

Citizen-Initiated Charges in North Carolina

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North Carolina is one of only several states that allow citizens to initiate misdemeanor and felony charges. North Carolina law allows “a person who is not a sworn law enforcement officer” to present testimony and have a judicial official issue charges, after a finding of probable cause.¹ Charges must be initiated with a criminal summons,² unless certain exceptions apply, in which case a warrant may issue. Those exceptions include when:

- there is corroboration of the facts from a sworn officer or at least one disinterested witness³;
- an investigation would be a substantial burden for the complainant⁴; or
- a warrant is necessary according to judicial discretion.⁵

Criminal summonses differ from warrants for arrest in that a summons does not result in the person being taken into custody. Rather, the summons is served and directs the person to appear in court on a specified date to answer the charges.⁶ A warrant for arrest, in contrast, directs a law enforcement officer take the person into custody.⁷

A prior version of the statute required a written affidavit by the initiating citizen.⁸ That requirement, however, was short lived and, effective October 1, 2018,⁹ was repealed.

In the 2023 North Carolina legislative session, Senate Bill 621 would have amended the statute to provide that a citizen only could initiate charges related to crimes of domestic violence.¹⁰ The bill passed its first reading but did not advance further.¹¹

¹ N.C.G.S. § 15A-304(b)(3) and § 304(d).

² *Id.* § (b)(3).

³ See *id.* at § 15A-304(b)(3)(a).

⁴ *Id.* § (b)(3)(b).

⁵ *Id.* § (b)(1), as referenced by § (b)(3)(c). “Circumstances...may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person...will fail to appear, danger that the person...will escape, danger that there may be injury to person or property, or the seriousness of the offense.” *Id.*

⁶ N.C.G.S. § 15A-303(a).

⁷ N.C.G.S. § 15A-304(e).

⁸ S.L. 2017-176, § 5(a), 2017 N.C. Sess. Laws 1185, 1185-86.

⁹ An Act to Make Various Changes to the Law Governing the Administration of Justice, S.L. 2018-40, § 7.1, 2018 N.C. Sess. Laws 401, 402. The prior law was only in effect from December 2017 to October 2018. See *id.* § 7.2 and S.L. 2017-176, *supra* note 13, § 5(b).

¹⁰ Modify Public-Initiated Charges, S.B.621, 2023-2024 Sess. (N. C. 2023).

¹¹ Senate Bill 621. NORTH CAROLINA GEN. ASSEMBLY, <https://www.ncleg.gov/BillLookup/2023/S621> (last visited Feb. 23, 2024).

Only three other states¹² have similar procedures for citizen-initiated charges: Arizona,¹³ Idaho,¹⁴ and Wisconsin.¹⁵ Other states, however, allow for citizen-initiated charges in some form, with some variation in procedure. Ohio¹⁶ and Pennsylvania¹⁷ allow for citizen-initiated complaints in the form of submissions to attorneys representing the state;¹⁸ in Pennsylvania, the citizen also can petition the court of common pleas for review if the submission is denied.¹⁹ Massachusetts,²⁰ Rhode Island,²¹ and Washington²² allow citizens to seek criminal complaints only for misdemeanors. New Hampshire allows for citizen initiation and prosecution of criminal complaints only for offenses that are not punishable by imprisonment.²³ West Virginia allows citizens to file criminal complaints in certain incidents involving domestic violence.²⁴

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¹² For a more robust list and analysis on citizen-initiated charges, see *Fifty States and D.C. Survey of Laws That Authorize or Recognize Private Citizen-Initiated Investigation and/or Prosecution of Criminal Offenses*, NAT'L CRIME VICTIM L. INST., found at <https://law.lclark.edu/live/files/26911-50-states-victim-initiated-investigation>; (last visited Feb. 23, 2024).

¹³ Ariz. R. Crim. P. 2.3(a)(2), noting that a complaint must be "sworn before a magistrate." See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 2 ("Arizona").

¹⁴ Idaho Code Ann. § 19-504. See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 3 ("Idaho").

¹⁵ Wisc. Stat. Ann. § 958.26(2)(am), (b) and (d). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 11 ("Wisconsin").

¹⁶ Ohio Rev. Code Ann. § 2935.09(D). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 7-8 ("Ohio").

¹⁷ Pa. R. Crim. P. § 506(a). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 7-8 ("Pennsylvania").

¹⁸ In Ohio, this may be a "prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before a magistrate." Ohio Rev. Code Ann. § 2935.09(D). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 7-8 ("Ohio").

¹⁹ Pa. R. Crim. P. § 506(b)(2). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 8-9 (Pennsylvania).

²⁰ Mass. Gen. Laws Ann. 218 § 35A; see also *Bradford v. Knights*, 695 N.E.2d 1068, 1071 (Mass. 1998). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 5 (Massachusetts").

²¹ R.I. Gen. Laws Ann. §12-12-1.3 and §12-10-12(a). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 9 ("Rhode Island").

²² Wash. CrRLJ [Criminal Rules for Courts of Limited Jurisdiction] 2.1(c). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 10 ("Washington").

²³ *State v. Martineau*, 808 A.2d 51, 52 (N. H. 2002). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 6 ("New Hampshire").

²⁴ W. Va. Code Ann. § 48-27-304; § 48-27-305, and § 48-27-902(a). See also NAT'L CRIME VICTIM L. INST., *supra* note 12, at 10 ("West Virginia").