

INFRACTION Case Processing in North Carolina (Spring 2002)

Note: *This handout provides a general overview of the processing of an infraction case in North Carolina. It is not a substitute for reviewing the specific requirements contained in the North Carolina General Statutes and the opinions of the North Carolina appellate courts.*

Infraction: An infraction is an unlawful act that is not a crime. In other words, an infraction is an unlawful act (1) that is not a felony or a misdemeanor and (2) for which a defendant may not be imprisoned. The usual punishment for an infraction is a fine. A minor traffic offense is a common example of an infraction. A person charged with an infraction is later found to be "responsible" or "not responsible" for the infraction.

Charge: A law enforcement officer typically charges an infraction using a citation form. The citation is simply a legal instrument that directs a person to appear in court on a certain date.

Pretrial Release: The defendant is not arrested and is not placed in confinement prior to trial. Some defendants charged with infractions may be required to post a bond to ensure their appearance at trial. In most infraction cases, however, no bond is required. Either way, the defendant remains free to carry out his or her usual activities until his or her court date. If, however, the defendant fails to appear on his or her scheduled court date, the court may issue an order for the defendant's arrest.

Waiver: Rather than appearing in court, the defendant may choose to waive his or her right to a trial and instead simply pay the fine and any court costs prior to trial. To do this, the defendant signs the back of the citation form to indicate that he or she is (1) waiving his or her right to a trial on the infraction and (2) admitting responsibility for the offense. The defendant then submits the signed citation form to the clerk or a magistrate along with the payment for the fine and court costs. In order to waive an infraction charge in this manner, the defendant must submit the citation and the payment to the court by 5:00 PM on the last business day before the defendant's court date. A defendant who waives an offense is treated the same as a defendant who is found responsible for an offense by a judge. For example, a defendant who waives an offense may be subject to drivers license points or an increase in his or her automobile insurance rates.

Trial/Hearing: If the defendant chooses to challenge the infraction charge, he or she must appear in District Court on the court date specified in the citation. A judge rather than a jury decides the case and the process is typically less formal than the trial of a felony or misdemeanor. The District Attorney represents the State and must prove beyond a reasonable doubt that the defendant is responsible for the infraction.

Appeal: Following a finding of responsibility in District Court, the defendant may appeal to the Superior Court for a trial de novo (i.e., the Superior Court will hear the case anew as if it had never been tried in District Court). The defendant will be tried by a jury in Superior Court unless he or she agrees to have a judge decide the case. If the defendant is again found responsible for the infraction, he or she may appeal to the North Carolina Court of Appeals.

MISDEMEANOR Case Processing in North Carolina (Spring 2002)

Note: This handout provides a general overview of the processing of a misdemeanor case in North Carolina. It is not a substitute for reviewing the specific requirements contained in the North Carolina General Statutes and the opinions of the North Carolina appellate courts.

Misdemeanor: A misdemeanor is a crime that is less serious than a felony.

Arrest: A law enforcement officer may arrest a defendant if the officer has probable cause to believe the person has committed or is committing a crime. Generally speaking, an officer has probable cause if the facts and circumstances are such that a reasonable person would believe the defendant has committed or is committing a crime. In some situations, the officer may arrest the defendant without an arrest warrant. In other situations, the officer will need to apply to a court official (usually a magistrate) for the issuance of a warrant for the defendant's arrest.

Initial Appearance: Following the arrest, the defendant will make an initial appearance before a court official (usually a magistrate). The magistrate will advise the defendant of the charges against him or her and advise the defendant of his or her rights. If the officer made the arrest without a warrant, the magistrate will determine whether there was probable cause for the arrest. The magistrate must also set the conditions under which the defendant may be released from jail prior to trial.

No Indictment: Unlike felonies, misdemeanor charges are not submitted to a grand jury. The original criminal process document (e.g., the arrest warrant) serves as the State's pleading in the case rather than the indictment that is used in Superior Court. The District Attorney may, however, file a "misdemeanor statement of charges." This is a document signed by the District Attorney that charges the defendant with a misdemeanor. If the District Attorney files a misdemeanor statement of charges, it takes the place of the original criminal process document.

