_\_\_

# STATE OF NORTH CAROLINA

In The General Court Of Justice  
District Court Division

\_\_\_\_\_ County

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

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

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

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

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

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

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

**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)

# APPLICATION FOR SEARCH WARRANT FOR BODILY FLUIDS

(Attach additional sheets if necessary.)

Name Of Law Enforcement Officer (Applicant)		Rank	N.C. State Highway Patrol		Police/Sheriff
Name Of Individual To Be Searched		Race		Male <input type="checkbox"/>	Female <input type="checkbox"/>
Location Of Individual To Be Searched		Fluid To Be Seized		Blood <input type="checkbox"/>	Urine <input type="checkbox"/>
Crime(s) Charged <input type="checkbox"/> Commercial DWI. G.S. 20-138.2.					
<input type="checkbox"/> DWI. G.S. 20-138.1. <input type="checkbox"/> Death By Vehicle. G.S. 20-141.4.					
<input type="checkbox"/> Habitual DWI. G.S. 20-138.5 <input type="checkbox"/> Other (specify)					

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

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

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

1. I rely on the facts stated in the following report(s), of which a copy or copies is/are attached and incorporated by reference: (Attach a copy of the report(s) checked below if available and if either contains relevant facts.)

Affidavit and Revocation Report (AOC-CVR-1A/DHHS 3907).

Driving While Impaired Report Form/Alcohol Influence Report Form.

2. The following facts establish on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ AM  PM, the individual named above was operating a (  commercial motor ) vehicle, to wit: (type, make and year) \_\_\_\_\_

\_\_\_\_\_ on \_\_\_\_\_ a \_\_\_\_\_ highway/street  public vehicular area in \_\_\_\_\_ County at or near the city/town of \_\_\_\_\_ in violation of the statute(s) specified above:

(check all that apply)

a. At the time and place stated above:

I observed the above-named individual operating the above-described vehicle.

I observed the above-described vehicle being operated in the following manner:

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

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

d. On or about the date stated above, at \_\_\_\_\_ AM  PM I detected a  strong  moderate  faint odor of alcohol coming from the breath of the above-named person:

at the scene.

at the following hospital \_\_\_\_\_

at other location \_\_\_\_\_

I observed the following behaviors of the individual named above, which evidence impairment of the person's mental and/or physical faculties as follows:

e. The above-named individual stated to me that before or while operating the described vehicle he/she:

had consumed alcohol.

was consuming alcohol.

had consumed controlled substance, to wit: \_\_\_\_\_

had consumed other impairing substance, to wit: \_\_\_\_\_

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

g. I observed the following facts:

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

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

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

## SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature \_\_\_\_\_ Date \_\_\_\_\_ Signature Of Applicant \_\_\_\_\_

Date My Commission Expires \_\_\_\_\_ County Where Notarized \_\_\_\_\_

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

NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form.

ATTACH TEST RECORD TICKET HERE  
File No.

# STATE OF NORTH CAROLINA

County \_\_\_\_\_

In The General Court Of Justice  
District Court Division

## IN THE MATTER OF

## AFFIDAVIT AND REVOCATION REPORT OF LAW ENFORCEMENT OFFICER

CHEMICAL ANALYST

Name

Address

City

State

Zip

Race

Sex

Date Of Birth

Drivers License No.

State

Vehicle Type

CMV

Haz. Mat.

Citation No.

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

The undersigned being first duly sworn says:

**I** 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 its approved breath-testing instruments.
- 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 \_\_\_\_\_

**I** 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 the approved breath-testing instrument shown on the attached DHHS 4082, 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 the instrument utilized 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.

15. The willful refusal occurred in an implied-consent offense involving death or critical injury to another person.  AOC-CR-155 search warrant issued and executed in this case.  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

Notary

Date My Commission Expires \_\_\_\_\_ County Where Notarized \_\_\_\_\_

Agency Name

**SEAL**

## 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.

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.

Dare 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 M LAW ENFORCEMENT OFFICER CHEMICAL ANALYST

Name  
James Beam Doe

Address  
1313 Sour Mash Dr

City  
Anywhere

State  
NC

Zip  
200020

Race W	Sex M	Date Of Birth 12/22/1954	Drivers License No. 0000000	State NC	Vehicle Type	CMV	Haz. Mat.	Citation No. C-287672-9CTRN
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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

The undersigned being first duly sworn says:

1.1 am a law enforcement officer. On the 13 day of September, 2020, at 2:00 (iJfajdm., 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 ITS. 158 (Give Street, Highway Or Public Vehicular Area) while committing an implied-consent offense in that he drove his vehicle in an erratic manner, was speeding, had strong odor of alcohol on breath, staggered

(List Sufficient Facts To Establish Probable Cause)

- 2. The driver has a drivers license restriction: Q alcohol concentration. 33 ignition interlock. 33 conditional restoration (Restn \*9).
- 3. The driver violated a drivers license restriction by: 33 refusing to be transported for testing. 33 not having an operable ignition interlock on the vehicle being driven. 33 failing to personally activate the ignition interlock on the vehicle being driven. 33 exceeding the driver's alcohol concentration limitation. 33 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: 3 G.S. 20-138.1. Q 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 Mark Grant, 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 its approved breath-testing instruments.
- 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 \_\_\_\_\_, 2020, at \_\_\_\_\_ 2:45 (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. 33 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 the approved breath-testing instrument shown on the attached DHHS 4082, 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 the instrument utilized 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 33 DHHS 4082. 33 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. 33 totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.

<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		Signature Of Chemical Analyst/Law Enforcement Officer <u>Major G. M. Hams</u>	DHHS Permit No.
Date 09/13/2020	Signature Of Official Authorized To Administer Oaths <u>Major G. M. Hams</u>	Print/Name Of Chemical Analyst/Law Enforcement Officer Major G. M. Hams	
<input checked="" type="checkbox"/> Magistrate	<input checked="" type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court
<input checked="" type="checkbox"/> Notary <b>SEAL</b>	Date My Commission Expires	County Where Notarized	
		Agency Name Kill Devil Hills PD	

**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>1</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.



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.

Dare 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

Name

James Beam Doe

LAW ENFORCEMENT OFFICER

CHEMICAL ANALYST

Address

1313 Sour Mash Dr

The charged offense is impaired supervision or instruction under G.S. 20-12.1. Accordingly, substitute "supervisor/instructor" wherever "driver" appears below.

City

Anywhere

State

NC

Zip

200020

G.S. 20-16.2, 20-16.5, 20-17.8, 20-19(c3), 20-139.1

Race

W

Sex

M

Date Of Birth

12/22/1954

Drivers License No.

0000000

State

NC

Vehicle Type

CMV

Haz. Mat.

Citation No.

C-287672-9CTRN

The undersigned being first duly sworn says:

1.1 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: Q alcohol concentration. Q ignition interlock. Q conditional restoration (Restr: \*9).
3. The driver violated a drivers license restriction by: Q refusing to be transported for testing. Q not having an operable ignition interlock on the vehicle being driven. Q failing to personally activate the ignition interlock on the vehicle being driven. Q 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: Q G.S. 20-138.1. EH 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.
6.1 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 its approved breath-testing instruments.
7.1 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.
8.1 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 2:20 (a.)(p.)m. on the 13th day of September, 2020.
9. On the 13th day of September, 2020, at 2:45 (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. Q 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 the approved breath-testing instrument shown on the attached DHHS 4082, 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 the instrument utilized on the 5th day of September, 2020, 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 (check one) \_\_\_ DHHS 4082. Q 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. Q 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. 896 ID

Date 09/13/2020

Signature of Official Authorized To Administer Oaths

Print Name Of Chemical Analyst/Law Enforcement Officer

Mark Grant

Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court

Notary SEAL

Date My Commission Expires County Where Notarized

Agency Name Kill Devil Hills PD

## 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>1</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.

## **Request for Examination of Physical Evidence Instructions**

### **IF INSTRUCTIONS ARE NOT FOLLOWED, EVIDENCE MAY BE RETURNED**

1. **If the status of this case changes in any manner (i.e. case closed), please NOTIFY THE LABORATORY IMMEDIATELY via FA Web.**
2. **Hand delivery** is the **preferred** method for evidence submission followed by **Courier Mail** or **Registered Mail**.
3. Completed **FA Web pre-log printouts AND ANY ADDITIONAL REQUIRED FORMS OR LETTERS** must be in an envelope attached to the **OUTSIDE** of the mailing package. **MAIL ONLY ONE CASE PER MAILING PACKAGE.** Make a copy of the printout for your records.
4. **PACKAGING REQUIREMENTS:**
  - **ALL CONTAINERS MUST BE SEALED. THE PERSON SEALING THE EVIDENCE SHOULD PLACE THEIR INITIALS ACROSS THE TAPE ONTO THE CONTAINER ITSELF. HEAT SEALED AND TAMPER-PROOF EVIDENCE CONTAINERS MUST BEAR THE INITIALS OF THE INDIVIDUAL SEALING THE CONTAINER.** For clarification concerning the packaging or labeling of evidence, please refer to the **Policy and Procedure for Evidence Submissions** available online in the FA Web Portal. If there are still unanswered questions, please contact the appropriate laboratory personnel.
  - **DO NOT MARK THE OUTSIDE OF EVIDENCE ENVELOPES/PACKAGES WITH WORDS SUCH AS DRUGS, FIREARMS, ETC.**
  - All glass containers (ESPECIALLY TUBES OF BLOOD) must be adequately protected against breakage and leakage (e.g., padding and plastic bags).
  - Any package containing biological materials or materials exposed to biological contamination **MUST** be properly identified as **BIOLOGICAL HAZARDS**. In addition, you must indicate on the submission form(s) that the case contains Biohazardous Evidence.
  - Sharp metal objects or glass objects (e.g., knives, glass, razor blades, crack pipes, etc.) must be secured to heavy cardboard with ends protected.
  - Green plant material and/or any wet evidence (e.g., clothing) should be dried out and submitted in **PAPER** bags (NOT PLASTIC).
5. Complete the following part(s) of the submission form for evidence being submitted for the designated examinations:

<b>Only Part A:</b> for Drug, Toxicology, or Latent Evidence	<b>Parts A, B, and C:</b> for Body Fluid/DNA Evidence
<b>Parts A and B:</b> for Poison & Tampering, Trace Evidence, or Firearms	<b>Parts A, B, &amp; D:</b> for Hair & Fiber Evidence
	<b>Parts A, B, C and D:</b> for Hair, Fiber, and Body Fluid/DNA Evidence
6. For **DIGITAL EVIDENCE**, the Computer Forensics Supplement must be submitted in addition to the search warrant, court order, or consent form.
7. **DRUG EVIDENCE SUBMISSION REQUIREMENTS:**
  - Drug evidence seized from different people on the same occasion or the same person on different occasions must be submitted separately.
  - Prior to submission, you **MUST** separate drugs from containers to be processed for latent prints.
  - The number of dosage units or packages of each type of controlled substance should be noted in the item description (e.g., two red tablets, five plastic bags of white powder, etc.).
8. **FIREARMS SUBMISSIONS REQUIREMENTS:**
  - All firearms submitted to the laboratory must be **UNLOADED**. If you are not able to unload the weapons, transport the item(s) to the laboratory in person. Advise laboratory personnel of any loaded weapons immediately upon arrival.
9. **HAIR EVIDENCE SUBMISSION REQUIREMENTS:**
  - Cases will be accepted only when proper standards are submitted from **ALL** victims and suspects.
  - Hair evidence will be accepted only after it has been removed from large, bulky items (e.g., clothing and bedding, etc.)
  - Hair evidence will be accepted only in cases in which the hair is a vital part of the evidence.
10. **LATENT EVIDENCE SUBMISSION REQUIREMENTS:**
  - When submitted for latent print comparison purposes, fingerprint cards bearing known inked impressions are evidence and must be listed and identified as an item of evidence.
  - Elimination inked impressions are required in all simple, property type cases submitted for latent print analysis.

### **SUBMIT THE EVIDENCE TO THE NEAREST LABORATORY:**

North Carolina State Crime Laboratory  
9052 Mail Service Center  
Raleigh, NC 27699

Triad Regional Laboratory  
Guilford Building  
2306 West Meadowview Road, Suite 110  
Greensboro, North Carolina 27407

Western Regional Laboratory  
P.O. Box 528  
Edneyville, North Carolina 28727

#### **State Courier #: Mail Service Center 9052**

Commercial deliveries only, use:  
121 East Tryon Road  
Raleigh, North Carolina 27603  
Attention Evidence Control

The above address is to be used for all  
mail and commercial deliveries.

**State Courier #: 02-18-57**

Phone: (336) 315-4900

#### **State Courier #: 06-90-01**

Commercial deliveries only, use:  
300 St. Pauls Road  
Hendersonville, North Carolina 28792

Phone (828) 654-0525

Phone: (919) 582-8756

**All DNA Database sample collection kits must be submitted to 9055 Mail Service Center Raleigh, NC 27699**

Use *Continuation Sheet* to list additional items of evidence

**PART A REQUEST FOR EXAMINATION OF PHYSICAL EVIDENCE**

Requesting Officer: \_\_\_\_\_ County of Offense: \_\_\_\_\_ Lab # \_\_\_\_\_  
 Requesting Agency: \_\_\_\_\_ ORI #: \_\_\_\_\_ SBI File # \_\_\_\_\_

**PLEASE PLACE A CHECK MARK (✓) BESIDE THE PREFERRED ADDRESS**

Agency P. O. Box, City and Zip: \_\_\_\_\_ Agency File # \_\_\_\_\_  
 Agency Street Address, City and Zip: \_\_\_\_\_ Type of Case: \_\_\_\_\_  
 CAA (SBI Case Agent Assigned): \_\_\_\_\_ DIC (SBI District in Charge): \_\_\_\_\_ Date of Offense: \_\_\_\_\_  
 Investigating Officer Name and Best Contact Number – Name: \_\_\_\_\_ Contact Number: \_\_\_\_\_

VICTIM(S)	Race/Sex	DOB	SUSPECT(S)	Race/Sex	DOB	ID #

Has any evidence in this case been submitted to the laboratory previously? \_\_\_\_\_ If yes, to which section(s)? \_\_\_\_\_

Lab Item #	Agency Item #	Type Container/Description of Evidence	Examine For	Exact Location Found (Use names for body fluid/DNA Evidence)

Additional Analysis Requested / Instructions:

**EVIDENCE WILL BE RETURNED TO THE REQUESTING OFFICER**

**STATE CRIME LABORATORY CHAIN OF CUSTODY USE ONLY**

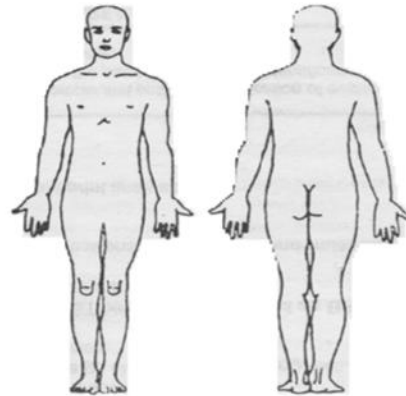
The signatures of North Carolina State Crime Laboratory employees appearing below indicate that the material described above under *TYPE CONTAINER / DESCRIPTION OF EVIDENCE* was delivered to the person (approved carrier) indicated, on or about the date stated, and was delivered in essentially the same condition as received. By submitting this form, you acknowledge and approve laboratory personnel to use the most appropriate and up to date methods authorized by our laboratory and/or sample submission to another laboratory to best meet your needs.

ITEM(S)	Received By: (Print) (Initial)	Received From: (Print) (Initial)	DATE

**COMPLETE PART B OR ATTACH A COPY OF THE INVESTIGATIVE REPORT**

Lab Number: \_\_\_\_\_

**PART B:** Description of the incident (Brief Summary of the events of the crime). Be sure to provide details as to who may have been bleeding in cases involving body fluid/DNA evidence.



**For Firearms Examination**

(Show entrance and exit wounds)

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**PART C:** (For body fluid/DNA cases)

Have samples from all possible bleeders or body fluid donors been included?  Yes  No

Have any of the above persons been transfused in the last 30 days?  Yes  No

**In sexual offense cases answer the following:**

1. Was the alleged assailant known to the victim?  Yes  No
2. Did the victim have sex with someone within 72 hours prior to the incident?  Yes  No
3. Is a known DNA sample from the consenting sex partner available at this time?  Yes  No
4. Do you plan to submit this sample?  Yes  No
5. Has/have the suspect(s) made any statement that the act was consensual?  Yes  No

**NOTE:** No DNA testing will be conducted on evidence samples unless known DNA samples from all victims and suspects are submitted. In sexual offense cases, a known DNA sample must also be submitted from any consensual sexual partners of the victim within 72 hours of the incident, if DNA typing is requested.

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**PART D:** (For hair, fiber and other particle analysis cases)

Crime Occurred: (Check all that apply)  Suspect's Residence  Victim's Residence  
 Suspect's Vehicle  Victim's Vehicle  
 Other Location (describe):

Have the suspect(s) and victim(s) lived at the same residence or shared a common environment?  Yes  No

If this is a rape case, has consent or common environment been involved?  Yes  No

**IF YES, HAIR SAMPLES SHOULD NOT BE SUBMITTED FOR EXAMINATION**

Be sure to indicate the race of the victim(s) and suspect(s) listed on Page 1

Please retain all hair and fiber evidence until either (1) the hair samples from all suspects and victims **are obtained** for hair analysis, **OR** (2) all fiber standards (carpeting, upholstery, clothing of suspect/victim) **are obtained** for fiber analysis. **YOU MUST SUBMIT THE NECESSARY STANDARDS BEFORE ANALYSIS CAN BE PERFORMED.**

North Carolina State Crime Laboratory

Page \_\_\_\_\_ of \_\_\_\_\_

**CONTINUATION PAGE**  
 Supplement to  
**REQUEST FOR EXAMINATION OF PHYSICAL EVIDENCE Part A**

Agency File # \_\_\_\_\_ SBI File # \_\_\_\_\_ LAB # \_\_\_\_\_

Lab Item #	Agency Item #	Type Container/Description of Evidence	Examine For	Exact Location Found (Use names for body fluid/DNA Evidence)

Additional Analysis Requested / Instructions:

**STATE CRIME LABORATORY CHAIN OF CUSTODY USE ONLY**

The signatures of North Carolina State Crime Laboratory employees appearing below indicate that the material described above under *TYPE CONTAINER / DESCRIPTION OF EVIDENCE* was delivered to the person (approved carrier) indicated, on or about the date stated, and was delivered in essentially the same condition as received. By submitting this form, you acknowledge and approve laboratory personnel to use the most appropriate and up to date methods authorized by our laboratory and/or sample submission to another laboratory to best meet your needs.

ITEM(S)	Received By:	(Print)	(Initial)	Received From:	(Print)	(Initial)	DATE

North Carolina Department of Justice  
North Carolina State Crime Laboratory  
Proficiency



**Laboratory Report**

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TO:	Requesting Officer	DATE:	January 7, 2022
	Investigating Agency	CRIME LAB NO.:	P202200000
	Address	SBI FILE NO.:	
	City, NC ZIP	AGENCY FILE NO.:	
		EXAMINED BY:	Forensic Scientist
LOCATION:	County	DATE OF OFFENSE:	June 24, 2021
TYPE OF	Offense		
CASE:			
SUBJECT(S):	Suspect	Victim (Victim)	

---

**ITEM SUBMITTED BY SUBMITTING OFFICER ON JANUARY 4, 2022:**

Item # 1: One (1) purple Verizon LG cellphone bearing model number: LG-UX8575 and MEID HEX: A0000021802960

**TYPE EXAMINATION REQUESTED:**

Forensic Analysis.

**RESULTS OF EXAMINATION:**

The Laboratory received notification that this case no longer requires examination. The analysis of this case has been terminated. No results or conclusions are being reported.

**DISPOSITION OF EVIDENCE:**

The evidence will be retained for pick-up unless otherwise authorized.

End of Report

I, Joshua H. Stein, Attorney General of the State of North Carolina, hereby certify that the form identified as: North Carolina State Crime Laboratory, Department of Justice, Laboratory Report is a form approved by me for the purpose stated in G.S. 90-95(g) and G.S. 8-58.20 and approved by me in compliance with the said statutes.

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**THIS REPORT IS TO BE USED ONLY IN CONNECTION WITH AN OFFICIAL CRIMINAL INVESTIGATION.**

This report contains the opinions/interpretations of the examiner(s) who issued the report. All supporting documentation generated during the examination is released with the report.

Forensic Scientist

**Confidential:** This is an official file of the North Carolina State Crime Laboratory. To make public or reveal the contents thereof to any unauthorized person is a violation of the General Statutes of North Carolina.

**STATE OF NORTH CAROLINA**

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District     Superior Court Division

**IN THE MATTER OF:**

**INVENTORY OF ITEMS SEIZED  
PURSUANT TO SEARCH**

Name

G.S. 15A-223, -254, -257

I, the undersigned officer, executed a search of:

Person, Premises Or Vehicle Searched

Date Of Search

This search was made pursuant to

- 1. a search warrant issued by: \_\_\_\_\_.
- 2. consent to search given by: \_\_\_\_\_.
- 3. other legal justification for the search: \_\_\_\_\_.

The following items were seized:

**Original - File**

**Copy - For Search by Warrant of a Person, to Person from Whom Items Taken**

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

**Copies - For Search by Consent, to Person Giving Consent and Owner of Vehicle/Premises Searched, if Known**



Items Seized Continued:

1. I left a copy of this inventory with the person named below, who is:

- a. the owner of the premises searched.
- b. the owner of the vehicle searched.
- c. the person in apparent control of the premises searched.
- d. the person in apparent control of the vehicle searched.
- e. the person from whom the items were taken.

2. As no person was present, I left a copy of this inventory:

- a. in the premises searched, identified on the reverse.
- b. in the vehicle searched, identified on the reverse.

Name And Address Of Person To Whom A Copy Of This Inventory Was Delivered, If Any

The law enforcement agency identified below will hold the seized property subject to court order.

<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		Name Of Law Enforcement Officer (type or print)
Date	Name (type or print)	Signature Of Law Enforcement Officer
<input type="checkbox"/> Notary	Signature	Title Of Law Enforcement Officer
<b>SEAL</b>	Date My Commission Expires	Name And Address Of Agency
	County Where Notarized	
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate		

**ACKNOWLEDGMENT OF RECEIPT**

I, the undersigned, received a copy of this inventory.

Date	Signature Of Person Receiving Inventory
------	---

(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.

(TYPE OR PRINT IN BLACK INK)  
**STATE OF NORTH CAROLINA**  
County

File No.

In The General Court Of Justice  
District Court Division

**OFFICER'S AFFIDAVIT FOR SEIZURE AND  
IMPOUNDMENT AND MAGISTRATE'S ORDER -  
FELONY SPEEDING TO ELUDE**

G.S. 20-28.3

Name And Address Of Defendant

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 the offense of felony speeding to elude arrest in violation of  G.S. 20-141.5(b)  20-141.5(b1) in that: (List sufficient facts to constitute probable cause.) \_\_\_\_\_
2. I charged the defendant with an offense in violation of the statute cited above.
3. A check of law enforcement records or other reliable information indicates that the motor vehicle described above has not been reported stolen.
4. 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.
5.  (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).

**OFFICER'S NOTIFICATION TO THE DIVISION OF MOTOR VEHICLES OF  
 SEIZURE AND IMPOUNDMENT OF VEHICLE**

G.S. 20-28.3

<i>Date Of Offense</i>	<i>Date Of Seizure</i>	<i>County In Which Charges Are Filed</i>	
<i>Name And Address Of Defendant</i>		<i>Defendant's Driver's License No.</i>	<i>State</i>
		<i>Vehicle License No.</i>	<i>State</i>
<i>Name And Address Of Registered Owner(s)</i>		<i>Vehicle Year</i>	<i>Vehicle Make</i>
		<i>Vehicle Type</i>	
		<i>Name, Address And Telephone No. Where Vehicle Stored</i>	
<i>Vehicle Identification No.</i>			

**INSURANCE INFORMATION**

**NOTE:** Complete This Section If Seized Vehicle Is Damaged

<i>Name And Address Of Insurance Company For Seized Vehicle</i>	<i>Policy Number</i>
---	----------------------

**INSURANCE INFORMATION FOR OTHER VEHICLE(S) INVOLVED**

**NOTE:** Complete This Section For All Other Vehicles Involved

<i>Name And Address Of Insurance Company</i>		<i>Policy Number</i>	
<i>Vehicle Identification No.</i>	<i>Vehicle License No.</i>	<i>State</i>	
<i>Vehicle Year</i>	<i>Vehicle Make</i>	<i>Vehicle Type</i>	

(Add Additional Pages If Necessary)

**OFFICER'S INFORMATION**

<i>Seizing Officer's Name And Department Or Agency (Print)</i>	<i>Badge No.</i>
<i>Telephone No. (      )</i>	

**NOTE TO OFFICER:** Provide completed form to DCI terminal operator so that seizure information can be sent to DMV via DCI Formatted Screen within 24 hours of seizure. DCI terminal operator should keep this form on file for one week after entry. You may call (919) 861-3185 for assistance.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division**STATE VERSUS**

Name And Address Of Defendant

Defendant's Drivers License No.

State

Name And Address Of Vehicle Owner(s) Other Than Defendant

Name And Address Of Bond Surety (If Applicable)

Vehicle Identification No.

Vehicle License No.

State

Vehicle Type

Make

Year

Date Of Offense

Date Of Seizure If Different From Offense Date

 Vehicle Moved To State Contractor Facility**PROSECUTOR'S NOTICE  
OF FORFEITURE HEARING -  
IMPAIRED DRIVING** MOTOR VEHICLE  PROCEEDS

G.S. 20-28.3(c)

Name And Address Of Lienholder(s)

Name And Address Of Bond Surety (If Applicable)

Name And Address Of School Board Attorney

Name And Address Of Initial Place Of Impoundment

**PROSECUTOR'S CERTIFICATE OF HEARING****TO THE DEFENDANT, SCHOOL BOARD ATTORNEY, VEHICLE OWNER(S), LIENHOLDER(S), AND/OR SURETY(IES) NAMED ABOVE:**

The motor vehicle described above was seized pursuant to G.S. 20-28.3(a), and the vehicle (or proceeds related to the vehicle) remains subject to forfeiture under G.S. 20-28.2. A hearing to determine whether the vehicle described above (or proceeds related to the vehicle) will be forfeited is scheduled for the date, time, and location stated below. You may intervene to protect your interest in the vehicle. Non-defendant owners may do so by filing a **Non-Defendant Owner's Petition/Application For Release Of Seized Motor Vehicle Acknowledgment - Impaired Driving** (AOC-CR-330A). Lienholders may do so by filing a **Lienholder's Petition For Release Of Seized Motor Vehicle Notice Of Hearing/Waiver And Order - Impaired Driving** (AOC-CR-334A).

Date Of Hearing

Time Of Hearing

 AM  
 PM

Location Of Hearing

**PROSECUTOR'S CERTIFICATE OF SERVICE**

I certify that on this date, a copy of this Prosecutor's Notice Of Forfeiture Hearing - Impaired Driving was served by:

- first class mail at the address(es) shown above on the  defendant.  school board attorney.  owner(s).  
 lienholder(s).  bond surety(ies).
- personally delivering a copy to the  defendant.  school board attorney.  owner(s).  lienholder(s).  bond surety(ies).
- Other \_\_\_\_\_.

Date

Name Of Prosecutor (Type Or Print)

Signature Of Prosecutor

**NOTE TO PETITIONER:** You are advised to bring any documentation supporting your petition, such as your North Carolina Certificate of Insurance, FS-1, or your registration or vehicle title, to the hearing.

**NOTE:** "In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least 10 days before the hearing at which an order of forfeiture may be entered." G.S. 20-28.2(c). The attorney for the county board of education also is entitled to notice. G.S. 20-28.3(k).

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

## STATE VERSUS

## PROSECUTOR'S NOTICE OF FORFEITURE HEARING - FELONY SPEEDING TO ELUDE

MOTOR VEHICLE  PROCEEDS

G.S. 20-28.2(c)

Name And Address Of Defendant

Defendant's Drivers License No.

State

Name And Address Of Vehicle Owner(s) Other Than Defendant

Name And Address Of Lienholder(s)

Name And Address Of Bond Surety (If Applicable)

Name And Address Of Bond Surety (If Applicable)

Vehicle Identification No.

Name And Address Of School Board Attorney

Vehicle License No.

State

Vehicle Type

Make

Year

Name And Address Of Initial Place Of Impoundment

Date Of Offense

Date Of Seizure If Different From Offense Date

Vehicle Moved To State Contractor Facility

## PROSECUTOR'S NOTICE OF SERVICE

### TO THE DEFENDANT, SCHOOL BOARD ATTORNEY, VEHICLE OWNER(S), LIENHOLDER(S), AND/OR SURETY(IES) NAMED ABOVE:

The motor vehicle described above was seized pursuant to G.S. 20-28.3(a1), and the vehicle (or proceeds related to the vehicle) remains subject to forfeiture under G.S. 20-28.2. A hearing to determine whether the vehicle described above (or proceeds related to the vehicle) will be forfeited is scheduled for the date, time, and location stated below. You may intervene to protect your interest in the vehicle. Non-defendant owners may do so by filing a **Non-Defendant Owner's Petition/Application For Release Of Seized Motor Vehicle Acknowledgment - Felony Speeding To Elude** (AOC-CR-330B). Lienholders may do so by filing a **Lienholder's Petition For Release Of Seized Motor Vehicle Notice Of Hearing/Waiver And Order - Felony Speeding To Elude** (AOC-CR-334B).

Date Of Hearing

Time Of Hearing

AM  
 PM

Location Of Hearing

## PROSECUTOR'S CERTIFICATE OF SERVICE

I certify that on this date, a copy of this Prosecutor's Notice Of Forfeiture Hearing - Felony Speeding To Elude was served by:

- first class mail at the address(es) shown above on the  defendant.  school board attorney.  owner(s).  
 lienholder(s).  bond surety(ies).  
 personally delivering a copy to the  defendant.  school board attorney.  owner(s).  lienholder(s).  bond surety(ies).  
 Other \_\_\_\_\_.

Date

Name Of Prosecutor (Type Or Print)

Signature Of Prosecutor

**NOTE TO PETITIONER:** You are advised to bring any documentation supporting your petition, such as your North Carolina Certificate of Insurance, FS-1, or your registration or vehicle title, to the hearing.

**NOTE:** "In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least 10 days before the hearing at which an order of forfeiture may be entered." G.S. 20-28.2(c). The attorney for the county board of education also is entitled to notice. G.S. 20-28.3(k).

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

Name Of Defendant		<p><b>NON-DEFENDANT OWNER'S                  PETITION/APPLICATION FOR RELEASE                  OF SEIZED MOTOR VEHICLE                  ACKNOWLEDGMENT -                  IMPAIRED DRIVING</b></p> <p>G.S. 20-28.2(e), 20-28.3(e), 20-28.3(e1)</p>		
Defendant's Drivers License No.	State			
Vehicle Identification No.				
Vehicle License No.	State			
Vehicle Type	Make			

The motor vehicle described above was seized on the date shown above while being driven by the defendant named above. The defendant was charged with committing an impaired driving offense and it is alleged that at the time of the violation (1) the defendant's drivers license was revoked pursuant to a prior impaired driving license revocation or (2) the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy. The petitioner named on the reverse side applies for the release of that motor vehicle and any funds paid into this Court as a result of any damage to or sale of the vehicle incident to its seizure. Release is requested:

(check all that apply)

- Temporarily pending a proceeding before the Clerk on this Petition or pending a hearing on the forfeiture of the vehicle.  
**NOTE:** Check this option if you want immediate temporary release of your vehicle. You must execute and file a bond. Use "Bond To Secure Temporary Pretrial Release Of Motor Vehicle - Impaired Driving," AOC-CR-331A.
- Permanently after a proceeding before the Clerk on this Petition to be held as soon as may be feasible after the filing of this Petition.
- Permanently after a hearing conducted by the court on the forfeiture of the vehicle.

I state:

1. The petitioner is:
  - a. an individual.
  - b. a business firm or corporation acting through the undersigned agent.
2. I am a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time the vehicle was seized.**
3. I was not the driver at the time of the underlying offense resulting in the seizure.
4. I am an innocent owner because:  
 (check all that apply) (**NOTE:** This item does not apply to temporary release petitions.)
  - a. I did not know and had no reason to know that  the defendant's drivers license was revoked.  the defendant did not have a valid drivers license and that the defendant had no liability insurance.
  - b. I knew that  the defendant's drivers license was revoked,  the defendant did not have a valid drivers license and that the defendant had no liability insurance, but the defendant drove the motor vehicle without my expressed or implied permission, and I filed a police report for unauthorized use of the motor vehicle and have agreed to prosecute the unauthorized operator of the motor vehicle.
  - c. The motor vehicle was reported stolen.
  - d.  (applicable to offenses committed prior to December 1, 2013) I am in the business of renting vehicles, and the defendant is not listed as an authorized driver on the rental contract.  
 (applicable to offenses committed on or after December 1, 2013) I am a rental car company as defined in G.S. 66-201 and  the defendant is not listed as an authorized driver on the rental agreement as defined in G.S. 66-201.  the defendant is listed as an authorized driver on the rental agreement as defined in G.S. 66-201, but I had no actual knowledge of the revocation of the defendant's license at the time the rental agreement was entered.
  - e. I am in the business of leasing motor vehicles, held legal title to the motor vehicle as lessor at the time the vehicle was seized, and had no actual knowledge of the revocation of the defendant's drivers license at the time the lease was entered.

(Over)



5. I acknowledge that:

- a. The motor vehicle described above was operated by the defendant named above who was charged with an offense involving impaired driving and it is alleged that at the time of the violation  the defendant's license was revoked as a result of a prior impaired drivers license revocation.  the defendant did not have a valid drivers license and did not have liability insurance.
- b. If the vehicle is again operated by the defendant and the defendant is charged with an offense involving impaired driving, then the vehicle is subject to impoundment and forfeiture if at the time of the violation (i) the defendant's drivers license is revoked as a result of a prior impaired driving license revocation or (ii) the defendant does not have a valid drivers license and does not have liability insurance.
- c. A lack of knowledge or consent to the operation will not be a defense in the future, unless I have taken all reasonable precautions to prevent the use of the vehicle by the defendant and immediately report, upon discovery, any unauthorized use to the appropriate law enforcement agency.

6. (check applicable box) (NOTE: This item does not apply to temporary release petitions.)

- a. I have not previously executed an acknowledgment naming the defendant named on the reverse side as operator of the vehicle described on the reverse side.
- b. I have previously executed an acknowledgment naming the defendant named on the reverse side as operator of the vehicle described on the reverse side and have taken all reasonable precautions to prevent the use of the vehicle by the defendant named on the reverse side and immediately reported, upon discovery, any unauthorized use to the appropriate law enforcement agency.

7. (check if you are a lessor) I agree not to sell, give, or otherwise transfer possession of the motor vehicle to the defendant or to any person acting on the defendant's behalf. **NOTE:** "A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal." G.S. 20-28.2(e).

8. (NOTE: This item does not apply to temporary release petitions.) I have financial responsibility to the extent required by Article 13 of Chapter 20 of the General Statutes, or to the extent required by the laws of the state outside North Carolina in which my vehicle is registered. (NOTE: Form FS-1, which can be obtained from your insurance company, will provide proof of financial responsibility.)

9. (check if applying for temporary release) The motor vehicle has been seized for at least 24 hours, I am posting a bond equal to the fair market value of the motor vehicle as evidenced by the attached form AOC-CR-331A, I have not previously executed an acknowledgment naming the defendant named on the reverse side, and no bond posted by me to secure the release of this motor vehicle has previously been ordered forfeited.

Name, Address And Telephone No. Of Petitioner/Applicant (Type Or Print)	Date
	Signature Of Petitioner/Applicant
	Drivers License No. (Individual Petitioner Only) State

**NOTE TO CLERK:** Immediately upon the filing of this form, report the owner's acknowledgment to DMV using STARS.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

Name Of Defendant			<p><b>NON-DEFENDANT OWNER'S                  PETITION/APPLICATION FOR RELEASE                  OF SEIZED MOTOR VEHICLE                  ACKNOWLEDGMENT -                  FELONY SPEEDING TO ELUDE</b></p> <p>G.S. 20-28.2(e), 20-28.3(e), 20-28.3(e1)</p>	
Defendant's Drivers License No.		State		
Vehicle Identification No.				
Vehicle License No.		State		
Vehicle Type	Make	Year	Date Of Seizure	Date Of Offense

The motor vehicle described above was seized on the date shown above while being driven by the defendant named above. The defendant was charged with committing the offense of felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1). The petitioner named on the reverse side applies for the release of that motor vehicle and any funds paid into this Court as a result of any damage to or sale of the vehicle incident to its seizure. Release is requested:

(check all that apply)

- Temporarily** pending a proceeding before the Clerk on this Petition or pending a hearing on the forfeiture of the vehicle.  
**NOTE:** Check this option if you want immediate *temporary* release of your vehicle. You must execute and file a bond. Use "Bond To Secure Temporary Pretrial Release Of Motor Vehicle - Felony Speeding To Elude," AOC-CR-331B.
- Permanently after a proceeding before the Clerk on this Petition to be held as soon as may be feasible after the filing of this Petition.
- Permanently after a hearing conducted by the court on the forfeiture of the vehicle.

I state:

1. The petitioner is:
  - a. an individual.
  - b. a business firm or corporation acting through the undersigned agent.
2. I am a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time the vehicle was seized.**
3. I was not the driver at the time of the underlying offense resulting in the seizure.
4. I am an innocent owner because:  
 (check all that apply) (**NOTE:** This item does not apply to temporary release petitions.)
  - a. The defendant drove the motor vehicle without my expressed or implied permission, and I filed a police report for unauthorized use of the motor vehicle and have agreed to prosecute the unauthorized operator of the motor vehicle.
  - b. The motor vehicle was reported stolen.
  - c. I am a rental car company as defined in G.S. 66-201 and  the defendant is not listed as an authorized driver on the rental agreement as defined in G.S. 66-201.  the defendant is listed as an authorized driver on the rental agreement as defined in G.S. 66-201, but the rental agreement expressly prohibits use of the vehicle while committing a felony.
  - d. I am in the business of leasing motor vehicles, and held legal title to the motor vehicle as lessor at the time the vehicle was seized.
5. I acknowledge that:
  - a. The motor vehicle described above was operated by the defendant named above who was charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).
  - b. If the motor vehicle is again operated by the defendant and the defendant is charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1), then the vehicle is subject to impoundment and forfeiture.
  - c. A lack of knowledge or consent to the operation will not be a defense in the future, unless I have taken all reasonable precautions to prevent the use of the motor vehicle by the defendant and immediately report, upon discovery, any unauthorized use to the appropriate law enforcement agency.
6. (check applicable box) (**NOTE:** This item does not apply to temporary release petitions.)
  - a. I have not previously executed an acknowledgment naming the defendant named above as operator of the vehicle described above.
  - b. I have previously executed an acknowledgment naming the defendant named above as operator of the vehicle described above and have taken all reasonable precautions to prevent the use of the vehicle by the defendant named above and immediately reported, upon discovery, any unauthorized use to the appropriate law enforcement agency.

- 7. (check if you are a lessor) I agree not to sell, give, or otherwise transfer possession of the motor vehicle to the defendant or to any person acting on the defendant's behalf. **NOTE:** "A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal." G.S. 20-28.2(e).
- 8. (**NOTE:** This item does not apply to temporary release petitions.) I have financial responsibility to the extent required by Article 13 of Chapter 20 of the General Statutes, or to the extent required by the laws of the state outside North Carolina in which my vehicle is registered. (**NOTE:** Form FS-1, which can be obtained from your insurance company, will provide proof of financial responsibility.)
- 9. (check if applying for temporary release) The motor vehicle has been seized for at least 24 hours, I am posting a bond equal to the fair market value of the motor vehicle as evidenced by the attached form AOC-CR-331B, I have not previously executed an acknowledgment naming the defendant named on the reverse side, and no bond posted by me to secure the release of this motor vehicle has previously been ordered forfeited.

Name, Address And Telephone No. Of Petitioner/Applicant (Type Or Print)	Date	
	Signature Of Petitioner/Applicant	
	Drivers License No. (Individual Petitioner Only)	State

**NOTE TO CLERK:** Immediately upon the filing of this form, report the owner's acknowledgment to DMV using STARS.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

<i>Name Of Defendant</i>		<b>BOND TO SECURE TEMPORARY PRETRIAL RELEASE OF MOTOR VEHICLE - IMPAIRED DRIVING</b>		
<i>Defendant's Drivers License No.</i>		<i>State</i>		G.S. 20-28.3(e)
<i>Vehicle Identification No.</i>		<i>Vehicle Type</i>	<i>Make</i>	<i>Year</i>
<i>Vehicle License No.</i>		<i>Amount Of Bond (See Note On Bond Amount Below)</i>		
		\$		

- Cash Bond By Owner(s)** (See note on reverse side.) - I/We, the undersigned motor vehicle owner(s), acknowledge that the motor vehicle described above has been seized pursuant to G.S. 20-28.3 and that, upon the issuance of an order temporarily releasing the vehicle under G.S. 20-28.3(e), I/we shall be bound to pay the county school fund of the county named above the sum shown above, and hereby deposit cash in this amount as security with the understanding that the deposit will be returned on the Court's determination that the conditions of this Bond stated on the reverse side have been performed.
- Property Bond By Owner(s)** - I/We, the undersigned motor vehicle owner(s), acknowledge that the motor vehicle described above has been seized pursuant to G.S. 20-28.3 and that, upon the issuance of an order temporarily releasing the vehicle under G.S. 20-28.3(e), I/we shall be bound to pay the county school fund of the county named above the sum shown above, and hereby tender a deed of trust in recordable form to real property in the full amount of this Bond with the understanding that the deed of trust will be cancelled on the Court's determination that the conditions of this Bond stated on the reverse side have been performed.
- Surety Bond** - We, the undersigned owner(s) and surety(ies), jointly and severally acknowledge that the motor vehicle described above has been seized pursuant to G.S. 20-28.3 and that, upon the issuance of an order temporarily releasing the vehicle under G.S. 20-28.3(e), we and our personal representatives are bound to pay the county school fund of the county named above 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(have) 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) on the Court's determination that the conditions of this Bond stated on the reverse side have been performed, and that it will **NOT** be available to the owner(s) of the vehicle. (For cash bond, see note on reverse side.)

<i>Name, Address And Tel. No. Of Vehicle Owner 1</i>		<i>Name, Address And Tel. No. Of Vehicle Owner 2</i>	
<i>Date Of Execution Of Bond</i>	<i>Signature Of Vehicle Owner 1</i>	<i>Signature Of Vehicle Owner 2</i>	

### ACCOMMODATION BONDSMAN

<i>Name And Address Of Accommodation Bondsman</i>		<i>Name And Address Of Accommodation Bondsman</i>	
<i>Telephone No.</i>		<i>Telephone No.</i>	

### PROFESSIONAL BONDSMAN

<i>Name Of Bondsman</i>		<i>Name Of Runner, If Applicable</i>	
<i>License No. Of Bondsman</i>	<i>Telephone No.</i>	<i>License No. Of Runner</i>	<i>Telephone No.</i>

### INSURANCE COMPANY

<i>Name Of Insurance Company</i>		<i>Name Of Bail Agent</i>	
<i>Power Of Appointment No. Of Bail Agent</i>		<i>License No. Of Bail Agent</i>	<i>Telephone No.</i>

### SIGNATURE

<i>Signature Of Surety</i>	<i>Signature Of Surety</i>
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### SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

### SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

<i>Date</i>	<i>Signature</i>	<i>Date</i>	<i>Signature</i>
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Magistrate  Deputy CSC  Assistant CSC  Clerk Of Superior Court  Magistrate  Deputy CSC  Assistant CSC  Clerk Of Superior Court

### COMPLETE IF CASH DEPOSITED

<i>Signature Of Official Accepting Cash</i>	<i>Name Of Official Accepting Cash (type or print)</i>	<i>Receipt No.</i>
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**NOTE: If cash deposited, see note on reverse side.**  
**NOTE ON BOND AMOUNT:** The amount of this bond must be equal to the fair market value of the motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3.

Original - File  
(Over)

**CONDITIONS**

The condition of this Bond is that the owner(s) will return the motor vehicle, in substantially the same condition as it was at the time it was seized and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released. If the owner(s) fails/fail to return the vehicle in the manner specified above or otherwise violates/violate a condition of pretrial release of the motor vehicle as set forth in G.S. 20-28.3(e), the Court shall order the forfeiture of the bond and shall issue an order to seize the vehicle, and the person(s) obligated on this Bond shall pay to the county school fund of the county named on the reverse side the amount of this Bond shown on the reverse side. This Bond is effective and binding throughout all stages of the proceedings in the trial divisions of the General Court of Justice and until there is a final disposition on the seized motor vehicle.

Each motor vehicle owner, by signing this Bond, acknowledges that if he or she willfully violates any condition of pretrial release of the motor vehicle, he or she also may be held in civil or criminal contempt.

Each accommodation bondsman, by signing on the reverse, 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 vehicle identified on the reverse, 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.

<i>Amount Of Premium Promised</i> \$	<i>Date Due</i>	<i>Amount Of Premium Received</i> \$
<i>Name Of Person From Whom Collateral Received</i>	<i>Nature Of Collateral</i>	<i>Value</i>

**AFFIX STAMP OR  
POWER OF ATTORNEY  
HERE**

**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 Vehicle Owner(s) Or By Another Person Who Intends For The Cash To Be Returned To The Owner(s).** Enter the owner's(s) name, address and telephone number on Side One. Check "Cash Bond By Owner(s)." Have the owner(s) sign. Do no more. No person's name should appear on this form other than the name(s) of the owner(s) (and the name of the defendant at the top of Side One). Sign, enter your name and enter receipt number under "Complete If Cash Deposited." Make the receipt out to the owner(s), not to any other person.

**When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Returned To The Owner(s).** Enter the owner's(s) name, address and telephone number on Side One. Check "Surety Bond." Have the owner(s) sign. Enter the name, address and telephone number of the person(s) depositing the cash under "Accommodation Bondsman." Have that/those person(s) sign under "Signature Of Surety." Complete the notarization section for that/those person(s). Sign, enter your name and enter receipt number under "Complete If Cash Deposited." Make the receipt out to the person(s) depositing the cash.

(2) **To Bookkeeper.** When there is a final disposition of the seized motor vehicle, disburse the cash as follows: (1) If "Cash Bond By Owner(s)" is checked on Side One, disburse to the owner(s). (2) If "Surety 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 OF NORTH CAROLINA

File No.  

\_\_\_\_\_ County

In The General Court Of Justice  
 District     Superior Court Division

Name Of Defendant		<b>BOND TO SECURE TEMPORARY PRETRIAL RELEASE OF MOTOR VEHICLE - FELONY SPEEDING TO ELUDE</b> <small>G.S. 20-28.3(e), -(e2)(2)</small>		
Defendant's Drivers License No.	State			
Vehicle Identification No.	Vehicle Type	Make	Year	
Vehicle License No.	State	Amount Of Bond (See Note On Bond Amount Below) \$		

- Cash Bond By Owner(s)** (See note on reverse side.) - I/We, the undersigned motor vehicle owner(s), acknowledge that the motor vehicle described above has been seized pursuant to G.S. 20-28.3 and that, upon the issuance of an order temporarily releasing the vehicle under G.S. 20-28.3, I/we shall be bound to pay the county school fund of the county named above the sum shown above, and hereby deposit cash in this amount as security with the understanding that the deposit will be returned on the Court's determination that the conditions of this Bond stated on the reverse side have been performed.
- Property Bond By Owner(s)** - I/We, the undersigned motor vehicle owner(s), acknowledge that the motor vehicle described above has been seized pursuant to G.S. 20-28.3 and that, upon the issuance of an order temporarily releasing the vehicle under G.S. 20-28.3, I/we shall be bound to pay the county school fund of the county named above the sum shown above, and hereby tender a deed of trust in recordable form to real property in the full amount of this Bond with the understanding that the deed of trust will be cancelled on the Court's determination that the conditions of this Bond stated on the reverse side have been performed.
- Surety Bond** - We, the undersigned owner(s) and surety(ies), jointly and severally acknowledge that the motor vehicle described above has been seized pursuant to G.S. 20-28.3 and that, upon the issuance of an order temporarily releasing the vehicle under G.S. 20-28.3, we and our personal representatives are bound to pay the county school fund of the county named above 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(have) 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) on the Court's determination that the conditions of this Bond stated on the reverse side have been performed, and that it will **NOT** be available to the owner(s) of the vehicle. **(For cash bond, see note on reverse side.)**

Name, Address And Tel. No. Of Vehicle Owner 1		Name, Address And Tel. No. Of Vehicle Owner 2		
Date Of Execution Of Bond	Signature Of Vehicle Owner 1	Signature Of Vehicle Owner 2		

### ACCOMMODATION BONDSMAN

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		
<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		
Date	Signature	Date	Signature	

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

### COMPLETE IF CASH DEPOSITED

Signature Of Official Accepting Cash	Name Of Official Accepting Cash (type or print)	Receipt No.
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**NOTE: If cash deposited, see note on reverse side.**  
**NOTE ON BOND AMOUNT:** The amount of this bond must be equal to the fair market value of the motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3.

Original - File  
(Over)

**CONDITIONS**

The condition of this Bond is that the owner(s) will return the motor vehicle, in substantially the same condition as it was at the time it was seized and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released. If the owner(s) fails/fail to return the vehicle in the manner specified above or otherwise violates/violate a condition of pretrial release of the motor vehicle as set forth in G.S. 20-28.3, the Court shall order the forfeiture of the bond and shall issue an order to seize the vehicle, and the person(s) obligated on this Bond shall pay to the county school fund of the county named on the reverse side the amount of this Bond shown on the reverse side. This Bond is effective and binding throughout all stages of the proceedings in the trial divisions of the General Court of Justice and until there is a final disposition on the seized motor vehicle.

Each motor vehicle owner, by signing this Bond, acknowledges that if he or she willfully violates any condition of pretrial release of the motor vehicle, he or she also may be held in civil or criminal contempt.

Each accommodation bondsman, by signing on the reverse, 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 vehicle identified on the reverse, 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.

<i>Amount Of Premium Promised</i> \$	<i>Date Due</i>	<i>Amount Of Premium Received</i> \$
<i>Name Of Person From Whom Collateral Received</i>	<i>Nature Of Collateral</i>	<i>Value</i>

**AFFIX STAMP OR  
POWER OF ATTORNEY  
HERE**

**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 Vehicle Owner(s) Or By Another Person Who Intends For The Cash To Be Returned To The Owner(s).** Enter the owner's(s) name, address and telephone number on Side One. Check "Cash Bond By Owner(s)." Have the owner(s) sign. Do no more. No person's name should appear on this form other than the name(s) of the owner(s) (and the name of the defendant at the top of Side One). Sign, enter your name and enter receipt number under "Complete If Cash Deposited." Make the receipt out to the owner(s), not to any other person.

**When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Returned To The Owner(s).** Enter the owner's(s) name, address and telephone number on Side One. Check "Surety Bond." Have the owner(s) sign. Enter the name, address and telephone number of the person(s) depositing the cash under "Accommodation Bondsman." Have that/those person(s) sign under "Signature Of Surety." Complete the notarization section for that/those person(s). Sign, enter your name and enter receipt number under "Complete If Cash Deposited." Make the receipt out to the person(s) depositing the cash.

(2) **To Bookkeeper.** When there is a final disposition of the seized motor vehicle, disburse the cash as follows: (1) If "Cash Bond By Owner(s)" is checked on Side One, disburse to the owner(s). (2) If "Surety 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 OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

District Superior Court Division

ORDER ON NON-DEFENDANT OWNER'S PETITION/APPLICATION FOR RELEASE OF SEIZED MOTOR VEHICLE - IMPAIRED DRIVING

G.S. 20-28.2(e), 20-28.3(e), 20-28.3(e1)

Form with fields for Name Of Defendant, Defendant's Drivers License No., State, Name Of Petitioner/Applicant (Vehicle Owner), Petitioner's/Applicant's Drivers License No., State, Vehicle Identification No., Vehicle Type, Make, Year, Vehicle License No., State, Date Of Seizure, Date Of Offense.

I. CLERK'S ORDER ON PETITION FOR TEMPORARY RELEASE

On the application of the person named above for the temporary release of the motor vehicle described above pending a proceeding before the Clerk on permanent release or pending a hearing on the forfeiture of the vehicle, the undersigned finds as follows:

- 1. The applicant is a person in whose name a registration card or certificate of title for the motor vehicle was issued at the time of the seizure.
2. The motor vehicle was seized and impounded pursuant to G.S. 20-28.3.
3. The motor vehicle has been seized for at least 24 hours.
4. The applicant was not the driver at the time of the underlying offense resulting in the seizure.
5. The applicant has properly executed an adequate "Bond To Secure Temporary Pretrial Release Of Motor Vehicle - Impaired Driving," AOC-CR-331A.
6. The applicant has executed and filed an acknowledgment as defined in G.S. 20-28.2(a1)(1a), and a check of the records of the Division of Motor Vehicles indicates that the applicant has not previously executed an acknowledgment naming the defendant named above.
7. A check of the appropriate records of the Court or the Division of Motor Vehicles indicates that a bond posted by the applicant to secure the release of the motor vehicle described above has not previously been ordered forfeited.

It is ORDERED that: (NOTE: If all findings above are checked, check Order No. 1 below. If any finding is not checked, check Order No. 2 below.)

- 1. The motor vehicle described above be released to the applicant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the vehicle, on condition that the applicant return the vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the District Attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released.
NOTE: Failure to return the vehicle will result in forfeiture of the applicant's bond and seizure of the vehicle, and may result in the issuance of an order to show cause why the applicant should not be held in contempt.
2. The application is denied and the motor vehicle shall remain impounded pending further orders of the Court.

NOTE TO CLERK: Do not remove the title hold in STARS upon the entry of an order for temporary release.

Form with fields for Date, Signature, Assistant CSC, Clerk Of Superior Court.

II. ORDER ON PETITION FOR PERMANENT RELEASE

NOTE: Use Section II to enter an order either after a proceeding before the Clerk on a non-defendant motor vehicle owner's petition for permanent pretrial release of a seized motor vehicle, or after a forfeiture hearing at which a non-defendant motor vehicle owner's petition for release of a seized vehicle is heard.

FINDINGS OF FACT

This matter is before the Clerk or the Court on petition of the vehicle owner named above for release of the motor vehicle described above. A proceeding was held before the Clerk or a hearing was held before the Court on this date. On the basis of the evidence presented and the entire record in this action, the Clerk or the Court finds by the greater weight of the evidence that:

- 1. The motor vehicle was seized on the date shown above while being driven by the defendant named above. The defendant was charged with an offense involving impaired driving and it is alleged that at the time of the violation the defendant's drivers license was revoked as a result of a prior impaired driving license revocation. the defendant did not have a valid drivers license and did not have liability insurance.

(Over)



2. The petitioner is a person in whose name a registration card or certificate of title for the motor vehicle described on the reverse side was issued **at the time the vehicle was seized**.
3. The petitioner was not the driver at the time of the underlying offense resulting in the seizure.
4. The petitioner is an innocent owner in that:
- a. The petitioner did not know and had no reason to know that  the defendant's drivers license was revoked.  the defendant did not have a valid drivers license and did not have liability insurance.
- b. The petitioner knew that  the defendant's drivers license was revoked,  the defendant did not have a valid drivers license and that the defendant had no liability insurance, but the defendant drove the motor vehicle without the petitioner's expressed or implied permission, and the petitioner filed a police report for unauthorized use of the motor vehicle and has agreed to prosecute the unauthorized operator of the motor vehicle.
- c. The motor vehicle was reported stolen.
- d.  (applicable to offenses committed prior to December 1, 2013) The petitioner is in the business of renting vehicles, and the defendant is not listed as an authorized driver on the rental contract.  
 (applicable to offenses committed on or after December 1, 2013) The petitioner is a rental car company as defined in G.S. 66-201 and  the defendant is not listed as an authorized driver on the rental agreement as defined in G.S. 66-201.  
 the defendant is listed as an authorized driver on the rental agreement as defined in G.S. 66-201, but the petitioner had no actual knowledge of the revocation of the defendant's license at the time the rental agreement was entered.
- n** e. The petitioner is in the business of leasing motor vehicles, held legal title to the motor vehicle as lessor at the time the vehicle was seized, and had no actual knowledge of the revocation of the defendant's drivers license at the time the lease was entered.
5. The Clerk or the Court has been furnished a properly executed form FS-1, or other proof of insurance, and is satisfied that the petitioner is financially responsible.
6. The petitioner has executed and filed an acknowledgment as defined in G.S. 20-28.2(a1)(1a).
7. A check of the records of the Division of Motor Vehicles indicates that the petitioner:
- a. has not previously executed an acknowledgment naming the defendant as the operator of the vehicle described on the reverse side.
- b. has previously executed an acknowledgment naming the defendant as the operator of the vehicle described on the reverse side, but has taken all reasonable precautions to prevent the use of the vehicle by the defendant and immediately reported, upon discovery, any unauthorized use of the vehicle to the appropriate law enforcement agency.
8. If the petitioner is a vehicle lessor, the petitioner has agreed not to sell, give, or otherwise transfer possession of the motor vehicle to the defendant or to any person acting on the defendant's behalf.

**NOTE:** If all numbered findings above are found, and either Finding 4.a, 4.b, 4.c, 4.d, or 4.e is checked, the petitioner is an innocent owner entitled to the release of the motor vehicle. If any numbered finding is not found, the petitioner is not an innocent owner and is not entitled to the release of the motor vehicle.

### CONCLUSIONS OF LAW

The petitioner named on the reverse side:

1. is an innocent owner, as defined in G.S. 20-28.2(a1)(2), and is entitled to the release of the motor vehicle described on the reverse side.
2. is not an innocent owner, as defined in G.S. 20-28.2(a1)(2), and is not entitled to the release of the motor vehicle described on the reverse side.

### ORDER

It is ORDERED that:

1. The motor vehicle described on the reverse side be released to the petitioner named on the reverse side upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk of Superior Court shall disburse to the petitioner all funds held by the Clerk representing proceeds of insurance or proceeds of the sale of the motor vehicle.
2. The petition is denied. The motor vehicle shall remain impounded and the Clerk shall continue to hold all funds paid into the Clerk representing proceeds of insurance or proceeds of the sale of the motor vehicle, pending further orders of the Court. If this Order is entered after a proceeding before the Clerk on pretrial release, it may be reconsidered by the Court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge
	Name (Type Or Print)	

**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

### CERTIFICATION

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTE TO CLERK:** The Clerk shall report the entry of an order of permanent release to DMV by electronic means (STARS). G.S. 20-28.8. The Clerk shall also send a copy of the order of release or denial to the county school board attorney and the District Attorney. G.S. 20-28.3(e1).

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice

District  Superior Court Division

## ORDER ON NON-DEFENDANT OWNER'S PETITION/APPLICATION FOR RELEASE OF SEIZED MOTOR VEHICLE - FELONY SPEEDING TO ELUDE

G.S. 20-28.2(e), 20-28.3(e), 20-28.3(e1)

Name Of Defendant			
Defendant's Drivers License No.	State		
Name Of Petitioner/Applicant (Vehicle Owner)			
Petitioner's/Applicant's Drivers License No.	State		
Vehicle Identification No.	Vehicle Type	Make	Year
Vehicle License No.	State	Date Of Seizure	Date Of Offense

### I. CLERK'S ORDER ON PETITION FOR TEMPORARY RELEASE

On the application of the person named above for the temporary release of the motor vehicle described above pending a proceeding before the Clerk on permanent release or pending a hearing on the forfeiture of the vehicle, the undersigned finds as follows:

- 1. The applicant is a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time of the seizure.**
- 2. The motor vehicle was seized and impounded pursuant to G.S. 20-28.3.
- 3. The motor vehicle has been seized for at least 24 hours.
- 4. The applicant was not the driver at the time of the underlying offense resulting in the seizure.
- 5. The applicant has properly executed an adequate "Bond To Secure Temporary Pretrial Release Of Motor Vehicle - Felony Speeding To Elude," AOC-CR-331B.
- 6. The applicant has executed and filed an acknowledgment as defined in G.S. 20-28.2(a1)(8), and a check of the records of the Division of Motor Vehicles indicates that the applicant has not previously executed an acknowledgment naming the defendant named above.
- 7. A check of the appropriate records of the Court or the Division of Motor Vehicles indicates that a bond posted by the applicant to secure the release of the motor vehicle described above has not previously been ordered forfeited.

It is ORDERED that: (**NOTE:** If all findings above are checked, check Order No. 1 below. If any finding is not checked, check Order No. 2 below.)

- 1. The motor vehicle described above be released to the applicant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the vehicle, on condition that the applicant return the vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the District Attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released.  
**NOTE:** Failure to return the vehicle will result in forfeiture of the applicant's bond and seizure of the vehicle, and may result in the issuance of an order to show cause why the applicant should not be held in contempt.
- 2. The application is denied and the motor vehicle shall remain impounded pending further orders of the Court.

**NOTE TO CLERK:** Do not remove the title hold in STARS upon the entry of an order for temporary release.

Date	Signature	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk Of Superior Court

### II. ORDER ON PETITION FOR PERMANENT RELEASE

**NOTE:** Use Section II to enter an order either after a proceeding before the Clerk on a non-defendant motor vehicle owner's petition for permanent pretrial release of a seized motor vehicle, or after a forfeiture hearing at which a non-defendant motor vehicle owner's petition for release of a seized vehicle is heard.

### FINDINGS OF FACT

This matter is before the Clerk or the Court on petition of the vehicle owner named above for release of the motor vehicle described above. A proceeding was held before the Clerk or a hearing was held before the Court on this date. On the basis of the evidence presented and the entire record in this action, the Clerk or the Court finds by the greater weight of the evidence that:

- 1. The motor vehicle was seized on the date shown above while being driven by the defendant named above. The defendant was charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).

(Over)

- 2. The petitioner is a person in whose name a registration card or certificate of title for the motor vehicle described on the reverse side was issued **at the time the vehicle was seized**.
- 3. The petitioner was not the driver at the time of the underlying offense resulting in the seizure.
- 4. The petitioner is an innocent owner in that:
  - a. The defendant drove the motor vehicle without the petitioner's expressed or implied permission, and the petitioner filed a police report for unauthorized use of the motor vehicle and has agreed to prosecute the unauthorized operator of the motor vehicle.
  - b. The motor vehicle was reported stolen.
  - c. The petitioner is a rental car company as defined in G.S. 66-201 and  the defendant is not listed as an authorized driver on the rental agreement as defined in G.S. 66-201.  the defendant is listed as an authorized driver on the rental agreement as defined in G.S. 66-201, but the rental agreement expressly prohibits use of the vehicle while committing a felony.
  - d. The petitioner is in the business of leasing motor vehicles, and held legal title to the motor vehicle as lessor at the time the vehicle was seized.
- 5. The Clerk or the Court has been furnished a properly executed form FS-1, or other proof of insurance, and is satisfied that the petitioner is financially responsible.
- 6. The petitioner has executed and filed an acknowledgment as defined in G.S. 20-28.2(a1)(8).
- 7. A check of the records of the Division of Motor Vehicles indicates that the petitioner:
  - a. has not previously executed an acknowledgment naming the defendant as the operator of the vehicle described on the reverse side.
  - b. has previously executed an acknowledgment naming the defendant as the operator of the vehicle described on the reverse side, but has taken all reasonable precautions to prevent the use of the vehicle by the defendant and immediately reported, upon discovery, any unauthorized use of the vehicle to the appropriate law enforcement agency.
- 8. If the petitioner is a vehicle lessor, the petitioner has agreed not to sell, give, or otherwise transfer possession of the motor vehicle to the defendant or to any person acting on the defendant's behalf.

**NOTE:** *If all numbered findings above are found, and either Finding 4.a, 4.b, 4.c, or 4.d is checked, the petitioner is an innocent owner entitled to the release of the motor vehicle. If any numbered finding is not found, the petitioner is not an innocent owner and is not entitled to the release of the motor vehicle.*

**CONCLUSIONS OF LAW**

The petitioner named on the reverse side:

- 1. is an innocent owner, as defined in G.S. 20-28.2(a1)(2), and is entitled to the release of the motor vehicle described on the reverse side.
- 2. is not an innocent owner, as defined in G.S. 20-28.2(a1)(2), and is not entitled to the release of the motor vehicle described on the reverse side.

**ORDER**

It is ORDERED that:

- 1. The motor vehicle described on the reverse side be released to the petitioner named on the reverse side upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk of Superior Court shall disburse to the petitioner all funds held by the Clerk representing proceeds of insurance or proceeds of the sale of the motor vehicle.
- 2. The petition is denied. The motor vehicle shall remain impounded and the Clerk shall continue to hold all funds paid into the Clerk representing proceeds of insurance or proceeds of the sale of the motor vehicle, pending further orders of the Court. If this Order is entered after a proceeding before the Clerk on pretrial release, it may be reconsidered by the Court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge
	Name (Type Or Print)	

**NOTICE TO PARTY OBTAINING RELEASE:** *"[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.*

**CERTIFICATION**

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTE TO CLERK:** *The Clerk shall report the entry of an order of permanent release to DMV by electronic means (STARS). G.S. 20-28.8. The Clerk shall also send a copy of the order of release or denial to the county school board attorney and the District Attorney. G.S. 20-28.3(e1).*

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District     Superior Court Division

## DEFENDANT OWNER'S PETITION FOR RELEASE OF SEIZED VEHICLE AND ORDER - IMPAIRED DRIVING

G.S. 20-28.3(e2)(1)

Name Of Defendant/Petitioner	
Defendant/Petitioner's Drivers License No.	State
Vehicle Identification No.	
Vehicle License No.	State
Vehicle Type	Make
Year	Date Of Seizure
	Date Of Offense

### I. PETITION

The undersigned petitions for a pretrial determination that the petitioner's drivers license was not revoked pursuant to an impaired driving license revocation and for release of the petitioner's motor vehicle, and says:

- The motor vehicle described above was seized on the date shown above pursuant to G.S. 20-28.3. I was charged with committing an impaired driving offense and it was alleged that at the time of the offense my drivers license was revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a).
- I am a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time of the seizure**.
- At the time of the seizure, my drivers license was not revoked as a result of an impaired driving license revocation as defined in G.S. 20-28.2(a) because:
  - a. Any periods of revocation had expired prior to the date of the alleged offense.
  - b. If my drivers license was revoked at the time of the alleged offense, it was not as a result of an impaired driving license revocation.
  - c. I do not hold a North Carolina drivers license and my privilege to drive in North Carolina has not been revoked pursuant to an impaired driving license revocation.
  - d. Other: (specify) \_\_\_\_\_
- I have financial responsibility to the extent required by Article 13 of Chapter 20 of the General Statutes.

Name And Address Of Defendant/Petitioner (type or print)	Telephone No. Of Defendant/Petitioner
	Date
	Signature Of Defendant/Petitioner

### II. STATE'S DETERMINATION ON RELEASE OF VEHICLE

- (check one)
- Based on available information, the district attorney has determined that the motor vehicle described above is not subject to forfeiture under G.S. 20-28.2 because the drivers license of the defendant/petitioner named above was not revoked pursuant to an impaired driving license revocation. Therefore, **the State consents** to the release of the motor vehicle to the defendant/petitioner.
  - Based on available information, the district attorney has determined that the defendant/petitioner has not satisfied the requirements for release under G.S. 20-28.3(e2)(1). The State **does not consent** to the release of the motor vehicle to the defendant/petitioner.

Date	Name Of Prosecutor (type or print)	Signature Of Prosecutor
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### III. CLERK'S ORDER RELEASING MOTOR VEHICLE TO DEFENDANT ON STATE'S CONSENT

On the petition of the defendant/petitioner named above for a pretrial determination that the defendant/petitioner's drivers license was not revoked pursuant to an impaired driving license revocation and for release of the defendant/petitioner's motor vehicle, the undersigned finds:

- The State has noted on the petition its consent to the release of the vehicle.
- The defendant/petitioner is a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time of the seizure**.
- The Clerk has been furnished proof of the existence of financial responsibility to the extent required by Article 13 of Chapter 20 of the General Statutes, and is satisfied that the defendant/petitioner is financially responsible.

THEREFORE, it is ordered that the motor vehicle described above be released to the petitioner named above upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle.

Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

**NOTE TO CLERK:** The Clerk shall send a copy of the order of release to the county school board attorney, G.S. 20-28.3(e2), and shall report the entry of an order of release to DMV by electronic means (STARS), G.S. 20-28.8.

**IV. NOTICE OF HEARING**

To the defendant/petitioner, to the District Attorney for the prosecutorial district that includes the county named above, and to the attorney for the board of education of the county named above:

A hearing on the above petition will be held on the date and at the time and location shown below.

Date Of Hearing	Time Of Hearing	<input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Hearing
Date	Signature		<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

**NOTE TO CLERK:** "If the seizure was for an offense involving impaired driving, a defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education." If the State has consented to the release on Side One, a hearing is unnecessary. G.S. 20-28.3(e2)(1).

**V. ORDER ON PETITION AFTER HEARING**

This matter is before the Court on the petition of the defendant/petitioner named on the reverse side for a pretrial determination that the defendant/petitioner's drivers license was not revoked pursuant to an impaired driving license revocation and for release of the motor vehicle described on the reverse side. A hearing was held before the Court on this date. On the basis of the evidence presented and the entire record in this action, the Court finds by the greater weight of the evidence that:

1. The motor vehicle described on the reverse side was seized on the date shown above pursuant to G.S. 20-28.3. The defendant/petitioner was charged with committing an impaired driving offense and it was alleged that at the time of the offense the defendant/petitioner's drivers license was revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a).
2. The defendant/petitioner is a person in whose name a registration card or certificate of title for the motor vehicle was issued at the time of the seizure.
3. The defendant/petitioner has established that at the time of the above offense, the defendant/petitioner's drivers license was not revoked as a result of an impaired driving license revocation as defined in G.S. 20-28.2(a).
4. The Court has been furnished proof of the existence of financial responsibility to the extent required by Article 13 of Chapter 20 of the General Statutes, and is satisfied that the defendant/petitioner is financially responsible.

Therefore, it is ORDERED that:

1. The motor vehicle described on the reverse side be released to the defendant/petitioner named on the reverse side upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle.
2. The petition is denied because the petitioner has failed to establish the facts necessary to support one or more of the findings required for release of the vehicle. The motor vehicle shall remain impounded pending further orders of the Court. If this Order is entered after a hearing on pretrial release, it may be reconsidered by the Court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

Date	Signature	Name (type or print)
		<input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge

**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

**CERTIFICATION**

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTE TO CLERK:** The Clerk shall report the entry of an order of release to DMV by electronic means (STARS), G.S. 20-28.8. The Clerk may also send a copy of the order of release to the county school board attorney.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice

District  Superior Court Division

## DEFENDANT OWNER'S PETITION FOR TEMPORARY RELEASE OF SEIZED VEHICLE AND ORDER - FELONY SPEEDING TO ELUDE

G.S. 20-28.3(e2)(2)

Name Of Defendant/Petitioner		
Defendant/Petitioner's Drivers License No.	State	
Vehicle Identification No.		
Vehicle License No.	State	
Vehicle Type	Make	Year

Date Of Seizure	Date Of Offense
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### I. PETITION

The undersigned petitions for the temporary pretrial release of the motor vehicle described above, and says:

1. The motor vehicle described above was seized on the date shown above pursuant to G.S. 20-28.3. I was charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).
2. I am a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time of the seizure.**
3. The motor vehicle has been seized for at least 24 hours.
4. I am posting a bond equal to the fair market value of the motor vehicle as evidenced by the attached form AOC-CR-331B.
5. No bond posted by me to secure the release of the motor vehicle described above previously has been ordered forfeited.

Name And Address Of Defendant/Petitioner (Type Or Print)	Telephone No. Of Defendant/Petitioner
	Date
	Signature Of Defendant/Petitioner

Telephone No. Of Defendant/Petitioner
Date
Signature Of Defendant/Petitioner

### II. CLERK'S ORDER ON PETITION FOR TEMPORARY RELEASE

On the petition of the defendant named above for the temporary pretrial release of the motor vehicle described above pending a hearing on the forfeiture of the vehicle, the undersigned finds as follows:

1. The motor vehicle described above was seized on the date shown above pursuant to G.S. 20-28.3. The defendant named above was charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).
2. The defendant is a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time of the seizure.**
3. The motor vehicle has been seized for at least 24 hours.
4. The defendant has properly executed an adequate "Bond To Secure Temporary Pretrial Release Of Motor Vehicle - Felony Speeding To Elude," AOC-CR-331B.
5. A check of the appropriate records of the Court or the Division of Motor Vehicles indicates that a bond posted by the defendant to secure the release of the motor vehicle described above has not previously been ordered forfeited.

It is ORDERED that: (**NOTE: If all findings above are checked, check Order No. 1 below. If any finding is not checked, check Order No. 2 below.**)

1. The motor vehicle described above be released to the defendant named above upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the vehicle, on condition that the defendant return the vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the District Attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released.

**NOTE: Failure to return the vehicle will result in forfeiture of the defendant's bond for the motor vehicle and seizure of the vehicle, and may result in the issuance of an order to show cause why the defendant should not be held in contempt.**

2. The petition is denied and the motor vehicle shall remain impounded pending further orders of the Court.

Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTE TO CLERK:** Do not remove the title hold in STARS upon the entry of an order for temporary release.

### CERTIFICATION

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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# STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

District  Superior Court Division

Name Of Defendant			<b>LIENHOLDER'S PETITION FOR RELEASE OF SEIZED MOTOR VEHICLE NOTICE OF HEARING/WAIVER AND ORDER - IMPAIRED DRIVING</b>		
Defendant's Drivers License No.		State			
Vehicle Identification No.					
Vehicle License No.		State			
Vehicle Type		Make			Year
				G.S. 20-28.2(d), 20-28.2(f), 20-28.3(e3)	
				Date Of Offense	

## I. PETITION

The motor vehicle described above was seized on the date shown above pursuant to G.S. 20-28.3(a). The undersigned petitions for:

(Check one or both, as applicable)

- pretrial release of the motor vehicle pursuant to G.S. 20-28.3(e3), after a hearing on this Petition to be held upon ten (10) days prior notice to all interested parties.
- post-trial release of the motor vehicle pursuant to G.S. 20-28.2(f), after the hearing on the forfeiture of the vehicle.

The undersigned states:

1. The petitioner is:
  - a. an individual.
  - b. a firm or corporation acting through the undersigned agent.
2. The petitioner holds a security interest in the motor vehicle that had been perfected at the time of the seizure and that appears on the title to the vehicle.
3. Default on the obligation secured by the motor vehicle has occurred and the vehicle owner is in default under the terms of the security instrument evidencing the petitioner's interest in the vehicle.
 

**NOTE:** *The court may require petitioner to present documentation that supports the allegation that the vehicle owner is in default.*
4. As a consequence of the default, the petitioner is entitled to possession of the motor vehicle.
5. The petitioner agrees to sell the motor vehicle in accordance with the terms of the security agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes, and pay to the Clerk of Superior Court the proceeds from the sale, less the amount of the lien and less the towing and storage costs paid by the petitioner.
6. The petitioner agrees not to sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner. **NOTE:** *A lienholder who refuses to sell, give or transfer possession of the motor vehicle to the defendant, the motor vehicle owner or any person acting on behalf of the defendant or the motor vehicle owner shall not be liable for damages arising out of such refusal. G.S. 20-28.2(f); G.S. 20-28.3(e3).*
7. The motor vehicle has not previously been released to the petitioner.

Name, Address And Telephone No. Of Petitioner (Type Or Print)		Date	
		Signature Of Petitioner	
		Drivers License No. (Individual Petitioner Only)	Date

## II. NOTICE OF HEARING (FOR PRETRIAL RELEASE PETITION)

**To each registered owner and titled owner of the motor vehicle described above, to the attorney for the board of education of the county named above, and to the District Attorney for the prosecutorial district that includes the county named above:**

A hearing on the above petition will be held on the date and at the time and location shown below.

Date Of Hearing	Time Of Hearing	<input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Hearing
Date	Name Of Petitioner		Signature Of Petitioner

**NOTE TO PETITIONER SEEKING PRETRIAL RELEASE:** *If, when this petition is filed, all parties have not signed the "Waiver Of Hearing And Consent To Release" on Side Two, you must obtain a date, time and location for a hearing on this petition in accordance with any calendaring practices in effect in this district. You must insert that information in the "Notice Of Hearing" on Side One, date and sign the "Notice Of Hearing," and serve a copy of the Petition and Notice of Hearing on all interested parties. You must then file a certificate of service in this case, showing who was served and by what means. Service may be made by delivering a copy to the person to be served or mailing a copy to that person at the person's last known address.*

**III. WAIVER OF HEARING AND CONSENT TO RELEASE  
(FOR PRETRIAL RELEASE PETITION)**

Each undersigned party waives a hearing on the above Petition and consents to the release of the motor vehicle described above to the petitioner pursuant to G.S. 20-28.3(e3).

Party	Name	Date	Signature
Registered Owner			
Titled Owner			
District Attorney			
School Board Attorney			

**IV. CLERK'S ORDER RELEASING MOTOR VEHICLE ON PARTIES' CONSENT  
(FOR PRETRIAL RELEASE PETITION)**

On the petition of the lienholder named on the reverse side for release of the motor vehicle described on the reverse side, the undersigned finds:

- All interested parties have waived notice and a hearing on the petition and have consented to the release of the motor vehicle to the petitioner, as evidenced by their signatures above.
- The petitioner holds a security interest in the motor vehicle that had been perfected at the time of the seizure and appears on the title to the vehicle.
- The petitioner has agreed not to sell, give, or transfer possession of the motor vehicle to the defendant named on the reverse side, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner.

Therefore, it is **ORDERED** that the motor vehicle described on the reverse side be released to the petitioner upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk of Superior Court shall disburse to the lienholder any funds being held by the Clerk representing proceeds of insurance for damage to the motor vehicle. The petitioner shall not sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner.

**NOTE:** Violation of this condition shall be punishable by civil or criminal contempt. G.S. 20-28.3(e3). In addition, see the NOTICE TO PARTY OBTAINING RELEASE below.

Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**V. JUDGE'S ORDER ON PETITION AFTER HEARING**

This matter is before the Court on the petition of the lienholder named on the reverse side for release of the motor vehicle described on the reverse side. A hearing was held before the Court on this date. If this is a petition for pretrial release, a copy of the petition and a notice of the hearing were served by the petitioner on all interested parties at least ten (10) days prior to the hearing, as evidenced by the petitioner's certificate of service on file in this case.

On the basis of the evidence presented and the entire record in this case, the Court finds by the greater weight of the evidence that:

- The petitioner holds a security interest in the motor vehicle that had been perfected at the time of the seizure and that appears on the title to the vehicle.
- Default on the obligation secured by the motor vehicle has occurred and the motor vehicle owner is in default under the terms of the security instrument evidencing the petitioner's interest in the vehicle.
- As a consequence of the default, the petitioner is entitled to possession of the motor vehicle.
- The petitioner has agreed to sell the motor vehicle in accordance with the terms of the security agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes, and pay to the Clerk of Superior Court the proceeds from the sale, less the amount of the lien and less the towing and storage costs paid by the petitioner.
- The petitioner has agreed not to sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner.
- The motor vehicle has not previously been released to the petitioner.

It is **ORDERED** that:

1. The motor vehicle described on the reverse side be released to the petitioner upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk of Superior Court shall disburse to the lienholder any funds being held by the Clerk representing proceeds of insurance for damage to the motor vehicle. The petitioner shall not sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner. **NOTE:** Violation of this condition shall be punishable by civil or criminal contempt. G.S. 20-28.3(e3).
2. The petition is denied. The motor vehicle shall remain impounded pending further orders of the Court.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
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**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

**CERTIFICATION**

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court	<input type="checkbox"/> Assistant CSC
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**NOTE TO CLERK:** The Clerk shall report to DMV by electronic means (STARS) the entry of an order of release. G.S. 20-28.8. The Clerk also may send a copy of the order of release to the county school board attorney and District Attorney.



# STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

District  Superior Court Division

Name Of Defendant		
Defendant's Drivers License No.	State	
Vehicle Identification No.		
Vehicle License No.	State	
Vehicle Type	Make	Year

## LIENHOLDER'S PETITION FOR RELEASE OF SEIZED MOTOR VEHICLE NOTICE OF HEARING/WAIVER AND ORDER - FELONY SPEEDING TO ELUDE

G.S. 20-28.2(d), 20-28.2(f), 20-28.3(e3)

Date Of Seizure	Date Of Offense
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### I. PETITION

The motor vehicle described above was seized on the date shown above pursuant to G.S. 20-28.3(a1). The undersigned petitions for:

(Check one or both, as applicable)

- pretrial release of the motor vehicle pursuant to G.S. 20-28.3(e3), after a hearing on this Petition to be held upon ten (10) days prior notice to all interested parties.
- post-trial release of the motor vehicle pursuant to G.S. 20-28.2(f), after the hearing on the forfeiture of the vehicle.

The undersigned states:

1. The petitioner is:
  - a. an individual.
  - b. a firm or corporation acting through the undersigned agent.
2. The petitioner holds a security interest in the motor vehicle that had been perfected at the time of the seizure and that appears on the title to the vehicle.
3. Default on the obligation secured by the motor vehicle has occurred and the vehicle owner is in default under the terms of the security instrument evidencing the petitioner's interest in the vehicle.
 

**NOTE:** *The court may require petitioner to present documentation that supports the allegation that the vehicle owner is in default.*
4. As a consequence of the default, the petitioner is entitled to possession of the motor vehicle.
5. The petitioner agrees to sell the motor vehicle in accordance with the terms of the security agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes, and pay to the Clerk of Superior Court the proceeds from the sale, less the amount of the lien and less the towing and storage costs paid by the petitioner.
6. The petitioner agrees not to sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner. **NOTE:** *A lienholder who refuses to sell, give or transfer possession of the motor vehicle to the defendant, the motor vehicle owner or any person acting on behalf of the defendant or the motor vehicle owner shall not be liable for damages arising out of such refusal. G.S. 20-28.2(f); G.S. 20-28.3(e3).*
7. The motor vehicle has not previously been released to the petitioner.

Name, Address And Telephone No. Of Petitioner (Type Or Print)	Date
	Signature Of Petitioner
	Drivers License No. (Individual Petitioner Only)      Date

### II. NOTICE OF HEARING (FOR PRETRIAL RELEASE PETITION)

To each registered owner and titled owner of the motor vehicle described above, to the attorney for the board of education of the county named above, and to the District Attorney for the prosecutorial district that includes the county named above:

A hearing on the above petition will be held on the date and at the time and location shown below.

Date Of Hearing	Time Of Hearing <input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Hearing
Date	Name Of Petitioner	Signature Of Petitioner

**NOTE TO PETITIONER SEEKING PRETRIAL RELEASE:** *If, when this petition is filed, all parties have not signed the "Waiver Of Hearing And Consent To Release" on Side Two, you must obtain a date, time and location for a hearing on this petition in accordance with any calendaring practices in effect in this district. You must insert that information in the "Notice Of Hearing" on Side One, date and sign the "Notice Of Hearing," and serve a copy of the Petition and Notice of Hearing on all interested parties. You then must file a certificate of service in this case, showing who was served and by what means. Service may be made by delivering a copy to the person to be served or mailing a copy to that person at the person's last known address.*

(Over)

**III. WAIVER OF HEARING AND CONSENT TO RELEASE  
(FOR PRETRIAL RELEASE PETITION)**

Each undersigned party waives a hearing on the above Petition and consents to the release of the motor vehicle described above to the petitioner pursuant to G.S. 20-28.3(e3).

Party	Name	Date	Signature
Registered Owner			
Titled Owner			
District Attorney			
School Board Attorney			

**IV. CLERK'S ORDER RELEASING MOTOR VEHICLE ON PARTIES' CONSENT  
(FOR PRETRIAL RELEASE PETITION)**

On the petition of the lienholder named on the reverse side for release of the motor vehicle described on the reverse side, the undersigned finds:

- All interested parties have waived notice and a hearing on the petition and have consented to the release of the motor vehicle to the petitioner, as evidenced by their signatures above.
- The petitioner holds a security interest in the motor vehicle that had been perfected at the time of the seizure and that appears on the title to the vehicle.
- The petitioner has agreed not to sell, give, or transfer possession of the motor vehicle to the defendant named on the reverse side, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner.

Therefore, it is **ORDERED** that the motor vehicle described on the reverse side be released to the petitioner upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk of Superior Court shall disburse to the lienholder any funds being held by the Clerk representing proceeds of insurance for damage to the motor vehicle. The petitioner shall not sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner.

**NOTE:** Violation of this condition shall be punishable by civil or criminal contempt. G.S. 20-28.3(e3). In addition, see the NOTICE TO PARTY OBTAINING RELEASE below.

Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**V. JUDGE'S ORDER ON PETITION AFTER HEARING**

This matter is before the Court on the petition of the lienholder named on the reverse side for release of the motor vehicle described on the reverse side. A hearing was held before the Court on this date. If this is a petition for pretrial release, a copy of the petition and a notice of the hearing were served by the petitioner on all interested parties at least ten (10) days prior to the hearing, as evidenced by the petitioner's certificate of service on file in this case.

On the basis of the evidence presented and the entire record in this case, the Court finds by the greater weight of the evidence that:

- The petitioner holds a security interest in the motor vehicle that had been perfected at the time of the seizure and that appears on the title to the vehicle.
- Default on the obligation secured by the motor vehicle has occurred and the motor vehicle owner is in default under the terms of the security instrument evidencing the petitioner's interest in the vehicle.
- As a consequence of the default, the petitioner is entitled to possession of the motor vehicle.
- The petitioner has agreed to sell the motor vehicle in accordance with the terms of the security agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes, and pay to the Clerk of Superior Court the proceeds from the sale, less the amount of the lien and less the towing and storage costs paid by the petitioner.
- The petitioner has agreed not to sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner.
- The motor vehicle has not previously been released to the petitioner.

It is ORDERED that:

1. The motor vehicle described on the reverse side be released to the petitioner upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk of Superior Court shall disburse to the lienholder any funds being held by the Clerk representing proceeds of insurance for damage to the motor vehicle. The petitioner shall not sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner. **NOTE:** Violation of this condition shall be punishable by civil or criminal contempt. G.S. 20-28.3(e3).
2. The petition is denied. The motor vehicle shall remain impounded pending further orders of the Court.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
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**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

**CERTIFICATION**

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court	<input type="checkbox"/> Assistant CSC
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**NOTE TO CLERK:** The Clerk shall report to DMV by electronic means (STARS) the entry of an order of release. G.S. 20-28.8. The Clerk also may send a copy of the order of release to the county school board attorney and District Attorney.

**STATE OF NORTH CAROLINA**

File No.

In The General Court Of Justice

 District  Superior Court Division

\_\_\_\_\_ County

**ORDER FORFEITING MOTOR VEHICLE  
AFTER HEARING - IMPAIRED DRIVING**

G.S. 20-28.2(b), (b1) &amp; (d); G.S. 20-28.5

Name Of Defendant

Defendant's Drivers License No.

State

Vehicle Identification No.

Vehicle License No.

State

Vehicle Type

Make

Year

Date Of Seizure

Date Of Offense

**NOTE:** Use this form only to enter an order forfeiting a motor vehicle that was seized under G.S. 20-28.3(a) (impaired driving seizure).**FINDINGS OF FACT**

This matter is before the Court to determine whether the vehicle described above (or proceeds related to the vehicle) shall be forfeited pursuant to G.S. 20-28.2. A hearing was held before the Court on this date. Based on the evidence presented and the entire record in this case, the Court finds by the greater weight of the evidence that:

1. The motor vehicle was seized on the date shown above while being driven by the defendant named above. The defendant was charged with an offense involving impaired driving and it was alleged that at the time of the violation  the defendant's drivers license was revoked as a result of a prior impaired driving license revocation.  the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy.
2. The motor vehicle has not been permanently released to a non-defendant motor vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder pursuant to G.S. 20-28.3(e3).
3. Pursuant to G.S. 20-28.2(c), the prosecutor has notified the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, the motor vehicle owner, or the lienholder may intervene to protect that person's interest, and this notice was served at least ten (10) days before the hearing, as shown by the Prosecutor's Notice Of Hearing And Certificate Of Service on file in this case.
4. Neither the defendant, a non-defendant motor vehicle owner nor a lienholder appeared at this hearing or petitioned for release of the vehicle or, if any of them has so appeared or petitioned, all petitions have been denied. No non-defendant motor vehicle owner has been determined to be an innocent owner.

*(Select appropriate option)*

5.  a. The defendant has been convicted of an offense involving impaired driving and at the time of the offense the defendant's drivers license was revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a).
- b. The defendant has been convicted of an offense involving impaired driving and at the time of the offense the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy.
- c. The defendant has not been convicted of an offense involving impaired driving, but the defendant failed to appear at his/her scheduled trial for that offense, at least sixty (60) days have elapsed since the date scheduled for that trial, and an order for the defendant's arrest has been issued and not set aside. The defendant is guilty of the offense involving impaired driving and at the time of the 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).  the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy.

**CONCLUSIONS OF LAW**

On the basis of the foregoing findings of fact, the Court concludes as a matter of law that the vehicle described above (or proceeds related to the vehicle) is subject to forfeiture pursuant to G.S. 20-28.2.

**ORDER**

It is ORDERED that the vehicle described above be forfeited, transferred to the county board of education named above and, at the board's option, either sold pursuant to G.S. 20-28.5 or retained and registered by it with the Division of Motor Vehicles pursuant to this Order, and the Clerk of Superior Court shall disburse to the county board of education all funds being held by the Clerk representing proceeds of insurance or proceeds from the sale of the motor vehicle.

Date

Name Of Presiding Judge (Type Or Print)

Signature Of Presiding Judge

(Over)

(See reverse side for important Notes.)

**APPEAL ENTRIES**

- 1. The defendant named above in District Court gave notice of appeal from the conviction of the offense involving impaired driving found in the above Order. The issue of forfeiture shall be heard in Superior Court de novo.
- 2. The defendant named above gave notice of appeal to the appellate division from the conviction of the offense involving impaired driving found in the above Order. Pursuant to G.S. 20-28.5(e), enforcement of this Order is stayed pending determination of the appeal.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
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**CERTIFICATION**

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTE TO CLERK:** *The Clerk shall report to DMV by electronic means [STARS] the entry of an order of forfeiture. G.S. 20-28.8. The Clerk also may send a copy of the order of forfeiture to the county school board attorney and district attorney.*

**FURTHER NOTE TO CLERK:** *"Upon receipt of notice of conviction of a violation of an offense involving impaired driving while the person's license is revoked as a result of a prior impaired driving license revocation... [DMV] shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored." G.S. 20-54.1(a). DMV shall also "revoke the registration of the motor vehicle seized, and the owner [at the time of seizure] shall not be allowed to register the motor vehicle seized until the convicted operator's drivers license has been restored." G.S. 20-54.1(b). To facilitate implementation of these provisions, if **Findings of Fact No. 5.a. in this Order is selected**, the Clerk should enter the appropriate registration stop(s) into STARS. The clerk should not enter a registration stop against an owner who has been found to be an innocent owner as defined in G.S. 20-28.2.*

**STATE OF NORTH CAROLINA**

File No.

In The General Court Of Justice

 District  Superior Court Division

\_\_\_\_\_ County

**ORDER FORFEITING MOTOR VEHICLE  
AFTER HEARING -  
FELONY SPEEDING TO ELUDE**

G.S. 20-28.2(b2) &amp; (d); G.S. 20-28.5

Name Of Defendant

Defendant's Drivers License No.

State

Vehicle Identification No.

Vehicle License No.

State

Vehicle Type

Make

Year

Date Of Seizure

Date Of Offense

**NOTE:** Use this form only to enter an order forfeiting a motor vehicle that was seized under G.S. 20-28.3(a1) (felony speeding to elude seizure).**FINDINGS OF FACT**

This matter is before the Court to determine whether the vehicle described above (or proceeds related to the vehicle) shall be forfeited pursuant to G.S. 20-28.2. A hearing was held before the Court on this date. Based on the evidence presented and the entire record in this case, the Court finds by the greater weight of the evidence that:

1. The motor vehicle was seized on the date shown above while being driven by the defendant named above. The defendant was charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).
  2. The motor vehicle has not been permanently released to a non-defendant motor vehicle owner pursuant to G.S. 20-28.3(e1) or a lienholder pursuant to G.S. 20-28.3(e3).
  3. Pursuant to G.S. 20-28.2(c), the prosecutor has notified the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, the motor vehicle owner, or the lienholder may intervene to protect that person's interest, and this notice was served at least ten (10) days before the hearing, as shown by the Prosecutor's Notice Of Hearing And Certificate Of Service on file in this case.
  4. Neither the defendant, a non-defendant motor vehicle owner nor a lienholder appeared at this hearing or petitioned for release of the vehicle or, if any of them has so appeared or petitioned, all petitions have been denied. No non-defendant motor vehicle owner has been determined to be an innocent owner.
- (Select appropriate option)
5.  a. The defendant has been convicted of felony speeding to elude arrest pursuant to  G.S. 20-141.5(b).  G.S. 20-141.5(b1).  
 b. The defendant has not been convicted of felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1), but the defendant failed to appear at his/her scheduled trial for that offense, at least sixty (60) days have elapsed since the date scheduled for that trial, and an order for the defendant's arrest has been issued and not set aside. The defendant is guilty of felony speeding to elude arrest pursuant to  G.S. 20-141.5(b).  G.S. 20-141.5(b1).

**CONCLUSIONS OF LAW**

On the basis of the foregoing findings of fact, the Court concludes as a matter of law that the vehicle described above (or proceeds related to the vehicle) is subject to forfeiture pursuant to G.S. 20-28.2.

**ORDER**

It is ORDERED that the vehicle described above be forfeited, transferred to the county board of education named above and, at the board's option, either sold pursuant to G.S. 20-28.5 or retained and registered by it with the Division of Motor Vehicles pursuant to this Order, and the Clerk of Superior Court shall disburse to the county board of education all funds being held by the Clerk representing proceeds of insurance or proceeds from the sale of the motor vehicle.

Date

Name Of Presiding Judge (Type Or Print)

Signature Of Presiding Judge

**APPEAL ENTRIES**

1. The defendant named above in District Court gave notice of appeal from the conviction of felony speeding to elude arrest.
2. The defendant named above gave notice of appeal to the appellate division from the conviction of felony speeding to elude arrest. Pursuant to G.S. 20-28.5(e), enforcement of this Order is stayed pending determination of the appeal.

Date

Name Of Presiding Judge (Type Or Print)

Signature Of Presiding Judge

(Over)

(See reverse side for important Notes.)

**CERTIFICATION**

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk Of Superior Court	

**NOTE TO CLERK:** *The Clerk shall report to DMV by electronic means [STARS] the entry of an order of forfeiture. G.S. 20-28.8. The Clerk also may send a copy of the order of forfeiture to the county school board attorney and district attorney.*

**FURTHER NOTE TO CLERK:** *“Upon receipt of notice of conviction of a felony speeding to elude arrest offense under G.S. 20-141.5(b) or (b1), the Division [of Motor Vehicles] shall revoke the registration of all motor vehicles registered in the convicted person’s name and shall not register a motor vehicle in the convicted person’s name until the convicted person’s license is restored.” G.S. 20-54.1(a1). In addition, “[u]pon receipt of a notice of conviction... [for felony speeding to elude arrest under G.S. 20-141.5(b) or (b1)], the Division [of Motor Vehicles] shall revoke the registration of the motor vehicle seized, and the owner [at the time of seizure] shall not be allowed to register the motor vehicle seized until the convicted operator’s drivers license has been restored.” G.S. 20-54.1(b). To facilitate implementation of these provisions, **if Findings of Fact No. 5.a. in this Order is selected**, the Clerk should enter the appropriate registration stop(s) into STARS. The clerk should not enter a registration stop against an owner who has been found to be an innocent owner as defined in G.S. 20-28.2.*

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice

 District  Superior Court Division

Name Of Defendant		<b>ORDER RELEASING SEIZED MOTOR VEHICLE TO DEFENDANT-OWNER OR NON-DEFENDANT MOTOR VEHICLE OWNER AFTER DISPOSITION OF CRIMINAL CHARGES - IMPAIRED DRIVING</b>  G.S. 20-28.4		
Defendant's Drivers License No.	State			
Name Of Motor Vehicle Owner (See Note)				
Motor Vehicle Owner's Drivers License No.	State			
Vehicle Identification No.		Vehicle Type	Make	Year
Vehicle License No.	State	Date Of Seizure	Date Of Offense	

**NOTE:** [Use this form only to enter an order releasing a motor vehicle to the defendant-owner or other motor vehicle owner (1) after the defendant has been found not guilty of the underlying offense involving impaired driving, or (2) after the charge has been dismissed without leave, or (3) after the defendant has pled to or been convicted of a lesser offense, or (4) after the Court otherwise has failed to find that the criteria for forfeiture in G.S. 20-28.2(b) or (b1) have been met. To enter an order forfeiting a seized motor vehicle, use "Order Forfeiting Motor Vehicle After Hearing-Impaired Driving," AOC-CR-335A.] In the space labeled "Name Of Motor Vehicle Owner" above, enter the name of the owner to whom the motor vehicle is to be released. If this is the defendant, enter the defendant's name here as well as in the space for "Name Of Defendant."

## FINDINGS OF FACT

This matter is before the Court to determine whether the vehicle described above shall be forfeited pursuant to G.S. 20-28.2. Based on the evidence presented and the entire record in this case, the Court finds that:

1. The motor vehicle was seized on the date shown above while being driven by the defendant named above. The vehicle was seized pursuant to G.S. 20-28.3(a).
2. The motor vehicle owner named above is a person in whose name a registration card or certificate of title for the motor vehicle was issued at the time of seizure.
3. The defendant was subsequently not convicted of an offense involving impaired driving, or if the defendant was convicted the Court finds that  (applicable to offenses committed prior to December 1, 2013) the defendant's drivers license was not revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).  (applicable to offenses committed on or after December 1, 2013) the criteria for forfeiture in G.S. 20-28.2(b) or (b1) otherwise have not been met.

## CONCLUSIONS OF LAW

On the basis of the foregoing findings of fact, the Court concludes as a matter of law that the vehicle described above is not subject to forfeiture pursuant to G.S. 20-28.2.

## ORDER

It is ORDERED that the motor vehicle described above and any funds held by the Clerk representing proceeds of insurance be released to the motor vehicle owner named above upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk shall disburse to the motor vehicle owner all funds held by the Clerk representing proceeds of the sale of the motor vehicle.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
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**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

## CERTIFICATION

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk Of Superior Court	

**NOTE TO CLERK:** The Clerk shall report to DMV by electronic means [STARS] the entry of an order of release. G.S. 20-28.8. The Clerk also may send a copy of the order of release to the county school board attorney and District Attorney.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

Name Of Defendant		<b>ORDER RELEASING SEIZED MOTOR VEHICLE TO DEFENDANT-OWNER OR NON-DEFENDANT MOTOR VEHICLE OWNER AFTER DISPOSITION OF CRIMINAL CHARGES - FELONY SPEEDING TO ELUDE</b>  G.S. 20-28.4		
Defendant's Drivers License No.	State			
Name Of Motor Vehicle Owner (See Note)				
Motor Vehicle Owner's Drivers License No.	State			
Vehicle Identification No.		Vehicle Type	Make	Year
Vehicle License No.	State	Date Of Seizure	Date Of Offense	

**NOTE:** [Use this form only to enter an order releasing a motor vehicle to the defendant-owner or other motor vehicle owner (1) after the defendant has been found not guilty of the underlying felony speeding to elude arrest offense, or (2) after the charge has been dismissed without leave, or (3) after the defendant has pled to or been convicted of a lesser offense. To enter an order forfeiting a seized motor vehicle, use "Order Forfeiting Motor Vehicle After Hearing - Felony Speeding To Elude," AOC-CR-335B.] In the space labeled "Name Of Motor Vehicle Owner" above, enter the name of the owner to whom the motor vehicle is to be released. If this is the defendant, enter the defendant's name here as well as in the space for "Name Of Defendant."

## FINDINGS OF FACT

This matter is before the Court to determine whether the vehicle described above shall be forfeited pursuant to G.S. 20-28.2. Based on the evidence presented and the entire record in this case, the Court finds that:

1. The motor vehicle was seized on the date shown above while being driven by the defendant named above. The vehicle was seized pursuant to G.S. 20-28.3(a1).
2. The motor vehicle owner named above is a person in whose name a registration card or certificate of title for the motor vehicle was issued at the time of seizure.
3. The defendant was subsequently not convicted of felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).

## CONCLUSIONS OF LAW

On the basis of the foregoing findings of fact, the Court concludes as a matter of law that the vehicle described above is not subject to forfeiture pursuant to G.S. 20-28.2.

## ORDER

It is ORDERED that the motor vehicle described above and any funds held by the Clerk representing proceeds of insurance be released to the motor vehicle owner named above upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk shall disburse to the motor vehicle owner all funds held by the Clerk representing proceeds of the sale of the motor vehicle.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
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**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

## CERTIFICATION

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTE TO CLERK:** The Clerk shall report to DMV by electronic means [STARS] the entry of an order of release. G.S. 20-28.8. The Clerk also may send a copy of the order of release to the county school board attorney and District Attorney.



STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

County

STATE VERSUS

MOTION FOR CONTINUANCE
AND ORDER - IMPAIRED DRIVING
(DWI OR COMMERCIAL DWI
INVOLVING MOTOR VEHICLE FORFEITURE)

G.S. 20-28.3(m)

Name Of Defendant

Offense

[X] DWI. G.S. 20-138.1 [ ] Commercial DWI. G.S. 20-138.2

Original Trial Date

No. Of Previous Continuances

Scheduled Trial Date

Proposed Rescheduled Trial Date

Court Rescheduled Trial Date (If Different)

MOTION

The offense listed above is an impaired driving offense involving the forfeiture of a motor vehicle pursuant to G.S. 20-28.2, and is currently scheduled to be heard on the scheduled trial date shown above. The trial of this action was originally scheduled for the original trial date shown above and [ ] has not previously been continued. [ ] has previously been continued the number of times shown above.

The [ ] State [ ] defendant moves that the trial of the above criminal action be continued from the scheduled trial date shown above to the proposed rescheduled date shown above for the following compelling reason: (state facts constituting compelling reason)

I certify that I gave notice of this Motion to the opposing party prior to this Motion being heard.

Date

Signature

Name (Type Or Print)

[ ] Dist. Attorney [ ] Asst. Dist. Attorney [ ] Defense Attorney [X] Defendant

ORDER

After a hearing on the above Motion For Continuance of the trial of the above impaired driving offense involving the forfeiture of a motor vehicle pursuant to G.S. 20-28.2, the Court [ ] finds [ ] does not find that the facts set forth in the motion constitute a "compelling reason" for the continuance requested. It is ORDERED that

- [ ] 1. The motion is allowed and the trial of the above action is continued to and shall be held on the: [ ] a. proposed rescheduled trial date shown above. [ ] b. court rescheduled trial date shown above. [ ] 2. The motion is denied and the trial of the above action shall be held on the scheduled trial date shown above, without further continuance.

