



ADMINISTRATIVE OFFICE OF THE COURTS

TREY ALLEN
GENERAL COUNSEL

PO BOX 2448, RALEIGH, NC 27602
O 919-890-1300
F 919-890-1914
TREY.ALLEN@NCCOURTS.ORG

MEMORANDUM

TO: NC Judicial Branch
FROM: Joseph Kyzer, Assistant Legal Counsel, Legislative Liaison
DATE: November 23, 2021
SUBJECT: Legislative Changes to the First Appearance Process – [S.L. 2021-138 \(SB 300\)](#), [S.L. 2021-182 \(SB 183\)](#)¹

The Governor signed S.L. 2021-138 (SB 300) into law on September 2, 2021, and S.L. 2021-182 (SB 183) into law on November 18, 2021. Together, these legislative enactments make important changes to North Carolina’s first appearance process for defendants by expanding the application of the first appearance requirement to additional offenses, shortening the deadline to provide a first appearance, and making an exception and conforming change to those revisions.²

This memo details those revisions for judicial officials impacted by changes to the first appearance process, which take effect on December 1, 2021.³

I. New Application to Misdemeanor Offenses When Defendant in Custody

Prior to December 1, 2021, only defendants charged with a felony or accompanying misdemeanor in the exclusive, original jurisdiction of the superior court are entitled to a first appearance. G.S. 15A-601(a), G.S. 7A-271.

Section 14.(a) of S.L. 2021-138 expands that scope by providing that for criminal processes served on or after December 1, 2021, a first appearance is required for any defendant charged with a misdemeanor who is held in custody. G.S. 15A-601(a). A defendant is not in custody if the defendant was never taken into custody or has been released pursuant to Article 26 of Chapter 15A of the General Statutes prior to a first appearance.

A defendant charged with a misdemeanor offense who is not in custody does not require a first appearance under the new law. G.S. 15A-601(a). The first appearance for any defendant charged with a felony who is not in custody must occur at the next session of district court held in the county. G.S. 15A-601(c).

¹ For future reference, a copy of this memo will be available on the Administrative Office of the Courts (NCAOC)’s Juno site for Judicial Branch users at <http://juno.nccourts.org/legal-memos>, under the memo list for Criminal Memos.

² Court officials reviewing this memorandum may recall that S.L. 2021-138 would have authorized magistrates to conduct first appearances in situations when neither a district court judge nor the clerk is available. S.L. 2021-182 repealed this authorization before it became law, and therefore magistrates will not be authorized to conduct first appearances.

³ A [model implementation plan](#) for new first appearance requirements is available on the UNC School of Government’s Criminal Law Blog.

Court officials may find it challenging to incorporate the new first appearance rules for misdemeanor defendants into their local case management plans. Release order form AOC-CR-200, and NCAOC applications, allow a judicial official presiding at an initial appearance to enter a single court date. At an initial appearance for a misdemeanor defendant committed to custody, the presiding judicial official may enter a date for the defendant's first appearance, even though a first appearance will not be necessary if the defendant satisfies the conditions of release and is no longer in custody on that date. Accordingly, if the AOC-CR-200 orders a misdemeanor defendant to appear at a first appearance date, the local case management plan may need to address how to process "failures to appear" by defendants who have been released prior to that date. Alternatively, if the AOC-CR-200 specifies a regular court date, the case management plan should address calendaring first appearances for defendants who remain in custody.

II. Shortened Deadline for First Appearance from 96 hours to 72 hours

Section 14.(a) of S.L. 2021-138 amends G.S. 15A-601(c) to reduce the period required for a first appearance from 96 hours to 72 hours. That section further amends G.S. 15A-601(e) to make the 72-hour deadline applicable to first appearances conducted by the clerk of superior court when no district court judge is available within the county.

The requirement under S.L. 2021-138 to provide a first appearance within 72 hours will not apply to a defendant whose first appearance before a district court judge was set in a criminal summons under G.S. 15A-303(d), consistent with the current law's exception for such defendants. G.S. 15A-601(c).

III. Exception for Courthouse Closures Longer than 72 Hours – Time Extended to 96 Hours

Section 2.5(a) of Session Law 2021-182 creates an exception to the new requirement to provide a first appearance within 72 hours. G.S. 15A-601(c). If the courthouse is closed for transactions for longer than 72 hours, a first appearance is required within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever arrives first.

As a result, an extended period of 96 hours may be permitted to provide a first appearance to a defendant during holiday weekends, other extended holiday closures, or any other instance when the courthouse is closed to transactions for more than 72 consecutive hours.

IV. Conforming Change to Conditions of Pretrial Release Statute G.S. 15A-534

Section 2.5(b) of S.L. 2021-182 makes a conforming change to the procedure for determining conditions of pretrial release that is consistent with the new 72-hour requirement for first appearances under G.S. 15A-601(c). G.S. 15A-534.

When a judicial official has concluded that insufficient information exists to determine whether any danger is posed to the public by a defendant charged with a felony offense and currently on probation for a prior offense, the period for a required first appearance is shortened from 96 hours to 72 hours. G.S. 15A-534(d2)(3). An identical exception for times when the courthouse is closed for transactions for more than 72 hours was also included in this revision, extending the deadline in such situations to 96 hours. *Id.*

This change to G.S. 15A-534(d2)(3) will require a revision to NCAOC form AOC-CR-272 (Detention of Probationer Arrested for Felony / Detention of Defendant Arrested for Probation Violation with Pending Felony or Prior Sex Offense). Side One of the form contains a note that refers to the current 96-hour deadline in G.S. 15A-534(d2)(3). This note will be updated to reflect the 72-hour timeline described above; however, until the updated version is released, judicial officials should be aware that the note's reference to 96 hours is incorrect for criminal processes served on or after December 1, 2021.

V. Conclusion

Judicial officials with questions about the changes described above should feel free to contact Joseph Kyzer at Joseph.A.Kyzer@nccourts.org. Law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the legislation discussed above should consult their respective legal counsel.