Motions: In misdemeanor cases, motions (e.g., a motion to prevent certain evidence from being introduced at trial) are typically made and ruled upon during the course of the trial rather than prior to trial.

Trial: Unless the defendant has pled guilty to the charged offense (or to another offense) pursuant to an agreement with the District Attorney, the defendant will stand trial on the misdemeanor charge in District Court. The trial has six main parts:

- The opening statements by the District Attorney and the defendant's attorney.
- The presentation of evidence by the District Attorney. The District Attorney must prove beyond a reasonable doubt that the defendant is guilty of the misdemeanor.
- The presentation of evidence by the defendant (although the defendant is not required to present evidence).
- The closing statements by the attorneys.
- The entry of a judgment by the judge. (Juries are not used for misdemeanor cases in District Court.)
- The sentencing of the defendant if the judge found the defendant guilty.

Sentence: The sentence is the formal punishment ordered by the court following a conviction. In North Carolina, judges follow a “structured sentencing” process for misdemeanors. Essentially, the judges rely on a grid (or chart) that determines a defendant’s sentence based on (1) the nature of the current offense, (2) the defendant’s prior criminal record and (3) certain aggravating and mitigating factors. The punishment may include imprisonment, probation, community service or fines (or some combination of these options), along with other sanctions and responsibilities.

Probation: Probation is a process by which a person convicted of a crime is allowed to avoid imprisonment so long as he or she complies with certain conditions imposed by the court. If the defendant violates one or more of the conditions of probation, the court may revoke the defendant's probation and order that the defendant be imprisoned.

Appeal: Following a conviction in District Court, the defendant may appeal to the Superior Court for a trial de novo (i.e., the Superior Court will hear the case anew as if it had never been tried in District Court). The procedures for the trial of a misdemeanor in Superior Court are the same as those used for felonies in Superior Court. If the defendant is found guilty in Superior Court, he or she may appeal to the North Carolina Court of Appeals.

FELONY Case Processing in North Carolina (Spring 2002)

Note: This handout provides a general overview of the processing of a felony case in North Carolina. It is not a substitute for reviewing the specific requirements contained in the North Carolina General Statutes and the opinions of the North Carolina appellate courts.

Felony: A felony is a very serious crime. There are different felony levels ranging from the most serious (Class A) to the less serious (Class I).

Arrest: A law enforcement officer may arrest a defendant if the officer has probable cause to believe the person has committed or is committing a crime. Generally speaking, an officer has probable cause if the facts and circumstances are such that a reasonable person would believe the defendant has committed or is committing a crime. In some situations, the officer may arrest the defendant without an arrest warrant. In other situations, the officer will need to apply to a court official (usually a magistrate) for the issuance of a warrant for the defendant's arrest.

Initial Appearance: Following the arrest, the defendant will make an initial appearance before a court official (usually a magistrate). The magistrate will advise the defendant of the charges against him or her and advise the defendant of his or her rights. If the officer made the arrest without a warrant, the magistrate will determine whether there was probable cause for the arrest. The magistrate must also set the conditions under which the defendant may be released from jail prior to trial.

First Appearance: At the first appearance, a District Court Judge will inform the defendant of the charges against him or her, ensure that the defendant has a copy of the criminal process (e.g., the arrest warrant), review the eligibility of the defendant for release from jail prior to trial and determine whether the defendant is requesting a probable cause hearing. If the defendant does not yet have an attorney, the judge will advise the defendant of his or her rights and determine whether the defendant is entitled to an attorney at State expense.

Probable Cause Hearing: If the defendant requests a probable cause hearing, a District Court Judge will determine whether there is probable cause for the felony with which the defendant is charged (or whether there is probable cause for a lesser felony offense). Even if the judge finds no probable cause, the District Attorney may seek an indictment from the grand jury. If the judge finds probable cause, the District Attorney must still present the case to the grand jury unless the defendant waives the right to the review by the grand jury.