Date

Name Of District Court Judge (Type Or Print)

Signature Of District Court Judge

NOTE: G.S. 20-28.3(m) provides, "District court trials of offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first. Once scheduled, the case shall not be continued unless all of the following conditions are met: (1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard. (2) The judge makes a finding of a 'compelling reason' for the continuance. (3) The motion and finding are attached to the court case record."

STATE OF NORTH CAROLINA

File No.

02CR99999

Dare County

In The General Court Of Justice
District Court Division

STATE VERSUS

Name Of Defendant
James Beam Doe

Offense

[X] DWI. G.S. 20-138.1 [ ] Commercial DWI. G.S. 20-138.2

MOTION FOR CONTINUANCE
AND ORDER - IMPAIRED DRIVING
(DWI OR COMMERCIAL DWI
INVOLVING MOTOR VEHICLE FORFEITURE)

G.S. 20-28.3(m)

Original Trial Date
11/10/2002

No. Of Previous Continuances
One (1)

Scheduled Trial Date
12/16/2002

Proposed Rescheduled Trial Date
01/10/2003

Court Rescheduled Trial Date (If Different)

MOTION

The offense listed above is an impaired driving offense involving the forfeiture of a motor vehicle pursuant to G.S. 20-28.2, and is currently scheduled to be heard on the scheduled trial date shown above. The trial of this action was originally scheduled for the original trial date shown above and

[ ] has not previously been continued. [O] has previously been continued the number of times shown above.

The [ ] State [E] defendant moves that the trial of the above criminal action be continued from the scheduled trial date shown above to the proposed rescheduled date shown above for the following compelling reason: (state facts constituting compelling reason)

To find an alibi witness.

I certify that I gave notice of this Motion to the opposing party prior to this Motion being heard.

Date
12/15/2002

Signature
R. Weasel

Name (Type Or Print)
Romero Weasel

[ ] Dist. Attorney [CH] Asst. Dist. Attorney [R] Defense Attorney [ ] Defendant

ORDER

After a hearing on the above Motion For Continuance of the trial of the above impaired driving offense involving the forfeiture of a motor vehicle pursuant to G.S. 20-28.2, the Court [ ] finds [ ] does not find that the facts set forth in the motion constitute a "compelling reason" for the continuance requested. It is ORDERED that

- [ ] 1. The motion is allowed and the trial of the above action is continued to and shall be held on the:
[O] a. proposed rescheduled trial date shown above.
[ ] b. court rescheduled trial date shown above.
[ ] 2. The motion is denied and the trial of the above action shall be held on the scheduled trial date shown above, without further continuance.

Date
12/15/2002
Name Of District Court Judge (Type Or Print)
Adam Brainless

Signature Of District Court Judge
yA. 7 Brainless

NOTE: G.S. 20-28.3(m) provides, "District court trials of offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first. Once scheduled, the case shall not be continued unless all of the following conditions are met: (1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard. (2) The judge makes a finding of a 'compelling reason' for the continuance. (3) The motion and finding are attached to the court case record."

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division**STATE VERSUS****PROSECUTOR'S DISMISSAL AND EXPLANATION  
(Implied-Consent Offense Or Driving While License  
Revoked For An Impaired Driving License Revocation)**

Defendant Name

**NOTE:** Prosecutor signs and completes both sides of this form.

G.S. 20-138.4

File Number	Count No.(s)	Offense(s)

 **DISMISSAL (NOTE: Recall all outstanding Orders For Arrest in a dismissed case.)**

The undersigned prosecutor enters a dismissal to the above charge(s) and assigns the following reasons:

- 1. No crime is charged.
- 2. There is insufficient evidence to warrant prosecution for the following reasons:
  
- 3. Defendant has agreed to plead guilty to the following charges:

in exchange for a dismissal of the following charges:

- 4. The defendant was charged as the result of  defendant's identity being used without permission.  mistaken identity.  
**(NOTE TO PROSECUTOR: You must notify the Court of this dismissal. The Court should use AOC-CR-283, Order Of Expunction Under G.S. 15A-147(a1) (Identity Theft Or Mistaken Identification) to expunge charges.)**
- 5. Other: (specify)  See additional information on reverse.

A jury has not been impaneled nor has evidence been introduced. (If a jury has been impaneled, or if evidence has been introduced, modify this sentence accordingly.) \_\_\_\_\_

 **DISMISSAL WITH LEAVE**

The undersigned prosecutor enters a dismissal with leave to the above charge(s) and assigns the following reasons:

- 1. The defendant failed to appear for a criminal proceeding at which the defendant's attendance was required and the prosecutor believes that the defendant cannot readily be found.
- 2. The defendant has been indicted and cannot readily be found to be served with an Order For Arrest.
- 3. The defendant has entered into a deferred prosecution agreement with the prosecutor in accordance with the provisions of Article 82 of G.S. Chapter 15A. **(NOTE: A person charged with impaired driving under G.S. 20-138.1 is not eligible for deferred prosecution under G.S. 15A-1341(a1) or (a2). See G.S. 15A-1341(a.)**
- 4. Other: (specify)  See additional information on reverse.

**NOTE:** This form must be completed and signed by the prosecutor when the dismissal occurs out of court. The better practice is for the prosecutor to complete and sign the form when the charges are orally dismissed in open court.Also, in accordance with G.S. 15A-931(a1), unless the defendant or the defendant's attorney has been otherwise notified by the prosecutor, a written dismissal of the charges against the defendant must be served in the same manner prescribed for motions under G.S. 15A-951. If the record reflects that the defendant is in custody, the written dismissal shall be also served **by the prosecutor** on the chief officer of the custodial facility where the defendant is in custody.

Date	Name Of Prosecutor (type or print)	Signature Of Prosecutor
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Original-File Copy-Elected District Attorney Copy-Charging Agency  
(Over)

**REINSTATEMENT**

This case, having previously been dismissed with leave as indicated above, is now reinstated for trial.

Date	Name Of Prosecutor (type or print)	Signature Of Prosecutor
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**EXPLANATION OF PROSECUTOR**

G.S. 20-28.3(c)

- The undersigned prosecutor has taken the following action on this charge: *(check the action taken)*
  - Entered a voluntary dismissal.
  - Accepted a plea of guilty or no contest to a lesser included offense.
  - Substituted another charge that carries a lesser mandatory minimum punishment or that is not a case subject to the implied-consent law.
  - Took a discretionary action that effectively dismissed or reduced the charge.
  - Entered a voluntary dismissal subsequent to the defendant having been indicted on a more serious charge.
- The undersigned prosecutor took the action described above for the following reason(s): *(attach additional sheets if necessary)*
- The defendant  had an alcohol concentration of \_\_\_\_\_.  refused the chemical analysis.
- a. The defendant has no prior conviction(s) for an implied-consent offense or driving while license revoked.  
 b. The defendant has a prior conviction(s) for an implied-consent offense or driving while license revoked. *(list conviction(s) below)*
- A review of the records of the Division of Motor Vehicles indicates that the defendant  did  did not have a valid drivers license or privilege to drive in this state at the time of the offense.
- A review of the records of the Administrative Office of the Courts indicates that there  are  are not other charges currently pending against the defendant.
- The undersigned prosecutor believes in good faith that the following elements of the charge can be proved:
- The undersigned prosecutor believes in good faith that the following elements of the charge cannot be proved: *(specify reason each element listed cannot be proved)*
- The charging agency is \_\_\_\_\_.  
The name of the charging officer is \_\_\_\_\_. The charging officer  is  is not available.

**PRIOR CONVICTIONS**

The defendant has the following prior conviction(s) for an implied-consent offense or driving while license revoked: *(attach additional sheet if necessary)*  See attached DMV driving history.

Offense	Date Of Offense	File Number	County/State	Date Of Conviction

**SIGNATURE OF PROSECUTOR**

The foregoing information is complete and accurate to the best of my knowledge.

Date	Name Of Prosecutor (type or print)	Signature Of Prosecutor
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STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

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.

Table with 3 columns: Date, Name Of Judicial Official (Type Or Print), Signature Of Judicial Official

NOTE: See reverse for supplemental findings and order, and for disposition of license.

- Judge, Magistrate, Deputy CSC, Assistant CSC, Clerk Of Superior Court

NOTICE

If at the time of this 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.

In The General Court Of Justice
District Court Division

County

IN THE MATTER OF

REVOCATION ORDER
WHEN PERSON NOT 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, and the above-named person is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation; and the revocation remains in effect at least thirty (30) days from:

- 1. 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, if he/she does so within five (5) working days of the effective date of this Order (the failure of the above-named person to act within five (5) working days will result in a longer revocation period as explained in the Notice below); or
2. (check this option if Finding No. 5 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, if he/she does so within five (5) working days of the effective date of this Order (the failure of the above-named person to act within five (5) working days will result in a longer revocation period as explained in the Notice below), 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 am informing the above-named person of his/her right to a hearing by explaining this right in the Notice below. I am delivering a copy of this Order to him/her by depositing it in the United States mail as provided in G.S. 20-16.5(f).

EFFECTIVE DATE OF ORDER: 12:01 a.m.,

NOTE: The effective date specified herein is four (4) days after the Order is mailed. Count the four (4) days beginning with the day following the day of mailing pursuant to G.S. 1A-1, Rule 6. See reverse for Supplemental Findings and Order, and for Disposition of License or Privilege.

Date Signature Of Judicial Official Deputy CSC Assistant CSC Clerk Of Superior Court

NOTICE

Your license to drive is revoked as of the effective date shown above. If within five (5) working days of the effective date of this Order you surrender your drivers license to the Clerk of Superior Court or show you are not licensed to operate a motor vehicle, this Revocation remains in effect for at least a thirty (30) day period beginning on the date you surrender your license or make the showing. If you fail to do so, this Revocation remains in effect for at least a forty-five (45) day period beginning on the date you surrender your license or make the showing. Appearance before the Clerk of Superior Court must be made between 8:30 a.m. and 5:00 p.m., Monday through Friday.

Your failure to appear before the Clerk of Superior Court may result in a law enforcement officer seizing your license or requiring you to demonstrate you are not licensed. In this event, this Revocation remains in effect for at least a forty-five (45) day period which will not begin until the officer seizes your license or you demonstrate you are not licensed.

If at 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 your license is revoked under Paragraph 1 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 2 of this Order, this Revocation remains in effect for at least the thirty (30) or forty-five (45) days explained above 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.

If prior to the effective date of this Order you were not licensed by the North Carolina Division of Motor Vehicles or did not have a valid license from another state, an additional \$50 restoration fee must be paid to the Division of Motor Vehicles before you can drive again in North Carolina. This fee must be paid even though you are a resident of another state.

You have a right to a hearing to contest the validity of this Revocation before either a magistrate or a 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 this hearing. If you do request a hearing but fail to appear, you forfeit the right to a hearing.

**IT IS UNLAWFUL FOR YOU TO DRIVE A MOTOR VEHICLE IN THE STATE OF NORTH CAROLINA UNTIL YOU ARE AUTHORIZED TO DO SO. 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:

- 1. The person named herein appeared before the Clerk of Superior Court at \_\_\_\_\_  AM  PM on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, which  is  is not within five (5) working days of the effective date of this Revocation Order.
- 2. The person:
  - a. surrendered his/her drivers license to the Court.
  - b. was validly licensed but unable to locate his/her license card and filed an affidavit which constituted surrender of the drivers license.
  - c. demonstrated 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  forty-five (45) days from the date set forth above 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 the reverse side is checked) is indefinite and remains in effect for at least  thirty (30) days  forty-five (45) days from the date set forth above 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
------	-----------	---

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 forty-five (45) 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 the reverse side is checked) is indefinite and remains in effect for at least forty-five (45) 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
------	-----------	---

**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

**DRIVERS LICENSE  
PICK-UP ORDER**

G.S. 20-16.5

Race Sex Height Weight

Hair Color Eye Color DOB Drivers License No. State

**TO ANY LAW ENFORCEMENT OFFICER:**

You are ORDERED to pick up the drivers license issued to the person named above in accordance with G.S. 20-29 and deliver it to the undersigned within three (3) days of the surrender.

Date Signature  Deputy CSC  Assistant CSC  Clerk Of Superior Court

**RETURN OF SERVICE**

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

Date Received Date Served

- 1. by personally serving the person named above and picking up the attached drivers license.
- 2. the person named above demonstrated that he/she is not currently licensed.
- 3. the person named above was not served for the following reason:

Date Of Return Signature Of Law Enforcement Officer No. Department Or Agency

**NOTICE TO PERSON SERVED**

**Your license to drive is revoked.** Unless the revocation is indefinite, your license will remain revoked for at least a \_\_\_\_\_ day period beginning on the day you surrender your license or show that you are not currently licensed to drive. If the revocation is indefinite, your license will be revoked for that period or until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which your drivers license had been or is revoked under G.S. 20-16.5.

At the end of the revocation period you are still prohibited from driving until you have paid a \$100 fee to the Clerk of Superior Court. This \$100 fee may be paid at any time, even prior to the end of the revocation period, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Payment in person must be paid in cash, by certified check or money order. Payment by mail must be made by certified check or money order, made payable to the Clerk of Superior Court. This fee is in addition to any fee you have paid or are to pay in connection with any other pending offense for which your drivers license has been or is revoked under G.S. 20-16.5.

If prior to the effective date of this Order you were not licensed by the North Carolina Division of Motor Vehicles or did not have a valid license from another state, an additional \$50 restoration fee must be paid to the Division of Motor Vehicles before you can drive again in North Carolina. This fee must be paid even though you are a resident of another state.

You have a right to a hearing to contest the validity of this Revocation before a magistrate or judge. To do so a written request must be made within ten (10) days of the effective date of the revocation. A hearing request form is available from the office of the Clerk of Superior Court or magistrate. Your license will remain revoked and you are not authorized to drive pending the hearing. If you do request a hearing but fail to appear, you forfeit the right to a hearing.

**IT IS UNLAWFUL FOR YOU TO DRIVE A MOTOR VEHICLE IN THE STATE OF NORTH CAROLINA UNTIL YOU ARE AUTHORIZED TO DO SO.**

**STATE OF NORTH CAROLINA**

File No.   
 >

In The General Court Of Justice  
District Court Division

\_\_\_\_\_ County

IN THE MATTER OF

Name And Address Of Petitioner

**REQUEST FOR HEARING TO  
CONTEST LICENSE REVOCATION**

Home Telephone No.

Work Telephone No.

G.S. 20-16.5

**TO THE APPROPRIATE JUDICIAL OFFICIAL:**

I request a hearing to contest the validity of the revocation of my drivers license which was ordered revoked on the date set forth below.

I challenge the validity of the revocation on the following specific ground(s):

**(NOTE:** List the finding(s) for probable cause, as set forth on the Revocation Order, which you believe to be wrong.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I specifically request that the hearing be conducted by a District Court Judge.

I understand that the hearing will be limited to the grounds I specify in this request and that the revocation of my drivers license remains in effect pending the hearing. I further understand that this hearing must be held and completed within three (3) working days following the date of this request, or within five (5) working days if I have requested a District Court Judge to conduct the hearing. I also understand that my failure to appear at the hearing will result in the forfeiture of my right to a hearing.

I understand that the decision of the Magistrate or District Court Judge at the hearing is final, and that there is no right of appeal from the decision.

Date License Revoked

Date

Signature Of Petitioner

**ORDER SETTING HEARING**

The defendant having requested a hearing, the undersigned hereby sets a time, date and location of hearing as shown below.

Date Of Hearing

Time Of Hearing

AM  PM

Date

Location Of Hearing

Signature

Deputy CSC

Assistant CSC

Clerk Of Superior Court

Magistrate

**FILING INSTRUCTIONS**

This request must be filed by the Petitioner within ten (10) days of the effective date of the revocation order with one of the following:

- 1. Judicial official at the initial appearance; or
- 2. The Clerk of Superior Court; or
- 3. A Magistrate designated by the Clerk of Superior Court to receive such requests.

\_\_\_\_\_ County

In The General Court Of Justice  
District Court Division

**IN THE MATTER OF**

*Name And Address Of Petitioner*

**FINDINGS AND ORDER  
IN CONTESTED LICENSE REVOCATION**

G.S. 20-16.5

The Court finds that the petitioner filed a timely Request For Hearing To Contest License Revocation form setting forth the specific grounds upon which the validity of the revocation is challenged.

The Court, having considered the evidence and arguments presented at the hearing, finds by the greater weight of the evidence the following:

1. The hearing

- a. was held and completed within the required time limits.
- b. was not held and completed within the required time limits.

2. As to each condition alleged by the law enforcement officer and chemical analyst in this matter,

- a. all were met.
- b. at least one was not met.
- c. other than the current offense, there are no additional pending offenses for which the person's drivers license had been or is revoked under G.S. 20-16.5.

Based upon the foregoing findings of fact, the Court CONCLUDES and ORDERS that the revocation of the petitioner's license be:

- a. sustained.
- b. rescinded.
- c. the indefinite suspension is rescinded and a separate order shall be entered by an appropriate judicial official revoking the petitioner's drivers license for an appropriate period.

<i>Date</i>
<i>Name Of Judicial Official (Print Or Type)</i>
<i>Signature Of Judicial Official</i>
<input type="checkbox"/> <i>Judge</i> <span style="margin-left: 200px;"><input type="checkbox"/> <i>Magistrate</i></span>

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice  
District Court Division

IN THE MATTER OF

Name And Address

REVOCATION REPORT TO  
DIVISION OF MOTOR VEHICLES

CORRECTION       SPECIAL

G.S. 20-16.5

Race

Sex

DOB

Drivers License No.

State

TO THE DIVISION OF MOTOR VEHICLES

CORRECTION

- 1. The drivers license of the above named person was reported revoked under G.S. 20-16.5 on \_\_\_\_\_ and the revocation was sent in error.
- 2. The drivers license of the above named person was revoked under G.S. 20-16.5 on \_\_\_\_\_ and:
  - a. The revocation was terminated on \_\_\_\_\_.
  - b. on \_\_\_\_\_, a revocation compliance was sent to DMV in error.
  - c. the fee was paid and the license returned to the licensee on \_\_\_\_\_.

SPECIAL

- 1. The drivers license of the above named person is reported revoked under G.S. 20-16.5 on \_\_\_\_\_ and the case is at superior court level. The revocation cannot be sent electronically.
- 2. The drivers license of the above named person was revoked under G.S. 20-16.5 on \_\_\_\_\_, and the fee was paid and the license was returned to the licensee on \_\_\_\_\_. The compliance cannot be sent electronically.

Date

Signature

Deputy CSC     Assistant CSC     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

ZZZZZZZZZZZZZZZZZZZZ NORTH CAROLINA RESIDENTS m

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:

Blank lines for providing details of license loss and search efforts.

viz OUT-OF-STATE RESIDENTS YZZZ

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:

Blank lines for providing details of license loss and search efforts.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Affiant

Notary section including fields for Date, Signature, Notary status (Deputy CSC, Magistrate, Notary), Date Commission Expires, and County Where Notarized.

# STATE OF NORTH CAROLINA

File No.

County \_\_\_\_\_ Seat of Court \_\_\_\_\_

(NOTE: This form should be used for only one DWI conviction. Multiple convictions sentenced under G.S. 20-179 may not be consolidated for judgment.)

In The General Court Of Justice

District  Superior Court Division

## STATE VERSUS

## IMPAIRED DRIVING - JUDGMENT SUSPENDING SENTENCE (For Offenses Committed Before Dec. 1, 2009)

COMMITMENT ON SPECIAL PROBATION

G.S. 20-179

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

Race \_\_\_\_\_ Sex \_\_\_\_\_ Drivers License No. \_\_\_\_\_ State \_\_\_\_\_ Date Of Birth \_\_\_\_\_

Date Of Offense \_\_\_\_\_ Attorney For State \_\_\_\_\_  Def. Found Not Indigent  Def. Waived Attorney \_\_\_\_\_ Attorney For Defendant \_\_\_\_\_  Appointed  Retained *Crt Rptr Initials* \_\_\_\_\_

Offense  Impaired Driving (G.S. 20-138.1).  Impaired Driving in a commercial vehicle (G.S. 20-138.2).  Operating a commercial vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2A).  Operating a school bus, school activity bus, or child care vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2B).

The defendant was found guilty/responsible, pursuant to  plea ( pursuant to *Alford*) ( of no contest)  trial by judge  trial by jury, of the offense specified above. The Court, based upon the determinations shown on the attached Determination of Sentencing Factors form (AOC-CR-311, Rev. 12/07), has imposed the following punishment level.

Level One.  Level Two.  Level Three.  Level Four.  Level Five.

The Court, having considered evidence, arguments of counsel and statement of defendant, ORDERS that defendant be imprisoned

for a minimum term of \_\_\_\_\_ for a maximum term of \_\_\_\_\_ in the custody of the Misdemeanant Confinement Program.

This sentence shall run at the expiration of the sentence imposed in file number \_\_\_\_\_.

The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this Judgment as a result of this charge  and as an inpatient at a facility operated or licensed by the State for the treatment of alcoholism or substance abuse after the commission of the above offense. Credit shall be applied against the  minimum and maximum terms above.  imprisonment for special probation below. (NOTE: No credit may be given for the first 24 hours spent in confinement.)

## SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on

unsupervised probation for \_\_\_\_\_ months.  
 supervised probation for \_\_\_\_\_ months, the Court having received evidence and having found as a fact that supervision is necessary.

## SPECIAL PROBATION - G.S. 15A-1351

A. As a condition of special probation, the defendant shall (select 1. or 2.)  
 1. serve an active term of \_\_\_\_\_  days  months  hours  
 a. in the custody of the Sheriff of this County.  and pay jail fees.  
 b. as an inpatient in (name treatment facility) \_\_\_\_\_ and shall follow the rules of that facility until discharged and not leave its premises except as authorized under those rules.

2. (for offenses committed prior to December 1, 1997) submit to imprisonment and house arrest per the attached AOC-CR-603A, Page Two.

NOTE: This term shall NOT be reduced by good time, gain time, or parole, or, unless provided above, by jail or treatment time.

B. The defendant shall report \_\_\_\_\_ Day \_\_\_\_\_ Date \_\_\_\_\_ Hour \_\_\_\_\_  AM and shall remain in custody until: \_\_\_\_\_ Day \_\_\_\_\_ Date \_\_\_\_\_ Hour \_\_\_\_\_  AM  
in a sober condition to begin serving this term on: \_\_\_\_\_  PM

C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next \_\_\_\_\_ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered.

D. This term shall be served at the direction of the probation officer within \_\_\_\_\_  days  months of this Judgment.

E. Work release is recommended.  F. Substance abuse treatment is recommended.

## MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule  determined by the probation officer.  set out by the court as follows: \_\_\_\_\_

Costs	Fine	Restitution*	Attorney's Fees	Community Service Fee	EHA Fee/CAM Fee	Appt Fee/Misc	Total Amount Due
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

The Court finds just cause to waive costs, as ordered on the attached  AOC-CR-618.  Other: \_\_\_\_\_

## REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)

NOTE: Any probationary judgment may be extended pursuant to G.S. 15A-1342.

The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device 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.

If the defendant is on supervised probation, the defendant shall also: (5) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (6) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (7) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (8) At a time to be designated by the probation officer, visit with the probation officer a facility maintained by the Division of Prisons of the Department of Adult Correction.

If the defendant is to serve an active sentence as a condition of special probation, the defendant shall also: (9) Obey the rules and regulations of the Division of Prisons of the Department of Adult Correction and, if applicable, the Division of Juvenile Justice of the Department of Public Safety, governing the conduct of inmates while imprisoned. (10) If placed on supervised probation above, report to a probation officer in the State of North Carolina within 72 hours of the defendant's discharge from the active term of imprisonment.

AOC-CR-310A, Rev. 1/23

Original - File Copy - DMV

Material opposite unmarked squares is to be disregarded as surplusage.

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(Over)

**SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1); 20-179**

- 11. Obtain a substance abuse assessment and all recommended education or treatment. *(Mandatory for offenses committed on or after December 1, 1997.)*
- 12. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles; and not operate a motor vehicle until the defendant's driving privilege is restored by that Division, except as may be permitted in a limited privilege.
- 13. Complete \_\_\_\_\_ hours of community service within \_\_\_\_\_ days from this date as directed by the judicial service coordinator, and pay to the Clerk the community service fee prescribed by law  pursuant to the schedule set out under "Monetary Conditions" above  within \_\_\_\_\_ days of this date.  Fee shall be paid before beginning service.
- 14. Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any previously convicted users, possessors or sellers of any such illegal drug or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept or used.
- 15. Submit, upon the request of any law enforcement or probation officer, to any physical, chemical, blood, or breath test or to a urinalysis for the detection of alcohol or controlled substances.
- 16. Abstain from alcohol consumption for \_\_\_\_\_ days, as verified by a continuous alcohol monitoring system of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction.  The defendant shall pay to the Clerk the fees associated with the system, as set by the entity providing the system, but not to exceed a total cost of \$1,000.  The court finds, upon good cause shown, that the defendant should not be required to pay the costs of the continuous alcohol monitoring system and \_\_\_\_\_, the local government entity responsible for the incarceration of the defendant in the local confinement facility, has agreed to pay the costs of the system to the Clerk. *(Applies to offense(s) committed on or after December 1, 2007.)*
- 17. Other:

*[Check any that apply - G.S. 20-179(r)]*

- The probation officer may transfer the defendant to unsupervised probation upon completion of  the community service required by Special Condition No. 13 above.  payment of the "Total Amount Due" on the reverse.

**SPECIAL ALCOHOL CONCENTRATION FINDING**

- The defendant's alcohol concentration was  0.16  0.15 *(use for offense(s) committed on or after December 1, 2007)* or greater.
- Other: \_\_\_\_\_

**ORDER OF COMMITMENT/APPEAL ENTRIES**

- 1. It is ORDERED that the Clerk deliver **two** certified copies of this Commitment on Special Probation to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order is modified as follows: \_\_\_\_\_  
**NOTE: *Withdrawal of appeal or remand to District Court requires that a new sentencing hearing be scheduled in District Court, unless certain conditions are met. G.S. 20-38.7(c).***
- 3. The defendant gives notice of appeal from the judgment of the Superior Court to the appellate division. Appeal entries and any conditions of post-conviction release are set forth in AOC-CR-350.

**SIGNATURE OF JUDGE**

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
------	---	------------------------------

**CERTIFICATION**

I certify that this Judgment and the attachment(s) marked below are true and complete copies of the originals.

- 1. Determination Of Sentencing Factors (AOC-CR-311, Rev. 12/07)  3. Other: \_\_\_\_\_
- 2. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
------	--	--------------------	--

**SEAL**

**NOTE TO CLERK:** *If the defendant's conviction is based on a violation of an offense involving impaired driving while the defendant's drivers license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, report DWI Defendant Registration Stop to DMV using menu item #9 in STARS. Also report the defendant's conviction to DMV in the usual manner. If there is a non-defendant vehicle owner, report registration stop to DMV using menu item #10 in STARS (unless the owner has been found to be an innocent owner).*

Material opposite unmarked squares is to be disregarded as surplusage.

# STATE OF NORTH CAROLINA

File No.

County \_\_\_\_\_ Seat of Court \_\_\_\_\_

NOTE: [Use AOC-CR-310 for DWI offense(s).]

In The General Court Of Justice

District  Superior Court Division

## STATE VERSUS

## JUDGMENT SUSPENDING SENTENCE - FELONY PUNISHMENT: COMMUNITY INTERMEDIATE (STRUCTURED SENTENCING)

(For Offenses Committed Before Dec. 1, 2009)

G.S. 15A-1341, -1342, -1343, -1343.2, -1346

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

Race \_\_\_\_\_ Sex \_\_\_\_\_ Date Of Birth \_\_\_\_\_

Attorney For State \_\_\_\_\_  Def. Found Not Indigent  Def. Waived Attorney

Attorney For Defendant \_\_\_\_\_  Appointed  Retained  Crit Rptr Initials \_\_\_\_\_

The defendant was found guilty/responsible, pursuant to  plea ( pursuant to *Alford*) ( of no contest)  trial by judge  trial by jury, of

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

\*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

The Court  1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be \_\_\_\_\_.

Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission to this issue.

2. makes no prior record level finding because none is required.

PRIOR RECORD LEVEL:  I  II  III  IV  V  VI

The Court (NOTE: Block 1 or 2 MUST be checked.):

- 1. makes no written findings because the prison term imposed is within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).
- 2. makes the Determination of aggravating and mitigating factors on the attached AOC-CR-605.
- 3. makes the Findings of Extraordinary Mitigation set forth on the attached AOC-CR-606.
- 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
- 5. adjudges the defendant to be a habitual felon to be sentenced as a Class C felon.
- 6. finds enhancement pursuant to:  G.S. 90-95(e)(3) (drugs).  G.S. 14-3(c) (hate crime).  G.S. 50B-4.1 (domestic violence).  G.S. 14-50.22 (gang misdemeanor).  Other: \_\_\_\_\_. This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission.
- 7. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603A, Page Two, Side Two, and makes the additional findings and orders on the attached AOC-CR-615, Side Two.
- 8. finds the above-captioned offense(s) involved the (check all that apply)  physical or mental  sexual abuse of a minor.  (if No. 7 not found) and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603A, Page Two, Side Two.
- 9. finds that a  motor vehicle  commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
- 10. finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
- 11. (offenses committed on or after Dec. 1, 2008, only) finds the above-designated offense(s) involved criminal street gang activity. G.S. 14-50.25.
- 12. finds that the defendant refused to consent to conditional discharge under G.S. 90-96(a).
- 13. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
- 14. finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be imprisoned

for a minimum term of \_\_\_\_\_ months for a maximum term of \_\_\_\_\_ months in the custody of the NC DAC.

This sentence shall run at the expiration of sentence imposed in file number \_\_\_\_\_.

The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the  sentence imposed above.  imprisonment required for special probation set forth on AOC-CR-603A, Page Two.

## SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on  supervised  unsupervised probation for \_\_\_\_\_ months.

- 1. The Court finds that a  longer  shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).
- 2. The Court finds that it is NOT appropriate to delegate to the Division of Community Supervision and Reentry the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment.
- 3. This period of probation shall begin  when the defendant is released from incarceration  at the expiration of the sentence in the case below.

File No.	Offense	County	Court	Date

- 4. The defendant shall comply with the conditions set forth in file number \_\_\_\_\_.
- 5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)

## MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule  determined by the probation officer.  set out by the court as follows: \_\_\_\_\_

Costs	Fine	Restitution*	Attorney's Fees	Comm Serv Fee	EHA Fee	SBM Fee	Appt Fee/Misc	Total Amount Due
\$	\$	\$	\$	\$	\$	\$	\$	\$

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

- The Court finds just cause to waive costs, as ordered on the attached  AOC-CR-618.  Other: \_\_\_\_\_.
- Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.

Material opposite unmarked squares is to be disregarded as surplusage. (Over)



**REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)**

**NOTE:** Any probationary judgment may be extended pursuant to G.S. 15A-1342. The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device, or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or 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. If the defendant is on supervised probation, the defendant shall also: (5) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (6) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (7) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (8) At a time to be designated by the probation officer, visit with the probation officer a facility maintained by the Division of Prisons of the Department of Adult Correction.

9. The Court finds that the defendant is responsible for acts of domestic violence and therefore makes the additional findings and orders on the attached AOC-CR-603A, Page Two, Side Two.

**SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1), 143B-1454(c)**

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:

- 10. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of \_\_\_\_\_ or until relicensed by the Division of Motor Vehicles, whichever is later.
- 11. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, and of the defendant's vehicle and premises while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:
  - stolen goods     controlled substances     contraband     child pornography    \_\_\_\_\_
- 12. Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any illegal drugs or controlled substances; and not knowingly be present at or frequent any place where illegal drugs or controlled substances are sold, kept, or used.
- 13. Supply a breath, urine, and/or blood specimen for analysis of the possible presence of a prohibited drug or alcohol, when instructed by the defendant's probation officer.
- 14. Successfully pass the General Education Development Test (G.E.D.) during the first \_\_\_\_\_ months of the period of probation.
- 15. Complete \_\_\_\_\_ hours of community or reparation service during the first \_\_\_\_\_ days of the period of probation, as directed by the judicial services coordinator and pay the fee prescribed by G.S. 143B-1483.     pursuant to the schedule set out under Monetary Conditions on the reverse.     within \_\_\_\_\_ days of this Judgment and before beginning service.
- 16. Report for initial evaluation by \_\_\_\_\_, participate in all further evaluation, counseling, treatment, or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.
- 17. Not assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with \_\_\_\_\_. "Contact" includes any defendant-initiated contact, direct or indirect, by any means, including, but not limited to, telephone, personal contact, e-mail, pager, gift-giving, telefacsimile machine or through any other person, except \_\_\_\_\_.
- 18. Other: \_\_\_\_\_

19. Comply with the Special Conditions Of Probation which are set forth on AOC-CR-603A, Page Two.

**ORDER OF COMMITMENT/APPEAL ENTRIES**

- 1. 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 to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

<i>Date</i>	<i>Name Of Presiding Judge (type or print)</i>	<i>Signature Of Presiding Judge</i>
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**CERTIFICATION**

I certify that this Judgment and the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Appellate Entries (AOC-CR-350)</li> <li><input type="checkbox"/> 2. Judgment Suspending Sentence (AOC-CR-603A, Page Two) (additional conditions of probation)</li> <li><input type="checkbox"/> 3. Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)</li> <li><input type="checkbox"/> 4. Extraordinary Mitigation Findings (AOC-CR-606)</li> <li><input type="checkbox"/> 5. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> 6. Judicial Findings As To Required DNA Sample (AOC-CR-319)</li> <li><input type="checkbox"/> 7. Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-615, Side Two)</li> <li><input type="checkbox"/> 8. Additional File No.(s) And Offense(s) (AOC-CR-626)</li> <li><input type="checkbox"/> 9. Other: _____</li> </ul> |
|---|---|

<i>Date</i>	<i>Date Certified Copies Delivered To Sheriff</i>	<i>Signature Of Clerk</i>	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
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**SEAL**

Material opposite unmarked squares is to be disregarded as surplusage.

Name Of Defendant

## INTERMEDIATE PUNISHMENTS

**NOTE:** Use this page with **AOC-CR-603A**, "Judgment Suspending Sentence - Felony"; **AOC-CR-604A**, "Judgment Suspending Sentence - Misdemeanor"; **AOC-CR-619A**, "Conditional Discharge Under G.S. 90-96(a)"; **AOC-CR-621A**, "Conditional Discharge Under G.S. 14-50.29"; **AOC-CR-627A**, "Conditional Discharge Under G.S. 90-96(a1)"; **AOC-CR-632A**, "Conditional Discharge Under G.S. 15A-1341(a4)"; or **AOC-CR-633A**, "Conditional Discharge Under G.S. 15A-1341(a5)"; **for offenses committed before Dec. 1, 2009.**

In addition to complying with the regular and any special conditions of probation set forth in the "Judgment Suspending Sentence" entered in the above case(s), the defendant shall also comply with the following special conditions of probation and conditions of special probation, which are defined as intermediate punishments by G.S. 15A-1340.11(6).

 **1. Special Probation - G.S. 15A-1351**

For the defendant's active sentence as a condition of special probation, the defendant shall comply with these additional regular conditions of probation: (1) Obey the rules and regulations of the Division of Prisons of the Department of Adult Correction and, if applicable, the Division of Juvenile Justice of the Department of Public Safety, governing the conduct of inmates while imprisoned. (2) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

A. Serve an active term of \_\_\_\_\_  days  months  hours in the custody of the  
 NC DAC.  Sheriff of this County.  Other: \_\_\_\_\_

(NOTE: Special probation may not be served in DAC for (i) a noncontinuous period or (ii) a misdemeanor. For a defendant under 18, any period of special probation must be served in the Division of Juvenile Justice of the Department of Public Safety.)

B. The defendant shall report in a sober condition to begin serving his/her term on:

Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	and shall remain in custody until:	Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM
-----	------	------	--	------------------------------------	-----	------	------	--

C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next \_\_\_\_\_ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered.

D. This term shall be served at the direction of the probation officer within \_\_\_\_\_ **n** days  months of this judgment.

E. Pay jail fees.  F. Work release is recommended.  G. Substance abuse treatment is recommended.

H. Other:

 **2. Residential Program - G.S. 15A-1340.11(8); 15A-1343(b1)(2)**

Attend or reside in \_\_\_\_\_ (name program) residential program for a period of \_\_\_\_\_ **n** days,  months, and abide by all rules and after care regulations of that program.  
 Other:

 **3. House Arrest With Electronic Monitoring - G.S. 15A-1340.11(4a); 15A-1343(b1)(3c)**

Be assigned to house arrest with electronic monitoring for a period of \_\_\_\_\_ **n** days,  months, and submit to electronic monitoring and abide by all rules, regulations, and directions of the probation officer, regarding electronic monitoring, and pay the fees prescribed under G.S. 15A-1343(c2) pursuant to the schedule set out under Monetary Conditions.

Other:

 **4. Intensive Supervision Program - G.S. 15A-1340.11(5); 15A-1343(b1)(3b); 143B-1454(c)**

Submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-1454(c), for a period of \_\_\_\_\_ months (6 to 9 months recommended by the Division of Community Supervision and Reentry), and comply with the rules adopted by that program.

Other:

 **5. Day Reporting Center - G.S. 15A-1340.11(3); 15A-1343(b1)(10); 15A-1340.11(6)**

Report as directed by the probation officer to the Day Reporting Center for a period of \_\_\_\_\_ **n** days,  months, and abide by all rules and regulations of that program.

Other:

 **6. Local Judicially Managed Accountability and Recovery Court - G.S. 15A-1340.11**

Comply with the rules of the program adopted pursuant to Chapter 7A, Article 62, of the General Statutes, and report on a regular basis as directed to participate in court supervision and any screening, evaluation, and treatment ordered by the court.

Other:

**MANDATORY SPECIAL CONDITIONS FOR SEX OFFENDERS AND PERSONS CONVICTED OF OFFENSES INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF A MINOR - G.S. 15A-1343(b2)**

**NOTE:** *The following are not defined as intermediate punishments under G.S. 15A-1340.11(6).*

**NOTE:** *Select only one of the three sets of conditions below.*

**1. Special Conditions For Reportable Convictions - G.S. 15A-1343(b2)**

**NOTE:** *Impose only for a reportable conviction under G.S. 14-208.6.*

The defendant has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4) and must

- a. Register as a sex offender and enroll in satellite-based monitoring if required on the attached AOC-CR-615, Side Two.
- b. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- c. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

**n** d. *(if the Court finds physical, mental, or sexual abuse of a minor)* Not reside in a household with

(1) *(for sexual abuse)* any minor child.

(2) *(for physical or mental abuse)* any minor child **n** other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household):* \_\_\_\_\_

e. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: **n** child pornography

f. Other: \_\_\_\_\_

**2. Special Conditions For Offenses Involving The Sexual Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** *Impose if offense involved sexual abuse of a minor but is not a reportable conviction.*

The defendant has been convicted of an offense involving the sexual abuse of a minor and must

- a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- c. Not reside in a household with any minor child. (G.S. 15A-1343(b2)(4))

d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

e. Other: \_\_\_\_\_

**3. Special Conditions For Offenses Involving The Physical Or Mental Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** *Impose if offense involved physical or mental abuse of a minor but is not a reportable conviction and did not involve sexual abuse.*

The defendant has been convicted of an offense involving the physical or mental abuse of a minor and must

- a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

c. Not reside in a household with

(1) any minor child.

(2) any minor child other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household):* \_\_\_\_\_

d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

e. Other: \_\_\_\_\_

**ADDITIONAL CONDITIONS FOR DOMESTIC VIOLENCE**

1. Pursuant to its finding that the defendant is responsible for acts of domestic violence, the Court further finds that:

**n** a. there is an abuser treatment program, approved by the Domestic Violence Commission, reasonably available to the defendant, who shall:

(1) *(for supervised probation)* attend and complete *(check one)*  *(program name)* \_\_\_\_\_

**n** a program to be identified by the probation officer, and abide by the program's rules. The probation officer shall send a copy of this judgment to the program, which shall notify the officer if the defendant fails to participate or is discharged for violating any of its rules.

(2) *(for unsupervised probation)* attend and complete *(check one)*  *(program name)* \_\_\_\_\_

**n** a program chosen by the defendant, who shall notify the program and the district attorney of that choice within ten (10) days of the entry of this judgment, and abide by the program's rules. The district attorney shall send a copy of this judgment to the program, which shall notify the district attorney if the defendant fails to participate or is discharged for failure to comply with the program or its rules.

**n** b. there is no approved abuser treatment program reasonably available.  c. it would not be in the best interests of justice to order the defendant to complete an abuser treatment program because \_\_\_\_\_

2. As additional Special Conditions of Probation, the defendant shall:

a. not come within \_\_\_\_\_ feet of \_\_\_\_\_ at any time.

b. comply fully with any G.S. Chapter 50B Domestic Violence Protective Order in effect.

The above conditions are incorporated in the "Judgment Suspending Sentence" in the above case(s) and made a part thereof.

Date

Name Of Presiding Judge (type or print)

Signature Of Presiding Judge

Material opposite unmarked squares is to be disregarded as surplusage.

**STATE OF NORTH CAROLINA**

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

**STATE VERSUS**

**ADDITIONAL FILE NO.(S) AND OFFENSE(S)**

Name Of Defendant

**NOTE:** Use this page in conjunction with all NCAOC judgment or probationary forms, to list additional offenses of conviction, deferred prosecution, or conditional discharge addressed in the court's order. There are no A, B, C, D, or other variations of this form, so this page can be used to continue an offense list from any of the related forms, for any date(s) of offense or conviction.

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

**\*NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

(Over)

		ADDITIONAL FILE NO.(S) AND OFFENSE(S)					
File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

**\*NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

# STATE OF NORTH CAROLINA

File No.

County \_\_\_\_\_ Seat of Court \_\_\_\_\_

(NOTE: This form should be used for only one DWI conviction. Multiple convictions sentenced under G.S. 20-179 may not be consolidated for judgment.)

In The General Court Of Justice

 District  Superior Court Division**STATE VERSUS****IMPAIRED DRIVING - JUDGMENT  
SUSPENDING SENTENCE**

(For Offenses Committed Dec. 1, 2009 - Nov. 30, 2011)

 **COMMITMENT ON SPECIAL PROBATION**

G.S. 20-179

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

Race \_\_\_\_\_ Sex \_\_\_\_\_ Drivers License No. \_\_\_\_\_ State \_\_\_\_\_ Date Of Birth \_\_\_\_\_

Date Of Offense \_\_\_\_\_ Attorney For State \_\_\_\_\_

 Def. Found Not Indigent  Def. Waived Attorney

Attorney For Defendant \_\_\_\_\_

 Appointed  Retained

Crt Rptr Initials \_\_\_\_\_

Offense  Impaired Driving (G.S. 20-138.1).  Impaired Driving in a commercial vehicle (G.S. 20-138.2).  Operating a commercial vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2A).  Operating a school bus, school activity bus, or child care vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2B).

The defendant was found guilty/responsible, pursuant to  plea  pursuant to *Alford* ( of no contest)  trial by judge  trial by jury, of the offense specified above. The Court, based upon the determinations shown on the attached Determination of Sentencing Factors form (AOC-CR-311, Rev. 12/07), has imposed the following punishment level.

 Level One.  Level Two.  Level Three.  Level Four.  Level Five.

The Court, having considered evidence, arguments of counsel and statement of defendant, ORDERS that defendant be imprisoned

for a minimum term of \_\_\_\_\_ for a maximum term of \_\_\_\_\_ in the custody of the Misdemeanant Confinement Program.

 This sentence shall run at the expiration of sentence imposed in file number \_\_\_\_\_.

The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this Judgment as a result of this charge  and as an inpatient at a facility operated or licensed by the State for the treatment of alcoholism or substance abuse after the commission of the above offense. Credit shall be applied against the  minimum and maximum terms above.  imprisonment for special probation below. (NOTE: No credit may be given for the first 24 hours spent in confinement.)

**SUSPENSION OF SENTENCE**

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on

 unsupervised probation for \_\_\_\_\_ months. supervised probation for \_\_\_\_\_ months, the Court having received evidence and having found as a fact that supervision is necessary.**SPECIAL PROBATION - G.S. 15A-1351** A. As a condition of special probation, the defendant shall serve an active term of \_\_\_\_\_  days  months  hours 1. in the custody of the Sheriff of this County.  and pay jail fees. 2. as an inpatient in (name treatment facility) \_\_\_\_\_, shall follow the rules of that facility until discharged, and shall not leave its premises except as authorized under those rules.**NOTE:** This term shall NOT be reduced by good time, gain time, or parole, or, unless provided above, by jail or treatment time. B. The defendant shall report in a sober condition to begin serving this term on: Day \_\_\_\_\_ Date \_\_\_\_\_ Hour \_\_\_\_\_  AM  PM and shall remain in custody until: Day \_\_\_\_\_ Date \_\_\_\_\_ Hour \_\_\_\_\_  AM  PM C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next \_\_\_\_\_ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered. D. This term shall be served at the direction of the probation officer within \_\_\_\_\_  days  months of this Judgment. E. Work release is recommended.  F. Substance abuse treatment is recommended.**MONETARY CONDITIONS**The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule  determined by the probation officer.  set out by the court as follows: \_\_\_\_\_

Costs	Fine	Restitution*	Attorney's Fees	Community Service Fee	EHA Fee/CAM Fee	Appt Fee/Misc	Total Amount Due
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

 The Court finds just cause to waive costs, as ordered on the attached  AOC-CR-618.  Other: \_\_\_\_\_**REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)****NOTE:** Any probationary judgment may be extended pursuant to G.S. 15A-1342.

The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device 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.

If the defendant is on supervised probation, the defendant shall also: (5) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (6) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(7) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (8) At a time to be designated by the probation officer, visit with the probation officer a facility maintained by the Division of Prisons of the Department of Adult Correction. (9) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the

defendant may be required to reimburse the Division of Community Supervision and Reentry of the Department of Adult Correction for the actual cost of drug screening and drug testing, if the results are positive. (10) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (11) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used. If the defendant is to serve an active sentence as a condition of special probation, the defendant shall also: (12) Obey the rules and regulations of the Division of Prisons of the Department of Adult Correction and, if applicable, the Division of Juvenile Justice of the Department of Public Safety, governing the conduct of inmates while imprisoned. (13) If placed on supervised probation above, report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

**SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1); 20-179**

- 14. Obtain a substance abuse assessment and all recommended education or treatment.
- 15. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles; and not operate a motor vehicle until the defendant's driving privilege is restored by that Division, except as may be permitted in a limited privilege.
- 16. Complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days of the period of probation, as directed by the judicial service coordinator. The fee prescribed by G.S. 143B-1483 is
  - not due because it is assessed in a case adjudicated during the same term of court.
  - to be paid  pursuant to the schedule set out under Monetary Conditions above  within \_\_\_\_\_ days of this Judgment and before beginning service.
- 17. Abstain from alcohol consumption for \_\_\_\_\_ days, as verified by a continuous alcohol monitoring system of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction.  The defendant shall pay to the Clerk the fees associated with the system, as set by the entity providing the system, but not to exceed a total cost of \$1,000.  The court finds, upon good cause shown, that the defendant should not be required to pay the costs of the continuous alcohol monitoring system and \_\_\_\_\_, the local government entity responsible for the incarceration of the defendant in the local confinement facility, has agreed to pay the costs of the system to the Clerk.
- 18. Other: \_\_\_\_\_

[Check any that apply - G.S. 20-179(r)]

- The probation officer may transfer the defendant to unsupervised probation upon completion of  the community service required by Special Condition No. 16 above.  payment of the "Total Amount Due" on the reverse.

**SPECIAL ALCOHOL CONCENTRATION FINDING**

- The defendant's alcohol concentration was 0.15 or greater.
- Other: \_\_\_\_\_

**ORDER OF COMMITMENT/APPEAL ENTRIES**

- 1. It is ORDERED that the Clerk deliver **two** certified copies of this Commitment on Special Probation to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order is modified as follows: \_\_\_\_\_  
**NOTE: Withdrawal of appeal or remand to District Court requires that a new sentencing hearing be scheduled in District Court, unless certain conditions are met. G.S. 20-38.7(c).**
- 3. The defendant gives notice of appeal from the judgment of the Superior Court to the appellate division. Appeal entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
------	---	------------------------------

**CERTIFICATION**

I certify that this Judgment and the attachment(s) marked below are true and complete copies of the originals.

- 1. Determination Of Sentencing Factors (AOC-CR-311, Rev. 12/07)  3. Other: \_\_\_\_\_
- 2. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
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**SEAL**

**NOTE TO CLERK: If the defendant's conviction is based on a violation of an offense involving impaired driving while the defendant's drivers license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, report DWI Defendant Registration Stop to DMV using menu item #9 in STARS. Also report the defendant's conviction to DMV in the usual manner. If there is a non-defendant vehicle owner, report registration stop to DMV using menu item #10 in STARS (unless the owner has been found to be an innocent owner).**

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

File No.

County Seat of Court

NOTE: [Use AOC-CR-310 for DWI offense(s).]

In The General Court Of Justice

District Superior Court Division

STATE VERSUS

JUDGMENT SUSPENDING SENTENCE - FELONY PUNISHMENT: COMMUNITY INTERMEDIATE (STRUCTURED SENTENCING) (For Offenses Committed Dec. 1, 2009 - Nov. 30, 2011)

G.S. 15A-1341, -1342, -1343, -1343.2, -1346

Name Of Defendant, Race, Sex, Date Of Birth, Attorney For State, Def. Found Not Indigent, Def. Waived Attorney

Attorney For Defendant, Appointed, Retained, Cr Rptr Initials

The defendant was found guilty/responsible, pursuant to plea (n) pursuant to Alford) ( of no contest) trial by judge trial by jury, of

Table with columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., F/M, CL., \*Pun. CL.

\*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

The Court 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission to this issue. 2. makes no prior record level finding because none is required.

PRIOR RECORD LEVEL: I III V II IV VI

The Court (NOTE: Block 1 or 2 MUST be checked.):

- 1. makes no written findings because the prison term imposed is within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).
2. makes the Determination of aggravating and mitigating factors on the attached AOC-CR-605.
3. makes the Findings of Extraordinary Mitigation set forth on the attached AOC-CR-606.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be a habitual felon to be sentenced as a Class C felon.
6. finds enhancement pursuant to: G.S. 90-95(e)(3) (drugs). G.S. 14-3(c) (hate crime). G.S. 50B-4.1 (domestic violence). G.S. 14-50.22 (gang misdemeanor). Other: This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission.
7. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603B, Page Two, Side Two, and makes the additional findings and orders on the attached AOC-CR-615, Side Two.
8. finds the above-captioned offense(s) involved the (check all that apply) physical or mental sexual abuse of a minor. (if No. 7 not found) and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603B, Page Two, Side Two.
9. finds that a motor vehicle commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
10. finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
11. finds the above-designated offense(s) involved criminal street gang activity. G.S. 14-50.25.
12. finds that the defendant refused to consent to conditional discharge under G.S. 90-96(a).
13. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
14. finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be imprisoned

for a minimum term of months for a maximum term of months in the custody of the NC DAC.

This sentence shall run at the expiration of sentence imposed in file number

The defendant shall be given credit for days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the sentence imposed above. imprisonment required for special probation set forth on AOC-CR-603B, Page Two.

SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on supervised unsupervised probation for months.

- 1. The Court finds that a longer shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).
2. The Court finds that it is NOT appropriate to delegate to the Division of Community Supervision and Reentry the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment.
3. This period of probation shall begin when the defendant is released from incarceration at the expiration of the sentence in the case below.

Table with columns: File No., Offense, County, Court, Date

- 4. The defendant shall comply with the conditions set forth in file number
5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)

MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule determined by the probation officer. set out by the court as follows:

Table with columns: Costs, Fine, Restitution\*, Attorney's Fees, Comm Serv Fee, EHA Fee, SBM Fee, Appt Fee/Misc, Total Amount Due

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

- The Court finds just cause to waive costs, as ordered on the attached AOC-CR-618. Other:
Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.

Material opposite unmarked squares is to be disregarded as surplusage. (Over)



**REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)**

**NOTE:** Any probationary judgment may be extended pursuant to G.S. 15A-1342. The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device, or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or 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.

If the defendant is on supervised probation, the defendant shall also: (5) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (6) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (7) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (8) At a time to be designated by the probation officer, visit with the probation officer a facility maintained by the Division of Prisons of the Department of Adult Correction. (9) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the defendant may be required to reimburse the Division of Community Supervision and Reentry of the Department of Adult Correction for the actual cost of drug screening and drug testing, if the results are positive. (10) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (11) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

12. The Court finds that the defendant is responsible for acts of domestic violence and therefore makes the additional findings and orders on the attached AOC-CR-603B, Page Two, Side Two.

**SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1), 143B-1454(c)**

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:

- 13. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of \_\_\_\_\_ or until relicensed by the Division of Motor Vehicles, whichever is later.
- 14. Successfully pass the General Education Development Test (G.E.D.) during the first \_\_\_\_\_ months of the period of probation.
- 15. Complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-1483 is  not due because it is assessed in a case adjudicated during the same term of court.  to be paid  pursuant to the schedule set out under Monetary Conditions on the reverse.  within \_\_\_\_\_ days of this Judgment and before beginning service.
- 16. Report for initial evaluation by \_\_\_\_\_, participate in all further evaluation, counseling, treatment, or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.
- 17. Not assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with \_\_\_\_\_. "Contact" includes any defendant-initiated contact, direct or indirect, by any means, including, but not limited to, telephone, personal contact, e-mail, pager, gift-giving, telefacsimile machine or through any other person, except \_\_\_\_\_.
- 18. Other: \_\_\_\_\_

19. Comply with the Special Conditions Of Probation which are set forth on AOC-CR-603B, Page Two.

**ORDER OF COMMITMENT/APPEAL ENTRIES**

- 1. 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 to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

<i>Date</i>	<i>Name Of Presiding Judge (type or print)</i>	<i>Signature Of Presiding Judge</i>
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**CERTIFICATION**

I certify that this Judgment and the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Appellate Entries (AOC-CR-350)</li> <li><input type="checkbox"/> 2. Judgment Suspending Sentence (AOC-CR-603B, Page Two) (additional conditions of probation)</li> <li><input type="checkbox"/> 3. Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)</li> <li><input type="checkbox"/> 4. Extraordinary Mitigation Findings (AOC-CR-606)</li> <li><input type="checkbox"/> 5. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> 6. Judicial Findings As To Required DNA Sample (AOC-CR-319)</li> <li><input type="checkbox"/> 7. Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-615, Side Two)</li> <li><input type="checkbox"/> 8. Convicted Sex Offender Permanent No Contact Order (AOC-CR-620)</li> <li><input type="checkbox"/> 9. Additional File No.(s) And Offense(s) (AOC-CR-626)</li> <li><input type="checkbox"/> 10. Other: _____</li> </ul> |
|---|--|

<i>Date</i>	<i>Date Certified Copies Delivered To Sheriff</i>	<i>Signature Of Clerk</i>	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC	<b>SEAL</b>
			<input type="checkbox"/> Clerk Of Superior Court	

Material opposite unmarked squares is to be disregarded as surplusage.

Name Of Defendant

## INTERMEDIATE PUNISHMENTS

**NOTE:** Use this page with **AOC-CR-603B**, "Judgment Suspending Sentence - Felony"; **AOC-CR-604B**, "Judgment Suspending Sentence - Misdemeanor"; **AOC-CR-619B**, "Conditional Discharge Under G.S. 90-96(a)"; **AOC-CR-621B**, "Conditional Discharge Under G.S. 14-50.29"; **AOC-CR-627B**, "Conditional Discharge Under G.S. 90-96(a1)"; **AOC-CR-632B**, "Conditional Discharge Under G.S. 15A-1341(a4)"; or **AOC-CR-633B**, "Conditional Discharge Under G.S. 15A-1341(a5)"; **for offenses committed from Dec. 1, 2009 through Nov. 30, 2011.**

In addition to complying with the regular and any special conditions of probation set forth in the "Judgment Suspending Sentence" entered in the above case(s), the defendant shall also comply with the following special conditions of probation and conditions of special probation, which are defined as intermediate punishments by G.S. 15A-1340.11(6).

 **1. Special Probation - G.S. 15A-1351**

For the defendant's active sentence as a condition of special probation, the defendant shall comply with these additional regular conditions of probation:

(1) Obey the rules and regulations of the Division of Prisons of the Department of Adult Correction and, if applicable, the Division of Juvenile Justice of the Department of Public Safety, governing the conduct of inmates while imprisoned. (2) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

A. Serve an active term of \_\_\_\_\_  days  months  hours in the custody of the

NC DAC.  Sheriff of this County.  Other: \_\_\_\_\_

(NOTE: Special probation may not be served in DAC for (i) a noncontinuous period or (ii) a misdemeanor. For a defendant under 18, any period of special probation must be served in the Division of Juvenile Justice of the Department of Public Safety.)

B. The defendant shall report in a sober condition to begin serving his/her term on:

Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	and shall remain in custody until:	Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM
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C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next \_\_\_\_\_ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered.

D. This term shall be served at the direction of the probation officer within \_\_\_\_\_ **n** days  months of this judgment.

E. Pay jail fees.  F. Work release is recommended.  G. Substance abuse treatment is recommended.

H. Other:

 **2. Residential Program - G.S. 15A-1340.11(8); 15A-1343(b1)(2)**

Attend or reside in \_\_\_\_\_ (name program) residential program for a period of \_\_\_\_\_  days,  months, and abide by all rules and after care regulations of that program.

Other:

 **3. House Arrest With Electronic Monitoring - G.S. 15A-1340.11(4a); 15A-1343(b1)(3c)**

Be assigned to house arrest and electronic monitoring and remain at the defendant's residence for a period of \_\_\_\_\_ **n** days,  months, abide by all rules, regulations, and directions of the probation officer regarding such monitoring, and pay the fees prescribed in G.S. 15A-1343(c2) as provided under Monetary Conditions. The defendant may leave the residence for the following purpose(s) and as otherwise permitted by the defendant's probation officer:  employment  counseling  a course of study  vocational training.

Other:

 **4. Intensive Supervision - G.S. 15A-1340.11(5); 15A-1343(b1)(3b); 143B-1454(c)**

Submit to intensive supervision pursuant to G.S. 143B-1454(c), for a period of \_\_\_\_\_ months (6 to 9 months recommended by the Division of Community Supervision and Reentry) and comply with the rules adopted for such supervision by the Division of Community Supervision and Reentry.

Other:

 **5. Day Reporting Center - G.S. 15A-1340.11(3); 15A-1343(b1)(10); 15A-1340.11(6)**

Report as directed by the probation officer to the Day Reporting Center for a period of \_\_\_\_\_ **n** days,  months, and abide by all rules and regulations of that program.

Other:

 **6. Local Judicially Managed Accountability and Recovery Court - G.S. 15A-1340.11**

Comply with the rules of the program adopted pursuant to Chapter 7A, Article 62, of the General Statutes, and report on a regular basis as directed to participate in court supervision and any screening, evaluation, and treatment ordered by the court.

Other:

## INTERMEDIATE CONDITIONS OF PROBATION - G.S. 15A-1343(b4)

If subject to intermediate punishment, the defendant shall, in addition to the terms and conditions imposed above, comply with the following intermediate conditions of probation.

(1) If required by the defendant's probation officer, perform community service under the supervision of the Division of Community Supervision and Reentry, and pay the fee required by G.S. 143B-1483, but no fee shall be due if the Court imposed community service as a special condition of probation and assessed the fee in this judgment or any judgment for an offense adjudicated in the same term of court. (2) Not use, possess, or control alcohol. (3) Remain within the defendant's county of residence unless granted written permission to leave by the court or the defendant's probation officer. (4) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments by abiding by the rules, regulations, and direction of each program.

Material opposite unmarked squares is to be disregarded as surplusage.

(Over)

**MANDATORY SPECIAL CONDITIONS FOR SEX OFFENDERS AND PERSONS CONVICTED OF OFFENSES INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF A MINOR - G.S. 15A-1343(b2)**

**NOTE:** *The following are not defined as intermediate punishments under G.S. 15A-1340.11(6).*

**NOTE:** *Select only one of the three sets of conditions below.*

**1. Special Conditions For Reportable Convictions - G.S. 15A-1343(b2)**

**NOTE:** *Impose only for a reportable conviction under G.S. 14-208.6.*

The defendant has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4) and must

- a. Register as a sex offender and enroll in satellite-based monitoring if required on the attached AOC-CR-615, Side Two.
- b. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- c. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

**n** d. *(if the Court finds physical, mental, or sexual abuse of a minor)* Not reside in a household with

(1) *(for sexual abuse)* any minor child.

(2) *(for physical or mental abuse)* any minor child **n** other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household):* \_\_\_\_\_

e. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: **n** child pornography

f. Other: \_\_\_\_\_

**2. Special Conditions For Offenses Involving The Sexual Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** *Impose if offense involved sexual abuse of a minor but is not a reportable conviction.*

The defendant has been convicted of an offense involving the sexual abuse of a minor and must

- a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- c. Not reside in a household with any minor child. (G.S. 15A-1343(b2)(4))

d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

e. Other: \_\_\_\_\_

**3. Special Conditions For Offenses Involving The Physical Or Mental Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** *Impose if offense involved physical or mental abuse of a minor but is not a reportable conviction and did not involve sexual abuse.*

The defendant has been convicted of an offense involving the physical or mental abuse of a minor and must

- a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- c. Not reside in a household with

(1) any minor child.

(2) any minor child other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household):* \_\_\_\_\_

d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

e. Other: \_\_\_\_\_

**ADDITIONAL CONDITIONS FOR DOMESTIC VIOLENCE**

1. Pursuant to its finding that the defendant is responsible for acts of domestic violence, the Court further finds that:

**n** a. there is an abuser treatment program, approved by the Domestic Violence Commission, reasonably available to the defendant, who shall:

(1) *(for supervised probation)* attend and complete *(check one)*  *(program name)* \_\_\_\_\_

**n** a program to be identified by the probation officer, and abide by the program's rules. The probation officer shall send a copy of this judgment to the program, which shall notify the officer if the defendant fails to participate or is discharged for violating any of its rules.

(2) *(for unsupervised probation)* attend and complete *(check one)*  *(program name)* \_\_\_\_\_

**n** a program chosen by the defendant, who shall notify the program and the district attorney of that choice within ten (10) days of the entry of this judgment, and abide by the program's rules. The district attorney shall send a copy of this judgment to the program, which shall notify the district attorney if the defendant fails to participate or is discharged for failure to comply with the program or its rules.

**n** b. there is no approved abuser treatment program reasonably available.  c. it would not be in the best interests of justice to order the defendant to complete an abuser treatment program because \_\_\_\_\_

2. As additional Special Conditions of Probation, the defendant shall:

a. not come within \_\_\_\_\_ feet of \_\_\_\_\_ at any time.

b. comply fully with any G.S. Chapter 50B Domestic Violence Protective Order in effect.

The above conditions are incorporated in the "Judgment Suspending Sentence" in the above case(s) and made a part thereof.

Date

Name Of Presiding Judge (type or print)

Signature Of Presiding Judge

Material opposite unmarked squares is to be disregarded as surplusage.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District     Superior Court Division

**STATE VERSUS**

**ADDITIONAL FILE NO.(S) AND OFFENSE(S)**

Name Of Defendant

**NOTE:** Use this page in conjunction with all NCAOC judgment or probationary forms, to list additional offenses of conviction, deferred prosecution, or conditional discharge addressed in the court's order. There are no A, B, C, D, or other variations of this form, so this page can be used to continue an offense list from any of the related forms, for any date(s) of offense or conviction.

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

**\*NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

(Over)

		ADDITIONAL FILE NO.(S) AND OFFENSE(S)					
File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

**\*NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

# STATE OF NORTH CAROLINA

File No.

County \_\_\_\_\_ Seat of Court \_\_\_\_\_

(NOTE: This form should be used for only one DWI conviction. Multiple convictions sentenced under G.S. 20-179 may not be consolidated for judgment.)

In The General Court Of Justice

 District  Superior Court Division**STATE VERSUS****IMPAIRED DRIVING - JUDGMENT  
SUSPENDING SENTENCE**

(For Offenses Committed Dec. 1, 2011 - Nov. 30, 2016)

 **COMMITMENT ON SPECIAL PROBATION**

G.S. 20-179

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

Race \_\_\_\_\_ Sex \_\_\_\_\_ Drivers License No. \_\_\_\_\_ State \_\_\_\_\_ Date Of Birth \_\_\_\_\_

Date Of Offense \_\_\_\_\_ Attorney For State \_\_\_\_\_

 Def. Found Not Indigent  Def. Waived Attorney

Attorney For Defendant \_\_\_\_\_

 Appointed  Retained

Crt Rptr Initials \_\_\_\_\_

Offense  Impaired Driving (G.S. 20-138.1).  Impaired Driving in a commercial vehicle (G.S. 20-138.2).  Operating a commercial vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2A).  Operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2B).

The defendant was found guilty/responsible, pursuant to  plea  pursuant to *Alford* ( of no contest)  trial by judge  trial by jury, of the offense specified above. The Court, based upon the determinations shown on the attached Determination of Sentencing Factors form (AOC-CR-311, Rev. 12/15), has imposed the following punishment level.

 Aggravated Level One.  Level One.  Level Two.  Level Three.  Level Four.  Level Five.

The Court, having considered evidence, arguments of counsel and statement of defendant, ORDERS that defendant be imprisoned

for a minimum term of \_\_\_\_\_ for a maximum term of \_\_\_\_\_ in the custody of the Misdemeanant Confinement Program.

 This sentence shall run at the expiration of sentence imposed in file number \_\_\_\_\_.

The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this Judgment as a result of this charge  and as an inpatient at a facility operated or licensed by the State for the treatment of alcoholism or substance abuse after the commission of the above offense. Credit shall be applied against the  minimum and maximum terms above.  imprisonment for special probation below. (NOTE: No credit may be given for the first 24 hours spent in confinement.)

**SUSPENSION OF SENTENCE**

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on

 unsupervised probation for \_\_\_\_\_ months. supervised probation for \_\_\_\_\_ months, the Court having received evidence and having found as a fact that supervision is necessary.**SPECIAL PROBATION - G.S. 15A-1351** A. As a condition of special probation, the defendant shall serve an active term of \_\_\_\_\_  days  months  hours 1. in the custody of the Sheriff of this County.  and pay jail fees. 2. as an inpatient in (name treatment facility) \_\_\_\_\_, shall follow the rules of that facility until discharged, and shall not leave its premises except as authorized under those rules.**NOTE: This term shall NOT be reduced by good time, gain time, or parole, or, unless provided above, by jail or treatment time.** B. The defendant shall report in a sober condition to begin serving this term on: 

Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM
-----	------	------	--

 and shall remain in custody until: 

Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM
-----	------	------	--

 C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next \_\_\_\_\_ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered. D. This term shall be served at the direction of the probation officer within \_\_\_\_\_  days  months of this Judgment. E. Work release is recommended.  F. Substance abuse treatment is recommended.**MONETARY CONDITIONS**The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule  determined by the probation officer.  set out by the court as follows: \_\_\_\_\_

Costs	Fine	Restitution*	Attorney's Fees	Community Service Fee	EHA Fee/CAM Fee	Appt Fee/Misc	Total Amount Due
\$	\$	\$	\$	\$	\$	\$	\$

**NOTE: In addition to all other costs, G.S. 7A-304(a)(10) requires a fee of \$100.00 for a conviction of any of the four offenses sentenced on this form.**

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

 The Court finds just cause to waive costs, as ordered on the attached  AOC-CR-618.  Other: \_\_\_\_\_**REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)****NOTE: Any probationary judgment may be extended pursuant to G.S. 15A-1342.**

The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or 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.

If the defendant is on supervised probation, the defendant shall also: (5) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer. (6) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (7) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (8) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (9) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be

Original - File Copy - DMV  
Material opposite unmarked squares is to be disregarded as surplusage.  
(Over)

required to submit to any other search that would otherwise be unlawful. (10) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (11) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used. (12) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Community Supervision and Reentry of the Department of Adult Correction for the actual costs of drugs or alcohol screening and testing.

If the defendant is to serve an active sentence as a condition of special probation, the defendant shall also: (13) Obey the rules and regulations of the Division of Prisons of the Department of Adult Correction and, if applicable, the Division of Juvenile Justice of the Department of Public Safety, governing the conduct of inmates while imprisoned. (14) If placed on supervised probation above, report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

**SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1); 20-179**

- 15. Obtain a substance abuse assessment and all recommended education or treatment.
- 16. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles; and not operate a motor vehicle until the defendant's driving privilege is restored by that Division, except as may be permitted in a limited privilege.
- 17. Complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days of the period of probation, as directed by the judicial service coordinator. The fee prescribed by G.S. 143B-1483 is
  - not due because it is assessed in a case adjudicated during the same term of court.
  - to be paid  pursuant to the schedule set out under Monetary Conditions above  within \_\_\_\_\_ days of this Judgment and before beginning service.
- 18. Abstain from alcohol consumption for \_\_\_\_\_  days,  months, as verified by a continuous alcohol monitoring (CAM) system.
  - a. (offenses committed prior to December 1, 2012, only) The defendant shall pay to the Clerk the fees associated with the system.
  - b. (offenses committed on or after December 1, 2012) The fees for the system shall be paid directly to the monitoring provider by  the defendant.  \_\_\_\_\_, the local government entity responsible for the defendant's incarceration in the local confinement facility, upon the Court's finding, for good cause shown, that the defendant should not be required to pay the fees and the local government's agreement to pay them.
  - c. (Levels 1 and 2, only, for offenses committed on or after December 1, 2012) The defendant shall be given credit against this period of abstinence and monitoring for (maximum of 60) \_\_\_\_\_ days spent on CAM prior to trial.
- 19. Other:

[Check any that apply - G.S. 20-179(r)]

- The probation officer may transfer the defendant to unsupervised probation upon completion of  the community service required by Special Condition No. 17 above.  payment of the "Total Amount Due" on the reverse.

**SPECIAL ALCOHOL CONCENTRATION FINDING**

- The defendant's alcohol concentration was 0.15 or greater.  Other: \_\_\_\_\_.

**ORDER OF COMMITMENT/APEAL ENTRIES**

- 1. It is ORDERED that the Clerk deliver **two** certified copies of this Commitment on Special Probation to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order is modified as follows: \_\_\_\_\_  
**NOTE: Withdrawal of appeal or remand to District Court requires that a new sentencing hearing be scheduled in District Court, unless certain conditions are met. G.S. 20-38.7(c).**
- 3. The defendant gives notice of appeal from the judgment of the Superior Court to the appellate division. Appeal entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
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**CERTIFICATION**

I certify that this Judgment and the attachment(s) marked below are true and complete copies of the originals.

- 1. Determination Of Sentencing Factors (AOC-CR-311, Rev. 12/15)  3. Other: \_\_\_\_\_
- 2. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
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**SEAL**

**NOTE TO CLERK: If the defendant's conviction is based on a violation of an offense involving impaired driving while the defendant's drivers license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, report DWI Defendant Registration Stop to DMV using menu item #9 in STARS. Also report the defendant's conviction to DMV in the usual manner. If there is a non-defendant vehicle owner, report registration stop to DMV using menu item #10 in STARS (unless the owner has been found to be an innocent owner).**

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

File No.

County Seat of Court

NOTE: [Use AOC-CR-310 for DWI offense(s).]

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

JUDGMENT SUSPENDING SENTENCE - FELONY
PUNISHMENT: COMMUNITY INTERMEDIATE
(STRUCTURED SENTENCING)
(For Offenses Committed Dec. 1, 2011 - Nov. 30, 2016)

G.S. 15A-1341, -1342, -1343, -1343.2, -1346

Name Of Defendant
Race Sex Date Of Birth

Attorney For State
Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant
Appointed Retained Cr Rptr Initials

The defendant was found guilty/responsible, pursuant to plea (pursuant to Alford) (of no contest) trial by judge trial by jury, of

Table with columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., F/M, CL., \*Pun. CL.

\*NOTE: Enter punishment class if different from underlying offense class...
The Court 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be...
Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission to this issue.
2. makes no prior record level finding because none is required.

PRIOR RECORD LEVEL: I III V II IV VI

- The Court (NOTE: Block 1 or 2 MUST be checked.):
1. makes no written findings because the prison term imposed is within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).
2. makes the Determination of aggravating and mitigating factors on the attached AOC-CR-605.
3. makes the Findings of Extraordinary Mitigation set forth on the attached AOC-CR-606.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be (check only one) a habitual felon to be sentenced four classes higher than the principal felony (no higher than Class C).
6. finds enhancement pursuant to: G.S. 90-95(e)(3) (drugs). G.S. 14-3(c) (hate crime). G.S. 50B-4.1 (domestic violence). G.S. 14-50.22 (gang misdemeanor). Other: This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission.
7. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603C, Page Two, Side Two, and makes the additional findings and orders on the attached AOC-CR-615, Side Two.
8. finds the above-captioned offense(s) involve the (check all that apply) physical or mental sexual abuse of a minor. (If No. 7 not found) and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603C, Page Two, Side Two.
9. finds that a motor vehicle commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
10. finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
11. finds the above-designated offense(s) involved criminal street gang activity. G.S. 14-50.25.
12. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) the defendant refused to consent. (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.
13. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
14. finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be imprisoned for a minimum term of months for a maximum term of months in the custody of the NC DAC.

This sentence shall run at the expiration of sentence imposed in file number

The defendant shall be given credit for days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the sentence imposed above. imprisonment required for special probation set forth on AOC-CR-603C, Page Two.

SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on supervised unsupervised probation for months.

- 1. The Court finds that a longer shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).
2. The Court finds that it is NOT appropriate to delegate to the Division of Community Supervision and Reentry the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment.
3. This period of probation shall begin when the defendant is released from incarceration at the expiration of the sentence in the case below.
4. The defendant shall comply with the conditions set forth in file number
5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)

Table with columns: File No., Offense, County, Court, Date

MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule determined by the probation officer. set out by the court as follows:

Table with columns: Costs, Fine, Restitution\*, Attorney's Fees, Comm Serv Fee, EHA Fee, SBM Fee, Appt Fee/Misc, Total Amount Due

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.
The Court finds just cause to waive costs, as ordered on the attached AOC-CR-618. Other:
Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.
AOC-CR-603C, Rev. 1/23, © 2023 Administrative Office of the Courts



**REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)**

**NOTE:** Any probationary judgment may be extended pursuant to G.S. 15A-1342. The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device, or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or 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. If the defendant is on supervised probation, the defendant shall also: (5) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer. (6) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (7) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (8) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (9) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful. (10) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (11) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used. (12) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Community Supervision and Reentry of the Department of Adult Correction for the actual costs of drug or alcohol screening and testing.

13. The Court finds that the defendant is responsible for acts of domestic violence and therefore makes the additional findings and orders on the attached AOC-CR-603C, Page Two, Side Two.

**SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1)**

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:

- 14. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of \_\_\_\_\_ or until relicensed by the Division of Motor Vehicles, whichever is later.
- 15. Successfully pass the General Education Development Test (G.E.D.) during the first \_\_\_\_\_ months of the period of probation.
- 16. Complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-1483 is  not due because it is assessed in a case adjudicated during the same term of court.  to be paid  pursuant to the schedule set out under Monetary Conditions on the reverse.  within \_\_\_\_\_ days of this Judgment and before beginning service.
- 17. Report for initial evaluation by \_\_\_\_\_, participate in all further evaluation, counseling, treatment, or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.
- 18. Not assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with \_\_\_\_\_. "Contact" includes any defendant-initiated contact, direct or indirect, by any means, including, but not limited to, telephone, personal contact, e-mail, pager, gift-giving, telefacsimile machine or through any other person, except \_\_\_\_\_.
- 19. (for offenses committed on or after December 1, 2012) Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of \_\_\_\_\_  days,  months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
- 20. Other:

21. Comply with the Special Conditions Of Probation which are set forth on AOC-CR-603C, Page Two.

**ORDER OF COMMITMENT/APPEAL ENTRIES**

- 1. 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 to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

<i>Date</i>	<i>Name Of Presiding Judge (type or print)</i>	<i>Signature Of Presiding Judge</i>
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**CERTIFICATION**

I certify that this Judgment and the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Appellate Entries (AOC-CR-350)</li> <li><input type="checkbox"/> 2. Judgment Suspending Sentence (AOC-CR-603C, Page Two) (additional conditions of probation)</li> <li><input type="checkbox"/> 3. Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)</li> <li><input type="checkbox"/> 4. Extraordinary Mitigation Findings (AOC-CR-606)</li> <li><input type="checkbox"/> 5. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> 6. Judicial Findings As To Required DNA Sample (AOC-CR-319)</li> <li><input type="checkbox"/> 7. Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-615, Side Two)</li> <li><input type="checkbox"/> 8. Convicted Sex Offender Permanent No Contact Order (AOC-CR-620)</li> <li><input type="checkbox"/> 9. Additional File No.(s) And Offense(s) (AOC-CR-626)</li> <li><input type="checkbox"/> 10. Other: _____</li> </ul> |
|---|--|

<i>Date</i>	<i>Date Certified Copies Delivered To Sheriff</i>	<i>Signature Of Clerk</i>	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
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**SEAL**

Material opposite unmarked squares is to be disregarded as surplusage.

STATE VERSUS

File No.

Name Of Defendant

NOTE: Use this page with AOC-CR-603C, "Judgment Suspending Sentence - Felony"; AOC-CR-604C, "Judgment Suspending Sentence - Misdemeanor"; AOC-CR-619C, "Conditional Discharge Under G.S. 90-96(a)"; AOC-CR-621C, "Conditional Discharge Under G.S. 14-50.29"; AOC-CR-627C, "Conditional Discharge Under G.S. 90-96(a1)"; AOC-CR-628C, "Conditional Discharge Under G.S. 14-204(b)"; AOC-CR-632C, "Conditional Discharge Under G.S. 15A-1341(a4)"; or AOC-CR-633C, "Conditional Discharge Under G.S. 15A-1341(a5)"; for offenses committed from Dec. 1, 2011, through Nov. 30, 2016.

COMMUNITY AND INTERMEDIATE PROBATION CONDITIONS - G.S. 15A-1343(a1)

In addition to complying with the regular and any special conditions of probation set forth in the "Judgment Suspending Sentence" entered in the above case(s), the defendant shall also comply with the following conditions of probation, which may be imposed for any community or intermediate punishment.

- 1. Submit to house arrest with electronic monitoring, remain at the defendant's residence for a period of \_\_\_ days, \_\_\_ months, abide by all rules, regulations, and directions of the probation officer regarding such monitoring, and pay the fees prescribed in G.S. 15A-1343(c) as provided under Monetary Conditions. The defendant may leave the residence for the following purpose(s) and as otherwise permitted by the probation officer: \_\_\_ employment \_\_\_ counseling \_\_\_ a course of study \_\_\_ vocational training. Other:
2. Complete \_\_\_ hours of community service during the first \_\_\_ days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-1483 is \_\_\_ not due because it is assessed in a case adjudicated during the same term of court. \_\_\_ to be paid \_\_\_ pursuant to the schedule set out under Monetary Conditions in the "Judgment Suspending Sentence." \_\_\_ within \_\_\_ days of this Judgment and before beginning service. Other:
3. Submit to the following period(s) of confinement in the custody of the \_\_\_ Sheriff of this County. \_\_\_ (other local confinement facility). \_\_\_ and pay jail fees. The defendant shall report in a sober condition to serve the term(s) indicated below. NOTE: Periods of confinement imposed here must be for two-day or three-day consecutive periods, only, for no more than six days in a single month, and in no more than three separate months during the period of probation. To impose special probation under G.S. 15A-1351, see INTERMEDIATE PUNISHMENTS, below.

Table with 3 columns: Date, Hour, AM/PM, for, 2/3 days. Multiple rows for specifying confinement periods.

- 4. Obtain a substance abuse assessment, monitoring, or treatment as follows:
5. (for offenses committed on or after December 1, 2012) Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of \_\_\_ days, \_\_\_ months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
6. Participate in an educational or vocational skills development program as follows:
7. Submit to satellite-based monitoring, if required on the attached AOC-CR-615, Side Two.

INTERMEDIATE PUNISHMENTS

In addition to complying with the regular and any special, community, or intermediate conditions of probation set forth in the "Judgment Suspending Sentence" or herein for the above case(s), the defendant shall also comply with the following intermediate punishment(s) under G.S. 15A-1340.11(6).

- 1. Special Probation - G.S. 15A-1351
For the defendant's active sentence as a condition of special probation, the defendant shall comply with these additional regular conditions of probation:
(1) Obey the rules and regulations of the Division of Prisons of the Department of Adult Correction and, if applicable, the Division of Juvenile Justice of the Department of Public Safety, governing the conduct of inmates while imprisoned. (2) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.
A. Serve an active term of \_\_\_ days \_\_\_ months \_\_\_ hours in the custody of the \_\_\_ NC DAC. \_\_\_ Sheriff of this County. \_\_\_ Other:
(NOTE: Special probation may not be served in DAC for (i) a noncontinuous period or (ii) a misdemeanor. For a defendant under 18, any period of special probation must be served in the Division of Juvenile Justice of the Department of Public Safety.)
B. The defendant shall report in a sober condition to begin serving his/her term on:
Day Date Hour AM/PM and shall remain in custody until: Day Date Hour AM/PM
C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next \_\_\_ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered.
D. This term shall be served at the direction of the probation officer within \_\_\_ days \_\_\_ months of this judgment.
E. Pay jail fees. F. Work release is recommended. G. Substance abuse treatment is recommended.
H. Other:
2. Local Judicially Managed Accountability and Recovery Court - G.S. 15A-1340.11
Comply with the rules of the program adopted pursuant to Chapter 7A, Article 62, of the General Statutes, and report on a regular basis as directed to participate in court supervision and any screening, evaluation, and treatment ordered by the court. Other:

INTERMEDIATE CONDITIONS OF PROBATION - G.S. 15A-1343(b4)

If subject to intermediate punishment, the defendant shall, in addition to the terms and conditions imposed above, comply with the following intermediate conditions of probation. (1) If required by the defendant's probation officer, perform community service under the supervision of the Division of Community Supervision and Reentry, and pay the fee required by G.S. 143B-1483, but no fee shall be due if the Court imposed community service as a special condition of probation and assessed the fee in this judgment or any judgment for an offense adjudicated in the same term of court. (2) Not use, possess, or control alcohol. (3) Remain within the defendant's county of residence unless granted written permission to leave by the court or the defendant's probation officer. (4) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments by abiding by the rules, regulations, and direction of each program.

Material opposite unmarked squares is to be disregarded as surplusage. (Over)

**MANDATORY SPECIAL CONDITIONS FOR SEX OFFENDERS AND PERSONS CONVICTED OF OFFENSES INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF A MINOR - G.S. 15A-1343(b2)**

**NOTE:** *The following are not defined as intermediate punishments under G.S. 15A-1340.11(6).*

**NOTE:** *Select only one of the three sets of conditions below.*

**1. Special Conditions For Reportable Convictions - G.S. 15A-1343(b2)**

**NOTE:** *Impose only for a reportable conviction under G.S. 14-208.6.*

The defendant has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4) and must

- a. Register as a sex offender and enroll in satellite-based monitoring if required on the attached AOC-CR-615, Side Two.
- b. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- c. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

d. *(if the Court finds physical, mental, or sexual abuse of a minor)* Not reside in a household with

(1) *(for sexual abuse)* any minor child.

(2) *(for physical or mental abuse)* any minor child  other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household):* \_\_\_\_\_

e. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

f. Other: \_\_\_\_\_

**2. Special Conditions For Offenses Involving The Sexual Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** *Impose if offense involved sexual abuse of a minor but is not a reportable conviction.*

The defendant has been convicted of an offense involving the sexual abuse of a minor and must

- a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- c. Not reside in a household with any minor child. (G.S. 15A-1343(b2)(4))

d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

e. Other: \_\_\_\_\_

**3. Special Conditions For Offenses Involving The Physical Or Mental Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** *Impose if offense involved physical or mental abuse of a minor but is not a reportable conviction and did not involve sexual abuse.*

The defendant has been convicted of an offense involving the physical or mental abuse of a minor and must

- a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

c. Not reside in a household with

(1) any minor child.

(2) any minor child other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household):* \_\_\_\_\_

d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

e. Other: \_\_\_\_\_

**ADDITIONAL CONDITIONS FOR DOMESTIC VIOLENCE**

1. Pursuant to its finding that the defendant is responsible for acts of domestic violence, the Court further finds that:

a. there is an abuser treatment program, approved by the Domestic Violence Commission, reasonably available to the defendant, who shall:

(1) *(for supervised probation)* attend and complete *(check one)*  *(program name)* \_\_\_\_\_

a program to be identified by the probation officer, and abide by the program's rules. The probation officer shall send a copy of this judgment to the program, which shall notify the officer if the defendant fails to participate or is discharged for violating any of its rules.

(2) *(for unsupervised probation)* attend and complete *(check one)*  *(program name)* \_\_\_\_\_

a program chosen by the defendant, who shall notify the program and the district attorney of that choice within ten (10) days of the entry of this judgment, and abide by the program's rules. The district attorney shall send a copy of this judgment to the program, which shall notify the district attorney if the defendant fails to participate or is discharged for failure to comply with the program or its rules.

b. there is no approved abuser treatment program reasonably available.  c. it would not be in the best interests of justice to order the defendant to complete an abuser treatment program because \_\_\_\_\_

2. As additional Special Conditions of Probation, the defendant shall:

a. not come within \_\_\_\_\_ feet of \_\_\_\_\_ at any time.

b. comply fully with any G.S. Chapter 50B Domestic Violence Protective Order in effect.

The above conditions are incorporated in the "Judgment Suspending Sentence" in the above case(s) and made a part thereof.

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
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Material opposite unmarked squares is to be disregarded as surplusage.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District     Superior Court Division

**STATE VERSUS**

Name Of Defendant

**ADDITIONAL FILE NO.(S) AND OFFENSE(S)**

**NOTE:** Use this page in conjunction with all NCAOC judgment or probationary forms, to list additional offenses of conviction, deferred prosecution, or conditional discharge addressed in the court's order. There are no A, B, C, D, or other variations of this form, so this page can be used to continue an offense list from any of the related forms, for any date(s) of offense or conviction.

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

\*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

(Over)

		ADDITIONAL FILE NO.(S) AND OFFENSE(S)					
File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

**\*NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

# STATE OF NORTH CAROLINA

File No.

County \_\_\_\_\_ Seat of Court \_\_\_\_\_

(NOTE: This form should be used for only one DWI conviction. Multiple convictions sentenced under G.S. 20-179 may not be consolidated for judgment.)

In The General Court Of Justice

District  Superior Court Division

## STATE VERSUS

## IMPAIRED DRIVING - JUDGMENT SUSPENDING SENTENCE

(For Offenses Committed On Or After Dec. 1, 2016)

COMMITMENT ON SPECIAL PROBATION

G.S. 20-179

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

Race \_\_\_\_\_ Sex \_\_\_\_\_ Drivers License No. \_\_\_\_\_ State \_\_\_\_\_ Date Of Birth \_\_\_\_\_

Date Of Offense \_\_\_\_\_ Attorney For State \_\_\_\_\_

Def. Found Not Indigent  Def. Waived Attorney

Attorney For Defendant \_\_\_\_\_

Appointed  Retained

Crt Rptr Initials \_\_\_\_\_

Offense  Impaired Driving (G.S. 20-138.1).  Impaired Driving in a commercial vehicle (G.S. 20-138.2).  Operating a commercial vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2A).  Operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2B).

The defendant was found guilty/responsible, pursuant to  plea ( pursuant to *Alford*) ( of no contest)  trial by judge  trial by jury, of the offense specified above. The Court, based upon the determinations shown on the attached Determination of Sentencing Factors form (AOC-CR-311, Rev. 12/15), has imposed the following punishment level.

Aggravated Level One.  Level One.  Level Two.  Level Three.  Level Four.  Level Five.

The Court, having considered evidence, arguments of counsel and statement of defendant, ORDERS that defendant be imprisoned

for a minimum term of \_\_\_\_\_ for a maximum term of \_\_\_\_\_ in the custody of the Misdemeanant Confinement Program.

This sentence shall run at the expiration of sentence imposed in file number \_\_\_\_\_.

The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this Judgment as a result of this charge  and as an inpatient at a facility operated or licensed by the State for the treatment of alcoholism or substance abuse after the commission of the above offense. Credit shall be applied against the  minimum and maximum terms above.  imprisonment for special probation below. (NOTE: No credit may be given for the first 24 hours spent in confinement.)

## SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on

unsupervised probation for \_\_\_\_\_ months.

supervised probation for \_\_\_\_\_ months, the Court having received evidence and having found as a fact that supervision is necessary.

## SPECIAL PROBATION - G.S. 15A-1351

A. As a condition of special probation, the defendant shall serve an active term of \_\_\_\_\_  days  months  hours

1. in the custody of the Sheriff of this County.  and pay jail fees.

2. as an inpatient in (name treatment facility) \_\_\_\_\_, shall follow the rules of that facility until discharged, and shall not leave its premises except as authorized under those rules.

NOTE: This term shall NOT be reduced by good time, gain time, or parole, or, unless provided above, by jail or treatment time.

B. The defendant shall report in a sober condition to begin serving this term on: Day \_\_\_\_\_ Date \_\_\_\_\_ Hour \_\_\_\_\_  AM  PM and shall remain in custody until: Day \_\_\_\_\_ Date \_\_\_\_\_ Hour \_\_\_\_\_  AM  PM

C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next \_\_\_\_\_ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered.

D. This term shall be served at the direction of the probation officer within \_\_\_\_\_  days  months of this Judgment.

E. Work release is recommended.  F. Substance abuse treatment is recommended.

## MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule  determined by the probation officer.  set out by the court as follows: \_\_\_\_\_

Costs	Fine	Restitution*	Attorney's Fees	Community Service Fee	EHA Fee/CAM Fee	Appt Fee/Misc	Total Amount Due
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

NOTE: In addition to all other costs, G.S. 7A-304(a)(10) requires a fee of \$100.00 for a conviction of any of the four offenses sentenced on this form.

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

The Court finds just cause to waive costs, as ordered on the attached  AOC-CR-618.  Other: \_\_\_\_\_

## REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)

NOTE: Any probationary judgment may be extended pursuant to G.S. 15A-1342.

The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or 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) Submit to the taking of digitized photographs, including photographs of the defendant's face, scars, marks, and tattoos, to be included in the defendant's records.

If the defendant is on supervised probation, the defendant shall also: (6) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer. (7) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer.

(8) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (9) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (10) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful.

Original - File Copy - DMV  
Material opposite unmarked squares is to be disregarded as surplusage.  
(Over)

(11) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (12) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used. (13) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Community Supervision and Reentry of the Department of Adult Correction for the actual costs of drugs or alcohol screening and testing.

If the defendant is to serve an active sentence as a condition of special probation, the defendant shall also: (14) Obey the rules and regulations of the Division of Prisons of the Department of Adult Correction and, if applicable, the Division of Juvenile Justice of the Department of Public Safety, governing the conduct of inmates while imprisoned. (15) If placed on supervised probation above, report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

**SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1); 20-179**

- 16. Obtain a substance abuse assessment and all recommended education or treatment.
- 17. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles; and not operate a motor vehicle until the defendant's driving privilege is restored by that Division, except as may be permitted in a limited privilege.
- 18. Complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days of the period of probation, as directed by the judicial service coordinator. The fee prescribed by G.S. 143B-1483 is
  - not due because it is assessed in a case adjudicated during the same term of court.
  - to be paid  pursuant to the schedule set out under Monetary Conditions above  within \_\_\_\_\_ days of this Judgment and before beginning service.
- 19. Abstain from alcohol consumption for \_\_\_\_\_  days,  months, as verified by a continuous alcohol monitoring (CAM) system.
  - a. The fees for the system shall be paid directly to the monitoring provider by
    - the defendant.  \_\_\_\_\_, the local government entity responsible for the defendant's incarceration in the local confinement facility, upon the Court's finding, for good cause shown, that the defendant should not be required to pay the fees and the local government's agreement to pay them.
  - b. (Levels 1 and 2, only) The defendant shall be given credit against this period of abstinence and monitoring for (maximum of 60) \_\_\_\_\_ days spent on CAM prior to trial.
- 20. Other:

[Check any that apply - G.S. 20-179(r)]

- The probation officer may transfer the defendant to unsupervised probation upon completion of  the community service required by Special Condition No. 18 above.  payment of the "Total Amount Due" on the reverse.

**SPECIAL ALCOHOL CONCENTRATION FINDING**

- The defendant's alcohol concentration was 0.15 or greater.  Other: \_\_\_\_\_.

**ORDER OF COMMITMENT/APEAL ENTRIES**

- 1. It is ORDERED that the Clerk deliver **two** certified copies of this Commitment on Special Probation to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order is modified as follows: \_\_\_\_\_  
**NOTE: Withdrawal of appeal or remand to District Court requires that a new sentencing hearing be scheduled in District Court, unless certain conditions are met. G.S. 20-38.7(c).**
- 3. The defendant gives notice of appeal from the judgment of the Superior Court to the appellate division. Appeal entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
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**CERTIFICATION**

I certify that this Judgment and the attachment(s) marked below are true and complete copies of the originals.

- 1. Determination Of Sentencing Factors (AOC-CR-311, Rev. 12/15)  3. Other: \_\_\_\_\_
- 2. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court	<b>SEAL</b>
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**NOTE TO CLERK: If the defendant's conviction is based on a violation of an offense involving impaired driving while the defendant's drivers license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, report DWI Defendant Registration Stop to DMV using menu item #9 in STARS. Also report the defendant's conviction to DMV in the usual manner. If there is a non-defendant vehicle owner, report registration stop to DMV using menu item #10 in STARS (unless the owner has been found to be an innocent owner).**

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

File No.

County Seat of Court

NOTE: [Use AOC-CR-310 for DWI offense(s).]

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

JUDGMENT SUSPENDING SENTENCE - FELONY
PUNISHMENT: COMMUNITY INTERMEDIATE
(STRUCTURED SENTENCING)
(For Offenses Committed Dec. 1, 2011 - Nov. 30, 2016)

G.S. 15A-1341, -1342, -1343, -1343.2, -1346

Name Of Defendant
Race Sex Date Of Birth
Attorney For State Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Appointed Retained Cr Rptr Initials

The defendant was found guilty/responsible, pursuant to plea (pursuant to Alford) (of no contest) trial by judge trial by jury, of

Table with columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., F/M, CL., \*Pun. CL.

\*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

The Court 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be
Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission to this issue.
2. makes no prior record level finding because none is required.

PRIOR RECORD LEVEL: I III V II IV VI

The Court (NOTE: Block 1 or 2 MUST be checked.):

- 1. makes no written findings because the prison term imposed is within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).
2. makes the Determination of aggravating and mitigating factors on the attached AOC-CR-605.
3. makes the Findings of Extraordinary Mitigation set forth on the attached AOC-CR-606.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be (check only one) a habitual felon to be sentenced four classes higher than the principal felony (no higher than Class C).
6. finds enhancement pursuant to: G.S. 90-95(e)(3) (drugs). G.S. 14-3(c) (hate crime). G.S. 50B-4.1 (domestic violence). G.S. 14-50.22 (gang misdemeanor). Other: This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission.
7. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603C, Page Two, Side Two, and makes the additional findings and orders on the attached AOC-CR-615, Side Two.
8. finds the above-captioned offense(s) involve the (check all that apply) physical or mental sexual abuse of a minor. (If No. 7 not found) and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603C, Page Two, Side Two.
9. finds that a motor vehicle commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
10. finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
11. finds the above-designated offense(s) involved criminal street gang activity. G.S. 14-50.25.
12. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) the defendant refused to consent. (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.
13. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
14. finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be imprisoned

for a minimum term of months for a maximum term of months in the custody of the NC DAC.

This sentence shall run at the expiration of sentence imposed in file number

The defendant shall be given credit for days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the sentence imposed above. imprisonment required for special probation set forth on AOC-CR-603C, Page Two.

SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on supervised unsupervised probation for months.

- 1. The Court finds that a longer shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).
2. The Court finds that it is NOT appropriate to delegate to the Division of Community Supervision and Reentry the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment.
3. This period of probation shall begin when the defendant is released from incarceration at the expiration of the sentence in the case below.

Table with columns: File No., Offense, County, Court, Date

- 4. The defendant shall comply with the conditions set forth in file number
5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)

MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule determined by the probation officer. set out by the court as follows:

Table with columns: Costs, Fine, Restitution\*, Attorney's Fees, Comm Serv Fee, EHA Fee, SBM Fee, Appt Fee/Misc, Total Amount Due

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

- The Court finds just cause to waive costs, as ordered on the attached AOC-CR-618. Other:
Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.

Material opposite unmarked squares is to be disregarded as surplusage.



**REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)**

**NOTE:** Any probationary judgment may be extended pursuant to G.S. 15A-1342. The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device, or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or 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. If the defendant is on supervised probation, the defendant shall also: (5) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer. (6) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (7) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (8) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (9) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful. (10) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (11) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used. (12) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Community Supervision and Reentry of the Department of Adult Correction for the actual costs of drug or alcohol screening and testing.

13. The Court finds that the defendant is responsible for acts of domestic violence and therefore makes the additional findings and orders on the attached AOC-CR-603C, Page Two, Side Two.

**SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1)**

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:

- 14. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of \_\_\_\_\_ or until relicensed by the Division of Motor Vehicles, whichever is later.
- 15. Successfully pass the General Education Development Test (G.E.D.) during the first \_\_\_\_\_ months of the period of probation.
- 16. Complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-1483 is  not due because it is assessed in a case adjudicated during the same term of court.  to be paid  pursuant to the schedule set out under Monetary Conditions on the reverse.  within \_\_\_\_\_ days of this Judgment and before beginning service.
- 17. Report for initial evaluation by \_\_\_\_\_, participate in all further evaluation, counseling, treatment, or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.
- 18. Not assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with \_\_\_\_\_. "Contact" includes any defendant-initiated contact, direct or indirect, by any means, including, but not limited to, telephone, personal contact, e-mail, pager, gift-giving, telefacsimile machine or through any other person, except \_\_\_\_\_.
- 19. (for offenses committed on or after December 1, 2012) Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of \_\_\_\_\_  days,  months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
- 20. Other:

21. Comply with the Special Conditions Of Probation which are set forth on AOC-CR-603C, Page Two.

**ORDER OF COMMITMENT/APPEAL ENTRIES**

- 1. 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 to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

<i>Date</i>	<i>Name Of Presiding Judge (type or print)</i>	<i>Signature Of Presiding Judge</i>
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**CERTIFICATION**

I certify that this Judgment and the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Appellate Entries (AOC-CR-350)</li> <li><input type="checkbox"/> 2. Judgment Suspending Sentence (AOC-CR-603C, Page Two) (additional conditions of probation)</li> <li><input type="checkbox"/> 3. Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)</li> <li><input type="checkbox"/> 4. Extraordinary Mitigation Findings (AOC-CR-606)</li> <li><input type="checkbox"/> 5. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> 6. Judicial Findings As To Required DNA Sample (AOC-CR-319)</li> <li><input type="checkbox"/> 7. Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-615, Side Two)</li> <li><input type="checkbox"/> 8. Convicted Sex Offender Permanent No Contact Order (AOC-CR-620)</li> <li><input type="checkbox"/> 9. Additional File No.(s) And Offense(s) (AOC-CR-626)</li> <li><input type="checkbox"/> 10. Other: _____</li> </ul> |
|---|--|

<i>Date</i>	<i>Date Certified Copies Delivered To Sheriff</i>	<i>Signature Of Clerk</i>	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC	<b>SEAL</b>
			<input type="checkbox"/> Clerk Of Superior Court	

Material opposite unmarked squares is to be disregarded as surplusage.

STATE VERSUS

File No.

Name Of Defendant

NOTE: Use this page with AOC-CR-603C, "Judgment Suspending Sentence - Felony"; AOC-CR-604C, "Judgment Suspending Sentence - Misdemeanor"; AOC-CR-619C, "Conditional Discharge Under G.S. 90-96(a)"; AOC-CR-621C, "Conditional Discharge Under G.S. 14-50.29"; AOC-CR-627C, "Conditional Discharge Under G.S. 90-96(a1)"; AOC-CR-628C, "Conditional Discharge Under G.S. 14-204(b)"; AOC-CR-632C, "Conditional Discharge Under G.S. 15A-1341(a4)"; or AOC-CR-633C, "Conditional Discharge Under G.S. 15A-1341(a5)"; for offenses committed from Dec. 1, 2011, through Nov. 30, 2016.

COMMUNITY AND INTERMEDIATE PROBATION CONDITIONS - G.S. 15A-1343(a1)

In addition to complying with the regular and any special conditions of probation set forth in the "Judgment Suspending Sentence" entered in the above case(s), the defendant shall also comply with the following conditions of probation, which may be imposed for any community or intermediate punishment.

- 1. Submit to house arrest with electronic monitoring, remain at the defendant's residence for a period of \_\_\_ days, \_\_\_ months, abide by all rules, regulations, and directions of the probation officer regarding such monitoring, and pay the fees prescribed in G.S. 15A-1343(c) as provided under Monetary Conditions. The defendant may leave the residence for the following purpose(s) and as otherwise permitted by the probation officer: \_\_\_ employment \_\_\_ counseling \_\_\_ a course of study \_\_\_ vocational training. Other:
2. Complete \_\_\_ hours of community service during the first \_\_\_ days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-1483 is \_\_\_ not due because it is assessed in a case adjudicated during the same term of court. \_\_\_ to be paid \_\_\_ pursuant to the schedule set out under Monetary Conditions in the "Judgment Suspending Sentence." \_\_\_ within \_\_\_ days of this Judgment and before beginning service. Other:
3. Submit to the following period(s) of confinement in the custody of the \_\_\_ Sheriff of this County. \_\_\_ (other local confinement facility). \_\_\_ and pay jail fees. The defendant shall report in a sober condition to serve the term(s) indicated below. NOTE: Periods of confinement imposed here must be for two-day or three-day consecutive periods, only, for no more than six days in a single month, and in no more than three separate months during the period of probation. To impose special probation under G.S. 15A-1351, see INTERMEDIATE PUNISHMENTS, below.

Table with 3 columns: Date, Hour, AM/PM, for, 2/3 days. Multiple rows for specifying confinement periods.

- 4. Obtain a substance abuse assessment, monitoring, or treatment as follows:
5. (for offenses committed on or after December 1, 2012) Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of \_\_\_ days, \_\_\_ months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
6. Participate in an educational or vocational skills development program as follows:
7. Submit to satellite-based monitoring, if required on the attached AOC-CR-615, Side Two.

