

Citizen-Initiated Charges in North Carolina

M. Jeanette Pitts, Legal Research Specialist

January 2023

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 summons differ from warrants for arrest in that the 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affidavit by the initiating citizen.⁸ That requirement, however, was short lived and, effective October 1, 2018,⁹ was repealed.

Only three other states have similar procedures for citizen-initiated charges: Arizona,¹⁰ Idaho,¹¹ and Wisconsin.¹² Other states, however, allow for citizen-initiated charges in some form, with some variation in procedure. Ohio¹³ and Pennsylvania¹⁴ allow for citizen-initiated complaints in

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 Ariz. R. Crim. P. 2.3(a)(2), noting that a complaint must be “sworn before a magistrate.”

¹¹ Idaho Code Ann. § 19-504.

¹² Wisc. Stat. Ann. § 958.26(2)(a) and (d).

¹³ Ohio Rev. Code Ann. § 2935.09(D).

¹⁴ Pa. R. Crim. P. 506(a).

the form of submissions to attorneys representing the state¹⁵; in Pennsylvania, the citizen also can petition the court of common pleas for review if the submission is denied.¹⁶ Massachusetts,¹⁷ Rhode Island,¹⁸ and Washington¹⁹ 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.²⁰ West Virginia allows citizens to file criminal complaints in certain incidents involving domestic violence.²¹

The UNC School of Government is non-partisan, non-advocacy and responsive to the needs of public officials. We do not advocate for any political ideology or policy outcome or allow our personal beliefs or those of our audiences to influence our work.

This paper may not be copied or posted online, nor transmitted, in printed or electronic form, without the written permission of the School of Government, except as allowed by fair use under United States copyright law. For questions about use of the document and permission for copying, contact the School of Government.
© 2023 School of Government. The University of North Carolina at Chapel Hill

¹⁵ 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).

¹⁶ *Id.* § 506(b)(2).

¹⁷ Mass. Gen. Laws Ann. 218 § 35A; *see also Bradford v. Knights*, 695 N.E.2d 1068, 1071 (Mass. 1998).

¹⁸ R.I. Gen. Laws Ann. §12-12-1.3 and §12-10-12(a).

¹⁹ Wash. CrRLJ [Criminal Rules for Courts of Limited Jurisdiction] 2.1(c).

²⁰ *State v. Martineau*, 808 A.2d 51, 52 (N. H. 2002).

²¹ W. Va. Code Ann. § 48-27-304; § 48-27-305, and § 48-27-902(a).