

## SUBCHAPTER V. CUSTODY.

### Article 23.

#### Police Processing and Duties upon Arrest.

##### **§ 15A-501. Police processing and duties upon arrest generally.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer:

- (1) Must inform the person arrested of the charge against him or the cause for his arrest.
- (2) Must, with respect to any person arrested without a warrant and, for purpose of setting bail, with respect to any person arrested upon a warrant or order for arrest, take the person arrested before a judicial official without unnecessary delay.
- (3) May, prior to taking the person before a judicial official, take the person arrested to some other place if the person so requests.
- (4) May, prior to taking the person before a judicial official, take the person arrested to some other place if such action is reasonably necessary for the purpose of having that person identified.
- (5) Must without unnecessary delay advise the person arrested of his right to communicate with counsel and friends and must allow him reasonable time and reasonable opportunity to do so.
- (6) Must make available to the State on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty. (1868-9, c. 178, subch. 1, s. 7; Code, s. 1130; Rev., s. 3182; C.S., s. 4548; 1937, c. 257, ss. 1, 2; 1955, c. 889; 1969, c. 296; 1973, c. 1286, s. 1; 1975, c. 166, ss. 7, 8; 2004-154, s. 11.)

##### **§ 15A-502. Photographs and fingerprints.**

(a) A person charged with the commission of a felony or a misdemeanor may be photographed and his fingerprints may be taken for law-enforcement records only when he has been:

- (1) Arrested or committed to a detention facility, or
- (2) Committed to imprisonment upon conviction of a crime, or
- (3) Convicted of a felony.

(a1) It shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of a felony to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.

(a2) It shall be the duty of the arresting law enforcement agency to cause a person charged with the commission of any of the following misdemeanors to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation:

- (1) G.S. 14-134.3 (Domestic criminal trespass), G.S. 15A-1382.1 (Offense that involved domestic violence), or G.S. 50B 4.1 (Violation of a valid protective order).
- (2) G.S. 20-138.1 (Impaired driving), G.S. 20-138.2 (Impaired driving in commercial vehicle), G.S. 20-138.2A (Operating a commercial vehicle after consuming alcohol), and G.S. 20-138.2B (Operating various school, child

care, EMS, firefighting, or law enforcement vehicles after consuming alcohol).

(3) G.S. 90-95(a)(3)(Possession of a controlled substance).

(a3) It shall be the duty of the arresting law enforcement agency to cause a person charged with a crime to provide to the magistrate as much of the following information as possible for the person arrested:

- (1) Name including first, last, middle, maiden, and nickname or alias.
- (2) Address including street, city, and state.
- (3) Drivers license number and state of issuance.
- (4) Date of birth.
- (5) Sex.
- (6) Race.
- (7) Social Security number.
- (8) Relationship to the alleged victim and whether it is a "personal relationship" as defined by G.S. 50B-1(b).

(a4) It shall be the duty of the arresting law enforcement agency to cause a person who has been charged with a misdemeanor offense of assault, stalking, or communicating a threat and held under G.S. 15A 534.1 to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.

(a5) It shall be the duty of the magistrate to enter into the court information system all information provided by the arresting law enforcement agency on the person arrested.

(a6) If the person cannot be identified by a valid form of identification, it shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of:

- (1) Any offense involving impaired driving, as defined in G.S. 20-4.01(24a), or
- (2) Driving while license revoked if the revocation is for an Impaired Driving License Revocation as defined in G.S. 20-28.2 to be fingerprinted and photographed.

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles." Notwithstanding the prohibition in this subsection, a photograph may be taken of a person who operates a motor vehicle on a street or highway if:

- (1) The person is cited by a law enforcement officer for a motor vehicle moving violation, and
- (2) The person does not produce a valid drivers license upon the request of a law enforcement officer, and
- (3) The law enforcement officer has a reasonable suspicion concerning the true identity of the person.

As used in this subsection, the phrase "motor vehicle moving violation" does not include the offenses listed in the third paragraph of G.S. 20-16(c) for which no points are assessed, nor does it include equipment violations specified in Part 9 of Article 3 of Chapter 20 of the General Statutes.

(b1) Any photograph authorized by subsection (b) of this section and taken by a law enforcement officer or agency:

- (1) Shall only be taken of the operator of the motor vehicle, and only from the neck up.

- (2) Shall be taken at either the location where the citation is issued, or at the jail if an arrest is made.
- (3) Shall be retained by the law enforcement officer or agency until the final disposition of the case.
- (4) Shall not be used for any purpose other than to confirm the identity of the alleged offender.
- (5) Shall be destroyed by the law enforcement officer or agency upon a final disposition of the charge.