INTERMEDIATE PUNISHMENTS

In addition to complying with the regular and any special, community, or intermediate conditions of probation set forth in the "Judgment Suspending Sentence" or herein for the above case(s), the defendant shall also comply with the following intermediate punishment(s) under G.S. 15A-1340.11(6).

- 1. Special Probation - G.S. 15A-1351
For the defendant's active sentence as a condition of special probation, the defendant shall comply with these additional regular conditions of probation:
(1) Obey the rules and regulations of the Division of Prisons of the Department of Adult Correction and, if applicable, the Division of Juvenile Justice of the Department of Public Safety, governing the conduct of inmates while imprisoned. (2) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.
A. Serve an active term of \_\_\_ days \_\_\_ months \_\_\_ hours in the custody of the \_\_\_ NC DAC. \_\_\_ Sheriff of this County. \_\_\_ Other:
(NOTE: Special probation may not be served in DAC for (i) a noncontinuous period or (ii) a misdemeanor. For a defendant under 18, any period of special probation must be served in the Division of Juvenile Justice of the Department of Public Safety.)
B. The defendant shall report in a sober condition to begin serving his/her term on:
Day Date Hour AM/PM and shall remain in custody until: Day Date Hour AM/PM
C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next \_\_\_ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered.
D. This term shall be served at the direction of the probation officer within \_\_\_ days \_\_\_ months of this judgment.
E. Pay jail fees. F. Work release is recommended. G. Substance abuse treatment is recommended.
H. Other:
2. Local Judicially Managed Accountability and Recovery Court - G.S. 15A-1340.11
Comply with the rules of the program adopted pursuant to Chapter 7A, Article 62, of the General Statutes, and report on a regular basis as directed to participate in court supervision and any screening, evaluation, and treatment ordered by the court. Other:

INTERMEDIATE CONDITIONS OF PROBATION - G.S. 15A-1343(b4)

If subject to intermediate punishment, the defendant shall, in addition to the terms and conditions imposed above, comply with the following intermediate conditions of probation. (1) If required by the defendant's probation officer, perform community service under the supervision of the Division of Community Supervision and Reentry, and pay the fee required by G.S. 143B-1483, but no fee shall be due if the Court imposed community service as a special condition of probation and assessed the fee in this judgment or any judgment for an offense adjudicated in the same term of court. (2) Not use, possess, or control alcohol. (3) Remain within the defendant's county of residence unless granted written permission to leave by the court or the defendant's probation officer. (4) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments by abiding by the rules, regulations, and direction of each program. Material opposite unmarked squares is to be disregarded as surplusage. (Over)

**MANDATORY SPECIAL CONDITIONS FOR SEX OFFENDERS AND PERSONS CONVICTED OF OFFENSES INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF A MINOR - G.S. 15A-1343(b2)**

**NOTE:** *The following are not defined as intermediate punishments under G.S. 15A-1340.11(6).*

**NOTE:** *Select only one of the three sets of conditions below.*

**1. Special Conditions For Reportable Convictions - G.S. 15A-1343(b2)**

**NOTE:** *Impose only for a reportable conviction under G.S. 14-208.6.*

The defendant has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4) and must

- a. Register as a sex offender and enroll in satellite-based monitoring if required on the attached AOC-CR-615, Side Two.
- b. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- c. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

d. *(if the Court finds physical, mental, or sexual abuse of a minor)* Not reside in a household with

(1) *(for sexual abuse)* any minor child.

(2) *(for physical or mental abuse)* any minor child  other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household):* \_\_\_\_\_

e. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

f. Other: \_\_\_\_\_

**2. Special Conditions For Offenses Involving The Sexual Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** *Impose if offense involved sexual abuse of a minor but is not a reportable conviction.*

The defendant has been convicted of an offense involving the sexual abuse of a minor and must

- a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- c. Not reside in a household with any minor child. (G.S. 15A-1343(b2)(4))

d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

e. Other: \_\_\_\_\_

**3. Special Conditions For Offenses Involving The Physical Or Mental Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** *Impose if offense involved physical or mental abuse of a minor but is not a reportable conviction and did not involve sexual abuse.*

The defendant has been convicted of an offense involving the physical or mental abuse of a minor and must

a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

c. Not reside in a household with

(1) any minor child.

(2) any minor child other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. *(Name minor child(ren) with whom the probationer may reside in the same household):* \_\_\_\_\_

d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision:  child pornography

e. Other: \_\_\_\_\_

**ADDITIONAL CONDITIONS FOR DOMESTIC VIOLENCE**

1. Pursuant to its finding that the defendant is responsible for acts of domestic violence, the Court further finds that:

a. there is an abuser treatment program, approved by the Domestic Violence Commission, reasonably available to the defendant, who shall:

(1) *(for supervised probation)* attend and complete *(check one)*  *(program name)* \_\_\_\_\_

a program to be identified by the probation officer, and abide by the program's rules. The probation officer shall send a copy of this judgment to the program, which shall notify the officer if the defendant fails to participate or is discharged for violating any of its rules.

(2) *(for unsupervised probation)* attend and complete *(check one)*  *(program name)* \_\_\_\_\_

a program chosen by the defendant, who shall notify the program and the district attorney of that choice within ten (10) days of the entry of this judgment, and abide by the program's rules. The district attorney shall send a copy of this judgment to the program, which shall notify the district attorney if the defendant fails to participate or is discharged for failure to comply with the program or its rules.

b. there is no approved abuser treatment program reasonably available.  c. it would not be in the best interests of justice to order the defendant to complete an abuser treatment program because \_\_\_\_\_

2. As additional Special Conditions of Probation, the defendant shall:

a. not come within \_\_\_\_\_ feet of \_\_\_\_\_ at any time.

b. comply fully with any G.S. Chapter 50B Domestic Violence Protective Order in effect.

The above conditions are incorporated in the "Judgment Suspending Sentence" in the above case(s) and made a part thereof.

Date

Name Of Presiding Judge (type or print)

Signature Of Presiding Judge

Material opposite unmarked squares is to be disregarded as surplusage.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

## STATE VERSUS

Name Of Defendant

## ADDITIONAL FILE NO.(S) AND OFFENSE(S)

**NOTE:** Use this page in conjunction with all NCAOC judgment or probationary forms, to list additional offenses of conviction, deferred prosecution, or conditional discharge addressed in the court's order. There are no A, B, C, D, or other variations of this form, so this page can be used to continue an offense list from any of the related forms, for any date(s) of offense or conviction.

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

**\*NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

(Over)

		ADDITIONAL FILE NO.(S) AND OFFENSE(S)					
File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

**\*NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

STATE OF NORTH CAROLINA

File No.

County \_\_\_\_\_ Seat of Court \_\_\_\_\_

NOTE: >8VH \$2& &5 IRU ' : , RÚHQVH V @

, Q K H H Q H & B @ 21 W X V W L F H
' L V W U ' F W X S H & L R R X U L W L V L R Q

STATE VERSUS

JUDGMENT SUSPENDING SENTENCE - FELONY
PUNISHMENT: [ ] COMMUNITY [ ] INTERMEDIATE
(STRUCTURED SENTENCING)

1DPH 21 'HIHQGDQW

Race \_\_\_\_\_ Sex \_\_\_\_\_ 'DWH 21 %LUWK

)RU 2±HQVHV & RPPLWVHG 2Q 2U \$IWH
\* 6 \$

\$WWRUQH\ )RU 6WDWH [ ] 'HI )RXQG 'HI :DLPHG \$WWRUQH\ )RU 'HIHQGDQW [ ] \$SSRLQW & 5SWU ,QL
1RW ,QGLJSHQWRUQH\ [ ] 5HWDLQH G

The defendant was found guilty/responsible, pursuant to [ ] SO [ ] pursuant to \$ OIR [ ] CR [ ] FR [ ] RQ [ ] WH [ ] Val by judge [ ] trial by jury, of

Table with 5 columns: )LOH 1R, V2±, 2±HQVH 'HVFULSWLRQ, 2±HQVH 'DWH \* 6 1R, F/M & / 3XQ & /

\*NOTE: (QWHU SXQLVKPHQW FODVV LI GLÚHUHQW IURP XQGHU\QJ RÚHQVH FODVV
The Court [ ] K D G H W H U S I X Q H V Q D R Q W \$ W K S U L R L F S R G Q W W G H I H Q W B R E W
\$ Q ' S U L R L F R O U G S R O Q Q G H @ \$ E L E D V R G V K H W H U P R O D K W L R O W K H
trier of fact beyond a reasonable doubt or the defendant's admission to this issue.
[ ] P D N H V U L R L F R O U G S R O Q Q G H @ I E Q H F D X R H L U H T X L U H G
PRIOR RECORD LEVEL: [ ] I [ ] III [ ] V [ ] II [ ] IV [ ] VI

The Court NOTE: %ORFN RU 0867 EH FKHFNHG :
[ ] P D N H V U L R L F R O U G S R O Q Q G H @ I E Q H F D X R H L U H T X L U H G \$ F
[ ] P D N H V U L R L F R O U G S R O Q Q G H @ I E Q H F D X R H L U H T X L U H G
[ ] P D N H V U L R L F R O U G S R O Q Q G H @ I E Q H F D X R H L U H T X L U H G
[ ] L P S U L V R Q P H F X L W S H F L D O G L R W S B R E D W H L R Q W H W D S F 2 8 & 5
[ ] \* 6 K S X U V X D R O W Q G W G D K H I H Q G S D U R Y L V G H E G W D Q W L L D V D Q F H
[ ] D G M X G V K H I H Q W B R E M K H F N R Q [ ] a habitual felon to be sentenced four classes higher than the principal felony QR KLJKHU WKDQ
[ ] D K D E L V X I D D D Q G Q W H W L D W H Q G V H U H Q W H D B & G D V I H O R Q
[ ] Q G V Q K D Q F S P X U Q W D F W \* 6 H G U X J V \* 6 F K D W H L P H \* 6 % G R P H V W R G H Q F H
[ ] \* 6 J D Q P L V G H P H D Q R D W K H U 7 K L V Q G I L Q J
based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission.
[ ] Q G W K E R Y H G H V R I E Q W H I Q W H S R U A R C E Y L K W G R G D Q V K H U H P S U R W H V S H F L D O G L R W S B R E D W H L R Q
[ ] I R U R P K C H W W D S F 2 8 & 5 3 D J F Z R 6 L G 7 Z R D Q B D N H W C H G L W L C R G L D Q B U G R Q W K C H W W D S F 2 8 & 5 6 L G 7 Z R
[ ] Q G W K E R Y H F D S R V H R Q H G V R O K H K H F N D O O W K D H S D S O R I E N T A L [ ] sexual abuse of a minor.
[ ] , I 1 R Q R W Q A K I K U H P S U R W H V S H F L D O G L R W S B R E D W H L R Q W H W D S F 2 8 & 5 3 D J F Z R 6 L G 7 Z R
[ ] Q G K D W [ ] motor vehicle [ ] F R P P H U F R V S H U K L F Z D I X V H G V K F R P P L V R M R G H Q D Q G K I D W K D E O H S R W W D H G
[ ] Q G W K L V Q R ± H Q L Q Y R D V L D Q R P P X Q L F D W K L R Q D V F O W Q L H G 6 % D D Q V K G H I H Q G S D Q S H U V R I G D O W L R Q
[ ] D V G ± Q H G 6 % E L W K H L F W L P
[ ] 11. RÚHQVHV FRPPLWVHG RQ R Q Q G V K W H H Q Z D H R P R L W S B G W U L P U Q Q D F W I D Y E W Q L H G 6 \$
[ ] D Q V K D W K H I H Q G S D Q V U L P U Q Q D H D B R U J D Q D Y H U ; Q L H G 6 \$ 7 K L V Q G I L Q E D V R G V K H W H U P I R Q D W L
this issue by the trier of fact beyond a reasonable doubt or on the defendant's admission.
[ ] Q G W K E R Y H G H V R I E Q W H I Q W R O F K E N R Q H R ÚHQVHV FRPPLWVHG 'H F criminal street gang activity
[ ] RÚHQVHV FRPPLWVHG RQ F W D P L E O D F F V L Y G W \
[ ] G L O R J W D D F R Q G L G L R Q I D D Q G H I D E H F D X M H F N D O O W K D H S D S O R I E N T A L [ ] the defendant refused to consent.
[ ] W K H R X J Q G Z L W K H U H H R H V Q V H V W S M F W R W G V H H Q G W I Q D S S U R S I D F L D O G L G L R Q I D D Q D H W R H U O D W H K H I H Q V H
[ ] Q G K D W H H I H Q G S D Q R G L V S O D ; H I G Z K R D R P P L W W K H Q J R \* Q 6 \$
[ ] Q G K D W H H I H Q V H Q L Q Y R O K H O E K R H D V V D X D O V F O W Q L H G 6 % I D J D L D P L Q R L 6 \$ D
7 K H R X U V Y L F R Q V L G H Y L I G S I D F J X P H R F R X Q D V G O W D W H R G H Q W Q Q D G W W K D W K E R R H I H Q V L P R U M K B Q H H

consolidated for judgment and the defendant be imprisoned

for a minimum term of \_\_\_\_\_ months for a maximum term of \_\_\_\_\_ P R Q W L Q W K F X V W R I Q K I H & ' \$ &

[ ] 7 K L W H Q W H Q B U K O W K H S L U D R W H R O V H B S F R L Q G H X P E H U

The defendant shall be given credit for \_\_\_\_\_ G D W S H I Q R R Q ; Q S H I Q R R Q K H D W W K I X G J P H D O V H V R K W K L D U J W B D S S O L H G
toward the [ ] sentence imposed above. [ ] L P S U L V R Q P H F X L W S H F L D O G L R W S B R E D W H L R Q W K 2 & 5 3 D J F Z R

SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on [ ] supervised [ ] unsupervised
probation for \_\_\_\_\_ months.

[ ] 7 K H R X U V Y L F R Q V L G H Y L I G S I D F J X P H R F R X Q D V G O W D W H R G H Q W Q Q D G W W K D W K E R R H I H Q V L P R U M K B Q H H
[ ] longer [ ] V K R U V S H U R S G R E D L V L R F Q V W D A K Z W L E W S H F L Q H G \$ G

[ ] 7 K H R X U V Y L F R Q V L G H Y L I G S I D F J X P H R F R X Q D V G O W D W H R G H Q W Q Q D G W W K D W K E R R H I H Q V L P R U M K B Q H H
requirements in \* 6 \$ H I R P P X G L X S H U Y D Q E R Q W K K W K R E S R D V G R W K H

[ ] 7 K L V U R S G R E D W K I D O D L Q when the defendant is released from incarceration [ ] at the expiration of the sentence in the case below.

Table with 4 columns: File No., 2úHQVH, &RXQW\, &RXUW, 'DWH

[ ] 7 K H I H Q G S D Q R S Z L W K F R Q G L W H I R Q I D D Q Q X P E H U

[ ] 7 K H I H Q G S D Q R Y D ' G S H V D P S S O X U V X D R Q W \$ \$ 2 & 5 U H T X L U H G

MONETARY CONDITIONS

7 K H I H Q G S D Q R V W K H O H R U N X S H & L R R X U W W A R V B D X Q M V K R Z E H O S D X M S H U R E D W K I S R Q Y I E H I S F O O F R O G X S H U Y L V H G
probation above, pursuant to a schedule [ ] G H W H U P L V Q S G R E D W E R Q [ ] set out by the court as follows: \_\_\_\_\_

Table with 8 columns: &RVVW, )LQH, 5HVWLWX, \$LVRUQ, )RHH S&V Fee, EHA Fee, 6%0 )HH, \$SSW )HH 0, VFRWDO \$PRXQW 'XH

6 H D W W D P S K I H Q V L R X U V L K R I W S B R E U G H Q L V H O D H Q S F 2 8 & 5 Z K L E K Q F R U S E U D W H I H G Q H F

[ ] 7 K H R X U V Y L F R Q V L G H Y L I G S I D F J X P H R F R X Q D V G O W D W H R G H Q W Q Q D G W W K D W K E R R H I H Q V L P R U M K B Q H H
[ ] 2WKHU

[ ] 8 S R Q D \ P H R O W K F R W S B D X Q M W K S H U R D R V E F O W U D Q W K H U I H Q G B R Q W X S H S Y L R / E D G L R Q
O D W H R S S O X I Q P B U W H G U W R H G L V U H J D W X S O X V D J H

\$ 2 & 5 ' 5 H Y < \$ G P L Q L V W U D W L Y H 2 F H R I W K H & R X U W V

5 (\* 8/\$ 5 & 21', 7, 216 2) 352% \$7, 21 \* 6 \$ E

NOTE: \$Q\ SUREDWLRQDU\ MXGJPHQW PD\ EH H\WFK... If the defendant is on supervised probation, the defendant shall also: 1 R D E V F R E Q Z L O O D X B D Q K S J U Y R L W L Z R O O P B O D Q K G H I H Q G Z K C W U T M D E R X W V X Q N Q R Z P K H X S H U Y S L V R E D R V E R Q 5 H P D Z Q W W I K O X U L V G M F K B R X O O H U D Q Z U L G S W H B L W B L R D E A W K B R X R W K S H U R E D R V E R Q 5 H S R U G L U H E W H K R X R W K S H U R E D R V E R Q R K H F H U J H D V R Q M L P O H S O D D H Q G O U H D V R Q D E D Q H H U M L K R F H W R L D W W H D V R Q D E O H W L P B Q V Z H O G D V R Q D E O H U W H F F H D Q B E W S D L O P S U R Y B M K H F H B Q Q G R W L K H F H R U D Q F K D Q L Q G G U R H W F S O R A P H Q R W L I A W K S H U R E D R V E R Q G H I H Q G D L W R E W B U G W D L L Q L V H F S O R R U P H G V X E P D W H D V R Q D E D Q H H U M L K R F H W R L D W W H D V R Q D E O H defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may Q R E V H U H T X M U R K E P L V B Q R W K H H U W F K D R X B Q K H L E Z K Q D Z I X G X E P W R D U U D Q M O H Y E A D O D H Z Q I R U F H R P A K R W K G H I H Q G S H O U W F R O S I W K G H I H Q G Y D O W F H S K H V G I D O C Y W K H U L J E R O V Z L O W K S H U H V F U L S F A E L R U B Q L Q R N V Q R Z L D V O R F Z I D M W H N Q R Z B S U H Y L R R Q O L F W H L G V S R V V H V R B H O Q D W X F L O O G U D D R Q W U R K E O M G O O F H R W Q R Z L E B S O H V D W W H T X H O S V D Z F K H W M F L O O G U D D R Q W U R K E O M G O Q F D U V R O N G S R V V H G 6 X S S D E U H D W K B B O R V S H F L P R D D O R W L K S R V V S E J O H H O S F U R K L G U W H O F Z K R H O Q V W U E A W K G H H Q G D Q W T S U R E D R V E R Q B S X U S R B L H M L H F W O W H K S R E D W X I S H Q V J W K H O V X R O W K Q D O D V S H R V L W L K S H R H T X M U R K E P E W K W H L V R Q & R P P X G L X S H U Y D Q E R B Q M W K H S D U W R B Q X O R W U H F R U L K B W K E D O M Y U X J D O F R A K R U H H O Q V H V W L Q J L D Y H O J K W O D W R L Q J D G L W proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court.

7 K & R X J U Q V W K D W H I H Q G V B W S R Q R D E O H S R P H W W R B D Q B K H U F D R U H M C H G L W L R Q L D Q B S U G R Q W K H D W W D S F 2 8 & 5 3 D J F Z R 6 L G 7 Z R

63 (& , \$ / & 21', 7, 216 2) 352% \$7, 21 \* 6 \$ E

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:  6 X U U H Q G H U H Q G D O W F H S K H V G I D O C Y W K H U L J E R O V Z L O W K S H U H V F U L S F A E L R U B Q L Q R N V Q R Z L D V O R F Z I D M W H N Q R Z B S U H Y L R R Q O L F W H L G V a motor vehicle for a period of \_\_\_\_\_ R X Q W H O L F B Q W H Y L V R B R W S R H K L F Z O K I L F K H L Y H D U W H U  6 X F F H V S D X O K H Q H U O F D W L Y R Q R S P H H Q W ' G X U M Q K H U V W \_\_\_\_\_ months of the period of probation.  & R P S O H W H K R X R B R P P X Q L H W Y G L F H W K G H U V W \_\_\_\_\_ days of the period of probation, as directed by the judicial services F R R U G L T O K H M B U H V F E L \* E G % L V  not due because it is assessed in a case adjudicated during the same term of court.  to be paid  S X U V X D R K W F K H G X H A M X Q G O R U Q H V B R O G L W Q R I C H Y H U  within \_\_\_\_\_ G D R W K L X G J P H Q W and before beginning service.  5 H S R B W Q L M Y L D O X E W L R Q \_\_\_\_\_ participate in all further evaluation, counseling, treatment, or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.  1 R D V V D W Q W H B D W H E H R X Q Q R Q V K S H U H P L R V Z H R U N S B D R A H D Y H Q F R Q V Z D F W K \_\_\_\_\_ 3 & R Q W L D F F V O D Q B M I H Q G D Q W F R Q W O D I E D W M H C G L B H D F Q A H D Q L Q F O X E X O P L P W A M B O H S K R U W H R Q D O H D P D L O S D J H U I W J W L W H I D P D E R I R O M I K U R O Q R K W K S H U V H R Q H S W \_\_\_\_\_  E V W I D I R O F F R R Q O X P S Q Z R B P L R R Q W L Q D R R P R O L W R I D I S C H U I R R G \_\_\_\_\_  days,  months, the Court having 1 R X O N G D W X E V W I D E X F H V H V V R B D Q V H Q V G H J H Q G D O W F R S C H Q G H I K F U R D E L X V H  2 W K H U  & R P S Z L W K G S H F & B Q G L W I 3 R Q E D Z K L R E Q V H I V R U R K 2 & & 5 3 D J F Z R

ORDER OF COMMITMENT/APEAL ENTRIES

, W 2 5 ' ( 5 ' W K W H D H G H N O W Y Z R U U W L R S H E W K L X G J P H O M B R P P L W P R O K M H B R H W K T K D O R E F A E D Q V K W W H R ^ F F D X W H G H I H Q Q R E G W O L Y Z L W K G F A S L V H W K F X V W R M G K H U H Q E D P H R Q V K L H Y H W W H H U W K H Q W H B S R V R H G until the defendant shall have complied with the conditions of release pending appeal.  7 K H H I H Q G I D Y Q V R W R L B S H D B A K M X G J P R H O M H U F L D X W W I S S H O ' O D W H S B S H H D O W D Q B Q F R Q G L W I L R Q V S R V W F R Q Y H O F H D U R H W U R U K U S 2 & & 5

SIGNATURE OF JUDGE

'DWH 1DPH 21 3UHVLGLQJ -XGJH WISH RU SUL 6WJQDWXUH 21 3UHVLGLQJ -XGJH

CERTIFICATION

, F H U W K W W L X G J P H O M B R P P L W P R O K M H B R H W K T K D O R E F A E D Q V K W W H R ^ F F D X W H G H I H Q Q R E G W O L Y Z L W K G F A S L V H W K F X V W R M G K H U H Q E D P H R Q V K L H Y H W W H H U W K H Q W H B S R V R H G 1. \$ S S H O ( O D W W H S 2 8 & 5  - X G J P H S Q W S H Q G H L Q W H S 2 8 & 5 3 D J F Z R  - X G L F L Q G L S O Q V U G H R U B H 2 † H Q G H X W S H Q G H G D G G L W R R O C D M S B R E D W L R Q 6 H Q W H S 2 8 & 5 6 L G 7 Z R  ) H O R Q G J P H Q O V L Q \$ V J U D Y S Q B Q W L J D D V L Q R U  \$ 2 & & 5  ([ W U D R O I G W Q D D W I Q L Q S 2 8 & 5  5 H V W L W R U W L R Q C H R I W S E H U G H Q L H L D W H Q F L Q J  \$ 2 & & 5  - X G L E Q O S Q 7 R 5 H T X L U S 6 D P S O 2 & & 5  - X G L F L Q G L S O Q V U G H R U B H 2 † H Q G H X W S H Q G H G 6 H Q W H S 2 8 & 5 6 L G 7 Z R  & R Q Y 6 H W H G Q G H H W P D Q I R R R V Q W D O F G V S 2 & & 5  \$ G G L Y L L O R R D D Q Q † H Q V H S 2 & & 5  2 W K H U

'DWH 'DWH & HUWL & HG & RSLHV 'H O L L Y J H O D W K G O R I B K H O H U N  'HSXW\ & 6 & \$V V W & 6 &  & OHUN 21 6XSHULRQ & RXUW



0 D W H R S S R O X I Q M P E U W F X E D U W R E G L V U H J D W Q H G O X V D J H

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STATE VERSUS

File No.

1DPH 21 'HIHQGDQW

NOTE: Use this page with \$2 & 5 ... \$2 & 5 ... 'Conditional ... 'Conditional ... 'RU R±HQVHV FRPPLWWHG RQ RU DIWHU 'HF

&20081,7<\$1',17(50('\$7(352%\$7,21&21',7,216 \* 6

1. Submit to house arrest with electronic monitoring, remain at the defendant's residence for a period of ... months, abide by all ... employment ... counseling ... a course of study ... vocational training.

&RPSOHWH hours of community service during the first ... days of the period of probation, as directed by the judicial services ... not due because it is assessed in a case adjudicated during the same term of court.

6XEPWVKRORSZLQJRF RQILQH ... Sheriff of this County. ... RWKHU ... 3HULRGV RI FRILQHPHQW LPSRVHG KHU PXV EH IRU WZR GD\ RU WKUHH GD\ FRQVHFXYWLYH SH ...

Table with 3 columns: 'DWH, Hour, \$0/30, for, GD\Y. Multiple rows for scheduling or conditions.

2EW ... \$EVWIDROPOFR ... XPS ... days, ... months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.

6XE ... 6LGZR

INTERMEDIATE PUNISHMENTS

6SHFLDO SUREDWLQ \* 6 ... \$ ... days ... months ... hours in the custody of the ... Sheriff of this County.

Table with 3 columns: 'D\, 'DWH, Hour, \$0/30, and shall remain in custody until: 'D\, 'DWH, Hour, \$0/30

C. The defendant shall again report to a sober condition to continue serving this term on the same day of the week for the next ... consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered.

,17(50('\$7(&21',7,216 2) 352%\$7,21 \* 6 \$ E

If subject to intermediate punishment, the defendant shall, in addition to the terms and conditions imposed above, comply with the following intermediate conditions of probation. ... UHTXEUHG % EXORHMK ...

\$2 & 5 ' 3DJH 7ZR 5HY < \$GPLQLVWUDWLYH 2^FH RI WKH &RXUWV





# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District     Superior Court Division

**STATE VERSUS**

Name Of Defendant

**ADDITIONAL FILE NO.(S) AND OFFENSE(S)**

**NOTE:** Use this page in conjunction with all NCAOC judgment or probationary forms, to list additional offenses of conviction, deferred prosecution, or conditional discharge addressed in the court's order. There are no A, B, C, D, or other variations of this form, so this page can be used to continue an offense list from any of the related forms, for any date(s) of offense or conviction.

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

**\*NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

(Over)

		ADDITIONAL FILE NO.(S) AND OFFENSE(S)					
File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.

**\*NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

Name Of Defendant

IMPAIRED DRIVING
DETERMINATION OF SENTENCING FACTORS
(For Offenses Committed Before Dec. 1, 2011)

G.S. 20-179

- District Court: The defendant has been convicted of impaired driving (G.S. 20-138.1). Based upon the evidence presented at the trial and sentencing hearing in District Court, the Court determines that (1) the State has proved the grossly aggravating factors and aggravating factors marked below beyond a reasonable doubt and (2) the defendant has proved the mitigating factors marked below by a preponderance of the evidence.
Superior Court: The defendant has been convicted of impaired driving (G.S. 20-138.1). Based upon the evidence presented at the trial and sentencing hearing in Superior Court, (1) the trier of fact has determined that the State has proved the grossly aggravating factors and aggravating factors marked below beyond a reasonable doubt, or the defendant has admitted to these grossly aggravating factors and aggravating factors, and (2) the Court determines that the defendant has proved the mitigating factors marked below by a preponderance of the evidence.

I. GROSSLY AGGRAVATING FACTORS - G.S. 20-179(c)

(NOTE: Either Nos. 1 and 2 or No. 3 apply in each case except aiders and abettors. If No. 1 is checked, No. 2.a. or No. 2.b. must also be checked.)

- 1. The defendant
a. has been convicted of a prior offense involving impaired driving which conviction occurred within seven (7) years before the date of this offense.
b. has two or more convictions as described in No. 1.a. (Level One punishment is required.)
c. has been convicted of an offense involving impaired driving which conviction occurred after the date of the offense for which the defendant is being sentenced but before or contemporaneously with the sentencing in this case.
d. has two or more convictions as described in No. 1.c. (Level One punishment is required.)
e. has a prior conviction in District Court for an offense involving impaired driving, the conviction was appealed to Superior Court, the appeal has been withdrawn or the case has been remanded back to District Court, and a new sentencing hearing for the case has not been held pursuant to G.S. 20-38.7.
f. has two or more convictions as described in No.1.e. (Level One punishment is required.)
g. drove, at the time of the current offense, while the defendant's drivers license was revoked under G.S. 20-28 and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
h. caused, by the defendant's impaired driving at the time of the current offense, serious injury to another person.
i. drove, at the time of the current offense, while a child under the age of 16 years was in the vehicle.
2. Therefore, the following level of punishment shall be imposed:
a. Level One punishment, because at least two grossly aggravating factors in No. 1 apply to this defendant.
b. Level Two punishment, because only one grossly aggravating factor in No. 1 applies to this defendant.
3. There are no grossly aggravating factors.

II. AGGRAVATING AND MITIGATING FACTORS - G.S. 20-179(d) AND (e)

AGGRAVATING FACTORS - G.S. 20-179(d):

(NOTE: Except for the factors in subdivisions 8 and 9 below, the conduct constituting the aggravating factor must occur during the same transaction or occurrence as this impaired driving offense.)

- 1. The defendant's faculties were grossly impaired at the time the defendant was driving.
2. The defendant had an alcohol concentration of at least 0.16 or 0.15 (use for offenses committed on or after December 1, 2007) within a relevant time after the driving.
3. The driving of the defendant was especially reckless.
4. The driving of the defendant was especially dangerous.
5. The negligent driving of the defendant led to an accident causing property damage of \$1,000.00 or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3.
6. The negligent driving of the defendant led to an accident causing personal injury.
7. The defendant was driving while the defendant's drivers license was revoked.

Original - File
Material opposite unmarked squares is to be disregarded as surplusage.
(Over)

- 8. The defendant had at least two prior convictions of a motor vehicle offense not involving impaired driving, which occurred within five (5) years of this offense, and
  - a. all were offenses for which at least three (3) points were assigned under G.S. 20-16.
  - b. all were offenses for which the defendant's drivers license was subject to revocation.
  - c. at least one was an offense for which at least three (3) points were assigned under G.S. 20-16 and at least one was an offense for which the defendant's drivers license was subject to revocation.
- 9. The defendant had at least one prior conviction of an offense involving impaired driving that occurred more than seven (7) years before the date of this offense.
- 10. The defendant has been convicted under G.S. 20-141.5 of speeding while fleeing or attempting to elude apprehension.
- 11. The defendant has been convicted under G.S. 20-141 of speeding by at least 30 m.p.h. over the legal limit.
- 12. The defendant passed a stopped school bus in violation of G.S. 20-217.
- 13. Additional factors that aggravate the seriousness of this offense:

- 14. There are no aggravating factors.

**MITIGATING FACTORS - G.S. 20-179(e):**

**NOTE:** Except for the factors in subdivisions 4, 6, and 7 below, the conduct constituting the mitigating factor must occur during the same transaction or occurrence as this impaired driving offense.

- 1. There was a slight impairment of the defendant's faculties resulting solely from alcohol; and, the defendant's alcohol concentration did not exceed 0.09 at any relevant time after the driving.
- 2. There was a slight impairment of the defendant's faculties resulting solely from alcohol; and, no chemical test was made available to the defendant.
- 3. The driving of the defendant was safe and lawful except for the impairment of the defendant's faculties.
- 4. The defendant has a safe driving record, having no convictions of any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the defendant's license is subject to revocation within five (5) years of the date of this offense.
- 5. The impairment of the defendant's faculties was caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the medical drug taken was within the prescribed dosage.
- 6. After being charged in this case with impaired driving, the defendant voluntarily submitted himself/herself to a mental health facility for assessment and has voluntarily participated in any treatment recommended by such facility, if such treatment was recommended.
- 6a. The defendant completed a substance abuse assessment, complied with its recommendations, and simultaneously maintained 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction. *(Applies to offenses committed on or after December 1, 2007.)*
- 7. Additional factors that mitigate the seriousness of this offense:

- 8. There are no mitigating factors.

**DETERMINATION - G.S. 20-179(f):**

**(NOTE: Check only one.)**

- 1. The aggravating factors marked above substantially outweigh any mitigating factors marked above. Therefore, Level Three punishment shall be imposed.
- 2. There are no aggravating or mitigating factors. Therefore, Level Four punishment shall be imposed.
- 3. The aggravating factors marked above are substantially counterbalanced by the mitigating factors marked above. Therefore, Level Four punishment shall be imposed.
- 4. The mitigating factors marked above substantially outweigh any aggravating factors marked above. Therefore, Level Five punishment shall be imposed.
- 5. No findings of mitigating or aggravating factors were made because the defendant is an aider and abettor. Therefore, Level Five punishment shall be imposed.

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
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Material opposite unmarked squares is to be disregarded as surplusage.

## SCHOOL BUS DRIVER POCKET CARD

FULL NAME	SVA		<input type="checkbox"/> Public
EXPIRATION DATE	DRIVER LICENSE NO.		<input type="checkbox"/> Non-Public
SCHOOL	COUNTY		
<input type="checkbox"/> AUTOMATIC TRANSMISSION ONLY	<input type="checkbox"/> BUS CAPACITY 16 OR LESS ONLY		
<input type="checkbox"/> CORRECTIVE LENSES	<input type="checkbox"/> OTHER		
REPRESENTATIVE N.C. DIVISION OF MOTOR VEHICLES	TRANSPORTATION OFFICIAL		

SBTS-338 (Rev. 4-98)

SBTS-338

### TELEPHONE NUMBERS

Garage: \_\_\_\_\_ Law Enforcement: \_\_\_\_\_  
 High School: \_\_\_\_\_ Other: \_\_\_\_\_  
 Emergency Medical: \_\_\_\_\_

This card is evidence that an official School Bus Driver Certificate for the driver named hereon has been filed with the Superintendent of the driver's school system or school official. This Certificate is invalid after the expiration-date indicated and is issued subject to the terms of the "Rules and Regulations Governing the Issuance and Cancellation of School Bus Driver Certificates" published by the N. C. Division of Motor Vehicles. Upon suspension or cancellation of the official School Bus Driver, this card shall be surrendered to the authorized agent of the driver's school, county, or the State of North Carolina upon request.

# The Visual Detection of DWI Motorists



STRICTLY  
ENFORCED

Please  
DRIVE SAFELY

# The Visual Detection of DWI Motorists



U.S. Department of Transportation  
**National Highway Traffic Safety  
Administration**





## INTRODUCTION

More than a million people have died in traffic crashes in the United States since 1966, the year of the National Traffic and Motor Vehicle Safety Act, which led to the creation of the National Highway Traffic Safety Administration (NHTSA).

During the late 1960's and early 1970's more than 50,000 people lost their lives each year on our nation's streets, roads and highways. Traffic safety has improved considerably since that time: the annual death toll has declined substantially, even though the numbers of drivers, vehicles, and miles driven all have increased. When miles traveled are considered, the likelihood of being killed in traffic during the 1960's was three to four times what it is today.

The proportion of all crashes in which alcohol is involved also has declined. The declines in crash risk and the numbers of alcohol-involved crashes are attributable to several factors, including the effectiveness of public information and education programs, traffic safety legislation, a general aging of the population, and law enforcement efforts.

NHTSA research contributed to the improved condition, in part, by providing law enforcement officers with useful and scientifically valid information concerning the behaviors that are most predictive of impairment. Continued enforcement of Driving While Intoxicated (DWI) laws will be a key to saving lives in the future. For this reason, NHTSA sponsored research leading to the development of a new DWI detection guide and training materials, including a new training video. Many things have changed since 1979, but like the original training materials, the new detection guide describes a set of behaviors that can be used by officers to detect motorists who are likely to be driving while impaired.

Building upon the previous NHTSA study, researchers interviewed officers from across the United States and developed a list of more than 100 driving cues that have been found to predict blood alcohol concentrations (BAC) of 0.08 percent or greater. The list was reduced to 24 cues during 3 field studies involving hundreds of officers and more than 12,000 enforcement stops. The driving behaviors identified by the officers are presented in the following four categories:

- 1) Problems in maintaining proper lane position**
- 2) Speed and braking problems**
- 3) Vigilance problems**
- 4) Judgment problems**

The cues presented in these categories predict that a driver is DWI at least 35 percent of the time. For example, if you observe a driver to be weaving or weaving across lane lines, the probability of DWI is more than .50 or 50 percent. However, if you observe either of the weaving cues and any other cue listed in this booklet, the probability of DWI jumps to at least .65 or 65 percent. Observing any two cues other than weaving indicates a probability of DWI of at least 50 percent. Some cues, such as swerving, accelerating for no reason, and driving on other than the designated roadway, have single-cue probabilities greater than 70 percent. Generally, the probability of DWI increases substantially when a driver exhibits more than one of the cues.

This booklet contains:

- **The DWI Detection Guide**
- **A summary of the research that led to the guide**
- **Explanations of the 24 driving cues**
- **A description of post-stop cues that are predictive of DWI**

The research suggests that these training materials will be helpful to officers in:

- **Detecting impaired motorists**
- **Articulating observed behaviors on arrest reports**
- **Supporting officers' expert testimony**

## DWI DETECTION GUIDE

Weaving plus any other cue:  $p =$  at least .65

Any two cues:  $p =$  at least .50

### **Problems Maintaining Proper Lane Position** $p = .50-.75$

- Weaving
- Weaving across lane lines
- Straddling a lane line
- Swerving
- Turning with a wide radius
- Drifting
- Almost striking a vehicle or other object

### **Speed and Braking Problems** $p = .45-.70$

- Stopping problems (too far, too short, or too jerky)
- Accelerating or decelerating for no apparent reason
- Varying speed
- Slow speed (10+ mph under limit)

### **Vigilance Problems** $p = .55-.65$

- Driving in opposing lanes or wrong way on one-way
- Slow response to traffic signals
- Slow or failure to respond to officer's signals
- Stopping in lane for no apparent reason
- Driving without headlights at night
- Failure to signal or signal inconsistent with action

### **Judgment Problems** $p = .35-.90$

- Following too closely
- Improper or unsafe lane change
- Illegal or improper turn (too fast, jerky, sharp, etc.)
- Driving on other than the designated roadway
- Stopping inappropriately in response to officer
- Inappropriate or unusual behavior (throwing, arguing, etc.)
- Appearing to be impaired

### **Post Stop Cues** $p \geq .85$

- Difficulty with motor vehicle controls
- Difficulty exiting the vehicle
- Fumbling with driver's license or registration
- Repeating questions or comments
- Swaying, unsteady, or balance problems
- Leaning on the vehicle or other object
- Slurred speech
- Slow to respond to officer or officer must repeat
- Providing incorrect information, changes answers
- Odor of alcoholic beverage from the driver

$p \geq .50$  when combined with any other cue:

- Driving without headlights at night
- Failure to signal or signal inconsistent with action

The probability of detecting DWI by random traffic enforcement stops at night has been found to be about 3 percent (.03).

## PROBLEMS IN MAINTAINING PROPER LANE POSITION

Maintaining proper lane position can be a difficult task for an impaired driver. For example, we have all, at one time, seen vehicles **weaving**. Weaving is when the vehicle alternately moves toward one side of the lane and then the other. The pattern of lateral movement can be fairly regular, as one steering correction is closely followed by another. In extreme cases, the vehicle's wheels even **cross the lane lines** before a correction is made. You might even observe a vehicle **straddling a center or lane line**. That is, the vehicle is moving straight ahead with either the right or left tires on the wrong side of the lane line or markers.



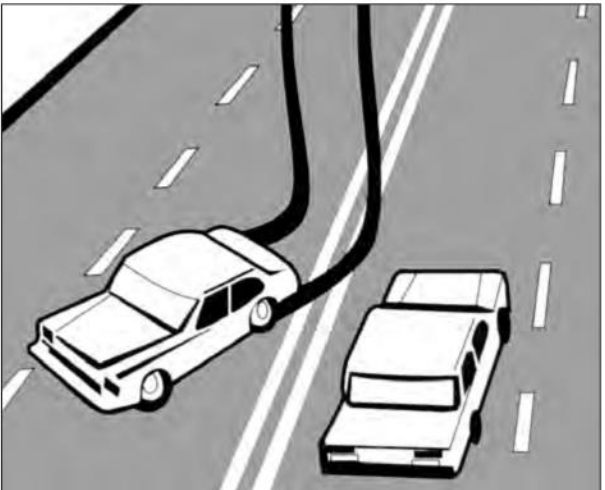
**Weaving**

**Drifting** is when a vehicle is moving in a generally straight line, but at a slight angle to the lane. The driver might correct his or her course as the vehicle approaches a lane line or other boundary or fail to correct until after a boundary has been crossed. In extreme cases, the driver fails to correct in time to avoid a collision.



Drifting

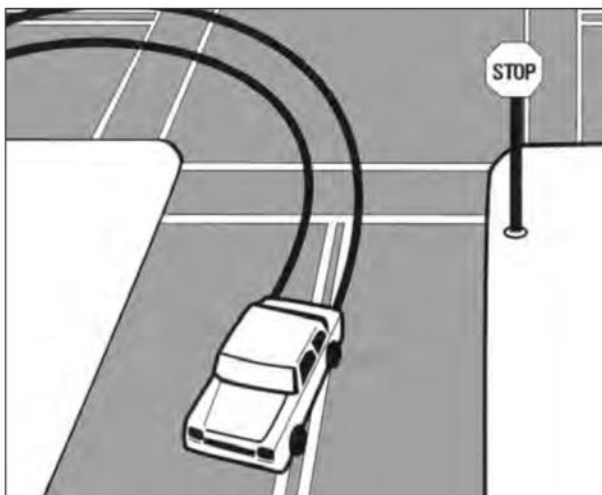
Course corrections can be gradual or abrupt. For example, you might observe a vehicle to **swerve**, making an abrupt turn away from a generally straight course, when a driver realizes that he or she has drifted out of proper lane position or to avoid a previously unnoticed hazard.



Swerving

A related DWI cue is **almost striking a vehicle or other object**. You might observe a vehicle, either at slow speeds or moving with traffic, to pass unusually close to a sign, barrier, building, or other object. This cue also includes almost striking another vehicle, either moving or parked, and causing another vehicle to maneuver to avoid a collision.

**Turning with a wide radius or drifting during a curve** is the final cue in this category of driver behaviors. A vehicle appears to drift to the outside of the lane or into another lane through the curve or while turning a corner. Watch for this cue, and stop the driver when you see it. Many alcohol-involved crashes are caused by an expanding turn radius or drifting out of lane position during a curve.



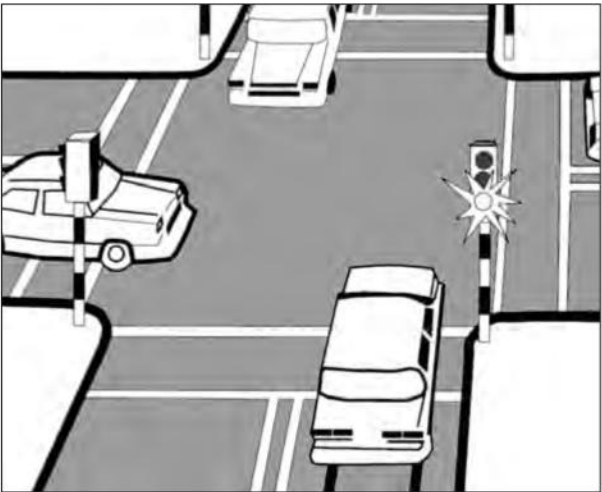
**Turning With a Wide Radius**

## SPEED AND BRAKING PROBLEMS

The research showed that braking properly can be a difficult task for an impaired driver. For example, there is a good chance the driver is DWI if you observe any type of **stopping problem**.

Stopping problems include:

- **Stopping too far from a curb or at an inappropriate angle**
- **Stopping too short or beyond a limit line**
- **Jerky or abrupt stops**



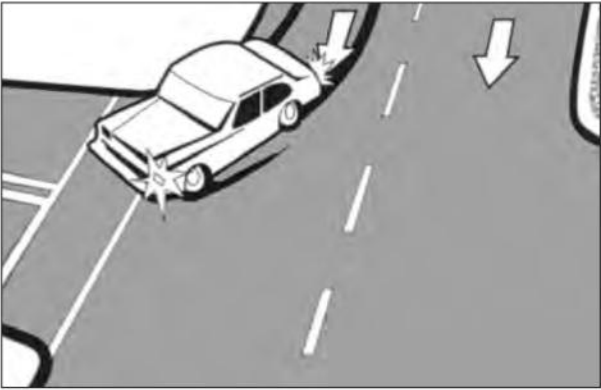
**Stopping Beyond a Limit Line**

Impaired drivers also can experience difficulty maintaining an appropriate speed. There is a good chance the driver is DWI if you observe a vehicle to:

- **Accelerate or decelerate rapidly for no apparent reason**
- **Vary its speed, alternating between speeding up and slowing down**
- **Be driven at a speed that is 10 miles per hour (mph) or more under the limit**

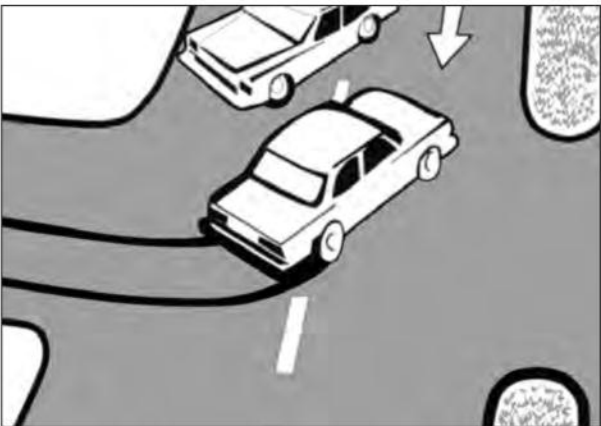
## VIGILANCE PROBLEMS

Vigilance concerns a person's ability to pay attention to a task or notice changes in surroundings. A driver whose vigilance has been impaired by alcohol might forget to turn on his or her headlights when required. Similarly, impaired drivers often forget to signal a turn or lane change, or their signal is inconsistent with their maneuver, for example, signaling left but turning right.



### **Signaling Inconsistent With Driving Actions**

Alcohol-impaired vigilance also results in motorists driving into opposing or crossing traffic and turning in front of oncoming vehicles with insufficient headway.



### **Driving Into Opposing or Crossing Traffic**



Driving is a complex task that requires accurate information about surrounding traffic conditions. Failing to yield the right of way and driving the wrong way on a one way street are dangerous examples of vigilance problems.

A driver whose vigilance has been impaired by alcohol also might respond more slowly than normal to a change in a traffic signal. For example, the vehicle might remain stopped for an unusually long period of time after the signal has turned green. Similarly, an impaired driver might be unusually slow to respond to an officer's lights, siren, or hand signals.

The most extreme DWI cue in the category of vigilance problems is to find a vehicle stopped in a lane for no apparent reason. Sometimes when you observe this behavior the driver will be just lost or confused, but more than half of the time the driver will be DWI—maybe even asleep at the wheel.

## JUDGMENT PROBLEMS

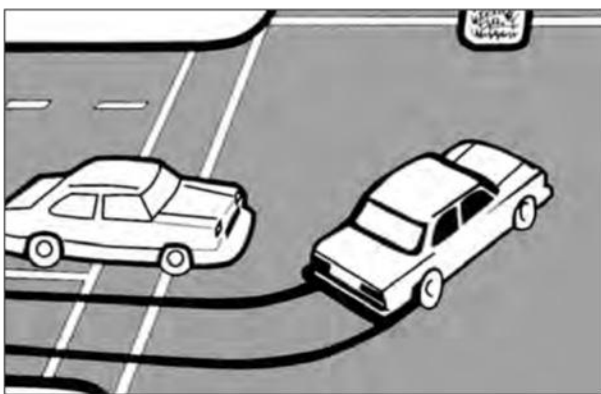
Operating a motor vehicle requires continuous decision making by the driver. Unfortunately, judgment abilities can be affected by even small amounts of alcohol. For example, alcohol-impaired judgment can cause a driver to follow another vehicle too closely, providing an unsafe stopping distance.

Alcohol-impaired judgment also can result in a driver taking risks or endangering others. If you observe a vehicle to make improper or unsafe lane changes, either frequently or abruptly or with apparent disregard for other vehicles, there is a good chance the driver's judgment has been impaired by alcohol.

Similarly, impaired judgment can cause a driver to turn improperly. For example, misjudgments about speed and the roadway can cause a driver

to take a turn too fast or to make sudden corrections during the maneuver. These corrections can appear to the observer as jerky or sharp vehicle movements during the turn.

Alcohol-impaired judgment can affect the full range of driver behaviors. For example, the research found that impaired drivers are less inhibited about making illegal turns than unimpaired drivers.

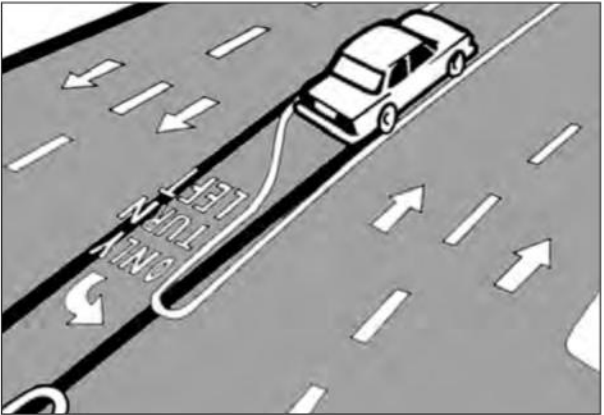


### Turning Illegally

Driving on other than the designated roadway is another cue exhibited by alcohol-impaired drivers. Examples include driving at the edge of the roadway, on the shoulder, off the roadway entirely, and straight through turn-only lanes.

In some cases, impaired drivers stop inappropriately in response to an officer, either abruptly as if they had been startled or in an illegal or dangerous manner.

In fact, the research has shown that there is a good chance a driver is DWI if you observe the person exhibit *any inappropriate or unusual behavior*. Unusual behavior includes throwing something from the vehicle, drinking in the vehicle, urinating at the roadside, arguing with another motorist, or otherwise being disorderly. If you observe inappropriate or unusual behavior, there is a good probability that the driver is DWI.



### Driving on Other Than the Designated Roadway

The final cue is actually one or more of a set of indicators related to the personal behavior or appearance of a driver. These indicators include, gripping the steering wheel tightly, driving with one's face close to the windshield, slouching in the seat, and staring straight ahead with eyes fixed. Some officers routinely scrutinize the faces of drivers in oncoming traffic, looking for the indicators of impairment. If you observe a driver who **appears to be impaired**, the research showed that there is an excellent probability that you are correct in your judgment.



### Appearing To Be Impaired

## SUMMARY

To summarize, the DWI cues related to **problems in maintaining proper lane position** include:

- **Weaving**
- **Weaving across lane lines**
- **Straddling a lane line**
- **Drifting**
- **Swerving**
- **Almost striking a vehicle or other object**
- **Turning with a wide radius or drifting during a curve**

The DWI cues related to **speed and braking problems** include:

- **Stopping problems (too far, too short, too jerky)**
- **Accelerating for no reason**
- **Varying speed**
- **Slow speed**

The DWI cues related to **vigilance problems** include:

- **Driving without headlights at night**
- **Failure to signal a turn or lane change or signaling inconsistently with actions**
- **Driving in opposing lanes or the wrong way on a one-way street**
- **Slow response to traffic signals**
- **Slow or failure to respond to officer's signals**
- **Stopping in the lane for no apparent reason**

The DWI cues related to **judgment problems** include:

- **Following too closely**
- **Improper or unsafe lane change**
- **Illegal or improper turn (too fast, jerky, sharp, etc.)**
- **Driving on other than the designated roadway**
- **Stopping inappropriately in response to an officer**
- **Inappropriate or unusual behavior**
- **Appearing to be impaired**

## POST-STOP CUES

In addition to the driving cues, the following post-stop cues have been found to be excellent predictors of DWI.

- **Difficulty with motor vehicle controls**
- **Difficulty exiting the vehicle**
- **Fumbling with driver's license or registration**
- **Repeating questions or comments**
- **Swaying, unsteady, or balance problems**
- **Leaning on the vehicle or other object**
- **Slurred speech**
- **Slow to respond to officer or officer must repeat questions**
- **Providing incorrect information or changes answers**
- **Odor of alcoholic beverage from the driver**









DOT HS 808 677  
March 2010



U.S. Department of Transportation  
**National Highway Traffic Safety  
Administration**



[www.nhtsa.gov](http://www.nhtsa.gov)

# STUDENT EVALUATION OF INSTRUCTORS

## Criminal Justice Standards Division

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## Sheriffs' Standards Division

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Form F-17  
(Rev. 6/11)

**Instructor** \_\_\_\_\_

**Institution/Agency** \_\_\_\_\_

**Block of Instruction** \_\_\_\_\_ **Date** \_\_\_\_\_

**VALUES**      **UNACCEPTABLE**                      **ACCEPTABLE**  
**1=POOR**      **2 = FAIR**      **3 = GOOD**                      **4 = EXCELLENT** **5 = SUPERIOR**

Please circle the appropriate value adjacent to each question.

### Instructor Qualities

- |     |                             |   |   |   |   |   |
|-----|-----------------------------|---|---|---|---|---|
| 1.  | Appearances.                | 1 | 2 | 3 | 4 | 5 |
| 2.  | Gestures.                   | 1 | 2 | 3 | 4 | 5 |
| 3.  | Verbal Pauses               | 1 | 2 | 3 | 4 | 5 |
| 4.  | Grammar                     | 1 | 2 | 3 | 4 | 5 |
| 5.  | Pronunciation               | 1 | 2 | 3 | 4 | 5 |
| 6.  | Enunciation                 | 1 | 2 | 3 | 4 | 5 |
| 7.  | Voice                       | 1 | 2 | 3 | 4 | 5 |
| 8.  | Rate - Too Fast or Too Slow | 1 | 2 | 3 | 4 | 5 |
| 9.  | Eye Contact                 | 1 | 2 | 3 | 4 | 5 |
| 10. | Enthusiasm                  | 1 | 2 | 3 | 4 | 5 |

**SUBTOTAL**    \_\_\_\_\_

**SUBTOTAL BROUGHT FORWARD**

— — — — —

**II Organization and Presentation**

- 1. Were the major objectives of the course made clear? 1 2 3 4 5
- 2. How well was the class presentation planned and organized? 1 2 3 4 5
- 3. Was the course material clearly explained? 1 2 3 4 5
- 4. Did test questions fairly reflect the course content? 1 2 3 4 5
- 5. Was class time well used? 1 2 3 4 5
- 6. Do you feel that your questions were adequately answered by the instructor? 1 2 3 4 5
- 7. Do you believe the instructor encouraged relevant student involvement in the class? 1 2 3 4 5
- 8. Did the instructor react to student viewpoints different from his in a positive manner? 1 2 3 4 5
- 9. How would you describe the instructor's attitude in class toward you, the student? 1 2 3 4 5
- 10. How would you rate the instructor's quality and use of training aids? 1 2 3 4 5

**TOTAL ACROSS**    \_\_\_+\_\_\_+\_\_\_+\_\_\_+\_\_\_

**CUMULATIVE TOTAL** \_\_\_\_\_

**INSTRUCTOR RATING FORMULA:**

**CUMULATIVE TOTAL ÷ 20 = INSTRUCTOR RATING**   

Comments

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## ***Domestic Violence Response***

BLET: 21X **Draft viii, 41 instructor notes only**

TITLE: DOMESTIC VIOLENCE RESPONSE

Lesson Purpose: To train officers to safely and effectively respond to domestic violence.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives by the information received during the instructional period.

1. State the dynamics of domestic violence relationships and how it impacts investigations and prosecutions.
2. Demonstrate the ability to safely respond to a domestic violence situation that includes:
  - a) Obtaining information from the telecommunicator
  - b) Utilizing proper approach and departure tactics
  - c) Taking appropriate enforcement action, if necessary
3. Identify an effective response and interview tactics for conducting a domestic violence investigation.
4. State the appropriate steps for conducting a domestic violence follow-up investigation.

Hours: Sixteen (16)

Instructional Method: Lecture, Practical Exercises

Testing Requirement(s): End of block test, Practical Exercise

Training Environment(s): Classroom, Practical Exercise Area

Materials Required: Audio-visual classroom equipment  
Duty gear  
Radios  
Training weapons  
ANSI rated safety glasses

## ***Domestic Violence Response***

Various props (e.g., fake drugs, torn clothing, make-up, fake blood, beer cans and bottles, rubber knives, glass ashtrays, keys, cell phone, clothing in a bag, 50B court order, etc.)  
Vehicle(s) equipped with blue lights, siren, radio, PA system, and a police suspension package

Videos:

*Domestic Violence Response*, NCJA (July 2015)

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Date Reviewed: July 2017

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Date Revised: July 2017  
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Date Revised: January 2019

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## ***Domestic Violence Response***

Date Revised:                      January 2020  
   January 2023  
   **July 2023**

## ***Domestic Violence Response***

### TITLE: DOMESTIC VIOLENCE RESPONSE – **Instructor Notes**

1. This lesson plan must be presented by an instructor currently certified by the North Carolina Criminal Justice Education and Training Standards Commission as a General Instructor.
2. This is a sixteen (16) hour block of instruction separated as follows:  
  
Eight (8) hours - Classroom lecture  
Eight (8) hours - Practical exercises
3. This lesson includes telecommunications, officer safety, legal, and investigative issues; therefore, the instructor delivering this block of instruction should be experienced in responding to and investigating domestic violence incidents. Also, the instructor must possess a clear understanding of the methods used to determine the primary aggressor, and must impress upon students that dual arrests are not best practice.
4. Prior to the practical exercise(s), the instructor will review the safety briefing form with all participants, to include role-players and students. The lead instructor and participants must sign and date the safety briefing form. Signed copies of the forms signifying that the participants have reviewed and understood the safety instructions given shall be retained in the student's file.
5. The instructor should use the following guidelines when conducting the practical exercise segment.
  - A. Purpose  
  
During each practical exercise, the responding officer's safety awareness should be challenged but not taken to extremes, such as possibly being presented with some aspect of physical and verbal aggression. It is his/her responsibility to resolve the situation justly, fairly, and safely. Students should first be coached and then allowed an opportunity to exercise individual decision-making skills in regards to arresting the individual determined to be the primary aggressor.
  - B. Exercise Conditions
    1. Exercises should be conducted after the lecture has been completed.
    2. Exercises require eight hours to administer.

## ***Domestic Violence Response***

3. Exercises should take place utilizing an actual house structure or living room/kitchen environment.
4. These exercises are designed for a class of twenty students or less.
5. Each exercise involves a student and instructor/coach response.
6. These exercises require some spontaneous reactions from the role players, but they should not try to escalate the violence or emotions in all of them. The officers should have the opportunity to discuss alternatives to arrest and to help the role players problem solve.

### **C. Personnel and Equipment**

1. The instructor will coach and guide as a supervisor who is on the scene with the responding officer. During the first scenario, the instructor should provide the most coaching, less coaching during the second scenario, and almost none by the third scenario. The instructor will critique each scenario.
2. At least three additional role players (scenarios include traditional and non-traditional relationships).
3. Duty belt, inert spray, radios, training weapons, handcuffs, safety glasses, and patrol vehicles for responding officers.

“Training weapons” are props or training aids that are used in scenario-type training events. Training weapons are weapons such as polymer molded firearms and weapons that have been rendered safe to the point that they cannot be loaded and/or fired. Weapons rendered safe have had modifications such as barrel plugs or inserts that will not allow the loading of lethal ammunition, firing pin removal, etc. Training weapons should be marked and physically inspected for each session of training to ensure the integrity of a safe training environment.

4. Training weapons, safety glasses, keys, cell phone, and props (to include torn clothing, make-up, fake blood, beer cans and bottles, rubber knives, glass ashtrays, clothing in a bag) for role players.

### **D. Procedures for Conducting the Exercises**

1. Before the practical exercise(s), the instructor will review the safety briefing form with all participants, to include role-players and students. The lead instructor and each participant must sign and date the safety

## ***Domestic Violence Response***

briefing form. The instructor shall retain signed copies of the forms in the student's permanent file signifying that the participants have reviewed and understood the safety instructions given.

2. Students will respond to a minimum of two scenarios. One evaluation form may be used for multiple scenarios and to document primary/secondary responses. The practical exercise evaluation form shall be retained in the student's permanent file.
3. After each scenario:
  - a) Collect radios, weapons, and glasses and following a safety check, according to the protocol reviewed at the beginning of class, give to the next students.
  - b) Critique and evaluate.
4. Evaluate the students using at least two of the six scenarios:
  - a) Assault by strangulation/assault on a female

A woman calls 9-1-1 and states that she needs the police because her husband is beating her. The phone is disconnected before any further information can be obtained. The CAD system reflects the address as being: (specific to your training site).

Upon arrival, the officers don't hear anything from inside. The male answers the door and is irritated and wants to know what the officers want. The male is hesitant to allow anyone in and states that he didn't call the police.

The officers should be very persistent in speaking with the person who called. Once an entry is made, the officers discovered a female who is shaken and visibly distraught. The female has a small amount of blood on her shirt from a busted lip and faint red bruising about her neck. The officer should separate the individuals for interview purposes. The female alleges that the male has been accusing her of having an affair with one of his friends and that during an argument, he slapped her across the mouth and started strangling her, while on top of her, on the floor.

## ***Domestic Violence Response***

The male who is still very irritated alleges that his wife is a habitual liar and states that she came after him. The male who is starting to calm down shows the officers where he has been scratched across the face and has a bite mark on the inside of his forearm.

The couple has been married for one year and has a history of documented domestic violence. Their history includes the male being arrested during one past incident for pushing and slapping the victim. Though a protective order was taken out during a past incident, both the order and charges were dropped in court.

### **Expected outcome:**

The officer should realize that the male's resistance to allowing them to enter the residence is a clue that he may have something to hide. The next clue is that the victim is visibly shaken while the male is very irritated. Also, the husband believed his wife was having an affair. The female's injuries should likely appear to be offensive (attacked the face/mouth and marks on the neck). The male's injuries should likely represent that the victim was defending herself at the time of the assault. The history of violence could help support the officer's decision to arrest the male as the primary aggressor. Pictures should be taken of the victim's injuries. The male should be arrested for 1) assault by strangulation (because he strangled her and she had faint bruising about her neck) and 2) assault on a female (AOF) for slapping her across the mouth. The officer should also run the suspect's record to see if the suspect qualifies to be charged with habitual misdemeanor assault instead of AOF. The officer would ideally conduct a danger/lethality assessment and safety planning with the victim and provide the victim with resources for the local domestic violence agency.

#### b) Simple assault/false imprisonment

A neighbor calls the police to report loud yelling and-screaming at the next door residence. When the police arrive, they hear a male and female arguing over a set of car keys and a cell phone. The male answers the door and states that he didn't call the police but allows them to come in anyway. The female immediately walks into another room, sits down, and starts tapping her foot. The female, though not hostile, is somewhat

## ***Domestic Violence Response***

belligerent to questioning and says several times, “just ask him.” The female does not cooperate with questioning any further.

The officer should separate the individuals for interview purposes. After questioning the male, the contact officer discovers that the female struck the male by slapping him in the face and would not allow him to leave the residence. The male has faint redness about the left side of his jaw. The male alleges that his girlfriend is upset over an issue regarding money and his child. The male alleges that his girlfriend hid his cell phone, car keys, and prevented him from leaving by blocking the doorways. The male alleges that his girlfriend gets irrational sometimes, and he thought it was best to leave, but she kept preventing him from leaving.

The couple has been living together for six months and has no previous documented history of domestic violence.

### **Expected outcome:**

The officers should realize that the female is agitated and uncooperative. Her body language and behavior should likely represent that of an irrational person. It is evident that the female hid her boyfriend’s keys and phone and was prohibiting him from leaving. It is also apparent that the male has been slapped across the face. The officer should ultimately conclude that the female is the predominant aggressor and should be arrested for 1) simple assault (for slapping him) and 2) false imprisonment (for blocking the doorways and preventing him from leaving). The officer should also run the suspect’s record to see if the suspect qualifies to be charged with habitual misdemeanor assault instead of simple assault. Pictures should be taken of the victim’s injuries. The officer would ideally conduct a danger/lethality assessment and safety planning with the victim and provide the victim with resources for the local domestic violence agency.

### c) Same-sex relationship

A young woman calls 9-1-1 and states that she needs help because her roommate is beating her. Upon arrival, the young woman answers the door and states that her roommate has punched and slapped her in the face because she has not cleaned up the apartment as she promised.



## ***Domestic Violence Response***

Once an entry is made, the officers see that the female caller is visibly afraid of the roommate, also a female, and the furniture is in disarray. The female caller has a small amount of blood on her shirt from a busted lip and a faint red bruise on her right cheek. The female caller alleges that her roommate has been out drinking all night, came home angry, and woke her up from bed by slapping and punching her in the face.

The roommate, who is still very irritated and appears intoxicated alleges that the female is a freeloader who always promises to pay her half but never does and that she was tired of it. The individuals have been roommates for over one year.

### **Expected outcome:**

The officer should separate the individuals for interview purposes. Once the two women are separated, the caller discloses that she is in an intimate relationship with her roommate. The officer should ask the victim if this has happened before. After a thorough investigation, the officer should arrest the roommate for simple assault and any other related charges. This relationship is classified as one of the personal qualifying domestic violence relationships, not because they are in an intimate relationship, but because they are household members. An assault on a female charge would not be appropriate here since the crime must be committed by a male per statute. The officer should also run the suspect's record to see if the suspect qualifies to be charged with habitual misdemeanor assault instead of simple assault. Pictures should be taken of the victim's injuries and the scene. The officer would ideally conduct a danger/lethality assessment and safety planning with the victim and, also, the officer should provide the victim with resources for the local domestic violence agency.

- d) Assault with a deadly weapon, communicating threats, language barrier

A Spanish-speaking woman calls 9-1-1 and reports that her husband threatened to kill her and then tried to run her over with the car. Upon arrival, the female is standing in the driveway crying. There is a male who is standing outside of the driver's side door of a vehicle parked several feet away from the curb in

## ***Domestic Violence Response***

the middle of the street. There is a teenage boy that is standing in-between the male and the female.

### **Expected outcome:**

The officer should separate the individuals for interview purposes. The male speaks English fluently and tells the officers that the female is crazy and was yelling to him to stay when she jumped in front of his car. When the officer interviews the female, she can communicate some of what happened in English but is struggling to find the words. The female's fourteen-year-old son is present and offers to translate. The officer should recognize that to get the full details from the female, the officer should utilize a language line. The officer should recognize that it is neither appropriate to put a child in the middle, nor is there any assurance that the child is accurately translating what the female has said. When the officer uses the language line, the female tells him that she and her husband were arguing about his drinking, and she said that she was going to leave him. She said that her son was present and that her husband told her that if she tried to leave that he would kill her. She started walking down the street, and the male got in his car and tried to hit her with it. She jumped out of the way and fell into the grass. She has grass stains on her pants - the officer interviews the son who reports the same as the female. The officer should come to a conclusion based on the witness statements and corroborating evidence that the male threatened to kill the female and tried to run her over with the car. The officer should arrest the male for 1) assault with a deadly weapon, 2) communicating threats, 3) assault on a female and potentially, 4) assault in the presence of a minor, depending on the age of her son, if he saw or heard the assault. The officer would ideally conduct safety planning with the victim and provide the victim with resources for the local domestic violence agency.

- e) Male victim/violation of domestic violence protective order (DVPO)/stalking

A male calls 9-1-1 and reports that his ex-girlfriend is harassing him with calls and text messages and shouldn't be calling him. The male says that there is a DVPO in place against her.

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Upon arrival, the ex-girlfriend is not on scene. The male says that he was granted a DVPO, although he does not have a copy with him. He says that his ex-girlfriend keeps calling and leaving him messages saying that she loves him and will do anything to get him back. She has also texted him multiple times and asked him to please forgive her and to stop ignoring her. He says that she has been abusive in the past, and that's why he obtained the DVPO. He just wants her to leave him alone and says this is stressing him out. He knows that she did this same thing to her previous ex-boyfriend, and he also had to get a DVPO.

### **Expected outcome:**

With the victim's consent, the officer should review the victim's phone to see the incoming calls, listen to the voicemails, and review the text messages. The officer should use the National Crime Information Center (NCIC)/Division of Criminal Information Network (DCIN) system to look up the DVPO and verify it is still active and what the terms are. The officer should use a camera to take pictures of the screen of the victim's phone, showing the incoming calls and text messages. The officer should also record the voicemails using an approved method of his/her department (work phone, in-car recording device, etc. only; DO NOT use a personal phone or electronic device to take photographs or document evidence).

Additionally, the officer should NOT rely on telling the victim that he should save the voicemails and text messages and bring them to court. The texts and voicemails are EVIDENCE, and the officer is responsible for collecting the evidence the same as if it were a weapon. With that said, encourage the victim to save the voicemails and text messages and bring them to court in addition to the officer photographing and recording them as evidence. The officer should recognize that even though the messages were not threatening in nature, they violate the no-contact order in the DVPO. The officer should run the female's record in CJLEADS and after discovering that she has been convicted of violating a DVPO twice before, the officer should charge the female with at least one count of felony habitual violation of a DVPO (and as many as seem appropriate based on the number of actual violations) as well as felony stalking (for stalking the male victim in violation of a court order). The officer would ideally conduct a danger/lethality assessment and

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safety planning with the victim and provide the victim with resources for the local domestic violence agency.

f) Domestic dispute

A woman calls 9-1-1 and hangs up before the dispatcher can obtain information. The dispatcher could hear yelling and screaming in the background. Upon arrival, the officers discover that the woman and her husband have had a heated argument over a private matter. The woman alleges that she wants the man out of the house right now and that the officers had better take him. The couple has a documented history of domestic violence. On one past occasion, the male was arrested for pushing the female.

**Expected outcome:**

The officer should separate the individuals for interview purposes. The officer should determine that no crime has been committed and that arrest is not an option. The officer should provide mediation and offer one party a ride to another location. The officer should ensure that neither party has sustained injuries. The officer should make both parties aware of community resources and let them know what options they have available. If the parties refuse to separate, the officer should realize that he or she cannot force either party to leave. Officers should also document in his/her report if the parties refused to leave and whether he/she noticed any signs of abuse.

E. Directions for Grading

The instructors should use the evaluation criteria listed on the Practical Exercise Form to evaluate the students on each scenario they participate in, either as a contact officer or a cover officer. If the student performs the listed activity satisfactorily, place an “S” in the adjacent space. If the student performs in an unsatisfactory manner, indicate their poor performance by placing a “U” on the appropriate line. A student that receives an unsatisfactory in more than three of the listed activities fails the practical exercise. The instructor must document the deficiency in the comments section.

5. To promote and facilitate law enforcement professionalism, four ethical dilemmas are listed below for classroom discussion. At their discretion, instructors must provide students with each ethical dilemma listed below. Sometime during the lecture,

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instructors should “set the stage” for the dilemma before taking a break. Instructors are encouraged to develop additional dilemmas as needed.

- a) You answer a call at your best friend’s house on a domestic violence call. There are signs of violence apparent on his wife. What do you do?
- b) You are dispatched to a house because of a 50-B violation. You verify before arriving that a valid order has been served. Upon arrival, you see the husband and wife hugging in the driveway. You ascertain from your interview that the couple is trying to reconcile, but you know the husband has violated the order. What do you do?
- c) Upon arriving at the scene of a domestic violence call, you realize that the suspect is someone you went to high school with. You never liked each other, and you do not see signs of violence, but you are sure he did what is alleged. What do you do?
- d) You are dispatched to a house after a neighbor calls the police about a domestic assault. Upon arrival, you realize that the male is a law enforcement officer in your agency. The female has apparent signs of injury and does not want to tell you what happened. The neighbor who called 9-1-1 approaches you and says that he saw the male drag the female out of the car, slap her across the face, and then pull her inside the house where the neighbor continued to hear screaming and yelling. The male tells you that they were just arguing loudly and says, “c’ mon, you know nothing happened here. I would never do anything to jeopardize my career or hurt my wife.” What do you do?

## ***Domestic Violence Response***

TITLE: DOMESTIC VIOLENCE RESPONSE

### I. Introduction

**NOTE: Show slide, “Domestic Violence Response.”**

#### A. Opening Statement

Across the country, law enforcement agencies have changed the way they respond to domestic violence. Officers should realize that they play an essential role in prevention and intervention in domestic violence. You will often be the only chance a victim may have in getting help. You are the front line for intervening in domestic and family violence.

As children in these violent homes become the next generation of victims and batterers, it is our responsibility to make sound decisions to protect them from harm and take the appropriate actions.

It has been found that arrest is an effective early intervention strategy which dramatically reduces the domestic homicide rate and repeat calls for service. By working to stop the violence, making the victim safe, and holding the batterer accountable, the cycle of violence can be broken.

#### B. Training Objectives

**NOTE: Show slides, “Training Objectives.”**

1. State the dynamics of domestic violence relationships and how it impacts investigations and prosecutions.
2. Demonstrate the ability to safely respond to a domestic violence situation that includes:
  - a) Obtaining information from the telecommunicator
  - b) Utilizing proper approach and departure tactics
  - c) Taking appropriate enforcement action, if necessary
3. Identify an effective response and interview tactics for conducting a domestic violence investigation.
4. State the appropriate steps for conducting a domestic violence follow-up investigation.

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### C. Reasons

**NOTE: Show slide, “Domestic Violence Can Be Lethal.”**

Domestic violence is prevalent and lethal. On average, more than three women are murdered by their husbands or boyfriends in this country every day.<sup>1</sup> Officers respond to domestic calls that are dangerous for them and the individuals living in the homes. Therefore, it is important that officers know and practice good safety procedures. The choice of how each officer handles a call is theirs to make. The more opportunity the officer has in knowing possible options and techniques and recognizing the importance of practicing good safety procedures, the greater the chances of successfully managing the conflict, which includes the officer walking away alive.

**NOTE: Show slide, “Officers Need to Remember.”**

Incidents of domestic violence are unpredictable occurrences, and the only thing more unpredictable than a human being is a human being in crisis. What happened before is not a reliable indicator of what will happen this time. What is happening right now is no predictor of what will happen hours, minutes, or even seconds from now.

**NOTE: Show slide and refer to the handout, “Domestic Violence.”<sup>2</sup> Discuss the statistics provided and the impact domestic violence has on its victim.**

### II. Body

#### A. Dynamics of Domestic Violence

##### 1. Domestic violence defined

**NOTE: Show slide, “Domestic Violence - Defined.”**

“Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

**NOTE: show slide, “Types of Abuse.”**

##### a) Physical abuse

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Hitting, slapping, shoving, grabbing, pinching, biting, hair pulling, etc. are types of physical abuse. This type of abuse also includes denying a partner medical care or forcing alcohol and/or drug use upon him or her.

b) Sexual abuse

Coercing or attempting to coerce any sexual contact or behavior without consent. Sexual abuse includes, but is certainly not limited to, marital rape, attacks on sexual parts of the body, forcing sex after physical violence has occurred or treating one in a sexually demeaning manner.

c) Emotional abuse

Undermining an individual's sense of worth and/or self-esteem is abusive. This may include, but is not limited to constant criticism, diminishing one's abilities, name-calling, or damaging one's relationship with his or her children.

d) Economic abuse

Is defined as making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one's attendance at school or employment.

e) Psychological abuse

Elements of psychological abuse include – but are not limited to – causing fear by intimidation: threatening physical harm to self, partner, children, or partner's family or friends; destruction of pets and property; and forcing isolation from family, friends, or school and/or work.”<sup>3</sup>

**NOTE: Show slide, “It Can Happen to Anyone.”**

“Domestic violence can happen to anyone, regardless of race, age, sexual orientation, religion, or gender. Domestic violence affects people of all socioeconomic backgrounds and education levels. Domestic violence occurs in both opposite-sex and same-sex relationships and can happen to intimidate partners who are married, living together or dating.



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Domestic violence not only affects those who are abused but also has a substantial effect on family members, friends, co-workers, other witnesses, and the community at large. Children, who grow up witnessing domestic violence, are among those seriously affected by this crime. Frequent exposure to violence in the home not only predisposes children to numerous social and physical problems but also teaches them that violence is a normal way of life – therefore, increasing their risk of becoming society’s next generation of victims and abusers.”<sup>4</sup>

### 2. Dynamics of domestic violence

**NOTE: Show slide, “Dynamics of Domestic Violence.”**

#### a) Power and control

**NOTE: Show slide, “Power and Control.”**

Domestic violence is characterized by a pattern of increasing power and coercive control. It is a continuum of behavior ranging from verbal abuse, economic exploitation, sexual abuse, bodily assaults, and homicide. This abuse is fundamentally about *power and control* by one partner over the other partner.<sup>5</sup>

#### b) Why do victims stay and leave several times? A domestic violence victim will leave an average of seven times before leaving the relationship for good.<sup>6</sup>

**NOTE: Show slide, “Why Victims Stay.” Ask the class, “Why do you think a person would stay in an abusive relationship?” Record the answers on a flipchart to discuss as you cover them.**

**NOTE: Ask the class to raise their hand if they have ever been in a romantic/dating relationship in their life. Most hands should rise. Have the students to keep their hands up if they have ever stayed in a relationship longer than they should have and knew it was over. Usually, two-thirds of the students will keep their hands up. Ask them, “Why?” Record answers on a flipchart. These same reasons can be referred to as why someone may stay in a non-abusive relationship. Discuss these reasons and then add violence to the equation.**

#### (1) Situational factors

**NOTE: Show slides, “Situational Factors.”**

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- (a) “Economic dependence on the abuser
  - (b) Fear of physical harm to self or children
  - (c) Fear of emotional damage to the children over the loss of a parent, even if that parent is abusive
  - (d) Fear of losing custody of the children because the abuser threatens to take the children if the victim tries to leave
  - (e) Lack of job skills
  - (f) Social isolation and lack of support because the abuser is often the victim’s only support system
  - (g) Lack of information regarding domestic violence resources
  - (h) Lack of alternative housing
  - (i) Cultural or religious constraints.”<sup>7</sup>
  - (j) The belief that law enforcement will not take the victim seriously<sup>8</sup>
  - (k) Stalking
  - (l) Religious/faith beliefs<sup>9</sup>
  - (m) Pets/farm animals
  - (n) Language barriers<sup>10</sup>
  - (o) “My partner will take my passport and immigration papers.
  - (p) My partner will have me deported or report me to the INS.”<sup>11</sup>
- (2) Emotional factors

**NOTE: Show slides, “Emotional Factors.”**

## ***Domestic Violence Response***

- (a) “Belief that the abusive partner will change because of his[/her] remorse and promises to stop battering
- (b) Fear of the abuser who threatens to kill the victim if abuse is reported to anyone
- (c) Lack of emotional support
- (d) Guilt over the failure of the relationship
- (e) Attachment to the partner
- (f) Fear of making major life changes
- (g) Feeling responsible for the abuse
- (h) Feeling helpless, hopeless and trapped
- (i) Belief that [the victim] is the only one who can help the abuser with his/her problems.”<sup>12</sup>
- (j) “My partner will spread horrible rumors about me.
- (k) [My partner] will out me at work or to my family.”<sup>13</sup>
- (l) “I’m nothing. I don’t deserve better.
- (m) I feel paralyzed.
- (n) I can’t face making decisions anymore.
- (o) I was brainwashed to believe that I couldn’t cope without my partner.
- (p) I am so used to life being this way.
- (q) I’m more comfortable with what I know than the unknown out in the world.”<sup>14</sup>

In spite of these powerful factors, victims still make decisions about going or staying based on

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the level of support they receive from family, law enforcement, and the criminal justice system, coworkers, advocates, and others as they reach out for help.<sup>15</sup>

### c) Understanding abuser behavior

Individuals that abuse others typically are very smart and can be quite charming. Most of these individuals have a pleasant public personality due to their charm that allows them to deceive and manipulate intimate partners. This is why, often, when a victim does report an assault, he or she is not easily believed. Batterers are often referred to by their victims as “Dr. Jekyll and Mr. Hyde” because of the drastic differences they portray themselves as in their public and private lives. Some examples of behaviors exhibited may include, but are not limited to, the following:

#### **NOTE: Show slides, “Understanding Abuser Behavior.”**

- (1) “Often blow up in anger at small incidents. He or she is often easily insulted, claiming hurt feelings when he or she is really very angry.
- (2) Are excessively jealous: At the beginning of a relationship, an abuser may claim that jealousy is a sign of his or her love. Jealousy has nothing to do with love.
- (3) Like to isolate victim: He or she may try to cut you off from social supports, accusing the people who act as your support network of ‘causing trouble.’
- (4) Have a poor self-image: are insecure.
- (5) Blame others for their own problems.
- (6) Blame others for their own feelings and are very manipulative. An abusive person will often say ‘you make me mad,’ ‘you’re hurting me by not doing what I ask,’ or ‘I can’t help being angry.’
- (7) Often are alcohol or drug abusers.
- (8) May have a family history of violence.

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- (9) May be cruel to animals and/or children.
- (10) May have a fascination with weapons.
- (11) May think it is okay to solve conflicts with violence.
- (12) Often make threats of violence, breaking, or striking objects.
- (13) Often use physical force during arguments.
- (14) Often use verbal threats such as 'I'll slap your mouth off,' 'I'll kill you,' or 'I'll break your neck.' Abusers may try to excuse this behavior by saying, 'everybody talks like that.'
- (15) May hold rigid stereotypical views of the roles of men and women. The abuser may see women as inferior to men, stupid, and unable to be a whole person without a relationship.
- (16) Are very controlling of others. Controlling behaviors often grow to the point where victims are not allowed to make personal decisions.
- (17) May act out instead of expressing themselves verbally.
- (18) May be quick to become involved in relationships. Many battered women dated or knew their abuser less than six months before they were engaged or living together.
- (19) May have unrealistic expectations. The abuser may expect his or her partner to fulfill all his or her needs. The abusive person may say, 'If you love me, I'm all you need – you're all I need.'
- (20) May use 'playful' force during sex, and/or may want to act out sexual fantasies in which the victim is helpless.
- (21) May say things that are intentionally cruel and hurtful in order to degrade, humiliate or run down the victim's accomplishments.

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- (22) Tend to be moody and unpredictable. They may be nice one minute and the next minute explosive. Explosiveness and mood swings are typical of men who beat their partners.
  - (23) May have a history of battering: the abuser may admit to hitting others in the past, but will claim the victim ‘asked for’ it. An abuser will beat any woman he is with: situational circumstances do not make a person abusive.”<sup>16</sup>
- d) Abusers’ interference with victims

**NOTE: Show slide, “Abusers’ Interference with Victims.”**

Officers are often frustrated with victims due to their choices to not to leave an abusive partner, not seek a domestic violence protective order, not come to court to prosecute the offender, or coming to court and recanting the violence they experienced. While it is frustrating for officers when this happens, officers are encouraged to remember what they have learned about the dynamics of domestic violence, and the barriers to victims leaving. Remember that victims call the police because they are scared and/or in immediate danger at the time. They are not calling the police out of a primary motivation to have the abuser arrested and prosecuted. Also, abusers are very skilled at manipulating victims to stay and to not participate in their prosecution.

Officers should be aware that while they might arrest an offender the night of the incident, often the next time they have any contact with that victim is in court. In contrast, abusers may contact the victim constantly (despite a pretrial release order not to do so). Often, abusers are calling the victim from jail even before the officer has left the sally port. These dynamics contribute to victims feeling stuck and unsure or unable to participate in the criminal prosecution. Officers should be alert to signs that the abuser is interfering with the victim by monitoring jail calls when possible, driving by the victim’s home and/or calling, or checking in on the victim in person in between the arrest and court dates.

Officers should be empowered to charge offenders who are intimidating victims with intimidating a witness.<sup>17</sup> “If there is a

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valid protective order prohibiting contact, then consider charging the abuser with violation of a domestic violence protective order.”<sup>18</sup> Also, consider revoking an offenders’ pretrial release conditions whenever appropriate to hold batterers accountable and make it clear that the officers do not tolerate domestic violence.

**NOTE: Show video, *Why I Stayed*.**

- e) Officer-involved domestic violence

**NOTE: Show slides, “Officer-Involved Domestic Violence.”**

“The International Association of Chiefs of Police states that the rate of officer-involved domestic violence ‘is estimated to be at least as common as that of the general population.’”<sup>19</sup> The dynamics for officer-involved domestic violence have all of the same methods of power and control previously discussed; however, the training they receive compounds matters when he or she uses their position of power/authority to gain and/or maintain control over another individual. Some of the tactics specific to officer-involved domestic violence are discussed below.

- (1) Reluctance to report

Victims of domestic violence by a law enforcement officer understandably fear calling the police because they know that the case will be handled by their abuser’s colleagues and friends of their abusers.<sup>20</sup>

- (2) Presence

- (a) Professional presence – Officers learn to project a “command presence.” The presence of a uniform, gun, badge, or any other official symbol can inflict fear or intimidation on another individual.
- (b) Personal presence – Gives “the look” that they know everything the victim has done, where they have been, who they have been with that day, etc.

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(3) Training and experience

Subject control and arrest techniques are taught to officers. They learn how to gain control over another individual to gain compliance. While it is always inappropriate and potentially criminal to use these techniques on individuals who are not criminal suspects, officers who commit domestic violence may use these techniques on his or her victims.

(4) Communication techniques

The officer may not be able to separate work from their personal life. They may see anything that comes up as challenging their dominance, authority, and/or power.

(5) Information gathering techniques

Law enforcement has access to a lot of information that the average citizen does not, such as running license tags, driver licenses, jail records, etc. Officers can also use information gathering programs in harmful ways to harass the victim, the victim's family, and friends. Even though officers have official access to law enforcement specific databases, it must be noted that it is wrong to use them for such purposes to stalk their victims.

(6) Lying

Some types of law enforcement responsibilities entail undercover investigations, which require them to deceive others as part of their role in an ongoing investigation. These same deceptive tactics can be used to manipulate domestic violence victims.

(7) Interview and interrogation techniques

Verbal communication methods ranging from persuasion to intimidation enable officers to manipulate and control the level of interaction with suspects to solicit cooperation and information. These same tactics can be employed by abusers on their intimate partners.

(8) Physical abuse



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During police training, officers are taught to use their hands, elbows, legs, and knees as weapons to inflict pain to gain compliance. It is these very same skills that are used on their intimate partners in the home to gain compliance and sub-ordination.

### (9) Weapons

The nature of a law enforcement officer's job provides the officer who batters a legitimate need for a weapon. Most officers have more than one. Many officers go armed at all times; weapons are always within reach in their home. Although a weapon may not be involved in all domestics, the threat is ever present and does not have to be spoken.

### (10) Denials

The abuser will minimize his or her behavior and acts and may break down crying after he or she has beaten the victim. He or she will say that they cannot believe what just happened and beg the victim to forgive them.

**NOTE: Show video, *Officer-Involved Domestic Violence*.**

### f) The impact of domestic violence on children

**NOTE: Show slide, "Children and Domestic Violence."**

"Watching or hearing a parent being harmed by their partner threatens a child's stability and security typically provided by their family. Children exposed to domestic violence are at an increased risk of experiencing physical injury or child abuse, to include physical abuse and psychological abuse."<sup>21</sup> "Exposure to violence may desensitize children to aggressive behavior. When this occurs, aggression becomes part of the 'norm' and is less likely to signal concern to them."<sup>22</sup>

**NOTE: Show video, *Descendent*. The video is an artist by the name of Descendent MC rapping about what it was like for him as a child to witness domestic violence and how he is still coping with it as an adult.**

### B. The Tactical Response Situation

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**NOTE: Show slide, “The Tactical Response.”**

Regardless of how much specialized training an officer has in intervention techniques, it may not be worth a great deal unless the officer is constantly aware of his/her safety and is conscious of practicing proper procedures to ensure his/her survival.

1. Having a developed plan of action will greatly decrease officer assault and death incidences. Officers should be mentally prepared for possible attacks. Approaching carefully and making a cautious entry, calming and separating the involved individuals, selecting the police action most likely to prevent further violence, and departing will ensure your safety.
2. Develop a plan of action.<sup>23</sup>

Are you mentally prepared when responding to domestic calls? What is your thought process? You should be having thoughts like these:

- a) Are there any weapons?
  - b) Where is the safest place to park?
  - c) What are the parties fighting about?
  - d) How many people are involved?
  - e) What do I already know about this location? **\*\*Each situation should be evaluated independently as prior violence (or lack of violence) does not determine the level of violence in the current situation.**
  - f) Where is my back-up, and how will they respond?
3. Approach and deploy tactically.<sup>24</sup>

Some officers killed during domestic violence calls were victims of ambushes that happened immediately upon arrival before making direct contact with the individuals involved.<sup>25</sup> It is important that you obtain as much information as possible about the situation before arriving on the scene, and use this information to make a tactical approach to the scene upon arrival.

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- a) Before arrival at a domestic disturbance, attempt to find out from the telecommunicator specific information relative to the call. This information in order of relevance includes:<sup>26</sup>

**NOTE: Show slide, “Telecommunicator’s Information.”**

- (1) The nature of the incident.
- (2) The address, apartment number, left, or right side of the road.
- (3) Injuries, is ambulance necessary?
- (4) Weapons
  - (a) What kinds of weapons?
  - (b) Where is the weapon(s) located?

At least one firearm is kept in one-third of all U.S. residences. A Washington Post survey conducted in 2014 found that, on average, each gun owner owns approximately eight firearms.<sup>27</sup>

- (5) The telephone number of the caller.
- (6) Is suspect present, suspect name, suspect description?
- (7) Have any of the parties involved been drinking or using drugs?
- (8) Are children present or involved?
- (9) Is there an ex parte or protective order?
- (10) Is the caller a victim or witness?
- (11) Who is the complainant?

“If it’s a disputant, then at least one of them will know you’re coming. If it’s a neighbor, which it is about 20 percent of the time, neither disputant may be expecting you. This will increase your chances of using surprise in

## ***Domestic Violence Response***

your approach, but may mean that you will be greeted with greater resentment for interfering uninvited.”<sup>28</sup>

- (12) Has the victim been sexually assaulted?

Remember, that technically speaking, the telecommunicator is usually the “first one on the scene,” so officers should take advantage of all the information that they can receive from this vital source.

**NOTE: Show video, *Domestic Violence Response* – “Telecommunicator.”**

- b) If possible, at least two officers should respond to a domestic violence situation.<sup>29</sup>

**NOTE: Show slide, “Two Officers.”**

Domestic calls should be considered a *two-officer* call. It is extremely difficult for one officer to cover all the areas of responsibility alone and maintain the safety of themselves and those at the scene. When officers are riding one per call, they should wait for their assisting officer before approaching the call. Domestic calls are unpredictable and can become volatile very quickly.

Responding to domestics alone has proven fatal to many officers. While you are alone, a potential assailant will likely perceive you as even more vulnerable. If approached by a party involved in the disturbance, notify your assisting car and the telecommunicator immediately to speed up their response.

- c) Tactical approach

**NOTE: Show slides, “Tactical Approach.”**

When you respond to a domestic violence call, you should always be under the assumption that all parties involved know that the police have been called. If one of them seeks to do you harm, they will be ready for you . . . YOU MUST ALSO BE READY!<sup>30</sup>

- (1) Park your patrol vehicle in a position where it will be least likely to be seen by the individuals inside the residence.<sup>31</sup>

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- (a) “Don’t pass the residence if possible.
- (b) Park several houses away on the same side of the street.
- (c) Park so your vehicle is between you and the residence (this affords immediate cover if needed).
- (d) Don’t park under a street light.”<sup>32</sup>
- (e) Don’t slam the door to your vehicle.

“There are several ways to safely approach and position your vehicle when responding to domestic disturbances. The key factor is parking your vehicle in such a way that affords you cover, while also allowing you to surprise the parties inside. Try to anticipate the address and stop short of it by watching the house numbers on the opposite side of the street. In rural areas, consider stopping short on the road that passes the property rather than driving in, and then follow a tree line on foot or use other concealment to allow an approach with the least amount of visibility.

If you do pull up in the driveway, try not to park in the expected place, i.e., center of driveway, right in front of sidewalk, etc. Pull up past the doorway or not the whole way up. Try to make sure that your car does not get blocked in—you may need to exit quickly.”<sup>33</sup>

- (2) Tactically approach the residence on foot.
  - (a) Walk leaving distance between you and your partner.
  - (b) Use available cover and concealment while approaching.
  - (c) Approach under cover of darkness when applicable.
  - (d) Look for signs of a possible armed encounter inside the residence. Signs to look for on the

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outside of the residence include gun racks in the back of trucks, NRA decals, etc.<sup>34</sup>

- (e) Don't cross in front of windows if possible. If it is necessary to do so, cross them quickly while looking for possible threats from them.<sup>35</sup>
- (f) Walk and stand to the side of doors. If possible, stand to the doorknob side of the door.<sup>36</sup> Avoid the fatal funnel. "The 'fatal funnel' is a term usually used pertaining to building-clearing operations. It refers to areas such as sidewalks, hallways and doorways that are generally narrow, confining areas that offer little or no cover or concealment and potentially limit the officer's tactical options if they have to go into combat."<sup>37</sup>

**NOTE:** Show slide, "Doors and Windows."

**NOTE:** Ask the question: **What is the problem having both officers standing on the same side of the door?**

**NOTE:** Answer:

- **Bunching up and stumbling into each other.**
- **One easy target for a shotgun or high-powered weapon.**
- **Crossfire potential.**

"One important factor to consider is the time lag between when the communicator receives a complaint and when the officer arrives on the scene. Many things can happen during this 5-10 minute period. Time is not frozen for the individuals inside; the disturbance continues, often intensifying, and sometimes resulting in a shooting before the first officer arrives."<sup>38</sup>

- (3) Assess the status of the disturbance and the level of threat.

**NOTE:** Show slide, "Tactical Approach."

This information can be gleaned from the telecommunicator, from previous encounters at the

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residence, and information gathered from fellow officers.

Questions to consider may include: Did you communicate with your back-up officer before entering the area? Are you sharing intelligence information? Are you coordinating your arrival time to coincide with each other? Are you designating the contact officer from the cover officer? Where is your available cover once you leave your patrol car? Be sure to answer these questions before you exit your vehicle. It is important to understand the increased risk of danger before the officer making his or her tactical approach to a domestic violence disturbance due to the number of officers ambushed or attacked without warning.<sup>39</sup>

- (4) Utilize contact/cover principles

**NOTE: Show slide, “Contact/Cover Tactical Skills.”**

- (a) While responding to a domestic violence incident, utilize the Contact/Cover technique with your backup officer. Contact and cover tactics employ multiple officers with distinct roles to safely control any situation. The main goals are to discourage and prevent resistance and officer assaults.<sup>40</sup>
- (b) “Contact officer role

**NOTE: Show slide, “Contact Officer.”**

Responding officers should decide who will assume the contact role before arriving on the scene. Once established, it should be maintained throughout the entire investigation when possible.

- i) Initiates ALL activity (frisks, searches, etc.) and dialogue with suspects, witnesses, and victims.
- ii) Conducts interviews with all involved parties.

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- iii) Takes notes.
  - iv) Conducts radio transmissions (be aware of comments that suspect may hear).
  - v) Initiates arrest procedures.
- (c) The cover officer role

**NOTE: Show slides, “Cover Officer.”**

The cover officers have two primary roles: observe suspect(s) and protect the contact officer. Cover officers must remain mobile, continuously reevaluate contact officer’s position and adjust accordingly, keeping in mind potential cross-fire situations (firearms, aerosol, and impact weapons).

- i) Maintains ‘triangulation’ position by keeping the suspect and the contact officer in sight at all times.
  - ii) Maintains position to allow continuous visual on contact officer, involved parties, and scene.
  - iii) Does **NOT** engage in dialogue with other persons other than contact officer. Should other persons approach cover officer, they should be quickly and politely told to wait a few moments until the contact officer is available.
  - iv) Follows directions given by contact officer.
  - v) Prevents escape routes.”<sup>41</sup>
- (d) The cover officer should position himself or herself in a manner to provide the following advantages:
- i) Personal cover from hostile acts.



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- ii) Clear view of all individuals and the Contact officer.
  - iii) Appropriate background if shooting becomes necessary.
  - iv) Non-crossfire position.
  - v) Good view of the surrounding area.
  - vi) Control over possible areas of escape for the arrestee.
- (e) Contact and cover officers should have nothing to do with rank or experience. The first officer on the scene or the one to make contact with the individuals should be the contact officer.
- (f) If the individuals separate, it may become necessary for the cover officer to become a contact officer until all the individuals can be controlled. This should be done as soon as possible.

**NOTE: Show video, *Domestic Violence Response* – “Tactical.”**

- d) Making initial contact<sup>42</sup>

**NOTE: Show slides, “Making Initial Contact.”**

- (1) When approaching from the front door, utilize contact and cover tactics and approach from an angle to avoid the fatal funnel created by the front door.
- (2) Listen before you knock. Get an idea of what’s going on inside (level of violence, number of people, etc.).
- (3) Stand to the side of the door as you knock, firearm side of your body away from the door. Be prepared to use your weapon if necessary.
- (4) Keep your presence and identity unknown as long as possible to gather as much information as you can at the scene before you enter the home.

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- (5) It is best to have someone inside open the door for you instead of going in when told to do so.
- (6) When entering the premises:
  - (a) Officer safety is your primary concern.
  - (b) Ensure that you see both hands of the person who opens the door before entering.
  - (c) It is best if you can see all parties involved while looking through the doorway before entering to determine the location and condition of the parties involved. Check for weapons.
  - (d) Be mindful that the person who answers the door may not be the calling party or be aware the police were called. The caller may have done so surreptitiously and could be at an increased risk for danger if their identity is made known. When the person answers the door, simply say a call was received and ask what is going on.
  - (e) Identify who is involved and whether there are any injuries, weapons, and the level of violence. Try to obtain this information as quickly as possible to ensure officer safety, as well as the safety of those involved. Determine if the suspect is still on scene.
  - (f) Keep the person who answers the door ahead of you as you walk in.
  - (g) The backup officer should follow the primary officer into the residence to help establish control of the situation.
- (7) Stop any violent acts currently in progress.
- (8) Render first aid and call for an ambulance for any injured parties.
- (9) Search for children and ask if children are present.

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- (10) Scan the area for weapons.
  - (a) Secure weapons in plain view.

**NOTE: Discuss the legal seizure of weapons. Instructors should remind students that seizures are measured by a standard of reasonableness. Officers may be faced with articulating why it was reasonable to seize a gun in a particular domestic encounter. For instance, you should note whether you've encountered the individual before, whether he has a criminal history of violent crimes, assaults on law enforcement or resisting law enforcement, what information you know about the domestic before you arrive on the scene and once you are at the scene – did the reporting party say alcohol was involved, do you see evidence alcohol was involved, do you see evidence of a disturbance inside the home, broken items, overturned items, and of course, note the appearance of the parties and what did you hear upon approaching the home? All of these factors and more will go towards a decision of whether the seizure was reasonable.**

- (b) Take bullets out of firearms.
  - e) Tactical departure

**NOTE: Show slides, “Tactical Departure.”**

- (1) “The officer who is the farthest inside the residence should leave first. This officer is at the most risk, and the officer closest to the door can provide cover.
- (2) Don't make a parting remark such as ‘If I have to come back, I'll arrest you.’ This will give the suspect an opportunity to prepare for the possibility of resisting.”<sup>43</sup>
- (3) Listen as you walk away for any sounds that may indicate violence is erupting again.
- (4) Watch your back as you depart. Don't take the chance of an attack from behind. It's possible that one or both were agreeing with your solution just to get you to leave and let your guard down.
- (5) Don't stay in the area or pass the residence while driving off. This offers an additional opportunity for a disputant to shoot at you.<sup>44</sup> However, officers may want to stay nearby during their shift in case there is a subsequent violent incident or in situations where the suspect has left, and the victim is worried about the suspect's return.

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- (6) Review the call in your mind. Think of what you did wrong and right. Did you expose yourself to danger? Discuss the call with your partner if the opportunity is available. Keep mental notes for next time.

### C. Conducting the Investigation

It first starts with having an understanding of the laws commonly associated with domestic violence. Filing a complaint for a 50B or 50C restraining order are the most common civil resources utilized by domestic violence victims. Both a 50B and 50C are forms of a restraining order which have the power to order the perpetrator to have no contact with the victim.

**NOTE: Show slide, “NC – Chapter 50B.”**

1. Knowing the law and how it applies
  - a) Domestic violence; definition
    - (1) “Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:
      - (a) Attempting to cause bodily injury, or intentionally causing bodily injury; or
      - (b) Placing the aggrieved party or a member of the aggrieved party’s family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or
      - (c) Committing any act defined in G.S. 14-27.21 through G.S. 14-27.33.
    - (2) For purposes of this section, the term ‘personal relationship’ means a relationship wherein the parties involved:

**NOTE: Show slide, “Personal Qualifying Relationships.”**

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- (a) Are current or former spouses;
  - (b) Are persons of opposite sex who live together or have lived together;
  - (c) Are parents, grandparents, or others acting in *loco parentis* to a minor child, or children and grandchildren;
  - (d) Have a child in common;
  - (e) Are current or former household members;
  - (f) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship (romantically involved over time on a continuous basis during the course of the relationship).<sup>45</sup>
- b) Domestic violence protective order or civil no-contact order

**NOTE: Show slide, “50B or 50C?”**

A victim may file a complaint or either a 50B or 50C restraining order free of charge in the county clerk’s office.<sup>46 47</sup> In some, but not all jurisdictions, victims can also file at the county magistrate’s office if a judge is not available.<sup>48</sup> Officers should familiarize themselves with the practices in their local jurisdictions to ensure they are giving victims accurate information about where to go to file a DVPO.

The initial request is typically for an ex parte order. If the victim is granted an ex parte order, the terms of the order granted by the judge are in effect. The judge will give the victim a date to return within ten days<sup>49</sup> to request that the order be extended (or granted if not originally granted at the ex parte stage) for up to one year.<sup>50</sup>

After the ex parte order is granted, the clerk will issue a summons for the defendant.<sup>51</sup> The summons, including the complaint, notice of hearing, and any temporary or ex parte order that has been issued must be served upon the defendant.<sup>52</sup>

**NOTE: Show slide and refer to the handout, “Ex Parte.”**

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The perpetrator will have the opportunity to be present at the return hearing. Victims have the right to represent themselves at their restraining order hearings. However, many victims feel more comfortable having an attorney to assist them in the process. Legal Aid of North Carolina is a legal services agency that represents eligible victims of domestic violence, sexual assault, and stalking for free in their restraining order hearings as resources allow. Often the local domestic violence/sexual assault program has a referral process to Legal Aid, or a victim may contact Legal Aid directly by calling the central intake line at 1-866-219-5262.