Grand Jury/Indictment: Grand juries in North Carolina comprise eighteen members. Like regular juries, grand jury members are drawn from a pool of citizens in the county in which the charges were filed. The District Attorney will present the case against the defendant to the grand jury in a secret proceeding. The defendant has no right to be present, no right to testify and no right to present witnesses at the grand jury proceeding. The role of the grand jury is to determine whether probable cause exists for the charge. At least twelve grand jury members must agree that there is probable cause in order for the case to move forward to trial. If twelve or more jurors agree, the grand jury returns a "true bill of indictment" and the District Attorney may continue with the prosecution. If the grand jury does not find probable cause, the District Attorney may resubmit the case to a grand jury at a later time.

Arraignment: North Carolina law provides for an arraignment proceeding following an indictment, but it is rarely used because the defendant typically waives arraignment. Where the defendant does request an arraignment, a Superior Court Judge will advise the defendant of the charges and the District Attorney will read the charges to the defendant. The defendant will then enter his or her plea. Where the defendant does not request an arraignment, the court will enter a “not guilty” plea on the defendant’s behalf.

Pretrial Activities: Prior to the trial of a felony case, the District Attorney and the defense will engage in a variety of activities including discovery (i.e., the exchange of evidence), motions (e.g., to change the location of the trial, to prevent certain evidence from being introduced at trial) and administrative hearings (e.g., to set deadlines for discovery, to set deadlines for the filing of motions, to discuss plea arrangements, to set a date for the start of the trial).

Plea Agreement: The defendant and the District Attorney may agree to an arrangement under which the defendant pleads guilty to the offense charged or to a lesser offense. Guilty pleas in Superior Court are governed by a specific set of procedures. To ensure that these procedures are followed, the court will use a “transcript of plea” form and ask the defendant a series of questions. The AOC has recently translated the transcript of plea form into Spanish.

Trial: Unless the defendant has pled guilty to the charged offense (or to another offense) pursuant to an agreement with the District Attorney, the defendant will stand trial on the felony charge in Superior Court. The trial has eight main parts:

- The selection of the jury.
- The opening statements by the District Attorney and the defendant’s attorney.
- The presentation of evidence by the District Attorney. The District Attorney must prove beyond a reasonable doubt that the defendant is guilty of the felony.
- The presentation of evidence by the defendant (although the defendant is not required to present evidence).
- The closing statements by the attorneys.
- The instructions from the court to the jury explaining to the jurors their duties and the legal issues they are to decide.
- The deliberation of the jury and the return of the verdict by the jury. (A guilty verdict must be the unanimous decision of all twelve jurors.)
- The sentencing of the defendant if the jury found the defendant guilty.

Sentence: The sentence is the formal punishment ordered by the court following a conviction. In North Carolina, judges follow a “structured sentencing” process for felonies. Essentially, the judges rely on a grid (or chart) that determines a defendant’s sentence based on (1) the nature of the current offense, (2) the defendant’s prior criminal record and (3) certain aggravating and mitigating factors. The punishment may include imprisonment, probation, community service or fines (or some combination of these options), along with other sanctions and responsibilities. Documents that the court and the parties may use during the sentencing phase of the trial include the sentencing worksheet, the restitution worksheet, the victim impact statement and the judgment form.

Probation: Probation is a process by which a person convicted of a crime is allowed to avoid imprisonment so long as he or she complies with certain conditions imposed by the court. There are certain “regular conditions” of probation that apply to all persons placed on probation (e.g., that the defendant may not commit a crime, that the defendant may not possess a firearm without the permission of the court). There are also “special conditions” of probation that the court may order (e.g., that the defendant undergo medical or psychiatric treatment, that the defendant may not operate a motor vehicle). Finally, there are certain special conditions of probation that apply to persons convicted of violent sexually-based offenses or offenses involving child abuse. If the defendant violates one or more of the conditions of probation, the court may revoke the defendant's probation and order that the defendant be imprisoned.

Appeal: Following a conviction, the defendant may appeal to the North Carolina Court of Appeals. In certain limited instances, the defendant may appeal from the Superior Court directly to the Supreme Court of North Carolina. The appellate process has its own series of rules and procedures that are not discussed here.

Motion for Appropriate Relief: In addition to appealing his or her case, the defendant may also file a motion for appropriate relief from the verdict or sentence. The law specifies the types of challenges for which this procedure may be used (e.g., the court lacked jurisdiction, the statute under which the defendant was convicted is unconstitutional, new evidence has been discovered).