

New Restrictions on Citizen-Initiated Criminal Process

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A colleague stopped into my office the other day to ask “did the General Assembly get rid of citizen-initiated warrants?” No, but it did make some significant changes to the procedure.

Background. As discussed in [this](#) prior post, North Carolina law allows judicial officials to issue criminal process -- such as a criminal summons or a warrant for arrest -- based on testimony from people who are not law enforcement officers. Our state isn't completely unique in that regard, but we do seem to give citizens more power to start up the machinery of the criminal justice system than most states do. Allowing citizens to initiate criminal charges has good aspects, such as increasing access to the courts and reducing the burden on law enforcement, and bad aspects, such as the potential for abuse of the criminal process.

Legislative change. This session, the General Assembly passed [S.L. 2017-176](#), one section of which amends [G.S. 15A-304\(b\)](#) -- the arrest warrant statute -- by adding a new subdivision (b)(2) as follows:

[A]n official shall only find probable cause based solely on information provided by a person who is not a sworn law enforcement officer if the information is provided by written affidavit. If the finding of probable cause . . . is based solely upon the written affidavit of a person who is not a sworn law enforcement officer, the issuing official shall not issue a warrant for arrest and instead shall issue a criminal summons, unless one of the following circumstances exists:

- a. There is corroborating testimony of the facts establishing probable cause from a sworn law enforcement officer or at least one disinterested witness.
- b. The official finds that obtaining investigation of the alleged offense by a law enforcement agency would constitute a substantial burden for the complainant.
- c. The official finds substantial evidence of one or more of the grounds listed in subdivision (1) of this subsection [which lists several considerations pertinent to whether to issue a summons or a warrant in cases initiated by an officer, including the defendant's history of failing to appear, the defendant's likelihood of flight, and whether the defendant poses an imminent danger].

Summing up the changes, the new law (1) requires citizens to put their complaints in written affidavits, and (2) encourages the issuance of a criminal summons rather than a warrant in most cases initiated by citizens.

I believe that the requirement of a written affidavit applies even when a citizen is seeking a criminal summons rather than an arrest warrant; although the requirement is set forth in G.S. 15A-304, which concerns arrest warrants, [G.S. 15A-303](#), which concerns criminal summons, incorporates by reference the probable cause requirements of G.S. 15A-304.

Effective date. The new law takes effect December 1, 2017, for “warrants issued on or after that date.” The reference to “warrants” may be somewhat ironic in a bill that encourages the use of the criminal summons rather than the warrant for arrest. Presumably the intent is for the law to apply to all types of criminal process issued after December 1.

Likely impact. Some people would like to do away with citizen-initiated criminal process altogether. Certainly this legislation falls short of that, but the requirement of a written affidavit still strikes me as important. It may deter some citizens from bringing meritless charges because it will make it easier to prove criminal or civil liability for false statements. It may also deter some citizens from bringing meritorious charges because they are not able to express themselves clearly in writing or are not comfortable attempting to do so. I'm interested in readers' thoughts about whether the net effect of the legislation is likely to be positive or negative, and what challenges there may be in the administration of the affidavit requirement.