- c) DVPO relief available to victims

**NOTE: Show slides, “DVPO Relief.”**

- (1) “If the court, including magistrates as authorized, finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. Protective orders entered shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed two years. In addition to ordering the defendant to have no contact with the victim, the order can also grant victims many other remedies which help protect them from an abusive partner.

Some of the relief most commonly given by judges include:

- (a) Temporary custody of children
- (b) Temporary possession of a residence
- (c) Stay a certain amount of distance away from the victim at all times
- (d) Orders preventing a party from:
  - i) Threatening, abusing, or following the other party

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- ii) Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
  - iii) Cruelly treating or abusing a pet, or
  - iv) Otherwise interfering with the other party
- (2) A copy of any order entered and filed shall be issued to each party. In addition, a copy of the order shall be retained by the police department of the city of the victim's residence. If the victim does not reside in a city where there is a police department, copies shall be issued and retained by the sheriff of the county where the victim resides. If the defendant is ordered to stay away from the child's school, a copy of the order shall be delivered promptly by the sheriff to the principal or, in the principal's absence, the assistant principal or the principal's designee of each school named in the order.
- (3) The sheriff of the county where a domestic violence order is entered shall provide for prompt entry of the order into the NCIC registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications, renewals, terminations and dismissals of the order shall also be promptly entered."<sup>53</sup>
- (4) "If the hearing for a motion to renew a protective order is set on a date after which the current order will have expired, the court may temporarily renew the current order upon the ex parte application of the plaintiff for a fixed period of time not to extend beyond the date of the renewal hearing or 30 days from the date the current order is set to expire, whichever occurs first, absent the express written consent of both parties or their attorneys.

This temporary renewal may not extend a temporary award of custody entered as part of a protective order beyond the maximum one-year period. If a temporary renewal is granted, and the defendant is not personally present in court, the order shall be served on the defendant in the same manner as an ex parte order issued pursuant to G.S. 50B-2. If a temporary renewal is granted, the Clerk shall provide a copy to the sheriff."<sup>54</sup>

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### d) Enforcement of orders

**NOTE: Show slides, “50B-4 Enforcement of Orders.”**

#### (1) Enforcing in-state protective orders

“A valid protective order, which includes an emergency or an ex parte order, shall be enforced by ALL North Carolina law enforcement agencies without further order of the court.”<sup>55</sup>

Officers should be able to view a copy of the terms of a DVPO on the NCIC/DCIN system and, therefore, it is NOT required that the victim have a paper copy with them. However, an officer may rely on ANY legible copy of a valid DVPO in determining probable cause for enforcement of the order. A victim does NOT have to produce a certified copy. Even when the victim provides a copy, law enforcement should still try to verify the terms on the NCIC/DCIN system, or potentially by checking with the telecommunicator and/or local law enforcement agency to ensure that the copy provided is the most recent order.

#### (2) Enforcing out-of-state protective orders – without provisions related to child custody

(a) A valid protective order entered by the courts of another State or the courts of an Indian Tribe is to be enforced just like a valid protective order entered by North Carolina courts.<sup>56</sup>

(b) If a copy of the out-of-state protective order (another U.S. State or Indian Tribe) is given to law enforcement and the person protected by the order states that the order is valid and remains in effect, law enforcement may rely on the copy and the statement and enforce those provisions of the order that do not relate to child-custody.<sup>57</sup>

(c) The order does not need to be registered with the Clerk of Court to be enforceable.<sup>58</sup>



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- (3) Enforcing out-of-state protective orders – with provisions related to child-custody
  - (a) If there are provisions in the out-of-state protective order that relate to child-custody, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) will control how law enforcement enforces those provisions.<sup>59</sup> A petition for a domestic violence protective order is a child-custody proceeding under UCCJEA if it involves that issue.<sup>60</sup>
  - (b) Under the UCCJEA, law enforcement may, at the request of a prosecutor or appropriate public official acting under UCCJEA, assist in locating the child/children.<sup>61</sup> However, law enforcement cannot take physical custody of the child/children even if the out-of-state protective order authorizes or orders law enforcement to take such action.<sup>62 63</sup>
  - (c) To take physical custody of the child/children encompassed by the out-of-state protective order, law enforcement must be presented with a Warrant to Take Physical Custody under N.C.G.S. 50A-311 issued by a court of this State (AOC-CV-667).<sup>64</sup>
  - (d) However, knowingly violating a valid out-of-state or Indian protective order is a crime under North Carolina law.<sup>65</sup> It is a Class A1 Misdemeanor,<sup>66</sup> and a law enforcement officer is authorized (in some cases directed)<sup>67</sup> to arrest the individual(s) whom the officer has probable cause to believe committed the misdemeanor, even if the offense took place outside of the officer's presence.<sup>68</sup>

**NOTE: For a discussion of child custody orders under Chapter 50 of the North Carolina General Statutes, see the Civil Process block of instruction.**

- e) Violation of valid protective order

**NOTE: Show slides, “50B-4.1 Violation of Valid Protective Order.”**

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- (1) If a person knowingly violates a valid protective order issued by the state of North Carolina, another state, or an Indian tribe, they are guilty of a Class A1 misdemeanor.<sup>69</sup>
- (2) If a person knowingly violates a valid protective order issued by the state of North Carolina, another state or an Indian tribe, and they have previously been convicted of two offenses of violating one of these protective orders, he/she shall be guilty of a Class H felony.<sup>70</sup>
- (3) A person who knowingly violates a valid protective order which orders them to stay away from a place or a person by possessing a deadly weapon or by having one nearby of their person shall be guilty of a Class H felony.<sup>71</sup>
- (4) If a person who is the subject of a protective order enters property designated as a safe house or haven where the person protected by the protective order is staying (whether the person protected is there or not), he/she shall be guilty of a Class H felony.<sup>72</sup>
- (5) “Warrantless arrest: A law enforcement officer shall arrest and take a person into custody with or without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated an order excluding the person from the residence or household occupied by a victim or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).”<sup>73</sup>

**NOTE: Show slide and refer to the handout, “DVPO.”**

- f) Emergency assistance.

**NOTE: Show slide, “50B-5 Emergency Assistance.”**

- (1) Agencies shall respond to requests for assistance as soon as possible, even when there is not a protective order in place.<sup>74</sup>
- (2) May take reasonable steps to protect the victim.<sup>75</sup>

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- (3) May inform the victim of services available to them, such as shelters, medical providers, and counseling services.<sup>76</sup>
  - (4) When the victim requests, law enforcement may transport the victim to the hospital, magistrate's office, public/private facilities for shelter, or his/her residence to retrieve food, medicine, or personal property.<sup>77</sup>
  - (5) Law enforcement cannot be held criminally or civilly liable for reasonable measures taken to assist the victim in providing one of the above services.<sup>78</sup>
- g) A no-contact order for stalking or non-consensual sexual conduct

**NOTE: Show slide, "50C – No-Contact Order for Stalking of Non-Consensual Sexual Conduct."**

Civil no-contact orders may be obtained by people who do not fit into the defined relationship categories required by 50B if certain types of behavior are alleged and found to exist by the court.

- (1) A personal relationship is not required to obtain a 50C.
  - (2) Any victim of unlawful conduct, which is defined as "non-consensual sexual conduct, including single incidences of non-consensual sexual conduct," and stalking committed by someone age 16 or older.<sup>79</sup>
- h) Understanding how 50Cs impact charging decisions

**NOTE: Show slide, "50Cs and Determining Probable Cause."**

- (1) Knowing that a victim has a valid 50C order is important for law enforcement in determining probable cause for potential violations and understanding the options of criminal charges available. If a judge has already granted a victim a 50C order and the victim is reporting that the defendant is harassing, threatening, or stalking her/him, law enforcement should consider the fact that the victim already has a 50C as corroboration of the victim's report

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and as part of a pattern of behavior on the part of the alleged perpetrator.

- (2) Also, if the officer has probable cause to believe that the victim is being stalked despite having a 50C order, the officer has probable cause to charge the defendant with felony stalking rather than just misdemeanor stalking, since the stalking violates a court order.<sup>80</sup> Felony stalking will be discussed later in this block of instruction.

### 2. Effective response tactics

#### a) Interviewing

**NOTE: Show slide, “Interviewing.”**

A major responsibility of a patrol officer responding to a domestic situation is to calm the individuals and to make the area a safe environment to correctly assess the situation.

- (1) Separate the involved parties to control and interview
  - (a) The contact officer should usher them apart and talk to the individuals one at a time. The contact officer should interview the victim and suspect so they cannot see each other, and at a minimum, out of hearing range. A victim is much less likely to report any abuse if the perpetrator can see or hear her/him. The officer should note the victim’s relationship to the suspect and ask them if there is a history of abuse.
  - (b) Contact officer should identify and interview all witnesses to the incident. Witnesses should be questioned away from the victim *and* the suspect. The witnesses’ contact information should be recorded.
  - (c) Officers should ask the victim who else the victim contacted/texted/called before police arrived. Officers will often identify additional witnesses through this line of questioning.

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- (d) Children often witness the violence and can make incriminating statements. They should be interviewed out of sight of the suspect, preferably alone. Children should be questioned in an age-appropriate manner with open-ended questions. Refer to your departmental policy and procedure on interviewing a child victim or witness.
  - (e) Officers should check with neighbors in the area for possible witness statements and interview them; recording their contact information.
- (2) Questions to be asked to determine injury or arrest<sup>81</sup>

**NOTE: Show slides, “Determining Injury or Arrest.”**

- (a) Describe the victim/suspect location upon arrival.
- (b) Record victim and suspect’s name, DOB, address, home, and work phone numbers.
- (c) Note time dispatched, time arrived.
- (d) Record any spontaneous statements (excited utterances) made by the victim/suspect.
- (e) Describe the victim/suspect’s emotional condition.
- (f) Note victim’s relationship to suspect (married, boy/girlfriend, family member, etc.).
- (g) Describe the suspect’s overall physical condition and appearance.
- (h) Document the victim/suspect’s injuries in detail (size, location, and coloration) and if medical treatment sought.
- (i) If victim/suspect received or may receive any medical attention, complete medical records release form, and have victim/suspect sign it.

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- (j) Document evidence of alcohol and other drugs consumed by the victim/suspect relative to the incident.
- (k) Record any history of substance/chemical use by victim/suspect.
- (l) Note any restraining/court orders in effect.
- (m) Ask the victim/suspect about the presence and location of any deadly weapons that were used, or threatened to be used, by the suspect.
- (n) Ask suspect about the presence, location, type of firearms, and ammunition in suspect's control, ownership, or possession.
- (o) Ask victim if any aspect of crime was facilitated by use of any technological devices (cell phone, computer, instant messaging, text, social networking, etc.)
- (p) Receive audio, video, or a written statement from victim/suspect (audio or video statement preferred).
- (q) If the suspect is arrested, issue *Miranda* rights, ask the suspect if he/she wants to make a statement, knew of a restraining order, and understood the order.
- (r) Advise and provide the victim with written notice of rights and services available.

**NOTE: Show slide, "Interviewing Tactics."**

- (3) The cover officer maintains a position of cover and does not get caught up in the discussion.
- (4) Avoid letting the individuals go into the kitchen, bathroom, and bedrooms because he/she may attempt to locate a weapon, plan an escape, barricade himself/herself in a room, etc.

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- (5) Maintain visual contact with all the individuals.

If the suspect needs to get any personal items, an officer should accompany them. If the suspect breaks and runs down a hall to another part of the house, the officer should either cautiously chase or take up a different position in the exited room to wait for the suspect's return.<sup>82</sup>

- (6) Nonverbal body language

- (a) Be aware of your nonverbal communication.

**NOTE: Show slide, "Nonverbal Communication."**

"Non-verbal communication cues may be used to predict between 50-90% of resistance levels.' Many patterns of suspect resistance are unintentional physiological responses to stress. Unfortunately, there is NOT one single behavior reliable enough to automatically assume a suspect will attack. Officers should look for 'clusters' of certain behaviors that are known to precede such resistance."<sup>83</sup>

**NOTE: Show slide, "Nonverbal Cues." Explain and demonstrate each.**

- (b) Heavy/audible breathing

Inhaling air through mouth instead of nose; suspects preparing to resist are anxious, and this anxiety triggers body's perceived need for more oxygen to handle upcoming confrontation; suspects preparing to resist may also make "grunting or groaning" noises.<sup>84</sup>

- (c) Clenching of teeth/jaw

Pre-fight facial expressions are not uncommon during stressful situations and may signal an attack; officers should also be aware of facial color changes (flushed, extreme redness).<sup>85</sup>

- (d) Unusual sweating

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(Stress sweat); sweating on cold days or on areas of the body that typically produce little sweat (palms, nose, ear); be aware of subjects who continuously wipe sweat off their hands, palms, and face.<sup>86</sup>

(e) Fist clenching

Tightening and erratic movement of fingers/hands.<sup>87</sup>

(f) Weight shifting/blading of body/ shoulder roll

Subjects preparing to attack will often shift their weight; lowering of center mass into a slightly crouched position; above movement attributes are sometimes illustrated by subject's inability to stand still; "fight response."<sup>88</sup>

(g) Target glancing

Eye movements from side to side; attackers will sometimes glance in direction(s) they want to escape or strike; scanning for witnesses or back-up officers; looking at placement of duty gear (weapon, OC, baton, handcuffs, etc.).<sup>89</sup>

(h) Ceasing of all movement

In preparation for or preserving energy for resistance, officers should be especially cautious if suspect's non-movement is preceded by high levels of movement.<sup>90</sup>

(i) "Dressing down."

Removal of clothing, jewelry, or other articles of apparel; activity may appear casual and non-threatening in appearance.<sup>91</sup>

(j) Spitting

Typically a sign of disrespect, but can be a precursor to resistance.<sup>92</sup>



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- (k) Conspicuously ignoring and staring through you  
  
Deliberate attempts to not answer officer questions, looking away from officer; direct staring at officer.<sup>93</sup>
- (l) Presence of impairment from alcohol or drugs  
Obvious signs of unpredictability.<sup>94</sup>
- (m) Furtive movements or gestures<sup>95</sup>  
  
Subject wants to place hands in pockets or subject is backing away from the officer.

**NOTE: Show slides, “Interview Tactics.”**

- (7) Do not focus solely on the hostile person, disregarding the victim.
- (8) Use a calm, direct speaking voice.
- (9) If the parties are yelling, lower your voice volume to almost a whisper.
- (10) Look directly at the person talking and acknowledge what they are saying, utilizing sympathetic listening skills.
- (11) Stay in control of the situation by maintaining a calm presence.
- (12) Eliminate distractions.
  - (a) Turn off the TV or stereo.
  - (b) Ensure the room is illuminated.
- (13) Use an interpreter if needed

It is critical that officers can communicate with all relevant people on scene. If any person on scene is limited English proficient, officers should always use a bilingual officer or language line interpreter to communicate with the person. Officers should never use

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children, neighbors, etc. as interpreters. Not only could it put that party in the middle of the situation, but officers also cannot ensure the accuracy of the translation they receive. The officer can also not assure that person's attendance for court if they are needed for trial.

- b) Document the physical and emotional state of all parties involved

A thorough investigation is necessary to assist the victim, and in cases that are accompanied by a criminal charge, the documentation of what occurred should be complete. In cases where a victim recants or refused to testify, evidence collected during an officer's investigation may be the only evidence to prove what happened. Since *Crawford v. Washington* made it almost impossible to get statements of a non-testifying witness into court, prosecutors often rely on evidence-based prosecution in cases where a victim does not cooperate. Evidence-based prosecution relies on good officers collecting evidence at the scene that will prove or disprove facts of the case.

**NOTE: Show slides, "Documenting the Physical and Emotional State of All Parties."**

- (1) Record the physical and emotional state of the victim, suspect, and witnesses at the time officers arrived on scene and at the time of the statement. Officers should note if the parties are excited, crying, fearful, shaking, angry, etc.

**NOTE: Show slide, "Admissibility of Statements."**

- (2) Note and document the purpose of the interview, as this information may assist the court in determining the admissibility of statements in the event the witness does not appear in court.
- (3) The need for evidence-based investigation

In the case of *Crawford v. Washington*, the United States Supreme Court established the rule that "testimonial statements by witnesses who are not subject to cross-examination at trial may not be admitted unless the witness is unavailable and there has been a prior opportunity to cross-examine [that witness]."<sup>96</sup>

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Domestic violence situations are ripe for application of this rule. Most often, a 911 operator, first responder, or police officer will take a statement of a domestic violence victim at the scene and ideally would like the victim to appear in court and testify to what happened. However, sometimes, those victims do not appear and, therefore, under this rule, their statement would not be admissible if his/her statement is considered to be testimonial.

(a) Testimonial

“Statements are *testimonial* when the circumstances objectively indicate that there is no such ongoing emergency and that the primary purpose of the interrogation is to establish or prove past facts potentially relevant to later criminal prosecution.”<sup>97</sup> These statements would be inadmissible, unless they met a *Crawford* exception such as forfeiture by wrongdoing, even if they meet a hearsay exception.

**NOTE: Instructors should remind his/her students they should take note of all statements made by victims and witnesses and conduct a fair and thorough investigation that focuses on all evidence available to him/her. It is the job of the attorneys to argue the rules of evidence and admissibility once the case is in court.**

(b) Nontestimonial

“Statements are *nontestimonial* when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to meet an ongoing emergency.”<sup>98</sup> These statements will be admissible if they meet a hearsay exception.

(4) Written statements

**NOTE: Show slide, “Written Statements.”**

In addition to orally interviewing all parties, taking notes, and writing a report summarizing the interviews, officers should obtain written statements from all parties whenever possible. Because victims are often reluctant

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to later participate in the prosecution of offenders, obtaining written statements in a witnesses' handwriting helps prosecutors prove the case and minimize the ability of victim, witnesses, and the defendant to deny making their original statements.

- c) Determining the primary aggressor

**NOTE: Show slides, "Self-Defense."**

If both parties are injured, the officer should try to determine if one party has acted in self-defense based on the evidence presented. If so, arrest only the primary aggressor, although it is recommended for you to refer to your departmental policy when an assault occurs and injuries are present. To distinguish the primary aggressor, examine:

- (1) The history of violence by the parties, including verbal reports of prior instances, prior domestic violence protective orders, and the parties' criminal histories
- (2) The height, weight, and age of both parties
- (3) Any physical disabilities or impairments
- (4) Existence of a current domestic violence protective order
- (5) Offensive versus defensive injuries

For example, scratches on the victim's body, which could have been inflicted in self-defense. Other possibilities include bite marks on arm or chest and defensive wounds such as bruises or abrasions on the forearms.

- (6) The presence of fear: which party is genuinely afraid of the other?
- (7) The proportional nature of mutual violence (i.e., a box of facial tissues thrown at someone as opposed to an iron)
- (8) Which party called 9-1-1?

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- (9) Credibility of parties: who gave the more detailed statement?
- (10) Corroboration by other witnesses or physical evidence

Do not forget that defending oneself is not a criminal act. The law guarantees everyone the right to protect themselves against physical harm. There is no need to retreat from one's home to accomplish this. However, self-defense does not mean punishment or retaliation. Additionally, the force of self-defense must be no greater than is necessary to fend off the attack. As previously mentioned, dual arrests are not best practice.

- d) Arrest

**NOTE: Show slides, “Determining If There Is Probable Cause.”**

- (1) Officers **must** arrest a person, *with or without a warrant*, if the officer has probable cause to believe that the individual has violated a valid protective order which prevented them from:
  - (a) Being on or about property the order requires they stay away from
  - (b) “Threatening, abusing, or following the other party.”<sup>99</sup>
  - (c) Harassing the other party, by phone or other means, at home or work, or other location.<sup>100</sup>
  - (d) Cruelly threatening animals belonging to the person protected by the order or any of their minor children.<sup>101</sup>
  - (e) Otherwise interfering with the party named in the order.<sup>102</sup>
- (2) Officers may arrest a person *without a warrant* if the suspect, while in the officer's presence:<sup>103</sup>
  - (a) Commits a criminal offense (**or**)

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- (b) Violates certain pre-trial release conditions of a domestic violence protective order in the officer's presence.

**NOTE: Instructors should inform students that pre-trial release conditions are entered by the clerks into the North Carolina **Administrative Office of the Courts eCourts database Warrant Repository (NCAWARE)**, but they may also call the magistrate or clerk's office to locate pre-trial release conditions.**

- (3) An officer may arrest any person *without a warrant* if the officer has probable cause to believe the suspect:<sup>104</sup>
  - (a) Has committed a felony; **(OR)**
  - (b) Has committed a misdemeanor and will not be apprehended unless immediately arrested or may cause physical injury to himself or others, or damage property unless immediately arrested; **(OR)**
  - (c) Has committed a misdemeanor under G.S. 14-72.1 [concealment of merchandise in mercantile establishment], 14-134.3 [domestic criminal trespass], 20-138.1 [setting fire to grassland, brushland, or woodland], or 20-138.2 [impaired driving in commercial vehicle]; **(OR)**
  - (d) Has committed a misdemeanor under G.S. 14-33(a) [simple assault], 14-33(c)(1) [inflicts serious injury upon another person or uses a deadly weapon], 14-33(c)(2) [assaults a female, he being a male person at least 18 years of age], or 14-34 [assault by pointing gun] when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; **(OR)**
  - (e) Has committed a misdemeanor under G.S. 50B-4.1(a) [violation of valid protective order]; **(OR)**
  - (f) Has violated a pretrial release order.

- e) Reviewing court orders

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**NOTE: Show slides, “Reviewing Court Orders.”**

- (1) Determine if the victim has a valid restraining order against the suspect
  - (a) Officers should be able to view a copy of the terms of a domestic violence protective order on the NCIC/DCIN system.
  - (b) It is NOT required that the victim have a paper copy, an original copy or a certified copy of the domestic violence protective order for it to be enforced upon a finding of probable cause.
  - (c) When the victim provides a copy, the officer should still try to verify the terms on the NCIC/DCIN system, or check with a telecommunicator and/or local law enforcement agency to ensure that the copy provided is the most recent order.
- (2) Has the restraining order been served on the suspect? To enforce a DVPO, the order must have been served. The State must prove the defendant knowingly and willfully violated the protective order. That cannot be done without valid service of the order.
- (3) Determine if the suspect violates court order
- (4) Enforcing out-of-state protective orders
  - (a) A valid protective order entered by the courts of another State or the courts of an Indian Tribe is to be enforced just like a valid protective order entered by North Carolina courts.<sup>105</sup> If a copy of the out-of-state protective order (another U.S. State or Indian Tribe) is given to law enforcement and the person protected by the order states that the order is valid and remains in effect, law enforcement may rely on the copy and the statement and enforce those provisions of the order that do not relate to child-custody.<sup>106</sup> The order does not need to be registered with the Clerk of Court to be enforceable.<sup>107</sup>

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- (b) Enforcing provisions related to child-custody  
If there are provisions in the out-of-state protective order that relate to child-custody, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) will control how law enforcement enforces those provisions.<sup>108</sup> A petition for a domestic violence protective order is a child-custody proceeding under UCCJEA if it involves that issue.<sup>109</sup>

Under the UCCJEA, law enforcement may, at the request of a prosecutor or appropriate public official acting under UCCJEA, assist in locating the child/children.<sup>110</sup> However, law enforcement cannot take physical custody of the child/children even if the out-of-state protective order authorizes or orders law enforcement to take such action.<sup>111 112</sup>

To take physical custody of the child/children encompassed by the out-of-state protective order, law enforcement must be presented with a Warrant to Take Physical Custody under N.C.G.S. 50A-311 issued by a court of this State (AOC-CVB-667).<sup>113</sup>

However, knowingly violating a valid out-of-state or Indian protective order is a crime under North Carolina law.<sup>114</sup> It is a Class A1 misdemeanor,<sup>115</sup> and a law enforcement officer is authorized (in some cases directed)<sup>116</sup> to arrest the individual(s) whom the officer has probable cause to believe committed the misdemeanor, even if the offense took place outside of the officer's presence.<sup>117</sup>

- 3. Investigative "clues" to pay attention to:

**NOTE: Show slide, "Investigative Clues."**

- a) Assaulter's resistance to officer entry
- b) Victim's reluctance to talk about the situation



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- c) Type of injury or complaint from victim
- (1) Look for multiple injuries in various stages of healing. Also, look for faded bruises and old scars, in addition to a fresh injury.
  - (2) Look for injuries in the “bathing suit pattern.”  
  
Batterers frequently direct injuries in hidden places or place that would be hidden by the smallest items of clothing, such as a bathing suit. A female officer should be requested to check for such injuries on female victims. However, male officers may conduct the same investigation if a female officer is not available.
  - (3) Bilateral injuries  
  
These are wounds and/or bruises on both sides of the body that may signify defensive injuries (i.e., bruising or scratches on the arms and/or legs).
  - (4) Pay attention to explanations inconsistent with the type and location of injury.  
  
“I fell and got two black eyes.”
  - (5) What is the delay between time of injury and time of treatment?
  - (6) Note any substance abuse.
  - (7) Note pregnant women with injuries.
  - (8) Note if there was a suicide attempt.
  - (9) Pay attention if partner is overly protective, agitated, or aggressive with victim (or if they won’t allow you to talk to the victim alone).
  - (10) Ask the victim if they have ever been forced to engage in sexual activity or made to do something that made them feel uncomfortable.

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- (11) Be aware of any psychological, emotional, or physiological complaints (hyperventilating, etc.).
- (12) Note any evidence of strangulation. Later in the lesson plan, we will discuss this crime.

### 4. Documentation

**NOTE: Show slides, “Documentation.”**

Documentation is important in all cases. However, due to the dynamics of domestic violence relationships, the majority of victims do NOT participate in the prosecution of the offender by the time the case gets to court. It is still vital to the victim, children, and community safety to prosecute domestic violence cases, even without the victim’s participation. Therefore, it is especially crucial for responding officers to do a thorough investigation and documentation so prosecutors can proceed even when the victim may become reluctant to testify. When writing your report, it is also important to remain objective and exclude your personal opinion. You should only record the details of the incident.

#### a) Reporting the incident

Many agencies in North Carolina conduct preliminary investigations when they are called to a domestic violence incident. This involves filing a standard investigation report documenting what occurred. Standard items for your report should include:

- (1) Include details received from the telecommunicator.
- (2) Note the time the officer received the call and the time the officer arrived on scene.
- (3) Note the location of the parties upon arrival.
- (4) The victim’s name, address, and phone number, including employment information.
- (5) The suspect’s name, address, and relationship to the victim and phone numbers, including employment information.

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- (6) The description of the circumstances surrounding the incident to include the victim's and suspect's spontaneous statements. Include SPECIFIC details of what the victim, suspect, and witnesses say happened.
- (7) Note in the report if a language line interpreter was used to obtain a statement.
- (8) A description of any injuries the victim or suspect suffered.
- (9) Note the physical and emotional demeanor of the victim and suspect.
- (10) Obtain handwritten statements from the victim, offender, and other witnesses.
- (11) Include whether the victim reports that the defendant has threatened her/him in the past, and if the victim has cooperated with law enforcement in the past.
- (12) Note if children witnessed the incident, their statements, and their physical and emotional demeanor.
- (13) Be sure to include any statements from other sources, i.e., other family members, witnesses, neighbors, etc. Be especially precise in documenting any excited utterances, as these are important in evidence-based prosecutions. Canvass the area/neighborhood and ask the victim who else they talked to before or after calling the police to identify potential witnesses.
- (14) Determine if there is a prior history of domestic violence, either reported by the parties or as seen in a criminal record check of parties.
- (15) Determine if there is a current or past domestic violence protective order.
- (16) Take photographs of the injured areas, evidence, and crime scenes. Take photographs of the individuals involved, to include any injuries. Also, photograph any related evidence such as the disarray of furniture, damaged property, blood, etc.

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**NOTE: Instructors should remind students to avoid taking pictures with his/her personal cellphones. Photographs in criminal investigations must be turned over during the discovery process. Therefore, there is at least the potential his/her phone could be the subject of discovery.**

- (17) Seize any weapons and other evidence involved in the investigation.
- (18) If the incident occurred in a public location such as a bar or gas station, inquire as to whether there is any video surveillance and obtain it if there is.
- (19) Document what course of action the responding officer took to rectify the situation.
- (20) Document what referral services were recommended to the victim and if transportation was provided to a local domestic violence service provider.
- (21) Include whether a referral was made to child protective services.
- (22) It is recommended to have a follow-up procedure for other shift officers or investigators to follow up with the victim.

### **b) Photographs**

- (1) The investigating officer should ensure that photos are taken of the victim's injuries, the assailant, and the crime scene.
- (2) The officer should remember to ask the victim about injuries that are possibly concealed by clothing or otherwise not readily apparent.
- (3) Photos should also be taken of any children present during the incident.

**NOTE: Instructors should remind students to consult someone in his/her agency or even the district attorney's office about photographing minors. There are special considerations that come into play when photographing minors.**

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- (4) Photos should be taken of any evidence, including electronic evidence.

c) Evidence collection

The officer should collect and preserve all physical evidence necessary to support prosecution, including:

- (1) Evidence substantiating the victim's injuries
- (2) Evidentiary articles that substantiate attack
- (3) Evidence recording the crime scene
- (4) Collect weapons used in the assault, even nontraditional weapons, such as telephone cords or broomsticks
- (5) Collect torn or bloody clothing
- (6) Collect/document any electronic evidence such as text messages, voicemails, emails, Facebook posts, etc.

Particularly in cases in which a victim is reporting a violation of a DVPO, the evidence is often electronic (emails, Facebook posts, voicemails, text messages, etc.). Officers should take the following steps to secure electronic evidence:

- (a) Review any electronic evidence that victim is reporting
- (b) COLLECT the evidence. Do NOT rely on victims of keep electronic messages, text messages, or any evidence for that matter. You would not rely on a victim to hold onto a murder weapon, so do not rely on him/her to keep any other evidence. Officers should avoid confiscating a victim's electronic device, as this is inconvenient and intrusive for the victim. However, officers can utilize several methods of collecting this evidence, such as:
  - i) Viewing the text messages on the victim's phone and taking pictures of the

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phone's face plate for each page of text messages

- ii) View incoming call logs on victim's phone and take pictures of the phone's face plate
- iii) Use a recording device to play and record any voicemails. Most officers have a recording device in their patrol cars in which worst case scenario, the officer could take the victim's phone to his/her car and play the voicemail, recording it on the patrol car's system.
- iv) Print out emails, Facebook posts, etc. or take pictures of them. Officers can forward the emails as well, although the forwarded email will not include the IP address history of the original sender. Officers can also take screenshots on a victim's computer and email themselves the screenshots.
- v) Officers can seize the defendant's phone, etc. and place into evidence but CANNOT search the phone until they have a search warrant or consent.

(7) Collect/document any video evidence

If the incident occurred in a public location such as a bar or gas station, inquire as to whether there is any video surveillance and obtain it if there is.

5. Enforcement action

**NOTE: Show slide, "Enforcement Action."**

- a) "When an arrest is warranted, do not rush it.
  - (1) Talk longer.
  - (2) **WAIT FOR BACK-UP.**

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- (3) Use verbal stall tactics.
  - (4) Anticipate the offender's actions.
- b) Do not discount the victim.

**NOTE: Show slides, "Do NOT Discount the Victim."**

- (1) Most common mistake.
- (2) Victim may not want the arrest.
- (3) Victim may become aggressive.
- (4) Back-up officer should assist, and when necessary, control the victim.
- (5) Make arrest away from victim, preferably outside near your patrol vehicle."<sup>118</sup>
- (6) Ensure victim is aware of provisions of the Crime Victims' Rights Act, the Crime Victims Compensation Act, and the Domestic Violence Victim Assistance Act, as well as receiving any additional appropriate case information and referral sources.<sup>119</sup>

### 6. Utilizing the law to hold abusers accountable

**NOTE: Show slides, "Holding the Abuser Accountable."**

Often officers undercharge domestic violence suspects because they are not as familiar with the felony laws that can apply to what might appear at first glance to be a misdemeanor offense. Charging abusers with felonies, when appropriate, conveys the seriousness of domestic violence. Also, it proves the prosecutor's office with more options on how to proceed with the case given the high rate of pleas in the criminal justice system. Therefore, it is important that officers are aware of relevant felonies and are considering them as options when an officer has probable cause that a domestic violence incident has occurred. Below are the most common felonies that officers should consider when responding to domestic violence calls:

**NOTE: Instructors should explain that the class is going to look at assault by strangulation in a little more detail than other crimes listed in the lesson plan. It is easy**

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**to overlook strangulation because there may not be many, if any, visible injury. However, officers need to take this crime seriously, as it is very dangerous to the victims.**

- a) Strangulation (G.S. 14-32.4(b))
  - (1) Strangulation is “a form of asphyxia characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck brought about by hanging, ligat[ure] or the manual assertion of pressure.”<sup>120</sup> “The general clinical sequence of a victim who is being strangled is one of severe pain, followed by unconsciousness, followed by brain death.”<sup>121</sup> “The victim will lose consciousness . . . [because of] blocking of the carotid arteries . . . , blocking of the jugular veins . . . , and closing off of the airway, causing the victim to be unable to breathe.”<sup>122</sup> “Only eleven pounds of pressure placed on both carotid arteries for ten seconds is necessary to cause unconsciousness.”<sup>123</sup>
  - (2) Generally, there are three types of strangulation. Hanging is typically associated with suicide by use of a rope or some other tying mechanism. Ligature strangulation, also known as garroting, is usually accomplished with articles such as telephone cord, belt, or clothing.<sup>124</sup> Finally, manual strangulation is most often accomplished by using the hands, but can include the use of forearms, and kneeling or standing on the throat.<sup>125</sup>
  - (3) North Carolina statute:

“Any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony.”<sup>126</sup>
  - (4) Physical injury – what to look for in your investigation  
The North Carolina statute governing assault by strangulation requires an assault that causes physical injury. Physical injury is not defined in the assault by strangulation statute but is defined in another statute. Physical injury is defined there as cuts, scrapes, bruises, or other physical injury which does not arise to the level of serious injury.<sup>127</sup> Physical injury seems to require more than physical contact, but testimony from a victim



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that she was cut and bruised after she was strangled, was deemed sufficient to show physical injury.<sup>128</sup>

Strangulation does not require that a victim have difficulty breathing.<sup>129</sup> Some common signs or symptoms of strangulation that may translate into physical injury required by statute are:<sup>130</sup>

- (a) A change in voice – hoarseness or loss of voice
- (b) Swallowing difficulty or painful swallowing
- (c) Involuntary urination or defecation
- (d) Miscarriage
- (e) Breathing difficulty or inability to breathe
- (f) Mental status changes from restlessness to combativeness
- (g) Visible injuries – scratches, abrasions, scrapes
- (h) Redness on the neck
- (i) Chin abrasions
- (j) Petechiae – under the eyelids, around the eyes, anywhere on the face, or neck above the area of strangulation
- (k) Blood red eyes
- (l) Ligature marks
- (m) Swelling
- (n) Vomiting
- (o) Lung damage
- (p) Death
- (q) No visible injuries – may need a medical evaluation to determine internal injuries

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### (5) Other considerations for assault by strangulation

In every case of known or suspected assault by strangulation, officers should assist victims in quickly seeking medical treatment. There may be internal injuries to the lungs or brain of the victim that may cause medical issues or death up to three weeks after the incident.<sup>131</sup>

If a victim refuses medical treatment, officers should note that refusal.

Victims will rarely report being “strangled.” Rather they will say they were “choked.” Strangulation only requires ANY physical injury – NOT serious injury. A bruise, scratch, red mark, difficulty breathing, sore throat, etc. all are examples of physical injury. If a victim reports being choked and has any sign of physical injury, the officer has probable cause to charge the suspect with strangulation instead of just assault on a female or simple assault.

### b) Habitual misdemeanor assault (G.S. 14-33.2)

“A person commits the offense of habitual misdemeanor assault if that person violates any of the provisions of G.S. 14-33 (assaults) and causes physical injury, or G.S. 14-34 (assault by pointing a gun), and has two or more prior convictions for either misdemeanor or felony assault, with the earlier of the two prior convictions occurring no more than fifteen years prior to the date of the current violation. A person convicted of violating this section is guilty of a Class H felony.”<sup>132</sup>

The suspect’s two prior convictions can be for ANY assaults, not just domestic violence assaults. Also, both convictions can be from the same conviction date. Finally, similar to strangulation, this offense requires just physical injury, NOT serious injury. So, in summary, two prior assault convictions in the last fifteen years plus any injury or an assault by pointing a gun offense, and the officer has probable cause to charge felony habitual misdemeanor assault, instead of just the misdemeanor assault.

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- c) Habitual violation of a domestic violence protective order (G.S. 50B-4.1(f))

“Any person who knowingly violates a valid protective order . . . after having been previously convicted of two offenses under this Chapter, shall be guilty of a Class H felony.”<sup>133</sup>

Like habitual misdemeanor assault, habitual violation of a DVPO requires two prior convictions and those convictions can be from the same conviction date. However, unlike habitual misdemeanor assault, habitual violation of a DVPO has no specific time limitation, and there are no additional elements. For example, if a suspect has violated a DVPO and has two prior convictions for violating DVPOs, no matter how old, the officer has probable cause to charge habitual felony violation of a DVPO rather than just misdemeanor violation of a DVPO.

- d) Felony stalking (G.S. 14-277.3A(d))

“A defendant who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense of stalking when there is a court order in effect prohibiting the conduct described under this section by the defendant against the victim is guilty of a Class H felony.”<sup>134</sup>

Stalking is defined as “a defendant is guilty of stalking if the defendant willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

- (1) Fear for the person’s safety or the safety of the person’s immediate family or close personal associates.
- (2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.”<sup>135</sup>

If an officer has probable cause that the suspect is stalking the victim, the officer should evaluate whether the suspect can be charged with felony stalking, either because the suspect has

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ONE prior conviction at any time of any stalking offense (such as stalking or cyberstalking), or because the suspect is stalking the victim in violation of ANY court order prohibiting the suspect from contacting or harassing the victim.

Examples of court orders include but are not limited to domestic violence protective orders (50B), no-contact orders (50C), pretrial release orders, and custody orders.

- e) Felony breaking and entering with the intent to terrorize or injure (G.S. 14-54(a1))

“Any person who breaks or enters any building with intent to terrorize or injure an occupant of the building is guilty of a Class H felony.”<sup>136</sup>

When a suspect commits what would typically be a misdemeanor B&E but does so to enter a home and assault a victim, officers have probable cause to charge the suspect with felony B&E rather than just the misdemeanor.

- f) Interfering with a State’s witness (G.S. 14-226)

“If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court, the person shall be guilty of a Class G felony.”<sup>137</sup>

It is important for officers to understand that this crime does NOT require that the suspect threaten the victim. Rather, if the suspect attempts to deter a victim in any manner from acting as a witness, then an officer may have probable cause for this felony. The suspect does not have to be successful. For example, if a suspect tells a victim to not come to court or to drop the charges, etc., that suspect is attempting to deter or prevent a victim from acting as a State’s witness.

- 7. Arrest and victim contact can work

**NOTE: Show slide, “Arrest CAN Work.”**

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- (a) Arrest protects the victim for the period the offender remains in jail. “Research has shown that police response also significantly increases the likelihood that victims will secure protective orders. [Also] reveals that, by and large, the vast majority of victims report satisfaction with the arrest of their abuser after the fact.”<sup>138</sup>
- (b) “A total of 11 percent of police departments in the U.S. have specialized domestic violence units.”<sup>139</sup> They are common in larger departments.<sup>140</sup>
- (c) “Specialized domestic violence units, emphasizing repeat victim contact and evidence gathering, have been shown to significantly increase the likelihood of prosecution, conviction, and sentencing.”<sup>141</sup>
- (d) “The specialized unit in Mecklenburg County, Charlotte, N.C., collected evidence in 61.8 percent of its cases, compared to only 12.5 percent of cases collected by patrol officers. In addition, whereas victims, ‘declined to prosecute’ in 30 percent of the cases handled by regular patrols declined to prosecute, only eight percent ‘declined prosecution’ in cases handled by the specialized DV unit.”<sup>142</sup>

### 8. Investigative approaches

**NOTE: Show slides, “Investigative Approaches.”**

Although the officers must determine the “truth” of what happened to decide if a crime has occurred, officers should adopt a “Trust – but verify” approach when working with victims of domestic violence. Victims will often be hesitant to tell officers what happened. Therefore, it is important not to discount the victim and to approach the victim from a place of trust, to begin with, so that the victim feels more comfortable disclosing abuse rather than feeling as if the officer is cross-examining her/him.

- a) “Avoid judging victims or personally commenting on the situation.
- b) Do not ask for a fight.
- c) Hear both sides.

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- d) Honor the problem.
- e) Be sensitive to cultural differences.
- f) Remain calm.
- g) Listen attentively.
- h) Don't let talk replace tactics."<sup>143</sup>
- i) Don't say some version of, "If I have to come back here, I'm arresting you both."

### 9. Referral

**NOTE: Show slides, "Referral Services."**

- a) In almost all situations, officers should attempt to refer the individuals to outside sources for help. It is imperative that officers use this opportunity to encourage all the family members to seek ways to stop the violence in their homes.
  - (1) Domestic violence service providers offer free services such as counseling, shelter, court advocacy, and support groups.

A victim's communications with counselors at rape crisis centers and domestic violence programs are privileged communications, and the counselors at these centers are not required to disclose any information which was given during the time the victim was receiving services. Therefore, if you are investigating a crime of domestic violence, you must speak to the victim personally to gather information about the crime or receive permission from the victim to be present during any intake of information by the domestic violence counselor. If your relationship with the center is good, the counselors may encourage the victim to inform law enforcement officers of both initial intake information and other pertinent information which may be divulged at a later time.

- (2) Psychological services

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- (3) Support groups
- (4) Court agencies
- (5) Attorneys - Officers should **not** recommend a specific private attorney or firm. With that said, Legal Aid of North Carolina is a non-profit organization that offers free legal services to victims of domestic violence. They can assist the victim in obtaining DVPOs and safety planning.
- (6) Alcoholics Anonymous, Narcotics Anonymous substance abuse programs, or Al-Anon for family members of alcoholics.
- (7) Al-Anon

**NOTE:** Ask a question, “What referral agencies do you have in your jurisdiction?” All students should be made aware of the specific services utilized in their geographic locations.

### **Example Answers:**

- Domestic Violence Service Program
- Legal Aid of North Carolina
- Urban Ministry
- Salvation Army
- Detox Center
- County Mental Health Center
- Attorneys
- Resources for specific populations such as LGBTQ centers or Latino community resources
- Certified Batterer Intervention Programs

Marital counseling is not an appropriate law enforcement referral for a couple where one person is violent and may require them to violate provisions of a domestic violence protective order to have no contact. It can increase the risk of violence. It can contribute to the belief that battering is partially the fault of the victim. Marital counseling is an insinuation that the couple has a problem together that can be worked out together. Domestic violence occurs because one person in the relationship is violent. That is never acceptable, and it is

## ***Domestic Violence Response***

that person's problem and has nothing to do with the dynamics of the couple. By seeing a couple together, it is extremely difficult for a victim to talk about the violence in the relationship truthfully. The victim may face more violence and retaliation for telling the truth. Abusers are highly manipulative people, and they can easily manipulate a counseling situation with even people who are trained to work with them.

**NOTE: Instructors are encouraged to obtain and provide victim assistance cards/brochures from their locales.**

- b) Each officer needs to believe that making an appropriate referral is paramount to the successful conclusion in a domestic violence situation. In many instances, it is the police that are the first "outsiders" made aware of the family problems. Officers should visit and meet with shelters and other sources of referral to understand how valuable these referrals can be as a measure to prevent further violence in the family unit.

10. If an arrest is not authorized

**NOTE: Show slide, "If Arrest is NOT Authorized."**

Officers should encourage parties to separate for a short period – at least overnight. This will help diffuse a volatile situation. Most likely, the best choice is to have the victim/complainant remain at the residence while the other party leaves. By resolving the situation in this manner, the victim's life is not further disrupted by having to move out.

- a) If one of the parties decides to leave but needs to get some personal belongings, then follow and watch them pack. Officers have been fatally wounded by letting the disputant get out of sight, only to return with a weapon.
- b) After the disputant has been convinced to leave the premises, you need to ensure that they do so to keep the domestic dispute from starting again.
- c) If the disputant is intoxicated, do not allow them to drive.
- d) If your departmental policy allows, offer to drive the disputant. This will ensure that they are away from the premises.



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- e) If the disputant drives or walks away, patrol around the area before clearing from the call. Check to make sure that the disputant is not waiting around the corner for you to leave so they can go back to the residence.
  - f) Once the disputant is gone, provide the victim with information about referral services, including legal assistance and shelters.
11. Transport to a domestic violence service provider.

**NOTE: Show slide, “Transportation.”**

Many times officers will be called upon to assist victims and children in leaving their homes and temporarily going to a shelter. Officers should transport the family members and assist the victims going to a safer environment. Every domestic violence shelter is required to offer the same or similar shelter services to victims regardless of race, color, religion, national origin, sex, gender identity, sexual orientation, or disability.<sup>144</sup>

12. Safety planning

**NOTE: Show slide, “Safety Planning.”**

Officers should remember that all domestic violence situations are potentially lethal for victims. Being aware of lethality risk factors may assist officers in directing resources to victims of domestic violence. In a danger assessment study, the following factors were present among murdered victims and abused women.

- a) Risk factors<sup>145</sup>

**NOTE: Show slides, “Risk Factors.”**

- (1) Partner used or threatened with a weapon
- (2) Partner threatened to kill a woman
- (3) Partner tried to choke (strangle) woman
- (4) Partner violently and constantly jealous
- (5) Woman forced to have sex when not wanted

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- (6) Gun in the house
  - (7) Physical violence increased in severity
  - (8) Partner controls most or all of the woman's daily activities
  - (9) Physical violence increase in frequency
  - (10) Partner uses illicit drugs
  - (11) Partner drunk every day or almost every day
  - (12) Woman ever beaten while pregnant
  - (13) Woman believed he was capable of killing her
  - (14) Partner reported for child abuse
  - (15) Partner violent outside the home
  - (16) Partner threatened or tried to commit suicide
  - (17) Victim threatened or tried to commit suicide
- b) Victim options after an arrest has been made

**NOTE: Show slides, "Safety Planning."**

When discussing with victims the situation they are currently experiencing, it is important to understand that your role is to give them **OPTIONS**, and **NOT** to tell them what to do or not do. Victims know their situation and the batterer better than anyone else. A one-size fits all approach will not work and does not honor the victim's experience or right to control her/his own decisions. For example, while obtaining a DVPO against one batterer might stop him/her from contacting the victim, for others, it might escalate the batterer's behavior and not be a safe option for the victim.

- (1) Make sure the victim has the names and numbers of police, the local domestic violence service program, community resources, friends, family members, and shelter to assist him or her.

## ***Domestic Violence Response***

- (2) If the suspect was arrested, explain to the victim, the suspect may threaten or sweet talk their way back into the victim's life. Help the victim to consider how they will respond if this occurs.
  - (3) Discuss options with the victim.
  - (4) Help the victim establish a safety plan for when the suspect is released from custody.
  - (5) Advise the victim how to find out when the suspect will be released. In North Carolina, victims have access to the North Carolina Statewide Victim Assistance and Notification system (NCSAVAN). They can contact 1-877-NCSAVAN to register for notification about offender status and release.<sup>146</sup>
  - (6) Explain to the victim how to obtain a domestic violence protective order.
  - (7) Explain to the victim that the batterer will be given pretrial release conditions, which likely will include a no-contact order with her/him. Explain to the victim how to obtain a copy of the conditions and how to enforce them.
- c) Safety planning for the victim who is leaving the residence
- (1) Identify items needed to take, such as money, personal papers including DVPO, car keys, change of clothing, passports, and social security cards for self and children.
  - (2) Leave money and an extra set of keys and extra clothes with someone the victim can trust.
  - (3) Take children, if at all possible, or arrange for someone to care for them.
  - (4) Keep the shelter numbers close at hand and keep change or a calling card at all times.
  - (5) Review the safety plan to plan the safest way to leave.  
**Remember - leaving the batterer can be the most dangerous time.**

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- d) Safety planning for the victim who continues in the relationship. It is important to discuss options to employ during or after a violent incident to help the victim stay safe while in the home.
  - (1) If an argument seems unavoidable, try to have it in a room that has access to an exit and not in the bathroom, kitchen, or anywhere near weapons.
  - (2) Practice how to get out of the home safely.
  - (3) Have a packed bag ready and keep it in a secret but accessible place.
  - (4) Identify a neighbor the victim can tell about the violence and ask that they call the police if they hear a disturbance.
  - (5) Decide and plan where the victim will go if forced to leave home.

- 13. Taking no police action is **not** recommended.

**NOTE: Show slide, “Taking NO ACTION is NOT Recommended.”**

Officers should not advise victims that they will always be there to protect them because they realistically cannot, and that can create liability for the officer and officer’s agency. Victims need to do everything they can lawfully do to help themselves and to get out of an assaultive situation.

If there is no crime, no violation of a pretrial release order, and no evidence of violence, the officers may have no reason to remain at the location. In this situation, they should complete their incident report and depart. Officers should never leave, however, without at least making a referral and ensuring the safety of the victim and children.

- D. Conducting a Follow-up Investigation

**NOTE: Show slides, “Follow-up.”**

The follow-up investigation should verify the inclusion of all the investigative steps described for the on-scene investigation. Additionally, the follow-up investigation should focus on how to prove the case even without the participation of the victim. The follow-up should also include:

## ***Domestic Violence Response***

1. Obtain medical records if available.
  - a) Obtain a copy of the EMS report
  - b) Obtain a medical release form from the victim, if appropriate
2. Obtain a copy of the 9-1-1 tape involving the original call for assistance. Be aware that most jurisdictions do not keep 9-1-1 calls for longer than sixty to ninety days.
3. Re-interview witnesses as necessary.
4. Contact the victim and witnesses to inform them of the status of the case and the intended referral to the prosecutor's office.
5. Record name, address, and phone number of two close friends or relatives of the victim who will know their whereabouts six to twelve months from the time of the investigation.
6. Complete a records check for any domestic violence history to review whether original charges should be upgraded to felonies.
7. Document all prior domestic violence incidents, including dates and locations, if possible, from interviews with the victim.
8. Obtain follow-up photographs of injuries to the victim (irrespective of whether photos were taken by the initial responding officer) because bruises and injuries can appear differently in the hours and days following the infliction of the injury.
9. Ensure the victim has been made aware of provisions of the Crime Victims' Rights Act, the Crime Victims Compensation Act, and the Domestic Violence Victim Assistance Act.
10. Within seventy-two hours, provide the victim with the AOC information sheet about agencies and services for victims of domestic violence.
11. Possibly assist in the return of one party to remove possessions from the premises.
12. If child protective services were contacted, follow-up with the assigned case worker.

## ***Domestic Violence Response***

13. Monitor jail calls, letters, and jail visits by the offender to the victim, which may include admissions, violations of DVPOs, and interference with State's witnesses.
14. Obtain phone records of the offender, the victim, and any other relevant parties.
15. Conduct regular follow-up with the victim to see how she/he is doing, if the victim has questions and to refer the victim to resources.

**NOTE: In a scenario setting, the instructor will demonstrate being the contact officer responding to a domestic disturbance being the arresting officer. Before making the arrest, the instructor should briefly discuss the circumstances with the students and ask whom they would arrest and why.**

**Conduct practical exercise.**

### III. Conclusion

#### A. Summary

During this block of instruction, we have discussed the prevalence and dynamics of domestic violence. Additionally, we discussed safe and tactical methods of responding to a domestic violence situation, including the initial response, making contact with the individuals, affecting an arrest, and departing the scene. We also discussed how to make an effective arrest, how to utilize the law to hold batterers accountable, diffuse a conflict situation, and make appropriate referrals. Finally, we discussed the documentation procedures that officers can utilize in bringing these matters to a successful conclusion.

**NOTE: Show slides, "Training Objectives."**

1. State the dynamics of domestic violence relationships and how it impacts investigations and prosecutions.
2. Demonstrate the ability to safely respond to a domestic violence situation that includes:
  - a) Obtaining information from the telecommunicator
  - b) Utilizing proper approach and departure tactics
  - c) Taking appropriate enforcement action, if necessary

## ***Domestic Violence Response***

3. Identify an effective response and interview tactics for conducting a domestic violence investigation.
4. State the appropriate steps for conducting a domestic violence follow-up investigation.

### B. Questions from Class

**NOTE: Show slide, “Questions.”**

### C. Closing Statement

By accepting that law enforcement will serve as the front line for intervening in the crime of domestic violence, police officers are empowered to change lives. Although disturbance calls often seem to appear beyond the jurisdiction of law enforcement, the public depends on law enforcement to represent fairness, objectivity, and stability. When officers handle a disturbance call effectively, they demonstrate the professionalism of the department. If officers handle the call poorly, they not only represent their department but may also end up assaulted or dead.

## ***Domestic Violence Response***

### **NOTES**

<sup>1</sup> Jeltsen.

<sup>2</sup> National Coalition against Domestic Violence, “Domestic Violence National Statistics.”

<sup>3</sup> “Domestic Violence - What is Domestic Violence?”

<sup>4</sup> “Domestic Violence - Who Is Affected.”

<sup>5</sup> Babbel.

<sup>6</sup> National Domestic Violence Hotline.

<sup>7</sup> Domestic Violence Roundtable.

<sup>8</sup> National Coalition Against Domestic Violence.

<sup>9</sup> National Coalition Against Domestic Violence.

<sup>10</sup> National Coalition Against Domestic Violence.

<sup>11</sup> Domestic Abuse Project.

<sup>12</sup> Domestic Violence Roundtable.

<sup>13</sup> Domestic Violence Roundtable.

<sup>14</sup> Domestic Violence Roundtable.

<sup>15</sup> National Coalition Against Domestic Violence.

<sup>16</sup> Independent Living Resource Center Thunder Bay.

<sup>17</sup> N.C.G.S. § 14-226 (2020).

<sup>18</sup> N.C.G.S. § 50B-4.1 (2020).

<sup>19</sup> Fisher, 7.

<sup>20</sup> Abuseofpower.com.

<sup>21</sup> Baker, Jaffe, Ashbourne, and Carter.



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- <sup>22</sup> Baker, Jaffe, Ashbourne, and Carter.
- <sup>23</sup> Miller, 17-18.
- <sup>24</sup> Miller, 18-21.
- <sup>25</sup> Meyer.
- <sup>26</sup> Violence against Women Committee, 1.
- <sup>27</sup> Ingraham.
- <sup>28</sup> Remsberg, 350.
- <sup>29</sup> National Sheriffs' Association. *First Response to Victims of Crime*, 15.
- <sup>30</sup> Remsberg, 356-357.
- <sup>31</sup> Rutledge, 208.
- <sup>32</sup> Rutledge, 209.
- <sup>33</sup> Remsberg, 356-357.
- <sup>34</sup> Remsberg, 358.
- <sup>35</sup> Rutledge, 211.
- <sup>36</sup> Rutledge, 211.
- <sup>37</sup> Willis.
- <sup>38</sup> Duncan, 28.
- <sup>39</sup> Duncan, 28.
- <sup>40</sup> Schaefer, 8-10.
- <sup>41</sup> Miller, "Contact/Cover Tactical Skills," 14-15.
- <sup>42</sup> Miller, "Contact/Cover Tactical Skills," 22-23.
- <sup>43</sup> Remsberg, 381.

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<sup>44</sup> Rutledge, 216.

<sup>45</sup> N.C.G.S. § 50B (2020).

<sup>46</sup> N.C.G.S. § 50B-2(a) (2020).

<sup>47</sup> N.C.G.S. § 50C-8(a) (2020).

<sup>48</sup> N.C.G.S. § 50C-2(c1) (2020).

<sup>49</sup> N.C.G.S. § 50B-2(c) (2020).

<sup>50</sup> N.C.G.S. § 50B-3(b) (2020).

<sup>51</sup> N.C.G.S. § 50B-2(b) (2020).

<sup>52</sup> N.C.G.S. § 50B-2(b) (2020).

<sup>53</sup> N.C.G.S. § 50B-3 (2020).

<sup>54</sup> N.C.G.S. § 50B-3(b) (2022).

<sup>55</sup> N.C.G.S. § 50B-4(c) (2020).

<sup>56</sup> N.C.G.S. § 50B-4(d) (2020).

<sup>57</sup> N.C.G.S. § 50B-4(d) (2020).

<sup>58</sup> N.C.G.S. § 50B-4(d) (2020).

<sup>59</sup> See N.C.G.S. 50A-101, et seq.; N.C.G.S. 50A-102(4); Suzanne Reynolds, 3-13 *Lee's North Carolina Family Law* §13.134 (Mass.: Matthew Bender & Co., Inc., 2015).

<sup>60</sup> N.C.G.S. § 50A-101(2020).

<sup>61</sup> N.C.G.S. § 50A-316 (2020).

<sup>62</sup> N.C.G.S. § 50A-311 (2020).

<sup>63</sup> *Chick v. Chick*, 164 N.C. App. 444, (2004).

<sup>64</sup> *Chick*, 444.

<sup>65</sup> N.C.G.S. § 50B-4.1(a) (2020).

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<sup>66</sup> N.C.G.S. § 50B-4.1(a) (2020).

<sup>67</sup> N.C.G.S. § 50B-4.1 (2020).

<sup>68</sup> N.C.G.S. § 15A-401(b) (2021).

<sup>69</sup> N.C.G.S. § 50B-4.1(a) (2020).

<sup>70</sup> N.C.G.S. § 50B-4.1(f) (2020).

<sup>71</sup> N.C.G.S. § 50B-4.1(g) (2020).

<sup>72</sup> N.C.G.S. § 50B-4.1(g1) (2020).

<sup>73</sup> N.C.G.S. § 50B-4.1(b) (2020).

<sup>74</sup> N.C.G.S. § 50B-5 (2020).

<sup>75</sup> N.C.G.S. § 50B-5 (2020).

<sup>76</sup> N.C.G.S. § 50B-5 (2020).

<sup>77</sup> N.C.G.S. § 50B-5 (2020).

<sup>78</sup> N.C.G.S. § 50B-5 (2020).

<sup>79</sup> N.C.G.S. § 50C-1(7) (2020).

<sup>80</sup> N.C.G.S. § 14-277.3 (2020).

<sup>81</sup> New Hampshire Department of Justice.

<sup>82</sup> Miller, “Domestic Violence Response,” 24.

<sup>83</sup> Garner.

<sup>84</sup> Garner.

<sup>85</sup> Garner.

<sup>86</sup> Garner.

<sup>87</sup> Garner.

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<sup>88</sup> Garner.

<sup>89</sup> Garner.

<sup>90</sup> Garner.

<sup>91</sup> Garner.

<sup>92</sup> Garner.

<sup>93</sup> Garner.

<sup>94</sup> Garner.

<sup>95</sup> Garner.

<sup>96</sup> “A Guide to Crawford and the Confrontation Clause,” 2.

<sup>97</sup> “A Guide to Crawford and the Confrontation Clause,” 11.

<sup>98</sup> “A Guide to Crawford and the Confrontation Clause,” 11.

<sup>99</sup> N.C.G.S. § 50B-3(a)(9)(a) (2020).

<sup>100</sup> N.C.G.S. § 50B-3(a)(9)(b) (2020).

<sup>101</sup> N.C.G.S. § 50B-3(a)(9)(b1) (2020).

<sup>102</sup> N.C.G.S. § 50B-3(a)(9)(c) (2020).

<sup>103</sup> N.C.G.S. § 15A-401(b)(1) (2021).

<sup>104</sup> N.C.G.S. § 15A-401(b)(2) (2021).

<sup>105</sup> N.C.G.S. § 50B-4(d) (2020).

<sup>106</sup> N.C.G.S. § 50B-4(d) (2020).

<sup>107</sup> N.C.G.S. § 50B-4(d) (2020).

<sup>108</sup> N.C.G.S. § 50A-101 (2020); N.C.G.S. § 50A-102(4) (2020); Reynolds, 3-13 *Lee’s North Carolina Family Law* §13.134.

<sup>109</sup> N.C.G.S. § 50A-101 (2020).

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<sup>110</sup> N.C.G.S. § 50A-316 (2020).

<sup>111</sup> N.C.G.S. § 50A-311 (2020).

<sup>112</sup> *Chick*, 444.

<sup>113</sup> *Chick*, 444.

<sup>114</sup> N.C.G.S. § 50B-4.1(a) (2020).

<sup>115</sup> N.C.G.S. § 50B-4.1(a) (2020).

<sup>116</sup> N.C.G.S. § 50B-4.1 (2020).

<sup>117</sup> N.C.G.S. § 15A-401 (2020).

<sup>118</sup> Miller, “Domestic Violence Response,” 23.

<sup>119</sup> Miller, “Domestic Violence Response,” 23.

<sup>120</sup> *State v. Braxton*, 183 N.C. App. 36, 42, (2007).

<sup>121</sup> Strack and McClane.

<sup>122</sup> Strack and McClane.

<sup>123</sup> Strack and McClane.

<sup>124</sup> Strack and McClane.

<sup>125</sup> Strack and McClane.

<sup>126</sup> N.C.G.S. § 14-32.4(b) (2020).

<sup>127</sup> N.C.G.S. § 14-34.7(c) (2020).

<sup>128</sup> *State v. Little*, 188 N.C. App. 152, 157, (2008).

<sup>129</sup> *State v. Williams*, 201 N.C. App. 161, (2009).

<sup>130</sup> Strack and McClane.

<sup>131</sup> Strack and McClane.

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<sup>132</sup> N.C.G.S. § 14-33.2 (2020).

<sup>133</sup> N.C.G.S. § 14-50B-4.1(f) (2020).

<sup>134</sup> N.C.G.S. § 14-277.3A(d) (2020).

<sup>135</sup> N.C.G.S. § 14-277.3A(d) (2020).

<sup>136</sup> N.C.G.S. § 14-54(a1) (2020).

<sup>137</sup> N.C.G.S. § 14-226 (2020).

<sup>138</sup> Hart and Klein.

<sup>139</sup> Hart and Klein.

<sup>140</sup> Hart and Klein.

<sup>141</sup> Hart and Klein.

<sup>142</sup> Hart and Klein.

<sup>143</sup> Miller, “Domestic Violence Response.”

<sup>144</sup> United States Department of Justice, “Nondiscrimination Grant Condition in the Violence against Women Reauthorization Act: Frequently Asked Questions.”

<sup>145</sup> Campbell and others.

<sup>146</sup> “North Carolina SAVAN Programs.”

## ***Controlled Substance***

BLET: 22Z Draft ix, 5-6, 26, 61, 65

TITLE: CONTROLLED SUBSTANCE

Lesson Purpose: To develop student skills in identifying controlled substances and developing the student's abilities to develop informants and conduct surveillance.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives by the information received during the instructional period.

1. Given a list of commonly encountered controlled substances, identify the correct pharmacological classification and its symptoms.
2. Recognize and identify various types of drug paraphernalia.
3. Identify common over-the-counter products that are used in methamphetamine production.
4. Identify standard and improvised lab equipment used in methamphetamine production.
5. State the appropriate methods to respond to a methamphetamine lab.
6. Identify the types of sources that may aid in developing informant contacts and what factors motivate them to provide information to law enforcement officers.
7. State and demonstrate the following types of surveillance operations:
  - a) Open
  - b) Close
  - c) Covert
8. Given a fact situation, identify the proper investigative follow-up procedures in a controlled substance case.

Hours: Twelve (12)

## ***Controlled Substance***

Instructional Method:	Lecture, Conference, Practical Exercises, Demonstration
Testing Requirement(s):	End of block test
Training Environment(s):	Classroom
Materials Required:	Audio-visual classroom equipment Handout Various drug samples as provided in the instructor notes section (provided by instructor or law enforcement agency; <u>not</u> required to be owned by school) Various drug paraphernalia (provided by instructor or law enforcement agency; <u>not</u> required to be owned by school) Video: <i>Fentanyl: A Real Threat to Law Enforcement</i> , Drug Enforcement Administration (2016).
References:	21 U.S. Code sec 863 – “Drug Paraphernalia.” Cornell University Law School, Legal Information Institute. Last modified 2017. Accessed November 2020. <a href="https://www.law.cornell.edu/uscode/text/21/863">https://www.law.cornell.edu/uscode/text/21/863</a> .  Adams, Thomas F. <i>Police Field Operations</i> , Eighth Edition, New Jersey: Pearson Education, Inc., 2014.  A Gray Media Group, Inc. Station. “Epidemic: Mom and Pop Meth Labs Dominate SC Drug Manufacturing.” Last modified July 21, 2014. Last accessed November 2020. <a href="https://www.wistv.com/story/24005346/the-war-on-meth-mom-and-pop-labs-dominate-drug-manufacturing/">https://www.wistv.com/story/24005346/the-war-on-meth-mom-and-pop-labs-dominate-drug-manufacturing/</a> .  <i>Arizona v. Gant</i> , 556 U.S. 332, (2009).  Billings, Judy, interview by author. Raleigh, NC, April 13, 2017.  Brown, Michael F. “Criminal Informants: Some Observations on Use, Abuse, and Control.” <i>Journal of Police Science and Administration</i> 13 (3): 251-256.  Center for Disease Control and Prevention. 2022. “Prescription Opioid Overdose Death Maps,” Last reviewed June 6, 2022. Accessed July 2022. <a href="https://www.cdc.gov/drugoverdose/deaths/prescription/maps.html">https://www.cdc.gov/drugoverdose/deaths/prescription/maps.html</a> .



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**July 2023**

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### TITLE: CONTROLLED SUBSTANCE – **Instructor Notes**

1. This lesson plan must be presented by an instructor currently certified by the North Carolina Criminal Justice Education and Training Standards Commission as a General Instructor.
2. Instructors should possess a thorough working knowledge of drug enforcement activities, including exposure to undercover assignments, surveillance, and informant development. Chapter 90 violations are covered in the “Elements of Criminal Law” lesson, but instructors are encouraged to reference them as necessary.
3. Instruction on the identification of drugs should be supplemented by illustrations and samples of controlled substances, demonstrating the use of the *PDR* and other guides. The material should also provide the students with the opportunity to simulate packaging evidence and completing the laboratory submission form. Using samples of genuine controlled substances in instruction is highly recommended. However, simulated controlled substances that accurately mimic the appearance and texture of the controlled substances they are designed to represent may be used when it is not feasible to use genuine controlled substances.
4. Practical exercises allow for creativity and should involve role-playing when practical.
5. Practical Exercises:

- a) Recognizing Drug Paraphernalia (Practical Exercise #1)

The purpose of this exercise is to familiarize the student with commonly encountered drug paraphernalia. This may be accomplished by taking paraphernalia and hiding it in the classroom and on students.

- (1) Hide the paraphernalia.
- (2) Set search parameters.
- (3) Initiate search activities.

- b) Debriefing a Source of Information (Practical Exercise #2)

Fact Situations:

- (1) A known dealer who has been arrested for assault on a female.
- (2) The girlfriend of the drug dealer who was arrested for assault.



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- (3) A 16-year-old whose parent discovered a bag of marijuana in the youth's bedroom.
- (4) A driver who has been arrested for driving without an operator's license (DWOL), and a search incident to arrest produced a piece of crack cocaine.
- (5) An unknown individual calls the police department and wants to talk with an officer about some people dealing drugs.

The fact scenarios may be played by students or role players. The student officer should conduct the debriefing by the information provided in the outline and handout.

c) Which Technique to Use (Practical Exercise #3)

Fact Situations:

- (1) Curb service crack cocaine dealers.
- (2) Employees in a large closed-gate manufacturing facility are selling marijuana.
- (3) A local gym owner is selling steroids.
- (4) A bartender is selling cocaine through the waitress.

Given the fact situation, devise an undercover plan by the material presented in class.

6. To promote and facilitate law enforcement professionalism, three ethical dilemmas are listed below for classroom discussion. At their discretion, instructors must provide students with each ethical dilemma listed below. Sometime during the lecture, instructors should "set the stage" for the dilemma before taking a break. Instructors are encouraged to develop additional dilemmas as needed.
  - a) You receive drug information from an informant, and you realize the reason the informant is talking to you is for revenge purposes. You also know that the informant is not reliable. Should you act on it anyway because the information is on a dealer, you have wanted to search for a long time but never could develop probable cause?
  - b) You are working with another officer, and she begins to show the following symptoms: nausea, body tremors, hallucinations, dazed appearance, and

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intensified mood swings. These are signs of drug impairment. What will you do?

- c) You observe another officer shake down a drug suspect and seize the drugs. The officer does not report the seizure but instead places the substances in his pocket and lets the suspect go. What will you do?

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TITLE: CONTROLLED SUBSTANCE

### I. Introduction

**NOTE: Show slide, “Controlled Substance.”**

#### A. Opening Statement

According to the 2019 Crime in the United States report produced by the Federal Bureau of Investigation, the highest number of arrests in the United States was for drug abuse violations.<sup>1</sup> While crime numbers change every year, drug crime remains one of the most common types of criminal offenses and a top priority for law enforcement nationwide. The United States Drug Enforcement Agency 2020 National Drug Threat Assessment Summary reported an increase of deaths related to “drug poisoning” involving methamphetamine, fentanyl-laced counterfeit pills, and cocaine.<sup>2</sup>

A law enforcement officer will come into contact with controlled substances regularly. Officers will also see that the use and abuse of controlled substances can lead to other criminal activity, such as larceny, violent crime, and further drug activity. The national law enforcement effort to combat illegal drugs has been likened to a war. In this analogy, the patrol officer then becomes a frontline soldier. As you ride in your patrol car, walk a foot beat, or pedal a bicycle, illegal drugs will be all around you.

#### B. Training Objectives

**NOTE: Show slides, “Training Objectives.”**

1. Given a list of commonly encountered controlled substances, identify the correct pharmacological classification and its symptoms.
2. Recognize and identify various types of drug paraphernalia.
3. Identify common over-the-counter products that are used in methamphetamine production.
4. Identify standard and improvised lab equipment used in methamphetamine production.
5. State the appropriate methods to respond to a methamphetamine lab.
6. Identify the types of sources that may aid in developing informant contacts and what factors motivate them to provide information to law enforcement officers.

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7. State and demonstrate the following types of surveillance operations:
  - a) Open
  - b) Close
  - c) Covert
8. Given a fact situation, identify the proper investigative follow-up procedures in a controlled substance case.

### C. Reasons

The detection, identification, and arrest of individuals who are potentially involved in the illegal drug trade is an important priority in the United States. According to the National Institute on Drug Abuse, “individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.”<sup>3</sup> It is an officer’s job to recognize the signs of illegal drug use, signals indicating illegal drug activity in a community, and what steps to take to combat the epidemic. Officers must know what investigative techniques are best suited for a particular situation and what avenues of enforcement are available, and to ensure their safety when coming in contact with the offenders or the drugs and items used to introduce drugs into one’s body. This block of instruction is designed to facilitate a foundational learning approach to controlled substance enforcement.

## II. Body

### A. Commonly Encountered Controlled Substances

#### 1. Classification

**NOTE: Show slide, “Drug Classifications.”**

- a) Narcotics or opioids (opiates)

**NOTE: Show slide, “Narcotics or Opioids (Opiates).”**

Narcotics or opioids are a class of drugs that act on the central nervous system (CNS) and can produce a sleep-like state and reduce pain or inflammation.<sup>4</sup> Narcotic drugs are used in the practice of medicine but heavily abused on the street.

Narcotics are both physically and psychologically addictive as

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they may produce a euphoric state as well as relieving pain. Narcotics are normally ingested as a pill. Some examples of narcotics are opium, heroin, oxycodone, hydrocodone, Dilaudid, and Demerol.<sup>5</sup>

**Opiates** refer to the natural substances that can be extracted from the flowering opium poppy plant, such as heroin, morphine, and codeine.<sup>6</sup>

**Opioids** are synthetic or semi-synthetic drugs that are manufactured to have similarities to opiates. “Their active ingredients are made via chemical synthesis. Opioids may act like opiates when taken for pain because they have similar molecules. Types of opioids: Methadone, Percocet, Percodan, OxyContin (oxycodone), Vicodin, Lorcet, Lortab (hydrocodone), Demerol (pethidine), Dilaudid (hydromorphone), Duragesic (fentanyl).”<sup>7</sup>

### b) Stimulants

**NOTE: Show slide, “Stimulants.”**

Stimulants also affect the CNS, but unlike narcotic drugs, stimulants create a feeling of excitement, greater energy, and alertness. Stimulants may also cause increased heart rate and blood pressure and rapid breathing. Stimulants may or may not be both physically and psychologically addictive.<sup>8</sup> Stimulants can be found in many forms, including powders and pills. The most common illegal stimulant is cocaine. Other stimulants include methamphetamines and amphetamines, including legal amphetamines that may be used to treat health conditions such as attention deficit hyperactivity disorder (ADHD) or depression.<sup>9</sup>

### c) Depressants

**NOTE: Show slide, “Depressants.”**

“Depressants are drugs that inhibit the function of the central nervous system (CNS) and are among the most widely used drugs in the world. These drugs operate by affecting neurons in the CNS, which leads to symptoms such as drowsiness, relaxation, decreased inhibition, anesthesia, sleep, coma, and even death. Many depressants also have the potential to be addictive.”<sup>10</sup> Examples of drugs that are classified as

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depressants include ethyl alcohol, barbiturates, benzodiazepines (Valium, Xanax).<sup>11</sup>

### d) Hallucinogens

**NOTE: Show slide, “Hallucinogens.”**

Hallucinogens can alter perception and have the ability to induce intense emotional feelings and cause hallucinations.<sup>12</sup> Hallucinogens can either be man-made or occur naturally in various plants and mushrooms. Examples of hallucinogens are LSD, psilocybin mushrooms, mescaline or peyote, salvia, ketamine, and ecstasy.<sup>13</sup>

Another important hallucinogenic drug that officers may encounter is Phencyclidine or PCP. PCP is a man-made hallucinogen that was previously used as an anesthetic for surgery.<sup>14</sup> Due to the extreme side effects of the drug, it is no longer used for surgical purposes. Users of PCP may often “feel out of control or disconnected from their body and environment.”<sup>15</sup> PCP may also be called “angel dust” and is commonly found as a liquid and white crystal powder.<sup>16</sup>

### e) Inhalants<sup>17</sup>

**NOTE: Show slides, “Inhalants.”**

Inhalants often include products that are easily purchased at a store or found in a home. People ingest inhalants by sniffing, inhaling, or “huffing” fumes or gases into their mouth or nose. Inhalants fall into four categories:

#### (1) Solvents

Solvents are liquids that become gas at room temperature. Volatile solvents can include items such as gasoline, felt-tip marker fluid, correction fluid, paint thinner, lighter fluid, etc.

#### (2) Aerosol sprays

Aerosols are the inhalants that are discharged from pressurized containers, such as hair sprays, deodorants, spray paint, and vegetable oil sprays.

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### (3) Gases

Gases can include household or commercial products such as butane lighters and whipped cream aerosol dispensers, but gases can also include anesthetic gases which are used for medical purposes. Commonly abused medical anesthetic gases include ether, chloroform, and nitrous oxide or laughing gas.

### (4) Nitrates

Nitrates can include common household products or can be prescribed for use in treating ailments such as chest pain. They are often in liquid form and include items such as leather cleaner and room odorizer.

### f) Cannabis

**NOTE: Show slide, “Cannabis.**

Cannabis, or marijuana, is “the dried leaves, flowers, stems, and seeds from the hemp plant, *Cannabis sativa*.”<sup>18</sup> Cannabis plants produce psychoactive ingredients called cannabinoids. The cannabinoids’ main ingredient giving the high effect, is Tetrahydrocannabinol (THC) or Delta 9. Marijuana is produced from the cannabis plant leaves (the least potent part), next to the stems and roots. Additionally, hash, a more potent use of cannabis, can be made from compressing the cannabis.<sup>19</sup> Cannabis is the most widely used illicit recreational drug in the United States, and while some states have legalized marijuana for medical or recreational use, marijuana remains an illegal drug in most states.<sup>20</sup> Marijuana is often smoked but can also be mixed into food or brewed into a tea.<sup>21</sup> The THC can also be extracted into oils or resin, also known as “hash.”<sup>22</sup> **The term marijuana does not include hemp or hemp products as described below.**

- (1) **“‘Hemp’ means the plant *Cannabis sativa* (L.) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.**

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(2) 'Hemp products' means all products made from hemp, including, but not limited to, cloth, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seed, seed meal and seed oil for consumption, and verified propagules for cultivation if the seeds originate from hemp varieties."<sup>23</sup>

g) Synthetic drugs

**NOTE: Show slide, "Synthetic Drugs."**

The newest group of abused substances includes synthetic, or man-made, cannabinoids<sup>24</sup> and synthetic Cathinones, a stimulant.<sup>25</sup> These include "K-2" or "Spice," which are both synthetic cannabinoids, and "bath salts," which are synthetic cathinones. These psychoactive substances can cause psychotic effects to the user. Users may also experience effects similar to stimulants and hallucinogens.<sup>26</sup>

Synthetic cannabinoids often appear as a plant-like substance, very similar to marijuana, and synthetic cathinones are often in a crystal or powder form.<sup>27</sup> Product names for synthetic cannabinoids include "Spice," "K2," "Kush," "GI Jane," and "Kryptonite." Produce names for "bath salts" include "Cloud 9," "Ivory Wave," and "Vanilla Sky." Individuals often snort, swallow, or smoke these synthetic drugs, but some can be injected. Although these chemicals are illegal, the chemical formulas for these types of drugs change frequently, so it can often be difficult to track these drugs. Manufacturers of these chemicals often try to avoid the law by "changing the chemical formulas in their mixtures."<sup>28</sup>

**NOTE: Show slides of multiple drug illustrations.**

2. North Carolina Controlled Substance Schedules

**NOTE: Show slides, "NC Controlled Substance Schedules."**

The North Carolina Controlled Substances Act added to domestic drug control efforts by creating categories for dangerous drugs. Drugs are rated and placed into "schedules," or groups, depending on the level of danger, risk of addiction, and medical uses for each particular substance.<sup>29</sup>



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In North Carolina, Schedule I drugs are considered the most dangerous, and Schedule VI drugs, the least dangerous. The categories and the drugs that fall within each may differ from the Federal classifications. For instance, in North Carolina, marijuana is a Schedule VI controlled substance; however, the Federal Controlled Substance Act classifies marijuana as a Schedule I controlled substance. The criteria for scheduling in North Carolina are as follows:

a) Schedule I controlled substances are those that have:<sup>30</sup>

- (1) High potential for abuse
- (2) No currently accepted medical use in the United States
- (3) Lack of accepted safety for use in treatment under medical supervision

Examples: Heroin, LSD, MDMA (or ecstasy), Mephedrone and MDPV (research chemicals commonly referred to as bath salts)

b) Schedule II controlled substances are those that have:<sup>31</sup>

- (1) High potential for abuse
- (2) Currently accepted medical use in the United States or a currently accepted medical use with severe restrictions
- (3) Abuse may lead to severe psychic or physical dependence

Examples: Opium, Cocaine, Methamphetamine, Ritalin, Dilaudid, Morphine, Hydrocodone, and Oxycodone

c) Schedule III controlled substances are those that have:<sup>32</sup>

- (1) Potential for abuse, but less than those drugs listed in Schedules I and II
- (2) Currently accepted medical use in the United States,
- (3) Abuse may lead to moderate or low physical dependence or high psychological dependence

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Examples: Ketamine, Buprenorphine (Suboxone), and Anabolic Steroids

- d) Schedule IV controlled substances are those that have:<sup>33</sup>
- (1) Low potential for abuse relative to those drugs listed in Schedule III
  - (2) Currently accepted medical use in the United States and
  - (3) Limited physical or psychological dependence

Examples: Diazepam (Valium), Phentermine, Alprazolam (Xanax)

- e) Schedule V controlled substances are those that have:
- (1) Low potential for abuse relative to substances listed in Schedule IV<sup>34</sup>
  - (2) Currently accepted medical use in the United States; and limited physical or psychological dependence<sup>35</sup>
  - (3) Low potential for abuse relative to substances listed in Schedule IV and consists primarily of preparations containing limited quantities of certain narcotics<sup>36</sup>

Example: Cough syrup with codeine

- f) Schedule VI controlled substances are those that have:<sup>37</sup>
- (1) No currently accepted medical use in the United States, or
  - (2) Relatively low potential for abuse in terms of risk to public health and potential to produce psychic or physical dependence, or
  - (3) A need for further and continuing study to develop evidence of the effects of the drugs

Examples: Marijuana and Tetrahydrocannabinol

- g) Counterfeit controlled substances

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**NOTE: Show slide, “Counterfeit Controlled Substances.”**

- (1) “A controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports, or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser; or
- (2) Any substance which is by any means intentionally represented as a controlled substance. It is evidence that the substance has been intentionally misrepresented as a controlled substance if the following factors are established:
  - (a) The substance was packaged or delivered in a manner normally used for the illegal delivery of controlled substances.
  - (b) Money or other valuable property has been exchanged or requested for the substance, and the amount of that consideration was substantially in excess of the reasonable value of the substance.
  - (c) The physical appearance of the tablets, capsules, or other finished product containing the substance is substantially identical to a specified controlled substance.”<sup>38</sup>

In North Carolina, it is a violation to “create, sell, deliver, or possess with intent to sell or deliver a counterfeit controlled substance.”<sup>39</sup>

Creating, selling, delivering, or possessing with intent to sell or deliver counterfeit controlled substances are punished as class I felonies.<sup>40</sup>

### 3. Signs and symptoms

**NOTE: Instructors should supplement this segment with a *Physicians’ Desk Reference* and *Drug Identification Bible*. The instructor may add time as applicable/efforts to**

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**explain the use of the internet to identify and case store data for identification purposes quickly.**

**NOTE: Show slide, “Drug User Recognition.”**

Listed below are some of the common drugs officers will encounter while working on patrol, and some of the more common indicators of use. Remember, each person may have a different reaction to drugs. Thus, an officer may observe all, some, or none of these indicators depending on the person and the situation. As these are the most common indicators of use, other side effects or symptoms may also be observed. These lists are not exhaustive.

a) Cocaine

**NOTE: Show slide, “Cocaine.”**

- (1) Rapidity of speech (low dose)<sup>41</sup>
- (2) Slowing of speech (high dose)<sup>42</sup>
- (3) Agitated appearance, extreme mood, mental alertness, and appearance of high energy<sup>43</sup>
- (4) Sedated appearance (high dose)<sup>44</sup>
- (5) High pulse, raised body temperature and blood pressure<sup>45</sup>
- (6) Dilated pupils<sup>46</sup>
- (7) Nasal passages may have cocaine residue inside<sup>47</sup>

b) Amphetamines

**NOTE: Show slide, “Amphetamines.”**

- (1) Dilated pupils
- (2) Sweating
- (3) Talkativeness
- (4) Possibly thin (due to loss of appetite)
- (5) Paranoia

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- (6) Quickened breathing
- (7) Aggressiveness
- (8) Irritability
- (9) Potentially violent<sup>48</sup>

c) Hallucinogens including Phencyclidine

**NOTE: Show slide, "Hallucinogens."**

- (1) Intensified mood, feelings, and sensory experiences<sup>49</sup>
- (2) Perspiring and increased body temperature<sup>50</sup>
- (3) Nausea, increased blood pressure, and increased heart rate<sup>51</sup>
- (4) Dazed appearance<sup>52</sup>
- (5) Disoriented or uncoordinated<sup>53</sup>
- (6) Body tremors<sup>54</sup>
- (7) Hallucinations<sup>55</sup>
- (8) Warm to the touch<sup>56</sup>
- (9) Possibly violent and combative<sup>57</sup>
- (10) Distorted perceptions of time and distance<sup>58</sup>
- (11) Blank stare<sup>59</sup>

d) Inhalants

**NOTE: Show slide, "Inhalants."**

- (1) May be a residue of substance on the hands, mouth, and face<sup>60</sup>
- (2) Nausea, confusion, euphoria, dizziness, drowsiness<sup>61</sup>
- (3) Slurred speech, lightheadedness<sup>62</sup>

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- (4) Bloodshot, watery eyes<sup>63</sup>
- (5) Lack of coordination<sup>64</sup>
- (6) Flushed face<sup>65</sup>

e) Cannabis

**NOTE: Show slide, “Cannabis.”**

- (1) Redness of eyes<sup>66</sup>
- (2) Odor of marijuana<sup>67</sup>
- (3) Altered sense of time, changes in mood, impaired body movement, impaired memory<sup>68</sup>
- (4) Body and eyelid tremors<sup>69</sup>
- (5) Relaxed inhibitions<sup>70</sup>
- (6) Increased appetite<sup>71</sup>

f) Narcotics/opiates/opioids

**NOTE: Show slide, “Narcotics/Opiates/Opioids**

- (1) Pin-point pupils<sup>72</sup>
- (2) Itching or flushed skin<sup>73</sup>
- (3) Confusion or poor judgment, scratching<sup>74</sup>
- (4) Decreased appetite<sup>75</sup>
- (5) Sleepiness<sup>76</sup>
- (6) Flushed complexion<sup>77</sup>
- (7) Needle marks if using injectable heroin<sup>78</sup>
- (8) Skin picking<sup>79</sup>

g) Depressants

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**NOTE: Show slide, “Depressants.”**

- (1) Slurred/thick speech<sup>80</sup>
- (2) Drowsiness, lack of coordination<sup>81</sup>
- (3) Confusion<sup>82</sup>
- (4) Nystagmus<sup>83</sup>

**NOTE: Show slide, “Some Effects, Signs, Symptoms, and Things to Consider About Abused Substances.” Distribute and review the handout with the students and emphasize how they may see these behaviors when interacting with someone abusing drugs.**

- h) Current trends in drug use:

**NOTE: Show slide, “Current Trends in Drug Use.”**

Marijuana remains the most commonly used drug in the United States, especially given some of the legalization of use in certain states.<sup>84</sup> The majority of all drug overdose deaths in the United States involve some type of opioid.<sup>85</sup> While deaths involving heroin has decreased it is still a serious public health and safety threat. “Fentanyl-laced counterfeit pills continue to be trafficked across the country and remain significant contributors to the rates of overdose deaths observed across the country.”<sup>86</sup> Additionally, methamphetamine, cocaine, and controlled prescription drugs continue to be readily available.<sup>87</sup> The demand for new psychoactive substances are constantly being created and sold to users.<sup>88</sup> Law enforcement must stay up to date on trends in drug use and abuse to effectively combat illegal behavior.

**NOTE: Show video, *Fentanyl: A Real Threat to Law Enforcement*.**

- (1) Opioids/heroin/fentanyl

**NOTE: Show slide, “Opioids/Heroin/Fentanyl.”**

Opioid, heroin, and more recently, fentanyl abuse has increased in the United States. According to the Centers for Disease Control, in 2020, an average of 44 people died each day from overdoses involving prescription opioids, totaling more than 16,000 deaths. Prescription

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opioids were involved in nearly 18% of all opioid overdose deaths in 2020, with a 16% increase in prescription opioid-involved death rates from 2019-2020.”<sup>89</sup> “Deaths involving heroin continues to post a serious public health and safety threat.”<sup>90</sup>

“Fentanyl is a synthetic opioid that is 50-100 times stronger than morphine. Pharmaceutical fentanyl was developed for pain management treatment of cancer patients, applied in a patch on the skin.”<sup>91</sup> “Fentanyl is added to heroin to increase its potency, or be disguised as highly potent heroin. Many users believe that they are purchasing heroin and actually don’t know that they are purchasing fentanyl – which often results in overdose deaths.”<sup>92</sup>

### (2) Methamphetamine<sup>93</sup>

**NOTE: Show slide, “Methamphetamine.”**

Methamphetamine is a synthetic drug that does not occur naturally and is manufactured using available chemicals and precursors. According to the Drug Enforcement Administration, the most potent and pure methamphetamine is produced in Mexico, however, because methamphetamine can be produced in small batches with common household chemicals, small clandestine laboratories are common throughout the United States. Methamphetamine acts as a stimulant on the user and comes most commonly in a powdered or crystallized form, although it is also available in a liquid form.

### (3) MDMA (“Molly” or “Ecstasy”)

**NOTE: Show slide, “MDMA.”**

MDMA is a synthetic Schedule I drug that acts simultaneously as a stimulant and a hallucinogen. Ecstasy or Molly comes in various forms and colors, including pills, gel capsules, and tablets.<sup>94 95</sup>

### (4) Oxycontin

**NOTE: Show slide, “Oxycontin.”**



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A unique, controlled-release form of Oxycodone fits the profile of opioids. Oxycodone is an opium derivative, which is the same active ingredient in Percodan and Percocet.<sup>96</sup>

- (5) Synthetic cathinones/mephedrone, MDPV, and similar compounds

**NOTE: Show slide, “Synthetic Cathinones/Mephedrone, MDPV, and Similar Compounds.”**

Commonly referred to as “bath salts,” these substances are synthetic chemicals that are manufactured overseas and sold throughout the world online and in tobacco stores. These substances are psychoactive, which generally come in a white to off-white powder form and are marketed as plant food, bath salts, “bug killer,” and scouring powder. Reported effects of the use of these substances include agitation, hallucinations, anxiety, paranoia, nausea, insomnia, and suicidal thoughts. There are hundreds of these compounds being manufactured and sold. Many of these substances are Schedule I controlled substances under NC General Statutes, but many are currently non-controlled. Items suspected of being one of these chemicals must be sent to the State Crime Laboratory for analysis and identification to determine legal status.<sup>97</sup>

- (6) Synthetic cannabinoids

**NOTE: Show slide, “Synthetic Cannabinoids.”**

Commonly referred to as “K-2” or “Spice,” these substances are synthetic chemicals that are often manufactured overseas. These chemicals are then sprayed on non-controlled plant material and then smoked, creating a stimulant effect reported to be at least 100 times more potent than Tetrahydrocannabinol (THC). Synthetic cannabinoids are often marketed as herbal incense and potpourri. Reported effects include anxiety, hallucinations, paranoia, nausea, seizures, loss of consciousness, and suicidal thoughts. There are thousands of these substances currently being sold online and in tobacco stores and convenience stores. Many of these substances are Schedule VI controlled

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substances in North Carolina, but many are currently non-controlled. Items suspected of being one of these chemicals must be sent to the State Crime Laboratory for analysis and identification to determine legal status.<sup>98</sup>

### 4. Patrol officer's response to violations of Controlled Substance Act

**NOTE: Show slide, "Law Enforcement Response."**

N.C.G.S. Chapter 90 violations were reviewed and are outlined in the "Elements of Criminal Law" lesson.

**NOTE: Instructors may want to review Chapter 90 violations as needed.**

#### a) Traffic stops

**NOTE: Show slide, "Traffic Stops."**

#### (1) Plain view/plain smell encounters

Officers performing in the performance of their duties come across evidence or contraband that is easily seen, it is *plain* view, and the officer may seize it. The evidence must be immediately recognizable.<sup>99</sup>

Plain smell is best explained in the court's opinion regarding the *United States v. Scheetz* held "... that the smell of marijuana emanating from a properly stopped automobile constituted probable cause to believe that marijuana was in the vehicle, justifying a search."<sup>100</sup> It is the officer's training and experience that greatly assists the valuation of testimony when it comes to such type of plain smell encounters.

#### (2) Search of a person incident to arrest<sup>101</sup>

Regardless of the offense leading to the arrest, officers have the automatic right to search the arrested person. The search incident to arrest must be accomplished nearby in time and place to the arrest. The scope of the search incident to arrest is limited to the arrested person (but not body cavities), and the area and objects within the arrested person's immediate control ("grab" or "lunge" area).

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### (3) Search of motor vehicle incident to arrest

First, such search incident to arrest may occur automatically only when the person is unsecured, and within reaching distance of the passenger compartment at the time, the search is conducted.<sup>102</sup>

The courts have stated that this will be very rare. From the officers' safety perspective, if subjects are under arrest yet not fully secured, the officers' primary concern should be the securing of the arrestee while searching the vehicle.

Once the subjects are under control, a search of a motor vehicle incident to arrest requires the officer have reason to believe that the motor vehicle contains evidence relevant to the crime for which the officer is making the arrest. The entire passenger compartment of the vehicle may be searched.

In a drug arrest, officers will be looking for additional drugs, drug paraphernalia, drug records, sums of money, and weapons. Officers need to be able to articulate that based on training experience, they have reason to believe this evidence will be found in the motor vehicle.

### (4) Consent searches

Even without reasonable belief that it may contain evidence of a crime, an officer may seek consent to search the motor vehicle. Consent to search a vehicle must be given freely and intelligently and must be voluntary and not the product of duress or coercion, actual or implied. Those persons who can give consent are the owner or possessor, or a third party if they have common authority. A good rule of thumb is ownership is not always enough. Ownership plus right of access is better than ownership alone.

**NOTE: Refer students to N.C.G.S. 15A-222.**

It is best to ask for consent only after the individual is free to leave from a legal stop. The officer should not

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possess any license, registration, or any other document which would not allow the subject to leave.<sup>103</sup>

### b) Contraband concealment

Officers must be aware of the areas in which individuals can hide illegal drugs and paraphernalia. Because drugs and paraphernalia are often packaged in small amounts or small objects, these items are easy to conceal. Officers should be aware of the most common hiding places for these types of items.

**NOTE: Show slide, “Contraband Concealment.”**

#### (1) People

Under some circumstances, officers may make a limited search—a “frisk”—to protect themselves when they confront a person who may be armed with a weapon, even though they do not have grounds to arrest the suspect.

The United States Supreme Court has ruled that officers may frisk a person when:<sup>104</sup>

- (a) They are confronting the person for a legitimate reason, and
- (b) They have a reasonable suspicion that the person may possess a weapon and present a threat to the officer’s safety or the safety of others.

Remember that a proper frisk is for weapons, not for drugs or paraphernalia. To seize what an officer believes to be illegal drugs or paraphernalia, the officer must be able to articulate that the item they felt during a proper frisk was immediately apparently contraband.

#### (2) Vehicles

Many areas of a vehicle may contain concealed contraband. In conducting a detailed search of a vehicle, officers should include the following areas:<sup>105</sup>

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- (a) Doors
- (b) Front quarter panels
- (c) Front bumper and grill
- (d) Engine compartment
- (e) Rear quarter panels
- (f) Rear end
- (g) Undercarriage/gas tank
- (h) Wheels
- (i) Interior
- (j) Rear compartment
- (k) Trunk
- (l) Lights<sup>106</sup>

Detailed searches are predicated on consent, probable cause, inventory, etc.

**NOTE: Show multiple slides on “Concealment Methods.”**

- c) Suspicious activity and when an officer can stop a vehicle

**NOTE: Show slide, “Suspicious Activity.”**

- (1) Observations based on training and experience<sup>107</sup>

What criminal items that qualify as immediately apparent as criminal contraband to an officer depend not only on the item or odor but on the officer’s training and experience. Officers are not precluded from offering lay testimony too.

- (2) Reasonable suspicion

- (a) The United States Supreme Court has adopted two elements which must be present to

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determine if reasonable suspicion exists. Those two elements are as follows:<sup>108</sup>

- i) The assessment must be based upon all of the circumstances. The analysis of the reasonable suspicion then proceeds with various objective observations, information from police reports, if available, and consideration of the modes or patterns of operation of certain kinds of violators. From this informational process, the officer draws inferences and makes deductions that may elude an untrained person.
  - ii) The process just described must raise a suspicion that the individual is engaged in wrongdoing.<sup>109</sup>
- (b) Reasonable suspicion is an *objective* (impartial) and *particularized* (detailed) basis and are supported by articulable facts for suspecting an individual(s) involvement in a crime. Examples include, but are not limited to:<sup>110</sup>
- i) A person fits the description of a suspect
  - ii) A person may not fit being about the area at the time
  - iii) The person is acting strangely
  - iv) The person is known to associate with criminals
  - v) The person loiters
  - vi) The person flees
  - vii) The person is in the presence of the crime scene.

- (3) Probable cause

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Probable cause is not required to stop a vehicle to investigate further; however, probable cause is required to charge for a criminal offense and search a vehicle. Probable cause is defined by the United States Supreme Court as follows: “. . . whether, at the moment the arrest was made, the facts and circumstances within [the officer’s] knowledge and of which [the officer] had reasonably trustworthy information were sufficient to warrant a prudent [person] in believing that the [defendant] had committed or was committing an offense.”<sup>111</sup>

Probable cause requires articulable facts that would induce a reasonably intelligent person to believe that an individual in the vehicle is subject to arrest for criminal activity.<sup>112</sup> There are instances when an officer may have both reasonable suspicion and probable cause to stop a vehicle.<sup>113</sup> For instance, when an officer observes a vehicle traveling at a rate higher than the posted speed limit, this officer has reasonable suspicion to stop the vehicle to investigate further, but also probable cause to charge the individual with speeding.<sup>114</sup> It is not always the case that an officer will have both the same time.<sup>115</sup>

### d) Patrol response for drug enforcement

“In many parts of the nation, the uniformed patrol officer has not been used to the greatest extent possible in drug control. When properly trained and motivated, a patrol officer is in an excellent position to make drug seizures and the associated arrest simply because drugs travel the streets and highways every day.”<sup>116</sup>

**NOTE: Show slide, “Patrol Response for Drug Enforcement.”**

- (1) Intelligence gathering
- (2) Street observations<sup>117</sup>

Patrol officers must remain vigilant to conditions that indicate the existence of drug activity. Although the patrol officer will gain experience as his or her career moves forward, some basic principles for street observation include, but are not limited to, many times drug dealers operate from a house, apartment, etc.,

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commonly their residence; and the amount of on-foot and vehicle traffic to and from the drug dealer's location is typically high and serves as an indicator of suspected drug activity.

(3) Open-air drug markets<sup>118</sup>

Most found in the areas near or surrounded by apartment complexes. Additionally, open-air drug markets are commonly located near shopping malls or even isolated residential sections. No matter the location, the open-air drug market has several common indicators such as, but not limited to, accessibility of vehicle traffic with adequate customer parking, larger amount of non-drug abuse traffic, both on-foot and vehicle-borne, allowing the drug operation to be less conspicuous, and numerous escape routes for the dealer and the end-user/purchaser to avoid law enforcement apprehension.

e) Unrelated arrests<sup>119</sup>

**NOTE: Show slide, "Unrelated Arrests."**

Do not negate an unrelated arrest; it may turn into a matter of a drug arrest or drug-related intelligence. During the arrest for an unrelated offense, the patrol officer may find drugs or evidence of drug use. Build a successful case. The patrol officer will be best advised to ensure baseline questions are answered to include – "Does the suspect have drugs in his or her possession?" "What are the drugs, and where did they come from?" "Is the possession legal?" "Is the suspect currently under the influence of drugs?" "Have I [patrol officer] verified what I have been told?" and "Is there intelligence to be gained from this information?"

The patrol officer will also need to determine what information provided by the suspect is important for further investigation and/or referred to the appropriate division for investigation (narcotics unit, property crimes unit, etc.). It is paramount the officer looks to his or her department's policy and procedures manual and appropriate chain-of-command to get the proper referrals and information in cases such as these.



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- f) These investigative processes are often neglected because the patrol officers serving as the front lines have a great advantage to gather and contribute drug information and related intelligence. Without proper training and understanding of department resources, patrol officers are often uncertain regarding the type of information to present, and the information's value to exceptional units (i.e., narcotics units, federal task forces, etc.).
- g) Case referral will generally be covered in a department's policy and procedures manual.

### 5. North Carolina Unauthorized Substances Tax

**NOTE: Show slide, "N.C. Unauthorized Substances Tax."**

- a) In addition to the criminal penalties involved with the possession of controlled substances, there are civil actions which may be enforced. The North Carolina Unauthorized Substances Tax<sup>120</sup> is designed to collect taxes for specific threshold quantities of controlled substances. The North Carolina courts have held that taxation of controlled substances is not a form of double jeopardy.
- b) Tax stamps may be purchased without penalty from the North Carolina Department of Revenue. Any controlled substance over the threshold quantity not bearing a valid North Carolina tax stamp violates state law and subject to the applicable penalties and interest due to the N.C. Department of Revenue.<sup>121</sup> Collection of the Unauthorized Substances Tax may involve seizure of property and currency.
- c) Threshold quantities for the N.C. Unauthorized Substances Tax

North Carolina General Statute requires every state and local law enforcement officer to report to the N.C. Department of Revenue within forty-eight hours the arrest of any individual in possession of taxable amounts of controlled substances that do not bear unauthorized substance tax stamps.<sup>122</sup>

- (1) More than 42.5 grams of marijuana [tax = forty cents (.40) for each gram of harvested stems and stalks that have been separated from the rest of the plant and three dollars and fifty cents (\$3.50) for each gram of marijuana, other than separated stems and stalks]

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- (2) Seven or more grams of any other controlled substance that is sold by weight [tax = fifty dollars (\$50.00) for each gram of cocaine and two hundred dollars (\$200.00) for each gram of any other controlled substance sold by weight]
  - (3) Ten or more dosage units of any other controlled substance that is not sold by weight [tax = fifty dollars (\$50.00) for each ten dosage units of any low street-value drug not sold by weight and two hundred dollars (\$200.00) for each ten dosage units of any other controlled substance not sold by weight]
  - (4) Any illicit spirituous liquor
  - (5) Mash
  - (6) Any illicit mixed beverages
- d) Documentation

Some of these objections require a full hearing before the Secretary of Revenue. The arresting officer will be called to testify under such circumstances. The officer's report is entered as evidence to support the assessment. The police report is a major piece of evidence, and narrative sections should include vital information such as:

- (1) Nature and reason for the search (consent, warrant).
- (2) The exact location where drugs were located.
- (3) Names of all vehicle/household occupants and their locations at the time of the search.
- (4) Owner/renter of vehicle or dwelling.
- (5) Identify items that prove the suspect had dominion and control over the vehicle or dwelling and where those items were found (license/registration in the glove box, phone bill on the kitchen table).
- (6) Description of how drugs were packaged.

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- (7) Description of all contraband, paraphernalia, and currency to include where found.
- (8) List results of any field tests of suspected substance, to include laboratory analysis.
- (9) Statements/admissions made by suspect(s) during investigation.
- (10) In cases where defendants lack physical possession, specify the facts and circumstances that illustrate constructive possession.

Agencies needing information or assistance from the Unauthorized Substances Tax Division are encouraged to call their local Enforcement Agent, or the Unauthorized Substances Tax Division in Raleigh at 919-707-7596 or the main website [www.dorn.com](http://www.dorn.com) then search “unauthorized substance tax” to locate the most recent published specific information.

