

Fingerprinting Uncooperative Defendants

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From time to time, an officer or a magistrate asks how to respond when a defendant who is properly subject to fingerprinting under G.S. 15A-502 refuses to be fingerprinted. There are at least three good ways to address this situation:

First, the magistrate can make fingerprinting a condition of release. This is probably permitted under G.S. 15A-534, which allows magistrates a broad authority to “place restrictions on the . . . conduct . . . of the defendant as [a] condition[] of pretrial release.” Perhaps that statute could be read to allow a magistrate only the power to regulate the defendant’s conduct while out on release, as opposed to his conduct necessary to be released, but I think a court would probably rule otherwise. Again, this procedure is probably permitted in the case of a defendant who refuses to, or is unable to, produce identification. See Jessica Smith, *Criminal Procedure for Magistrates*, Administration of Justice Bulletin 2007/06, at 13.

Second, the officer can attempt to induce compliance by threatening to have the defendant charged with resisting an officer. Such a charge would be proper given the officer’s duty to take the defendant’s fingerprints. *Cf., e.g., People v. Hasenflue*, 169 Misc. 2d 766, 648 N.Y.S.2d 254 (N.Y. Sup. 1996) (“[T]he defendant’s alleged conduct of refusing to be fingerprinted and his attempt to leave . . . could have given rise to a charge of Obstructing Governmental Administration in the Second Degree,” a charge apparently similar to the North Carolina offense of resisting an officer). Of course, some defendants may not comply despite the threat of additional charges.

Finally, the officer can probably take the defendant’s fingerprints using reasonable force. This is permitted for nontestimonial identification orders, see G.S. 15A-279(b), and would probably be permitted in the booking context as well. *Cf., e.g., Ritchie v. Erie County Prison*, 2005 WL 3019128 (W.D. Pa. Oct. 26, 2005) (unpublished) (recommending summary judgment in favor of defendants in civil suit regarding use of force to fingerprint inmate; court concludes that “[t]he evidence demonstrates that there was a need for the application of force in that Plaintiff had repeatedly refused to be fingerprinted”). However, because of civil liability concerns, officers may be reluctant to do this.

There are other solutions that might be permissible, like delaying the defendant’s initial appearance until he agrees to be fingerprinted, but the three above are the ones that I think are the most clearly allowed. If anyone has a different way of addressing this problem, please share it by posting a comment.