



## Writs for Incarcerated Defendants: Who Drives?

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Sometimes a person who is already incarcerated for one crime needs to be prosecuted for another crime. A surprisingly common question, usually from a sheriff's office, is who is responsible for getting the defendant-inmate to trial? The county that wants the inmate (the requesting county)? Or the county that has the inmate (the custodial county)?

There are two primary ways for a prosecutor to secure the presence of a defendant confined elsewhere in North Carolina: (1) a writ of habeas corpus ad prosequendum, and (2) a request for temporary custody under [G.S. 15A-711](#). (Different procedures apply for an inmate needed as a *witness*, see [G.S. 15A-805; 17-41 through -46](#) (writ of habeas corpus ad testificandum, using form [AOC-G-112](#)), but I'll leave those aside for today.) Though only the first option is technically a writ, both practices are sometimes referred to as "writting" a defendant from jail or prison to court.

In either case, the law does not clearly address who is responsible for transporting the defendant to trial, and sheriffs' offices on either side of a request sometimes disagree about it. For whatever help it may be, here is what I know about the two options.

**Writ of habeas corpus ad prosequendum.** A writ of habeas corpus ad prosequendum is a common-law writ. There is no statute describing it, and thus no clear allocation of responsibility for getting the defendant-inmate where he or she needs to be.

Nevertheless, the boilerplate form used to apply for and issue the writ, [AOC-CR-223](#), is styled as an order to the custodial agency to "deliver the defendant to the custody of the sheriff of this [the requesting] county." That suggests the custodian should "deliver" the inmate to the requesting county—a reading that would comport with other statutes concerning the writ of habeas corpus. When it comes to habeas corpus, the custodian that has "the body" generally must produce it promptly or face substantial penalties, including removal from office. See [G.S. 17-26](#) ("If any person to whom a writ of habeas corpus is directed shall neglect or refuse to . . . bring the body of the party detained according to the command of the writ without delay, . . . such person shall, upon conviction on indictment, be fined one thousand dollars (\$1,000), or imprisoned not exceeding 12 months, and if such person be an officer, shall moreover be removed from office.").

When the defendant-inmate is being held in prison (as opposed to a jail), two other statutes come into play. Under [G.S. 15-10.1](#) and [15-10.3](#), when a prison inmate is to be "held to account for any other charge pending against him," and the writ of habeas corpus ad prosequendum issues, the understanding is that the Department of Public Safety will be responsible for delivering the inmate to court. Prison policy acknowledges that responsibility, saying that prison staff will "ensure inmates are transported to court." N.C. Dep't of Pub. Safety Policy & Procedure, Outstanding Charges/Detainers, [§ G.0103\(a\)\(2\)](#). The policy goes on to say that if a law enforcement officer from the requesting county happens to show up to retrieve an inmate, the prison will be happy to let the officer take care of it (upon production of adequate credentials, of course). *Id.* [§ G.0103\(a\)\(3\)](#).

**Request for temporary custody.** Under [G.S. 15A-711](#), a prosecutor may make a request for temporary custody

directly (i.e., without the involvement of a judge) to the custodian of an inmate the prosecutor needs for trial. According to the official commentary accompanying that statutory section, it is intended as an alternative to the “traditional, and cumbersome, ‘habeas corpus ad prosequendum.’” The request, which may be made using form [AOC-CR-900](#), can be presented to any “penal or other institution under the control of the State or any of its subdivisions.” G.S. 15A-711(a). So, any prison or jail.

Regarding transportation of the requested defendant-inmate, the statute says the custodian must release the defendant “to the custody of an appropriate law-enforcement officer who must produce him at trial.” G.S. 15A-711(a). I read that to say that officers from the requesting prosecutor’s county will go pick up the inmate from the jail or prison, and the form is designed with that arrangement in mind.

To sum up, it seems to me that a custodial county is responsible for transporting a defendant-inmate in response to a writ of habeas corpus ad prosequendum, while a requesting county needs to go pick up an inmate sought under G.S. 15A-711. Other interpretations are possible, and I know the practice varies across the state. In recognition of those variations, prosecutors and sheriffs’ personnel should communicate their expectations clearly to avoid a situation where a defendant-inmate fails to appear because nobody brought him or her to court.