### 6. Drug overdose and limited immunity for certain offenses

**NOTE: Show slide, “Drug Overdose and Limited Immunity for Certain Offenses.”**

- a) A drug-related overdose in North Carolina is defined as “an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.”<sup>123</sup> A drug overdose can manifest itself in many different ways and can be very dangerous and even deadly if the individual experiencing an overdose does not receive medical attention.
- b) “Limited immunity for Samaritan”

**NOTE: Show slide, “Limited Immunity for Samaritan.”**

In North Carolina, a “good Samaritan” or any public person has limited immunity from prosecution in certain instances involving a drug overdose. A person will not be prosecuted for various drug-related offenses if:

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- (1) “The person sought medical assistance for an individual experiencing a drug-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.
- (2) The person acted in good faith when seeking medical assistance, upon reasonable belief that he or she was the first to call for assistance.
- (3) The person provided his or her own name to the 911 system or to a law enforcement officer upon arrival.
- (4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.”<sup>124</sup>
- (5) The evidence for prosecution of the offenses listed below was obtained as a result, of the person seeking medical assistance for the drug-related overdose.<sup>125</sup>
  - (a) A misdemeanor violation for possession of a controlled substance
  - (b) A felony violation for possession of less than one gram of cocaine
  - (c) A felony violation for possession of less than one gram of heroin
  - (d) A violation of drug paraphernalia

Fentanyl and its derivatives or mixtures of drugs including those substances are **NOT** covered.

- c) “Limited immunity for overdose victim”

**NOTE: Show slide, “Limited Immunity for Overdose Victim.”**

A person experiencing a drug overdose shall also be immune from prosecution for certain drug-related offenses if the same criteria listed above are met.<sup>126</sup>

- d) “Probation or release

**NOTE: Show slide, “Probation or Release.”**

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A person shall not be subject to arrest or revocation of pretrial release, probation, parole, or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution.<sup>127</sup> Probation officers may still conduct drug testing of persons required to comply because of pretrial release, probation, or parole, even if they are immune from prosecution for this particular instance of conduct involving the drug overdose.<sup>128</sup>

- e) “Civil liability for arrest or charges.”

**NOTE: Show slide, “Civil Liability for Arrest or Charges.”**

A law enforcement officer who, acting in good faith, arrests or charges a person who is determined to be immune from prosecution based on this law shall not be subject to civil liability for the arrest or filing of charges.<sup>129</sup>

While a person experiencing an overdose or another individual assisting that person may have limited immunity from prosecution for those drug-related charges, other evidence of criminal activity may still be used to prosecute other crimes. Evidence and contraband may still be seized from those individuals and destroyed or stored according to departmental policy.<sup>130</sup>

- 7. Seeking medical treatment for alcohol-related overdose and limited immunity for certain offenses
  - a) “Limited immunity for Samaritan.”

**NOTE: Show slides, “Limited Immunity for Samaritan Involving Alcohol Overdose.”**

In cases involving underage drinking and alcohol overdose, a person under the age of twenty-one shall not be prosecuted for the possession or consumption of alcoholic beverages if all of the following requirements and conditions are met:

- (1) “The person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel;
- (2) The person acted in good faith when seeking medical assistance; upon a reasonable belief that he or she was the first to call for assistance;

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- (3) The person provided his or her own name to the 911 system or to a law enforcement officer upon arrival;
  - (4) The person did not seek the medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.”<sup>131</sup>
- b) “Limited immunity for overdose victim”

**NOTE: Show slide, “Limited Immunity for Overdose Victim.”**

The immunity described above shall extend to the person who needed medical assistance if the same requirements are satisfied.<sup>132</sup>

- c) “Probation or release

**NOTE: Show slide, “Probation or Release.”**

A person shall not be subject to arrest or revocation of pretrial release, probation, parole, or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution.”<sup>133</sup>

- d) “Civil liability for arrest or charges.”

**NOTE: Show slide, “Civil Liability for Arrest or Charges.”**

A law enforcement officer who, acting in good faith, arrests or charges a person who is determined to be immune from prosecution based on this law, shall not be subject to civil liability for the arrest or filing of charges.”<sup>134</sup>

### 8. Addiction and treatment

**NOTE: Show slides, “Addiction.”**

- a) Addiction

“Abuse of and addiction to alcohol, nicotine, and illicit and prescription drugs cost Americans more than \$700 billion a year in increased health care costs, crime, and lost productivity.”<sup>135</sup> Addiction is a chronic, relapsing disease, much like diabetes, asthma, or heart disease, which affects the brain and causes “compulsive drug seeking and use, despite

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harmful consequences.”<sup>136</sup> The initial decision to take drugs is often voluntary; however, over time, drug abuse can cause changes to the brain that erode a person’s self-control and ability to make sound decisions, while increasing the intense impulses to use and abuse drugs.<sup>137</sup>

There are several reasons why someone may decide to start taking drugs. Some of these include, but are not limited to, the following reasons:

- (1) To feel good<sup>138</sup>

Because most drugs of abuse cause intense euphoria and other pleasurable feelings, individuals often enjoy using these substances to continue to experience these feelings. Each drug may have a different effect on the user; however, almost all drugs will cause a pleasurable feeling.

- (2) To feel better and relieve stress<sup>139</sup>

Individuals who suffer from anxiety, stress-related disorders, trauma, or depression may begin abusing drugs in an attempt to lessen the feelings of distress. This drug use is known as “self-medicating.” Stress can play a major role in beginning drug use, continuing drug abuse, or relapse.

- (3) To do better<sup>140</sup>

The increasing pressure that some individuals feel to chemically enhance or improve their athletic or cognitive performance can play a role in initial experimentation and continued drug abuse.

- (4) Curiosity or peer pressure<sup>141</sup>

Adolescents are particularly vulnerable to experimenting with drugs because of the strong influence of peer pressure. Teens are more likely than adults to engage in risky or daring behaviors such as drug use and will often do so out of curiosity, to impress their peer group or to express their independence. Individuals of all ages may first experiment with illicit substances out of curiosity.

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### b) Treatment

**NOTE: Show slide, “Treatment.”**

Because many controlled substances are highly addictive, individuals who abuse these drugs often require intense treatment to combat the addiction. Drug addiction is not only a physiological disease but also psychological. Drug use and abuse can cause long-term mental and physical damage to the users.<sup>142</sup>

Treatment and intervention help people to counteract addiction’s powerful disruptive effects and regain control of their lives. Treatment can include medication, cognitive, and behavioral therapies to combat addiction.<sup>143</sup>

### B. Drug Paraphernalia Identification and Recognition

**NOTE: Show slide, “Paraphernalia.”**

#### 1. Definition of drug paraphernalia

Drug paraphernalia includes “all equipment, products, and materials for any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substance Act, including planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body.”<sup>144</sup> Possession of drug paraphernalia is a class 1 misdemeanor in North Carolina.<sup>145</sup>

**NOTE: Show slide, “Examples of Drug Paraphernalia.”**

#### 2. Examples of drug paraphernalia are vast, changing, and may include items of common use converted to be used for unlawful drug use. Drug paraphernalia may include, but is not limited to:<sup>146</sup>

- a) Pipes or tubes (metal, wooden, acrylic, glass, stone, plastic, or ceramic)
- b) Water pipes or bongs
- c) Roach clips



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- d) Miniature spoons, scales, or straws
- e) Chillums (cone-shaped pipes used to smoke marijuana or hash)
- f) Cigarette/cigar rolling papers
- g) Syringes or cocaine free-based kits

Additionally, some factors an officer may check and consider in determination of what constitutes drug paraphernalia in addition to all other reasonably relevant factors include, but are not limited to, the following: "...instructions, oral or written, provided with the item concerning its use,"<sup>147</sup> "national and local advertising concerning its use; the manner in which the item is displayed for sale,"<sup>148</sup> "the existence and scope of legitimate uses of the item in the community; and expert testimony concerning its use."<sup>149</sup>

Also, retailers who sell or give away glass tubes or splitters must require identification from the recipient, enter the name and address on a record, and have the person sign that the glass tubes or splitters will not be used as drug paraphernalia.<sup>150</sup> The record must be maintained for at least two years and made available to law enforcement officers within 48 hours of a transaction.<sup>151</sup>

**NOTE: Show multiple slides of paraphernalia.**

**NOTE: In most cases, the paraphernalia recovered will become evidence; therefore, it is imperative that the officer treat it as such.**

**NOTE: Show slide, "Alerting Officers – Possession of Needles or Other Sharp Objects."**

### 3. The dangers of hypodermic needles and sharp objects

"Prior to searching a person, a person's premises, or a person's vehicle, an officer may ask the person whether the person is in possession of a hypodermic needle or other sharp object that may cut or puncture the officer or whether such a hypodermic needle or other sharp object is on the premises or in the vehicle to be searched. If there is a hypodermic needle or other sharp objects 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 residual amounts of a controlled substance contained in the needle or sharp object." This does not include any other drug paraphernalia that may be present and found during the search.<sup>152</sup>

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### 4. Syringe exchange programs

**NOTE: Show slides, “Syringe Exchange Programs.”**

According to G.S. 90-113.27, “no employee, volunteer, or participant of a syringe exchange programs can be charged with possession of needles, hypodermic syringes, or other injection supplies, or with residual amounts of controlled substances contained in a used needle, used hypodermic syringe, or used injection supplies, obtained from or returned to a syringe exchange program.”<sup>153</sup> “The limited immunity shall only apply if the person claiming immunity provides written verification that a needle, syringe, or other injection supplies were obtained from a needle and hypodermic syringe exchange program.”<sup>154</sup>

Syringe exchange programs offer the following benefits:

- a) “Disposal of used needles and hypodermic syringes.
- b) Needles, hypodermic syringes, and other injection supplies at no cost and in quantities sufficient to ensure that needles, hypodermic syringes, and other injection supplies are not shared or reused.
- c) Reasonable and adequate security of program sites, equipment, and personnel. Written plans for security shall be provided to the police and sheriffs’ offices with jurisdiction in the program location and shall be updated annually.
- d) Educational materials on all of the following:
  - (1) Overdose prevention
  - (2) The prevention of HIV, AIDS, and viral hepatitis transmission
  - (3) Drug abuse prevention
  - (4) Treatment for mental illness, including treatment referrals
  - (5) Treatment for substance abuse, including referrals for medication-assisted treatment”<sup>155</sup>
- e) Access to naloxone kits, or referrals to programs that provide access to naloxone<sup>156</sup>

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- f) “For each individual requesting services, personal consultations from a program employee or volunteer concerning mental health or addiction treatment as appropriate.”<sup>157</sup>
5. The collection, storage, and submission of drug paraphernalia and drug evidence

**NOTE: Show slide, “Collection, Storage, and Submission of Drug Paraphernalia and Drug Evidence.”**

Drug evidence may be submitted to the North Carolina State Crime Laboratory for analysis. The general rule for packaging drug evidence is that each item should be packaged in a separate plastic bag with a separate item number. Each bag should be labeled with the case number, item number, location where the item was seized, name of the officer who seized the item, the time of seizure, the officer’s initials, and the date of seizure. The bag should then be sealed with tape over the opening, with the seizing officer’s initials and date across the seal. Any plant material, particularly wet plant material, should be packaged in a paper bag rather than plastic, with the same labeling requirements.

Drug evidence may be submitted to the North Carolina State Crime Laboratory by courier mail, registered United States mail, commercial carrier that allows package tracking, or in person (preferred).<sup>158</sup> A Request for Examination of Physical Evidence form, or SBI-5, should accompany each submission. The SBI-5 should be affixed in an envelope to the outside of the package for any submissions that are mailed.

Additional information regarding the packaging of evidence and the number of items allowed per case submission to the lab can be found in the North Carolina State Bureau of Investigation State Crime Laboratory Evidence Guide.<sup>159</sup>

**NOTE: Show slide, “Practical Exercise #1, Recovering Drug Paraphernalia” and conduct practical exercise as described in the Instructor Notes section.**

### C. Methamphetamine

**NOTE: Show slides, “Methamphetamine.”**

Methamphetamine (commonly referred to as “meth”) is easy to make, and the necessary ingredients are inexpensive and readily available. An investment of a few hundred dollars in precursors, chemicals, and equipment can produce

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thousands of dollars' worth of meth. Recipes to manufacture methamphetamine are frequently passed from one "cooker" to another and can also be easily obtained on the internet. It is estimated that the average meth cooker teaches another ten people how to cook!<sup>160</sup>

1. Short-term effects<sup>161</sup>

**NOTE: Show slide, "Short-Term Effects of Methamphetamine Use."**

Meth's short-term effects are numerous and may include any or all of the following, and may not be limited to:

- a) Euphoria
  - b) Increased alertness
  - c) Increased energy
  - d) Insomnia
  - e) Light and sound sensitivity
  - f) Teeth grinding
  - g) Dry mouth
  - h) Jaw clenching
2. Long-term effects<sup>162</sup>

**NOTE: Show slide, "Long-Term Effects of Methamphetamine Use."**

Meth's long-term effects are also numerous, and can produce any or all of the following:

- a) Confusion
- b) Anxiety
- c) Violent behavior
- d) Paranoia
- e) Hallucinations

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- f) Severe dental problems
- g) Weight loss

**NOTE: Show slide, “4 Years.”**

### 3. Methamphetamine cycle of abuse

**NOTE: Show slides, “Methamphetamine Cycle of Abuse.”**

- a) **Rush:** “The rush is the initial response the abuser feels when smoking or injecting methamphetamine and is the aspect of the drug that low-intensity abusers do not experience when snorting or swallowing the drug.”<sup>163</sup> “The methamphetamine rush can continue for 5-30 minutes.”<sup>164</sup>
- b) **High:** “The rush is followed by the high, sometimes called the shoulder. During the high, the abuser often feels aggressively smarter and becomes argumentative, often interrupting other people and finishing their sentences. The high can last 4-16 hours.
- c) **Binge:** The binge is the continuation of the high. The abuser maintains the high by smoking or injecting more methamphetamine.”<sup>165</sup> “The binge can last three to fifteen days.
- d) **Tweaking:** Tweaking occurs at the end of the binge when nothing the abuser does will take away the feeling of emptiness and dysphoria, including taking more methamphetamine. Tweaking is very uncomfortable, and the abuser often takes a depressant to ease the bad feelings. The most popular depressant is alcohol, with heroin a close second.”<sup>166</sup>
- e) **Crash:** “To a binge abuser, the crash means an incredible amount of sleep. The body’s epinephrine has been depleted, and the body uses the crash to replenish its supply. Even the meanest, most violent abuser becomes almost lifeless during the crash and poses a threat to no one. The crash can last 1-3 days.
- f) **Normal:** After the crash, the abuser returns to normal – a state that is slightly deteriorated from the normal state before they used methamphetamine. This stage ordinarily lasts between 2

and 14 days. However, as the frequency of bingeing increases, the duration of the normal state decreases.

- g) **Withdrawal:** No acute, immediate symptoms of physical distress are evident with methamphetamine withdrawal, a stage that the abuser may slowly enter. Often 30-90 days must pass after the last drug use before the abuser realizes that he is in withdrawal.<sup>167</sup> **“Ninety-three percent of those in traditional treatment return to abuse methamphetamine.”<sup>168</sup>**

4. Types of clandestine labs:

**NOTE: Show slide, “Types of Clandestine Labs.”**

- a) “Super” lab

A large, highly organized lab that can manufacture ten or more pounds of methamphetamine per production cycle.<sup>169</sup> Super labs may be constructed anywhere but have been predominately concentrated in southern California and Mexico.<sup>170</sup> “The super labs account for up to 80 percent of all methamphetamine produced.”<sup>171</sup>

- b) Small-scale lab (“mom and pop” labs or “Beavis and Butthead” labs)

“These labs can manufacture only 1 to 4 ounces of methamphetamine per production cycle.”<sup>172</sup> Far less common, “dirt labs” have come about over the last few years.<sup>173</sup> “Small-scale lab cooks seek out areas where super labs dump their toxic waste, dig up the soil, and try to extract the residual methamphetamine.”<sup>174</sup> Further information finds, “90 percent of all labs are of the small-scale type.”<sup>175</sup>

It is important to note that clandestine methamphetamine lab operators... “typically produce enough drugs for their own and close associates’ use, and just enough extra to sell to others to finance the purchase of production chemicals.”<sup>176</sup> It is also important to understand, as well as for community safety, “that small labs account for far more explosions, fires, uncontrolled hazardous waste dumping, and child endangerment. This is largely because less-skilled cooks operate the small labs, using more-primitive equipment and facilities. Many small-lab cooks are parents and methamphetamine abusers themselves, and

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their drug dependency leads them to neglect their children's welfare. So, if the challenge is to reduce explosions, fires, environmental damage, and child endangerment, then the small labs are of greater concern."<sup>177</sup>

### 5. Illegal controlled substances produced in clandestine labs

**NOTE: Show slide, "Illegal Controlled Substances Produced in Clandestine Labs."**

- a) PCP
- b) LSD
- c) MDMA (ecstasy)
- d) GHB
- e) Cocaine/crack
- f) Methcathinone
- g) Methamphetamine
- h) DMT (dimethyltryptamine)

### 6. Types of methamphetamine labs

There are two main types of clandestine methamphetamine laboratories:

**NOTE: Show slide, "Types of Methamphetamine Labs."**

#### a) Super lab

A highly organized and very sophisticated lab that uses highly trained "cooks," specialized assistants, and the best equipment available.

#### b) Small-scale lab

The other type of clandestine meth lab is the small-scale "mom and pop" (or "Beavis and Butthead") lab. Such labs are generally run by the meth users and typically produce enough for personal use with a little left over to sell.

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### 7. Five prominent methamphetamine production methods

As a basic law enforcement training course in controlled substances, the following methods/descriptions do not include chemicals used in the separation and crystallization stages. Knowledge of the area you operate within, training, experience, and practical applications will best assist you to advancing such information.

**NOTE: Show slide, “Red Phosphorus Method.”**

- a) “Hydriodic acid/red phosphorus. The principal chemicals are ephedrine or pseudoephedrine, hydriodic acid, and red phosphorous. This method can yield multi-pound quantities of high-quality methamphetamine and is the preferred method of synthesis among Mexican methamphetamine-trafficking organizations.

**NOTE: Show slide, “Iodine/Red Phosphorous.”**

- b) Iodine/red phosphorous. The principal chemicals are ephedrine or pseudoephedrine, iodine, and red phosphorous. This method yields high quality methamphetamine and typically is used by producers when hydriodic acid supplies are limited.

**NOTE: Show slide, “Iodine/Hypophosphorous Acid.”**

- c) Iodine/hypophosphorous acid. The principal chemicals are ephedrine or pseudoephedrine, iodine, and hypophosphorous acid. Known as the “hypo method,” this method results in a high yield of methamphetamine and usually is used only when red phosphorous or hydriodic acid are in limited supply. This method is particularly dangerous, often resulting in explosions and fires because of the phosphine gas produced.

**NOTE: Show slide, “Birch Reduction/Nazi Method.”**

- d) Birch reduction/Nazi method. The principal chemicals are ephedrine or pseudoephedrine, anhydrous ammonia, and sodium or lithium metal. This method typically yields ounce-quantities of high-quality methamphetamine and is typically used by independent producers.”<sup>178</sup>

**NOTE: Show slide, “‘One Pot’ or ‘Shake and Bake’ Method.”**



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- e) “One pot” or “shake and bake” method – a method of manufacturing using the ammonia method is referred to as the “one pot” or “shake and bake” method. This is by far the easiest and fastest method of methamphetamine manufacturing seen thus far and is usually completed in a plastic soda or sports drink bottle. By 2011, in some areas of the United States, this method was used in approximately 95 percent of seized meth labs.<sup>179</sup>

### 8. Pseudoephedrine and the law

**NOTE: Show slides, “Pseudoephedrine and the Law.”**

Pseudoephedrine is one of the most critical ingredients used in the methamphetamine manufacturing process. The more pseudoephedrine one uses, the more methamphetamine one can produce. Methamphetamine can be produced with just one box of pseudoephedrine pills; however, meth manufacturers prefer to obtain as much pseudoephedrine as possible to obtain as much meth as possible.

- a) The Methamphetamine Lab Prevention Act of 2005 placed new restrictions on access to pseudoephedrine products. Some of these restrictions include:<sup>180</sup>
  - (1) Requiring the placement of these products behind the pharmacy counter and not on open store shelves,
  - (2) Prohibiting the sale of these products without a prescription to persons less than eighteen years of age,
  - (3) Requiring persons seeking to purchase these products to display a photo ID,
  - (4) Requiring pseudoephedrine retailers to keep a detailed log of all transactions and to have purchasers sign the log.
  - (5) Limiting the amount of pseudoephedrine that may be purchased in a single retail sale and within 30 days. These purchase limits in North Carolina are 3.6 grams of pseudoephedrine in twenty-four hours or 9.0 grams of pseudoephedrine in thirty days.

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- (6) Anyone violating these purchase limits violates North Carolina law.

**NOTE: Show slide, “National Precursor Log Exchange or NPLEEx.”**

- b) North Carolina state law also requires that every pseudoephedrine or ephedrine transaction be entered into a database called the National Precursor Log Exchange, or NPLEEx. This database is a “stop sale” system, meaning that it will not allow a purchaser to go over the purchase limits set by law.<sup>181</sup>
  - (1) All transactions in the database include a date and time of purchase, the name of the product purchased, the amount of pseudoephedrine purchased, and the purchaser’s signature.<sup>182</sup>
  - (2) Any attempt to purchase over the legal limits will show up as a “Block” or a “Purchase Attempt” in the database.<sup>183</sup>
  - (3) Any law enforcement officer in the state of North Carolina may obtain access to the NPLEEx database.<sup>184</sup>
  - (4) This database is an extremely helpful law enforcement tool when conducting methamphetamine laboratory investigations.

### 9. Meth lab indicators

Meth labs are often inadvertently discovered by the general public or by others during their jobs. Be certain that you, and others who may discover them, know what to look for and who to call!

- a) Labs are frequently discovered during, but not limited to:

**NOTE: Show slide, “Sometimes You Just Get Lucky.”**

- (1) Domestic disturbances
- (2) Fires and explosions
- (3) Medical emergency calls by citizens

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### b) Additional external indicators

**NOTE: Show slide, “Additional External Indicators.”**

- (1) “Bars or covers on windows.
- (2) Chemical smells or vapor clouds.
- (3) Dead animals or birds nearby.
- (4) Security: extra locks, fortified doors, guards, and surveillance cameras.
- (5) People coming and going at odd hours.
- (6) Precursor chemicals in trash.
- (7) Occupants regularly smoking outside.
- (8) Discoloration of pavement, soil, or structure.
- (9) Renters who pay in cash.
- (10) Electricity being run into a seemingly abandoned building.”<sup>185</sup>

### D. Clandestine Lab Operations and Equipment

**NOTE: Show slide, “Operations and Equipment.”**

#### 1. Clandestine lab equipment

**NOTE: Show slide, “Clandestine Lab Equipment.”**

Meth cooks utilize a wide variety of equipment, ranging from very specialized chemical apparatus to common household items. Large-scale and/or Mexican national labs often use specialized chemical apparatus, while smaller “mom and pop” labs use easily obtained, inexpensive, common household items such as Coleman fuel or charcoal lighter fluid, ice packs, fertilizer, lithium.<sup>186</sup>

#### 2. Specialized chemical apparatus/items<sup>187</sup>

**NOTE: Show slide, “Specialized Chemical Apparatus/Items.”**

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- a) Triple neck flasks
  - b) Single neck flasks
  - c) Reflux columns
  - d) Distillation columns
  - e) Heating mantles
  - f) Separatory funnels
  - g) Buchner funnels
3. Improvised lab equipment

**NOTE: Show slide, “Improvised Lab Equipment.”**

You will discover a wide variety of common household items used in meth production. These include, but are not limited to:<sup>188</sup>

- a) Pyrex, glass or Corningware containers, mason jars, or other kitchen glassware
- b) Plastic soda bottles
- c) Rubber tubing
- d) Dust or respiratory masks and filters
- e) Funnels
- f) Rubber gloves
- g) Large plastic storage containers or tubs
- h) Coffee filters or other items used to strain liquid, such as bed sheets. These may be stained red.
- i) White powder residue
- j) Sheets or other covers on windows

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- k) Gas cylinders or tanks that may contain anhydrous ammonia (may be denoted by a blue top as a chemical reaction causes the brass valve to turn blue when used to store the gas).
4. Methamphetamine lab hazards

**NOTE: Show slide, “Methamphetamine Lab Hazards.”**

Meth use and meth production present many hazards to law enforcement officers. These hazards include:

- a) Suspects and weapons<sup>189</sup>

Meth cooks are generally meth users, and they can be extremely paranoid and violent. Law enforcement officers must anticipate that suspects are probably armed with an array of weapons such as handguns, sawed-off shotguns, assault rifles, and machine guns. Because of the presence of weapons and the erratic behavior of these suspects, law enforcement officers must treat all clan lab encounters as high-risk situations.

Meth cooks may incorporate lookouts and guard dogs to protect their lab sites. They also utilize various types of electronic equipment to monitor for visitors and intruders, such as video surveillance cameras, motion detectors, scanners, baby monitors, and microphones.

- b) Explosives and booby traps<sup>190</sup>

Meth cooks will booby trap their labs, and areas surrounding their labs, intending to maim or kill an intruder. They often booby-trap objects that can be moved, such as gates and doors, or other objects that they believe will arouse your curiosity.

Just a few of the explosive booby traps discovered at labs include pipe bombs, translucent fishing hooks hanging from ceilings near door entrances, hand grenades, “toe-tappers” and aluminum foil mini bombs. Many cooks also use chemicals and chemical mixtures as explosives and booby traps. Hidden objects and traps intended to injure intruders are also frequently encountered, such as boards with protruding nails, grappling/fishing hooks hanging from trees and pits along pathways, and trip wires.

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Be aware that homemade explosives can be made with many of the same household chemicals that are used to manufacture controlled substances such as lye drain opener, fertilizer, hydrogen peroxide, acetone, and muriatic acid. The presence of these chemicals could be an indication of an illegal drug lab or a homemade explosives lab or both.

It is important to evacuate immediately, and contact bomb squad experts if suspected hazardous devices are located.

### E. Initial First Responder Actions for Meth Labs

**NOTE: Show slides, “First Responder Actions for Meth Labs.”**

1. When you discover a meth lab, *SAFETY* must be first and foremost in your mind! This includes:<sup>191</sup>
  - a) Responder safety
  - b) Public safety
2. Meth labs are crime scenes and hazmat scenes—immediate scene control is critical! You must attempt to:
  - a) “Step back and get out.”
  - b) Let your dispatch and services know you have discovered a suspected or in-progress clandestine laboratory and provide them with the exact location.
3. Initial safety procedures

**NOTE: Show slide, “Initial Safety Procedures.”**

- a) Your first operational thought should be safety. When entering a meth lab, there are immediate things you can do to keep yourself and the public safe.
  - (1) Do not touch or inhale/smell items about the laboratory area
  - (2) Don’t eat, drink or smoke at the scene

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- (3) Eliminate sources of ignition (i.e., radios and cell phones)
  - (4) Expect and anticipate multiple hazards and prepare in advance<sup>192</sup>
- b) Initial scene control will involve:<sup>193</sup>

**NOTE: Show slide, “Initial Scene Control.”**

- (1) Removing people from the immediate area (suspects, potential victims and/or general public)
- (2) Withdrawal to a safe distance from the scene (upwind and upgrade), minimally fifty feet
- (3) Do not place persons into your vehicle; consider the transfer of contaminants.

4. Response to “One-pot” meth labs

**NOTE: Show slide, “Response to ‘One-Pot’ Meth Labs – Safety Concerns.”**

- a) Safety concerns for first responders include the following:
- (1) “If these bottles rupture or burst, they can cause a large fireball and rapidly moving fire.
  - (2) The reaction can cause pressure to build up and cause the bottle to rupture.
  - (3) Poisonous and dangerous gases can be produced during and after the process.
  - (4) After the cooking process, these bottles will be discarded and dumped, but they still present a fire or a hazardous materials hazard.”<sup>194</sup>

**NOTE: Show slide, “Responding to ‘One-Pot’ Meth Labs.”**

- b) Responding to one-pot meth labs<sup>195</sup>
- (1) Always wear personal protective equipment.

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- (2) Do not touch or move any bottles or containers.
- (3) Be cautious when interacting with these individuals because they have a high incidence rate of communicable diseases such as human immunodeficiency virus infection/acquired immunodeficiency syndrome, tuberculosis, and other diseases.

### 5. Emergency decontamination<sup>196</sup>

**NOTE: Show slide, “Emergency Decontamination.”**

Should you come in contact with a possible clandestine lab or any area that is contaminated with chemicals, officers should contact the appropriate hazmat team to assist with decontamination. In jurisdictions with no hazmat teams, fire service can provide you with emergency field decontamination. It is essential that victims be moved to a safe area and decontaminated immediately in the following manner:

- a) Flood with water to flush off contamination
- b) Remove all contaminated clothing
- c) Flush again with lots of water!

### 6. Emergency first aid<sup>197</sup>

**NOTE: Show slide, “Emergency First Aid.”**

In many cases, emergency first aid will be necessary before a victim can be transported to a medical facility. Be prepared to provide emergency first aid to victims who have been exposed to hazardous chemicals and wastes through inhalation, ingestion, and/or skin absorption. Always take care to ensure that you are a safe distance from any chemicals or explosives before rendering first aid and always make sure you are safe.

- a) For inhalation exposures (make every effort to not inhale or smell products about the suspect laboratory area):
  - (1) Assure that fresh air is available



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- (2) Maintain victim's airway
  - b) For ingestion exposures:
    - (1) If the victim is conscious – rinse mouth immediately
    - (2) If the victim is unconscious – prevent aspiration
  - c) For skin exposures:
    - (1) Remove or cut off all clothing
    - (2) Flood with water
7. Immediate response drill:<sup>198</sup>

**NOTE: Show slide, “Immediate Response Drill.”**

Immediately call for assistance and provide as much of the following information as possible:

- a) Nature of the lab incident/lab scene
  - b) Exact location
  - c) Status of field law enforcement actions
  - d) Other actions taken at the scene
  - e) Injuries
  - f) Response actions needed
  - g) Type and quantity of chemicals involved
8. Response agencies<sup>199</sup>

**NOTE: Show slide, “Response Agencies.”**

Meth lab response is a multi-agency endeavor. It is important that law enforcement agencies maintain good working relationships with other local, state, and federal agencies and assist each other when needed. Remember, if you initiate the investigation that reveals a meth lab, your agency then becomes responsible for the clean-up. The North

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Carolina State Bureau of Investigation (NCSBI) is the lead agency in the response network in North Carolina. Local agencies need to have a protocol in place to work cooperatively in the investigative and response phases of methamphetamine-related cases. These contacts should include:

- a) Law enforcement
  - (1) Specialized clandestine lab teams (SBI) – The SBI has trained personnel to deal with dismantling methamphetamine laboratories (meth labs), as well as protective equipment to ensure officer safety. The SBI also packages up and disposes of any hazardous waste found at the scene of a meth lab. Thus, it is **mandatory** to contact the SBI when a meth lab is discovered. The 24-hour number to report such findings to the SBI is 1-800-334-3000.
  - (2) Drug law enforcement organizations
- b) Fire and hazmat
- c) Environmental and public health agencies
- d) Emergency and medical services
- e) Social services
- f) Children’s services

### F. Informant Development

Keep in mind that informants can be used in all types of investigations, not just controlled substance investigations. All law enforcement officers from the patrol level to major crimes investigators can utilize informants to gather information.

#### 1. Sources of information<sup>200</sup>

Sources of information for any investigation will come from a multitude of resources. The investigating officer of a narcotics investigation (or any criminal investigation) will find sources include, but are not limited to:

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**NOTE: Show slide, “Sources of Information.”**

- a) Human intelligence (commonly referred to as HUMIT)  
  
Such type insources of information may include such sources as private or public citizens, law enforcement officers, and/or criminal suspects or offender.
- b) Other law enforcement personnel  
  
This includes external agency contacts such as the Drug Enforcement Agency, Federal Bureau of Investigation, Internal Revenue Service, and/or Department of Homeland Security.
- c) Other criminal justice agencies  
  
This includes external agency contacts such as the prosecutor’s office, probation and parole agencies, and/or federal and state/county court records.
- d) Public service agencies  
  
This includes external agency contacts such as medical examiner’s office, sanitation departments, social service agencies, and/or Division of Motor Vehicles.
- e) Private sector sources  
  
This includes external agency contacts such as telephone/cellular phone companies, public utilities, credit agencies, and/or wire transfer services.

### 2. Types of informants

**NOTE: Show slides, “Informant Types.”**

“Informant” is a generic term often used by the police and prosecutors to describe a wide variety of individuals who confidentially provide them with information concerning criminal activity.<sup>201</sup> Officers must be careful to document any benefit which is received by an informant, whether it be cash incentives or assistance resolving pending criminal charges.<sup>202</sup> This information must be turned over to the State and defense counsel in criminal proceedings.<sup>203</sup>

- a) Occasional informant<sup>204</sup>

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These informants are used by officers over long periods and offer information sporadically. Usually, occasional informants will not testify in cases and will only give information when they want. The information received from these informants should be verified by investigators.

b) Regular informants<sup>205</sup>

Regular informants are productive informants and frequently work with officers over some time. The information received from regular informants is usually reliable and has resulted in arrests and convictions in the past.

c) Arrested informants<sup>206</sup>

Arrested informants cooperate with police to escape prosecution for a crime with which they have been charged.

State law allows for an indicted individual to provide substantial assistance for a law enforcement agency in exchange for the introduction of mitigating factors in the sentencing of their case.

Substantial assistance opportunities and “benefits” may vary significantly between jurisdictions.

d) Confidential informants<sup>207</sup>

The confidential informant is one who provides law enforcement officers with information about a crime and does not want to be known as the source of information. The informant’s identity must be protected since his or her value as a source is lost upon disclosure. Informants will often fear for their safety. Officers need to be sensitive to these concerns, yet professional in response. Should a confidential informant’s information lead to criminal charges, the informant’s identity may be required to be disclosed for trial. Officers should not disclose an informant’s identity until required to do so.

3. During the initial meeting with an informant, an officer can often detect the informant’s motivation for working with law enforcement based on what the officer has learned in their previous training and experience. “Identifying an informant’s true motive for providing information increases the chances of conducting an effective and safe criminal investigation.”<sup>208</sup> If an [officer] believes that the informant is

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providing information because he or she is repentant for past crimes when he or she, in actuality is there to learn police tactics and intelligence to avoid detection from him or herself, a disaster is in the making. Although there may be additional motivations for an informant to assist a police investigation, the following nine with one noted exception are regularly encountered as motivating factors.<sup>209</sup>

**NOTE: Show slide, “Informant Motivators.”**

a) Concerned citizen/altruistic<sup>210</sup>

The one exception regarding someone who is cooperating with law enforcement based upon a belief of moral and legal obligations to his or her community. An individual rarely involved in criminal activity and have short-term or limited usefulness.

b) Walk-in informant<sup>211</sup>

Self-initiated person walking into or visits a police department offering criminal information must be scrutinized to determine the actual motivation behind the initial step. In this type of motivating matter, a thorough debriefing most likely will reveal clues as to why the person has come forward.

c) Fear<sup>212</sup>

Fear is the most common motivation for someone to provide information to police and is a significant motivator. Fear of going to prison or prosecution is the most common motivation. An investigator attempting to convince a recently arrested suspect to immediately provide information is a common practice.

d) Revenge and jealousy<sup>213</sup>

Individually or combined revenge and jealousy have historically motivated people to do things or tell secrets they might otherwise do. Jealousy may stem from the love of, or for, money. However, business disputes between competing drug criminal organizations prompt revenge. An investigator should be cautious when an informant seeks to eliminate competition by informing upon a competitor. The investigator may then utilize the competitor’s information to help eliminate the informant’s illegal drug operation.

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e) Mercenary<sup>214</sup>

This type of informant works for money, thrills, or rewards. Mercenary-type informants may be challenging for the investigator as this type informant frequently has criminal histories, or may brag to friends about their work with law enforcement. However, with proper briefing and confidential informant agreements, this type informant is most willing to follow direction because they are paid on performance. Additionally, this informant may better introduce undercover investigators into criminal organizations.

f) Egotistical<sup>215</sup>

This type of informant will seek praise as much as he or she may also want payment for services or information. This type of informant may exhibit signs of consciously or subconsciously having a desire to be a police officer. It is best understood for the investigator not to become involved in an ego competition with the informant.

g) Perverse (alias; double agent)<sup>216</sup>

Indicated in many areas of law enforcement, informant handling is possibly the MOST DANGEROUS and DISRUPTIVE informant type an investigator may encounter. The informant offers services to learn law enforcement internal matters such as, but not limited to, identifying undercover officers, learning investigation case targets, investigation intelligence, and information to eliminate their competition.

h) Reformer or repentance<sup>217 218</sup>

This type of informant states a desire to make restitution for past criminal activity or break criminal alliances. This reforming or repenting statement(s) is/are seldom the sole motivator for or offering law enforcement cooperation. This type of informant may be found with a debt due to a drug dealer or like illegal drug organization. The informant type will need to be managed as to how he or she may try to direct who is targeted.

i) “James Bond Syndrome”<sup>219</sup>

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This type of informant is of particular concern as he or she may imagine themselves in a Hollywood-type scene from a fantasy or movie character. The informant may have information of value, but are found to be difficult to handle, but must be briefed or debriefed as to possible exaggerated knowledge of criminal activity to enhance their “role of their lifetime.”

### 4. Informant debriefing<sup>220</sup>

**NOTE: Show slide, “Informant Debriefing.”**

- a) Establish rapport; be sociable and use a pleasing personality.
- b) Interview the informant: Ask all of the important questions such as who, what, when, where, and how.
- c) Control the interview: You can determine motivation through good interviewing techniques.
- d) An informant procedure for evaluation of the informant must include an investigation of the informant’s background including, biographical detail, outstanding warrants/criminal history, driver’s license history, permanent and local addresses, and previous experience as a confidential informant.
- e) Do not make promises to the informant, particularly involving getting their charges reduced or dismissed.

**NOTE: Show slide and refer students to handouts, “Informant Debriefing, #1 and #2.”**

### 5. Rules for working with informants<sup>221</sup>

**NOTE: Show slide, “Rules for Working with Informants.”**

- a) Using the informant’s information

An informant’s information may be used in an affidavit for a search warrant if there is a “fair probability” based on the totality of the circumstances that the information is accurate and reliable. The officer can corroborate unknown information, or verify an informant’s statement and basis of knowledge, based upon information the officer knows to be true. Officers should include information, if they have it, to show that the informant has been reliable in the past.

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- b) Again, never make promises to the informant that you cannot keep. Do not agree to a reduction in charges without first consulting with the District Attorney, and if an informant is going to be paid, make sure to keep very accurate accounting of all payments.
- c) When possible, have a second officer present at meetings with the informant. This practice will reduce the risk of false allegations, which may be made by the informant.
- d) Entrapment  

Entrapment is inducing a person to commit a crime that they otherwise would not do. However, merely inviting a person to engage in an illegal act, or providing the opportunity to do so, is not entrapment.
- e) Protecting an informant's identity is of utmost importance. No one can be expected to provide information if it leads to injury or death.

### G. Surveillance Operations

“Surveillance is the process of keeping under observation a place, a person, or an object for the purpose of identifying persons, developing information, discovering relationships between the people and places or objects, and discovering evidence.”<sup>222</sup> Surveillance can help with any of the following:

1. Purpose of surveillance operations

**NOTE: Show slides, “Surveillance Operations.”**

- a) “Gain information required for building a criminal complaint
- b) Determine an informant's loyalty
- c) Verify a witness's statement about a crime
- d) Gain information required for obtaining a search or arrest warrant
- e) Gain information necessary for interrogating a suspect
- f) Identify a suspect's associates



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- g) Observe members of terrorist organizations
- h) Find a person wanted for a crime
- i) Observe criminal activities in progress
- j) Make a legal arrest
- k) Apprehend a criminal in the act of committing a crime
- l) Prevent a crime
- m) Recover stolen property
- n) Protect witnesses<sup>223</sup>

### 2. Types of surveillance

Although surveillance may be classified into multiple levels, identities, or functional titles, the following are some baseline foundation descriptions.

**NOTE: Show slide, “Surveillance.”**

#### a) Overt (open) surveillance vs. covert surveillance

##### (1) Overt (open) surveillance

Overt surveillance occurs when “an example of overt [or open surveillance] includes the security cameras businesses use that deter clients from stealing.”<sup>224</sup>

Footage from these cameras can be useful in various ways, such as identifying a possible suspect, providing the time of a suspect in the proximity where a crime occurred, locating a missing person, etc.

##### (2) Close surveillance (stakeout)<sup>225</sup>

In a close surveillance, the individual is kept under observation continuously, and it is maintained around the clock until the operation is completed. Generally, this type of surveillance may be necessary to obtain intelligence when the subject is suspected of criminal activity.

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### (3) Covert surveillance

In the alternative, covert surveillance goes undetected. For example, an undercover detective trailing a subject is covert surveillance.<sup>226</sup> While all investigations do not require covert surveillance, investigators may rely on officers to gather information to determine if a crime is being planned or has been committed, to determine the location of the crime, and to identify individuals involved in the crime. Often, the information collected covertly can be used to establish probable cause to seek an arrest warrant or a search warrant when necessary.

#### b) Mobile vs. stationary

##### (1) Mobile

“An investigation involves detectives following their subjects whether on foot or in a vehicle.”<sup>227</sup>

##### (2) Stationary

An investigation “remaining in one location, which could include watching the subject from a parked car.”<sup>228</sup>

#### c) Mechanical vs. human

##### (1) Mechanical

An investigation with “the use of video cameras, voice recorders, and other such equipment.”<sup>229</sup>

##### (2) Human

An investigation “when a member of the investigative team is a direct source of information.”<sup>230</sup>

### 3. Preparation for working a surveillance operation

**NOTE: Show slide, “Preparation for Working a Surveillance Operation.”**

#### a) Personnel<sup>231</sup>

##### (1) Officers should be of ordinary appearance

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- (2) Avoid anything that will attract attention
  - (3) Assignments should be based on the officer's ability to blend into the environment
- b) Pre-surveillance preparation<sup>232</sup>
- (1) Gather information
  - (2) Gather intelligence on suspect's work, neighborhood, and vehicles
  - (3) Obtain photos of suspects
  - (4) Become familiar with the area of operation

**NOTE: Show slide, "Know Your Subject," and "Surveillance Worksheet" and refer students to handouts.**

- c) Equipment<sup>233</sup>

**NOTE: Show slide, "Equipment."**

- (1) Clothing should blend with area
- (2) Cameras
- (3) Binoculars
- (4) Recording equipment
- (5) Body wires
- (6) Monitoring equipment
- (7) Vehicles should blend with area<sup>234</sup>

**NOTE: Practice all types of surveillance with the students as time allows.**

### H. Follow-up Investigation

**NOTE: Show slide, "Follow-Up Investigation."**

1. In conducting follow-up investigations, officers should utilize every available source. This includes:<sup>235</sup>

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- a) A follow-up contact with principles of the case
  - b) A review of crime analysis information
  - c) Efforts to develop informants
  - d) Determining involvement of suspects in other crimes
  - e) Checking suspect's criminal history
2. Review all existing information. This includes:
    - a) Reports
    - b) Sketches
    - c) Photographs
    - d) Physical evidence
    - e) Laboratory tests results
    - f) Witness/victim statements
  3. Identify the suspect
    - a) Establish that a crime was committed
    - b) Establish the suspect's involvement

### III. Conclusion

#### A. Summary

During this block of instruction, we learned how to identify and properly categorize many controlled substances. We explored a list of drug use symptoms and matched them to the likely controlled substance. We also discovered how to gather sources of information, including developing and handling reliable informants. And lastly, we learned how to perform patrol level drug interdiction and the appropriate method to conduct follow-up investigations.

**NOTE: Show slides, "Training Objectives."**

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1. Given a list of commonly encountered controlled substances, identify the correct pharmacological classification and its symptoms.
2. Recognize and identify various types of drug paraphernalia.
3. Identify common over-the-counter products that are used in methamphetamine production.
4. Identify standard and improvised lab equipment used in methamphetamine production.
5. State the appropriate methods to respond to a methamphetamine lab.
6. Identify the types of sources that may aid in developing informant contacts and what factors motivate them to provide information to law enforcement officers.
7. State and demonstrate the following types of surveillance operations:
  - a) Open
  - b) Close
  - c) Covert
8. Given a fact situation, identify the proper investigative follow-up procedures in a controlled substance case.

### B. Questions from Class

**NOTE: Show slide, “Questions.”**

### C. Closing Statement

The key to successful drug enforcement is a two-part equation. You have just received the first element--training. The second element is experience. Once you have been assigned, and perhaps even on your first tour of duty, you will come face-to-face with the reality of the drug problem that exists in our society. It now becomes your obligation to take this training and combine it with street experience, both yours and others, and make a positive impact in your jurisdiction.

“Life over dope! Never forget you have loved ones waiting for you. Perform as if your life depends on it...because it does! Your priority should always be to go home safe!”<sup>236</sup>

**NOTES**

<sup>1</sup> United States Department of Justice, “2019 Crime in the United States.”

<sup>2</sup> United States Department of Justice, “2020 National Drug Threat Assessment Summary.”

<sup>3</sup> United States Department of Health and Human Services, 12.

<sup>4</sup> National Institute on Drug Abuse, “Opioids.”

<sup>5</sup> Lyman, 53-55.

<sup>6</sup> Drugs.com.

<sup>7</sup> National Institute on Drug Abuse, “Misuse of Prescription Drugs Research Report.”

<sup>8</sup> Lyman, 58.

<sup>9</sup> Lyman, 62.

<sup>10</sup> Cherry.

<sup>11</sup> Cherry.

<sup>12</sup> National Institute on Drug Abuse, “What are Hallucinogens?”

<sup>13</sup> Miller, *Drugs and the Law*, 110.

<sup>14</sup> National Institute on Drug Abuse, “What are Hallucinogens?”

<sup>15</sup> National Institute on Drug Abuse, “What are Hallucinogens?”

<sup>16</sup> National Institute on Drug Abuse, “What are Hallucinogens?”

<sup>17</sup> National Institute on Drug Abuse, “What are Inhalants?”

<sup>18</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>19</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>20</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>21</sup> National Institute on Drug Abuse, “Marijuana.”

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<sup>22</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>23</sup> N.C.G.S. § 90-87 (2012).

<sup>24</sup> National Institute on Drug Abuse, “Synthetic Cannabinoids (K2/Spice).”

<sup>25</sup> National Institute on Drug Abuse, “Synthetic Cannabinoids (K2/Spice).”

<sup>26</sup> National Institute on Drug Abuse, “Synthetic Cannabinoids (K2/Spice).”

<sup>27</sup> National Institute on Drug Abuse, “Synthetic Cannabinoids (K2/Spice).”

<sup>28</sup> National Institute on Drug Abuse, “Synthetic Cannabinoids (K2/Spice).”

<sup>29</sup> National Institute on Drug Abuse, “Synthetic Cannabinoids (K2/Spice).”

<sup>30</sup> N.C.G.S. § 90-89 through 90-94 (2018).

<sup>31</sup> N.C.G.S. § 90-89 (2018).

<sup>32</sup> N.C.G.S. § 90-90 (2018).

<sup>33</sup> N.C.G.S. § 90-91 (2018).

<sup>34</sup> N.C.G.S. § 90-92 (2018).

<sup>35</sup> N.C.G.S. § 90-92 (2018).

<sup>36</sup> N.C.G.S. § 90-93 (2018).

<sup>37</sup> N.C.G.S. § 90-94 (2018).

<sup>38</sup> N.C.G.S. § 90-87(6) (2018).

<sup>39</sup> N.C.G.S. § 90-87(6) (2018).

<sup>40</sup> N.C.G.S. § 90-95(c) (2018).

<sup>41</sup> National Institute on Drug Abuse, “What is Cocaine?”

<sup>42</sup> National Institute on Drug Abuse, “What is Cocaine?”

<sup>43</sup> National Institute on Drug Abuse, “What is Cocaine?”

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- <sup>44</sup> National Institute on Drug Abuse, “What is Cocaine?”
- <sup>45</sup> National Institute on Drug Abuse, “What is Cocaine?”
- <sup>46</sup> National Institute on Drug Abuse, “What is Cocaine?”
- <sup>47</sup> Miller, *Drugs and the Law*, 305.
- <sup>48</sup> Miller, *Drugs and the Law*, 321.
- <sup>49</sup> Miller, *Drugs and the Law*, 321.
- <sup>50</sup> Miller, *Drugs and the Law*, 321.
- <sup>51</sup> Miller, *Drugs and the Law*, 321.
- <sup>52</sup> Miller, *Drugs and the Law*, 321.
- <sup>53</sup> Miller, *Drugs and the Law*, 321.
- <sup>54</sup> Miller, *Drugs and the Law*, 321.
- <sup>55</sup> Miller, *Drugs and the Law*, 321.
- <sup>56</sup> Miller, *Drugs and the Law*, 321.
- <sup>57</sup> Miller, *Drugs and the Law*, 321.
- <sup>58</sup> United States Department of Transportation, *Drug Evaluation and Classification Program*.
- <sup>59</sup> Hallucinogens.com.
- <sup>60</sup> Criss.
- <sup>61</sup> National Institute on Drug Abuse, “What are Hallucinogens?”
- <sup>62</sup> National Institute on Drug Abuse, “What are Hallucinogens?”
- <sup>63</sup> National Institute on Drug Abuse, “What are Hallucinogens?”
- <sup>64</sup> National Institute on Drug Abuse, “What are Hallucinogens?”
- <sup>65</sup> United States Department of Transportation, *Drug Evaluation and Classification Program*.
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<sup>66</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>67</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>68</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>69</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>70</sup> National Institute on Drug Abuse, “Commonly Abused Drug Charts: Inhalants.”

<sup>71</sup> United States Department of Transportation, *Drug Evaluation and Classification Program*.

<sup>72</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>73</sup> United States Department of Transportation, *Drug Evaluation and Classification Program*.

<sup>74</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>75</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>76</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>77</sup> National Institute on Drug Abuse, “Marijuana.”

<sup>78</sup> WebMD.com, “Painkillers, Narcotic Misuse, and Addiction.”

<sup>79</sup> WebMD.com, “Painkillers, Narcotic Misuse, and Addiction.”

<sup>80</sup> Foundation for a Drug-Free World, “The Truth about Prescription Drugs – Depressants.”

<sup>81</sup> Foundation for a Drug-Free World, “The Truth about Prescription Drugs – Depressants.”

<sup>82</sup> Foundation for a Drug-Free World, “The Truth about Prescription Drugs – Depressants.”

<sup>83</sup> Treatment4Addiction.com.

<sup>84</sup> National Institute on Drug Abuse. “Marijuana Research Report - What is the scope of marijuana use in the United States.”

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- <sup>85</sup> “2020 National Drug Threat Assessment Summary, 7.”
- <sup>86</sup> “2020 National Drug Threat Assessment Summary,” 4.
- <sup>87</sup> “2020 National Drug Threat Assessment Summary,” 4.
- <sup>88</sup> “2020 National Drug Threat Assessment Summary,” 4.
- <sup>89</sup> Center for Disease Control and Prevention, 1.
- <sup>90</sup> “2020 National Drug Threat Assessment Summary,” 7.
- <sup>91</sup> United States Department of Justice, “Drug Fact Sheet - Fentanyl,” 1.
- <sup>92</sup> United States Department of Justice, “Drug Fact Sheet - Fentanyl,” 1.
- <sup>93</sup> “2016 National Drug Threat Assessment Summary.”
- <sup>94</sup> “2016 National Drug Threat Assessment Summary.”
- <sup>95</sup> *Drug Identification Bible*.
- <sup>96</sup> “Oxycontin: Pain Relief vs. Abuse.”
- <sup>97</sup> “2016 National Drug Threat Assessment Summary.”
- <sup>98</sup> “2016 National Drug Threat Assessment Summary.”
- <sup>99</sup> Fitzgerald, 172-173.
- <sup>100</sup> *United States v. Scheetz*, 293 F.3d 175, 184, (4<sup>th</sup> Cir. 2002).
- <sup>101</sup> *United States v. Robinson*, 414 U.S. 218.
- <sup>102</sup> *Arizona v. Gant*, 556 U.S. \_\_\_\_ (2009).
- <sup>103</sup> Chumley.
- <sup>104</sup> Farb, 229.
- <sup>105</sup> *Police Operations: Theory and Practice*, 109-110.
- <sup>106</sup> Chumley.
- <sup>107</sup> *Scheetz*.

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- <sup>108</sup> *Terry v. Ohio*, 392 U.S. at 30, (2017).
- <sup>109</sup> Farb, 20.
- <sup>110</sup> Chumley.
- <sup>111</sup> Farb, 236-238.
- <sup>112</sup> Farb, 236-238.
- <sup>113</sup> Farb, 236-238.
- <sup>114</sup> Farb, 236-238.
- <sup>115</sup> Farb, 236-238.
- <sup>116</sup> Lyman, 169.
- <sup>117</sup> Lyman, 171.
- <sup>118</sup> Lyman, 173.
- <sup>119</sup> Lyman, 172.
- <sup>120</sup> N.C.G.S. § 105-113.105 through 113.113 (2018).
- <sup>121</sup> N.C.G.S. § 105-113.109 (2018).
- <sup>122</sup> N.C.G.S. § 105-113.108(b) (2018).
- <sup>123</sup> N.C.G.S. § 90-96.2 (2018).
- <sup>124</sup> “2016 National Drug Threat Assessment Summary.”
- <sup>125</sup> N.C.G.S. § 90-96.2 (c3) (2015).
- <sup>126</sup> N.C.G.S. § 90-96.2 (c) (2015).
- <sup>127</sup> N.C.G.S. § 90-96.2(b) (2015).
- <sup>128</sup> N.C.G.S. § 90-96.2(c) (2015).
- <sup>129</sup> N.C.G.S. § 90-96.2(c1) (2015).

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<sup>130</sup> N.C.G.S. § 90-96.2(d)(4) (2015).

<sup>131</sup> N.C.G.S. § 18B-302.2(a) (2018).

<sup>132</sup> N.C.G.S. § 18B-302.2(a) (2018).

<sup>133</sup> N.C.G.S. § 18B-302.2(a) (2018).

<sup>134</sup> N.C.G.S. § 18B-302.2 (2018).

<sup>135</sup> National Institute on Drug Abuse, “Drugs, Brain, and Behavior: The Science of Addiction.”

<sup>136</sup> National Institute on Drug Abuse, “The Science of Drug Abuse and Addiction: The Basics.”

<sup>137</sup> National Institute on Drug Abuse, “The Science of Drug Abuse and Addiction: The Basics.”

<sup>138</sup> National Institute on Drug Abuse, “The Science of Drug Abuse and Addiction: The Basics.”

<sup>139</sup> National Institute on Drug Abuse, “The Science of Drug Abuse and Addiction: The Basics.”

<sup>140</sup> National Institute on Drug Abuse, “The Science of Drug Abuse and Addiction: The Basics.”

<sup>141</sup> National Institute on Drug Abuse, “The Science of Drug Abuse and Addiction: The Basics.”

<sup>142</sup> National Institute on Drug Abuse, “The Science of Drug Abuse and Addiction: The Basics.”

<sup>143</sup> National Institute on Drug Abuse, “Drugs, Brain, and Behavior: The Science of Addiction.”

<sup>144</sup> N.C.G.S. § 90-113.22(a) (2018).

<sup>145</sup> N.C.G.S. § 90-113.22(b) (2018).

<sup>146</sup> United States Department of Justice, “Drug Paraphernalia Fast Facts.”

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<sup>147</sup> 21 U.S. Code sec 863 – “Drug Paraphernalia.”

<sup>148</sup> 21 U.S. Code sec 863 – “Drug Paraphernalia.”

<sup>149</sup> 21 U.S. Code sec 863 – “Drug Paraphernalia.”

<sup>150</sup> N.C.G.S. § 90-113.82(b)(3) (2018).

<sup>151</sup> N.C.G.S. § 90-113.82(d) (2018).

<sup>152</sup> N.C.G.S. § 90-113.22 (2019).

<sup>153</sup> N.C.G.S. § 90-113.27 (c) (2019).

<sup>154</sup> N.C.G.S. § 90-113.27 (c) (2019).

<sup>155</sup> N.C.G.S. § 90-113.27 (b) (2019).

<sup>156</sup> N.C.G.S. § 90-113.27 (b) (2019).

<sup>157</sup> N.C.G.S. § 90-113.27 (b) (2019).

<sup>158</sup> North Carolina Department of Justice.

<sup>159</sup> North Carolina Department of Justice.

<sup>160</sup> “Methamphetamine FAQ.”

<sup>161</sup> National Institute on Drug Abuse, “Methamphetamine.”

<sup>162</sup> National Institute on Drug Abuse, “Methamphetamine.”

<sup>163</sup> Narconon International, “Methamphetamine/Meth Addiction Info: Meth Abuse Patterns.”

<sup>164</sup> Narconon International, “Methamphetamine/Meth Addiction Info: Meth Abuse Patterns.”

<sup>165</sup> Narconon International, “Methamphetamine/Meth Addiction Info: Meth Abuse Patterns.”

<sup>166</sup> Narconon International, “Methamphetamine/Meth Addiction Info: Meth Abuse Patterns.”

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<sup>167</sup> Narconon International, “Methamphetamine/Meth Addiction Info: Meth Abuse Patterns.”

<sup>168</sup> Narconon International, “Methamphetamine/Meth Addiction Info: Meth Abuse Patterns.”

<sup>169</sup> Scott and Dedel.

<sup>170</sup> Scott and Dedel.

<sup>171</sup> Scott and Dedel.

<sup>172</sup> Scott and Dedel.

<sup>173</sup> Scott and Dedel.

<sup>174</sup> Scott and Dedel.

<sup>175</sup> Scott and Dedel.

<sup>176</sup> Scott and Dedel.

<sup>177</sup> Scott and Dedel.

<sup>178</sup> United States Department of Homeland Security. “Office of Intelligence and Analysis: Identifying and Differentiating Among Clandestine Biological, Chemical, Explosives, and Methamphetamine Laboratories,” 3.

<sup>179</sup> *Drug Identification Bible*, 492.

<sup>180</sup> N.C.G.S. § 90-113.53 (2018).

<sup>181</sup> N.C.G.S. § 90-113.52A (2018).

<sup>182</sup> N.C.G.S. § 90-113.52A (2018).

<sup>183</sup> N.C.G.S. § 90-113.52A (2018).

<sup>184</sup> N.C.G.S. § 90-113.52A (2018).

<sup>185</sup> United States Department of Homeland Security. “Office of Intelligence and Analysis: Identifying and Differentiating Among Clandestine Biological, Chemical, Explosives, and Methamphetamine Laboratories.”

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<sup>186</sup> A Gray Media Group, Inc. Station.

<sup>187</sup> United States Department of Justice, “Methamphetamine Laboratory Identification and Hazards Fast Facts Questions and Answers.”

<sup>188</sup> United States Department of Justice, “Methamphetamine Laboratory Identification and Hazards Fast Facts Questions and Answers.”

<sup>189</sup> Billings, April 13, 2017.

<sup>190</sup> Billings, April 13, 2017.

<sup>191</sup> Billings, April 13, 2017.

<sup>192</sup> Billings, April 13, 2017.

<sup>193</sup> Billings, April 13, 2017.

<sup>194</sup> Vernon.

<sup>195</sup> Vernon.

<sup>196</sup> Vernon.

<sup>197</sup> Vernon.

<sup>198</sup> Vernon.

<sup>199</sup> Vernon.

<sup>200</sup> Fitzgerald, 1.

<sup>201</sup> Fitzgerald, 1.

<sup>202</sup> Fitzgerald, 1.

<sup>203</sup> Fitzgerald, 1.

<sup>204</sup> Fitzgerald, 1.

<sup>205</sup> Fitzgerald, 1.

<sup>206</sup> Fitzgerald, 1.

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<sup>207</sup> Fitzgerald, 1.

<sup>208</sup> Lee.

<sup>209</sup> Lee.

<sup>210</sup> Grimes, 4-8.

<sup>211</sup> Lee.

<sup>212</sup> Lee, 1-2.

<sup>213</sup> Lee, 3.

<sup>214</sup> Lee, 3.

<sup>215</sup> Lee, 4.

<sup>216</sup> Lee, 5.

<sup>217</sup> Lee, 3.

<sup>218</sup> Grimes, 7.

<sup>219</sup> Lee.

<sup>220</sup> Fitzgerald, 389-390.

<sup>221</sup> Brown, 253.

<sup>222</sup> Adams, 81.

<sup>223</sup> Hess and Orthman, 220-221.

<sup>224</sup> Shamshak.

<sup>225</sup> United States Army.

<sup>226</sup> United States Army.

<sup>227</sup> United States Army.

<sup>228</sup> United States Army.



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<sup>229</sup> United States Army.

<sup>230</sup> United States Army.

<sup>231</sup> Errico, Inf. 2.

<sup>232</sup> Errico, Inf. 2.

<sup>233</sup> Fitzgerald, 389-390.

<sup>234</sup> Miller, *Drugs and the Law*, 562-563.

<sup>235</sup> *Raleigh Police Department Police and Procedures Manual*.

<sup>236</sup> Serrato, 9.

## ***Individuals with Mental Illness and Developmental Disabilities***

BLET: 27P **Draft, handouts**

TITLE: INDIVIDUALS WITH MENTAL ILLNESS AND DEVELOPMENTAL  
DISABILITIES

Lesson Purpose: To assist law enforcement officers in recognizing when a person may have a mental illness or developmental disability and to learn the best possible response when they encounter people with a mental illness or a developmental disability.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives by the information received during the instructional period:

1. State the characteristics that a person with a mental illness or a developmental disability may display to law enforcement.
2. Identify warning signs which may aid in the response to a person who may intend to commit suicide.
3. Identify effective responses to an individual with mental illness and/or a developmental disability, including but not limited to, de-escalation and the use of other crisis response resources or strategies.
4. State when it is appropriate to seek an involuntary commitment order and describe the steps involved in obtaining an involuntary commitment order.
5. Identify local mental health resources, including crisis response resources that are available through the state and through local communities.
6. Given reality-based training scenarios, answer the following questions:
  - a) What is the appropriate de-escalation response?
  - b) Is the respondent dangerous to self or others?
  - c) What legal authority does law enforcement have?
  - d) What action should the officer take?

Hours: Twenty-four (24)

## *Individuals with Mental Illness and Developmental Disabilities*

Instructional Method:	Lecture, Conference, Practical Exercises
Testing Requirement(s):	End of block test, Practical Exercise
Training Environment(s):	Classroom, Practical Exercise Area
Materials Required:	Audio-visual classroom equipment “Auditory Hallucinations” audio file Earbuds/headphones for each student Electronic device capable of playing an MP3 audio file Flipchart Handouts Video: <i>Individuals with Mental Illness and Developmental Disabilities</i> , NC Justice Academy (July 2018)
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## *Individuals with Mental Illness and Developmental Disabilities*

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***Individuals with Mental Illness and Developmental Disabilities***

**TITLE: INDIVIDUALS WITH MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES – Instructor Notes**

1. This lesson plan must be presented by an instructor currently certified by the North Carolina Criminal Justice Education and Training Standards Commission as a General Instructor. It is strongly recommended that the instructor for this block of instruction also be crisis intervention team (CIT) certified.
2. This is a twenty-four (24) hour block of instruction separated as follows:  
  
Sixteen hours (16) – Classroom lecture  
Eight hours (8) – Practical exercises
3. A large portion of the lesson is devoted to commitment procedures and officer safety issues when dealing with persons with mental illness or a developmental disorder. Instructors should be very familiar with commitment procedures. Additionally, it is recommended to request a representative from your local management entity or managed care organization in your area to assist in the presentation of this block of instruction.
4. Instructors must go to the following website to obtain his/her copies of needed AOC forms: [www.nccourts.org](http://www.nccourts.org). Student lesson plans will contain the forms. The forms include:

AOC-SP-220	AOC-SP-300	DMH 5-72-01
AOC-SP-222	AOC-SP-302A	DMH 5-72-01-A
AOC-SP-223	AOC-SP-302B	
AOC-SP-224	AOC-SP-909M	

5. Before the course delivery, instructors should visit the following link: <http://www.ncdhhs.gov/> to identify appropriate services in his/her local area for people in crisis with mental illness and/or a developmental disability.
6. Various video clips are presented to provide officers with an understanding of the characteristics of persons with a mental illness and/or a developmental disability, and how to intervene more effectively with people in crisis. These video clips include realistic situations officers face and should be presented at the appropriate points in the lesson plan.
7. The lesson plan includes a practical exercise titled “Auditory Hallucinations.” The practical exercise will take approximately sixty minutes to complete.

A. Purpose

This exercise is designed to provide you an experience of hearing voices that is as close as possible to the experience of people with auditory hallucinations.



Auditory hallucinations refer to the experience of having false perceptions of sounds – often of voices – that have no real origin but are experienced as coming from outside the person’s head. They are not thoughts or an individual just thinking out loud. Auditory hallucinations are commonly experienced by people with severe mental illnesses. Approximately seventy-five percent of people with schizophrenia experience auditory hallucinations, up to half of the people with bipolar disorder experience them, approximately forty percent of people with post-traumatic stress disorder have auditory hallucinations, and about ten percent of people with severe depression have auditory hallucinations.<sup>1</sup> However, people with other brain disorders such as epilepsy, brain lesions, brain tumors, dementia, or delirium may also experience auditory hallucinations. In contrast to people who “hear voices” but are not mentally ill, people with severe mental illness typically hear auditory hallucinations more frequently, what they hear is often derogatory, and their functioning is more greatly affected by the hallucinations.<sup>2</sup>

**B. Exercise Conditions**

During this exercise, you will listen to an audio file on an MP3 player of simulated auditory hallucinations. While listening to these hallucinations, you will complete several different tasks designed to help you appreciate how he or she may impact an individual’s ability to concentrate, listen to others, and complete specific tasks. Some of you may find this exercise to be disturbing or upsetting. If you begin to feel distressed in any way while participating in this exercise, you may stop listening to the audio file, remove the earbuds, and remain quietly at your desk until the rest of the class has completed the exercise. For those who choose to participate, please allow the audio file to continue playing throughout the entire exercise.

**C. Personnel and Equipment**

- One instructor
- “Auditory Hallucinations” audio file
- An electronic device capable of playing an MP3 audio file
- Earbuds/headphones for each student

**D. Procedures for Conducting the Exercises**

1. Distribute electronic devices and headphones/earbuds. Orient the class on how to operate the electronic devices, including how to turn it off and on, how to adjust the volume, and how to access the “Auditory Hallucinations” file on the device. After the orientation to the equipment is completed, the instructor should provide the following explanations of the tasks which the participants will complete while listening to the auditory hallucination audio file challenging his/her abilities to concentrate, listen, and follow instructions.

## *Individuals with Mental Illness and Developmental Disabilities*

2. Students should be told that, just like genuine auditory hallucinations, the voices and/or sounds may fade in and out, like a radio station with bad reception, and not to assume the machine has died if the voices and/or sounds briefly cease, but to wait to see if the voices restart. Students should be instructed to keep the audio file playing throughout the entire exercise, and not to pause or stop it until he/she has completed all of the tasks.
3. During the exercise, the student will complete several tasks while listening to the “Auditory Hallucinations” audio file.
4. The tasks are as follows and are located in the instructor and student handouts:

- Task #1 “The Interview.”

Students will take turns being interviewed by their partner. The interviewer will ask his/her partner a series of questions and will try to memorize his/her responses without writing the answers down. When the interviewer is finished asking questions, they switch roles, and the person who was answering questions then interviews his/her partner. Tell students that they will have ten minutes to complete their interviews. After ten minutes, or when all pairs are done interviewing, the instructor should quiz the students, asking each participant just a few short questions from the interview, such as, “What was your partner’s mother’s maiden name?” “Where was your partner born?” “What was the name of your partner’s first pet?”

- Task #2 “Suspect’s Description.”

Students will be tested on their ability to remember specific details of suspects, a residence, vehicles, and other important information. The instructor will read the scenario provided detailing information about a robbery that has occurred. The students should be instructed not to take any notes while listening to the scenario. After the instructor has finished reading the scenario, students will be asked a series of questions about the details of the scenario. Students will be given ten minutes to answer the questions. When they have finished the test, review the answers.

- Task #3 “Concentration Skills.”

Students will be tested on their ability to concentrate. The instructor should say to the class, “Now turn your answer sheet

over, and complete the following tasks on the blank side of this paper. First, spell the word, “WORLD” backwards and when you are done, write down the names of the months of the year backward, beginning with January. So to start, you would write, “y-r-a-u-n-a-J.” “Complete this task as quickly as you can.” After a couple of minutes, provide the following instructions. Instruct the students to count backward from 30 by threes. To do this, start with 30, subtract three to get 27, then subtract three from 27 to get 24, and subtract three from 24 to get 21, etc. Write down each of your answers on the sheet of paper. Complete this task as quickly as you can. When you finish counting backward from 30 by three’s, then count backward from 100 by seven, as quickly as you can, and providing your answers on paper. You will have three minutes to complete these tasks. After three minutes, stop the task and provide the students with the following instructions. “Draw on your paper three rows and columns of nine dots, with three rows of three dots and three columns of three dots to look like this.” [The instructor should draw an illustration of the following diagram on the board as an example.]



“Now, take your pen or pencil and draw four straight lines connecting all of the dots without lifting your pencil or pen from the paper.” Allow one or two minutes for this task.

5. After all of the tasks have been completed, which should take approximately forty-five minutes, have the students turn off the electronic devices, and collect them before debriefing the experience. Then begin the debriefing section of this exercise.
6. Debriefing should include the following:
  - a) You should ask the class to provide his/her reactions to this exercise. Ask if having the auditory hallucinations affected their ability to concentrate, to listen to others, and to follow instructions.
  - b) Ask them:
    - (1) “Now that you’d had the experience of hearing voices, what might you do differently when interacting with someone experiencing hallucinations?” Responses may

include repeating instructions, making instructions simpler to follow, being more patient, reducing outside stimuli and distractions (i.e., quieting the environment), and working harder to maintain the person's attention.

- (2) "You could stop the voices and remove the headphones/earbuds at any time. How would it affect you if you could not stop the voices, and had to listen to them constantly?" Responses should reflect greater empathy for those individuals experiencing this symptom of psychosis.
- (3) "You have just experienced one symptom of psychosis. Often, individuals with severe mental illnesses may experience other symptoms, as well. For example, in addition to the voices, a person may experience delusions that go along with the voices. He/she may think the voices he/she hears are of the voices of God talking to him/her. And if you are talking to the person at the same time, God is talking to him/her, to whom do you think he/she may pay more attention?"
- (4) Keep in mind, too, that although we attempted to make these hallucinations as similar as possible to those of people who experience psychosis, these hallucinations can vary greatly from person to person.<sup>3</sup> Some people may only hear noises or sounds, but not voices at all. Some hear only one voice; some may hear many different voices. The voices may be of people he/she knows or have known, or he/she may be completely unfamiliar to the person. And the voices may be of either gender. Some voices may simply provide commentary on what the individual is doing, saying things like, "he's going to open the door now." Most typically, the voices are negative. However, some people may experience voices more positively, even finding companionship in the voices. Some people experience "command hallucinations," in which the voices command the individual to do something. Some people feel compelled to act on those commands. Others who have command hallucinations can ignore them. People with mental illness are more likely to act on commands that are benign and harmless than those that urge harm to others.<sup>4</sup> The relationship between severe mental illness and violence to others is much less than is commonly believed. Most people with mental illness are of greater risk to themselves than to

others. Just because the individual has auditory hallucinations does not mean that person is violent or dangerous.

8. The lesson plan includes practical exercises that officers may face involving persons with mental illness or developmental disabilities. Using the material presented in the lesson plan, the instructor should have the class determine the following for each of the scenarios:

- What is the appropriate de-escalation response?
- Is the respondent dangerous to self or others?
- What legal authority does law enforcement have?
- What is the officer's best course of action? (Can the situation be resolved on the scene, can the person get services voluntarily to help the illness, or is a commitment or other enforcement action the appropriate step to take?)

A. Purpose

During each practical exercise, the responding officer's safety awareness should be challenged but not taken to extremes such as possibly being presented with some aspect of physical and verbal aggression, but not being placed in a "no-win" situation. Students should first be coached and then allowed an opportunity to exercise individual decision-making skills in regards to determining the appropriate de-escalation response and determining if the individual is a danger to him or herself. Additionally, the student should ascertain what legal authority he or she has in determining what course of action to take (i.e., resolving the situation on-scene, gaining voluntary compliance with the individual to get help with the illness, take enforcement action if that is the appropriate action necessary, etc.).

B. Exercise Conditions

1. Exercises should be conducted after the lecture has been completed.
2. Exercises require eight hours to administer.
3. Exercises can take place utilizing a residential environment, commercial environment, or public setting.
4. These exercises are designed for a class of twenty students or less.
5. These exercises require some spontaneous reactions from the role players, but he or she should not try to escalate the violence or emotions in all of them. The officers should have the opportunity to discuss alternatives to arrest and to help the role players problem solve.

C. Personnel and Equipment

1. Role players will be needed.
2. Duty belt, inert spray, radios, training weapons, handcuffs, safety glasses, and patrol vehicles for responding officers.

“Training weapons” are props or training aids that are used in scenario-type training events. Training weapons such as polymer molded firearms and weapons that have been rendered “safe” to the point that they cannot be loaded and/or fired. Weapons rendered “safe” have had modifications such as; barrel plugs or inserts that will not allow the loading of lethal ammunition, firing pin removal, etc. Training weapons should be marked and physically inspected for each session of training to ensure the integrity of a “safe” training environment.

3. Training weapons, safety glasses, keys, cell phone, and props (to include torn clothing, make-up, fake blood, beer cans and bottles, rubber knives, glass ashtrays, clothing in a bag) for role players.

D. Procedures for Conducting the Exercises

1. Before the practical exercise(s), the instructor will review the safety briefing form with all participants, to include role-players and students. The lead instructor and each participant must sign and date the safety briefing form. The instructor shall retain signed copies of the forms in each student’s permanent file signifying that the participants have reviewed and understood the safety instructions given.
2. Students will respond to a minimum of two scenarios. One evaluation form may be used for multiple scenarios. The instructor shall retain the practical exercise evaluation form in each student’s permanent file.
3. Advise the students and role players of the following instructions:
  - a) Tell the role players that his/her actions will be based on the scenarios.
  - b) During the first scenario, one student will be the contact officer, and the other student will be the cover officer. The contact officer is responsible for making all of the decisions based on the scenario provided, but he/she may confer with the contact officer if necessary. The contact officer should then explain why he/she made the decision he/she made and ensure understanding. During the second scenario, the roles change, and the other student must make the decisions.

## *Individuals with Mental Illness and Developmental Disabilities*

4. After each scenario:
  - a) Collect radios, weapons, and glasses and give to next students.
  - b) Critique and evaluate.
5. Evaluate the students using at least two of the four scenarios. One evaluation form may be used for multiple scenarios.
  - a) Scenario #1 – Suicidal Teenager

Officers respond to a teenage male who has called the suicide hotline stating he just wants to see his mom and wants to kill himself. The line disconnects, and Suicide Hotline makes contact with the Police Department. Officers make contact with John age 14. John states that his mother passed away from cancer, and his father barely speaks to the children anymore. John states that he and his two siblings are alone a majority of the time as his father is working so much, and he feels very lonely and does not wish to live anymore. He states that he intends on killing himself so he can be with his mother. John is not aggressive but does not want to interact with officers.

Role Player: The subject should appear with little to no effect, and will go from speaking to simply staring off and failing to respond to the officer. The subject will express that it doesn't matter anymore and that he just wants to be with his mother. If the officer uses empathetic language, the subject will talk about the trauma of watching his mother get sicker and sicker, and the day she passed away. The subject will express that his family is gone, and he is overwhelmed and feels there is no point to life. The subject will not have a plan and has no immediate access to weapons in the home.

Expected Outcome:

- Did the officer introduce himself in a personal manner?
- Did the officer ask the subject's name and use it frequently?
- Did the officer ask pertinent questions about the subject's situation to help determine the best course of action?
- Did the officer engage in bias-free language?
- Did the officer continue to engage the subject in conversation and utilize empathetic language to build rapport and trust?
- Did the officer work towards a plan of action?

- If needed, did the officer turn to other people (family member, another officer, respondent's friend, etc.) to get a better understanding of how to proceed?

b) Scenario #2 – Depressed Individual

Officers are called to the local high school about a 16-year-old female who has cut her wrist in the bathroom. Upon officer's arrival, he/she finds the cuts are superficial, and the female has several healed scars from similar cuts. The female does not readily engage with officers; however, does tell officers that no one cares about her anyway. She states that it is her body, and no one can tell her what to do. She states no one will listen anyway then stops speaking altogether.

Role Player: The subject will present with an attitude that she does not need to speak to anyone. She will advise she is fine and express anger fluctuating in a depressed state. The subject will advise that it does not matter what she has to say, and unless the officer engages in rapport and empathetic language, the subject will sit and stare away from the officers.

If the officer engages with the subject appropriately using rapport building and empathic language, she will reveal that she was molested by her step-father for several years; however, when she finally disclosed the sexual abuse, her mother became angry with her, and now her mother has nothing to do with her. If the officer engages with the subject in a harsh/insensitive manner or invades her personal space, she will begin shutting down emotionally, and experience increased anxiety, as this will trigger flashbacks of past abuse.

The subject has little effect, however, appears to become somewhat saddened when discussing the issue with her mother. The subject advises that she should have never told anyone, and she would have been better off. She is quite clear that she is not trying to harm herself; she simply cuts because she can control the pain. The subject advised that she and her mother move around a great deal, and she is just tired. She states that she does not sleep because she never feels safe, and she has trouble eating when she is at home. She stated that she has no friends, and she is not doing well in school because she is always thinking about her step-father and what he did to her. She said she has nightmares that keep her up throughout the night.

Expected Outcome:



- Did the officer introduce himself in a personal manner?
- Did the officer ask the subject's name and use it frequently?
- Did the officer ask pertinent questions about the subject's situation to help determine the best course of action?
- Did the officer engage in bias-free language?
- Did the officer continue to engage the subject in conversation and utilize empathetic language to build rapport and trust?
- Did the officer work towards a plan of action?
- If needed, did the officer turn to other people (family member, another officer, respondent's friend, etc.) to get a better understanding of how to proceed?

c) Scenario #3 – Bi-polar Individual

Officers respond to a report of loud noises coming from a house. Neighbors report hearing the female occupant talking and singing loudly, noise is extremely loud, as well as sounds of items being thrown about the house and even glass breaking. Neighbors further report that the thirty-something female lives in the house alone and is usually very quiet.

Officers knock on the door, and after several minutes, the female occupant answers. It is difficult to hear over the loud noise. She states her name is Regina, and she does not understand why officers are at her door. She appears unharmed physically but is wearing clothing that does not match and seems randomly put together. Looking over her shoulder, officers notice the living room has items thrown all about, and a large mirror appears to be broken [For safety purposes, a PDF document of the large broken mirror is to be used. This document can be located in the instructor handouts folder]. Regina is not aggressive toward officers. She seems unable to stop moving and immediately retreats into the house near a large paper tablet on a stand where it appears she has been drawing.

Role Player: The subject should appear highly energized and distracted. She seems unable to focus on one thing at a time and bounces back and forth around the room. She changes her focus from one officer to the other, then to the radio, and then back to her drawing, which she has been doing all day. If officers ask her to turn down the radio, Regina will state that

she needs to listen to her “music” and that it helps her to be creative with her drawing. If the officers use empathetic and rapport-building language, Regina will state that she has not slept in three days nor eaten in two. She will state she does not need sleep or food to function – that life provides all she needs! She will have intermittent conversations with the people on the radio, easily becoming distracted away from the officer’s questions. Regina does have medicine to help with her bi-polar diagnosis but does not like to take it because she gains weight. Officers will need to allow her to draw and listen to the radio, at a more controlled level. This will help the officer get the information needed to help her. She has no family in the area but will consider going for an assessment if officers can work through her distractions. If officers try to completely remove the distractions, Regina will shut down and tell officers to leave her house.

Expected Outcome:

- Did the officer introduce himself in a personal manner?
- Did the officer ask the subject’s name and use it frequently?
- Did the officer ask pertinent questions about the subject’s situation to help determine the best course of action?
- Did the officer engage in bias-free language?
- Did the officer continue to engage the subject in conversation and utilize empathetic language to build rapport and trust?
- Did the officer work towards a plan of action?
- If needed, did the officer turn to other people (family member, another officer, respondent’s friend, etc.) to get a better understanding of how to proceed?

d) Scenario #4 – Individual with Schizophrenia

You are dispatched to a scene with an individual who has broken the windows out of his own home. He says Bin Laden is hiding in the home. He states his name is “Charlie,” and he says he lives with Bin Laden in the house, but he wants Bin Laden to move out. He states that he’s going to replace the windows with mirrors so Bin Laden can confront his sins and be driven out of the house. He says, “Bin Laden is using my house as a ‘hidey hole!’” and asks for the officer’s help removing Bin Laden.

Role Player: There is no one currently in the house, and neighbors confirm that Charlie lives alone. If the officer says that Bin Laden isn't in the house and is, in fact, dead, the role player should state that Bin Laden's death was a hoax, like the moon landing, and that he's heard Bin Laden in the attic singing Islamic chants and telling him to do "things," but he won't do them because he's a child of God.

Expected Outcome:

- Did the officer introduce himself in a personal manner?
- Did the officer ask the subject's name and use it frequently?
- Did the officer ask pertinent questions about the subject's situation to help determine the best course of action?
- Did the officer engage in bias-free language?
- Did the officer continue to engage the subject in conversation and utilize empathetic language to build rapport and trust?
- Did the officer work towards a plan of action?
- If needed, did the officer turn to other people (family member, another officer, respondent's friend, etc.) to get a better understanding of how to proceed?

e) Scenario #5 – Autism

You are on foot patrol at a street festival when you notice a young adult make pick up a flashlight from a vendor's table and start to walk away with it. The young man is turning the flashlight on and off, fascinated by the light, as he is walking. As you are approaching the young man, the vendor is yelling at him to stop. When you ask the young man what he is doing, he stared at you blankly. When you ask him what he is doing with the flashlight, he holds it closer to his chest and begins to rock back and forth. When you ask him his name, he starts to rub aggressively and hit his head and makes deep moaning noises. The vendor is still yelling for him to return the flashlight or pay for it, and the young man is growing increasingly agitated.

Role Player: The young man has autism and is nonverbal. He is very interested in lights of all kinds. Too much external stimuli makes him anxious, and he tries to calm himself down by rocking back and forth. He is carrying a backpack, and inside of it is an identification card with personal and caregiver information.

The officer should recognize symptoms of autism. The officer should seek to minimize external stimuli, i.e., noise, by asking the vendor not to yell and explaining to the vendor that the young man has a disability.

The officer should take care not to invade the subject's personal space and not to use a loud voice. If the officer uses a loud voice, yells at the subject, invades his space, or is insensitive to this disability, the role player should become increasingly loud and agitated, increasing behaviors of hitting self.

It is apparent the young man is fascinated by the light. The officer should use this to build rapport. The officer can show the young man his flashlight, perhaps bringing the young man to a quieter area at the festival to further decrease external stimuli, and with it, the young man's anxiety. The officer should scan for identification, and once the young man has calmed down some, see if the young man will show the officer his backpack. Once identification is obtained, the caregiver should immediately be contacted. Once caregiver arrives, the flashlight may be returned to the vendor or purchased.

Expected Outcome:

- Did the officer introduce himself in a personal manner?
- Did the officer ask the subject's name and use it frequently?
- Did the officer ask pertinent questions about the subject's situation to help determine the best course of action?
- Did the officer engage in bias-free language?
- Did the officer continue to engage the subject in conversation and utilize empathetic language to build rapport and trust?
- Did the officer work towards a plan of action?
- If needed, did the officer turn to other people (family member, another officer, respondent's friend, etc.) to get a better understanding of how to proceed?

- f) Scenario #6 – Post-Traumatic Stress Disorder  
Officers are sent to a residence about a family disturbance. Officers are advised the male in the home has “lost it.” He wakes up screaming and is saying he can't deal with this anymore, and he just wants to die. Officers are advised there

are no weapons within the home. The male is currently in the living room, crying on the floor.

Role Player: You will need to present with a very agitated demeanor while expressing that you do not want to live anymore because you feel like you are a failure. You consistently repeat that you were not a good father, and you should have done better. You also continuously tell the officer how tired you are. You express you can't sleep because of the nightmares. After the officer speaks to you in a manner that demonstrates empathy, express to him/her that you have been arguing with your son about homework and grades. Explain that during the argument, the son went to his room and yelled that he hated you, and you responded "yeah...well back at you!" Moments later you heard a bang, and your son had shot himself with your duty weapon you had not yet secured. You were fired from your job as a law enforcement officer because you were always late, allegations of excessive force, and caught drinking on the job. You blame yourself for your son's death, and the last words you said to him were that you hated him.

Female Role Player (if available): You need to appear very concerned. You are very upset and distressed. You explain that your son killed himself one year ago today, and your husband has never been able to speak of the incident. You advise that he gets drunk, he no longer interacts with the family, and he will not go into the room and will not speak about the incident with a therapist. You will express that he makes you feel like a bad mother because you were able to process, and although you still cry and grieve, you have been able to push through for your other children.

Expected Outcome:

- Did the officer introduce himself/herself in a personal manner?
- Did the officer ask the subject's name and use it frequently?
- Did the officer ask pertinent questions about the subject's situation to help determine the best course of action?
- Did the officer engage in bias-free language?
- Did the officer continue to engage the subject in conversation and utilize empathetic language to build rapport and trust?
- Did the officer work towards a plan of action?

## *Individuals with Mental Illness and Developmental Disabilities*

- If needed, did the officer turn to other people (family member, another officer, respondent's friend, etc.) to get a better understanding of how to proceed?
9. To promote and facilitate law enforcement professionalism, three ethical dilemmas are listed below for classroom discussion. At his/her discretion, instructors must provide students with each ethical dilemma listed below. Sometime during the lecture, instructors should “set the stage” for the dilemma before taking a break. Instructors are encouraged to develop additional dilemmas as needed.
- a) You and your partner have responded to a call involving a person with mental illness using the protocol that your department has. The protocol specifies calling the mobile crisis team for assistance, which might take up to an hour to respond in person. Your partner says: “That takes way too long! Let’s just take him to the emergency department, which is five minutes away.” What do you do?
  - b) A woman calls the police when her daughter, who is a young adult, has a psychotic episode—she doesn’t recognize her mother and is becoming violent. When you and your partner arrive the situation deteriorates to where one of you has to sit on the young woman to restrain her. Meanwhile, the young woman pulls the hair of your partner because she says she is being assaulted by a terrorist. Your partner is angry and wants to take her to jail and charge her with assault; you feel it is part of the illness and want to take her to a crisis center. What do you do?
  - c) You and your partner respond to a “suicidal person with a gun” call. As you arrive, you see the person on a porch. You listen and empathize with the person, and you are in the process of making a plan. All this takes more than thirty minutes. Meanwhile, your partner yells to you, “Hurry up! I ain’t got all day.” What will you do?

## ***Individuals with Mental Illness and Developmental Disabilities***

TITLE: INDIVIDUALS WITH MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

I. Introduction

A. Opening Statement

**NOTE: Show slide, “Individuals with Mental Illness and Developmental Disabilities.” Greet class, introduce yourself, and provide a brief background. Ask the class why he or she thinks it is important for officers to know how to interact with persons with mental illness and/or developmental disabilities as well as other special populations.**

**NOTE: Ask the class to provide you with some of the characteristics a person with a mental illness may display? Record their answers on a flip chart, then revisit after the students know more about the actual characteristics.**

Among a study conducted with one hundred and seventy-four law enforcement agencies, the study concluded that seven percent of all their officers’ contacts, both investigations and complaints, involved persons believed to have a mental illness.<sup>5</sup> An officer’s response to a person with mental illness and/or developmental disability may make the difference between a positive outcome in which the respondent gets help or a tragic one in which someone, either the officer or the individual, is harmed. It is important to know how to help people in crisis, and how to get them help if further assistance is needed.

B. Training Objectives

**NOTE: Show slides, “Training Objectives.”**

1. State the characteristics that a person with a mental illness or a developmental disability may display to law enforcement.
2. Identify warning signs which may aid in the response to a person who may intend to commit suicide.
3. Identify effective responses to an individual with mental illness and/or a developmental disability, including but not limited to, de-escalation and the use of other crisis response resources or strategies.
4. State when it is appropriate to seek an involuntary commitment order and describe the steps involved in obtaining an involuntary commitment order.
5. Identify local mental health resources, including crisis response resources that are available through the state and through local communities.

## ***Individuals with Mental Illness and Developmental Disabilities***

6. Given reality-based training scenarios, answer the following questions:
  - a) What is the appropriate de-escalation response?
  - b) Is the respondent dangerous to self or others?
  - c) What legal authority does law enforcement have?
  - d) What action should the officer take?

### C. Reason

People with disabilities often end up in the detention facility for committing minor crimes that pose little risk to public safety, when what he/she need is treatment and care. Knowing what to do during encounters with people with mental illness and/or developmental disabilities will not only result in getting them the care he/she needs, this knowledge can also help you stay safe on the job. The officer who actively embraces this training and can apply it on the job increases the chances of a safe encounter with people with disabilities.

## II. Body

### A. Characteristics

**NOTE: Show video, *Our Voices*.**

#### 1. Mental illness

**NOTE: Show slides, “Characteristics of Mental Illness.”**

- a) First of all, mental illness is an illness, just like any other. Mental illness is also common; each year, one in five adults experiences a mental illness.<sup>6</sup> Serious mental illnesses are medical conditions that can affect a person’s thinking, feeling, mood, and behavior. Anyone, regardless of age, race, religion, social status, or income, may have a mental illness. Mental illnesses are not caused by a “weak will,” poor upbringing, or defects in moral character. He/she cannot be overcome by will-power or spiritual enlightenment. Like other medical conditions, such as diabetes or heart disease, serious mental illnesses are chronic conditions caused by the person’s genetic predisposition to develop the illness, in conjunction with factors in his or her environment.
- b) “The best treatments for serious mental illnesses today are highly effective; between 70 and 90 percent of individuals have



a significant reduction of symptoms and improved quality of life with a combination of pharmacological and psychosocial treatments and supports.”<sup>7</sup> However, research shows that less than half of all people dealing with a mental illness receive treatment.<sup>8</sup> There are often many reasons people cannot receive care. Those reasons could include a lack of insurance coverage, or not having access to the correct care in their community. However, there is also stigma about mental illness in our society, likely due to the lack of education on the topic.

**NOTE: The instructor will ask the students to provide words that someone would use to describe someone who is diagnosed with cancer. Some examples provided by students may include “fighter,” “strong,” “courageous,” etc. Write these words on the first sheet of flipchart paper. Next, have an identical sheet of paper beside the first sheet. Ask the students to give words that someone would use to describe someone with mental illness. After the students are done brainstorming, ask the students why there is such a discrepancy between the words we use for two medical conditions. Emphasize answers around stigma, fear, lack of knowledge, or understanding. Are there words that should be moved over from the cancer sheet to the mental illness sheet? How can we promote a better understanding of mental illness in our communities?**

- c) Mental illness is not the same as mental retardation. While mental illness may affect an individual’s attention span or concentration, making it difficult for the individual with mental illness to follow directions or instructions, it does not affect a person’s overall intellect.
- d) “The U.S. Surgeon General has found that the likelihood of violence from people with mental illness is low. In fact, ‘the overall contribution of mental disorders to the total level of violence in society is exceptionally small.’”<sup>9</sup>
- e) Finally, people with mental illness can and do contribute to society. Consider how much richer our lives are because of such people as Isaac Newton, Ludwig Von Beethoven, Michelangelo, Charles Dickens, Abraham Lincoln, Winston Churchill, Vincent Van Gogh, Leo Tolstoy, and Ernest Hemmingway, all of whom had mental illness.<sup>10</sup> News Anchor Jane Pauley, singer Britany Spears, actor Ben Stiller, and actress Catherine Zeta-Jones are other people you may have heard of who are living with mental illness.<sup>11</sup> Carrie Fisher spoke openly about her lifelong troubles with bipolar disorder, depression, and addiction.<sup>12</sup> Robin Williams struggled with depression before his death.<sup>13</sup> Lady Gaga suffers from post-traumatic stress disorder.<sup>14</sup> Lastly, Demi Lovato lives with bipolar disorder.<sup>15</sup>

## ***Individuals with Mental Illness and Developmental Disabilities***

**NOTE: Show slide, “Symptoms of Mental Illness.”**

2. Symptoms of mental illness can be evident in the person’s loss of contact with reality (as occurs with psychosis), loss of hope (as with depression), loss of control of his or her behavior (as with mania), or loss of ability to maintain proper perspective (as occurs with anxiety disorders).<sup>16</sup> Pay attention to verbal and nonverbal cues that a person with a mental illness may display.
  - a) Psychosis – loss of contact with reality due to mental illness<sup>17</sup>
    - (1) Verbal indicators

**NOTE: Show slide, “Loss of Contact with Reality – Verbal Indicators of Psychosis.”**

- (a) Some may exhibit speech that is disorganized, or even incoherent. For example, in response to asking a person’s name, the person may reply, *“My ID is suicide, and you are marshaling the warrants of death.”*
- (b) Associations between ideas he/she expresses may be very loose, and it may be difficult to follow his or her train of thought.
- (c) There may be very little actual content in the person’s speech.
- (d) For others with loss of reality, speech may be organized, and he/she may be able to respond appropriately to direct questions, but longer dialogues with them may reveal his or her delusions or false beliefs that persist in spite of evidence to the contrary.

- (2) Nonverbal indicators

**NOTE: Show slide, “Loss of Contact with Reality – Nonverbal Indicators of Psychosis.”**

- (a) May experience hallucinations that cause them to appear distracted, as if responding to voices that no one else hears, or he/she may even talk to or respond to those voices.

**NOTE: Introduce video by saying, “This scene accurately portrays the experience of auditory hallucinations, which is a common symptom of people with schizophrenia. Although this scene involves a young boy, note that childhood onset of schizophrenia is**

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not common. Most people who develop schizophrenia begin having overt symptoms of the disorder in young adulthood (i.e., in his or her early 20's)." Show video, *Radio*, demonstrating auditory hallucinations.

**NOTE:** Show slide, "Loss of Contact with Reality – More Nonverbal Indicators of Psychosis."

- (b) May engage in odd or bizarre behavior
- (c) May exhibit agitation or emotional reactions that are extreme or are not appropriate to the social situation, such as giggling for no apparent reason, shouting at random passersby, or reacting with hostility without apparent provocation; or the person may seem unusually emotionally unresponsive
- (d) May exhibit odd posturing or feel compelled to repeat speech or behaviors of others
- (e) An example would be schizophrenia

**NOTE:** Show video, *Rainstorm*, demonstrating symptoms of schizophrenia. Show this video then ask students, "What verbal and nonverbal indications of loss of reality did you observe?" Responses should include delusions, such as references to "the other Florida," extreme emotional reaction not appropriate to the situation, such as hostility resulting from paranoid delusions, and bizarre behavior, such as being in the rain without an umbrella in the yard at night.

**NOTE:** Conduct practical exercise, "Auditory Hallucinations," as described in the instructor notes section.

- b) Depression – loss of hope due to mental illness<sup>18</sup>

**NOTE:** Show slide, "Loss of Hope: Depression."

Everyone feels sad or blue, on occasion. For most of us, these episodes are brief, don't significantly affect our day-to-day functioning, and are not life-threatening. Persons whose symptoms are better accounted for by "normal" grief are not considered to have clinical depression. However, some people, such as those with a mental illness like depression, suffer despair that is very severe, long-lasting, debilitating, and life-threatening. He/she may experience a sense of hopelessness and helplessness. People cannot just "snap out" of a depression. About thirty percent of people with depression attempt suicide.

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**NOTE:** Ask the class, “How many of you think you know someone who has experienced depression; let’s see a show of hands.” Chances are that you do, since “depression is a very common illness, affecting nearly one in ten people in the United States.”

(1) Verbal indicators

**NOTE:** Show slide, “Loss of Hope: Verbal Indicators of Depression.”

- (a) Speech is often slowed down, with long pauses, or silences
- (b) The content of his or her speech will reflect his or her hopelessness and despair, and (perhaps) suicidal thoughts
- (c) Often express his or her feelings of guilt and worthlessness
- (d) Report seeing no solution to his or her problems, other than death, which he/she may view as a relief from his or her pain

(2) Nonverbal indicators

**NOTE:** Show slide, “Loss of Hope: Nonverbal Indicators of Depression.”

- (a) Often lacks energy and seems slow or lethargic
- (b) Responds to others with irritation or by withdrawing and avoiding social interaction
- (c) As the person becomes more severely depressed, the symptoms increase
- (d) May be tearful, confused, mute, or give only limited responses to questions that are asked
- (e) Has reduced energy, low sex drive, and disturbances in sleep and appetite

c) Mania – loss of control due to mental illness<sup>19</sup>

**NOTE:** Ask the class, “Have you ever known or seen someone who seemed out-of-control due to mental illness?” If students answer affirmatively, you may ask them to describe what he/she observed. If not, then you should say, “The following slides

describe what you may observe in someone who is out-of-control due to the manic phase of a bipolar disorder.”

- (1) Verbal indicators

**NOTE: Show slide, “Loss of Control: Verbal Indicators of Mania/Bipolar Disorder.”**

The person may exhibit rapid speech that is pressured, as if the individual has difficulty containing his or her speech, which may come out in a torrent, flowing from one topic to another with great rapidity. The content of speech may reflect an inflated sense of self or grandiose plans or ideas. Other individuals, with loss of control due to mental illness, will express an irrational hostility to others. He/she may verbally lash out at others impulsively. He/she may also report going for days without needing sleep.

- (2) Nonverbal indicators

**NOTE: Show slide, “Loss of Control: Nonverbal Indicators of Mania/Bipolar Disorder.”**

Some persons with loss of control of behavior due to mental illness exhibit excessive energy and engage in risky behaviors with little concern for consequences. He/she may begin numerous projects that he/she has difficulty completing, spend money excessively, act impulsively, exhibit a hyper-sexuality, and reduced inhibitions.

- d) Anxiety disorders – loss of perspective due to mental illness

Mental illnesses may result in the individual losing perspective about relative risks, dangers, or other things leading to problems in the person’s ability to function socially, occupationally, or in other areas of life.<sup>20</sup> Sometimes, these problems and others result from trauma that the person has experienced.<sup>21</sup> Other times, the loss of perspective may be due to other reasons, including biochemical imbalances or genetic tendencies, to develop the mental health disorder.<sup>22</sup> Officers should be aware that he/she is at high risk for developing trauma disorders, due to the nature of the work and likelihood of experiencing trauma on the job.<sup>23</sup>

- (1) Verbal indicators<sup>24</sup>

**NOTE: Show slide, “Loss of Perspective: Verbal Indicators of Anxiety Disorders.”**

Persons with mental illness who have loss of perspective may express being overwhelmed with his/her fears and worry. The content of his/her speech may reflect his or her obsession about his/ her worries or fear that something he/she does will or will not lead to some catastrophic event. He/she may report having nightmares or intrusive thoughts about a traumatic event.

- (2) Nonverbal indicators<sup>25</sup>

**NOTE: Show slide, “Loss of Perspective: Nonverbal Indicators of Anxiety Disorders.”**

Persons with loss of perspective may seem panic-stricken or anxious. The person’s heart may race, or the person may become highly agitated. Loss of perspective may be evident in the person’s surroundings, as well as the individual’s behavior. For example, a person may hoard things, to the point that the home is overflowing with belongings. Attempts to help the person get rid of clutter are met with resistance and panic. Other people who have lost perspective due to mental illness may feel driven by intense anxiety to compulsively engage in certain behaviors, like cutting himself/herself, or ritualistic behaviors, such as excessively cleaning his/her house or washing his/her hands.

- (3) Common anxiety disorders

- (a) Post-traumatic stress disorder (PTSD)

**NOTE: Show slide, “Post-Traumatic Stress Disorder.”**

When we hear the term PTSD, we often make a quick association with the military, war, and trauma. Although this can certainly be true, this is not the only population who may develop symptoms of PTSD. “PTSD is a mental health problem that some people develop after experiencing or witnessing a life-threatening event, like combat, a natural disaster, a car accident, or sexual assault.”<sup>26</sup> According to a current study, nearly 50% of all adults living in the United States will experience a traumatic event, yet only 10% of women and 5% of men

develop PTSD.<sup>27</sup>

- i) PTSD can manifest due to a variety of traumatic events to include:
- Witness or victim of a natural or man-made disaster.<sup>28</sup>
  - Individuals who fell victim to Katrina and the effects of Katrina exhibited mental health concerns at two times the rate as previous to Katrina, and many exhibited signs of probable PTSD.<sup>29</sup>
  - Victim or witness to a violent event(s) or child neglect.<sup>30</sup>
  - According to a study conducted on childhood victims, 37.5% of those sexually abused, 32.7% of those physically abused, and 30.6% of victims of childhood neglect presented with symptoms consistent with PTSD.<sup>31</sup>
  - Victims of domestic violence presented with symptoms of PTSD between 31% and 84% of the time.<sup>32</sup> The variance was associated with the form of violence, repeated acts of violence, and whether the abuse included a sexual component.<sup>33</sup> “5 million children in the US alone grow up living in homes with every year.”<sup>34</sup>
  - Traffic crashes, either witnessed or an individual being directly involved, have been shown to result in PTSD as well.<sup>35</sup>
  - Approximately 9% of individuals who have survived a serious car crash develop such symptoms.<sup>36</sup>

- Those who have been involved in an officer-involved shooting, responded to or investigated a homicide(s), seen someone die, seen an abused child(ren), seen a victim(s) of a serious traffic accident, seen a dead body, etc. may exhibit symptoms of PTSD such as re-experiencing the event, avoidance, and hyperarousal.<sup>37</sup>

**NOTE: Show video, *Marlene Tully*.**

- ii) Adult symptoms of PTSD<sup>38</sup>

**NOTE: Show slides, “Adult Symptoms of PTSD.”**

Individuals presenting with PTSD may show a variation of symptoms. Adults and children generally manifest his or her symptoms differently. Adults typically have demonstrated one or more of these symptoms.

- Replaying the experience repeatedly and having nightmares. The person may feel as if he/she is within the time and place of the past event. These are typically referred to as flashbacks.
- Individuals may avoid situations that bring back memories of the traumatic event. For example, a date rape victim may refuse to go out anymore even though previously he/she was very social. He/she may avoid or refuse to speak about the event.
- May demonstrate negative feelings towards himself/herself or others. The person may express guilt or shame. This may also be an expression of survival



guilt in which he/she was involved in a traumatic event where he/she survived while others did not.

- May no longer enjoy things he/she once did or finds it difficult to find joy in anything; feel that he/she is in constant danger; have a difficult time trusting others; experience emotional numbness/lack of feelings.
- Some may appear anxious; this is typically referred to as hyperarousal. May appear jittery and always looking out for the next threat or may express difficulty sleeping or concentrating.
- The person may take part in risky behaviors such as drug or alcohol use. The person may anger easily or appear to have an irritable attitude.

**NOTE: Show slides, “Children Symptoms of PTSD.”**

- iii) Children may manifest PTSD symptoms differently. According to current research, the following have been provided as examples of PTSD symptoms in children. It is important to remember that every child is different and, as such may or may not present in the manner another child of the same age may.<sup>39</sup>

Some symptoms may include:<sup>40</sup>

- Children under the age of six may begin to exhibit issues with separation anxiety. He/she may begin to have trouble sleeping or reenact the trauma when playing.

- Children between the ages of seven to eleven may also act out the trauma through play, drawings, or stories. Some may have nightmares and become more irritable or aggressive. Many of these children will try to avoid school, have issues with completing his/her schoolwork, and have problems making friends.
- Children in the age group of twelve to eighteen very often will present with symptoms very similar to those of adults. He/she may appear depressed, anxious, withdrawn, or participate in reckless behavior like substance abuse or running away.

iv) Interacting with an individual with PTSD

**NOTE: Show slides, “Interacting with an Individual with PTSD.”**

- According to studies involving 1140 incarcerated male felons, researchers found that of the 1140 male felons, those who were incarcerated for an expressive act of violence presented with at least one symptom of PTSD.<sup>41</sup> It is important to understand that not all individuals with PTSD are inherently violent; however, you must be vigilant in watching for behavior, which may indicate the possession of a weapon. This is vital to remember when interacting with a military member who is armed. He or she is trained never to give up a weapon; therefore, you may not be able to get him or her to simply drop the weapon as you

may in other population groups, especially if he or she is still “in the moment of battle.”<sup>42</sup>

- Do your best to reduce high-pressure situations. Try to calm the environment.<sup>43</sup>
- Do not treat the person as a “typical” person who has PTSD, as people who experience trauma do so differently. Treat each person you encounter as an individual with respect and dignity. Ask them what you can do to help them.<sup>44</sup>
- Be patient. The person may repeat things several times. He/she may present information in a manner in which seems very disorganized. Do not interrupt him/her.<sup>45</sup>
- Determine if he/she has a support person he/she would like for you to call. Remain calm; if you are excited, he/she may react to your excitement.<sup>46</sup>
- Understand the symptoms of PTSD may fluctuate over time. There may be periods in which the person may experience times of ease, and other times may be very difficult.<sup>47</sup>

v) Caregiver stress<sup>48</sup>

**NOTE: Show slide, “Caregiver Stress.”**

Although you may be responding to an individual in crisis, more than likely, you will also be interacting with a caregiver. A caregiver who is in an intimate relationship with the individual with PTSD is possibly undergoing a dramatic

change in their own lives and relationship. He/she may experience symptoms very similar to PTSD himself/herself or, at the very least, may be experiencing chronic stress. He/she may have to develop coping skills to combat the stigma often associated with mental illness. He/she may feel the need to compensate for the individual's behaviors and mannerisms. It is important to understand he/she may exhibit very intense emotions towards you that may range from anger to a depressed demeanor.

- vi) Law enforcement and PTSD: We are not immune.

**NOTE: Show slides, “Law Enforcement and PTSD – We Are Not Immune.”**

Although we have already discussed law enforcement's susceptibility to developing PTSD, let's explore this further. Law enforcement officers who accumulate stress over time without any intervention or appropriate coping methods can cause physical symptoms such as gastrointestinal disorders, high blood pressure, and coronary disease.<sup>49</sup> Far too often, this buildup of stress may result in the officer committing suicide and often with his or her duty weapon.<sup>50</sup>

“In 2018, at least 167 officers died by suicide, more than the total number of line-of-deaths resulted from 15 other causes such as felonious assault, patrol vehicle accident, heart attack, duty-related illness.”<sup>51</sup>

In an article written by Beverly J. Anderson, she writes about the myth perpetuated by law enforcement, the media, and the public that police officers can routinely be exposed to some of the worst of humanity with no ill effects.<sup>52</sup> She further points out that not only is

this a falsehood, but research has shown that the cumulative stressors of witnessing car crashes, murders, child abuse, and other forms of violence in addition to working rotating shifts, will affect officers emotionally and physically, resulting in alcoholism, divorce, domestic violence, heart attacks, cancer, depression, and suicide.<sup>53</sup>

3. Developmental disabilities

**NOTE: Show slides, “Developmental Disabilities.”**

- a) N.C.G.S. 122C-3(12a) defines a developmental disability as “a severe, chronic disability of a person that satisfies all of the following:
- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments.
  - (2) Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22.
  - (3) Is likely to continue indefinitely.
  - (4) Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (a) Self-care,
    - (b) Receptive and expressive language,
    - (c) Capacity for independent living,
    - (d) Learning,
    - (e) Mobility,
    - (f) Self-direction, and
    - (g) Economic self-sufficiency.
  - (5) Reflects the person’s need for a combination and sequence of special interdisciplinary, or generic care,

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treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated.”<sup>54</sup>

(6) “When applied to children from birth through four years of age, a developmental disability may be evidenced as a developmental delay.”<sup>55</sup>

b) Developmental disabilities may include but are not limited to:

(1) Intellectual disability (formerly known as mental retardation)

(2) Autism

(3) Traumatic brain injury

(4) Cerebral palsy

Functioning levels of people with developmental disabilities may range from mildly impaired to profoundly impaired.<sup>56</sup>

c) Mental retardation is the old legal term for a person who scores low on IQ tests, and who needs assistance with activities of daily living. The new term now used is “intellectual disability” instead of “mental retardation.”<sup>57</sup>

**NOTE: Show slide, “People with Intellectual Disabilities.”**

Research shows that people with intellectual disabilities:<sup>58</sup>

(1) Are victimized and arrested at a higher rate than the general population

(2) May not have resources to seek help

(3) May be dependent on others for care

(4) May have impaired judgment and communication abilities

(5) May have accompanying physical disabilities

(6) Have increased vulnerability, sometimes due to reliance on a caregiver who may be abusive

- d) What law enforcement officers may observe when engaging with persons with an intellectual disability:

**NOTE: Show slides, “Indicators of an Intellectual Disability.”**

- (1) Limited vocabulary;<sup>59</sup>
  - (2) “Difficulty understanding/answering questions;
  - (3) Mimics answers and responses
  - (4) Unable to communicate events clearly in his/her own words; and/or
  - (5) Unable to understand complicated instructions or abstract concepts.”<sup>60</sup>
  - (6) “Unaware of the seriousness of situations
  - (7) Easily led or persuaded by others; and/or
  - (8) Naïve eagerness to confess or please authority figures”<sup>61</sup>
  - (9) “Unaware of social norms and appropriate social behavior;
  - (10) Acts younger than actual age, may display childlike behavior;
  - (11) Displays low frustration tolerance and/or poor impulse control and/or
  - (12) May ‘act out,’ become emotional, or try to leave if under pressure.”<sup>62</sup>
  - (13) “Inability to read or write;
  - (14) Inability to tell time;
  - (15) Difficulty staying focused and easily distracted; and/or
  - (16) Awkward/poor motor coordination”<sup>63</sup>
- e) When people with intellectual disabilities have contact with law enforcement, he/she may:<sup>64</sup>

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**NOTE: Show slides, “When People with Disabilities Have Contact with Law Enforcement.”**

- (1) Try to hide his/her disability
  - (2) Pretend to understand his/her rights (when he/she doesn't understand them)
  - (3) Not understand commands
  - (4) Feel overwhelmed by law enforcement presence
  - (5) Say what he/she thinks the officer wants to hear
  - (6) Try to run away or become upset and combative (may not understand why he/she is being detained)
  - (7) Have difficulty describing details or actions
  - (8) Be the last to leave the scene of a crime and the first to be caught
- f) Autism spectrum disorder

**NOTE: Show slide, “Autism Spectrum Disorder.”**

“Autism Spectrum Disorder (ASD) refers to a group of developmental disabilities that are typically associated with challenges of varying severity in the areas of social interaction, communication, and repetitive/restricted behaviors. Autism is a brain disorder that typically appears during the first three years of life.”<sup>65</sup> “As its name implies, ASD is a spectrum disorder that affects individuals differently and with varying degrees of autism severity; no two people with ASD are the same. ASD is typically diagnosed in children, but it is a lifelong disorder that affects individuals of all ages. ASD also is found in combination with other disabilities.”<sup>66</sup>

“A person with ASD might:

**NOTE: Show slides, “Indicators of an Individual with an Autism Spectrum Disorder.”**

- (1) Have severe language deficits or differences;
- (2) Talk about or show interest in a restricted range of topics;



- (3) Not point at objects to show interest [such as when being questioned by an officer and instead he/she may] (point at an airplane flyer over);
  - (4) Not look at objects when another person points at them;
  - (5) Have trouble relating to others or not have an interest in other people at all;
  - (6) Avoid eye contact and want to be alone;
  - (7) Have trouble understanding other people's feelings or talking about their own feelings;
  - (8) Prefer not to be held or cuddled or might cuddle only when they want to;
  - (9) Appear to be unaware when other people talk to them, or repeat words or phrases in place of normal language (echolalia);
  - (10) Have trouble expressing their needs using typical words or motions;
  - (11) Laugh, cry, or show distress for no apparent reason;
  - (12) Repeat actions over and over again, often in a very stereotyped manner [such as twirling circles, hand flapping, rocking, etc.]
  - (13) Have trouble adapting when a routine changes;
  - (14) Have unusual reactions to the way things smell, taste, look, feel, or sound;
  - (15) Be oversensitive or under-sensitive to pain;
  - (16) Lose skills he/she once had (for instance, stop saying words they were once using).<sup>67</sup>
- g) Traumatic brain injury (TBI)

**NOTE: Show slide, "Traumatic Brain Injury."**

"A TBI is an injury that affects how the brain works. It may be caused by a bump, blow or jolt to the head, or penetrating injury (such as from a gunshot) to the head."<sup>68</sup>

**NOTE: Show slide, “Indicators of An Individual with a Traumatic Brain Injury.**

Law enforcement officers may observe or see evidence of the following:<sup>69</sup>

- (1) Difficulties with attention concentration, irritability, aggression, and impulsiveness
- (2) Short-term memory impairments and problems with processing information
- (3) Confusion
- (4) Perseveration
- (5) Not understanding the spoken word or difficulty speaking and being understood
- (6) Slurred speech or speaking very fast or very slow
- (7) Problems reading and/or writing

h) Cerebral palsy

**NOTE: Show slide, “Cerebral Palsy.”**

“Cerebral palsy (CP) is a group of disorders that affect a person’s ability to move and maintain balance and posture.”<sup>70</sup>

“Cerebral means having to do with the brain. Palsy means weakness or problems with using the muscles.”<sup>71</sup>

“All people with CP have problems with movement and posture. Many also have related conditions such as intellectual disability; seizures; problems with vision, hearing, or speech, changes in the spine (such as scoliosis); or joint problems (such as contractures).”<sup>72</sup>

Characteristics that law enforcement officers may observe include:<sup>73</sup>

**NOTE: Show slide, “Indicators of An Individual with Cerebral Palsy.”**

- (1) Stiff muscles
- (2) Uncontrollable movements
- (3) Poor balance and coordination

4. Individuals with multiple disorders

**NOTE: Show slide, “Individuals with Multiple Disorders.”**

- a) Individuals with mental illness frequently have additional disorders that co-occur. Two conditions that commonly co-occur with mental illness are:<sup>74</sup>
  - (1) Substance use disorders, and
  - (2) Intellectual and other developmental disabilities

**NOTE: Show slide, “People with Co-Occurring Disorders.”**

“Among the 20.2 million adults in the U.S. who experienced a substance abuse disorder, 50.5% had a co-occurring mental illness.”<sup>75</sup>

- b) Behavioral problems associated with these conditions are compounded and complicated when multiple conditions are present.

**NOTE: Show slide, “Medical Conditions That May Mimic Symptoms of a Mental Illness.”**

- c) Some medical conditions mimic symptoms of mental illness.<sup>76</sup> For example, a person with diabetes who is suffering from an insulin overdose will be confused, have slurred speech, will be unsteady on his/her feet, and may be clumsy or have jerky movements (appearing to be possibly intoxicated).<sup>77</sup> A person with cerebral palsy may also have difficulty walking and speaking that officers may interpret as due to drunkenness.<sup>78</sup> An elderly person with a urinary tract infection may be confused, agitated, hallucinations, or demonstrating other unusual behavioral changes.<sup>79</sup>

Finally, keep in mind that substance abuse can lead to the kinds of losses experienced by people with mental illness—loss of reality (as with LSD), or psychosis (induced by cocaine or amphetamines), loss of hope (as with alcohol or other depressants), loss of perspective (addiction results in an intense focus on obtaining the drug to the exclusion of all else), and loss of control (many drugs like alcohol).<sup>80</sup>

5. Treatment and noncompliance with treatment

**NOTE: Show slides, “Treatment and Noncompliance with Treatment.”**

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a) Mental illnesses are medical conditions, and medications are an essential component of treatment for most serious mental illnesses. Also, many people with mental illnesses, such as depression, can benefit from psychotherapy, particularly cognitive-behavioral therapies that focus on the individual learning new ways of thinking, behaving, and coping with his/her problems. Most people with mental illness are best treated with a combination of both medications and psychotherapy.

b) Anosognosia (pronounced Ann-Knows-Egg Nose-ia)<sup>81</sup>

Many people with severe mental illnesses, like schizophrenia, are not aware he/she has a mental illness. This is often difficult for others to understand, particularly when these symptoms of mental illness are so obvious. The technical term for a lack of awareness of one's illness is called anosognosia, and it is part of the mental illness itself.

(1) As the result of this lack of awareness, many individuals with mental illnesses do not follow his/her doctor's orders to take medications that can treat his/her illnesses, and he/she often will avoid treatment.

(2) Not understanding that an individual has been diagnosed with a mental illness can create increased anxiety and conflicts with others that are attempting to communicate with him/her about his/her condition. This lack of awareness can also create a potential risk for reckless or undesirable behavior.

**NOTE: Ask officers the following question, "Would you take medication for an illness you didn't think you had? What if the medication had side effects like dry mouth, weight gain, stiff muscles, or could lead to trembling hands, diabetes, or sexual dysfunction?"**

(3) Understand that people with mental illnesses are like you—he/she won't take medications for an illness he/she doesn't have either. And, informing them he/she has a mental illness and needs medications is unlikely to convince him/her.

B. Warning Signs of a Person Who May Intend to Commit Suicide

**NOTE: Show slide, "Those at Higher Risk of Suicide."**

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1. “Suicide is the 12<sup>th</sup> leading cause of death in the US for all ages.”<sup>82</sup>  
“Suicide is the 2<sup>nd</sup> leading cause of death in the world for those aged 15-24.”<sup>83</sup> North Carolina averages almost 1,000 deaths from suicide annually.<sup>84</sup> At greater risk are individuals with the following:
  - a) “Depression and other mental disorders, or a substance-abuse disorder (often in combination with other mental disorders)”<sup>85</sup>
  - b) “Prior suicide attempt
  - c) The family history of mental disorder or substance abuse
  - d) The family history of suicide
  - e) Family violence, including physical or sexual abuse
  - f) Firearms in the home, the method used in more than half of suicides
  - g) Incarceration
  - h) Exposure to the suicidal behavior of others, such as family members, peers, or media figures”<sup>86</sup>
2. Law enforcement and suicide

Law enforcement officers are also among those at higher risk for suicide. For every officer killed in the line of duty, there are three who have killed themselves. Put another way, statistically, you have about a three times greater risk of killing yourself than being killed in the line of duty.<sup>87</sup>

**NOTE: Ask the class, “What are the reasons you think law enforcement officers are at high risk of committing suicide?”**

**NOTE: Show slide, “Officers at Risk of Suicide.”**

Some reasons cited for officer’s high risk of suicide include the following:<sup>88</sup>

- a) The stress of the job can lead to mental health problems (depression, post-traumatic stress disorder, etc.).
- b) Officers may have family or marital problems created by job stress that leads to depression and increased suicide risk.

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- c) Officers are comfortable with and have access to firearms – one of the most lethal means of committing suicide.
- d) Officers are understandably reluctant to seek help for his/her problems. Potential officers will need to pass a mental health evaluation to become a law enforcement officer. Officers may be concerned about being found unfit for duty if he/she admits to emotional problems.

**NOTE: Show video, *Code 9*. This trailer is from a documentary that explores the less-told story of law enforcement. For those that choose law enforcement as a career, their choice has not only the potential of negatively affecting them as an individual but also their loved ones. *Code 9* explores the impacts of the stress and trauma the job causes and, if left untreated, can result in depression, suicidal thoughts, anger issues, and PTSD.**

**NOTE: Say to class, “If you find yourself becoming depressed and thinking of suicide, seek help. If you notice warning signs in your fellow officers, encourage them to seek help. Getting help might save your life or the life of your fellow officer.”**

### 3. Stress and stress management

**NOTE: Show slide, “Stress and Stress Management.”**

Law enforcement is an inherently dangerous and stressful field. This stress is derived from numerous sources that include the level of involvement in people’s individual lives and, most often, when people are experiencing tragedy or crisis. Officers are surrounded by pain and sadness much of his or her career. The nature of the profession exposes officers to danger every day. Officers feel the very heavy burden of being responsible for the safety of others throughout his or her career.

Officers are often provoked verbally and/or physically; however, he/she is expected to remain in control of their own emotions, and this may be counter to an officer’s natural emotional responses or expressions. This constant need to override his or her feelings can be another source of stress. The quick pace of the job, potentially moving from a call to perform traffic enforcement to giving cardiopulmonary resuscitation (CPR) to an unresponsive child, is stressful and does not allow for periods of mental rest.

One study revealed forty-one percent of all police officers that responded scored highly in the detection of stress and stress factors regarding to his or her jobs.<sup>89</sup> These same officers scored equally high about personal stressors.<sup>90</sup>

4. Symptoms of law enforcement stress<sup>91</sup>

**NOTE: Show slides, “Symptoms of Law Enforcement Stress.”**

It is important to understand and recognize the symptoms of stress within yourself as well as your fellow officer. The following are some physical signs of stress:

a) Fatigue

Many agencies have rotating shifts from days to evenings to nights with little recovery time for the body to properly regulate, resulting in insomnia. Very often, officers work over their scheduled shifts. This may be the result of a stressful event which evoked the fight or flight response.

This response can result in a release of adrenaline and cortisol, which raises the heart rate and changes in muscle tension and other physical changes. Repeated stressful events can lead to adrenal exhaustion and long-term fatigue. Chronic stress can lead to decreased sex drive/a decrease in sex hormone levels, potentially creating additional interpersonal and relationship issues.

b) Alcohol and drug abuse

Alcohol and drug abuse can result when the occasional alcoholic beverage turns into a way to mask the pain and stress of the job. This will undoubtedly affect the personal life of the officer but can lead to termination or incarceration.

c) Personal stress management

- (1) Avoid using chemical comforts to mask the stress. Alcohol, nicotine, and caffeine will only add comfort in the short-term; however, in the long-term, will only add to the stress.
- (2) Develop a mindset of a well-rounded, healthy lifestyle to include a healthy diet, exercise program, and relaxation techniques. When the body is healthy, the body can handle stress more effectively.
- (3) Law enforcement is a high-pressure career, and the fear of not living up to someone else’s standards can lead an officer to take on task after task, and he/she may quickly become overwhelmed. Setting clear boundaries

and knowing when to turn down extra assignments will help to maintain a healthy balance.

- (4) Avoid unnecessary conflict. Taking on arguments that are not yours to fight or that have no viable solution will only add to your stress and may cause an undue issue between co-workers.
- (5) Regularly check-in with yourself to check for symptoms of stress. Know your vulnerabilities and areas in which you are most likely to experience stress (these are different for everyone). Have an individualized stress management plan in place. Know where you can go to talk to a professional counselor if needed.

5. Children and suicide<sup>92</sup>

**NOTE: Show slide, “Children and Suicide.”**

- a) Young children rarely commit suicide. Out of one million children, less than two children ages five to eleven will die by suicide. Of one million aged 12-17 year-old adolescents, 52 of them will die by suicide.
- b) About one-third of all children that commit suicide had some type of mental health problem.
- c) Suicide attempts in children are often the result of family discord or stress, particularly divorce or death of a parent, or abuse.
- d) Other potential causes of suicidal thoughts may include a recent crisis/trauma (i.e., physical abuse, sexual assault, etc.) or problems at school.
- e) Statements made such as “I’m thinking about killing myself” should be taken seriously, and an immediate response should be taken.

6. Warning signs of intent to commit suicide<sup>93</sup>

**NOTE: Show slides, “Warning Signs of Intent to Commit Suicide.”**

- a) Getting affairs in order – including giving away prized possessions, making a will, making provisions for pets or children, saying “goodbyes.”



- b) Saying things like, “everyone would be better off without me” or “I want out.”
- c) A sudden switch from being extremely depressed to acting calm and happy
- d) Expressing strong feelings of hopelessness or being trapped
- e) Talking about killing or harming one’s self
- f) An unusual preoccupation with death or dying
- g) Acting recklessly, as if he/she has a death wish (e.g., speeding through red lights)

7. Suicide myths

**NOTE: Show slides, “Myths about Suicide.”**

- a) **“SUICIDE MYTH:** People who talk about suicide are just trying to get attention.  
**SUICIDE FACT:** People who die by suicide usually talk about it first. They are in pain and oftentimes reach out for help because they do not know what to do and have lost hope. Always take talk about suicide seriously. Always.”<sup>94</sup>
- b) **“SUICIDE MYTH:** Once people decide to die by suicide, there is nothing you can do to stop them.  
**SUICIDE FACT:** Suicide can be prevented. Most people who are suicidal do not want to die; they just want to stop their pain.
- c) **SUICIDE MYTH:** Suicide only strikes people of a certain gender, race, financial status, age, etc.  
**SUICIDE FACT:** Suicide can strike anyone.
- d) **SUICIDE MYTH:** People who attempt suicide and survive will not attempt suicide again.  
**SUICIDE FACT:** People who attempt suicide and survive will oftentimes make additional attempts.
- e) **SUICIDE MYTH:** People who attempt suicide are crazy.

**SUICIDE FACT:** No, no, no. They are in pain, and probably have a chemical imbalance in their brain. Anyone could attempt suicide.

- f) **SUICIDE MYTH:** People who attempt suicide are weak.

**SUICIDE FACT:** No, no, no. They are in pain, and probably have a chemical imbalance in their brain. Many people who are very ‘strong’ die by suicide.”<sup>95</sup>

- g) **“SUICIDE MYTH:** People who are suicidal definitely want to die.

**SUICIDE FACT:** The vast majority of people who are suicidal do not want to die. They are in pain, and they want to stop the pain.

- h) **SUICIDE MYTH:** You should never ask people who are suicidal if they are thinking about suicide or if they have thought about a method, because just talking about it will give them an idea.

**SUICIDE FACT:** Asking people if they are thinking about suicide does not give them the idea for suicide. And, it is important to talk about suicide with people who are suicidal because you will learn more about their mindset and intentions, and allow them to diffuse some of the tension that is causing their suicidal feelings.

- i) **SUICIDE MYTH:** When people who are suicidal feel better, they are no longer suicidal.

**SUICIDE FACT:** Sometimes suicidal people feel better because they have decided to die by suicide, and may feel a sense of relief that the pain will soon be over.”<sup>96</sup>

- j) **SUICIDE MYTH:** Young people never think about suicide, they have their entire life ahead of them.

**SUICIDE FACT:** “1 in 100,000 children ages 10 to 14 die by suicide each year. 7 in 100,000 youth ages 15-19 die by suicide each year.”<sup>97</sup>

8. Law enforcement officer-assisted suicide

**NOTE:** Show slide, “Law Enforcement Officer-Assisted Suicide.”

## ***Individuals with Mental Illness and Developmental Disabilities***

**NOTE: Ask the class, “If someone points a gun at you, what are you taught to do?”**

**Answer: Officers are trained to confront lethal force with lethal force.**

The public is aware of the types of training officers receive, and some individuals who are suicidal may exploit it in order to get themselves killed. The person may point a gun at you or attack you with a knife or lethal weapon with the intent of getting you to kill them. Such situations can be very traumatic for the officer involved. Keep in mind that your safety is paramount and act accordingly. Refer to your departmental policy and procedures for further guidance.

**NOTE: State, “People who attempt suicide are people who have lost hope and are unable to think of a way out of his/her pain other than by death.”**

9. How to intervene effectively if the person has lost hope and may be suicidal<sup>98</sup>

**NOTE: Show slides, “Intervention with a Suicidal Person.”**

- a) Listen attentively to everything the person has to say while comforting them with words of encouragement. The goal is to instill hope so the person can be persuaded to seek help.
- b) Remind him/her that intense emotional pain can be overwhelming, so be as gentle and caring as possible. Let the person know that you are deeply concerned.
- c) People who are depressed and suicidal will require your time. Do not leave the person alone, for even a second. Do not rush through the process of building a rapport with the individual.
- d) Talk openly with the person about suicide and ask the person questions such as the following:
  - (1) “Are you feeling so bad that you are thinking about killing yourself?” If the answer is yes, ask, “have you thought about how you would do it?” If the answer is yes, ask, “do you have what you need to do it?” If the answer is yes, ask, “have you thought about when you would do it?”

The more planning that someone has put into suicide, the higher the risk. If a person has a method and a time in mind, the risk is extremely high, and treatment is needed as soon as possible.

## ***Individuals with Mental Illness and Developmental Disabilities***

- (2) Don't be judgmental, and be careful not to make any statements to make the person feel any worse about their situation. He/she is extremely sensitive and highly vulnerable while in crisis.
- (3) Allow the person to express emotion in the way he/she wants, such as crying, yelling, swearing, etc. However, do not allow the person to become violent or harm himself/herself.

**NOTE: Show video, *Man on a Bridge*. Introduce this video by saying to the class, "Let's see how this advice can work in practice."**

### C. Effective Response to Persons with Disabilities

**NOTE: Show slide, "Effective Responses."**

#### 1. Barriers to effective communication

**NOTE: Show slides, "Barriers to Effective Communication."**

There are times in which the officer may be the reason the communication process deteriorates, and as a result, the situation escalates. When the communication process breaks down, often the encounter becomes violent. Understanding this, as well as understanding how our demeanor and body language impact our ability to successfully interact and communicate with individuals in crisis, is paramount to a successful outcome. When interacting with an individual in crisis, you and he/she is experiencing an emotionally charged atmosphere; the situation is most often uncertain and, therefore, you may constantly be adapting to the ebb and flow of the ever-changing environment. There are several barriers to communication you should consider; they are as follows:

#### a) Physical barriers<sup>99</sup>

Be attentive to the environment. Consider the noise level and other distractions (i.e., sirens, canine unit, lights, radio transmissions), if you can reduce these distractions. If the individual has the television on or radio on, ask his/her permission to turn them down. First of all, this demonstrates respect for them, and individuals who experience auditory hallucinations often use the noise to lessen the voices or sounds he/she is experiencing.

#### b) Officer's body language<sup>100 101</sup>

Be sure that if you are conveying a spoken message that you are there to help, that your body language is also presenting the same message. For example, You say, “Mary, I am here to help you.” This sounds great. You used his/her name and conveyed that you wished to help them, but your arms are folded across your chest, and you are tapping your fingers as if you have somewhere better to be. This is called incongruence in communication, and people generally respond to the nonverbal message much more so than the spoken word.

c) Failing to utilize active and empathetic listening<sup>102</sup>

It is vital to show the individual that you are listening to what he/she is saying, using all your senses, and we can demonstrate this by paraphrasing what you have heard both cognitively and emotionally. The word empathy comes from Latin and Greek roots; *Em* “to see through” and *Pathy* “the eye of the other.” For example, “John, you said that you were tired of people ignoring you and demeaning you. You seem very upset by this. Can you tell me more about that?” This verifies that you were listening, you understood, and you can empathize with how he feels.

d) Being judgmental or minimizing<sup>103</sup>

Remember, you do not have to agree with the individual’s point of view; you simply need to understand his/her point of view. For example, you respond to a suicidal female who advises that she and her boyfriend of a week have broken up, and she does not want to live anymore. It would be inappropriate for you to minimize her feelings, stating that that was ridiculous. Very often, law enforcement officers respond to the same individual on several different occasions; therefore, it can become frustrating over some time. However, making comments to the individual that you are just going to have them committed or using biased language, such as calling them “crazy” or “retarded” or any other name, is inappropriate and demeaning.

e) Engaging in power struggles or otherwise being authoritative<sup>104</sup>

This method is simply not going to be effective when dealing with individuals in crisis. Working **with** the individual to make decisions and taking an active role in developing his/her plan of action will go a long way to making them feel empowered and work towards them, gaining control of his/her own emotions and his/her respective situation. It is also important to

remember arguing with an individual means you have lost control of yourself, and this is going to escalate the situation. This is always true, however, especially when interacting with an individual experiencing hallucinations. In these crises, an officer should never agree/argue with the individual.

2. De-escalating people in crisis begins with having the right mindset or attitude. Negative thoughts or attitudes will be reflected in your behavior and may result in actions or consequences that are less than desirable. Likewise, a genuine desire to help the other person will also be reflected in your behavior and will more likely lead to compliance and success. Remember that most of the encounters that law enforcement has with persons with mental illness are because the symptoms of his/her illness are not under control. Most commonly, this occurs at the initial onset of illness, during a relapse (caused by a variety of reasons), and when the person is using substances. The person's behavior is usually a result of his/her illness, rather than being criminally motivated.
3. To assert authority over a scene, crowd, or individuals who are engaging in unruly behavior, officers are taught to assume a "command presence" by speaking loudly, by issuing direct commands, and demanding compliance with those commands. While command and control tactics may aid an officer in many situations, those same tactics, when used with a person experiencing a mental health crisis, may be counter-productive or even lead to an altercation, including hands-on intervention, with the possibility of injury that could have been avoided.
4. De-escalation techniques may be used when you have identified someone who is experiencing a mental illness, crisis, or a developmental disability. Most of the time, using de-escalation techniques with these individuals will increase the likelihood of a positive outcome for you, as well as for the person in crisis. De-escalation works well generally, even when you are not dealing with people with disabilities.

When interacting with a person with a disability, "if you take a LESS authoritative, LESS controlling, LESS confrontational approach, you actually will have MORE control. You are trying to give the consumer [individual in crisis] a sense that he or she is in control. Why? Because he or she is in a crisis, which by definition means the consumer [individual in crisis] is feeling out of control. The consumer's [individual in crisis] normal coping measures are not working at this time."<sup>105</sup>

**NOTE: Show video, *Man at the Mall*. The video demonstrates an intervention with a man with psychosis at the entrance to a mall utilizing effective de-escalation techniques being used by the officers. Ask students what they noticed the officers doing in the video that led to the man cooperating and avoiding a “hands-on” confrontation.**

**NOTE: Show slide, “Verbal De-Escalation Techniques.”**

5. Verbal de-escalation techniques are those things that you can say to someone in a crisis that will help them become calm, and non-verbal de-escalation techniques are those things you do nonverbally that can put a person in crisis at ease. Examples of nonverbal behaviors include facial expressions, body language conveyed by posture, and personal space. We can communicate as much nonverbally as we do verbally.<sup>106</sup>

**NOTE: At this point, the instructor should ask for a volunteer to come to the front of the room to demonstrate. Ask the volunteer to give you a summary of what they have learned in class so far. While the person is talking cross your arms, roll your eyes, tap your foot, look very impatient, and move closer and closer to the person, invading his/her personal space. The person will back up and respond to your body language. When the person responds, stop and ask the class what they observed, and what your language conveyed. Also, ask the volunteer how he/she felt when his/her personal space was invaded. Ask the class to comment on each of these nonverbal signs you demonstrated.**

- Personal space
- Eyes
- Body posture
- Facial expression

6. Effective nonverbal de-escalation is a skill you can learn. These skills include:<sup>107</sup>

**NOTE: Show slide, “Effective Nonverbal De-Escalation Techniques.”**

- a) Remaining calm
- b) Lowering the volume of your voice
- c) Losing your “I’m in command” presence
- d) Trying to physically lower yourself about the person you are dealing with (not towering over the person)
- e) Showing a more open posture indicating a “personal” connection

- f) Maintaining an “interview stance” with a slightly more relaxed posture, but in a position to protect yourself and take action, while not appearing to be threatening, hostile, or aggressive. Do not invade his/her personal space. A person in crisis may read this as aggressive and, in turn, respond aggressively.

**NOTE: Instructor should demonstrate how this stance looks.**

**NOTE: Show slide, “E-LEAP De-Escalation Model Basic Steps.”**

7. E-LEAP<sup>108</sup>

The E-LEAP de-escalation model provides a framework for verbally de-escalating a person in crisis and getting that person to collaborate with you in getting help. The steps are as follows:

E=Engage  
L=Listen  
E=Empathize  
A=Agree  
P=Partner

**NOTE: Show slides, “E-LEAP De-Escalation Model.”**

- a) **ENGAGE:** The goal of this step is to introduce yourself, and convey that you are there to help, and to begin seeking information from the person in crisis.
  - (1) Introduce yourself. “Hi, my name is Deputy Smith, with the Lincoln County Sheriff’s Office.”
  - (2) Ask the person’s name and use it often. “Can you tell me your name?”
  - (3) State what you see or know and ask for information. “Joe, you seem very upset. What is going on that has upset you so much?”
  - (4) State to the person that you are there to help. Be prepared to explain the reason you are there (e.g., a neighbor called to say someone is upset).
  - (5) When asking questions, avoid asking, “why” questions, and limit “yes” or “no” questions. “Yes,” or “no” questions will often yield those simplistic answers; our goal is to keep the person talking. The more he/she talks, and you listen, the more empowered he/she feels,



as very often, he/she feels that no one listens to him/her. Be careful to ask one question at a time and allow extra time for them to process your question and provide a response.

- b) **LISTEN** to the person's story. The goal of this step is to truly understand the person's concerns from his/her perspective. It is important to understand and to remember that what the person is saying or believing may be real or imagined. Since mental illness is a brain disease, thinking is affected by mental illness. Sometimes the person's thoughts are disconnected, and you will hear this in his/her speech, which can be difficult to follow. Techniques to promote listening include:
- (1) Using minimal encouragers, such as nodding your head, saying "okay" or "uh huh" or "go on." The purpose is to encourage the person to keep talking and show you are interested in listening.
  - (2) Reflecting or repeating what the person says. Often the reflecting response will simply consist of the last few words the person says. These statements should be brief and not interrupt the conversational flow.
  - (3) Asking open-ended questions. "Can you tell me more about that?" or "and then what?" Avoid "yes or no" questions at this stage, unless you need specific information.
- c) **EMPATHIZE** with what the person is experiencing. The goal of this step is to demonstrate your understanding of the person in crisis and his/her situation. Empathy is different from sympathy. Sympathy means feeling sorry for someone. Empathy means understanding what it is like to be in his/her shoes. Being sincere will help convey that you understand the person and what he/she is going through. Techniques to show empathy include:
- (1) Paraphrasing – similar to reflecting except that now you begin to communicate that you understand the person by putting what the person said into your own words. Paraphrasing builds rapport and can help the person clarify any misunderstanding. Paraphrasing statements may start with the following:  
  
"What I hear you saying is..."  
"If I am hearing you right..."

“Let me see if I understand what you are saying...”

- (2) Emotional labeling or helping the person to identify his/her feelings. This is different from “telling” the person what he/she is feeling because your statement is based on what the person has been communicating through his/her words and behavior. Emotional labeling statements may start with the following:

“You seem to be feeling [*specific emotion*]...”

“It seems to me like you feel [*specific emotion*]...”

“If I were in your situation, I think I’d feel [*specific emotion*]...”

- d) **AGREE** on what you have in common. The goal in this step is to avoid arguing about the delusions or hallucinations and to find common ground with the individual in crisis. If you’ve listened well, you can usually find agreement on something (i.e., “you feel scared and unsafe, and I agree that you need to be somewhere safe.” Or, “you are hungry, thirsty, and tired, and I agree, we need to get you somewhere you can get food, drink, and rest.” Or, “you say you’ve been poisoned. I don’t know if you have, but I agree that you need to be checked out by a doctor.” A technique you may use here is to “agree to disagree” on one issue, but find agreement elsewhere. (Example: “I don’t hear the devil speaking, and we may need to agree to disagree on your need for medicine, but I do agree you need some help.”) Putting yourself in the person’s shoes will help you find an agreeable solution.
- e) **PARTNER** to address the person’s need. The goal of this step is to find a resolution and get the person help. You can ask the person what he/she thinks will resolve the problem. You can look for alternatives with the person.

Try to empower the person to choose, when appropriate (i.e., “Would you like me to take you back to your mom’s house where you can get some sleep, or call the mobile crisis team to get you some help?”). Meet reasonable demands when possible. If repeated attempts fail, set firm limits, and tell the person that you are worried about his/her safety and that you want to help them.

State your expectations by linking it to a safety issue: “I need to make sure that everyone stays safe.” Find out what the person needs or wants. In your attempts to resolve an escalating situation, you may be tempted to use bargaining,

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deal-making, or saying or promising anything to gain compliance. Be aware that violating the person’s trust to gain temporary compliance might make future encounters with this individual more difficult to manage.

**NOTE: Show slide, “An Effective Response to a Person with Mental Illness . . .”**

- 8. Remember to adjust your behavior to that of the person with a mental illness. If the person is:<sup>109</sup>

**NOTE: Show slides, “If the Person Is – Then You Should ...”**

- a) Confused about what is real .....Be simple and straightforward
- b) Having difficulty concentrating ...Be brief, clear, repeat instructions
- c) Over stimulated .....Limit input – don’t force discussion
- d) Exhibiting very poor judgment .....Don’t expect rational behavior
- e) Preoccupied with his/her internal state....Make sure to get his/her attention
- f) Agitated.....Give them space, time, and patience
- g) Very emotionally upset .....Don’t take his/her words personally
- h) Withdrawn .....Engage in relevant conversation
- i) Hallucinating or delusional.....Avoid arguing; respond to feelings
- j) Fearful .....Be reassuring and calm
- k) Insecure.....Be caring and accepting
- l) Hopeless.....Instill hope; explore for suicide risk

9. Maintain your composure when a person “pushes your buttons.”<sup>110</sup>

**NOTE: Show slide, “Pushing Buttons.”**

- a) Know what your “hot buttons” are (i.e., what will set you off). We all have them.

Example: A person with mental illness calls you a “pig” or swears at you. This is NOT the time to demand respect.

- b) Recognize early signs of anger and do not take anything the person says personally. Remember that most of us have been irrational and said inappropriate things when we are under extreme stress.
- c) Recognize your limits. Try changing the focus of one’s attention from the elements that are causing the anger to something more calming.
- d) Express your emotions constructively by possibly telling the other person how you are feeling, such as: “I would like to help you, but I find it difficult because of your name-calling. Can you help me and stop the cursing so I can work on helping you? Thanks, I would appreciate it if you try.”
10. Sometimes, to maintain safety, it is necessary to start with an assertive intervention.

**NOTE: Show slide, “3 Steps Putting It All Together.”**

- a) The three-step assertive intervention:
- (1) “Empathy statement: A statement that lets the consumer know that you understand where he or she is coming from and how he or she likely feels.
  - (2) ~~Conflict~~ **Concern** statement: A statement that describes to the consumer that you have a concern that needs to be addressed.
  - (3) Action statement: A statement that lets the consumer know what you want him or her to do. This statement can be in the form of a request.”<sup>111</sup>
- b) Examples of assertive interventions<sup>112</sup>

**NOTE: Show slides, “Examples of Assertive Interventions.”**

- (1) *(Empathy statement)* – “Jack, I understand that you are upset and that you feel like no one is listening to you or doing enough to help you. *(Concern statement)* – But you and I need to let these people get back to work here, so we are going to have to get out of this waiting room. *(Action statement)* – I’d like you to walk with me down the hallway to an empty room so you and I can talk.”
- (2) *(Empathy statement)*. – “It looks to me like you are pretty upset, and I’m here to help you.” *(Concern statement)* – “But, I am afraid someone is going to get hurt by those stones.” *(Action statement)* – “I’d like you to stop tossing them and step up here on the curb so I can talk to you and try to understand what is going on with you today.”

**NOTE: Show slide, “When Communicating with a Person with a Developmental Disability or Brain Injury.”**

11. When interviewing someone who has a developmental disability or brain injury<sup>113</sup>
  - a) Use simple language; keep sentences short, and speak slowly and clearly.
  - b) Be patient and take time giving or asking for information.
  - c) If the person does not seem to understand what you are asking, try asking the question another way.
  - d) Treat adults as adults, regardless of his/her disability.
12. There are some specific interventions/recommendations for dealing with a person with an intellectual disability.<sup>114</sup>

**NOTE: Show slide, “Specific Interventions for Communicating with a Person with an Intellectual Disability.”**

- a) Speak directly with the person, saying the person's name often.
- b) Avoid asking closed-ended questions, especially ones that require a “yes” or “no” response. Ask simple open-ended questions in seeking information.
- c) If you are unsure if the person understands what you are saying, ask them to repeat what you said in his/her own words.

- d) Avoid asking abstract questions on time/sequences/reasons for behavior. Expect concrete answers.
13. Specific recommendations for interacting with a person with autism<sup>115</sup>

**NOTE: Demonstrate some of the actions officers may see with a person who has autism (e.g., flapping of hands, body rocking, pacing, avoiding direct eye contact) and ask how he/she should react should he/she sees them. Ask the class how you should respond if you see a person exhibiting these behaviors. Record their responses on the flip chart.**

**NOTE: Show slide, “When Interacting with An Individual That is Autistic.”**

- a) Approach the person in a quiet, non-threatening manner, avoiding quick motions and gestures that an autistic person may perceive as threatening.
- b) Know that a person’s lack of eye contact or lack of response to questions may not mean he/she is disrespectful. Talk to the person in a moderate and calm voice, repeating his/her directions or questions several times, if necessary. Be patient, and wait for answers. Speaking loudly will not help and may even be perceived as threatening.
- c) Instructions should be simple and direct. Be specific to reduce the possibility of confusion.
- d) Avoid physically touching the person, if possible. Touching may cause a “fight” or “flight” reaction because of his/her heightened sensitivity and being touched may be seen as an invasion of his/her personal space.
- e) Maintain a safe distance, remaining alert to the possibility of outbursts or impulsive acts.

**NOTE: Some of the interventions indicated for use with specific developmental disabilities are helpful for all people in crisis, including those with mental illness, but are of particular importance for people with those specific disabilities. Refer to the handout, “Communicating with People with Cognitive Disabilities.”**

14. Things to keep in mind regarding de-escalation.

**NOTE: Show slide, “Keep in Mind...”**

- a) De-escalation techniques are not a substitute for sound judgment and attention to safety. They are a tool to use when appropriate. Be sure to select the most appropriate response in the use of force continuum.

- b) De-escalation is not always successful.
- c) De-escalating a person in crisis requires time, patience, and practice.<sup>116</sup> Attempting to resolve a crisis too quickly can make a crisis worse, resulting in an unnecessary altercation.<sup>117</sup> Be sure to take the time needed when dealing with persons in crisis.<sup>118</sup>
- d) Finally, know when and who to call for assistance. The following section will describe a model program for law enforcement dealing with persons in crisis that is being implemented in many law enforcement communities in North Carolina.

15. Physical control – protective restraining priorities

**NOTE: Show slides, “Protective Restraining Priorities.”**

As mentioned previously, verbal de-escalation is not always successful. Despite your best efforts, you may have to apply force. The use of physical force on a person suffering from a mental illness or an intellectual disability should be your last resort when all other means, strategies, and resources have been exhausted. The situation should be one of exigency. Barring the responders’ physical intervention, harm to the respondent or a third person is likely.

- a) Be sure to follow federal laws, state laws, and departmental policies when interacting with an individual with mental illness or developmental disability in crisis. When your team has decided that physical control is the only option, officers should follow a standard of reasonableness in applying force.<sup>119</sup>
- b) There are other options. If the individual remains non-compliant after the officer has utilized his or her de-escalation methods and he or she is not a danger to himself or herself, consider allowing a different officer to interact with the individual. Another tactic to consider is to disengage from the individual until a more qualified responder arrives such as a Crisis Intervention Training (CIT) certified officer or mobile crisis team personnel. If the individual continues to be non-compliant after the officer(s) have exhausted all applicable de-escalation attempts and have determined that the use of force is necessary, respond appropriately continually assessing the need to use force.
- c) *San Francisco v. Sheehan*<sup>120</sup>

The Supreme Court case of *San Francisco v. Sheehan*, in 2015, highlights important considerations in police response to persons suffering from mental illness. In August 2008, Teresa Sheehan, a mentally-ill, 56-year-old woman was shot multiple times by police officers. The police had been called to take her for a psychiatric evaluation. When police arrived, the group home worker informed police Sheehan had a kitchen knife.

Sheehan verbally threatened the officers while in possession of the knife. She retreated into her room. Officers were unaware whether Sheehan had a route of escape or additional weapons, so they force their way into her room. Sheehan was shot five to six times, including in the hip and head. She survived but needed two hip replacement surgeries. Sheehan sued the officers and the city for failing to take her mental health status into account during the arrest.

- (1) The police officers were granted “qualified immunity” under the ruling. The decision suggests that police need to make “reasonable accommodations” whenever possible and avoid forcing a confrontation. Such accommodations can include bringing a mental health professional to the scene, letting medical workers take the lead, or even leave the scene and re-engage later.
  - (2) If the responding officer does not feel adequately staffed or trained to start the de-escalation process AND the subject is not an immediate danger to others, consider disengagement. Drop back to a secure perimeter and contain the situation until trained personnel arrive. If the respondent is hurting himself or herself, the officer will need to decide on action. The idea of “tactical disengagement” is included in Crisis Intervention Team (CIT) training at many agencies across the country.<sup>121</sup>
- d) Signs of an emotionally disturbed person (EDP) may include the following:
- (1) “The individual is very disoriented (unsure as to identity, date, location, time of day).
  - (2) The person is delusional (“I’m the President of the United States,” or “You are Satan,” etc.).



- (3) The individual is hallucinating; sees things or person that are not present or hears things that no one else can hear.
- (4) The person is extremely agitated or emotional, perhaps laughing or crying hysterically, for no readily apparent reason.
- (5) The individual repeatedly screams, howls, growls, or spouts unintelligible gibberish.
- (6) The person engages in seemingly endless repetitive motions, such as rocking back and forth.
- (7) The individual inexplicably acts out in a very aggressive or violent manner, such as smashing property or assaulting others.
- (8) The person verbally threatens to harm himself or others (suicidal or homicidal).”<sup>122</sup>

16. The last resort option - taking physical control<sup>123</sup>

Sometimes, verbal de-escalation is not successful. As a last resort, after all options have been exhausted, officers may need to take physical control of a respondent. The takedown method is thoroughly discussed in the *Subject Control Arrest Techniques* block of instruction.

**NOTE: Show slide, “Taking Physical Control – The Last Resort.”**

- a) Have the necessary help these techniques require three or more people to be effective. With good communication, civilians can assist. The equation is simple: The more trained personnel on scene, the more likely your team will physically de-escalate the respondent safely.
- b) The lead responder makes the decisions and communicates the time to act. The lead responder decides when to initiate contact and what will be the responsibilities of the others. Constant communication is vital to success. It takes very little time to assign responsibilities. It can be done just before acting, and while action takes place. Continue to communicate until your team safely secures the respondent in a recovery position (lying on their side with their head supported). This will help safeguard against positional asphyxiation or injuries sustained

from multiple officers being on top of the respondent. Train as a team, if possible. This eliminates on the spot learning.

- c) Before acting, if possible, reassess the environment. Is this the best place to engage the individual? Would it be better to let them move outside and engage them there? Are there things in the immediate area that could be harmful, like a glass coffee table? You may not always have the option to relocate. If it is possible, use the environment to your advantage.
- d) Upon physical contact, get as many of your team members behind the respondent as possible. It is easier to control someone physically from behind them on an angle. In the Subject Control Arrest Techniques block of instruction, this refers to “Escort Position” – 45° from the rear of either of the subject’s shoulders.”
- e) The restraint process – divide attention, limb separation, guide to ground, recovery position
  - (1) Four-responder restraint

**NOTE: Show slides, “Four-Responder Restraint Technique.”**

- (a) Four officers: This subject control technique can be used with four officers (or one officer and three helpers). The lead responder should signal when they are about to begin the restraining process. The lead responder will use both of their hands to secure the nearest arm of the respondent, optimally with both an over-hook and under-hook. Keep the trapped limb as close to your body as possible.
- (b) The next responder should use the same technique to secure the other arm. The under-hook is very important in adding “lift” to the subject, preventing them from falling forward too quickly.
- (c) The third responder will enter from behind the respondent and secure both the legs using both arms. Secure the legs around the knee area to aid in balance breaking. Keep the head and shoulder close to the respondent’s legs to increase advantage.

- (d) The lead responder will communicate the takedown to the team. Lower the respondent as slowly as possible to the ground. It is important that each responder have a secure hold on their assigned arm or leg. Once on the ground, keep the respondent's arms as close to their side as possible. This will reduce the likelihood of injury to all parties as well as expedite mechanical restraint.
- (e) The fourth responder will position themselves near the head of the respondent. His/her goal is to support and control the head with the least amount of pressure necessary. This can be done by placing both hands near the ear of the respondent as that person is looking sideways. If the respondent is face down, the responder should guide his/her head to one side as gently as possible. Be very aware of any downward body pressure from the respondent as the head is vulnerable to injury. The respondent should avoid placing his/her hands anywhere near the mouth of the respondent, as biting may be a possibility.
- (f) The lead responder will communicate with all responders, ensuring each responder is secure in his/her positioning.
- (g) Once done, apply mechanical restraints.
- (h) Another option is to have on-scene emergency medical services (EMS) personnel chemically sedate the respondent. Most EMS agencies will not engage an actively resisting subject, so adequate restraint is required. Mechanical restraints can be applied after sedation.
- (i) As soon as restraints are applied, move the respondent to a recovery position for evaluation and transport. This requires the team rolling the respondent to his/her side and supporting the head. This prevents any downward pressure being applied to the torso of the respondent.

**NOTE: Show slides, "Three-Responder Restraint Technique."**

- (2) Three responders can perform a similar restraint technique. The sequence remains the same except head support, and control will need to be handled by the second officer to secure the arm. That officer should position himself/herself closer to the head of the respondent after the takedown. He/she can use his/her knees to secure the arm of the respondent, thereby freeing up at least one arm to support and control the respondent's head. The responder securing the first arm will apply mechanical restraints. As soon as restraints are applied, move the respondent to a recovery position for evaluation and transport.
- (3) Please remember that any sort of physical control on a person suffering from any mental illness or an intellectual disability should be considered the LAST RESORT when techniques from verbal de-escalation were not successful, and tactical disengagement was not an option. With any type of subject control, there is always the possibility of injury to any person on the scene.

**NOTE: Sometimes, verbal de-escalation is not successful. As a last resort, after all options have been exhausted, officers may need to take physical control of a respondent. The following video demonstrates two multiple-officer techniques for consideration. The focus is on the safety of all involved and using the least amount of force to gain control of a person in crisis.**

**NOTE: Show video, *Multiple Officer Takedown*.**

17. When does the interaction between law enforcement and individuals with mental illness or developmental disabilities generally occur?

**NOTE: Show slide, “Interacting with Individuals with Mental Illness or Developmental Disabilities.”**

- a) “The majority of law enforcement encounters with people with mental illnesses are with individuals suspected of committing *low-level* misdemeanor crimes, or who are exhibiting nuisance behavior. Law enforcement may receive calls when a business owner or community member wants officers to ‘do something’ about a person – whether or not a crime was committed.”<sup>124</sup>
- b) “Law enforcement officers encounter people with mental illnesses at risk of harming themselves.”<sup>125</sup> “Of all calls for service involving people believed to have mental illnesses, law enforcement officers encounter individuals at risk of harming someone else relatively infrequently.”<sup>126</sup>

18. Law enforcement responses when encountering an individual with mental illness, developmental disability, or substance use disorder include the following:<sup>127</sup>

**NOTE: Show slide, “Law Enforcement Responses.”**

- a) Law enforcement will make judgments as to whether he/she can deal with the situation through de-escalation, through reaching out to a behavioral health agency for more information, or through initiating the commitment process.
- b) When there is a crisis that involves an individual with behavioral health symptoms, and law enforcement is called to respond, a CIT officer or a similar specialty response system such as social workers within a law enforcement organization should be dispatched to the scene, if available. Though widely available, CIT is not yet implemented throughout the entire state.
- c) Law enforcement will use de-escalation tactics such as E-LEAP to calm the person and to help with voluntarily getting them to his/her doctor’s office or alternate site. Officer discretion and departmental policies will outline this approach. These options may include contacting a mobile crisis team or taking the person to a walk-in crisis facility or to see his/her service provider. These options will vary by community. These options will be described later in detail.
- d) If the person is willing to seek an evaluation of his/her mental status voluntarily, the officer may provide transportation to a facility where the evaluation can take place, if this is allowed by his/her departmental policy.
- e) If it has been determined that the individual meets the criteria for involuntary commitment and the custody order has been issued by a magistrate, then the person shall be taken into custody by the officer. The officer will inform the individual that he/she is not under arrest. Once in custody, the officer will take the person for the evaluation, using local options that may include having dispatch contact a mobile crisis team or taking the person to a specific facility. The resources available for commitment evaluations vary by community. The officer should follow the protocol that has been established by their department, in collaboration with the local management entity (LME)/managed care organization (MCO). Law enforcement should check for protocols on how to handle local emergencies.

## ***Individuals with Mental Illness and Developmental Disabilities***

- f) Law enforcement bringing the person to be evaluated at the first commitment evaluation site will determine whether his/her continued presence is needed after consultation with a mental health professional at the site.
- g) The professional at the site where the evaluation is performed will inform law enforcement where to transport the individual.
- h) To summarize, law enforcement will make the following judgments:

**NOTE: Show slide, “Law Enforcement Judgments.”**

- (1) To leave the person at the scene or take the person home following successful de-escalation.
  - (2) To call the LME/MCO, the crisis line, the private provider, the respondent’s doctor, a crisis facility, EMS, or a hospital for more options.
  - (3) To take the person into custody.
19. If an individual with a mental illness or developmental disability needs medical treatment, an officer should contact EMS when the person is presenting with any of the following signs or symptoms:

**NOTE: Show slide, “Contact EMS When the Person is...”**

- a) “Poor general impression
- b) Unresponsive
- c) Responsive, but not following commands
- d) Difficulty breathing
- e) Shock
- f) Complicated childbirth
- g) Chest pain with systolic blood pressure less than 100
- h) Uncontrolled bleeding
- i) Severe pain anywhere.”<sup>128</sup>

## ***Individuals with Mental Illness and Developmental Disabilities***

**NOTE: State to the class, “Please note that this is not an all-inclusive list, and there may be other reasons not listed that you will want to call EMS for.”**

20. Behavioral health agencies specialize in the care and treatment of individuals with behavioral health concerns, including mental illness. The law enforcement officer may decide to transport the individual in crisis to a behavioral health agency’s crisis unit, or use other behavioral health crisis response alternatives, if available, with the following two factors:<sup>129</sup>

**NOTE: Show slide, “Consider Contacting a Crisis Unit or Crisis Response Alternative When...”**

- a) It appears to the officer that there is not a medical emergency, AND
  - b) You have not been able to de-escalate the individual in crisis at the scene.
21. Considerations to evaluate when determining if transportation to a crisis unit or other behavioral health crisis response alternative is the best option for the individual in crisis. Considerations may include:<sup>130</sup>

**NOTE: Show slides, “Consider Transporting When There Is No Medical Emergency.”**

- a) The person is making suicidal statements but has not attempted suicide.
  - b) The person is intoxicated and requesting assistance, and can walk and talk clearly.
  - c) The person seems to be hearing voices (auditory hallucinations) or has obvious delusions, but has not harmed themselves or others.
  - d) The person in crisis is a child or adolescent with no apparent medical problems.
  - e) The person is well-known to the behavioral health system, which has been serving the person for years, and there appears to be no acute medical issues.
  - f) The person seems very agitated, but can answer questions and is aware of his/her surroundings.
22. Disengagement

**NOTE: Show slide, “Disengagement.”**

After the officer has exhausted every reasonable effort to gain cooperation from the individual and the individual remains non-cooperative, the officer must make a decision to take action or disengage.

a) Take action

“When force becomes necessary, the greater the duration in which force is used, the greater the perception of brutality. When force is used, it should be used at a level sufficient for success as quickly as possible while adhering to legal standards.”<sup>131</sup>

“Half-hearted acts fail and are sometimes dangerous to officers, suspects, and sometimes even bystanders. If you act, act with confidence, courage, and commitment.”<sup>132</sup>

b) Withdraw and return with assistance

“If you withdraw with the intention of returning with assistance, then withdraw in the safest, surest, and quickest manner possible. Obtain the necessary assistance and lead the effort to return.”<sup>133</sup>

c) Withdraw and depart

“If you use discretion to take no action at that time (or ever) and begin to walk away, do not turn back around to address the subject unless there is an immediate need to respond to some new criminal act or threat. Once the officer turns away, no good ever comes of turning back around to address parting labels, words, boasts, or taunts issued by the other party.”<sup>134</sup>

“In summary, de-escalation for law enforcement is a deliberate process that recognizes and preserves the rights of others, understands and compensates for basic human emotions and reactions, and attempts to elicit the cooperation of the subjects encountered by law enforcement. De-escalation is the responsibility of each and every officer on a scene.”<sup>135</sup> “De-escalation for law enforcement is the inter-related combination of training, tactics, methods, techniques, weapons, communication, knowledge, confidence, maturity, experience, and wisdom. De-escalation is much more than simply following a preset interaction guideline or memorizing canned responses to common verbal challenges or assaults.”<sup>136</sup> It is widely recognized that not all



individuals can be de-escalated and that sometimes physical action is required, both deliberately and in response to unexpected acts.<sup>137</sup>

D. Commitment

**NOTE: Show slide, “Commitment.”**

1. The involuntary commitment process is a very important process because it does result in the loss of freedom but also results in receiving necessary treatment for the illness.
2. In most cases, the law enforcement officer is part of a transport process whereby a licensed professional is making the assessment that determines whether the respondent meets the standard for involuntary commitment or whether the respondent can be helped with less intrusive treatment measures.
3. Types of commitments

**NOTE: Show slide, “Types of Commitment.”**

- a) Voluntary commitment – A commitment where the respondent voluntarily decides to go to a treatment facility. A voluntary commitment may also be referred to as a voluntary admission.<sup>138 139 140 141</sup>
- b) Involuntary commitment – A commitment where a respondent meets the statutory criteria that he/she is a danger to self or others. Upon the filing of an affidavit and petition for commitment and a custody order, and evaluation will be performed by a licensed clinician. If the respondent meets the criteria for an involuntary commitment, then the respondent will be placed into a licensed twenty-four hour facility for treatment.<sup>142</sup>
- c) Emergency commitment – A commitment specifically designed to meet emergency or exigent circumstances. This type of commitment procedure can be initiated by an officer or other persons to expedite treatment and increase safety for all parties involved.<sup>143</sup>
- d) Outpatient commitment<sup>144 145 146</sup> – An order for outpatient commitment is ordered under the following circumstances:
  - (1) The respondent needs treatment and

- (2) The respondent can survive in the community with supervision, but the respondent cannot make the necessary decision to comply with treatment voluntarily

If the outpatient commitment is ordered, it will require the respondent to receive treatment outside a residential treatment facility.

4. Learning the language of 122C – Definitions

**NOTE: Show slides, “Learning the Language of 122C – Definitions.”**

- a) “No individual shall be involuntarily committed to a 24-hour facility unless that individual is mentally ill or a substance abuser and dangerous to self or others.”<sup>147</sup>
- b) Under 122C, law enforcement officer means a “sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.”<sup>148</sup>
- c) Intoxicated means “the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.”<sup>149</sup>
- d) Respondent refers to “the individual to be taken into custody for examination.”<sup>150</sup> The respondent will have an opportunity to respond to the petition filed.<sup>151</sup>
- e) The petitioner refers to the individual making the request to the court providing his or her knowledge that the respondent needs treatment for mental illness or substance abuse. The petitioner is the one seeking the commitment for the respondent who needs treatment.<sup>152</sup>
- f) Local managing entity (LME)<sup>153</sup>
- An area authority, county program, or consolidated human service agency whose functional responsibilities are to manage the treatment options available for the respondents.
- g) Local managing entity/managed care organization (LME/MCO)

“A local management entity that is under contract with the Department [of Health and Human Services] to operate the combined Medicaid Waiver Program authorized under Section 1915(b) and Section 1915(c) of the Social Security Act or to

operate a [Behavioral Health and Intellectual/Developmental Disabilities] tailored plan.”<sup>154</sup>

h) Twenty-four hour facility

A licensed twenty-four hour facility “is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals.”<sup>155</sup>

i) How do you define mental illness?

**NOTE: Show slides, “Mental Illness (G.S. 122C-3(21)).”**

(1) Adult: “When applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of the individual’s affairs and social relations as to make it necessary or advisable for the individual to be under treatment, care, supervision, guidance, or control.

(2) Minor: When applied to a minor, “a mental condition, other than an intellectual disability alone, that so impairs the minor’s capacity to exercise age adequate self-control or judgment in the conduct of the minor’s activities and social relationships so that the minor is in need of treatment.”<sup>156</sup>

**NOTE: Emphasize to students the difference between the adult and the minor as it relates to his/her age and appropriate behaviors.**

j) How do you define substance abuse?

**NOTE: Show slides, “Substance Abuser (G.S. 122C-3(37)).”**

(1) Substance abuse is defined as “the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. ‘Substance abuse’ may include a pattern of tolerance and withdrawal.”<sup>157</sup>

(2) A substance abuser is “an individual who engages in substance abuse.”<sup>158</sup>

k) What does dangerous to self mean?

**NOTE: Show slides, “Dangerous to Self (G.S. 122C-3(11)(a)).”**

## *Individuals with Mental Illness and Developmental Disabilities*

Within the relevant past, the individual has acted in such a way as to show:

- (1) “The individual ~~is~~ has acted in such a way as to show all of the following:
  - (a) The individual would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of the individual’s daily responsibilities and social relations, or to satisfy the individual’s need for nourishment, personal or medical care, shelter, or self-protection and safety.
  - (b) “There is a reasonable probability of the individual’s suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself or herself.
- (2) The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter.
- (3) The individual has mutilated himself or herself or attempted to mutilate himself or herself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.”<sup>159</sup>

- 1) What does dangerous to others mean?

**NOTE: Show slides, “Dangerous to Others (G.S. 122C-3(11)(b).”**

## *Individuals with Mental Illness and Developmental Disabilities*

- (1) “Within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or
- (2) Has acted in such a way as to create a substantial risk of serious bodily harm to another, or
- (3) Has engaged in extreme destruction of property; and
- (4) There is a reasonable probability that this conduct will be repeated.

Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.”<sup>160</sup>

### 5. Procedures for the different types of commitment

**NOTE: Show slides, “Procedures.”**

- a) All commitment procedures have the potential for danger to the officer, the respondent, and the community at large. Always be conscious of officer safety techniques during these procedures, including the transport procedure. It is best practice to follow department policy when conducting any type of commitment transport.
- b) Voluntary commitment procedures – If the respondent requests assistance in obtaining transportation to a treatment facility, the officer may transport for a voluntary commitment depending on your departmental policy. If a respondent approaches you and requests transport to a mental health facility, first seek what your departmental policy requires you to do in this instance. This scenario may require that you determine if the respondent has other means of transportation to a mental health facility. It is always best practice to follow department policy when conducting any type of commitment transport. It may also be best practice to check with your LME/MCO to determine what services may be available to the respondent at that time as well.
  - (1) Steps to follow:
    - (a) Notify LME/MCO hotline and request mobile crisis if available in your area for assistance.

## ***Individuals with Mental Illness and Developmental Disabilities***

- (b) See if alternative transportation is available.
- (c) Notify telecommunications and supervisor of intent to transport.
- (d) Follow standard operating procedures for safety protocols to consider, including a search of respondent for weapons.
- (e) Report/record general information on respondent.
- (f) Walk respondent into the admissions office.

(2) Example

**NOTE: Show slide, “Example.”**

You may be parked in a patrol vehicle writing a report when a subject approaches you and requests a ride to the hospital where he/she can get some help with his/her mental illness. The officer will make a judgment about seriousness of the situation, will ask the person questions about how the person is feeling and will possibly take the person to his/her health care provider or call for other services to meet the law enforcement officer and the respondent to provide further assistance.

**NOTE: Show video, *Mom Calling Police*. The video shows a situation that law enforcement sometimes encounters – an individual who has repeatedly called the police due to anxiety stemming from hallucinations (such as hearing voices that aren’t there) or paranoid delusions that he/she is being spied upon or threatened with harm.**

- c) Involuntary commitment procedures for a respondent who needs treatment for a mental illness

**NOTE: Show slide, “Involuntary Commitment Procedures for Respondent in Need of Treatment for a Mental Illness.”**

To start the process, papers are filed by the petitioner. The process may be initiated either by a layperson petitioner in the magistrate or clerk’s office or by an authorized clinician in a hospital or doctor’s office setting. If the involuntary commitment process (from now on referred to as the IVC process) begins in the magistrate or clerk’s office, form AOC-SP-302A will be used. If the IVC process is started by an authorized clinician, form AOC-SP-302B will be used.

**NOTE: Show slides, “Involuntary Commitment Procedures.” You may supplement this section with the handout titled, “Commitment Issues for Law Enforcement.”**

Steps to follow:

(1) The process begins when the petitioner files an affidavit and petition for commitment. Your responsibility as an officer begins when the court order for custody is issued. The following are the forms that you will need to become familiar with as you conduct an IVC (involuntary commitment order) transport:

(a) Affidavit and Petition for Involuntary Commitment – AOC-SP-300

This document contains the factual allegations of the behavior of the respondent and information that justifies why the respondent should be committed.<sup>161</sup>

Refer to the Affidavit and Petition form in handouts section of the curriculum and discuss the relevant information that should be included in the affidavit to show that the defendant is suffering from a mental illness. “The affidavit shall include the facts on which the affiant’s opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to having a mental illness, also has an intellectual disability, this fact shall be stated in the affidavit. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.”<sup>162</sup>

(b) Examination and Recommendation to Determine Necessity for Involuntary Commitment (ERIC) or Qualified Physicians Examination Report (QPE)

The authorized clinician will complete this form in addition to AOC-SP-300 Affidavit and Petition for Involuntary Commitment.

**NOTE: Review form with class.**

- (c) Findings and Custody Order Involuntary Commitment Form AOC-SP-302A or AOC-SP-302B

This document may be issued by a magistrate, or clerk of court and gives the law enforcement officer the authority to take the respondent into custody and transport for evaluation.<sup>163</sup>

**NOTE: Refer to the sample completed custody order in the handout section of the curriculum.**

While waiting for the evaluation, the individual may not be detained in a detention facility or any penal facility.<sup>164</sup>

- (2) Take custody of the respondent

The IVC order is only valid for twenty-four hours.<sup>165</sup> It is imperative that you locate the respondent within twenty-four hours.<sup>166</sup> If you are unable to locate the respondent within the twenty-four hour period, the petition becomes null and void, and the petition process will have to be started over from the beginning, thereby delaying treatment for the respondent.<sup>167</sup>

If you do not locate the respondent, you must document on the return of the custody order the reason(s) the respondent was not located and was not taken into custody.<sup>168</sup>

If you locate the respondent, you **MUST** sign and certify on the form that you were able to take the respondent into custody.<sup>169</sup>

Custody under 122C is similar to that of a warrant but differs in some ways.

On the form, certify that you took custody of the respondent by locating the respondent.<sup>170</sup> (This may mean that you actually locate the respondent and place him or her in your car and transport him or her to the site of initial evaluation or that you deliver the order to the respondent, but do not transport the respondent anywhere because he or she is staying at the place of evaluation, or if you only complete a paper transfer, or if you serve the respondent in a hospital bed).



Once the Custody Order is completed, the papers must be returned to the clerk of court.<sup>171</sup>

Under 122C-251(c), the law enforcement officer, to the extent possible, will advise respondents when taking them into custody, that he/she is not under arrest and has not committed a crime, but is being transported to receive an evaluation for his/her safety and the safety of others.<sup>172</sup>

- (3) Transport to a local site for an initial evaluation:<sup>173</sup>
  - (a) Without unnecessary delay after assuming custody, the law enforcement officer will transport the respondent to the site designated by the magistrate or clerk of court on the Custody Order. The transport of the respondent will be to an appropriate facility which has been designated by LME/MCO for the first evaluation by a mental health professional. Options may include a walk-in crisis center, a facility-based crisis facility, a mobile crisis team, and specific behavioral health providers. Contact your LME or MCO office to learn more information about the behavioral health resources in your community. Provided in the handouts is a list of area LME/MCO offices and their contact information.

When transporting a respondent for involuntary commitment, a clerk, magistrate, or district court judge may allow a respondent's health care provider, family member or an immediate friend to transport him or her, so long as this does not pose a substantial danger to the public.<sup>174</sup>

- (b) The evaluator has twenty-four hours to decide whether the respondent: (1) does not meet commitment criteria, (2) requires an out-patient commitment, or (3) meets the criteria for involuntary inpatient commitment. If either no commitment or out-patient commitment is recommended, the officer will transport the respondent back to the respondent's residence or, with the respondent's consent, to the home of a consenting individual located in the

originating county and the respondent shall be released from custody.

- (c) If inpatient commitment is recommended, law enforcement will transport to the designated twenty-four hour facility. If a twenty-four hour facility is not available, the respondent may be temporarily detained under appropriate supervision at the place of initial evaluation. The safety of the respondent and others should be the guiding factor in determining what defines appropriate supervision.

**NOTE: Local departments may have a protocol that they have developed on how to reach this decision. Some counties use assessments of the individual to guide the officers in achieving this decision.**

- (4) Transportation to the designated twenty-four hour facility
  - (a) A twenty-four hour facility is a facility that provided a structured living environment and services for a period of twenty-four consecutive hours or more and whose primary purpose is to treat the mentally ill, developmental disabled, and substance abuse respondents.<sup>175</sup>
    - i) State facilities – to include examples such as Central Regional Hospital (Butner), Broughton Hospital (Morganton), Cherry Hospital (Goldsboro)
    - ii) Private facilities – Community hospitals with psychiatric beds, private psychiatric facilities, etc. Examples include, but are not limited to, Holly Hill (Raleigh), Old Vineyard Vines (Winston-Salem), and Daymark (various locations throughout the State).
  - (b) Once you arrive at the designated twenty-four hour facility, the respondent must be evaluated again within twenty-four hours. The evaluator has the same two options for outcomes as the first assessment.<sup>176</sup>

- i) If the evaluator finds that the respondent does not meet commitment criteria or needs outpatient treatment, you will return the respondent to the originating county.<sup>177</sup>
- ii) If the evaluator determines that the respondent meets inpatient criteria, the respondent will be admitted to the facility.<sup>178</sup>

In most twenty-four hour facilities, officers will be asked to secure his/her weapons. This is for the officer's protection, as well as that of the respondent. It is important to comply with the rules set by the facility as well as to follow your departmental policies. When in doubt, please ask for guidance and clarification from your field training officer (FTO) or supervisor.

- d) Commitment procedures for respondents who need treatment for substance abuse

**NOTE: Show slides, "Commitment Procedures for a Respondent Who is in Need of Treatment for Substance Abuse (G.S. 122C-281 to 122C-294)."**

- (1) In regards to involuntary commitment procedure for substance abuse respondents, due to the lack of bed space at the treatment facilities, involuntary placement for a substance abuse respondent may be more time consuming than involuntary placement for a respondent with mental illness.
- (2) The basic procedural steps for involuntary commitment of substance abusers are identical to procedures for committing with mental illness, with certain exceptions.<sup>179</sup>
- (3) The district court may order commitment up to one hundred and eighty days at an initial hearing (as opposed to a maximum of ninety days in mental health cases).<sup>180 181</sup>
- (4) The substance abuse involuntary commitment provisions should not be confused with procedures for assisting individuals who are intoxicated in public.

- e) Emergency commitment procedures

**NOTE: Show slide, “Emergency Commitment Procedures.”**

- (1) Respondents with mental illness<sup>182</sup>
- (a) If an individual is mentally ill and dangerous to self or others, and
  - (b) Requires immediate hospitalization to prevent harm to himself or others,
  - (c) A law enforcement officer may transport the respondent directly to a mental health professional for examination.

**NOTE: Show slide of text box below.**

**mentally ill and dangerous to self or others  
+  
requires immediate hospitalization to  
prevent harm**

- i) If the mental health professional determines that the respondent meets the criteria for inpatient commitment, the professional will complete the “Emergency Certificate” (Form DMH 5-72-A Supplement to Support Immediate Hospitalization/Certificate, DMH 5-72-01-A (rev. Sept. 2001)).
- ii) This emergency certificate operates as a magistrate’s custody order and allows a law enforcement officer to transport the respondent to a 24-hour facility. Once you arrive at the 24-hour facility, a second examination is required, similar to the regular commitment process.
- iii) This procedure **ALLOWS** you to bypass the magistrate and take the respondent immediately for an initial evaluation.

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- iv) This procedure may not be available in all counties. Please check with your LME/MCO office for further information regarding the emergency commitment procedure.
- (2) A respondent with substance abuse<sup>183</sup>
  - (a) If an individual is a substance abuser and dangerous to self or others, and
  - (b) Any delay in taking the individual to a physician or eligible psychologist for examination would likely endanger life or property,
  - (c) A law enforcement officer may take the person into custody, take the person immediately before a magistrate, and complete the petition (AOC-SP-909M Petition And Custody Order For Special Emergency Substance Abuse Involuntary Commitment (Rev. 9/03)) for commitment.
  - (d) This procedure DOES NOT ALLOW you to bypass the magistrate.

**NOTE: Show slide of text box below.**

**a person who abuses substances and who is dangerous to himself or others**  
+  
**violent and requires restraint**  
+  
**delay creates a danger to life and property**

- f) Public intoxication

**NOTE: Show slides, “Public Intoxication.”**

- (1) Under 122C, a respondent for substance abuse may receive treatment by way of a voluntary commitment, or an involuntary commitment or an emergency commitment. The statute also allows for an individual who is deemed to be intoxicated in public but not

deemed to require a commitment to be taken into custody to receive assistance in his/her time of need.

- (2) “An officer may assist an individual found intoxicated in a public place by taking any of the following actions:
- a) The officer may direct or transport the intoxicated individual home;
  - b) The officer may direct or transport the intoxicated individual to the residence of another individual willing to accept him;
  - c) If the intoxicated individual is apparently in need of and apparently unable to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care, the officer may direct or transport him to an appropriate public or private shelter facility;
  - d) If the intoxicated individual is apparently in need of but apparently unable to provide for himself immediate medical care, the officer may direct or transport him to an area facility, hospital, or physician’s office; or the officer may direct or transport the individual to any other appropriate health care facility; or
  - e) If the intoxicated individual is apparently a substance abuser and is apparently dangerous to himself or others, the officer may proceed as provided in Part 8 of this Article.”<sup>184</sup>
- (3) “In providing the assistance authorized by subsection (a) of this section, the officer may use reasonable force to restrain the intoxicated individual if it appears necessary to protect himself, the intoxicated individual, or others. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under authority of this Part.”<sup>185</sup>
- (4) “If the officer takes the action described in either subdivision (a)(3) or (a)(4) of this section, the facility to which the intoxicated individual is taken may detain him only until he becomes sober or a maximum of 24 hours. The individual may stay a longer period if he

wishes to do so and the facility is able to accommodate him.”<sup>186</sup>

- (5) “Any individual who has knowledge that a person assisted to a shelter or other facility under subdivisions (a)(3) or (a)(4) of this section is a substance abuser and is dangerous to himself or others may proceed as provided in Part 8 of this Article.”<sup>187</sup> (emergency commitment procedure for respondents with substance abuse)
- (6) “A city or county may employ officers to assist individuals who are intoxicated in public. Officers employed for this purpose shall be trained to give assistance to those who are intoxicated in public including the administration of first aid. An officer employed by a city or county to assist intoxicated individuals has the powers and duties set out in G.S. 122C-301 within the same territory in which criminal laws are enforced by law enforcement officers of that city or county.”<sup>188</sup>
- (7) “In addition to the actions authorized by G.S. 122C-301(a), an officer may assist an individual found intoxicated in a public place by directing or transporting that individual to a city or county jail. That action may be taken only if the intoxicated individual is apparently in need of and apparently unable to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care and if no other facility is readily available to receive him. The officer and employees of the jail are exempt from liability as provided in G.S. 122C-301(b). The intoxicated individual may be detained at the jail only until he becomes sober or a maximum of twenty-four hours and may be released at any time to a relative or other individual willing to be responsible for his care.”<sup>189</sup>
- (8) Not all counties authorize the procedure as defined under 122C-303. It will be up to the Sheriff of each county to determine if this procedure will be allowed. In some counties, the above-mentioned practice authorized under 122C-303 is sometimes referred to as a white sheet procedure. It is imperative to remember that the respondent, in this case, DOES NOT see the magistrate. The respondent is NOT under arrest. The

respondent is mainly in the safekeeping of the facility for a period of up to twenty-four hours.

**NOTE: Show slide, “North Carolina Involuntary Commitment Process.”<sup>190</sup> Review handout with students.**

6. IVC transport requirements

**NOTE: Show slides, “Other Transportation Issues.”**

- a) To the extent feasible, law enforcement officers shall dress in plain clothes and travel in unmarked vehicles. Law enforcement officers, to the extent possible, shall advise respondents when taking them into custody that he/she is not under arrest and have not committed a crime, but are being transported to receive treatment and for his/her own safety and that of others.<sup>191</sup>
- b) “To the extent feasible, in providing transportation of a respondent, a city or county shall provide a driver or attendant who is the same sex as the respondent, unless the law enforcement officer allows a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent.”<sup>192</sup> Additionally, a clerk, magistrate, or district court judge may allow a respondent’s health care provider, family member, or an immediate friend to transport him or her, so long as this does not pose a substantial danger to the public.<sup>193</sup> If you do not have a driver/attendant who is the same sex as the respondent, there may be local resources that can assist. Contact your LME, MCO, or local National Alliance on Mental Illness (NAMI) affiliate to see if he/she has persons who are willing to volunteer to ride along with law enforcement on the transport.
- c) In providing the required transportation, the officer may use reasonable force to restrain the respondent if it appears necessary to protect himself/herself, the respondent, or others. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken.<sup>194</sup>
- d) However, be mindful that *Armstrong v. Village of Pinehurst*, 810 F.3d 892 (2016) says that a law enforcement officer may no longer use “injurious force,” like a Taser, OC spray, or baton, unless an objectively reasonable officer would conclude that there was an immediate danger to the officer or others.<sup>195</sup>



Physical resistance alone is not the same as an immediate danger to an officer.<sup>196</sup>

The Court goes on to say that physical resistance to an officer's manipulations of a person's body, erratic behavior and mental illness alone, do not rise to the level of an immediate danger to officers.<sup>197</sup> At all times, while conducting an IVC transport, follow your department policy in regards to the use of force.

- e) As an officer, you may be required to transport a respondent from one twenty-four hour facility to another twenty-four hour facility. If you are required to do so, form AOC-SP-222 will be used to complete this transport.

**NOTE: Review AOC-SP-222 form with the class.**

- f) As an officer, you may be required to transport a respondent on an outpatient commitment order. If you are conducting an outpatient commitment order transport, you may encounter one of the following forms:
  - (1) AOC-SP-220 Request for Transportation Order and Order (Outpatient fails but does not refuse to comply with treatment)(7/04)
  - (2) AOC-SP-223 Request for Transportation Order and Order (Committed substance abuser fails to comply with treatment or is discharged from twenty-four hour facility)(7/04)
  - (3) AOC-SP-224 Request for Transportation Order and Order (Outpatient fails to appear for prehearing examination)(7/04)

**NOTE: Review AOC-SP-220, AOC-SP-223, and AOC-SP-224 forms with students.**

7. Practical points

**NOTE: Show slides, "Practical Points."**

- a) Remember that while conducting an IVC transport, if the respondent moves, the original paperwork moves. If the respondent does not move, the paperwork does not move. When the respondent leaves a facility, leave a copy of the paperwork with the facility. When at the final destination of the respondent, be it a respondent's house or the licensed twenty-

four (24) hour facility, you, as the law enforcement officer, **must** bring all originals back to your county.

- b) Remember that AOC-SP-302A is the form that will be used for the Custody Order that is initiated in the magistrate or clerk's office by a layperson.
- c) Remember that AOC-SP-302B is the form that will be used for the Custody Order that is initiated in physician or authorized clinician in a doctor's office, hospital, emergency room, licensed twenty-four hour facility.
- d) Remember that there is a difference between an emergency commitment and public intoxication custody. An emergency commitment is governed by 122C-262 for mental illnesses and 122C-282 for substance abuse. For the process to be a valid emergency commitment, you must follow the guidelines as provided under the statute. If the respondent does not meet the criteria for an emergency commitment and the respondent meets the criteria for intoxicated in public, you may follow the guidance as provided under 122C-301 through 122C-303 for anyone needing assistance that appears to be publicly intoxicated.
- e) Just because a facility is open twenty-four hours a day, seven days a week, does not mean that the facility is a licensed twenty-four hour facility under 122C.
- f) When in doubt, call for assistance. You can call your magistrate's office or your local LME for guidance.

Take some time to review the paperwork and ask any questions you may have about how to complete the paperwork and which paperwork is required for which type of transport.

**NOTE: Show slide, "Involuntary Commitment Cases." Using the handout titled, "Seven Involuntary Commitment Cases,"<sup>198</sup> discuss example cases with students emphasizing the information presented in this lesson plan.**

E. Behavioral Health Resources

**NOTE: Show slide, "Behavioral Health Resources Available."**

- 1. It is a good idea to become familiar with the behavioral health services in your local community since a large number of those individuals with whom law enforcement comes into contact may have a mental illness, substance dependence, or a developmental disability.

## ***Individuals with Mental Illness and Developmental Disabilities***

**NOTE: Show slide, “Local Management Entity/Managed Care Organization.”**

a) LME/MCO

The functional responsibilities of the LMEs or MCOs include management and oversight of the local mental health, developmental disabilities, and substance abuse service system.<sup>199</sup> They are the local go-to public mental health resource. You can call them to find out about services for persons with special needs in a crisis. They coordinate a variety of service providers in their geographical area. Since communities are all different, the service array will also vary throughout North Carolina, based on the needs of the community. LMEs manage the system; they don’t provide direct services.<sup>200</sup>

b) In addition to the services available in the local communities, there are state-operated facilities that serve people who have severe and chronic needs that cannot be met in the community.<sup>201</sup>

**NOTE: Show slide, “State-Operated Facilities.”**

These facilities include:

- (1) Three state psychiatric hospitals (Cherry Hospital – Goldsboro, Central Regional Hospital – Butner, and Broughton Hospital – Morganton)
- (2) Two child mental health facilities (Whitaker Psychiatric Residential Treatment Facility – Butner and Wright School – Durham)
- (3) Three alcohol and drug abuse treatment centers (Julian F. Keith Alcohol and Drug Abuse Treatment Center – Black Mountain, R. J. Blackley Alcohol and Drug Abuse Treatment Center – Butner, and Walter B Jones Alcohol and Drug Abuse Treatment Center – Greenville)
- (4) Three neuro-medical treatment centers (Black Mountain Neuro-Medical Treatment Center – Black Mountain, O’Berry Neuro-Medical Treatment Center – Goldsboro, and Longleaf Neuro-Medical Treatment Center – Wilson)
- (5) Three developmental centers (Caswell Developmental Center – Kinston, J. Iverson Riddle Developmental

Center – Morganton, and Murdoch Developmental  
Center – Butner)

2. Behavioral health crisis response resources in North Carolina

**NOTE: Show slide, “Crisis Response Resources.”**

- a) Facility-based crisis units – facilities where treatment is provided 24/7 in a non-hospital setting, sometimes referred to as drop-off centers.<sup>202</sup>
- b) Mobile crisis teams – provide short-term, face-to-face crisis response in the community 24/7. The best resources for those who are new to the system (newly emerging illness, first-time diagnosis).<sup>203</sup>
- c) Behavioral health urgent care – locations where people in crisis may be taken to receive immediate crisis care and may include assessment and diagnosis for mental illness, substance abuse and intellectual and developmental disability issues. Care may include planning and referral for further treatment, medical management, outpatient treatment, and short-term follow-up care.<sup>204</sup>
- d) Emergency rooms of local hospitals – while the emergency room is an often used resource for persons in crisis because it is available 24/7, it may not always be the best alternative for a person in crisis.<sup>205</sup>
- e) Community hospitals with psychiatric units – these are an excellent resource for acute situations. While not available in every hospital in the state, they are scattered throughout the state. Families and people experiencing mental health emergencies often prefer using resources closer to home.<sup>206</sup>
- f) State psychiatric facilities – are reserved for the most violent, aggressive people with mental health problems who cannot be treated and stabilized in the community.<sup>207</sup>

**NOTE: Show slide, “Private Providers of Mental Health Services.”**

- g) Private providers of mental health services – may collaborate with and guide other crisis responders, including law enforcement. Ask the person in crisis, “Do you have a case manager?” Or “Are you getting treatment or services anywhere?” If so, you may consider obtaining the provider’s phone number to contact the provider for assistance. Many

individuals prone to having crises should have a crisis plan on file with clear instructions on treatment resources appropriate during the time of crisis.<sup>208</sup>

3. There are many options that may qualify as less restrictive and more appropriate for getting individuals experiencing disorders to medical/behavioral treatment resources. If a person does not meet commitment criteria, it is most appropriate to use these resources first. Community agencies are constantly developing new and better approaches to assisting people in crisis, so it is important to stay in touch with the LME/MCO so that law enforcement is aware of and able to use the best resources available to help individuals in crisis.

**NOTE: Show slide, “How Do I Find Resources in My Area?” Before the course delivery, instructors should visit the following link, <http://www.ncdhhs.gov/>, to identify appropriate services in his/her local area for people in crisis with mental illness and/or a developmental disability. Alternatively, use the following link to obtain contact information for the LME serving your county: <http://www.ncdhhs.gov/mhddsas/lmeonblue.htm>.**

F. Reality-Based Training Scenarios

**NOTE: Show slide, “Reality-Based Training Scenarios.” Conduct scenarios as written in the Instructor Notes page.**

III. Conclusion

A. Summary

This block of instruction is designed to help you learn to identify the characteristics that people with mental illnesses and developmental disabilities may display. Additionally, the information provided should help you to identify warning signs that a person you come in contact with may be at risk for suicide. You have been provided with effective responses, including crisis de-escalation techniques, to use when engaging with persons with mental illnesses or developmental disabilities. If de-escalation is not an effective approach, it is important for you to know how and when to use the commitment procedures available in North Carolina. Lastly, you should now know how to identify local mental health resources, including crisis response resources, to utilize when responding to individuals with mental illness or developmental disabilities. Mental illness is treatable.

**NOTE: Show slides, “Training Objectives.”**

1. State the characteristics that a person with a mental illness or a developmental disability may display to law enforcement.

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2. Identify warning signs which may aid in the response to a person who may intend to commit suicide.
3. Identify effective responses to an individual with mental illness and/or a developmental disability, including but not limited to, de-escalation and the use of other crisis response resources or strategies.
4. State when it is appropriate to seek an involuntary commitment order and describe the steps involved in obtaining an involuntary commitment order.
5. Identify local mental health resources, including crisis response resources that are available through the state and through local communities.
6. Given reality-based training scenarios, answer the following questions:
  - a) What is the appropriate de-escalation response?
  - b) Is the respondent dangerous to self or others?
  - c) What legal authority does law enforcement have?
  - d) What action should the officer take?

### B. Questions from Class

**NOTE: Show slide, “Questions.”**

### C. Closing Statement

**NOTE: Show slide, “Closing Statement.”**

Law enforcement will often encounter situations where he/she must interact with individuals displaying unusual behavior. It is a natural reaction to exercise caution when faced with the “unusual.” At times “the unusual” may present a danger, but many times, the “unusual” may represent a mental illness or developmental disability. The information taught in this block equips officers with skills to recognize individuals with mental illness or developmental disabilities and helps them to understand the usual command and control techniques may cause an escalation of negative behaviors. The use of de-escalation tactics may be more appropriate, models respect for those living with mental illness or developmental disabilities, and increases officer effectiveness and safety.

Through increased knowledge about crisis resources in the community, law enforcement officers can help assure that individuals in crisis receive

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appropriate care in the community, while emergency rooms and state hospitals are reserved for those who genuinely need those resources. Use of de-escalation tactics and crisis resources can also help ensure that our detention centers house only those who are a danger to the public and not those who need mental health treatment or supports. Law enforcement can play a significant role in shaping the public perception of those with mental illness or developmental disabilities. It begins with his or her attitude towards mental illness and an understanding that “different” or “unusual” behaviors may signal a need for help rather than reflect a criminal act. Finally, officers often have a great deal of discretion regarding the options he/she chooses to employ when dealing with individuals with mental illness or developmental disabilities. The choices the officer makes can be life changing for those he/she is trying to help. Hopefully, the information provided in this block of instruction prepares officers to make the best choices possible on behalf of those he/she comes into contact with who have mental illnesses or developmental disabilities.

**NOTES**

- <sup>1</sup> Waters.
- <sup>2</sup> Waters.
- <sup>3</sup> Waters.
- <sup>4</sup> Waters.
- <sup>5</sup> Deane and others.
- <sup>6</sup> National Alliance on Mental Illness, “Mental Health Facts in America.”
- <sup>7</sup> National Alliance on Mental Illness California.
- <sup>8</sup> National Alliance on Mental Illness, “Mental Health Facts in America.”
- <sup>9</sup> National Alliance on Mental Illness, “How Shootings Stigmatize People Living with Mental Illness.”
- <sup>10</sup> State of New Jersey Governor’s Council on Mental Health Stigma.
- <sup>11</sup> Schutte.
- <sup>12</sup> Weaver and Carroll.
- <sup>13</sup> Park.
- <sup>14</sup> Gillespie.
- <sup>15</sup> Heiser.
- <sup>16</sup> Kurtz.
- <sup>17</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 87-89.
- <sup>18</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 155-188.
- <sup>19</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 124-125.
- <sup>20</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 189-264.
- <sup>21</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 189-264.



- <sup>22</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 189-264.
- <sup>23</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 189-264.
- <sup>24</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 189-264.
- <sup>25</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 189-264.
- <sup>26</sup> United States Department of Veterans Affairs, *What is PTSD?*
- <sup>27</sup> Ozer and Weiss, 169-172.
- <sup>28</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 189-264.
- <sup>29</sup> Rhodes and Chan, 237-247.
- <sup>30</sup> Tsavoussis and others, 1-5.
- <sup>31</sup> Widom, 1223-1225.
- <sup>32</sup> *Diagnostic and Statistical Manual of Mental Disorders*, 189-264.
- <sup>33</sup> Wisom, 1223-1229.
- <sup>34</sup> Childhood Domestic Violence Association.
- <sup>35</sup> United States Department of Health and Human Services, 2.
- <sup>36</sup> Buckley.
- <sup>37</sup> Hartley and others, 1-21.
- <sup>38</sup> United States Department of Veterans Affairs, *What is PTSD?*
- <sup>39</sup> United States Department of Veterans Affairs, *PTSD in Children and Teens*.
- <sup>40</sup> United States Department of Veterans Affairs, *What is PTSD?*
- <sup>41</sup> Collins and Bailey, 203-220.
- <sup>42</sup> Lighthall.
- <sup>43</sup> Collins and Bailey.
- <sup>44</sup> "Tips for Communicating with People with TBI and PTSD."

- <sup>45</sup> Lighthall.
- <sup>46</sup> Lighthall.
- <sup>47</sup> United States Department of Veterans Affairs, *What is PTSD?*
- <sup>48</sup> Tunajek, 22-23.
- <sup>49</sup> Stevens, 183.
- <sup>50</sup> Stevens, 183.
- <sup>51</sup> Blue Help, para 1.
- <sup>52</sup> Anderson, 1.
- <sup>53</sup> Anderson, 2.
- <sup>54</sup> N.C.G.S. § 122C-3 (12a) (2020).
- <sup>55</sup> N.C.G.S. § 122C-3 (12a) (2020).
- <sup>56</sup> Green, 65-92.
- <sup>57</sup> American Association on Intellectual Disabilities.
- <sup>58</sup> Conley and others, 210-212.
- <sup>59</sup> The Arc of North Carolina, 4.
- <sup>60</sup> The Arc of North Carolina, 4.
- <sup>61</sup> The Arc of North Carolina, 4.
- <sup>62</sup> The Arc of North Carolina, 4.
- <sup>63</sup> The Arc of North Carolina, 4.
- <sup>64</sup> United States Department of Justice. “Advancing Public Safety for Officers and Individuals with Intellectual and Developmental Disabilities (I/DD).”
- <sup>65</sup> North Carolina Autism Society.
- <sup>66</sup> North Carolina Autism Society.

<sup>67</sup> North Carolina Autism Society.

<sup>68</sup> Centers for Disease Control and Prevention, “Get the Facts About TBI.”

<sup>69</sup> Centers for Disease Control and Prevention, “Symptoms of Mild TBI and Concussion.”

<sup>70</sup> Centers for Disease Control and Prevention, “What is Cerebral Palsy?”

<sup>71</sup> Centers for Disease Control and Prevention, “What is Cerebral Palsy.”

<sup>72</sup> Centers for Disease Control and Prevention, “What is Cerebral Palsy.”

<sup>73</sup> Centers for Disease Control and Prevention, “What is Cerebral Palsy.”

<sup>74</sup> “Co-Occurring Disorders.”

<sup>75</sup> “Mental Illness: The Numbers Behind A Hidden Disease,” 8.

<sup>76</sup> Diamond, Sections 4 and 5.

<sup>77</sup> Mayo Clinic, “Diabetic Hypoglycemia,” 7.

<sup>78</sup> Mayo Clinic, “Cerebral Palsy.”

<sup>79</sup> Sollitto.

<sup>80</sup> “Protecting Ohio’s Families: A Law Enforcement Guide,” 26-27.

<sup>81</sup> Amador, 57-73.

<sup>82</sup> Suicide Awareness Voices of Education.

<sup>83</sup> Suicide Awareness Voices of Education.

<sup>84</sup> Centers for Disease Control and Prevention, Stats of the State of North Carolina.

<sup>85</sup> National Institute of Mental Health.

<sup>86</sup> National Institute of Mental Health.

<sup>87</sup> Ritter.

<sup>88</sup> Ritter.

- <sup>89</sup> Hansen.
- <sup>90</sup> Hansen.
- <sup>91</sup> Hansen.
- <sup>92</sup> Kennedy-Moore.
- <sup>93</sup> Smith and others, 4.
- <sup>94</sup> Caruso, “Suicide Myths.”
- <sup>95</sup> Caruso, “Suicide Myths.”
- <sup>96</sup> Caruso, “Suicide Myths.”
- <sup>97</sup> Suicide Awareness Voices of Education.
- <sup>98</sup> Caruso, “How to Help a Suicidal Person.”
- <sup>99</sup> Pearson and others, 72.
- <sup>100</sup> Matsumoto and Frank, 185-186.
- <sup>101</sup> Matsumoto and Frank, 185-186.
- <sup>102</sup> Thompson and Jenkins, 63-70.
- <sup>103</sup> Hanna, Suggett, and Radtke, 203-204.
- <sup>104</sup> Thompson and Jenkins, 57-86.
- <sup>105</sup> Saunders, slide 7.
- <sup>106</sup> Compton and Kotwicki, 167-170.
- <sup>107</sup> Compton and Kotwicki, 167-170.
- <sup>108</sup> Amador, 57-73, 74-94, 95-106, 122-133, 134-141.
- <sup>109</sup> Kurtz, interview by author, 31 August, 2017.
- <sup>110</sup> Conflict Dynamics Profile.
- <sup>111</sup> Compton and Kotwicki, 170.

- <sup>112</sup> Compton and Kotwicki, 170.
- <sup>113</sup> Tassé and others, 3.
- <sup>114</sup> *Resource Guide on Intellectual (Cognitive) Disabilities for Professions in the Criminal Justice System*, 7.
- <sup>115</sup> Debbaudt and Rothman, 20-23.
- <sup>116</sup> Dufresne.
- <sup>117</sup> Dufresne.
- <sup>118</sup> Dufresne.
- <sup>119</sup> *Graham v. Connor*, 490 U.S. 386, (1989).
- <sup>120</sup> *City and County of San Francisco, California, et. al. v. Sheehan* Certiorari to the United States Court of Appeal for the Ninth Circuit No. 13-1412.
- <sup>121</sup> Police Executive Research Forum, 18.
- <sup>122</sup> Garner.
- <sup>123</sup> Papenfuhs, 65-67.
- <sup>124</sup> Reuland and others, 5.
- <sup>125</sup> Reuland and others, 5.
- <sup>126</sup> Reuland and others, 6.
- <sup>127</sup> Kara, 79-84.
- <sup>128</sup> Limmer and O’Keefe, 201.
- <sup>129</sup> North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
- <sup>130</sup> Kurtz.
- <sup>131</sup> Kentucky Justice and Public Safety Council, slide 76.
- <sup>132</sup> Kentucky Justice and Public Safety Council, slide 75.

<sup>133</sup> Kentucky Justice and Public Safety Council, slide 75.

<sup>134</sup> Kentucky Justice and Public Safety Council, slide 75.

<sup>135</sup> Kentucky Justice and Public Safety Council, slide 92.

<sup>136</sup> Kentucky Justice and Public Safety Council, slide 92.

<sup>137</sup> Kentucky Justice and Public Safety Council, slide 92.

<sup>138</sup> N.C.G.S. § 122C-211 (2020).

<sup>139</sup> N.C.G.S. § 122C-221 (2020).

<sup>140</sup> N.C.G.S. § 122C-231 (2020).

<sup>141</sup> N.C.G.S. § 122C-241 (2020).

<sup>142</sup> N.C.G.S. § 122C-261 (2020).

<sup>143</sup> N.C.G.S. § 122C-262 (2020).

<sup>144</sup> N.C.G.S. § 122C-261 (2020).

<sup>145</sup> N.C.G.S. § 122C-265 (2020).

<sup>146</sup> N.C.G.S. § 122C-291 (2020).

<sup>147</sup> N.C.G.S. § 122C-201 (2020).

<sup>148</sup> N.C.G.S. § 122C-3 (19) (2020).

<sup>149</sup> N.C.G.S. § 122C-3 (18) (2020).

<sup>150</sup> Botts.

<sup>151</sup> Botts.

<sup>152</sup> Botts.

<sup>153</sup> N.C.G.S. § 122C-3 (20) (b) (2020).

<sup>154</sup> N.C.G.S. § 122C-3 (20) (c) (2020).

<sup>155</sup> N.C.G.S. § 122C-3 (14) (g) (2020).

<sup>156</sup> N.C.G.S. § 122C-3 (21) (2020).

<sup>157</sup> N.C.G.S. § 122C-3 (36) (2020).

<sup>158</sup> N.C.G.S. § 122C-3 (37) (2020).

<sup>159</sup> N.C.G.S. § 122C-3 (11) (a) (2020).

<sup>160</sup> N.C.G.S. § 122C-3 (11) (b) (2020).

<sup>161</sup> N.C.G.S. § 122C-261 (2020).

<sup>162</sup> N.C.G.S. § 122C-261 (a) (2020).

<sup>163</sup> N.C.G.S. § 122C-261 (2020).

<sup>164</sup> N.C.G.S. § 122C-261 through 122C-263 (2020).

<sup>165</sup> N.C.G.S. § 122C-261 (e) (2020).

<sup>166</sup> N.C.G.S. § 122C-261 (e) (2020).

<sup>167</sup> N.C.G.S. § 122C-261 (e) (2020).

<sup>168</sup> North Carolina Administrative Office of the Courts, AOC-SP-302A.

<sup>169</sup> N.C.G.S. § 122C-261 (2020). North Carolina Administrative Office of the Courts, AOC-SP-302A.

<sup>170</sup> N.C.G.S. § 122C-261 (2020).

<sup>171</sup> N.C.G.S. § 122C-261 (2020).

<sup>172</sup> N.C.G.S. § 122C-251 (c) (2020).

<sup>173</sup> N.C.G.S. § 122C-263 (2020).

<sup>174</sup> N.C.G.S. § 122C-251 (2021).

<sup>175</sup> N.C.G.S. § 122C-3 (14) (g) (2020).

<sup>176</sup> N.C.G.S. § 122C-266 (a) (2020).

<sup>177</sup> N.C.G.S. § 122C-266 (a) (2020).

<sup>178</sup> N.C.G.S. § 122C-266 (a) (2020).

<sup>179</sup> N.C.G.S. § 122C-281 (2020).

<sup>180</sup> N.C.G.S. § 122C-287 (2020).

<sup>181</sup> N.C.G.S. § 122C-271 (2020).

<sup>182</sup> N.C.G.S. § 122C-262 (2020).

<sup>183</sup> N.C.G.S. § 122C-281 (2020).

<sup>184</sup> N.C.G.S. § 122C-301(a) (2020).

<sup>185</sup> N.C.G.S. § 122C-301(b) (2020).

<sup>186</sup> N.C.G.S. § 122C-301(c) (2020).

<sup>187</sup> N.C.G.S. § 122C-301(d) (2020).

<sup>188</sup> N.C.G.S. § 122C-302 (2020).

<sup>189</sup> N.C.G.S. § 122C-303 (2020).

<sup>190</sup> Botts.

<sup>191</sup> N.C.G.S. § 122C-251 (c) (2020).

<sup>192</sup> N.C.G.S. § 122C-251 (d) (2020).

<sup>193</sup> N.C.G.S. § 122C-251 (2021).

<sup>194</sup> N.C.G.S. § 122C-251 (e) (2020).

<sup>195</sup> *Armstrong v. Village of Pinehurst*, 810 F.3d 892,905 (2016).

<sup>196</sup> *Armstrong*.

<sup>197</sup> *Armstrong*.

<sup>198</sup> Botts.

<sup>199</sup> North Carolina Department of Health and Human Services, “About Us.”



## *Individuals with Mental Illness and Developmental Disabilities*

<sup>200</sup> North Carolina Department of Health and Human Services, “LME/MCO Directory.”

<sup>201</sup> North Carolina Department of Health and Human Services, “State Operated Healthcare Facilities.”

<sup>202</sup> North Carolina Department of Health and Human Services, “Professional Treatment Services in Facility-Based Crisis Programs.”

<sup>203</sup> North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

<sup>204</sup> North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

<sup>205</sup> Technical Assistance Collaborative, Inc.

<sup>206</sup> North Carolina Department of Health and Human Services, “State Operated Healthcare Facilities.”

<sup>207</sup> North Carolina Department of Health and Human Services, “Facilities.”

<sup>208</sup> “Memorandum: Implementation Update #86.”

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Lead Instructor Signature

**INDIVIDUALS WITH MENTAL ILLNESS AND  
DEVELOPMENTAL DISABILITIES  
PRACTICAL EXERCISE SAFETY INSTRUCTIONS**

**Instructions:** Prior to the practical exercise(s), the instructor will review the safety briefing form with all participants, to include role-players and students. All instructors and participants must sign and date the safety briefing form. The instructor shall retain signed copies of the form(s) signifying that the instructors and participants have reviewed and understood the safety instructions given.

**General Statement:** Students participating in the Basic Law Enforcement Training Course should be exposed to realistic practical exercise scenarios. This realism includes exercises where the use of deadly force and the entire force continuum is simulated. Each instructor has the responsibility to ensure that students and role players are not endangered or injured while participating in this exercise.

**Procedure:**

1. The course instructor must be present during exercises in which firearms or other weapons are used.
2. The instructor should be CPR trained and shall have first-aid equipment on the site during the exercises.
3. Before the start of the exercise, the instructor shall advise students NOT to bring any ammunition to the practical exercise training area and only to bring weapons if advised to do so. The instructor shall carefully check all student equipment to ensure that no lethal or less-lethal equipment has entered the training area. These items could include but not limited to: live ammunition, loaded weapons, live Tasers, duty chemical agents, knives, etc. The triple safety check must be implemented.

The triple safety check includes the following steps:

- 1) Student checks all their equipment to ensure that it is clear.
  - 2) Another student or person checks to ensure equipment is clear.
  - 3) Course instructor(s) check all equipment to ensure that it is clear.
4. "Training weapons" are props or training aids that are used in scenario-type training events. Training weapons such as polymer molded firearms, and/or weapons that have been rendered "safe" to the point that they cannot be loaded and/or fired. Weapons rendered "safe" have had modifications such as: barrel plugs or inserts that will not allow the loading of lethal ammunition, firing pin removal, etc. Training weapons should be clearly marked and physically inspected for each session of training as to ensure the integrity of a "safe" training environment.
  5. ANSI rated eye protection will be worn by all participants, students and instructors when training equipment is used that could produce a potential projectile or flame.
  6. The instructor will try to restrict uninvolved pedestrian traffic, so that unknowing individuals will not "accidentally" wander into the staged exercises. Marking the training area with signs will aid in helping people detour the area.
  7. The primary instructor will brief other instructors, role players, and students on the objectives of the exercise and each person's scripted role during the exercise.
  8. If the exercises involve the use of the student's handgun, the instructor will inspect all weapons before the practical exercise to ensure that they are all unloaded. The triple safety check must be implemented.
  9. All vehicles utilized in this practical exercise shall be properly searched by the instructor(s) and shall be clear of all weapons and ammunition.

10. Prior to any practical exercise, instructor(s) shall advise the students and role players that if a physical arrest is required, role players will only offer passive resistance. Students shall only use reasonable force to overcome the passive resistance, if offered. A code word shall be established that the students and role players are to use that would stop all action if there is a potential for injury or pain.
11. The instructor will submit a detailed report to the School Director of any injuries suffered during the practical exercises.
12. A copy of this policy shall be presented to all participants before the practical exercises begin.

**By signing this form, I acknowledge that I have read and understand the safety instructions that were provided to me and agree to abide by them during the delivery of the practical exercise(s).**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Basic Law Enforcement Training  
Individuals With Mental Illness or Developmental Disabilities  
Practical Exercise Form**

**Student:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Instructor:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Grading:** *Satisfactory (S) / Unsatisfactory (U)*

		<b>Primary Scenario: _____</b>	<b>Secondary Scenario: _____</b>
<b>Instructor Initials</b>			
<b>1. Introduction / Verbal Language</b> a. Introduces himself/herself using name b. Provides reason for the contact c. Voice tone was appropriate and calming d. Rate of speech was appropriate e. Used open-ended questions f. Reflected feelings and reported content to convey understanding of the consumer g. Used encouragement (i.e. “uh huh”, “go on”)			
<b>2. Non-Verbal Body Language</b> a. Conveys concern and interest in the consumer b. Sensitive to the consumer’s personal space c. Used non-verbal body language to encourage the consumer to speak about what is bothering him/her (i.e. head nod)			
<b>3. Intervention</b> a. Set appropriate limitations and confronted problematic behavior without escalating the person in crisis b. Developed a plan of action with the consumer c. Developed a rapport with the consumer to understand his/her needs and wants			

If not satisfactory, please provide comment: \_\_\_\_\_

**NOTE:** Students receiving more than three (3) “Unsatisfactory” scores fail this practical exercise and portion of the Individuals with Mental Illness or Developmental Disabilities block of instructions.

## Task #1 The Interview

1. What is your mother's maiden name?
2. What was the name of the hospital where you were born in?
3. Where were you born?
4. What was the name of your first pet?
5. What is your birth date?
6. What was the start date for the agency where you work?
7. Who was your first grade teacher?
8. What was your high school mascot?
9. What is your middle name?
10. Where did you go for your favorite vacation?
11. Where would you like to be buried?
12. What was the last name of your first boy or girl friend?
13. What was the most unusual job you've ever held?
14. What was the last book you read?
15. What was the last movie you saw?
16. What is your favorite TV show?
17. What size shoe do you wear?
18. What is your favorite color?
19. If you could be an animal, what animal would you want to be?
20. What language would you like to learn, other than English?

## Task #2 – Scenario Memory Exercise Instructor Version

I will read a scenario to you. The scenario will contain descriptions of suspects, a residence, vehicles, and other important information. Once the scenario has been read, you will be required to write down as much of the descriptions and information that you can remember. Do not start writing until you are told to do so. This is a timed event.

The scenario is as follows:

Suspects in a robbery were seen entering a residence. The residence has been contained. You have been dispatched to report to a command post whereupon you receive the following briefing:

Suspects are believed to be inside of a blue and gray house with white trim. The address of the house is 2248 South Lincoln Street. The house is situated on the west side of the street, facing east. The front door is accessed by a raised front porch. The front of the house has two windows, one on each side of the door. There are several windows on the north and south side of the house. The west side of the house contains one large window, south of a backdoor. No basement windows have been seen.

There is a chain link fence enclosing the front yard. A large German Shephard dog is inside the front yard and barks at any noise. The backyard of the property is also enclosed by a chain link fence. A driveway runs along the north side of the property. There is a blue and white, single car, detached garage adjacent to the northwest corner of the house. The garage door is closed. There are no windows on the garage, but there is a walk through door on the south side. This door is also closed.

In front of the garage, parked in the driveway, is an older model silver Pontiac Firebird. This vehicle does not appear to run. Behind the Firebird is the suspect vehicle. The suspect vehicle is a gold Jeep Cherokee. The plate on the Jeep is 147 Kilo Bravo November. A records check of this license plate number comes back to a 1979 Ford F-150 pick-up.

The first suspect, who was the driver of the vehicle, was described as male, Hispanic, five feet six to five feet eight inches tall, medium build with black hair, small moustache and a few days growth of a beard. He was seen wearing blue baggy pants, black sweatshirt, black tennis shoes and a white baseball style hat with an emblem on the front.

The second suspect was described as male, white, approximately five feet ten inches tall. One hundred and sixty to one hundred and eighty pounds, brown hair with a brown goatee. He was seen wearing black baggy pants, white t-shirt, and white tennis shoes.

No weapons were ever seen, although both suspects insinuated they had handguns inside of the waistbands of their pants.

- 1) What is the address of the house involved in the incident? 2248 South Lincoln Street
- 2) What is the color of the residence? Blue and gray house with white trim
- 3) What type of dog is at the residence? German Shepherd
- 4) Where is the dog located? Front yard
- 5) How many vehicles are at the residence? Two (2)
- 6) Describe the vehicles. (1) Older model silver Pontiac Firebird (2) Gold Jeep Cherokee
- 7) Which is the suspect's vehicle? Gold Jeep Cherokee
- 8) How many suspects are involved in this incident? Two (2)
- 9) Describe the suspect or suspects.
  - (1) Hispanic male, 5'6" – 5'8" tall, medium build with black hair, small moustache and a few days growth of a beard, wearing blue baggy pants, black sweatshirt, black tennis shoes, and a white baseball style hat with an emblem on the front.
  - (2) White male, approximately 5'10" tall, 160-180 lbs, brown hair with a brown goatee, wearing black baggy pants, white t-shirt, and white tennis shoes.
- 10) Was anything mentioned about a weapon? No weapons were ever seen but both suspects insinuated they had handguns inside the waistbands of their pants.

Task #2 Scenario Memory Exercise Student Version

1) What is the address of the house involved in the incident?

---

2) What is the color of the residence?

---

3) What type of dog is at the residence?

---

4) Where is the dog located?

---

5) How many vehicles are at the residence?

---

6) Describe the vehicles.

---

7) Which is the suspect's vehicle?

---

8) How many suspects are involved in this incident?

---

9) Describe the suspect or suspects.

---

---

---

---

10) Was anything mentioned about a weapon?

---

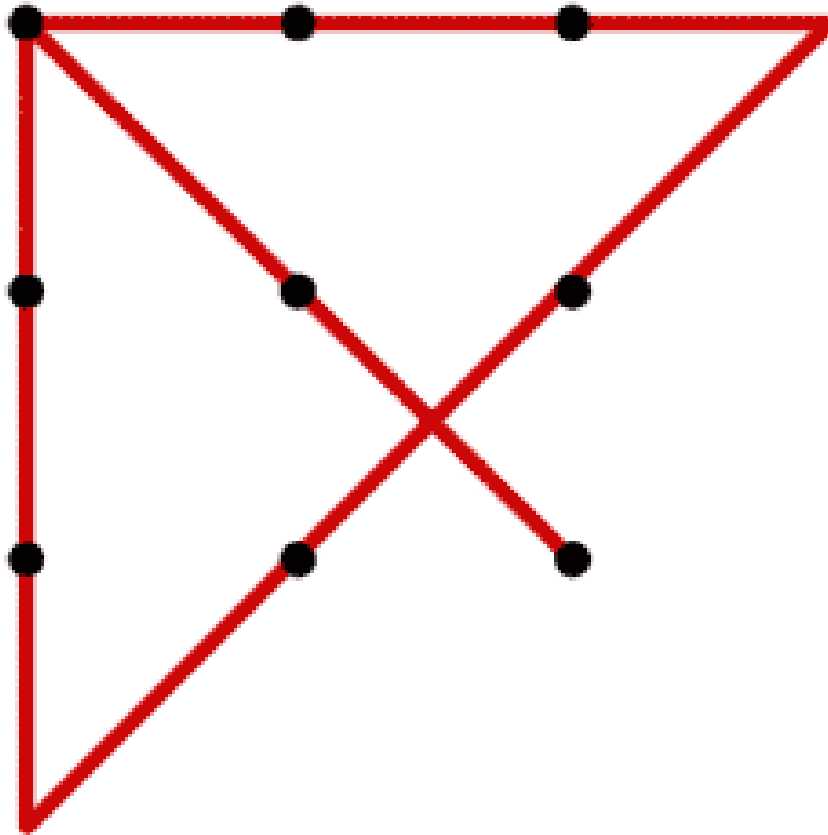
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### Task #3 Concentration - Student



**Task #3 Concentration – Instructor**



# COMMUNICATING WITH PEOPLE WITH COGNITIVE DISABILITIES

## *Hints:*

- Try to keep your surroundings quiet and free from distractions.
- Make eye contact before you speak and say the person's name often.
- Use simple language, repeat points, speak slowly and clearly.
- Clearly identify yourself, explain why you are there.
- Give one direction, or ask one question at a time.
- Have person repeat directions/instructions in their own words.
- Ask open-ended rather than "yes/no" type questions.
- Be patient for response.
- Avoid abstract questions on time/sequences/reasons for behavior.
- Observe behavior as nonverbal communication.
- Treat an adult as an adult, but be sensitive to their special needs.

## *Traits Often Seen:*

### **May not communicate at age level:**

- Limited vocabulary
- Difficulty understanding/answering questions
- Mimic answers/responses
- Unable to communicate events clearly in his/her own words

### **May not understand consequences of situations:**

- Unaware of seriousness of situations
- Easily led or persuaded by others
- Naïve eagerness to confess or please

### **May not behave appropriately:**

- Unaware of social norms and appropriate social behavior
- Acts younger than actual age, may display childlike behavior
- Displays low frustration tolerance and/or poor impulse control

### **May have difficulty performing tasks:**

- Inability to read, write, tell time, change money
- Difficulty staying focused and easily distracted
- Awkward/poor motor coordination

Source: "Police Card." Raleigh, NC: The Arc of North Carolina. [On-line]. Available at:  
<http://www.arcnc.org/file/CommTipCards.pdf> [May 2012].

# Seven Involuntary Commitment Cases

*Note: Although the appellate cases cited here are instructive, they are based on evidence presented at the district court hearing where the standard of proof—clear, cogent, and convincing evidence—is significantly higher than the reasonable-grounds determination that a magistrate must make in response to a petition. Evidence that is not clear, cogent, and convincing at the district court level may still provide a magistrate with reasonable grounds to believe that the respondent meets the criteria for commitment.*

## Case One

Respondent had been unemployed for almost one year, having left her job because she felt she was being harassed by married men at work. Had not attempted to seek other employment and was living in her car for two weeks prior to the hearing, despite the cold weather (October). Respondent felt people were harassing her. Daughter believes that respondent is incapable of providing for herself in her present state. Respondent had refused to seek treatment on her own. It appeared that the only food that the respondent had was that which her daughter brought to the car for her, and her daughter feared that respondent would die of carbon monoxide poisoning if respondent continued to live in her car the rest of the winter. One physician diagnosed respondent as suffering from psychotic depression and stated that she was not eating well. Another physician diagnosed respondent as suffering from paranoid schizophrenia, observing that her speech was rapid, excessive, and often irrelevant, her affect was blunted and she believed that others were “harming her.” Court upheld commitment order, holding the evidence supported the trial court’s finding that, because of her mental instability, respondent was unable to tend to her basic daily needs. As a result, there was a probability of serious physical debilitation in the near future. (“Without treatment respondent’s death or injury was likely to occur by uneventful slow degrees or by misadventure.”) *In re Medlin*, 59 N.C. App. 33, 279 S.E.2d 604 (1982).

## Case Two

The respondent's husband and daughter testified that the respondent had forgotten to turn off the stove, resulting in the burning of numerous pots and pans and a Formica top. Respondent is extremely forgetful, frequently talks to the wall, and appears to be out of touch with her real surroundings. Doctor testified that respondent has a manic depressive illness, manic phase. Trial court finds mental illness and dangerous to self. Appellate court, in a split decision, determined that, while the facts may meet the first prong of dangerous to self (lack of self-care ability), they do not support finding a “reasonable probability of serious debilitation in the near future.” *In re Crainshaw*, 54 N.C. App. 429 (1981).

## Case Three

*Petitioner:* Respondent gets upon the public streets of the city, blocks people from walking, preaches loud words, and refuses to leave after being directed by the city police. She is in a mentally ill state of mind and is imminently dangerous to herself or others. She needs medical treatment. Court testimony of doctor: She is religiously preoccupied, has ideas of persecution, and delusions of grandeur. She cannot take care of herself because of her impaired judgment and needs to be hospitalized for her own care and protection. She cannot understand why City Hall will not give her a license. If she persists in trying to convert someone on the street and they resist the idea, they might become physically aggressive toward her. I don't get any indication that she is aggressively motivated in the sense of being physically violent. Trial court

found mental illness and danger to self and others. Appellate court said that, while the facts may support a finding of mental illness, they do not support a finding of danger to self or others. To the extent that her behavior may lead to someone else being aggressive toward her, then it would be more appropriate to commit her aggressor. *In re Hogan*, 32 N.C App. 429 (1977).

#### **Case Four**

Mother states that she is afraid daughter is going to hurt herself because she has threatened a lot of people in the area. Brother testified that respondent threatened to cut his throat and did cut his hand within the last week. Doctor testified that respondent had evidence of delusional thinking, was somewhat elated with hyperactivity, had a bipolar disorder, and is mentally ill and would be dangerous to herself and others unless confined. Appellate court upheld the commitment order on the basis that the evidence supported a finding of mental illness and danger to self or others. *In re Jackson*, 60 N.C. App. 581 (1983).

#### **Case Five**

*Petitioner:* Respondent has a hammer in the house, breaks everything she can find, and told her husband that if he went to sleep she would bash his brains out. She has threatened to kill her daughter, granddaughter and sister. Court testimony of daughter: Upon coming home, I found the TV busted, the telephone had been cut away from the wall, and glass was all over the living room. When I asked what happened, mother became excited and said that she had broken the TV, cut the phone, and broke some of the glass. On the phone the night before, mother had threatened to kill father and aunt. On appeal, respondent challenged only the trial court's finding of danger to others. Finding upheld. *In re Williamson*, 36 N.C. App. 362 (1978).

#### **Case Six**

*Parents testimony:* Respondent deliberately cut himself with a knife the day he was taken into custody and deliberately exposed himself to danger by sitting on the edge of a busy airport runway. He had been observed in the woods with a rope around his neck. He kept an iron pipe and hatchet under his bed and he threatened his mother three days before the petition by forcing her to sit in one chair and not move for two hours while he was screaming, shouting, and cursing. He threatened to "bust" his mother's head if she called anybody. He complained of demons and of feeling that his bones were being pulled out. Appellate court determined that there were sufficient facts to support the finding of mental illness and danger to self and others. *In re Collins*, 49 N.C. App. 243 (1980).

#### **Case Seven**

Inpatient commitment order upheld where respondent required anti-psychotic medication, refused to take medication, would not eat properly, and refused recommended outpatient treatment. Testimony was presented that respondent's condition of chronic mental illness and poly-substance abuse had not changed since initial commitment, respondent would not be able to survive without supervision, and had history of bizarre and aggressive thoughts and behavior. "Failure of a person to properly care for his/her medical needs, diet, grooming and general affairs meets the test of dangerousness to self." *In re Lowery*, 110 N.C. App. 67 (1993).



# North Carolina Involuntary Commitment Process

**Layperson petition**  
Layperson completes petition in front of magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

Hospital ER or LME facility (1<sup>st</sup> exam)

Officer transports respondent

**Clinician petition**  
Clinician completes petition & exam form (1<sup>st</sup> exam), then faxes to magistrate

Magistrate reviews petition & issues custody order

Officer transports respondent

24-hour facility (2<sup>nd</sup> exam)

**Emergency petition\***  
Clinician completes exam form & emergency certificate (1<sup>st</sup> exam), submits to clerk of court for 24-hr. facility & local officer

Officer transports respondent pursuant to emergency certificate

District court judge reviews examination form

Hearing: Court orders release, outpatient, inpatient, or substance abuse commitment

\*Use when respondent requires immediate hospitalization; procedure by-passes magistrate.

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# Commitment Issues for Law Enforcement

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[www.ncsheriffs.org](http://www.ncsheriffs.org)

March 2022

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# 1. Introduction

In the course of their duties, law enforcement officers, both city and county, will be asked to serve orders on and to transport individuals who are the subject of involuntary commitment procedures. Involuntary mental health commitments can seem complex and overwhelming to a law enforcement officer who is unfamiliar with the process. This publication is designed to give officers a reference tool when they are fulfilling their role in the commitment process. It is recommended that agencies develop a written departmental policy for how to handle the various issues that arise during the course of involuntary commitment proceedings.

While navigating through the commitment process, it is important to keep certain underlying policies in mind. North Carolina's policy is to encourage voluntary admissions to facilities. It is State law that no individual shall be involuntarily committed to a 24-hour facility unless that individual is 1) mentally ill or a substance abuser, and 2) is dangerous to self or others. All admissions and commitments must be accomplished.

## 2. Overview of the Involuntary Commitment Process

### 2.1 Non-Clinical Initiated

Anyone, including a law enforcement officer, who has knowledge of an individual who is mentally ill or a substance abuser and is either dangerous to self or others, or is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, may appear before a clerk of superior court or magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take respondent into custody for examination by a commitment examiner (AOC-SP-300). The terms "mental illness," "substance abuse," "danger to self," and "danger to others" are all defined in G.S. § 122C-3.

Being "dangerous to self" is defined in G.S. § 122C-3(11)(a) as acting in a way to show:

1. The person is unable, without care, supervision, and the continued assistance of others to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter or self-protection and safety; and
2. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given; or
3. The person has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given; or
4. The person has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of self-mutilation unless adequate treatment is given.

Being “dangerous to others” is defined in G.S. § 122C-3(11)(b) as, within the relevant past, the person has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another, or has created a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property and there is a reasonable probability of future dangerous conduct.

## 2.2 Clinician Initiated

The commitment process may also be initiated by certain clinicians. The clinician is not required to appear before a magistrate. G.S. § 122C-261(d); G.S. § 122C-281(d). They may swear to an affidavit before any official authorized to administer an oath, such as a notary public (AOC-SP-300). The affidavit and petition for involuntary commitment may then be faxed or couriered to the magistrate or clerk of court.

## 2.3 Issuance of a Custody Order

Regardless of who initiates the petition for involuntary commitment, the magistrate or clerk of court shall review the affidavit and petition to determine if the involuntary commitment criteria are met. If the magistrate or clerk of court finds probable cause that the respondent is mentally ill or a substance abuser and dangerous to self and/or others, he/she must issue the Findings and Custody Order to law enforcement. If the petitioner is a non-clinician, the magistrate or clerk of court will use form AOC-SP-302A. If the petitioner is a clinician, the magistrate or clerk of court will use form AOC-SP-302B.

# 3. Responsibility and Authority of the Law Enforcement Officer

## 3.1 Taking a Respondent into Custody

G.S. § 122C-261(e) and G.S. § 122C-281(e) require a law enforcement officer who receives a custody order from the clerk of court or magistrate to take the respondent into custody within twenty-four hours after the order is signed. If the respondent cannot be located and taken into custody within this 24-hour period, the order should be returned unserved. If the respondent is located after this time, the order would have to be **reissued** prior to taking the respondent into custody.

### 3.1.1 Forcible Entry to Take Respondent into Custody

In *In re Reed*, 39 N.C. App. 227, 249 S.E.2d 864 (1978), the Court found that a custody order is analogous to an arrest warrant. Both function to deprive an individual of his liberty; one in a civil context, the other in a criminal context. A law enforcement officer may enter private premises in any of the following three situations to take a respondent into custody pursuant to a custody order.

First, an officer may enter the premises of the respondent under the same circumstances allowed for executing an arrest warrant. This means the officer must:

1. Have probable cause to believe that the person to be taken into custody is on the premises;

2. Have given or made a reasonable effort to give the occupant notice of his presence unless there is reasonable cause to believe that giving such notice would present a clear danger to human life; and
3. Have the signed custody order in his possession.

If after these conditions are satisfied, the officer reasonably believes his admittance onto the premises is being denied or unreasonably delayed, the officer may use force to enter.

Second, in accordance with G.S. § 15A-285, an officer may enter buildings, vehicles, and other premises if he reasonably believes that doing so is urgently necessary to save a life, prevent serious bodily harm, or avert or control a public catastrophe.

Third, an officer may enter private premises when consent is given by an appropriate resident. Consent must be given by the person whose premises are to be entered or by a person who, by ownership or otherwise, is reasonably and apparently entitled to give or withhold consent. For example, assume the respondent and a third party share an apartment. The third party may give an officer permission to enter common areas of the apartment such as a kitchen or living room. However, the third party cannot consent to the officer entering areas of the apartment over which he does not possess common authority, such as the respondent's bedroom or private bath. If the respondent is in the residence of a third party and the third party refuses to give consent to law enforcement to enter and take custody of the respondent, the officer must weigh all the facts and circumstances to determine whether the situation rises to the level of urgent necessity as discussed in G.S. § 15A-285 or whether an additional court order to gain entry should be sought.

### 3.1.2 Use of Force to Take Respondent into Custody

In providing transportation pursuant to a commitment order, the law enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect the officer, the respondent, or others. G.S. § 122C-251(e).

## 3.2 Responsibility for Transporting the Respondent

When the respondent is a resident of the city or is physically taken into custody within the city limits, G.S. § 122C-251(a) requires the city to transport the respondent. If the respondent lives outside the city limits and in the county or is physically taken into custody outside the city limits, then the county must transport the respondent. If the respondent is to be transported to a facility outside the county, then the county is responsible for the transportation regardless of whether the respondent resides in the city or the county. However, cities and counties may contract with each other to provide transportation. G.S. § 122C-251(a).

In addition, the governing body of a city or county must adopt a plan for transportation in involuntary commitment proceedings. Law enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation required by involuntary commitment proceedings. Persons so designated shall be trained and the plan shall ensure adequate safety and protection for both the public and the respondent. Law enforcement, other affected agencies, including local acute care hospitals, and other mental health providers must participate in the planning. The area authority may participate in the planning. If any person other than a law enforcement officer is designated to provide transportation, the person designated shall follow the procedures set up for a law enforcement officer to transport. G.S. § 122C-251(g).

In certain circumstances, a magistrate or district court judge may authorize the family or immediate friends of the respondent, if they so request, or a health care provider to transport the respondent in accordance with the procedures of this article. This authorization should only be granted in cases where the dangers to the public, the family or friends of the respondent, the health care provider, or to the respondent himself are not substantial. The family or immediate friends of the respondent or the health care provider must bear the cost of providing this transportation. G.S. § 122C-251(f).

### 3.3 Obtaining the Initial Examination

#### 3.3.1 Where to Take the Respondent

After taking custody of the respondent, G.S. § 122C-263 and G.S. § 122C-283 require the officer to transport the respondent to a facility or location identified by the Local Management Entity/Managed Care Organization (LME/MCO) in the community crisis services plan that has an available commitment examiner who is also capable of performing a health screen "without unnecessary delay." An area facility is operated by or under contract with the area authority and constitutes an entity whose primary purpose is to provide care, treatment, habilitation, and rehabilitation to the mentally ill, developmentally disabled, or substance abusers. Law enforcement officers should contact their LME to find out where to transport respondents for an initial examination. If the respondent is already located at the site of first examination when the custody order is issued, the law enforcement officer may serve the custody order on the respondent at that facility. It is imperative that the officer complete the "Return of Service/Custody Certification" at the time the respondent is taken into custody or when the custody order is served on the respondent.

At this facility, the respondent is to be examined by a commitment examiner. If a commitment examiner is not available, whether on-site, on-call, or via telehealth at any facility or location, the officer must take the respondent to an alternative non-hospital provider or crisis center where a first examination and health screen may be performed at the same location.

If neither a non-hospital provider or crisis center is available, the officer must take the respondent to a private hospital or clinic, a general hospital, or a state facility for the mentally ill. If a commitment examiner is not available, the respondent may be temporarily detained in an area facility if one is available. If an area facility is not available, the respondent may be detained under "appropriate supervision" in the respondent's home, a private hospital or clinic, or a general hospital. G.S. § 122C-263(a); G.S. § 122C-283(a). If the respondent is awaiting examination, the individual may be detained in a State facility for mental illness in that situation. G.S. § 122C-263(a). **However, the respondent may not be detained in a jail or other penal facility.**

### 3.4 Remaining with the Respondent

A law enforcement officer shall remain with the respondent until the officer has determined that a person qualified to perform a first examination is available to conduct the examination. G.S. § 122C-263(a). The first examination and health screen may be performed in person, face-to-face or via "telehealth services," defined as the use of two-way, real-time interactive audio and video where the respondent and commitment examiner can hear and see each other. G.S. § 122C-263(a1), (c); G.S. § 122C-283(e).

While the respondent is waiting for an evaluation or waiting for an available bed at a designated 24-hour treatment facility, the law enforcement officer may leave the respondent under appropriate supervision. Determining what is appropriate supervision will depend on the circumstances. Factors to consider include: whether the respondent appears violent, whether he or she has a history of violence, the type of facility where respondent is being examined (i.e., is it a secured facility), and the personnel available to supervise

the respondent (i.e., is there a security guard or company police officer on site?). A law enforcement officer should use his or her best judgment and consult with facility staff in making this determination.

### 3.5 Exceptions to the Initial Examination Requirement

The initial examination is unnecessary in three situations. The first is if a commitment examiner or eligible physician or psychologist completed the affidavit and petition for involuntary commitment. G.S. § 122C-3; G.S. § 122C-263(b)(1); G.S. § 122C-283(b)(1). The second is if the custody order states that the respondent was charged with a violent crime and was found incapable of proceeding. G.S. § 122C-263(b)(2). The third is if the custody order states the respondent is violent, requires restraint, and that a delay in taking the individual to a commitment examiner would likely endanger life or property. G.S. § 122C-282; G.S. § 122C-283(b)(2). If the initial examination is not needed, the officer must transport the respondent directly to a designated 24-hour facility. A designated 24-hour facility is a facility that provides a structured living environment and services for a period of twenty-four consecutive hours or more that has been designated by the Secretary of the N.C. Department of Health and Human Services for the custody and treatment of involuntary commitment clients. A list of designated 24-hour facilities may be found at the following link: <https://www.ncdhhs.gov/documents/north-carolina-facilities-designated-custody-and-treatment-individuals-under-petitions>.

### 3.6 Transporting Respondent from Initial Examination

#### 3.6.1 Inpatient Commitment Recommended

If the first examiner recommends inpatient treatment, law enforcement is responsible for transporting the respondent to a designated 24-hour facility identified by the site of the first evaluation and the LME. Within 24 hours of arrival at the 24-hour facility, the respondent must be examined by a physician if being examined for mental health issues and by a qualified professional if being examined for substance abuse. This second examination may also be performed in person, face-to-face, or via telehealth services. G.S. § 122C-266(a1); G.S. § 122C-285(a1).

#### 3.6.2 Outpatient or No Commitment Recommended

If the physician recommends outpatient treatment for mental health, the law enforcement agency that originally took the respondent into custody is responsible for returning the respondent to either his residence or the home of a consenting third party. If the physician determines that the respondent needs neither inpatient nor outpatient treatment for mental health, G.S. § 122C-263 mandates that proceedings be terminated. G.S. § 122C-263(d)(3) also mandates that the agency who originally took the respondent into custody shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody. If the physician or eligible psychologist determines that commitment for substance abuse is not needed, the respondent must be released and the proceedings terminated. G.S. § 122C-283(d)(2).

### 3.7 Transporting Respondent to and from a Designated 24-Hour Facility

#### 3.7.1 Transporting Within the County

The law enforcement agency who originally took the respondent into custody is responsible for transporting the respondent from the initial examination to the designated 24-hour facility if the facility is located within the county. If the respondent lives in the city or is taken into custody in the city, then the city is responsible for such transportation. If the respondent lives in the county or was taken into custody in the county, then

the county has the responsibility to transport.

Likewise, upon the respondent's release from a designated 24-hour facility, the city has the duty to transport the respondent home if he or she lives inside city limits or was taken into custody inside city limits. Otherwise, the county is responsible for transporting the respondent home.

Cities and counties may contract with each other to provide these services. Additionally, the respondent being discharged may use his or her own transportation. G.S. § 122C-251(b).

### 3.7.2 Transporting Outside the County

If the respondent must be transported to a designated 24-hour facility in another county, then the county where the respondent was originally taken into custody is responsible for the transportation. This will be true even if the respondent lives inside the city limits or was initially taken into custody inside the city. When the designated 24-hour facility is outside the county where the respondent was originally taken into custody, transportation between counties upon discharge must be provided by the county of residence of the respondent.

## 3.8 Considerations in Transporting a Respondent

It is important to remember that individuals taken into custody under the involuntary commitment statutes have not committed a criminal offense. Law enforcement officers, to the extent possible, shall advise respondents when taking them into custody that they are not under arrest, but are being transported to receive treatment and for their own safety and for the safety of others. G.S. § 122C-251(c). Because the involuntary commitment process can be frightening and disorienting to the respondent, the law enforcement officer should make every effort to assure the respondent that he or she is there to help. The statute also says that, to the extent feasible, the transporting officer should be in plain clothes and travel in an unmarked vehicle. In addition, if the transporting officer is not of the same sex as the respondent, then an attendant of the same sex as respondent should accompany the law enforcement officer during transport. There is no requirement that this attendant be a sworn law enforcement officer. It may be appropriate to allow a member of the respondent's family to accompany the respondent during transport.

In providing the required transportation, G.S. § 122C-251(e) states that the law enforcement officer “may use reasonable force to restrain the respondent if it appears necessary to protect the law enforcement officer, the respondent or others.” In addition, “every effort to avoid restraint of a child under the age of 10 shall be made by the transporting officer unless the child’s behavior or other circumstances dictate that restraint is necessary.” G.S. § 122C-251(e). No law enforcement officer may be held criminally or civilly liable for an assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of Chapter 122C, Article 9 of the General Statutes. G.S. § 122C-251(e). In all cases, it is our recommendation that prior to transportation of a respondent, the transporting officer should contact dispatch and provide beginning mileage, location, destination and starting time. Upon reaching the destination, the officer should again contact dispatch and give ending mileage, ending time and location.

## 3.9 Cost of Transportation

Pursuant to G.S. § 122C-251(h), the cost and expenses of transporting a respondent for involuntary commitment is the responsibility of the county of residence of the respondent to the extent they are not reimbursed by a third-party insurer. The State, a city, or a county that incurs expense in transporting a respondent is entitled to recover the reasonable costs of transportation from the county of residence of the respondent. The county of residence of the respondent is entitled to recover the reasonable cost of

transportation it has paid to the State, a city, or a county. The county of residence may recover that cost from:

1. The respondent, if the respondent is not indigent;
2. any person or entity that is legally liable for the respondent's support and maintenance provided there is sufficient property to pay the cost;
3. any person or entity that is contractually responsible for the cost; or
4. any person or entity that otherwise is liable under federal, state, or local law for the cost, provided that the respondent or other individual liable for the respondent's support is provided a reasonable notice and opportunity to object to the reimbursement.

## 4. Special Emergency Procedures

**This process should only be used in the most unusual and extreme circumstances.**

Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment and who requires immediate hospitalization to prevent harm to self or others, may transport the individual directly to an area facility, or state facility for the mentally ill, for examination by a commitment examiner. Upon examination by a commitment examiner, if the individual meets the criteria for inpatient commitment and requires immediate hospitalization to prevent harm to self or others, the commitment examiner shall so certify in writing before any official authorized to administer oaths. The form used by the examiner is commonly called the "Emergency Certificate" and is form DMH-5-72-01A. If the commitment examiner completes the emergency certificate, appearance before a magistrate is waived. The commitment examiner is required to send a copy of the certificate to the clerk of superior court as soon as possible. The emergency certificate must be reviewed by the chief district court judge within twenty-four hours (excluding weekends and holidays). G.S. § 122C-264(b1). Anyone, including a law enforcement officer, may transport the individual to a designated 24-hour facility for examination and treatment pending a district court hearing. The emergency certificate shall serve as the custody order and the law enforcement officer or other designated person shall provide transportation. G.S. § 122C-262. The law enforcement officer or other designated person shall complete the return of service on this form.

## 5. Authority Under Transportation Orders

A transportation order (AOC-SP-220) is issued when a respondent who has been recommended for outpatient commitment has failed to meet requirements of his or her outpatient commitment status. The outpatient center will notify the clerk of superior court who will issue an order to law enforcement to pick up the respondent and transport him or her to the outpatient facility for evaluation. This custody order is valid throughout the State. If the respondent resides in the city or is taken into custody in the city, then the city is responsible for transporting. Similarly, if the respondent lives in the county or is taken into custody in the county, then the county is responsible for the transportation. The officer may wait and return the respondent home after the evaluation. A law enforcement officer may use reasonable force to transport a respondent pursuant to a transportation order. If it appears that the respondent is dangerous to self and/or others, involuntary inpatient commitment proceedings may be initiated. G.S. § 122C-265(a)(c)(e).

## **6. Conclusion**

Commitment procedures for individuals may involve officers in situations that are outside of the range of their usual law enforcement duties. We hope this publication is helpful in describing the responsibilities of law enforcement. Questions concerning officers' roles in the commitment process may be directed to the North Carolina Attorney General's Office.



## Frequently Asked Questions

**Q: How long must the law enforcement officer wait after delivering the respondent for an initial examination?**

A: A law enforcement officer must remain with the respondent until the officer has determined that a physician or eligible psychologist at the area authority is available to conduct the examination. G.S. § 122C-263(a). The law enforcement officer may then leave the respondent if the respondent will be left under appropriate supervision. Determining what is appropriate supervision will depend on the circumstances of each case. Factors to consider include: whether the respondent appears violent, whether he or she has a history of violence, the type of facility where respondent is being examined (for example, is it a secured facility?), and the personnel available to supervise the respondent (i.e., is there a security guard or company police officer on site?).

**Q: Who is responsible for transporting the respondent from the initial examination if outpatient commitment is recommended?**

A: If, after the initial examination, the clinician recommends outpatient treatment, the law enforcement agency that originally took the respondent into custody shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county, and the respondent shall be released from custody. G.S. § 122C-263(d)(1)(d).

**Q: Who has the duty to provide transportation during the involuntary commitment process?**

A: Transportation of a respondent, including admission and discharge, shall be provided by either the city or the county. The agency responsible will be based on where the respondent lives or is taken into custody. The city has the duty to provide transportation of a respondent who is a resident of the city or who is taken into custody in the city limits. The county has the duty to provide transportation for a respondent who resides in the county outside the city limits or who is taken into custody outside of the city limits. However, cities and counties may contract with each other to provide transportation. G.S. § 122C-251(a).

**Q: Who must transport the respondent to and from the designated 24-hour facility?**

A: The law enforcement officer or agency who originally took the respondent into custody will transport the respondent to and from the 24-hour facility. When the respondent is being moved to a 24-hour facility in another county, transportation should be provided by the county where respondent was taken into custody. Transportation between counties where respondent has requested a change of venue for the district court hearing should be provided by the county where the petition for involuntary commitment was initiated. G.S. § 122C-251(b). Upon release from a 24-hour facility in another county, the respondent's county of residence is responsible for providing transportation from the 24-hour facility. A discharged respondent may provide his or her own transportation.

**Q: What are the statutory requirements for how a respondent should be transported?**

A: G. S. § 122C-251(c) provides that law enforcement officers, to the extent possible, shall advise respondents when taking them into custody that they are not under arrest and have not committed a crime, but are being transported to receive treatment and for their own safety and for the safety of others. The statute also says that, to the extent feasible, the transporting officer should be in plain clothes and travel in an unmarked vehicle. In addition, the transporting officer or attendant should be of the same sex as the respondent unless the officer allows a member of the respondent's family to accompany the respondent. G.S. § 122C-251(d). Every effort to avoid restraint of a child under the age of ten shall be made by the transporting officer unless the child's behavior or other circumstances dictate that restraint is necessary.

**Q: How do you handle transportation of a respondent when the law enforcement agency required to transport does not have an available officer of the same sex as the respondent?**

A: G. S. § 122C-251(d) states that in providing transportation of a respondent, the agency responsible for the transportation shall provide a driver or attendant who is the same sex as the respondent, unless a family member accompanies the respondent. Agencies are encouraged to attempt to get a family member to accompany the respondent during the process. If a family member is unavailable or unwilling and an agency does not have an officer who is the same sex as the respondent, the statute allows for an “attendant” to accompany the respondent with the officer during the transportation. There is no statutory requirement that the “attendant” be a sworn law enforcement officer. If an agency does not have someone of the same sex as the respondent working as a law enforcement officer, the respondent could be accompanied by anyone of the same sex. The details of who may and will serve as an attendant should be worked out in advance by agencies that might find themselves in this position. G.S. § 122C-294 requires each area authority to develop a local plan with local law enforcement agencies and courts for the commitment process. Such details can be worked out according to this plan or through departmental policy.

**Q: What are the possible civil rights violations or concerns that arise from commitment proceedings?**

A: No law enforcement officer may be held criminally or civilly liable for an assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of Chapter 122C, Article 9 of the General Statutes. G.S. § 122C-251(e).

Questions of law enforcement liability will most frequently arise when an officer has taken action pursuant to G.S. § 122C-262, the special emergency procedure for individuals requiring immediate hospitalization. Such claims are usually based on an alleged violation of the respondent's Fourth Amendment right. *Gooden v. Howard County, MD.*, 9540 F. 2d 960, 968 (4th Cir. 1992). Such claims are scrutinized to determine if the officer had “probable cause” to believe the respondent is “both mentally ill and that her mental illness made her a danger to herself or others.” *Gooden* at 1363. If the respondent claims that excessive force was used, the officer's conduct must be evaluated “from the perspective of a reasonable officer on the scene,” and the “tense, uncertain, and rapidly evolving” circumstances must be taken into consideration. *Janicsko v. Pellman*, 774 F. Supp. 331, 340 (M.D.PA. 1991).

**Q: How much force may a law enforcement officer use to restrain a respondent during the commitment process?**

A: A law enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect his or herself, the respondent, or others. G.S. § 122C- 251(e). However, every effort must be made

to avoid restraining a child under the age of ten unless the child's behavior or other circumstances dictate that restraint is necessary. G.S. § 122C-251(e).

**Q: What is a transportation order and what are the law enforcement officer's responsibilities regarding transportation orders for respondents who have failed to comply with outpatient treatment?**

A: A transportation order is issued when a respondent who has been recommended for outpatient commitment has failed to meet requirements of his or her outpatient commitment status. The treatment provider will notify the clerk of superior court who will issue an order to law enforcement to pick up the respondent and to transport him or her to the treatment provider for evaluation. The officer may wait and return the respondent home after the evaluation. If it appears that the respondent is mentally ill and dangerous to self and/or others, involuntary inpatient commitment proceedings may be initiated. G.S. § 122C-265(a)(c)(e).

**Q: What is considered the respondent's county of residence?**

A: The county of residence for the respondent is the county of his or her domicile at the time of his or her admission or commitment to a facility. A county of residence is not changed because the respondent is temporarily out of his or her county in a facility or otherwise. G.S. § 122C-3(10).

**Q: Do we need any kind of plan or agreement with area facilities or hospitals to know how to proceed with an involuntary commitment order?**

A: Yes, G.S. § 122C-294 requires that each area authority shall develop a local plan with local law enforcement agencies, local courts, local hospitals, and local medical societies necessary to facilitate implementation of the involuntary commitment process. If your agency is unaware of a plan, contact your local area authority (LME/MCO) and discuss your concerns with them.

**Q: What is an "Area of Authority"?**

A: G. S. § 122C-3(1) defines area authority as the area mental health, developmental disabilities, and substance abuse authority. Our LME/MCOs are the area authorities. There are currently seven in the State.

A map of the LME/MCOs and the counties they cover is located at the following link: <https://www.ncdhhs.gov/providers/lme-mco-directory>. Other DMH forms and information regarding commitment are available at: <https://www.ncdhhs.gov/ivc>.

## **Appendix I**

### **Administrative Office of the Courts (AOC) Commitment Forms**

# STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice  
District Court Division**IN THE MATTER OF:**

Name And Current Address Of Respondent

**REQUEST FOR TRANSPORTATION ORDER  
AND ORDER  
(OUTPATIENT FAILS BUT DOES NOT CLEARLY  
REFUSE TO COMPLY WITH TREATMENT)**

G.S. 122C-273(a)(2)

Date Of Outpatient Commitment Order

Transport To (Name And Address Of Physician Or Center)

Date Period Of Commitment Expires

**NOTE:** Use this form only when (1) an Outpatient Commitment Order has been entered after a hearing in district court; (2) the respondent has failed, but has not clearly refused, to comply with all or part of the prescribed treatment, and (3) the respondent is to be taken to a physician or outpatient treatment center for examination. **DO NOT** use this form when the respondent has clearly refused to comply; instead use "Request For Supplemental Hearing (Outpatient Fails Or Clearly Refuses To Comply With Treatment)," AOC-SP-221. Other transportation orders are: "Notice Of Need For Transportation Order (From One 24-Hour Facility To Another)," AOC-SP-222; "Request For Transportation Order And Order (Committed Substance Abuser Fails To Comply Or Is Discharged From 24-Hour Facility)," AOC-SP-223; Request For Transportation Order And Order (Outpatient Fails To Appear For Prehearing Examination), AOC-SP-224.

**REQUEST**

The outpatient physician, physician's designee or outpatient treatment center named below requests that the Clerk of Superior Court enter an order pursuant to G.S. 122C-273(a)(2) to take the Respondent named above into custody and to take the Respondent immediately to the outpatient treatment physician or center specified above for examination. In support of this request the undersigned states:

1. An Outpatient Commitment Order was entered in this proceeding on the date shown above and the Respondent was ordered to comply with prescribed treatment. The period of outpatient commitment has not expired.
2. The Respondent has failed to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable efforts to solicit compliance, in that (*Summarize facts showing failure to comply and reasonable efforts to solicit compliance*):

Date

Signature Of Physician, Physician's Designee Or Representative Of Center

- 
- Physician
- 
- 
- Physician's Designee
- 
- 
- Representative Of Center (Title)

Name Of Physician Or Center (Type Or Print)

Name Of Person Signing Request (Type Or Print)

**ORDER****TO ANY LAW ENFORCEMENT OFFICER:**

You are ORDERED to take the Respondent into custody, take the Respondent immediately to the specified outpatient treatment physician or center and turn the Respondent over to the custody of that physician or center.

Date

Signature

- 
- Clerk Of Superior Court
- 
- 
- Assistant Clerk Of Superior Court

**NOTE:** See Side Two for Officer's Return.

AOC-SP-220, New 7/04

© 2004 Administrative Office of the Courts

**OFFICER'S RETURN**

*Respondent Taken Into Custody  
Date*

*Time*

AM  PM

*Respondent Turned Over To Physician Or Center  
Date*

*Time*

AM  PM

On the date and time shown above, I took the Respondent into custody. I took the Respondent immediately to the specified outpatient treatment physician or center and turned the Respondent over to the custody of that physician or center.

I DID NOT take the Respondent named above into custody because:

*Date Of Return*

*Signature Of Deputy Sheriff Or Law Enforcement Officer Making Return*

*Name Of Deputy Sheriff Or Law Enforcement Officer Making Return (Type Or Print)*

*County Of Sheriff Or City Of Law Enforcement Officer*

**STATE OF NORTH CAROLINA**

File No.

In The General Court Of Justice  
District Court Division

\_\_\_\_\_ County

**IN THE MATTER OF****AFFIDAVIT AND PETITION FOR  
INVOLUNTARY COMMITMENT**

G.S. 122C-261, 122C-281

Name And Address Of Respondent

Social Security No. Of Respondent (if available)

Date Of Birth

Drivers License No. Of Respondent

State

I, the undersigned affiant, being first duly sworn, and having sufficient knowledge to believe that the respondent is a proper subject for involuntary commitment, allege that the respondent is a resident of, or can be found in the above named county, and:

(check all that apply)

1. has a mental illness and is dangerous to self or others or has a mental illness and is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.  
 in addition to having a mental illness, respondent also has an intellectual disability.
2. is a substance abuser and dangerous to self or others.

The facts upon which this opinion is based are as follows: (State facts, not conclusions, to support ALL blocks checked.)

Name And Address Of Nearest Relative Or Guardian

Name And Address Of Person Other Than Petitioner Who May Testify

Home Telephone No.

Business Telephone No.

Home Telephone No.

Business Telephone No.

Petitioner requests the court to issue an order to a law enforcement officer to take the respondent into custody for examination by a person authorized by law to conduct the examination for the purpose of determining if the respondent should be involuntarily committed.

**SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

Signature Of Petitioner

Date

Signature

Name And Address Of Petitioner (type or print)

 Deputy CSC    Assistant CSC    Clerk Of Superior Court    Magistrate

 Notary (use only with  
commitment examiner petitioner)

Date Notary Commission Expires

Relationship To Respondent

**SEAL**

County Where Notarized

Home Telephone No.

Business Telephone No.

Original-File   Copy-Hospital   Copy-Special Counsel   Copy-Attorney General  
(Over)

**PETITIONER'S WAIVER OF NOTICE OF HEARING**

I voluntarily waive my right to notice of all hearings and rehearings in which the Court may commit the respondent or extend the respondent's commitment period, or discharge the respondent from the treatment facility.

*Signature Of Witness*

*Date*

*Signature Of Petitioner*

**NOTE:** "Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of [Chapter 122C] may be expunged from the files of the court." G.S. 122C-54(e).



STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

County

IN THE MATTER OF

FINDINGS AND CUSTODY ORDER
INVOLUNTARY COMMITMENT
(PETITIONER APPEARS BEFORE MAGISTRATE OR CLERK)

Name And Address Of Respondent

G.S. 122C-252, -261, -263, -281, -283

Social Security No. Of Respondent

Date Of Birth

Driver's License No. Of Respondent

State

I. FINDINGS

The Court finds from the petition in the above matter that there are reasonable grounds to believe that the facts alleged in the petition are true and that the respondent probably:

(Check all that apply)

- 1. has a mental illness and is dangerous to self or others or has a mental illness and is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.
In addition to probably having a mental illness, the respondent also probably has an intellectual disability.
2. is a substance abuser and dangerous to self or others.

II. CUSTODY ORDER

TO ANY LAW ENFORCEMENT OFFICER:

The Court ORDERS you to take the above named respondent into custody WITHIN 24 HOURS AFTER THIS ORDER IS SIGNED and take the respondent for examination by a person authorized by law to conduct the examination. (A COPY OF THE COMMITMENT EXAMINER'S FINDINGS SHALL BE TRANSMITTED TO THE CLERK OF SUPERIOR COURT IMMEDIATELY.)

- IF the commitment examiner finds that the respondent is NOT a proper subject for involuntary commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
IF the commitment examiner finds that the respondent has a mental illness and is a proper subject for outpatient commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
IF the commitment examiner finds that the respondent has a mental illness and is a proper subject for inpatient commitment, then you shall transport the respondent to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.
IF the commitment examiner finds that the respondent is a substance abuser and subject to involuntary commitment, the commitment examiner must recommend whether the respondent be taken to a 24-hour facility or released, and then you shall either release him/her or transport the respondent to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.

Date Time AM PM Signature Deputy CSC CSC Assistant CSC Magistrate

This Order is valid throughout the State. If the respondent is taken into custody, this Order is valid for seven (7) days from the date and time of issuance.

III. RETURN OF SERVICE
A. CUSTODY CERTIFICATION

Respondent WAS NOT taken into custody for the following reason:

I certify that this Order was received and respondent served and taken into custody as follows:

Date Respondent Taken Into Custody Time AM PM
Name Of Law Enforcement Officer (type or print) Signature Of Law Enforcement Officer
Name Of Law Enforcement Agency Badge No. Of Officer

NOTE TO LAW ENFORCEMENT OFFICER: If respondent is not taken into custody within 24 hours after this Order is signed, check the appropriate box above and return to the Clerk of Superior Court immediately. If respondent is served and taken into custody, complete return of service on the reverse. When taking respondent into custody you must inform him or her that he or she is not under arrest and has not committed a crime, but is being transported to receive treatment and for his or her own safety and that of others.

**B. PATIENT DELIVERY TO FIRST EXAMINATION SITE**

The respondent was presented to an authorized commitment examiner as shown below:

Date Presented	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Commitment Examiner (type or print)
Name Of Examining Facility	County Of Examining Facility	
Name Of Law Enforcement Officer (type or print)	Signature Of Law Enforcement Officer	
Name Of Law Enforcement Agency	Badge No. Of Officer	

**C. FOR USE WHEN TRANSPORTING AFTER FIRST EXAMINATION:  
PATIENT RELEASED OR DELIVERED TO 24-HOUR FACILITY**

1. The commitment examiner found that the respondent does not meet the commitment criteria, or meets the criteria for outpatient commitment, or meets the criteria for substance abuse commitment and should be released pending a hearing. I returned respondent to his/her regular residence or the home of a consenting person and released respondent from custody.
2. The commitment examiner found that the respondent has a mental illness and meets the criteria for inpatient commitment, or meets the criteria for substance abuse commitment and should be held pending a district court hearing. I transported and placed the respondent in the custody of the 24-hour facility named below for observation and treatment.

Name Of 24-Hour Facility	County Of 24-Hour Facility
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3. Respondent was temporarily detained under appropriate supervision at the site of first examination because the first commitment examiner recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, a commitment examiner determined that the respondent no longer meets inpatient commitment criteria or meets the criteria for outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

Date Delivered	Time Delivered <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Commitment Examiner (type or print)
Name Of Examining Facility	County Of Examining Facility	
Name Of Law Enforcement Officer (type or print)	Signature Of Law Enforcement Officer	
Name Of Law Enforcement Agency	Badge No. Of Officer	

**NOTE TO LAW ENFORCEMENT OFFICER:** Upon completing this section, immediately return this form and a copy of the commitment examiner's written report (Form No. DMH 5-72-01) to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

County

IN THE MATTER OF

Name And Address Of Respondent

FINDINGS AND CUSTODY ORDER
INVOLUNTARY COMMITMENT
(PETITIONER IS CLINICIAN WHO HAS EXAMINED RESPONDENT)

G.S. 122C-252, -261, -263, -281, -283

Social Security No. Of Respondent

Date Of Birth

Driver's License No. Of Respondent

State

I. FINDINGS

The Court finds from the petition in the above matter that there are reasonable grounds to believe that the facts alleged in the petition are true and that the respondent probably:

(Check all that apply)

- 1. has a mental illness and is dangerous to self or others.
In addition to probably having a mental illness, the respondent also probably has an intellectual disability.
2. is a substance abuser and dangerous to self or others.

II. CUSTODY ORDER

TO ANY LAW ENFORCEMENT OFFICER:

The Court ORDERS you to take the above named respondent into custody WITHIN 24 HOURS AFTER THIS ORDER IS SIGNED and transport the respondent directly to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.

Form with fields for Date, Time, Signature, and checkboxes for Deputy CSC, CSC, Assistant CSC, Magistrate.

This Order is valid throughout the State. If the respondent is taken into custody, this Order is valid for seven (7) days from the date and time of issuance.

III. RETURN OF SERVICE
A. CUSTODY CERTIFICATION

- Respondent WAS NOT taken into custody for the following reason:
I certify that this Order was received and respondent served and taken into custody as follows:

Form with fields for Date Respondent Taken Into Custody, Time, Name Of Law Enforcement Officer, Signature Of Law Enforcement Officer, Name Of Law Enforcement Agency, Badge No. Of Officer.

NOTE TO LAW ENFORCEMENT OFFICER: If respondent is not taken into custody within 24 hours after this Order is signed, check the appropriate box above and return to the Clerk of Superior Court immediately. If respondent is served and taken into custody, complete return of service on the reverse. When taking respondent into custody you must inform him or her that he or she is not under arrest and has not committed a crime, but is being transported to receive treatment and for his or her own safety and that of others.

**B. FOR USE WHEN 24-HOUR FACILITY NOT IMMEDIATELY AVAILABLE OR MEDICALLY APPROPRIATE**

A 24-hour facility is not immediately available or medically appropriate. The respondent is being temporarily detained under appropriate supervision at the facility named below.

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Commitment Examiner (type or print)
Name Of Examining Facility		County Of Examining Facility
Name Of Law Enforcement Officer (type or print)		Signature Of Law Enforcement Officer
Name Of Law Enforcement Agency		Badge No. Of Officer

**C. FOR USE WHEN RESPONDENT RELEASED BEFORE TRANSPORT TO 24-HOUR FACILITY**

Respondent was temporarily detained under appropriate supervision at the site of first examination because the first commitment examiner (petitioning clinician) recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, a commitment examiner determined that the respondent no longer meets the inpatient commitment criteria or meets the criteria for outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

Date Delivered	Time Delivered <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Commitment Examiner (type or print)
Name Of Examining Facility		County Of Examining Facility
Name Of Law Enforcement Officer (type or print)		Signature Of Law Enforcement Officer
Name Of Law Enforcement Agency		Badge No. Of Officer

**NOTE TO LAW ENFORCEMENT OFFICER:** Upon completing this section, immediately return this form and the commitment examiner's written report (Form No. DMH 5-72-01) to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).

**D. PATIENT DELIVERY TO 24-HOUR FACILITY**

I transported the respondent and placed him/her in the custody of the 24-hour facility named below.

Date Delivered	Time Delivered <input type="checkbox"/> AM <input type="checkbox"/> PM
Name Of 24-Hour Facility	County Of 24-Hour Facility
Name Of Law Enforcement Officer (type or print)	Signature Of Law Enforcement Officer
Name Of Law Enforcement Agency	Badge No. Of Officer

**NOTE TO LAW ENFORCEMENT OFFICER:** Upon completing this section, immediately return this form to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).

SUPPLEMENT TO SUPPORT IMMEDIATE HOSPITALIZATION  
(To be used in addition to "Examination and Recommendation for Involuntary Commitment, Form 572-01)

**CERTIFICATE**

The Respondent, \_\_\_\_\_  
requires immediate hospitalization to prevent harm to self or others because:

I certify that based upon my examination of the Respondent, which is attached hereto,  
the Respondent is (check all that apply):

- Mentally ill and dangerous to self
- Mentally ill and dangerous to others
- In addition to being mentally ill, is also mentally retarded

\_\_\_\_\_  
**Signature of Physician or Eligible Psychologist**

**Address:** \_\_\_\_\_

**City State Zip:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Date/Time:** \_\_\_\_\_

**Name of 24-hour facility:** \_\_\_\_\_

**Address of 24-hour facility:** \_\_\_\_\_

**NORTH CAROLINA**

\_\_\_\_\_ County  
Sworn to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

(seal)

\_\_\_\_\_  
**Notary Public**

**My commission expires:** \_\_\_\_\_

Pursuant to G.S. 122C-262 (d), this certificate *shall serve as the Custody Order* and the law enforcement officer or other person *shall provide transportation to a 24-hr. facility in accordance with G.S. 122C-251.*

CC: 24-hour facility  
Clerk of Court in county of 24-hour facility

Note: If it cannot be reasonably anticipated that the clerk will receive the copy within 24 hours (excluding Saturday, Sunday and holidays) of the time that it was signed, the physician or eligible psychologist shall also communicate the findings to the clerk by telephone.

**TO LAW ENFORCEMENT: See back side for Return of Service**

RETURN OF SERVICE			
<input type="checkbox"/> <b>Respondent WAS NOT taken into custody for the following reason:</b>			
<input type="checkbox"/> <b>I certify that this Order was received and served as follows:</b>			
<i>Date Respondent Taken into Custody</i>	<i>Time</i>		
	<input type="checkbox"/> AM <input type="checkbox"/> PM		
<i>Name of 24-Hour Facility</i>	<i>Date Delivered</i>	<i>Time Delivered</i>	<i>Date of Return</i>
		AM <input type="checkbox"/> PM <input type="checkbox"/>	
<i>Name of Transporting Agency</i>	<i>Signature of Law Enforcement Official</i>		

# STUDENT EVALUATION OF INSTRUCTORS

## Criminal Justice Standards Division

Post Office Drawer 149  
Raleigh, NC 27602  
(919) 661-5980  
Fax (919) 779-8210

## Sheriffs' Standards Division

Post Office Box 629  
Raleigh, NC 27602  
(919) 779-8213  
Fax 662-4515

Form F-17  
(Rev. 6/11)

**Instructor** \_\_\_\_\_

**Institution/Agency** \_\_\_\_\_

**Block of Instruction** \_\_\_\_\_ **Date** \_\_\_\_\_

**VALUES**      **UNACCEPTABLE**                      **ACCEPTABLE**  
**1=POOR**      **2 = FAIR**      **3 = GOOD**                      **4 = EXCELLENT** **5 = SUPERIOR**

Please circle the appropriate value adjacent to each question.

### Instructor Qualities

- |     |                             |   |   |   |   |   |
|-----|-----------------------------|---|---|---|---|---|
| 1.  | Appearances.                | 1 | 2 | 3 | 4 | 5 |
| 2.  | Gestures.                   | 1 | 2 | 3 | 4 | 5 |
| 3.  | Verbal Pauses               | 1 | 2 | 3 | 4 | 5 |
| 4.  | Grammar                     | 1 | 2 | 3 | 4 | 5 |
| 5.  | Pronunciation               | 1 | 2 | 3 | 4 | 5 |
| 6.  | Enunciation                 | 1 | 2 | 3 | 4 | 5 |
| 7.  | Voice                       | 1 | 2 | 3 | 4 | 5 |
| 8.  | Rate - Too Fast or Too Slow | 1 | 2 | 3 | 4 | 5 |
| 9.  | Eye Contact                 | 1 | 2 | 3 | 4 | 5 |
| 10. | Enthusiasm                  | 1 | 2 | 3 | 4 | 5 |

**SUBTOTAL**    \_\_\_\_\_

**SUBTOTAL BROUGHT FORWARD**

\_\_\_ \_ \_ \_ \_

**II Organization and Presentation**

- 1. Were the major objectives of the course made clear? 1 2 3 4 5
- 2. How well was the class presentation planned and organized? 1 2 3 4 5
- 3. Was the course material clearly explained? 1 2 3 4 5
- 4. Did test questions fairly reflect the course content? 1 2 3 4 5
- 5. Was class time well used? 1 2 3 4 5
- 6. Do you feel that your questions were adequately answered by the instructor? 1 2 3 4 5
- 7. Do you believe the instructor encouraged relevant student involvement in the class? 1 2 3 4 5
- 8. Did the instructor react to student viewpoints different from his in a positive manner? 1 2 3 4 5
- 9. How would you describe the instructor's attitude in class toward you, the student? 1 2 3 4 5
- 10. How would you rate the instructor's quality and use of training aids? 1 2 3 4 5

**TOTAL ACROSS** \_\_\_+\_\_\_+\_\_\_+\_\_\_+\_\_\_

**CUMULATIVE TOTAL** \_\_\_\_\_

**INSTRUCTOR RATING FORMULA:**

**CUMULATIVE TOTAL ÷ 20 = INSTRUCTOR RATING**

Comments

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## ***Crowd Management***

BLET: 28Q Draft iv, 3-4, 22-23, 68

TITLE: CROWD MANAGEMENT

Lesson Purpose: To familiarize the student with the psychological aspects of crowds and present procedures used by law enforcement officers to control crowds, demonstrations, and civil disorders.

Training Objectives: At the end of this block of instruction, the student will be able to achieve the following objectives by information received during the instructional period:

1. Name the three (3) different categories of crowds and give an example of each.
  - a) Physical crowd
  - b) Psychological crowd
  - c) Mob
2. Identify the tactics used to counter the social and psychological influences of crowd behavior.
3. State the duties of a law enforcement officer when patrolling a non-violent/passive protest and a potentially violent/hostile demonstration.
4. Demonstrate proper crowd control formations, using the riot baton to control/restrain crowd movement.
5. Identify the various uses for chemical munitions, specialty impact munitions, and distraction devices.

Hours: Twelve (12)

Instructional Method: Lecture, Demonstration, Practical Exercise

Testing Requirement(s): End of block test, Practical Exercise

Training Environment(s): Classroom, Practical Exercise Area

Materials Required: Audio-visual classroom equipment  
Chemical munitions (recommended)

## ***Crowd Management***

Flexcuffs and set of cutters  
Flip chart/whiteboard  
Four law enforcement vehicles  
Gas masks  
Handouts  
Riot batons  
Riot helmets  
Riot shields  
Stretcher  
Video:

*St. Petersburg Riots/Crowd Control*, Vol.2, Program 12,  
In the Line of Duty (1996) (31 minutes)

### References:

*Chemical Munitions Training Course Summary*. Hart Valley,  
MD: A.A.T. Corp., 1988.

“Civil Disorder.” *Basic Law Enforcement Training*.  
Salemburg, NC: North Carolina Justice Academy, 1994.

*Civil Disorder - Mobile Tactics*. Los Angeles: Los Angeles  
Sheriff’s Department, 1994.

Defense Technology/Federal Laboratories. *Chemical  
Munitions Instructor Manual*. Jacksonville, FL: Armor  
Holding Co., 1999.

Defense Technology/Federal Laboratories. *Distraction Devices  
Instructor Certification Program Manual*. Jacksonville, FL:  
Armor Holding Co., 1999.

Defense Technology/Federal Laboratories. *Special Impact  
Munitions Instructor Manual*. Jacksonville, FL: Armor Holding  
Co., 1999.

Fourkiller, Larkin, and Micheal Holsapple. “Civil  
Disturbance.” *Law and Order*, May 2000, Volume 48, Issue 5.

Hallowell, Billy. “Here’s the History Behind Occupy Wall  
Street’s Creepy Guy Fawkes Mask.” *The Blaze*, Inc.,  
November 4, 2011. Accessed January 2023. [https://www.  
theblaze.com/news/2011/11/04/heres-the-history-behind-  
occupy-wall-streets-creepy-guy-fawkes-mask](https://www.theblaze.com/news/2011/11/04/heres-the-history-behind-occupy-wall-streets-creepy-guy-fawkes-mask).

## ***Crowd Management***

International Association of Chiefs of Police. "Riot Control Tactics for New Urban Violence." Alexandria, VA: 1996.

*Martinez v. Kilday*, 117 S.W.2d 151 (Texas Court of Civil Appeals, 1938).

North Carolina, General Statutes (1994) 14-288.2, "Riot; inciting to riot; punishments."

*Scott v. Henrich*, 39F.3d912 (9<sup>th</sup> Cir. 1994).

Tech Target. "Flash Mob." January 2009. Accessed November 2020. <https://searchmobilecomputing.techtarget.com/definition/flash-mob>.

United States Department of Homeland Security. *Managing Civil Actions in Threat Incidents: Protester Devices*. Washington, DC: Center for Domestic Preparedness, Office of Grants, and Training, 2006.

Vasquez, John P. Lt. "Managing Spontaneous Crowds Effectively." *Police Magazine*, Nov. 1997, 24-30.

Young, Patrick. "The Next Page: Hot Trends in Protest Technology: Tools of the Trade." *Pittsburgh Post-Gazette*, PG Publishing Company, March 18, 2007. Accessed January 2023. <http://www.post-gazette.com/opinion/Op-Ed/2007/03/18/The-Next-Page-Hot-trends-in-protest-technology-/stories/200703180245>.

Revised By:

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Lieutenant  
North Carolina General Assembly Police Department

Gary Turlington  
First Sergeant  
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## ***Crowd Management***

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Date Revised: January 2015

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Date Revised: August 2018  
January 2020

Content Revision By: Christopher Humphrey  
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Date Revised: July 2020

Content Revision By: Jennifer Fisher, M.S.  
Instructor/Developer  
North Carolina Justice Academy

Date Revised: July 2023  
**January 2024**

## ***Crowd Management***

### TITLE: CROWD MANAGEMENT – **Instructor Notes**

1. This lesson plan must be presented by an instructor currently certified by the North Carolina Criminal Justice Education and Training Standards Commission as a General Instructor.
2. The purpose of this block of instruction is to familiarize the student with the organization, development, and proper execution of riot control, dispersal, and arrest techniques. Crowd dispersal and arrest exercises will provide the student with the basic skills to safely and successfully participate and conduct similar operations in their jurisdictions. The instructor will retain the evaluation sheets in the student's permanent file.
3. Careful planning and coordination of practical exercise events cannot be overemphasized. This is particularly true during a mock riot or mock civil disturbance and arrest exercises. Due to the number of students playing the role of officers and the number of others playing the role of an unruly crowd, it is recommended that a safety monitor is appointed to work with the role players of the unruly crowd, while the instructors work with all the students. Please refer to the practical exercise guidelines within the instructor notes section of this lesson plan for instructions on conducting and evaluating the practical exercise. School directors must retain the graded evaluation sheet in the student files.
4. If possible, it is recommended that the students be exposed to live chemical munitions while the mock riot exercises are being conducted. If live chemicals are not used, then, inert agents should be used. It is important that safety devices are provided to the role players to protect the eyes and facial areas.
5. Instructors should review all applicable OSHA regulations for gas masks and other munitions exercises.
6. To promote and facilitate law enforcement professionalism, three ethical dilemmas are listed below for classroom discussion. At their discretion, instructors must provide students with each ethical dilemma listed below. Sometime during the lecture, instructors should “set the stage” for the dilemma before taking a break. Instructors are encouraged to develop additional dilemmas as needed.
  - a) A “pro-life” group is demonstrating outside an abortion clinic. Many of the individuals are elderly and members of the local churches. After being ordered to disperse, they refuse. Your supervisor orders you to deploy riot canisters filled with pepper spray. What will you do?
  - b) During a conflict-ridden demonstration, two of your fellow officers apprehend a demonstrator who is attempting to flee. They knock him to the ground with

## ***Crowd Management***

their batons. The demonstrator is not resisting, but the officers begin striking the demonstrator for “street justice.” What will you do?

- c) Working a large football game between two arch-rivals, you are assigned crowd control. With three minutes left in the game, you observe three teenagers (approximately thirteen years of age) climb the fence to see the game. They didn’t pay the admission. You expect the crowd to possibly erupt in about two minutes. What will you do?

## ***Crowd Management***

### PRACTICAL EXERCISE GUIDELINES: PASSIVE PROTEST

#### A. Purpose

These exercises are intended to provide the students with an opportunity to observe, practice, and perform the following training objective:

Demonstrate the ability to properly handcuff, lift, and transport a passive protester by using flex-cuffs and stretchers.

#### B. Conditions of the Exercise

1. These exercises will be conducted after the classroom lecture has been completed and before the exposure to any chemical agents.
2. These exercises should take approximately fifteen to thirty minutes, depending on class size.
3. These exercises can take place either outdoors or indoors.
4. All students are required to participate in the exercise.

#### C. Personnel and Equipment

1. One primary instructor can conduct these exercises.
2. At least one stretcher is needed for the entire class.
3. Each student should have at least two flex-cuffs to participate in these exercises.
4. One set of cutters is required.

#### D. Procedures for Conducting the Exercise

1. Divide the students into equal groups and pair off into arrest teams.
2. Give specific instructions on how to use flex-cuffs and how to correctly pick up a stretcher.
3. Lay the stretcher out in front of one group.
4. Have one student act as a passive arrestee by sitting on the ground with legs crossed.

## ***Crowd Management***

5. Using two arrest teams at a time, have students take turns placing flex-cuffs on the arrestee, placing the arrestee on a stretcher, and carrying the arrestee to another group.
6. Group two then performs the same exercise.
7. Continue until all students have rotated through the exercise.

**NOTE: To save time, each student in the arrest team can place flex-cuffs on the arrestees. Therefore, the arrestees will have two sets of flex-cuffs on his/her wrists.**

**NOTE: Instructors must cover proper lifting techniques with students before any lifting is done. Remember to lift with your legs and not your back.**

### **E. Evaluating the Exercise**

1. Instructor(s) must use the criteria provided on the Crowd Management Practical Evaluation form to evaluate the student's ability to demonstrate the skills listed.
2. If the student performs the listed criteria satisfactorily, the instructor shall place an "S" in the adjacent space signifying the student satisfactorily demonstrated the criteria listed. If the student performs the listed criteria unsatisfactorily, the instructor will place an "U" in the adjacent space signifying the student did not satisfactorily demonstrate the criteria listed. If a student receives two or more "unsatisfactory" scores the student fails, the practical exercise of the Crowd Management block of instruction.
3. Any unsatisfactory "U" score(s) should be explained by the instructor in the notes section on the practical exercise form.
4. The practical skills evaluation form must be retained in each student's permanent file.



## ***Crowd Management***

### **PRACTICAL EXERCISE GUIDELINES: FORMATIONS, CHEMICAL AGENTS AND MOBILE TACTICS**

#### **A. Purpose of the Exercise**

These exercises are intended to provide the student with an opportunity to observe, practice, and perform the following training objective:

Demonstrate proper crowd control formations and using the riot baton.

#### **B. Conditions of the Exercise**

1. The exercise will be conducted after the classroom lecture has been completed.
2. The exercise will take approximately four hours to complete.
3. A specific site location is required for the exercises. A street location is the best site. However, an open field or parking lot may be used for traditional foot formations. A paved area must be used for mobile rescue tactics.
4. All students are required to participate in this exercise.
5. Students need practice and familiarization time to become accustomed to the various offensive and defensive techniques associated with the use of riot batons. Sufficient time is available in this block for agencies that utilize riot shields to train with them in conjunction with riot batons.
6. The instructor should have a pre-planned idea about what type of scenario should be given to each respective team based on the tactic used.
  - a) Baton familiarization. Students must have time to become familiar with holding and using these instruments. These are special issue items and not covered in any other block of instruction.
  - b) Traditional crowd dispersal operation using the riot baton.
  - c) A second scene should be conducted with the aid of inert chemical agents. (Time thirty minutes)
  - d) Demonstrate back-up team movement to cover the withdrawal of the primary team upon making an arrest and to rescue or disperse the crowd. (Time thirty minutes)

## ***Crowd Management***

- e) The exercise should culminate in the two formations forming a basic riot squad by joining together and moving to block or disperse the crowd. This should be worked into the above time frame.
  - f) The gas mask procedures should be initiated at various stages of the exercise to allow the student to perfect masking and unmasking skills.
  - g) Arrest teams working in conjunction with the various formations should be utilized to show the student the efficiency of unit action.
7. Chemical agents: A demonstration of the various chemical agents used for crowd control and dispersal operation, using inert munitions, should be demonstrated under field conditions. This allows the students to see and experience first-hand the effects, capabilities, and limitations of the various systems and munitions. This exercise includes controlled exposure exercise and decontamination time. Emphasis should focus on the proper use of the gas mask, including donning and clearing the mask in an exposure exercise.

Gas mask procedures: Instructors should review the manufacturer's instructions regarding gas mask procedures with students during the classroom familiarization. They should also refer to OSHA regulation 1910.134 (c) (1) (iii)/Fit testing procedure for a tight-fitting respirator, 1910 134 App. B-1/User Seal check procedure and 1910-134 App. B-2/Respirator cleaning procedure, which can be accessed at the OSHA web site at [www.osha.gov](http://www.osha.gov).

### **C. Instructional Personnel and Equipment**

- 1. One primary instructor can conduct the classroom lecture and direct the student exercises outdoors.
- 2. An assistant instructor will be required to assist during the field exercises to monitor the role players, safety monitor, and to assist in coordinating the various field elements.
- 3. Students must have the following equipment to successfully complete the exercise of fielding a basic crowd control formation:
  - a) Riot helmets
  - b) Riot batons
  - c) Gas masks

## ***Crowd Management***

### D. Procedures for Conducting the Exercise

1. Divide the students into squads of eight to twelve in each squad.
2. Arrest teams should be designated and should consist of no less than three students and no more than six students.
3. Additional units arrive on the scene and put on basic riot gear to assist the first responding unit, should it become necessary. The instructor should gear the role-playing scenario to include options of staging and not assisting, and at other times requiring assistance. Scenarios should include the officers' withdrawal with and without arrests being made.
4. Students should be divided into two groups when conducting unprotected chemical exposure. One student is masked while his/her partner is unmasked. This is necessary for safety reasons. Once the first student has recovered from the exposure, then switch roles.

### E. Evaluating the Exercise

1. Instructor(s) must use the criteria provided on the Crowd Management Practical Evaluation form to evaluate the student's ability to demonstrate the skills listed.
2. If the student performs the listed criteria satisfactorily, the instructor will place an "S" in the adjacent space signifying the student satisfactorily demonstrated the skill listed. If the student performs the listed criteria unsatisfactorily, the instructor will place an "U" in the adjacent space signifying the student did not satisfactorily demonstrate the skill listed. If a student receives two or more "unsatisfactory" scores the student fails, this practical exercise of the Crowd Management block of instruction.
3. Any unsatisfactory "U" scores should be explained by the instructor in the notes section on the practical exercise form.
4. The practical skills evaluation form must be retained in each student's permanent file.

## ***Crowd Management***

TITLE: CROWD MANAGEMENT

### I. Introduction

#### A. Opening Statement

**NOTE: Show slide, “Crowd Management.”**

Imagine these calls: “Unit #2, respond to Fourth and Main St. Report of a group of 10-15 people fighting outside the Barrel Lounge,” or “Respond to a loud party call involving approximately 40 to 50 teens reportedly drinking underage.”

Crowd management is necessary any time officers deal with three or more individuals in a group. Group behavior is an active part of any crowd, and the failure to understand this can lead to a crowd confrontation and jeopardize your safety and that of the community. The First Amendment of the United States Constitution and our state constitution guarantees freedom of speech and the right to lawful assembly. It does not, however, protect against unlawful, violent, or destructive behavior.

Unfortunately, our history is marked with incidents where these rights have been abused, resulting in mobs and riots that left death and destruction in their wake. The actions or inactions of officers can turn a crowd into a hostile mob. Do not underestimate the potential of a riot occurring in your jurisdiction. It may not be of the magnitude of those in large cities, but they can and do occur.

The growing phenomenon of riots occurring at sporting events should be a concern of every jurisdiction that has them—yes, even at your local hometown high school. Preparation for crowd management must begin before the event. There may be times, however, when you have little or no time to prepare, so we must start our planning and preparation now.

#### B. Training Objectives

**NOTE: Show slides, “Training Objectives.”**

1. Name the three (3) different categories of crowds and give an example of each.
  - a) Physical crowd
  - b) Psychological crowd

## ***Crowd Management***

### c) Mob

2. Identify the tactics used to counter the social and psychological influences of crowd behavior.
3. State the duties of a law enforcement officer when patrolling a non-violent/passive protest and a potentially violent/hostile demonstration.
4. Demonstrate proper crowd control formations, using the riot baton to control/restrain crowd movement.
5. Identify the various uses for chemical munitions, specialty impact munitions, and distraction devices.

### C. Reasons

In day-to-day activities, the officer will find himself or herself engaged in duties related to crowd control. These tasks may range from controlling a curious group of bystanders at the scene of an accident to the possibility of a hostile crowd bent on riot and destruction. The officer must be equipped with the knowledge to handle correctly and respond to this type of situation.

The actions you take initially can make the problem more manageable or can lead to the loss of control and a destructive riot. The primary goal of any officer is to protect life and property. By implementing the options and tactics in this block of instruction and understanding the dynamics of crowd behavior, you will be able to initiate steps to protect yourself adequately and contain the crowd, if not disperse the crowd before it becomes a major problem.

## II. Body

### A. Crowds

#### 1. Crowd defined

**NOTE: Show slide, "Crowds."**

- a) Civil disobedience occurs in many forms, from small-scale neighborhood disputes to bar fights and overly exuberant sports victory celebrations to planned civil disobedience and violent protest or riots. As law enforcement officers, we generally view our actions as one-on-one with those persons who break

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the law. We must learn to see our actions on a broader plane, especially when taking action in a group setting.

Actions taken by an individual officer, right or wrong, can be viewed negatively by a group and ultimately lead to civil unrest. Officers should not ignore unlawful behavior but should use tact and diplomacy when confronted by a crowd, which will

- (1) Lessen the possibility of a hostile group attack on officers.
  - (2) Give the officer time to consolidate resources to help diffuse, contain or disperse a crowd before a problem develops.
- b) A crowd is best described as several persons temporarily congregated in an area. Crowds form for many different reasons. Individuals assembled in a given area usually have no common bond other than their curiosity about an event. There are also planned crowd activities such as political rallies, sporting events, and parties.
- c) North Carolina law also establishes the legal definition of a crowd when they become or are about to become disorderly.

N.C.G.S. § 14-288.2 (a) **Riot; inciting a riot** defines a riot (crowd) as, “a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.

- (1) Any person who willfully engages in a riot is guilty of a Class 1 misdemeanor.
- (2) Any person who willfully engages in a riot is guilty of a Class H felony if in the course of the riot the person brandishes any dangerous weapon or uses a dangerous substance.
- (3) Any person who willfully engages in a riot is guilty of a Class F felony if in the course of the riot the person

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causes property damage in excess of two thousand five hundred dollars (\$2,500) or serious bodily injury.

- (4) Any person who willfully engages in a riot is guilty of a Class E felony if in the course of the riot the person causes a death.
- (5) Any person who willfully incites or urges another to engage in a riot, so that as a result of such inciting or urging a riot occurs or a clear and present danger of a riot is created, is guilty of a Class A1 misdemeanor.
- (6) Any person who willfully incites or urges another to engage in a riot, and such inciting or urging is a contributing cause of a riot in which there is property damage in excess of two thousand five hundred dollars (\$2,500) or serious bodily injury, shall be guilty of a Class E felony.
- (7) Any person who willfully incites or urges another to engage in a riot, and such inciting or urging causes a death, shall be guilty of a Class D felony.
- (8) Any person whose person or property is injured by reason of a violation of this section may sue for and recover from the violator three times the actual damages sustained, as well as court costs and attorneys' fees.
- (9) Mere presence alone with an overt act is not sufficient to sustain a conviction pursuant to this section.”<sup>1</sup>

**This does not mean that every crowd is a riot, but one should remember, “Every crowd has the potential to become a riot.” You must look at the actions of the group and their potential to become disorderly or demonstrate violent conduct.**

- d) Typically, crowds are orderly, lawful in their actions, and not endangering life or property. This type of crowd situation does not present a major problem for law enforcement officials. Our actions or failure to act or act properly can turn a crowd from peaceful to confrontational or violent.

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### 2. Types of crowds<sup>2</sup>

Crowds are divided into three major categories: physical, psychological, and mobs. Each of these is then broken down into corresponding sub-categories.

**NOTE: Show slide, “Crowd Types.”**

#### a) The physical crowd

The physical crowd can also be called a conventional crowd or casual crowd. They are characterized by the density of contact showing no significant group behavior. The physical crowd has little or no organization, no unity of purpose, its members come and go, and have no common bond. (Example: mall or major festival-type event)

#### b) The psychological crowd

The psychological crowd is an assemblage of people who have a sustained common interest and respond emotionally to the same stimuli. (Example: ball game, political speech, parade, fire, accident or disturbance)

Categories of psychological crowds:

##### (1) Sightseer or sightseeing crowd

This crowd is characterized by their common bond (a single purpose for being at a specific place). They are described as curiosity seekers, mostly cooperative, and sometimes anxious to assist. Officers must retain their cooperation while attempting to disperse them. One must determine appropriate action. Some groups may respond to a stern warning or direction, while this same action may set off another group. The best course of action is to start with diplomacy and gain their cooperation. Also, taking away the “show” or focal event will often help this crowd to disperse on its own.

##### (2) The expressive or agitated crowd

Members of the expressive crowd are involved in some expressive behavior, such as a block party or political



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rally. This type of crowd is emotionally involved and can quickly become agitated if approached improperly. For the most part, they want to have a good time or express their point of view. If possible, and as long as there is no breach of peace, it is best to let the crowd release their energies by permitting them to express themselves.

Officers must be aware of the emotional climate of this group to find a way to reduce the arousing level and successfully disperse the crowd. Otherwise, officers risk the possibility of turning the crowd into an aggressive and destructive mob.

Here a direction to disperse, under the authority of N.C.G.S. § 14-288.5 – “Failure to disperse when commanded” – may be an effective option. The art is knowing when to use this type of stern direction, versus seeking cooperation. In any case, one must be aware of when and how to effectively use the letter of the law versus the spirit of the law and vice-versa.

*Expressive or agitated crowds* are an unorganized group of people willing to be led into lawlessness but hesitate to act because it lacks

- (a) Organization
- (b) Courage
- (c) Unity

They are noisy, willing to threaten and taunt or harass police; however, they refrain from physical attack.

- c) Mob (hostile/aggressive)

A mob is a crowd whose members, under the stimulus of intense excitement and agitation, lose their sense of reason. They can also lose respect for the sense of order, law, and respect for each other. This type of crowd is a riot under NC law.

Types of mobs:

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**NOTE: Show slide, “Mob Types.”**

(1) Escape mob

A highly emotionally charged crowd driven by fright describes the escape mob. People involved are driven by an overpowering fear, which creates an emotional, unreasonable, and frantic behavior driving the crowd to seek safety. This type of mob is challenging to control because of the group, even though together and acting as one, is interested in individual survival.

One must try to channel this type of crowd as they move from one area to another. This is necessary to reduce the potential of injury caused by the mob upon other members of the fear-driven mob. Never stand in front of this emotionally driven group, or you may be seriously injured.

(2) The aggressive mob

This is a mob that will attack, riot, and terrorize others. The aim of the mob is the destruction of property and physical attacks on persons. The actions of the crowd or the sight of blood often drive them to a frenzy.

(3) Acquisitive mob

**NOTE: Give an example of a riot at a local retail store, involving parents seeking unique toys in your jurisdiction, or use the examples here: Christmas shopping riot at the local Wal-Mart involving three hundred parents and only twenty-five scooters at 0600 hours.**

This mob has the desire to acquire something. (Example: The looting of food or merchandise, the taking or attempting to take an officer’s prisoner.) A prisoner taken by officers in a bar or loud party call can also be the target of the crowd as they try to regain control of their peers. When making an arrest, officers must take action to remove prisoners or other persons in custody as soon as possible to help defuse the focus of this type of group.

(4) Expressive mob

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An expressive mob is a group expressing intense feelings or revelry. It usually follows some special events. This type of crowd can show itself at your local high school football game. This type of mob can be very destructive.<sup>3</sup>

**NOTE: Give an example of a riot at a sporting event in your jurisdiction or use the examples here: (Example: New Year's Eve, major sporting event such as the Detroit Pistons riot on June 16, 1990, when seven were killed during the crowd's rampage or the Boston Red Sox winning the 2013 World Series against the Saint Louis Cardinals.)**

(5) Flash mobs

“A flash mob is a group of strangers who organize themselves, using electronic media such as cell phones or the Internet, to gather together in a public place, behave in a predetermined manner for a predetermined amount of time, and then quickly disperse.

A successful flash mob event depends on the element of surprise. Participants, called *mobsters* share news about the time and place for an upcoming event through postings on blogs, chain e-mail messages, SMS text messages, and social networking sites such as Facebook and Twitter.

Bill Wasik, senior editor of *Harper's Magazine*, orchestrated the first successful flash mob in June 2003 at Macy's department store. A group of 100 people received instructions to gather at one of four staging areas. Further directions led them to the store's rug department, where they told employees they lived together and were shopping for a 'love rug.'

Wasik's subsequent flash mobs included one group applauding for 15 seconds in the lobby and mezzanine of the Hyatt hotel and another group pretending to be tourists from Maryland in a SoHo shoe store. It wasn't until June 2006, when Wasik published an article about his flash mobs in *Harper's*, that their source was publicly known. According to Wasik, he created the flash mob, at least in part, 'as a student that would satirize scenester-y gatherings.'

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Since then, flash mobs have been organized by many people, for many purposes, all over the world. Flash mobs have included:

- (a) Zombie walks in various cities around the world
- (b) A protest against a third runway at Heathrow Airport in London
- (c) Mob pillow fights, known as Pillow Fight Club gatherings
- (d) Distribution of clothing to the homeless on Vancouver's Downtown Eastside
- (e) A large group dancing to music broadcasted over the public address system in a London underground station, created for a T-Mobile ad.

According to Howard Rheingold, author of 'The Virtual Community' and 'Smart Mobs: The Next Social Revolution,' flash mobs are not just a passing fad but are a demonstration of the 'ability for groups of people to organize collective action in the face-to-face world, in ways that they were unable to do before the combination of the Internet and mobile telephones made it possible.'"<sup>4</sup>

### 3. Types of disturbances

There are five general types of disturbances and civil unrest, which may be confronted by law enforcement officers.

**NOTE: Show slide, "Types of Disturbances."**

#### a) Mass demonstration

This type of demonstration usually involves hundreds or thousands of people, many of whom may be nonviolent and within their rights to protest, but because of their numbers, they can overwhelm the capabilities of law enforcement agencies. (Example: protest march)

#### b) Civil disobedience

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This involves a group that is usually nonviolent and uses tactics and posture that place them in a position to be arrested by law enforcement agencies. This puts the law enforcement agency in a very awkward position because of the nonviolent approach taken. It is usually a highly visible action and often has extensive media coverage. (Example: operation rescue demonstration, student takeovers on college campuses)

c) Labor disputes

The dynamics of a labor dispute are very complex. To better understand the related law enforcement problems involved in this duty, officers should look at several perspectives: free speech, police power at the scene, picketing, employer and non-striking employees, and access to company property.

- (1) The right of strikers to picket is protected by the courts because it is a valid expression of freedom of speech.
- (2) Exercise of the police powers must be reasonable about the actions which it is designed to combat and must be neither arbitrary nor discriminatory.
- (3) An employer and its employees who do not strike also have the right to be protected. Under North Carolina law, employees do not have to join a union to be employed or continue to work; therefore, they have a right to work without interference from striking employees.
- (4) The law is clear that an employer has the legal right of ingress and egress to and from their premises without prior consultation with the picketers; employees, customers, and others are seeking to enter or leave the employer's premises also have the right to do so without interference from the picket lines.

d) Idealistic protest

These usually involve fanatically dedicated participants, young males who are not deterred by the threat of arrest or use of force.

e) Riot

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A riot is an uncontrolled and violent disturbance of the public peace by three or more persons joined together for a common purpose. (Example: L.A. riots)

(1) Conventional mob riot

This classic type of riot is the climate of violence, which is caused by the rampage of a spontaneously formed mob.

(2) Race riot

An actual race riot is open warfare between those of different ethnic or religious groups. Rumor plays a vital role in this type of riot-used to influence. Once the stage is set, only a spark (incident) is required to ignite the group into a bloody war. The target is the enemy group. It may even be the police themselves who are the target. Traditional crowd/riot control techniques have limited effectiveness in this setting because law enforcement is usually caught between groups who may be armed. Special tactics, using chemicals munitions, special impact munitions, and anti-sniper teams need to deal with this type of situation

(3) Organized/planned riot

A planned riot occurs when a mob is deliberately assembled and incited to riot. They utilize a key instigator with predetermined followers. They are used to enhance the ideas of the instigator and destroy the police department's reputation. As a result, the public loses faith in the police, which hurts police morale and makes them hesitant and unsure of themselves.

(4) Guerrilla riot

Their actions are not those of the mob but rather those of a guerrilla army or terrorist group. Their prime target is the police, and they use ambush techniques to accomplish their goals. Conventional riot control countermeasures are useless in this type of encounter. This is actual urban warfare involving guns, grenades, explosives, etc.

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### (5) Spontaneous riot

Confrontations just don't happen. Some force or event must occur to set off a group. Officers responding to loud party calls or gatherings outside nightspots can become targets, particularly if the officers' actions are viewed as improper by the group. Such actions may be a simple arrest, closing a loud party, or clearing the street. A proper tactical approach to this type of situation may be the only preparation time officers have before things spiral out of control. Remember the tactical saying, "It is better to have a plan and not need it than to need a plan and not have it."

In 1964 and 1965, the Rochester, Pennsylvania, and the L.A. Watts Riots were all ignited from routine police arrests on busy streets where crowds spontaneously gathered and fused. These incidents occurred rapidly; however, they did not erupt into widespread civil unrest for hours. In contrast, today's incidents grow out of control in as little as fifteen minutes. In the 1992 L.A. Riot that began at the intersection of 71<sup>st</sup> and 77<sup>th</sup> Street, the community was already upset about the "Rodney King" verdict, and the on-scene arrest of local gang members became a riot that quickly spread rapidly through the city's south side.<sup>5</sup>

**NOTE: Show video, *St. Petersburg Riots/Crowd Control*. It is recommended that the instructor show video(s) of other recent incidents.**

### 4. Role of the rumor

**NOTE: Show slide, "Role of the Rumor."**

The rumor is the characteristic mode of communication in a collective behavior setting. Rumors can be defined as communication through people caught up in an ambiguous situation, trying to make a meaningful sense of it by relying on their perceptions and intellect.

- a) A rumor is a progressive distortion of an initially accurate statement.
- b) Rumor plays a significant part in crystallizing public opinion.

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- c) Some experts have said that no riot takes place without a build-up through rumor.
- d) Animosity is gradually intensified preceding a riot by stories of aggressive acts on the part of the opposition.
- e) Rumors often follow controversial encounters between a member of the public and an officer of a different culture. These rumors are often more important than the incident.

Example: The Watts Riots of the 1960s began because of a rumor – “the police were beating a pregnant black woman.” The facts were that an arrest had been made, but the arrestee was neither pregnant nor was she beaten. The subsequent confrontation between citizens and the police lead to further confrontations where the police either withdrew because they were not prepared to deal with the crowds, or they were made to appear helpless.

- f) With today’s live media coverage, rumors and police action or in-action will influence the situations much more quickly.
- g) Rumors must be countered. When a rumor begins to surface, every effort must be made to communicate the truth. Effectively using community contacts, i.e., community advisor, community leaders, community policing efforts, and the press to get the facts out into the community can accomplish this.

### **B. Social/Psychological Influences of Crowd Behavior**

Psychological and behavioral factors are present in any crowd confrontation. These factors affect the crowd as well as law enforcement personnel. Knowledge and appreciation of social-psychological influences can help control forces that can effectively counter riot tactics, help with crowd dispersal, and help supervisors maintain control of their subordinates.

These behavioral factors not only affect a crowd, but they affect control forces as well.

**NOTE: Show slide, “Crowd Behavioral Factors.”**

- 1. Influences<sup>6</sup>
  - a) Anonymity



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The feeling of being lost in the crowd. Members of the crowd feel they cannot be identified. Therefore, they lose responsibility for their actions.

b) Universality

The “everybody is doing it” feeling. Members feel the attitudes and emotions are being experienced and are shared by everyone in the group.

c) Inability to withdraw

Being afraid to express a view contrary to those in the majority.

d) Increased hostility (convergence theory)

When people are frustrated and believe they are being mistreated, confrontation is an outlet for their anger; however, conflict does not eliminate the problem, and it often increases hatred between social groups. According to this theory, people merely reveal their true selves in a crowd--the crowd serving only as an excuse or a trigger.

e) Social suggestion

The urge to do what others do is quite strong with most people. Crowd people tend to follow the lead of others, particularly those designated as leaders. Those involved usually have a common denominator that brings them together to unify the group.

f) Emotionality

There exists in any crowd a high degree of emotional tension and excitement. Hostile emotions like anger and fear may drive the crowd to act out.

g) Irrationality

There are two aspects of this behavior in a crowd setting. The first is fear and panic. The second is frustration, which can result in violent behavior.

h) Homogeneity of mental state (group mindset)

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Here the members of the mob share a common attitude, opinion, dissatisfaction, and frustration. Often referred to as a “group mindset.”

i) Emotional contagion (contagion theory)

This is the most dramatic feature of collective behavior, where excitement seems to be transmitted from one person to another. Emotional contagion provides the crowd with psychological unity and the point at which a crowd or assemblage becomes a mob.

2. Tactics for countering social/psychological influences

**NOTE: Show slide, “Tactics for Countering Social/Psychological Influences.”**

Officers must use methods to reduce these influences upon the crowd. They will not stop all people from acting out, but it will reduce the number of those who will.

a) Dispersing the crowd as soon as possible to reduce the influences of the crowd on its members.

- (1) Verbalizing the need for the crowd to disperse, using diplomacy and tact.
- (2) Seeking cooperation and explaining what actions may be used to disperse the group if necessary.
- (3) Allow a reasonable time for the crowd to disperse and “save-face;” pushing the crowd may lead to a confrontation.
- (4) Control the number of officers on the scene. Too many officers present may lead to uncoordinated action and may “push” the crowd into action. If additional officers are at the scene or needed in the event the situation turns into a confrontation, they should be positioned nearby but out of sight of the crowd.
- (5) If the crowd’s actions should result in violence, then more forcible dispersal actions may be needed. We will cover those tactics later in this block of instruction.

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- b) The use of photography and video to take away anonymity.
- c) Selective arrest and enforcement to reduce the feeling of universality. Arrest should be made selectively or at the direction of supervisors. This is necessary to maintain sufficient manpower levels at the scene.
- d) Call people by name if they are known. Officers who are in contact with their communities through community policing efforts should know their residents.
- e) Put them on notice of the law and possible violations, i.e., order to disperse, failure to disperse and unlawful assembly.
- f) Have a dispersal/back-up team formed close by the scene but out of sight, to not inflame the situation until they are needed.

### C. Patrolling Non-violent and Violent Demonstrations and Protests

#### 1. Mental preparation

**NOTE: Show slide, “Mental Preparation of Officers.”**

A particular need exists to prepare individuals for the mental and physical stress of civil disturbance control operations. Officers must be made aware of the influence of social and psychological factors upon their behavior. The same human behavioral influences that work on the disorderly crowd can also influence officers. We counter this through training, discipline, and preparation. In addition to these influences, there are others that will affect officers in a riot/crowd management situation. Some of those include:

#### a) Individual response to stress

Officers engaged in civil disturbance operations will encounter the noise and confusion created by large numbers of people facing them. Individuals may shout at, insult, or call officers abusive names. Officers must learn to ignore these taunts and not allow personal feelings to interfere with the execution of their mission. Also, officers can expect objects to be thrown at them but must learn to avoid thrown objects by evasive movements. They must never throw the objects back. Officers must subdue their emotions and carry out their orders determinedly and professionally.

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**NOTE: Make a point that officers should understand that the well-disciplined execution of orders is the most effective force applied against rioters.**

b) Psychological influences

Just as the crowd may be swept into violence by various psychological influences, the reaction of officers may be inappropriate because of the same factors. Both the law enforcement commanders and the officers must be aware of these factors so that they can cope with them in the civil disturbance environment.

- (1) The cumulative effect of these psychological factors may be an excessive response by officers who are often thrust into situations with little time available for briefing.
- (2) The fatigue factor must also be taken into consideration in determining the ability of the control force personnel to deal with provocation. In situations where the control forces become extremely emotionally involved, the supervisors may lose control over the officer's actions.
- (3) Emotional involvement - Officer focuses in on one demonstrator and targets this person for uses of force and/or arrest. Supervisors must be vigilant for such behavior and pull these officers off the line and put them in a support role until they regain their composure – “a cooling off time.”

2. Law enforcement roles and responsibilities

a) Non-violent/passive protests

**NOTE: Show slide, “Passive Protests.”**

As law enforcement agencies throughout the country continue to improve and update their training in response to violent community disturbances, most do not have a plan of action when dealing with the non-violent or passive protest. Law enforcement officers should not respond to passive protests in the same manner as they would for violent protests. Law enforcement agencies must develop a procedure to deal with this type of disturbance.

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When confronting passive protesters, law enforcement officers must be aware of the differences in tactics used by this group as compared to the violent group, because the response will be different.

(1) Passive protests: lawful v. unlawful

Officers must always be aware of state and local laws dealing with lawful protests. The simple fact that a group of individuals is gathering to voice an opinion to gain public sentiment does not necessarily mean that the protest is unlawful.

(2) What is lawful?

(a) Picketing

A way of protesters gaining sympathy and support from the public. (check local ordinances for procedures and restrictions.) Many ordinances require the picketers to remain a certain distance from the business, as well as remain a certain distance between each other and others opposing the picketers.

(b) Parades and marches

(3) What is unlawful?

(a) Violence

Involving injury or damage to people or property

(b) Blocking entrances

N.C.G.S. §14-277.4 Obstruction of Health Care Facilities – A lawful protest becomes unlawful when protesters move onto the premises and begin to block entrances.

Unlawfully entering and remaining on the premises may also be a violation of N.C.G.S.

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§14-159.12 or §14-159.13 (first- and second-degree trespass).

(4) Communication and liaisons

(a) Identify the leaders

Once the leaders are identified, it is imperative that open communication is maintained with them.

(b) Attend group meetings to obtain intelligence information

(c) Use informants

Infiltrate meetings as a last resort when leaders do not cooperate. Help to identify troublemakers and possible militants.

(d) Identify local and out of town militants

(e) Report to supervisors

Any information received must be relayed to departmental supervisors.<sup>7</sup>

(5) Protester tactics

**NOTE: Show slide, “Protester Tactics.”**

(a) Blocking entrances

Protesters may block doorways, loading docks, or delivery entrances. They may stand, sit, or lie.

(b) Locking arms

They may join arms and make a human chain.

(c) Padlocking with chains

They may use metal chains and locks, as well as

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other types of devices to lock themselves to buildings, equipment, and other structures. Tools to assist in the defeat of these devices are essential items to consider having available on a support vehicle.

(d) Singing and chanting

This is a common tactic that adds stress to the officers on the scene. Officers must shout over the singing to give their commands.

(e) Name-calling

Protesters will accuse officers of taking sides. (At abortion protests, they have been known to call officers murderers.)

(6) Protester devices

**NOTE: Show slides, “Protester Devices.”**

(a) Protester devices<sup>8</sup>

Protesters may use protester devices. A protester device could be a locking or non-locking device that can be constructed from a variety of materials (PVC pipes, bicycle locks, barrels, steel, wood, etc.) The purpose of a protester device is to prevent efficient extrication and draw media attention to the protester cause. Examples of protester devices include:

- i) Sleeping Dragons, Dragon Sleeve, or lockbox
- ii) Bicycle lock(s)
- iii) Tripods

Lockdown devices used by protesters can also include handcuffs, chains, and padlocks, to fasten their bodies to trees, gates, entrances, roads, and equipment.

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Steel pipes used to lock protesters to the ground or around objects are called “black bears.” Tripods and tree platforms have also been used to suspend protesters off the ground to block access to the property and to promote an environmental protest.

(b) Mask and costumes

**NOTE: Show Slide, “Protester Masks and Costumes.”**

Another protest tactic is the wearing of masks or costumes. Protesters will often wear masks for symbolism and anonymity. Anonymity can cause problems in identifying the individual(s) that commit crimes. Officers should apply local ordinances and or state statutes N.C.G.S. §14-12.7 and N.C.G.S. §14-12.8 to address this issue before a mass civil disobedience incident. Protesters were reluctant to wear the Guy Fawkes mask after arrests had been made for doing so in Zuccotti Park in New York.<sup>9</sup>

b) Violent/hostile crowds

(1) Control of an unlawful disturbance or riot

Riot control experts agree that the sooner you disperse a riotous crowd, the sooner you begin to regain control. Unlawful actions during a riot should not be allowed to continue. However, you must have sufficient dispersal/control forces on hand to deal with a crowd.

(1) **Dispersal is the key**, not mass arrest, when it comes to stopping a riotous crowd.

(2) Diplomacy is preferred over forcible action, if possible. Officers must work to not overreact to a crowd, yet they must prepare to react if necessary, to disperse the crowd as quickly as possible.



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- (3) When forming up a dispersal squad, do so out of sight of the crowd, yet close enough to respond quickly if needed. This is necessary to keep the crowd from knowing what you are doing until your dispersal units are ready to act.

Officers must always be aware of state and local laws dealing with lawful protests. The simple fact that a group of individuals is gathering to voice an opinion to gain public sentiment does not necessarily mean that the protest is unlawful.

- (2) Types of violence

**NOTE: Show slide, “Types of Violence.”**

A riot is mob violence, a contagious striking out at authority and the symbols of authority. It may consist of indiscriminate looting and burning; it may be open attacks on officials, buildings, or innocent bystanders; or it may be both. Law enforcement must control group violence. Law enforcement, therefore, must be carefully instructed about the kinds of violence they may encounter.

- (a) Verbal and written abuse

Anticipate both; the purpose of this tactic is to anger and demoralize law enforcement and cause them to take individual actions that may later be exploited as “police brutality.”

- (b) Noise

This is a two-prong attack. Leaders of unruly crowds use noise to keep the emotions high in the mob; while working to confuse, fatigue and disorient control force personnel.

- (c) ~~Attacks on officers and their equipment~~ **Assault on emergency personnel**

- i) **“An assault upon emergency personnel is an assault upon any person coming**

within the definition of ‘emergency personnel’ which is committed in an area:

- In which a declared state of emergency exists; or
  - ii) Within the immediate vicinity of which a riot is occurring or is imminent.
- ii) The term ‘emergency personnel’ includes law-enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, members of the North Carolina National Guard, and other persons lawfully engaged in providing essential services or otherwise discharging or attempting to discharge his or her official duties during the emergency.
- iii) Any person who commits an assault upon emergency personnel is guilty of a Class H felony.
- iv) Any person who commits an assault upon emergency personnel with or through the use of any dangerous weapon or substance shall be punished as a Class F felon.
- v) Any person who commits an assault upon emergency personnel causing serious bodily injury to the emergency personnel is guilty of a Class E felony.
- vi) Any person who commits an assault upon emergency personnel causing death to the emergency personnel is guilty of a Class D felony.”<sup>10</sup>

(d) Thrown objects

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- (e) Moving vehicles
  - (f) Destruction of property and looting
  - (g) Demolitions and explosions
  - (h) Weapons and firearms
- (3) Tactics employed by rioters

Conventional mob tactics restricted by area and leadership can be effectively stopped by the traditional move, divide, and disperse techniques. There is a new tactic being used now. However, that is designed to counter the measures employed by law enforcement. It thrives on deception, confusion, and the “divide-and-conquer” theory. The following are some of the tactics employed by “organized mobs.”

- (a) Numerous false calls to the fire department to scatter and render fire-fighting equipment ineffective.
- (b) False calls of “officer in trouble” are used to divert law enforcement manpower, or to cause officers to converge on a particular area to attract a large crowd that may be incited to riot.
- (c) Interfering with a law enforcement officer performing in the line of duty, forcing action to be taken against agitators. Then the cry of “police brutality” is raised.
- (d) Reliance on emotional appeal to the masses.
- (e) Blocking or flooding the law enforcement switchboard with false or petty calls.
- (f) Use of walkie-talkies on citizens’ bands by mob leaders to control the operations of the mob.
- (g) Use of direct coordinated attacks of control force with similar formations and protective

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gear, i.e., the anarchist groups in the WTO event known as the “Battle for Seattle” in 1999.

- (h) There is no limit to mob ingenuity, and officers must recognize the effectiveness of mob psychology as employed by the advocates of violence.
- c) Countermeasure operations, which can enhance control force operations and safety.

**NOTE: Show slide, “Countermeasure Operations.”**

- (1) Downtown - Secure rooftops and side streets; having moving patrols and watching for sniper fire are essential.
- (2) Residential areas - same as for downtown areas only; security may become an additional problem due to the extra space and lack of accessibility into private residences.
- (3) Barricades - Must be such that they impede protester movement. Passive barricades do little to deter a mob bent on violence.
- (4) Looting - Foot patrols or D.A.R.T. (Dispersal, Arrest, Rescue Teams) can effectively deal with this type of activity.
- (5) Vital buildings - Law enforcement must gain entry, secure sensitive areas, and initiate action to remove the rioters.

**NOTE: Ask students to name the types of important buildings in their jurisdictions. Write responses on the board or flip chart. Typical responses should include police headquarters, fire and EMS stations, hospitals, pawnshops, hardware, and sporting goods/gun stores, and power and communications facilities.**

- (6) Teamwork - Stick together; a single officer response is oftentimes ineffective and counterproductive.
- (7) Post-riot control - Once suppressed, positive action must prevent a recurrence. Try to correct the source of

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trouble and re-establish normal relations in the community.

- (a) Use of COP teams
- (b) Work with community leaders
- (c) Make positive community contact

### D. Crowd and Demonstration Control

**NOTE: Show slide, “Crowd and Demonstration Control.”**

A crowd generally is aware of the law and usually respects the principles of law and order. However, emotions often become so high that they overrule order. In confronting a crowd, law enforcement should know the reason for the meeting, determine the general characteristics of the individuals (and the crowd), and know the area well in which the crowd gathers.

One popular method of controlling factors, which affect emotions, is to have a permit system for the registering of meetings and assemblies. **The permit system is a local ordinance provision and not state law.** Officers should check for this provision in their respective jurisdictions. In a permit system, organizers must apply for a permit to hold meetings or gatherings. In such a situation, the permit issuers (often a law enforcement agency) can set rules and regulations for these meetings that must be followed, or the permit may be canceled. Certain elements, such as those discussed below, can be controlled to prevent their effect on the emotions of the crowd at the meeting. Promoters and organizers can be held legally responsible for the group’s behavior. This encourages the organizer to “police” their group to ensure a peaceful meeting. It allows law enforcement time to plan for the event.

#### 1. Crowd control plan/planned event

A plan should be developed to give officers direction and to establish a departmental plan of action and a guiding philosophy for law enforcement response and actions. Some key points are:

**NOTE: Show slide, “Law Enforcement Duties at Demonstrations.”**

- a) Observe spectators rather than the event.
- b) Avoid unnecessary conversation.

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- c) Keep outside the crowd.
- d) Identify and watch crowd agitators.
- 2. Control of lawful demonstrations
  - a) A lawful demonstration should not be looked upon with disapproval by law enforcement. First Amendment rights must be respected and protected!
  - b) The visible officers should be kept to a minimum; normal dress should be worn.
  - c) Proper liaison between law enforcement and the demonstrators often prevents trouble.
  - d) Use of probation and parole officers to identify potential troublemakers. Their presence may affect persons on some form of supervised court release.
  - e) Use of plain-clothes officers to monitor the crowd from within the group and identify potential troublemakers.
- 3. Do's and don'ts for crowd management enforcement
  - a) Do's for law enforcement

**NOTE: Show slide, "Dos for Law Enforcement."**

- (1) Be impartial at all times.
- (2) If you have a close relative or friend involved in the dispute, advise your superior; he may determine to temporarily transfer or reassign you.
- (3) It is the responsibility of the supervising officer to see to it that the necessary information is passed on. The policies and approach of law enforcement personnel at the scene should be consistent.
- (4) All discussions relative to the dispute situation between or among the officers and either or both disputants should take place at the supervisor level and should be taped whenever possible.

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- (5) Taverns or other places providing alcoholic beverages in the area should be notified of any potential problems involving the purchase and use of alcoholic beverages and asked to assist by being especially watchful for abuses involving alcoholic beverages or the ABC laws.
- (6) The general public should be kept a safe distance from the area of the dispute, but not so far that the general public is either actually or constructively excluded from viewing and comprehending the substance of the grievance being protested. A safe distance is a distance that tends to lessen tensions and assure law enforcement clear and safe room for action should violence erupt. Safe distances will vary directly about tensions and dangers attendant at the dispute scene.
- (7) Be aware of agitators, professional or other, who may attempt to put law enforcement in a position in which they appear to be taking sides.
- (8) Keep pedestrian and vehicular traffic on any nearby sidewalks and streets moving.
- (9) Do not engage in unsolicited intelligence or information gathering at the strike scene unless directed to do so through the chain of command; if you do come upon the information, you feel would be useful, report it through the chain of command.
- (10) In handling vehicles passing through (or attempting to) a picket line:
  - (a) Have a labor official direct the pickets to clear the entrance, if possible; if not, then break the picket line only temporarily as necessary to accomplish the movement.
  - (b) Do not give the impression you are directing vehicles to enter or leave. The driver seeking to enter or leave the picketed premises should be allowed to make their own decision whether to enter or leave.

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(c) Union officials should be allowed to communicate with the drivers of the vehicles seeking to enter or leave the picketed premises; if the driver of the vehicle refuses to communicate with the union official, that is his right.

b) Don'ts for law enforcement

**NOTE: Show slide, "Do Not."**

- (1) Do not, under any circumstances, discuss the merits of the dispute with any person involved in the dispute.
- (2) Do not become provoked by name-calling or derogatory remarks directed at you.
- (3) Do not at any time go to the scene of the dispute to obtain information unless directed to do so by the chain of command.
- (4) Do not discuss an injunction with anyone involved in the dispute. The injunction is civil and should be treated as such. However, if a court issues one, you will enforce it as you would any other order of the court if the court directs enforcement.<sup>11</sup>

#### 4. Use of force

The amount of force used to quell any civil disturbance must be only that force necessary to overcome the actions of the crowd. It is through the controlled application of force that a crowd is dispersed, or a disturbance ended. Indiscriminate use of force upon a crowd should never be tolerated or condoned. In dealing with crowds, officers should keep the following case law in mind. In *Scott v. Henrich* 39F.3d912 (9<sup>th</sup> Cir. 1994), reads in part, "Officers need not use the least intrusive force, but must not exceed that force which is reasonable under the totality of the circumstances."<sup>12</sup> Also, refer to *Graham v. Connor*.

Regardless of the type of demonstration, the amount of force used must be:

**NOTE: Show slide, "Use of Force."**



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- a) Reasonable
- b) Necessary
- c) Lawful

The force should be applied only long enough to overcome the resistance of another person's force.<sup>13</sup>

Example: A riot may require an officer to use either a baton in a striking or thrusting motion, chemical agents, or special impact munitions to move or disperse a crowd. On the other hand, passive/resistant demonstrations may require officers to physically carry the demonstrators away.

### 5. Additional considerations

Large-scale disturbances utilize the same techniques as small-scale disturbances. The critical point between the two is that large-scale disturbances require more control force personnel. Supervisors should never attempt to disperse a large crowd with a small number of officers.

If there are insufficient control forces on hand to disperse the crowd, efforts should be made to monitor and contain the crowd as well as possible until additional control forces are summoned. This level of activity will require the use of the following response plan:

- a) Isolate the area. The primary goal and responsibilities are to safeguard lives.
  - (1) Restricting access to the affected area effectively seals off the disturbance. The objective of isolation is to prevent the spread of the unrest to unaffected areas, to prevent the escape of individuals identified for arrest, and to evacuate the area of uninvolved persons and keep others out of the area.
  - (2) Building clearing - Control forces may be needed to "clear" buildings in the affected area, checking for trapped, non-involved persons and to identify possible hot spots or buildings requiring special attention, such as gun shops, hardware stores, etc.

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### b) Isolation techniques

There are several techniques for isolating a disturbance area.

**NOTE: Show slide, “Isolation Techniques.”**

- (1) Use of barricades - The purpose of physical barriers is to deny or limit entry and exit from the disturbance area. They are usually only effective if the barricades are manned or are too difficult for rioters to move.
- (2) Roadblocks - To be effective, roadblocks must not be easily breached by vehicles. For example, 55-gallon drums filled with water or sand, sandbags, or heavy vehicles are all effective roadblocks.
- (3) Perimeter patrols that operate along the outer boundaries of the affected area can be effective. The purpose is to prevent entry to or exit from the area. Perimeter patrols can also help capture identified ringleaders fleeing the area.

### 6. Crowd control operations

There are four crowd control options available based on the desired objective. A prime consideration in selecting an option(s) will be the effect of the response in reducing the intensity of the existing situation.

**NOTE: Show slide, “Crowd Control Options.”**

#### a) Monitor

This option consists of watching the crowd’s progress and development by control force teams. Monitoring enables the agency to gauge the crowd’s activity and intent about civil disturbance and possibly influence their actions through persuasive means.

This option is particularly appropriate for large non-violent demonstrations where more decisive action is not feasible because of the crowd size and where the intensity of the situation might escalate. This option is also appropriate as an interim measure pending the arrival of additional control forces.

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Techniques for accomplishing this option include passive observation of the crowd and communication with leaders on the intent or interest of the group. If the crowd is not out of control, officers should monitor the area to identify leaders and group actions and to discover possible dispersal alternatives.

b) Containment

This option consists of restraining many individuals within the area they are presently occupying, thereby containing any further aggressive activity. This option would be appropriate in college campus situations to prevent demonstrators from spreading out to surrounding communities and to prevent unauthorized personnel from entering the campus.

c) Blocking

This option consists of the physical denial of a crowd's advance upon a facility, which is the potential or actual target of dissident activity. Crowd control formations (especially the "skirmish line") and barricades are the most appropriate techniques for this option. Barricades such as vehicles, traffic barrels, and water or sand-filled barrels can be erected to block or channel the movement of crowds. These devices and water or sand-filled barrels can be erected to block or channel the movement of crowds. These devices, when used in combination with control forces and other crowd control techniques, are useful in accomplishing containment or blocking.

d) Dispersion

This option consists of action taken to fragment a crowd and is especially applicable to small crowd situations in a congested urban environment. This selection should include the consideration that such dispersion may increase and spread lawlessness rather than reduce it. Therefore, one should establish control over the dispersal routes, provide security for those facilities that might become likely targets for small groups, and then prepare to follow-up the dispersal operation with the apprehension of small groups still active in the area.

Techniques for accomplishing dispersal objectives would include the proclamation, show of force, use of crowd control

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formations, and the use of riot agents and saturation patrol techniques.

e) Post-disturbance actions

Once the crowd has been dispersed, efforts must be employed to keep the crowd from reforming. Small formations, of no less than four-officer teams, should be left to patrol the affected area and disperse groups that try to reform. Additional control forces may have to be called into the area if the smaller units cannot handle the situation.

7. Techniques for crowd control and dispersal

There are numerous techniques designed to provide agencies with the flexibility of action in accomplishing crowd control. There is no one technique that is best employed in all situations. Rather, you must read the crowd and use the one most appropriate for the situation. Your response may be multifaceted to the complexity of the situation.

Some of the most common techniques used are:

a) Isolation and observation

This consists of the deployment of teams to the peripheral areas of the crowd for monitoring activities. Teams gather information on the crowd size, location, and mood, and report on developing situations.

b) Communications of interest and intent

In certain situations, effective communication with crowd leaders and participants may enable police personnel to control the situation without resorting to more severe action.

c) Cooperation

Active initiation by control forces to obtain the cooperation of group leaders may significantly decrease the potential for disruption of the crowd activity.

d) Issuing a proclamation

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A proclamation establishes the illegal nature of the crowd's action and is an excellent medium to make known to the crowd the intent of control forces supervision. The proclamation is also a means of reducing the size of the crowd before direct action being taken. In making any proclamation to a crowd, consideration must be given to determining a specific time for dispersal versus not stating a definite time for dispersal. Either approach must be weighed carefully depending on the situation, the resources available to control/disperse the crowd, because the situation may change. Supervisors or command personnel will usually make this decision when dealing with large-scale disturbances.

**NOTE: Discuss N.C.G.S. § 14-288.5 - Failure to disperse when commanded or the common law violation of Unlawful Assembly may be useful here. Refer students to the handout, "Selected Statutes for Law Enforcement Officers Regarding Public Demonstrations, Civil Disorders, Parades, and Riots."**

e) Show of force

Marching a well-equipped, highly disciplined control force into view of a crowd may be all the force necessary to persuade them to disperse peacefully. On the other hand, in some situations, such as with idealistically motivated groups, a show of force may have a counterproductive effect by causing them to become involved in a direct challenge of control forces. Ten well-trained officers can effectively disperse one thousand rioters.

f) Crowd control formations

Crowd control formations, when properly employed and effectively executed against a crowd of a limited size, represents one of the most practical methods of crowd control and dispersal. A supervisor must always realize the limits of crowd control formations.

When a large crowd has been dispersed, do not assume that members of the crowd have returned to peaceful activity; small groups may initiate dispersed riotous activities. Therefore, the use of formation should only be part of a total dispersal effort. Also, if the crowd refuses to move, other techniques may have to be employed, such as the use of riot control agents and physical arrest.

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### g) Arrest and processing of arrestees

(1) Verbalize the intent to arrest and the actual arrest when necessary.

(2) Use arrest teams

No less than two officers, with four to six being preferred. All arrest teams will be under the direct supervision of an arrest team supervisor. During times of civil disorder, individual police action will be suspended, and arrests will only be made under the direction of a supervisor. Arrest team members will escort prisoners to a central prisoner processing area.

(3) Use flex-cuffs instead of metal for mass arrests. Flex-cuffs are convenient, and the public may view it as a softer method for handcuffing.

(4) Use stretchers or “Stokes” style baskets for carrying prisoners – cuts down on officer and arrestee injuries.

(5) Photograph and document each arrestee - before moving your prisoner, photograph each arrestee and record date, time, and name or number of the prisoner.

(6) Videotape entire disturbance for court and training purposes.

(7) Processing of arrestees

A point outside the affected area, yet close by, will allow for the quick return of arrest team personnel to maximize their effectiveness.

At the arrest processing point, the arresting officer should have his photograph taken with the prisoner for later identification and court purposes.

(8) Special considerations of arrests

During times of civil unrest, a physical arrest must be kept to a minimum, not to appease the crowd, but to economize on the limited number of police resources.

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Therefore, individual police action must be suspended. Supervisors will determine the course of action, including all arrests. Exception: emergency life or death situations. Procedures must also be established to deal with arrestees, transportation, and detainment.<sup>14</sup>

8. Crowd control formations and equipment
  - a) Protective equipment for law enforcement
    - (1) Gas masks

**NOTE: The instructor should demonstrate the procedure for the use of the protective mask. Allow practice for putting on the mask in class and later in formation drills.**

- (2) Helmets
    - (3) Goggles or visors
    - (4) Body armor
    - (5) Gloves
    - (6) Shin guards
    - (7) Boots
    - (8) Shields
    - (9) Groin protection-apply to both male and female officers
  - b) Show and use of force - use only the minimum force to control the situation effectively.
    - (1) Officer presence
    - (2) Batons/shields
    - (3) Horses
    - (4) Dogs, used as resource protection versus crowd control
    - (5) Vehicles

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- (6) Chemical agents
  - (7) Special impact weapons systems
  - (8) Distraction devices
  - (9) Firearms
- c) Riot batons and their use

The riot baton is generally twenty-six to forty-two inches in length, either fixed or collapsible, with rounded ends, a suggested diameter of 1.25 inches, and preferably a thong at one end that can be placed in the palm.

- (1) Grip, stances, and footwork
  - (a) Basic grip: During crowd control situations, the baton is normally held using the two-handed grip. The right-hand grips the end of the baton. The left-hand grips the barrel of the baton approximately twelve inches from the tip. If a thong or lanyard is attached to the baton, do not wrap it around your fingers, wrist, or hand.
  - (b) Parade rest position: “Parade rest” is the relaxed and ready position. The feet are shoulder-width apart. The left palm is facing out. The right palm is facing toward the body. The hands are approximately six inches from the end of the baton.
  - (c) Port position: The “port” position is a ready position. The right hand and forearm are parallel to the ground. The left hand is level with the left shoulder. The striking end of the baton bisects the angle between the neck and left shoulder. The baton is held approximately eight inches from the body. The feet are shoulder-width apart.
  - (d) On guard position: Most movements are initiated from the “on guard” position. The feet should be placed approximately shoulder-width



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apart, with the left foot about twelve inches forward of the right foot. The weight should be equally distributed on both feet with the legs slightly bent, and the baton is held approximately six inches in front of the body and at a forty-five-degree angle. The body is bent slightly at the waist. The left arm is bent and parallel to the ground so that the forearm protects your throat area.

- (e) To move forward from the “on guard” position, move the left foot forward and then bring up the right foot in a shuffle motion.
  - (f) To move backward, move the right foot to the rear and then slide the left foot backward in a shuffle motion.
  - (g) To circle to the left, move the left foot to the left as you pivot on the right foot.
  - (h) To circle to the right, move the left foot to the right as you pivot on the right foot.
  - (i) To move sideward to the left, move the left foot to the left and then move the right foot.
  - (j) To move sideward to the right, move the right foot to the right and then move the left foot.
- (2) Primary target striking areas. The same considerations discussed in the baton section of the *Subject Control Arrest Techniques* lesson plan apply to the use of the riot baton. When deadly force is not justified, all strikes are to be directed to the center muscle mass areas of the opponent’s body that are not likely to result in lethal or serious injury. Center muscle mass does not include the joints of the extremities. These are:
- (a) Center muscle mass of the arm
  - (b) Center muscle mass of the leg
  - (c) Center muscle mass of the body

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**NOTE: Instructors should review with students the sections on target areas and use of force in the *Subject Control Arrest Techniques* lesson plan.**

- (3) Striking motions using the riot baton
  - (a) Jab or short thrust. Slide forward with your left foot. At the same time, quickly thrust the tip of the baton forward and strike the opponent in the pit of the stomach. After striking the blow, return quickly to the “on guard” position to prevent the baton from being grabbed.
  - (b) Two-handed push. This is not a blow as such, but a technique that can be used to push or hold back an individual. Slide forward with your left foot and quickly extend both arms, holding the baton in a horizontal position and push the opponent. Immediately return to the “on guard” position to prevent the baton from being grabbed. You should also be prepared to follow with a butt stroke if the baton is grabbed. Several officers employing this technique in a formation can push or hold back a fairly large group.
  - (c) Butt stroke. This blow is generally delivered upward or sideward using that portion of the baton below the right hand. Slide forward with the left foot while you drive the butt of the baton towards the opponent’s midsection with the right hand. At the same time, pull the barrel of the baton back towards you with the left hand. In this manner, the baton is used as a lever to gain additional power.
  - (d) Reverse jab. This technique is generally used as a follow-up to the butt stroke. Following the butt stroke, drive the barrel end of the baton toward the opponent with the left hand.
  - (e) Strike to the center muscle mass of upper and lower leg. Slide forward with the left foot. As you start the strike, allow the left hand to slide down the barrel of the baton to a position

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alongside the right hand. Complete the motion by striking the center muscle mass of the upper and lower leg.

- (4) Blocking motions using the riot baton
  - (a) Against an opponent's left punch. Deflect the punch upwards and to the right of your body. Strike if necessary and appropriate.
  - (b) Against an opponent's right punch. Snap the tip of the barrel upward and outward to your left, deflecting the blow-off to the side. Strike if necessary and appropriate.
  - (c) Against an opponent's uppercut. Twist the baton to the horizontal position and thrust it downward to block the punch. Strike if necessary and appropriate.
  - (d) Against an opponent's kick. Pull the left knee backward while at the same time thrusting the baton downwards to block the kick. Strike if necessary and appropriate.

d) Initial officer/small agency response formations

Small agencies often do not have the resources of large agencies. As well, initial responding units, no matter the size of the agency, are often caught off guard by spontaneous crowd incidents. A patrol officer can make a situation worse. A proper mindset and a cool head can go a long way in diffusing a situation.

- (1) Initial response/mini formations
  - (a) Use of basic cover-contact approach to begin building the formation
  - (b) Initial or point officer is the contact officer
    - i) Advises other officers of being in charge
    - ii) Does the talking

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- iii) Makes any order to disperse
  - iv) Decides to effect an arrest. Remember we do not have to make the arrest today and should only do this as a last resort.
- (c) The second officer takes a cover position to the right or left of the contact officer and one pace back. This officer is responsible for watching the crowd for dangers and covering the point/contact officer.
- (d) The third officer takes a position to the left or right of the contact/point officer and the opposite of the second officer.
- (e) The fourth officer takes a rearguard position, directly behind the contact/point officer, two paces directly behind the contact/point officer. This officer needs to be more flexible in their movements/actions to allow for the protection of the rear of the formation. They may also have to walk backward.

Team members must be told that the person walking backward can only walk at half pace; therefore, movement of the formation must be at a slower pace.

- (f) This gives the initial responding officers three-hundred-and-sixty-degree coverage for officer safety and allows officers to work as a team, instead of being spread throughout the crowd.
- (g) Supervisor/fifth arriving officer - the supervisor or fifth officer will assume a position in the center of the formation. She or he acts as a controlling mechanism to maintain the squad's integrity and controls a prisoner in the event an arrest is made. They may also be used to deploy controlled bursts of chemical/specialty munitions to help with the withdrawal of the formation.

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- (h) Additional responding units will form a diamond formation, with riot gear on in the event they are needed to assist the primary team. This may be necessary to help the initial units to withdraw, or to rescue them if necessary and to disperse the crowd if it is needed. This group must form up out of sight of the crowd, or they may incite them to become disruptive.
- (i) The four-officer diamond is an excellent formation for small agencies to use when dealing with crowds. All four officers can be placed in one mobile unit to respond, or use two units, with two officers each. This reduces the number of patrol vehicles needed, and the number of potential units damaged, should rioters attack them.

### (2) Additional arriving units

These units should respond to an area close to the scene, but out of sight so as not to have too many officers on the scene and possibly escalate the situation. While at the staging area these units should form their mini-formations and prepare to:

- (a) Establish a safe withdrawal area should they have to move in and assist the primary team with withdrawal.
- (b) Prepare to enter the crowd if necessary, with organized formations and protective and dispersal equipment.
- (c) Coordinate the isolation of the affected area.
- (d) Extract/cover withdrawal of initial team should the crowd become hostile and attack them.
- (e) Acts as a dispersal team should it become necessary to use force to break up the crowd.

### (3) Mini formations

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- (a) Three officer wedge
  - (b) Four officer diamond
  - (c) Combining of two mini formations into a basic six-to-eight-person team
- (4) Additional uses of mini formations
- (a) Rescue teams
  - (b) Special arrest teams
  - (c) Special dispersal teams, utilizing chemical and or special impact munitions.
- e) Larger riot control formations

**NOTE: Show slides, “Riot Control Formations,” and refer to the handout section, “Formations, Commands, and Movements.” Instructors are encouraged to provide copies of these slides to students for future reference. The class should be broken down into squads, and the formations practiced in an open area.**

(1) Squad

A squad should not be less than eight or more than twelve officers. One member should be designated as the leader. Smaller units may be used by smaller agencies, but units of less than four officers will not be very effective against large crowds. It is recommended they only be deployed in the diamond formation. When additional units arrive, two diamonds can be easily combined to form a basic eight-person squad.

(2) Platoon

A platoon should consist of three or four squads. One officer should be designated as the leader. Three platoons form one company.

(3) Formations

The *line*, the *echelon* (right and left), the *wedge*, and the *diamond*; rapid and uniform response to commands is

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essential. An additional formation is the *encirclement*, used to protect arresting officers and not crowd dispersal. In the encirclement, one officer will alternate facing in and out, to watch the arrest activity and the crowd.

### (4) Vehicles

Vehicles should be located where they can quickly maneuver to block oncoming vehicular assault on the riot formation.

## 9. Withdrawal of control forces

Inevitably there will be times when patrol forces must withdraw from an area because they are overwhelmed by the size of the mob. In doing so, every effort should be made to:

### a) Withdraw

- (1) Make a tactical withdrawal from an area.
- (2) Do so in an orderly and deliberate fashion. The mob may view a quick withdrawal as a victory.

No one advocates, “fighting a last stand;” however, a retreat can be a morale boost to the mob whose activities can become more intense because they feel “the power of the group.”

### b) Re-enter

Control forces should re-enter the area only when sufficient personnel have arrived to deal with the situation or employ more tactically advanced methods or special purpose tactics. If unable to re-enter, isolation of the area is the best option.

## E. Use of Chemical Agents, Specialty Impact Munitions, and Distraction Devices

### 1. Chemical agents

**NOTE: Show slide, “Chemical Agents.”**

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The proper use of chemical agents not only helps law enforcement personnel restore order but also reduces the chances for injury to officers and rioters. On the other hand, if used improperly or indiscriminately, chemical munitions can cause injury and possibly death. It can also lead to complaints of excessive force.<sup>15</sup>

Chemical munitions should only be used when the crowd is disorderly to the extent of throwing objects, physically attacking officers, or there is an imminent threat of either. Any time chemical munitions are used, at least one crowd escape route should be determined before deployment.

No legitimate police objective can be achieved by the indiscriminate spraying of chemical agents onto a crowd. Also, care must be taken to avoid discharging chemical agents so that it only affects the front half of a crowd. This will place incapacitated individuals between the crowd and the front ranks of the police lines. Any time chemical agents are used on a crowd, *they should be warned of its pending use*. This gives those who choose time to leave. This warning may not always be possible but should be given if time and the situation permits.

**REMEMBER**, the use of chemical agents is considered a *use of force* and should only be deployed by officers specially trained in their use and deployment.

- a) Introduction to chemical agents: This is an introduction to chemical munitions and does not qualify one as a trained chemical munitions operator.

Currently, there are four forms of chemical agents used by law enforcement agencies for crowd control.

- (1) HC (Hexachlorethane) - Smoke

Even though the smoke is not an irritant agent per se, smoke in and of itself is irritating to some people. Smoke is effective when used to break up some crowds that are disorderly, but not overtly violent. Smoke can be used for the following purposes:

- (a) Conceal movement
- (b) Disorient the crowd



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- (c) Determine the wind direction
- (2) CN (Chloroacetophenone) - discovered in 1869 by a German chemist
  - (a) Odor: like apple blossoms
  - (b) Incapacitation factor: Ten to twenty minutes. CN is a fast-acting irritant that affects the upper respiratory passages, lacrimal glands, and eyes. The agents usually begin to work in one to three seconds; however, some people may not be affected for up to thirty minutes.
  - (c) CN is an irritant that does not affect everyone. This chemical agent may not affect those on drugs or alcohol.
  - (d) Physiological effects: Irritating to the skin, causing a burning and itching sensation. Flowing of tears, nose irritation – agents primarily affect moist areas of the body.
  - (e) CN is a lacrimal, meaning it affects the lacrimal glands, ducts, and sacs around the eyes and in the nasal and sinus cavities.
- (3) CS (Orthochlorbenzalmalononitrile)

An irritant agent developed and used for crowd dispersal. Most effective broad-based munition, used primarily outdoors. It causes irritation to the eyes, skin, and respiratory system.

**NOTE: The label CS has nothing to do with the chemical name; it is the first initials of its two British developers, B.B. Carson, and R. W. Stroughton.**

- (a) Odor: peppery smell
- (b) Incapacitating time factor produces almost immediate effects in five to ten seconds. Effects can last from ten to thirty minutes.
- (c) Physiological effects

## ***Crowd Management***

- i) Extreme burning of the eyes, accompanied by the copious flowing of tears
  - ii) Involuntary closing of the eyes
  - iii) A stinging sensation on moist skin
  - iv) Runny nose, sinus, and nasal drip
  - v) Tightness in the chest and throat. One should observe exposed subjects for respiratory difficulty after exposure. Seek medical treatment if difficulty persists beyond twenty to thirty minutes, or if requested.
  - vi) Dizziness or swimming of the head
- (4) Oleoresin capsicum (OC) products

One needs to know the type of OC dispersal system they are using. Cone-shaped mist systems are effective crowd dispersion systems, while the streams and foams are target specific systems that do not lend themselves to crowd dispersal operations. Stream OC products are very useful in crowd control when used on a controlled scale on specific individuals, such as those identified for arrest-by-arrest teams. Cone-shaped misting or fogging systems are more suited for crowd dispersal. OC dispersal systems, which use micro-pulverized powder, which is expelled into the air using compressed gas, are useful in dispersing crowds.

- (a) Odor: Spicy, peppery smell
- (b) Incapacitation factor for stream-based OC systems
  - i) Acts immediately on most individuals, those individuals under the influence of drugs, heavy alcohol, or experiencing severe mental problems may be able to ward off the effects for a time.

## ***Crowd Management***

- ii) Almost total incapacitation of some subjects.
  - iii) Incapacitation usually limited to the one sprayed.
  - iv) Foggers and powder-based munitions affect the breathing ability of the exposed individual more than the eyes, which makes them better crowd dispersal systems.
- (c) Physiological effects
- i) Burning sensation to the eyes
  - ii) Irritation to the nasal passages and throat
  - iii) Tight feeling around the chest
- (d) Stream-based OC products may be best used by arrest teams to target persons singled out for arrest because of their incapacitating ability.
- b) Chemical munitions identification chart

**NOTE:** Show slide, “Munitions Chart.”

**NOTE:** Remind students this is a voluntary commercial color code, and they may encounter some variations, so they should always read the labels of any chemical agents before they are deployed. Only those persons specially trained in their use should deploy chemical agents. The use of military munitions could lead to civil liability.

<u>Name</u>	<u>Color Code</u>	<u>Uses</u>
Smoke	Yellow	Used to obscure vision and determine wind direction
CN	Red	Used to disperse crowds or on barricaded subjects
CS	Blue	Riot agent

## ***Crowd Management***

OC	Orange	Best used by arrest teams; currently not applied on a broad basis in crowd control
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*Other agents, you should know about--these agents will not be used as riot agents; however, they may be encountered when other agencies respond to assist during periods of civil disorder.*

CR	Violet	Irritant and sickening agent
----	--------	------------------------------

DM	OD Green	Sickening agent also called “Adamsite.”
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*If you come across any of these agents, turn them in to be properly disposed of.*

**NOTE: Tell students that all chemical agents have a shelf life, usually no more than four years from the date of manufacture. Agents that have reached the manufacturer’s expiration date should not be used. All munitions must be disposed of according to established procedures for disposing of hazardous waste, as defined by the EPA.**

c) Special considerations

Officers must consider the target area before deploying chemical agents. Broad-based pyrotechnic agents should not be used in areas where there are small children and older adults with breathing difficulties. Only those agents or delivery systems that limit the spread of the agents should be considered in these areas. Some cases will preclude the use of agents altogether. Clean-up of the area must be completed after the situation returns to normal.

Examples: hospitals, daycares, nursing homes, etc.

d) First aid for exposure to chemical agents

**NOTE: Show slide, “First Aid for Exposure.”**

(1) General - complete incapacitation

(a) Remove affected person from the contaminated area to an open, upwind position

(b) Remain calm

## ***Crowd Management***

- (c) Significant discomfort should disappear within ten to twenty minutes
- (2) Eyes - burning sensation, heavy flow of tears, involuntary closing of eyes
  - (a) Keep eyes open, facing the wind
  - (b) Do not rub eyes
  - (c) Tearing helps clear the eyes
  - (d) If particles of the agent are lodged in the eyes, wash out with large amounts of water
- (3) Skin - stinging or burning sensation on moist skin areas; blisters from very heavy concentrations can occur
  - (a) Sit and remain quiet to reduce sweating
  - (b) Expose the affected areas to the air
  - (c) Gross contamination can be relieved by flushing with clear water for at least ten minutes. Gross contamination is when the agents or carrier is visible on the subject — usually, a white powdery substance or an orange oily substance when pepper-sprayed.
  - (d) For CS, a solution of five to ten percent sodium carbonate--sodium carbonate is superior to water and needs to be used only in small amounts. A baking soda solution (sodium bicarbonate) will also work, but more slowly.
- (4) Nose - irritation, burning sensation, nasal discharge
  - (a) Breathe normally
  - (b) Blow nose to remove discharge
  - (c) Nose drops should help if discomfort is severe

## ***Crowd Management***

- (5) Chest - irritation, burning sensation, coughing, feeling of suffocation, tightness in the chest, often accompanied by a feeling of panic
  - (a) The victim should relax and keep calm
  - (b) Talking reassuringly to the victim will help to relieve discomfort and prevent panic

For severe or prolonged effects, complications, and contamination of wounds seek medical attention as soon as possible.<sup>16</sup>

- e) Legal concerns about using chemical munitions

The use of chemical munitions has been generally accepted by the courts and public as an acceptable use of force to disperse riotous crowds and avert what the police could reasonably regard as threatened violence.<sup>17</sup>

The only major issues considered by the courts have been the training of officers and the method of deployment (e.g., firing the agent straight into the faces of subjects).<sup>18</sup>

### 2. Special impact munitions/distraction devices

Two additional resources available to officers in crowd dispersal are the special impact munitions, known as SIMS and distraction devices, sometimes referred to as “flash-bangs.”

**NOTE: Show slide, “Special Impact Munitions.”**

- a) Special impact munitions (SIMS)

These munitions are referred to as *kinetic energy munitions* and are viable tools to employ on violent crowds and violent individuals within the crowd. *Only personnel specially trained in the use and deployment of these munitions should deploy them on crowds or individuals.* They must only be used against hostile crowds and when other dispersal options are not effective or safe to use.

Throughout the history of policing, impact weapons have been used to keep the peace. SIMS is a modern method of using this

## ***Crowd Management***

technique. This modern method allows officers to utilize this concept at a greater distance and impact.

- (1) Use of specialty impact munitions
  - (a) Move or route a crowd
  - (b) Cover formation movement during *violent demonstrations/riot*
  - (c) Takedown targeted subjects for arrest
  - (d) Stop potential violent attackers from hitting officers
  
- (2) Types of special impact munitions
  - (a) Bean bag rounds
  - (b) Rubber bullets
  - (c) Rubber pellets
  - (d) Rubber baton rounds
  - (e) Foam rounds
  - (f) Wooden baton rounds
  - (g) Sponge rounds
  - (h) Sting-ball grenades - can be fortified with chemical agents, giving it both chemical and SIMS capabilities.
  
- (3) Psychological effects

SIMS have a strong mental effect on an individual.

  - (a) Anxiety - having a firearm pointed directly at them
  - (b) Fear - of being struck by a munition

## ***Crowd Management***

(c) Panic - crowd or individuals may scatter making it more difficult to strike a specific individual

(4) Physiological effects

Deploying officers must use caution when deploying these munitions. As with any impact weapon, officers must avoid striking areas of the body, which may cause death or serious injury. Those areas are the chest, solar plexus, head, spine, neck, groin, and major joints.

(5) First aid steps

Subjects, who are struck with special impact munitions, should be medically cleared before being confined to a detention facility. Since it is difficult to determine the nature of internal injuries that a subject has sustained from the use of SIMS, they should be examined at a hospital before being incarcerated. Lacerations and other visible wounds should be treated using standard first aid measures until more advanced medical treatment can be administered.

b) Distraction devices

**NOTE: Show slide, “Distraction Devices.”**

These devices use a low order explosive to create a light and sound that momentarily blinds and distracts subjects. These effects capitalize on the panic or fear mentality and will give control forces time to move in and disperse a crowd, or the device alone may assist in this process. *As with any special munitions, only those officers trained in the use should deploy such devices.*

**NOTE: Advise students never to use “homemade” distraction devices.**

(1) Psychological effects (mental distraction)

(a) Diverts or confuses the crowd.

(b) May believe that an explosive has been used. This trick or ruse gives control forces time to



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act, while the crowd's attention is diverted or preoccupied with "survival" thinking.

- (c) It creates fear and may cause some in the crowd to flee, thereby reducing the number of individual control forces dealt with.
  - (d) It affects the ability of some people to reason due to sensory overload.
- (2) Physiological effects: Physical distraction, which is one that the body cannot control when exposed to a perceived danger or stimulus that creates fear.
- (a) Visual effects  

Flash of brilliant light that may cause individuals to be unable to focus and be disoriented for ten to thirty minutes.
  - (b) Auditory effects  

The loud sound or overpressure created by the distraction device, which causes a slight ringing in the ears and may cause short disturbances in one's equilibrium.
- (3) Potential hazards
- (a) Officers should avoid using them in the vicinity of children and the elderly, due to their sensitive health.
  - (b) Fire hazard - the munitions use a small explosive charge, which causes a brilliant momentary flash (fireball), which may ignite flammable materials.
  - (c) Smoke may add to confusion for control forces as well as rioters.
  - (d) Secondary ballistic projectiles – a piece from the munitions or an object may be propelled by the distraction device, which may cause injuries.

## ***Crowd Management***

- (e) Hearing problems - exposure to multiple devices, particularly in a closed space, may result in some hearing loss. Ear protection may be needed in this case.
- (f) Failure of munitions to initiate, resulting in the device being thrown back at control forces.

**NOTE: After the classroom portion of this block of instruction is completed, the instructor(s) will conduct the practical exercises as described in the instructor notes section.**

### III. Conclusion

#### A. Summary

During this block of instruction, we have identified the different classes of crowds and learned to differentiate between a casual crowd and a mob. Psychological and social factors that influence crowds were discussed, as well as those that affect control force personnel. We also identified the specific duties of a law enforcement officer when assigned to a potentially violent demonstration, strike, or at a nonviolent protest. Crowd control options, plans, tactics, and other actions were covered in this lesson. We practiced crowd control formations utilizing riot batons. We experienced the effects of chemical munitions as a crowd dispersal agent and utilized a gas mask to ward off those effects. We also discussed the utilization of specialty munitions and distraction devices used with crowd dispersal strategies. We all hope we never have to use them, but remember it is better to have a plan and training, and not need it than to need it and not have it.

**NOTE: Show slides, "Training Objectives."**

1. Name the three (3) different categories of crowds and give an example of each.
  - a) Physical crowd
  - b) Psychological crowd
  - c) Mob
2. Identify the tactics used to counter the social and psychological influences of crowd behavior.

## ***Crowd Management***

3. State the duties of a law enforcement officer when patrolling a non-violent/passive protest and a potentially violent/hostile demonstration.
4. Demonstrate proper crowd control formations, using the riot baton to control/restrain crowd movement.
5. Identify the various uses for chemical munitions, specialty impact munitions, and distraction devices.

### B. Questions from Class

**NOTE: Show slide, “Questions.”**

### C. Closing Statement

Crowd management is an experience that you may not encounter very often; however, when we must mobilize, we will need to be ready. The actions we take or fail to take will impact the outcome of a crowd encounter. By employing the progressive steps, using effective verbalization skills, diplomacy, and employing tactical approaches and other tools and tactics discussed here, when necessary, officers should be able to work effectively towards containing, if not controlling, and dispersing, most crowds encountered.

**NOTES**

- <sup>1</sup> N.C.G.S. § 14-288.2 (1994 **2023**).
- <sup>2</sup> International Association of Chiefs of Police, 16, 17, 20.
- <sup>3</sup> International Association of Chiefs of Police, 20.
- <sup>4</sup> Tech Target.
- <sup>5</sup> International Association of Chiefs of Police, 32.
- <sup>6</sup> International Association of Chiefs of Police, 24.
- <sup>7</sup> Tech Target, 4.
- <sup>8</sup> United States Department of Homeland Security, PD-3.
- <sup>9</sup> Hallowell.
- <sup>10</sup> **N.C.G.S. § 14-288.9 (2023)**.
- <sup>11</sup> “Civil Disorder.”
- <sup>12</sup> *Scott v. Henrich*, 39F.3d912, (9<sup>th</sup> Cir. 1994).
- <sup>13</sup> International Association of Chiefs of Police, 7.
- <sup>14</sup> International Association of Chiefs of Police, 60-61.
- <sup>15</sup> L.A. County Sheriff’s Department, 7.
- <sup>16</sup> *Chemical Munitions Training Course Summary*, 10.
- <sup>17</sup> *Martinez v. Kilday*, 117 S.W. 2<sup>nd</sup> Texas Court of Civil Appeals, 1988.
- <sup>18</sup> *Chemical Munitions Training Course Summary*, 12.

**SELECTED STATUTES for  
LAW ENFORCEMENT OFFICERS  
REGARDING PUBLIC DEMONSTRATIONS,  
CIVIL DISORDERS, PARADES, AND RIOTS**

**§ 14-12.7. Wearing of masks, hoods, etc., on public ways.**

No person or persons at least 16 years of age shall, while wearing any mask, hood or device whereby the person, face or voice is disguised so as to conceal the identity of the wearer, enter, be or appear upon any lane, walkway, alley, street, road, highway or other public way in this State. (1953, c. 1193, s. 6; 1983, c. 175, ss. 1, 10; c. 720, s. 4.)

**§ 14-12.8. Wearing of masks, hoods, etc., on public property.**

No person or persons shall in this State, while wearing any mask, hood or device whereby the person, face or voice is disguised so as to conceal the identity of the wearer, enter, or appear upon or within the public property of any municipality or county of the State, or of the State of North Carolina. (1953, c. 1193, s. 7.)

**§ 14-277.2. Weapons at parades, etc., prohibited.**

(a) It shall be unlawful for any person participating in, affiliated with, or present as a spectator at any parade, funeral procession, picket line, or demonstration upon any private health care facility or upon any public place owned or under the control of the State or any of its political subdivisions to willfully or intentionally possess or have immediate access to any dangerous weapon. Violation of this subsection shall be a Class 1 misdemeanor. It shall be presumed that any rifle or gun carried on a rack in a pickup truck at a holiday parade or in a funeral procession does not violate the terms of this act.

(b) For the purposes of this section the term "dangerous weapon" shall include those weapons specified in G.S. 14-269, 14-269.2, 14-284.1, or 14-288.8 or any other object capable of inflicting serious bodily injury or death when used as a weapon.

(c) The provisions of this section shall not apply to a person exempted by the provisions of G.S. 14-269(b) or to persons authorized by State or federal law to carry dangerous weapons in the performance of their duties or to any person who obtains a permit to carry a dangerous weapon at a parade, funeral procession, picket line, or demonstration from the sheriff or police chief, whichever is appropriate, of the locality where such parade, funeral procession, picket line, or demonstration is to take place.

(d) The provisions of this section shall not apply to concealed carry of a handgun at a parade or funeral procession by a person with a valid permit issued in accordance with Article 54B of this Chapter, with a permit considered valid under G.S. 14-415.24, or who is exempt from obtaining a permit pursuant to G.S. 14-415.25. This subsection shall not be construed to permit a person to carry a concealed handgun on any premises where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises in accordance with G.S. 14-415.11(c). (1981, c. 684, s. 1; 1983, c. 633; 1993, c. 412, s. 2; c. 539, s. 174; 1994, Ex. Sess., c. 24, s. 14(c); 1997-238, s. 4; 2013-369, s. 15.)

**Unlawful Assembly** - This is a common law offense

A person guilty of this offense

- (1) Assembles with two or more other persons
- (2) With the common intent to commit disorderly acts that will interfere with the rights of others, or
- (3) For the purpose of committing acts in such a manner as would cause a firm person to apprehend a breach in peace.

**§ 14-288.2. Riot; inciting to riot; punishments.**

(a) A riot is a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.

(b) Any person who willfully engages in a riot is guilty of a Class 1 misdemeanor.

(c) Any person who willfully engages in a riot is guilty of a Class H felony, if:

- (1) In the course and as a result of the riot there is property damage in excess of fifteen hundred dollars (\$1,500) or serious bodily injury; or
- (2) Such participant in the riot has in his possession any dangerous weapon or substance.

(d) Any person who willfully incites or urges another to engage in a riot, so that as a result of such inciting or urging a riot occurs or a clear and present danger of a riot is created, is guilty of a Class 1 misdemeanor.

(e) Any person who willfully incites or urges another to engage in a riot, and such inciting or urging is a contributing cause of a riot in which there is property damage in excess of fifteen hundred dollars (\$1,500) or serious bodily injury, shall be punished as a Class F felon. (1969, c. 869, s. 1; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1, c. 179, s. 14; 1993, c. 539, ss. 187, 188, 1225, 1226; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 14-288.4. Disorderly conduct.**

(a) Disorderly conduct is a public disturbance intentionally caused by any person who does any of the following:

- (1) Engages in fighting or other violent conduct or in conduct creating the threat of imminent fighting or other violence.
- (2) Makes or uses any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace.
- (3) Takes possession of, exercises control over, or seizes any building or facility of any public or private educational institution without the specific authority of the chief administrative officer of the institution, or his authorized representative.
- (4) Refuses to vacate any building or facility of any public or private educational institution in obedience to any of the following:
  - a. An order of the chief administrative officer of the institution, or the officer's representative, who shall include for colleges and universities the vice

chancellor for student affairs or the vice-chancellor's equivalent for the institution, the dean of students or the dean's equivalent for the institution, the director of the law enforcement or security department for the institution, and the chief of the law enforcement or security department for the institution.

- b. An order given by any fireman or public health officer acting within the scope of the fireman's or officer's authority.
  - c. If an emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of the officer's authority.
- (5) Shall, after being forbidden to do so by the chief administrative officer, or the officer's authorized representative, of any public or private educational institution:
- a. Engage in any sitting, kneeling, lying down, or inclining so as to obstruct the ingress or egress of any person entitled to the use of any building or facility of the institution in its normal and intended use; or
  - b. Congregate, assemble, form groups or formations (whether organized or not), block, or in any manner otherwise interfere with the operation or functioning of any building or facility of the institution so as to interfere with the customary or normal use of the building or facility.
- (6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto.
- (6a) Engages in conduct which disturbs the peace, order, or discipline on any public school bus or public school activity bus.
- (7) Except as provided in subdivision (8) of this subsection, disrupts, disturbs, or interferes with a religious service or assembly or engages in conduct which disturbs the peace or order at any religious service or assembly.
- (8) Engages in conduct with the intent to impede, disrupt, disturb, or interfere with the orderly administration of any funeral, memorial service, or family processional to the funeral or memorial service, including a military funeral, service, or family processional, or with the normal activities and functions occurring in the facilities or buildings where a funeral or memorial service, including a military funeral or memorial service, is taking place. Any of the following conduct that occurs within two hours preceding, during, or within two hours after a funeral or memorial service shall constitute disorderly conduct under this subdivision:
- a. Displaying, within 500 feet of the ceremonial site, location being used for the funeral or memorial, or the family's processional route to the funeral or memorial service, any visual image that conveys fighting words or actual or imminent threats of harm directed to any person or property associated with the funeral, memorial service, or processional route.
  - b. Uttering, within 500 feet of the ceremonial site, location being used for the funeral or memorial service, or the family's processional route to the

funeral or memorial service, loud, threatening, or abusive language or singing, chanting, whistling, or yelling with or without noise amplification in a manner that would tend to impede, disrupt, disturb, or interfere with a funeral, memorial service, or processional route.

- c. Attempting to block or blocking pedestrian or vehicular access to the ceremonial site or location being used for a funeral or memorial.

As used in this section the term "building or facility" includes the surrounding grounds and premises of any building or facility used in connection with the operation or functioning of such building or facility.

(b) Except as provided in subsection (c) of this section, any person who willfully engages in disorderly conduct is guilty of a Class 2 misdemeanor.

(c) A person who commits a violation of subdivision (8) of subsection (a) of this section is guilty of:

(1) A Class 1 misdemeanor for a first offense.

(2) A Class I felony for a second offense.

(3) A Class H felony for a third or subsequent offense. (1969, c. 869, s. 1; 1971, c. 668, s. 1; 1973, c. 1347; 1975, c. 19, s. 4; 1983, c. 39, s. 5; 1987, c. 671, s. 1; 1993, c. 539, s. 189; 1994, Ex. Sess., c. 24, s. 14(c); 2001-26, s. 2; 2006-169, s. 1; 2012-12, s. 2(b); 2013-6, s. 1.)

#### **§ 14-288.5. Failure to disperse when commanded a misdemeanor; prima facie evidence.**

(a) Any law-enforcement officer or public official responsible for keeping the peace may issue a command to disperse in accordance with this section if he reasonably believes that a riot, or disorderly conduct by an assemblage of three or more persons, is occurring. The command to disperse shall be given in a manner reasonably calculated to be communicated to the assemblage.

(b) Any person who fails to comply with a lawful command to disperse is guilty of a Class 2 misdemeanor.

(c) If any person remains at the scene of any riot, or disorderly conduct by an assemblage of three or more persons, following a command to disperse and after a reasonable time for dispersal has elapsed, it is prima facie evidence that the person so remaining is willfully engaging in the riot or disorderly conduct, as the case may be. (1969, c. 869, s. 1; 1993, c. 539, s. 190; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 14-288.6. Looting; trespass during emergency.**

(a) Any person who enters upon the premises of another without legal justification when the usual security of property is not effective due to the occurrence or aftermath of riot, insurrection, invasion, storm, fire, explosion, flood, collapse, or other disaster or calamity is guilty of a Class 1 misdemeanor of trespass during an emergency.

(b) Any person who commits the crime of trespass during emergency and, without legal justification, obtains or exerts control over, damages, ransacks, or destroys the property of another is guilty of the felony of looting and shall be punished as a Class H felon. (1969, c. 869, s. 1; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1, c. 179, s. 14; 1993, c. 539, ss. 191, 1227; 1994, Ex. Sess., c. 24, s. 14(c).)

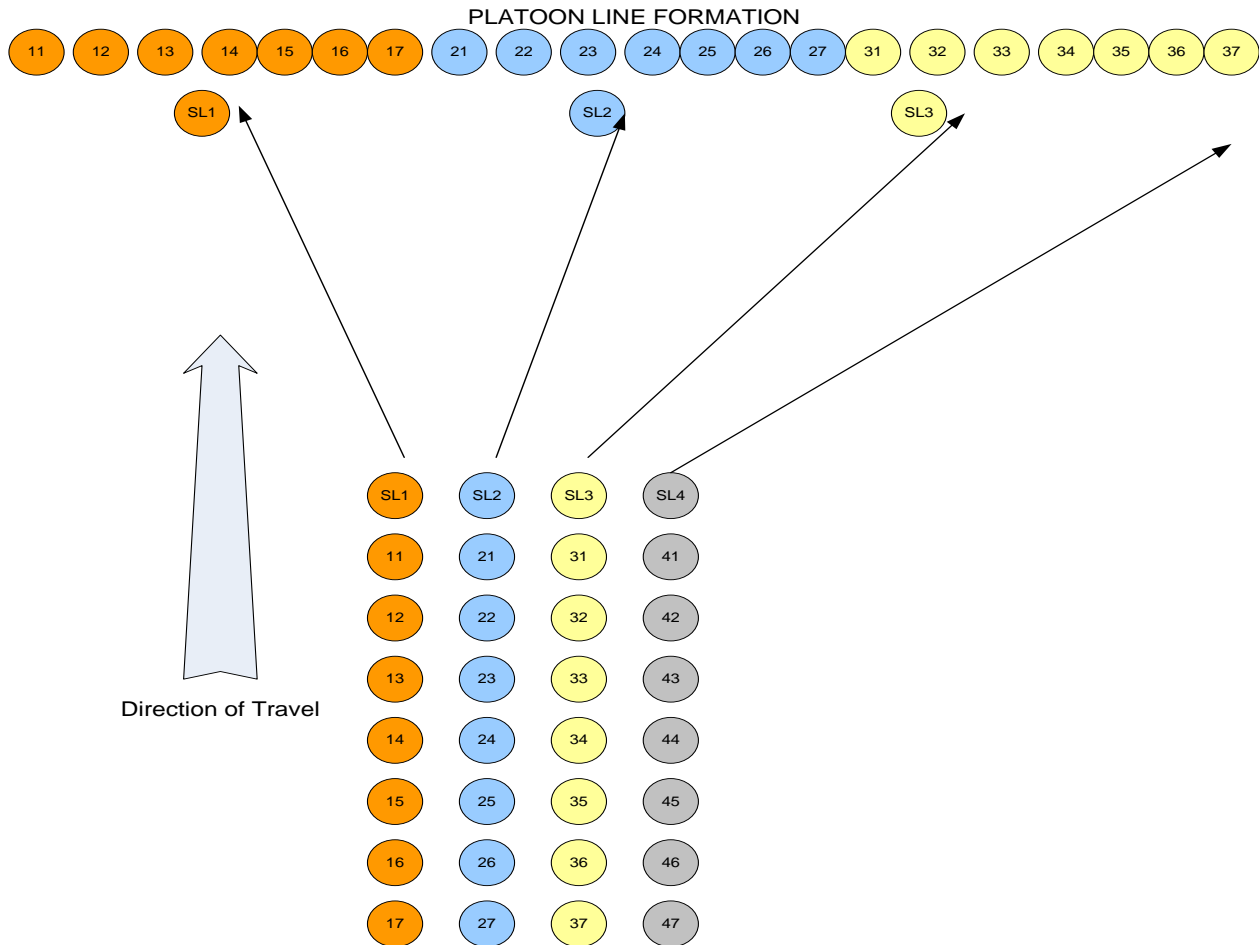


**§ 14-288.10. Frisk of persons during violent disorders; frisk of curfew violators.**

(a) Any law-enforcement officer may frisk any person in order to discover any dangerous weapon or substance when he has reasonable grounds to believe that the person is or may become unlawfully involved in an existing riot and when the person is close enough to such riot that he could become immediately involved in the riot. The officer may also at that time inspect for the same purpose the contents of any personal belongings that the person has in his possession.

(b) Any law-enforcement officer may frisk any person he finds violating the provisions of a curfew proclaimed under the authority of G.S. 14-288.12, 14-288.13, 14-288.14, or 14-288.15 or any other applicable statutes or provisions of the common law in order to discover whether the person possesses any dangerous weapon or substance. The officer may also at that time inspect for the same purpose the contents of any personal belongings that the person has in his possession. (1969, c. 869, s. 1.)

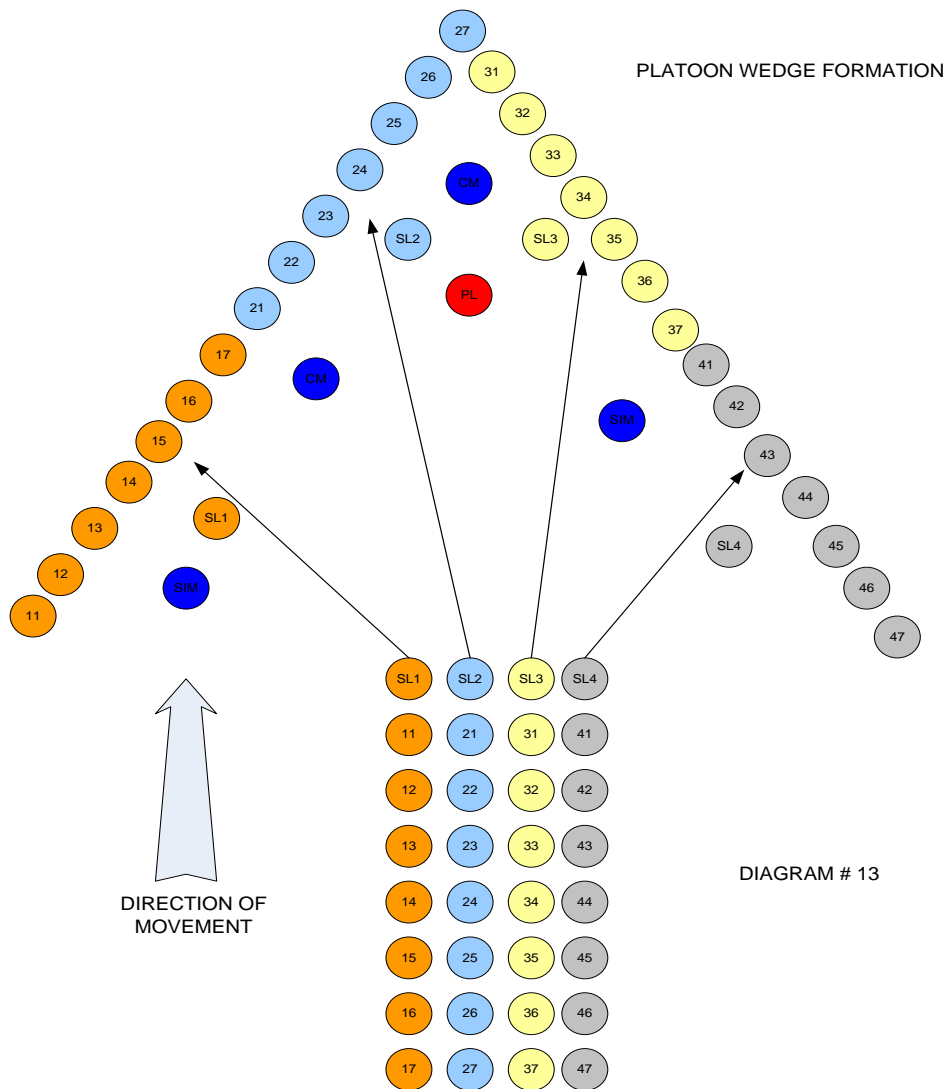
**FORMATIONS,  
COMMANDS  
AND MOVEMENTS**



### **Line Formation with Close Quarter Support**

This Formation affords the platoon leader the opportunity to fill in gaps in the skirmish line and fortify the formation by deepening the manpower. This formation is intended for heavy resistance and possibly incoming objects thrown by unlawful crowds. This formation allows the individual member to be supported by someone immediately behind him. The platoon leader may direct the line to “*Cover Up*”. This will allow the members to raise their shield in a phalanx and prevent objects from permeating the lines.

- a) The *preparatory command* is - “*Platoon....Line Formation with close quarter support*” The *supplemental platoon command* is” *Close Quarter Support*”
- b) The *command to execute* is “*Move*”.

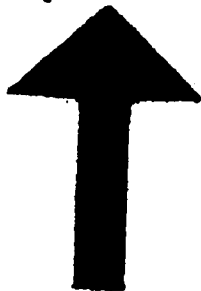


### Platoon Wedge Formation

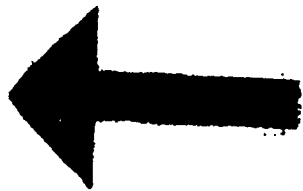
This formation is an offensive formation that is used to penetrate and split crowds. This formation can be constructed and formed from the platoon or any mobile formation. The platoon leader must recognize that the rear must be protected and upon splitting a crowd or mob, some elements of the crowd will be beyond the flanks and to the rear.

- a) The *preparatory command* is - “*Platoon.....Wedge Formation* (The platoon leader must identify the constructing elements of the wedge to simplify dress and formation)....*Ready.....*”
- b) The *command to execute* is - “*Move*”

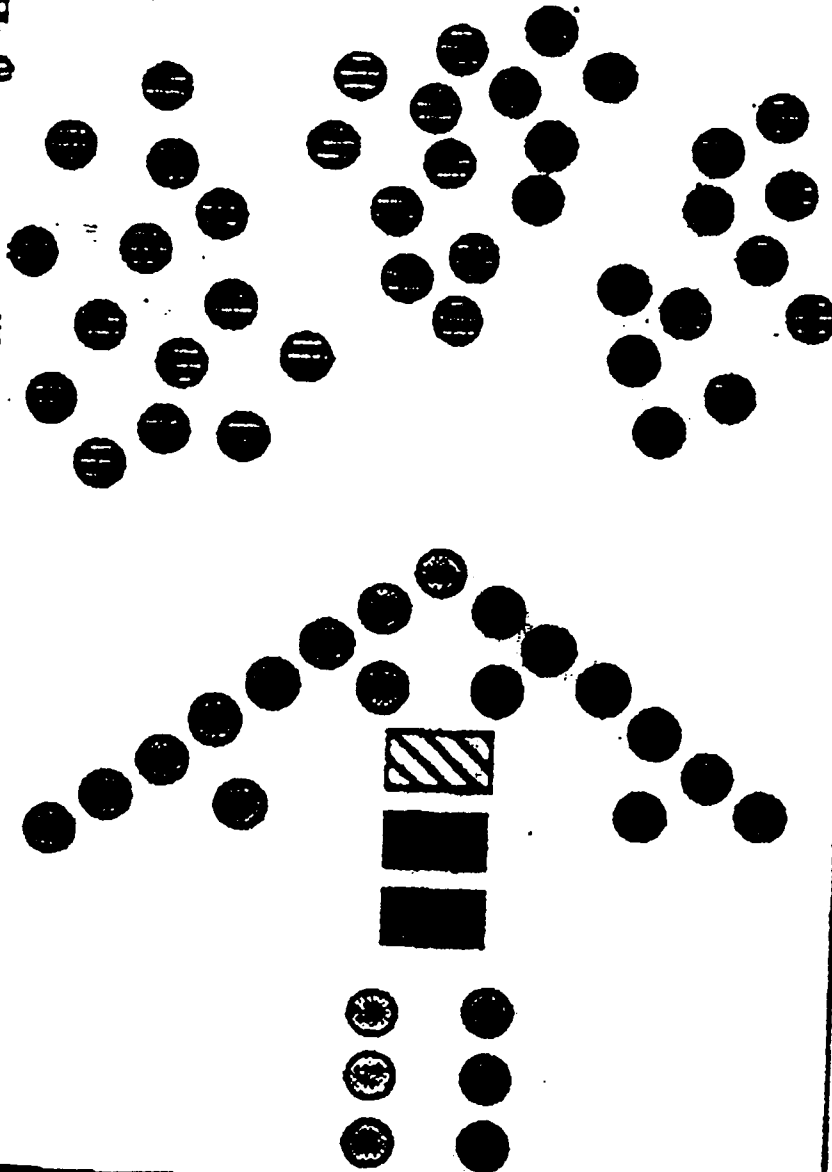
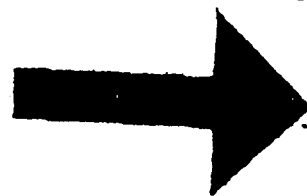
Escape Route








Escape Route

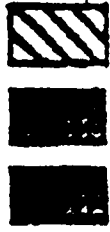
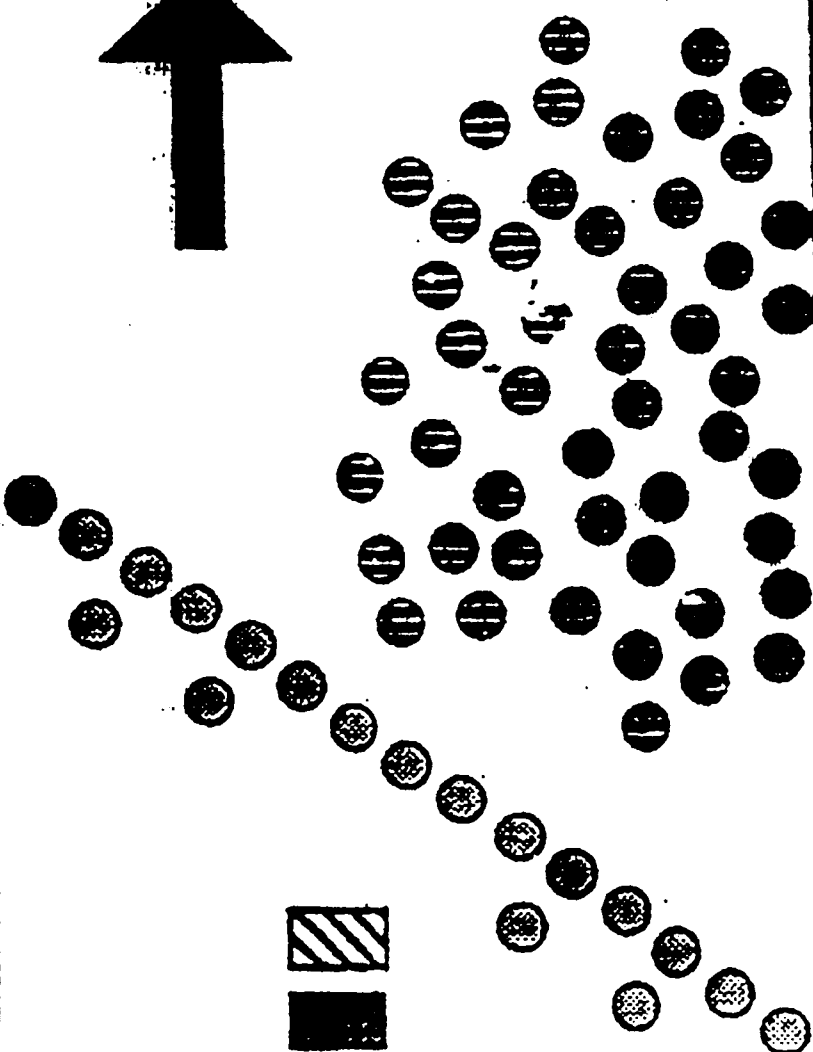
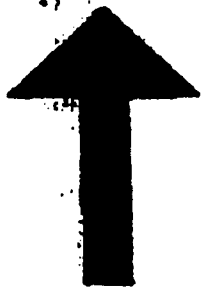








Escape Route

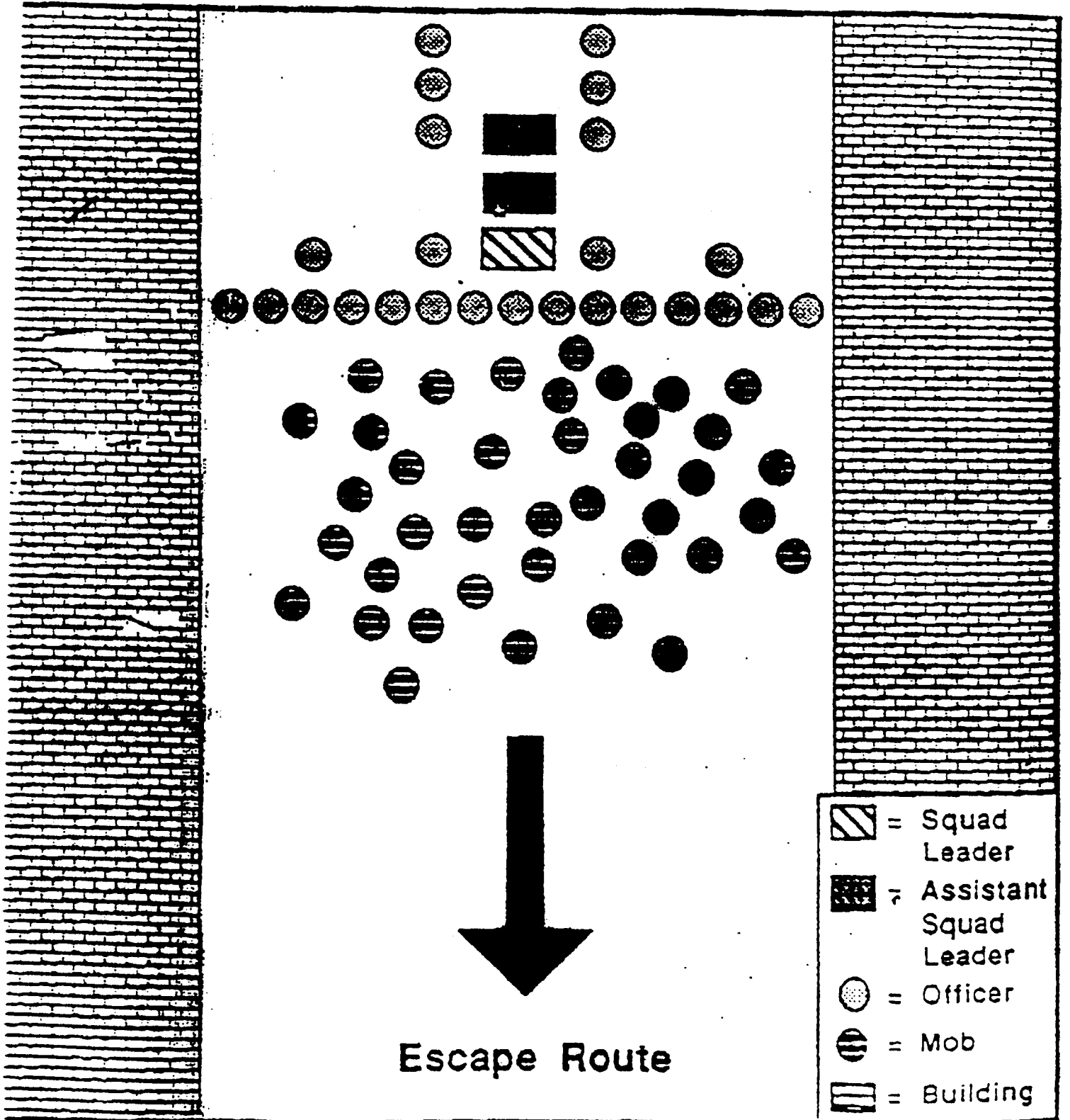


-  = Squad Leader
-  = Assistant Squad Leader
-  = Officer
-  = Mob
-  = Building

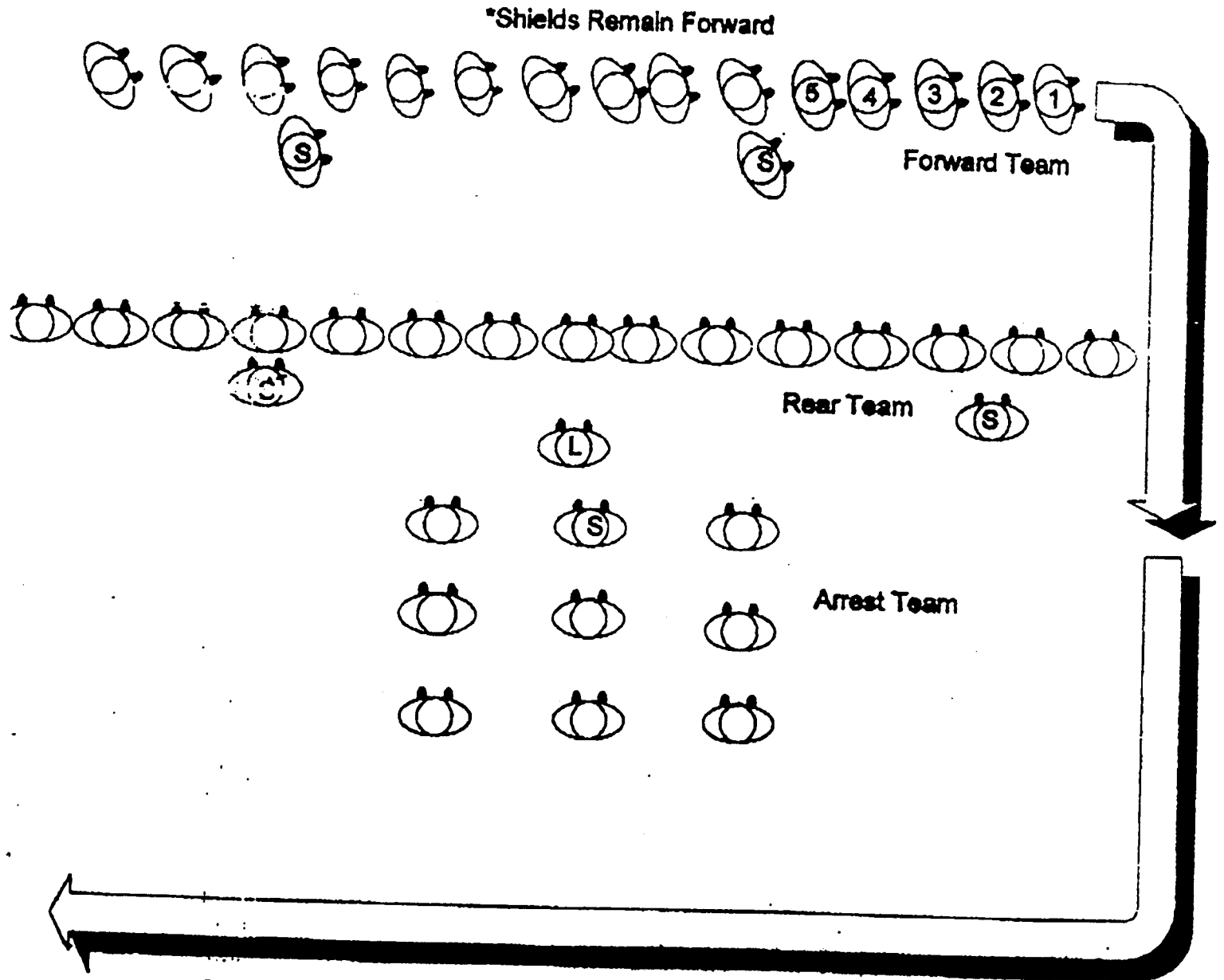
Escape Route



-  = Squad Leader
-  = Assistant Squad Leader
-  = Officer
-  = Mob
-  = Building
-  = Fence

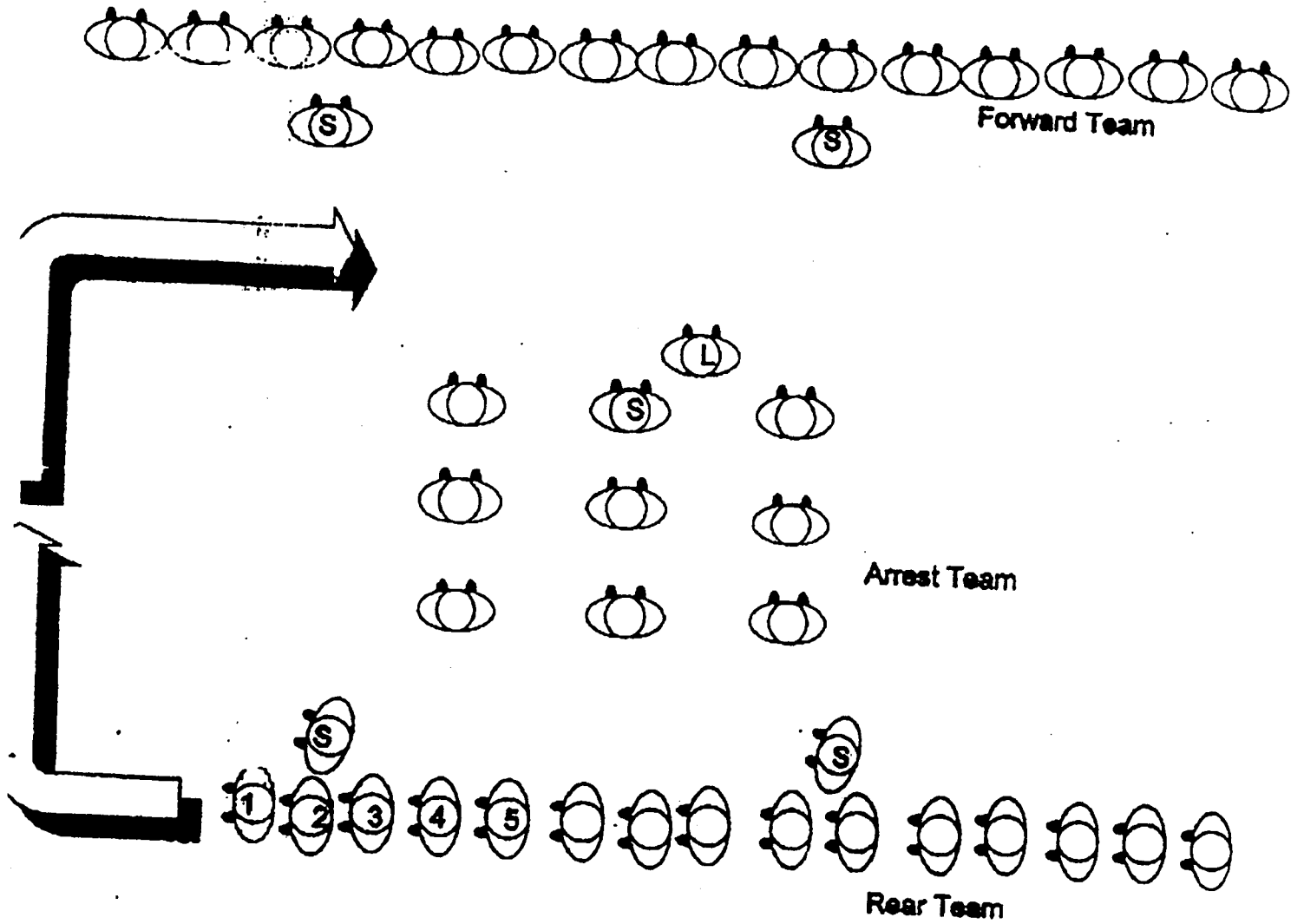


# LINE REPLACEMENT; FORWARD TEAM MOVEMENT





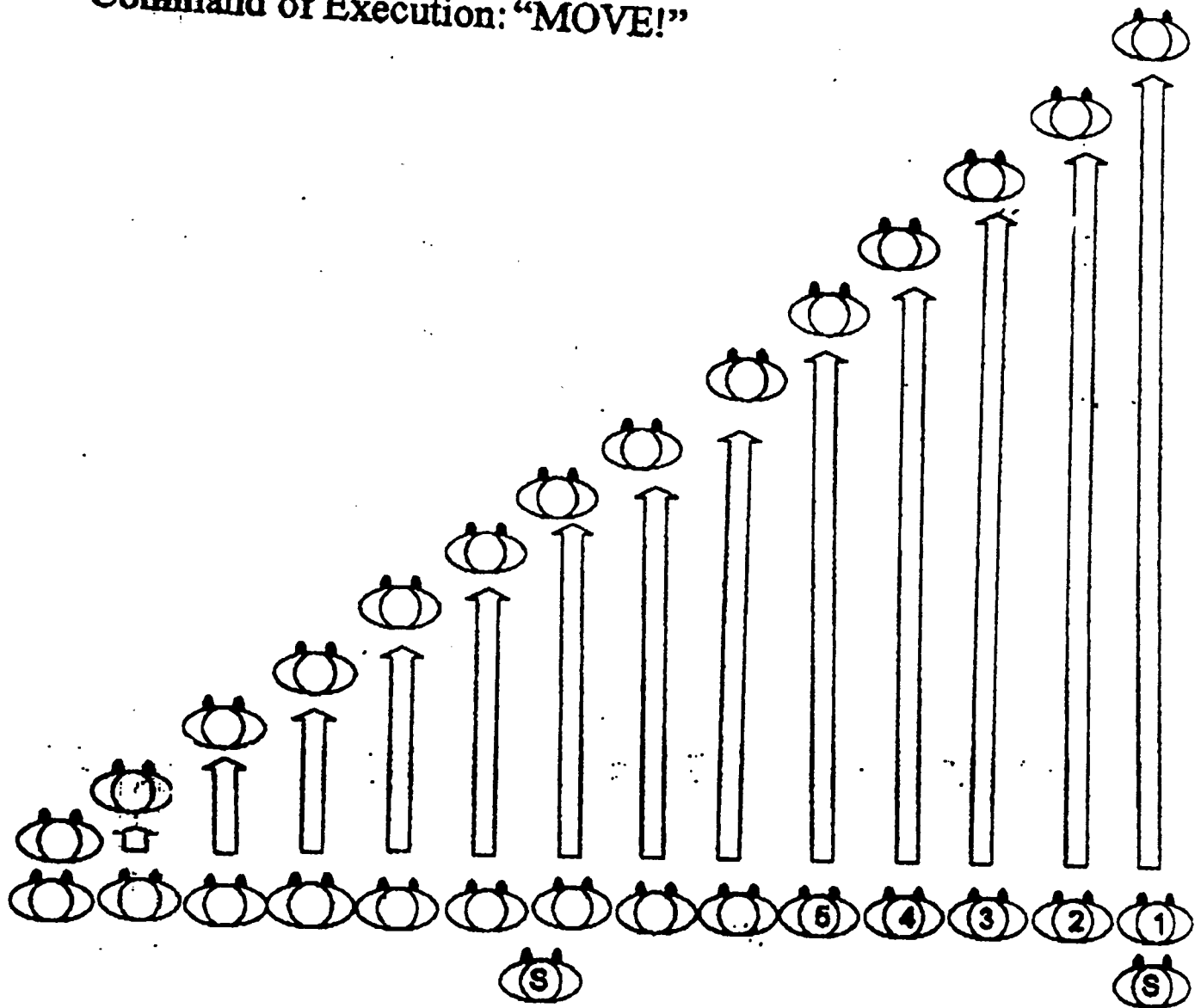
# LINE REPLACEMENT; REAR TEAM MOVEMENT



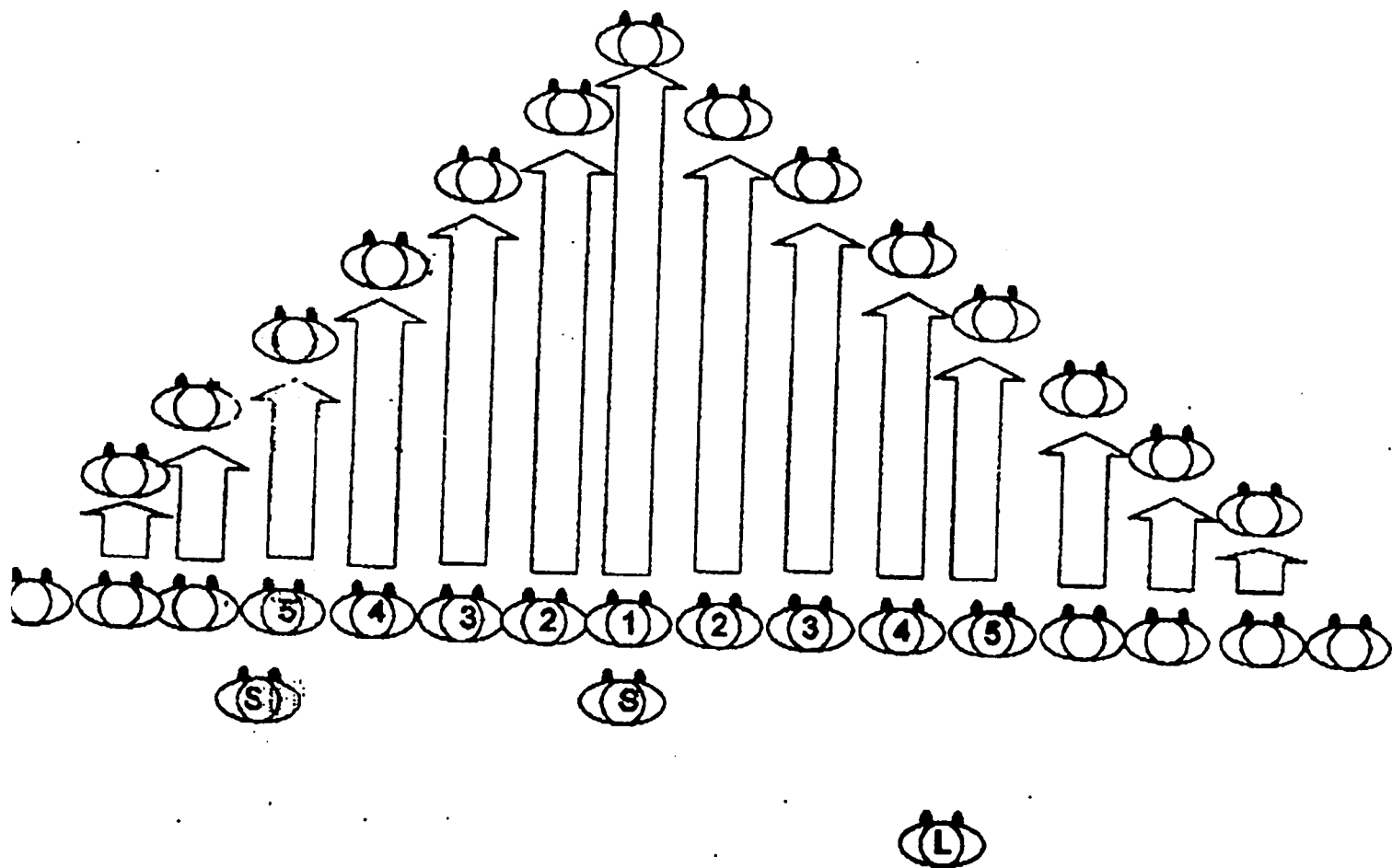
# Line to a Diagonal Left Formation

Preparatory Command: "Diagonal Left"

Command of Execution: "MOVE!"



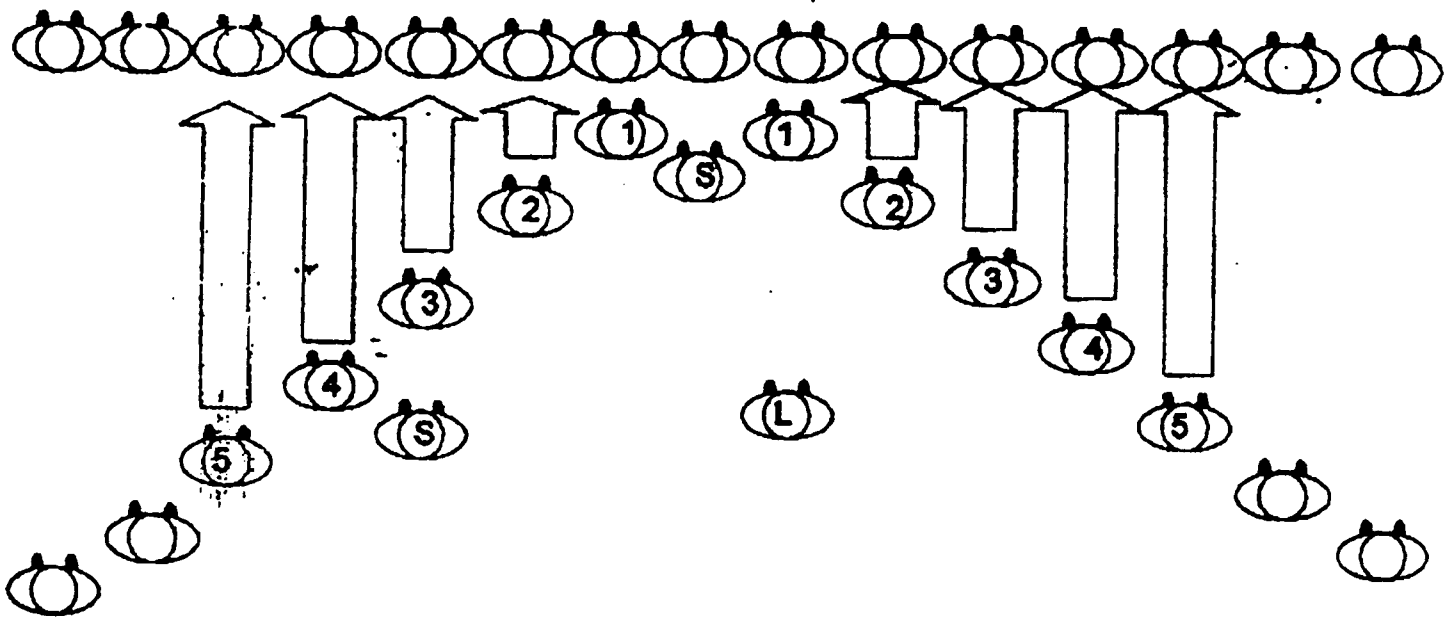
# LINE TO WEDGE FORMATION



**Preparatory Command: "Wedge Formation, On  
Badge #-----"**

**Command of Execution: "MOVE!"**

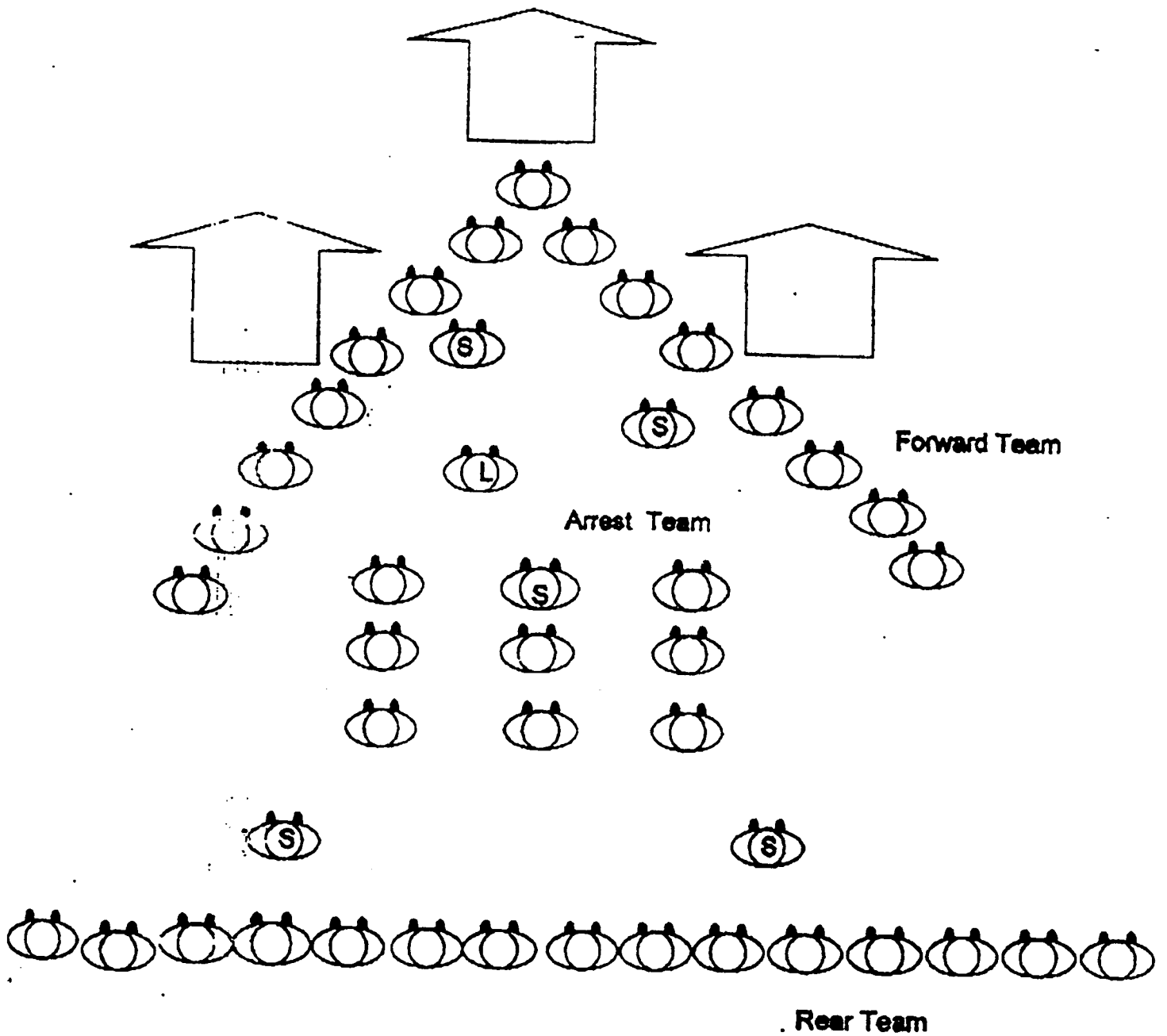
# WEDGE TO LINE FORMATION



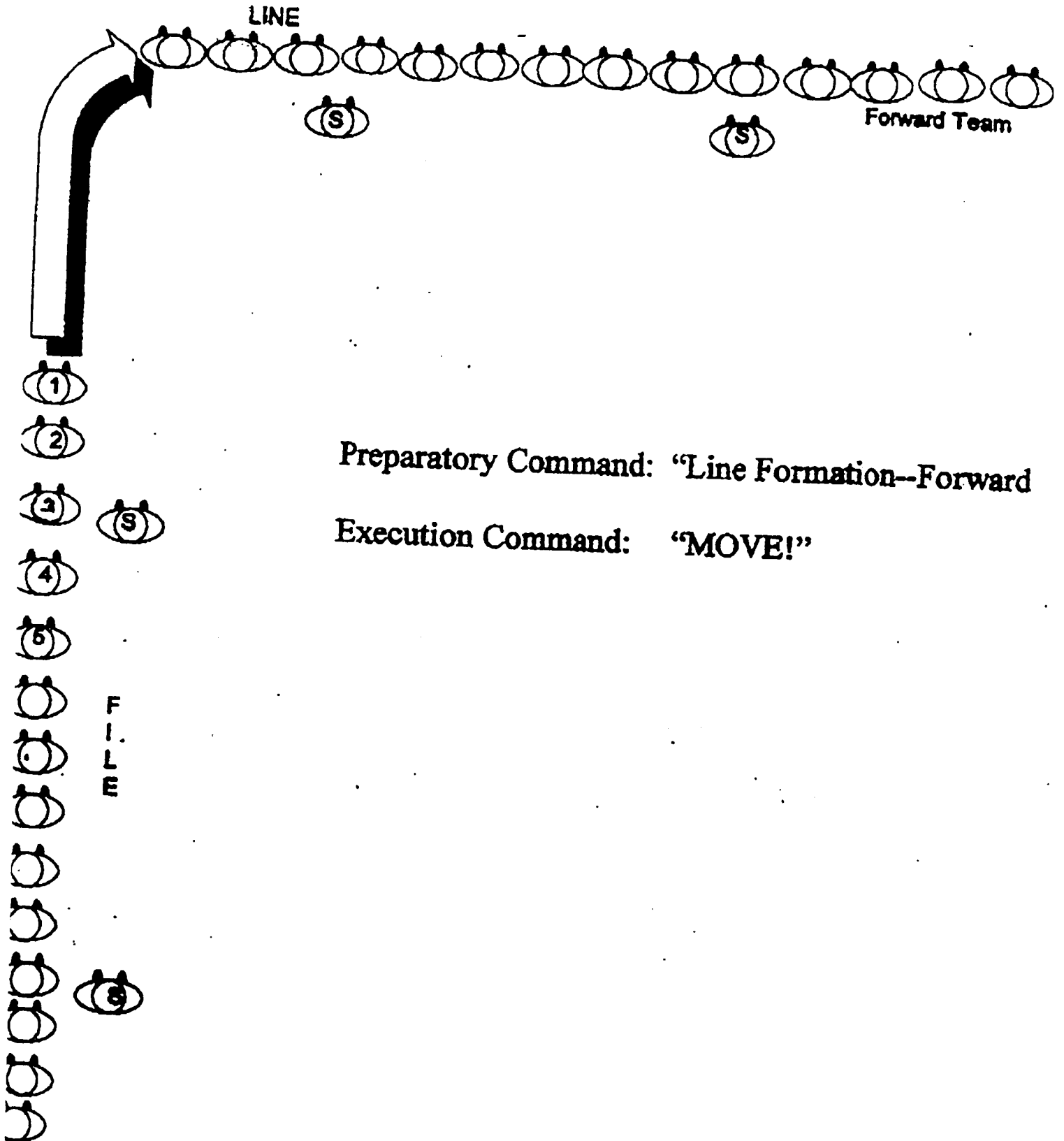
**Preparatory Command: "Line Formation"**

**Command of Execution: "MOVE!"**

# WEDGE FORMATION



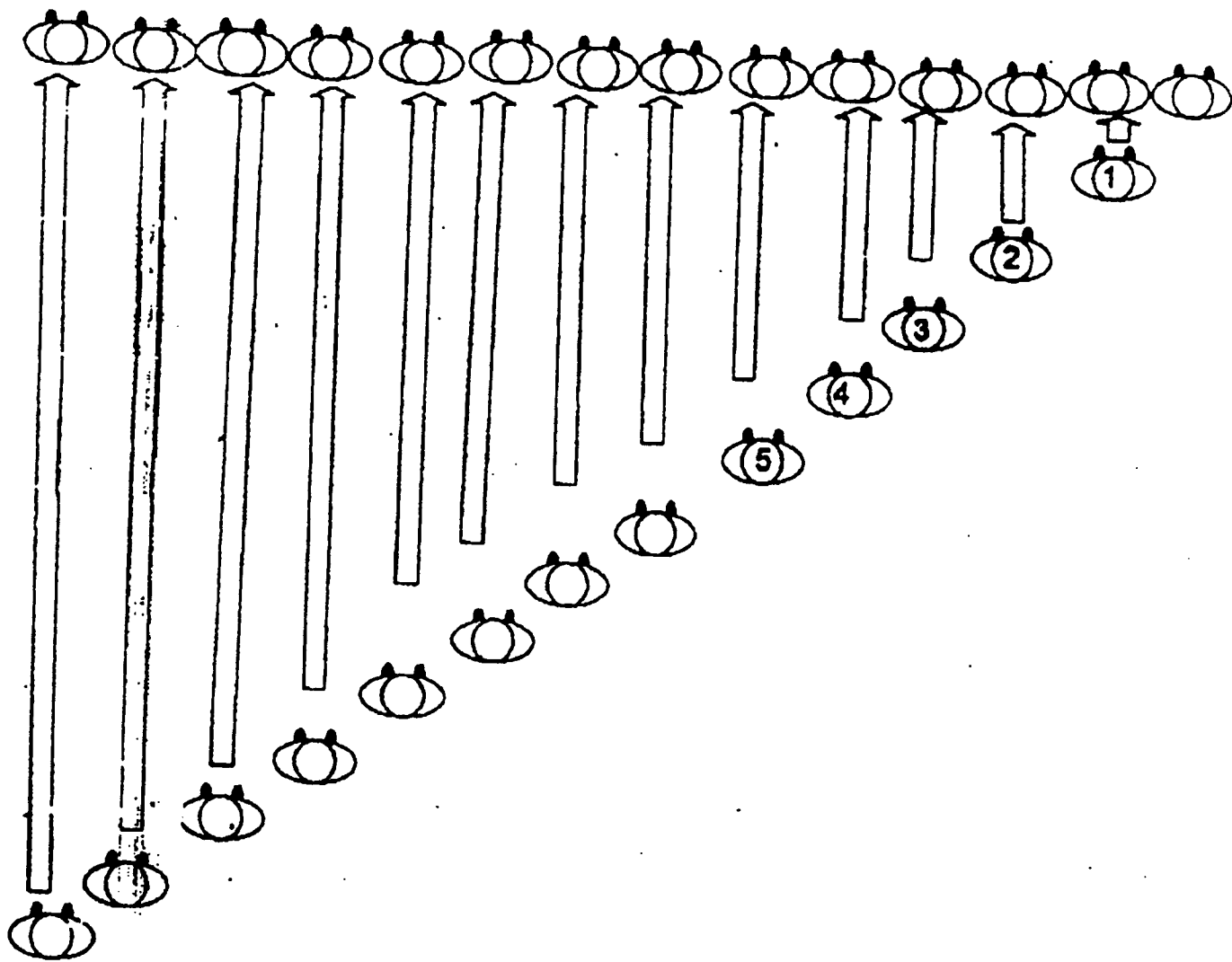
# FILE TO LINE FORMATION



Preparatory Command: "Line Formation--Forward

Execution Command: "MOVE!"

# DIAGONAL FORMATION TO A LINE FORMATION



Preparatory Command: "Line Formation"

Command of Execution: "MOVE!"

## CROWD MANAGEMENT PRACTICAL SKILLS EVALUATION

**Student:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Lead Instructor:** \_\_\_\_\_

**Asst. Instructors:** \_\_\_\_\_

**Instructors should evaluate the student's ability to demonstrate the listed tasks based on the following:**

<b>Passive Protests:</b>	<b>Satisfactory (S) / Unsatisfactory (U)</b>
Proper use of flexcuffs, i.e., proper position on wrists, proper restrictiveness (not too loose or too tight).	
Proper lifting techniques, i.e., lifting with legs and not back.	

<b>Formations, Chemical Agents and Mobile Tactics</b>	<b>Satisfactory (S) / Unsatisfactory (U)</b>
The ability to demonstrate the various crowd control formations.	
The ability to work as a team.	
The ability to control and/or restrain crowd movement.	
The ability to properly use the gas mask.	

Students receiving two (2) or more "unsatisfactory" scores fail this practical exercise of the Crowd Management block of instruction.

If the student receives an unsatisfactory, please explain:

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**SUBTOTAL BROUGHT FORWARD**

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**II Organization And Presentation**

- 1. Were the major objectives of the course made clear? 1 2 3 4 5
- 2. How well was the class presentation planned and organized? 1 2 3 4 5
- 3. Was the course material clearly explained? 1 2 3 4 5
- 4. Did test questions fairly reflect the course content? 1 2 3 4 5
- 5. Was class time well used? 1 2 3 4 5
- 6. Do you feel that your questions were adequately answered by the instructor? 1 2 3 4 5
- 7. Do you believe the instructor encouraged relevant student involvement in the class? 1 2 3 4 5
- 8. Did the instructor react to student viewpoints different from his in a positive manner? 1 2 3 4 5
- 9. How would you describe the instructor's attitude in class toward you, the student? 1 2 3 4 5
- 10. How would you rate the instructor's quality and use of training aids? 1 2 3 4 5

**TOTAL ACROSS** \_\_\_+\_\_\_+\_\_\_+\_\_\_+\_\_\_

**CUMULATIVE TOTAL** \_\_\_\_\_

**INSTRUCTOR RATING FORMULA:**

**CUMULATIVE TOTAL . 20 = INSTRUCTOR RATING**

Comments

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