(c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under Article 21 of Chapter 7B of the General Statutes.

(d) This section does not prevent the taking of photographs, moving pictures, video or sound recordings, fingerprints, or the like to show a condition of intoxication or for other evidentiary use.

(e) Fingerprints or photographs taken pursuant to subsection (a), (a1), or (a2) of this section may be forwarded to the State Bureau of Investigation, the Federal Bureau of Investigation, or other law-enforcement agencies. (1973, c. 1286, s. 1; 1977, c. 711, s. 22; 1979, c. 850; 1981, c. 862, s. 3; 1993, c. 539, s. 298; 1994, Ex. Sess., c. 24, s. 14(c); 1996, 2nd Ex. Sess., c. 18, s. 23.2(b); 1998-202, s. 13(f); 2007-370, s. 1; 2007-534, s. 1; 2015-195, s. 11(h); 2015-267, s. 2(a), (b).)

#### **§ 15A-502.1. DNA sample upon arrest.**

A DNA sample shall be obtained from any person arrested for an offense designated under G.S. 15A-266.3A, in accordance with the provisions contained in Article 13 of Chapter 15A of the General Statutes. (2010-94, s. 12.)

#### **§ 15A-503. Police assistance to persons arrested while unconscious or semiconscious.**

(a) Whenever a law-enforcement officer arrests a person who is unconscious, semiconscious, or otherwise apparently suffering from some disabling condition, and who is unable to provide information on the causes of the condition, the officer should make a reasonable effort to determine if the person arrested is wearing a bracelet or necklace containing the Medic Alert Foundation's emergency alert symbol to indicate that the person suffers from diabetes, epilepsy, a cardiac condition, or any other form of illness which would cause a loss of consciousness. If such a symbol is found indicating that the person being arrested suffers from one of those conditions, the officer must make a reasonable effort to have appropriate medical care provided.

(b) Failure of a law-enforcement officer to make a reasonable effort to discover an emergency alert symbol, as required by this section, does not by itself establish negligence of the officer, but may be considered along with other evidence to determine if the officer took reasonable precautions to ascertain the emergency medical needs of the person in his custody.

(c) A person who is provided medical care under the provisions of this section is liable for the reasonable costs of that care unless he is indigent.

(d) Repealed by Session Laws 1975, c. 818, s. 1. (1975, c. 306, s. 1; c. 818, s. 1.)

#### **§ 15A-504. Return of released person.**

(a) Upon a magistrate's finding under G.S. 15A-511(c)(2) of no probable cause for a warrantless arrest, a law-enforcement officer may return the person previously arrested and any other person accompanying him to the scene of the arrest.

(b) No officer acting pursuant to this section may be held to answer in any civil or criminal action for injury to any person or damage to any property when damage results, whether directly or indirectly, from the actions of the person so released or transported.

(c) Nothing in this section shall be construed to supersede the provisions of G.S. 122C-301. (1981, c. 928; 1987, c. 282, s. 3.)

**§ 15A-505. Notification of parent and school.**

(a) A law enforcement officer who charges a minor with a criminal offense shall notify the minor's parent or guardian of the charge, as soon as practicable, in person or by telephone. If the minor is taken into custody, the law enforcement officer or the officer's immediate superior shall notify a parent or guardian in writing that the minor is in custody within 24 hours of the minor's arrest. If the parent or guardian of the minor cannot be found, then the officer or the officer's immediate superior shall notify the minor's next-of-kin of the minor's arrest as soon as practicable.

- (b) The notification provided for by subsection (a) of this section shall not be required if:
- (1) The minor is emancipated;
  - (2) The minor is not taken into custody and has been charged with a motor vehicle moving violation for which three or fewer points are assessed under G.S. 20-16(c), except an offense involving impaired driving, as defined in G.S. 20-4.01(24a); or
  - (3) The minor has been charged with a motor vehicle offense that is not a moving violation.

(c) A law enforcement officer who charges a person with a criminal offense that is a felony, except for a criminal offense under Chapter 20 of the General Statutes, shall notify the principal of any school the person attends of the charge as soon as practicable but at least within five days. The notification may be made in person or by telephone. If the person is taken into custody, the law enforcement officer or the officer's immediate supervisor shall notify the principal of any school the person attends. This notification shall be in writing and shall be made within five days of the person's arrest. If a principal receives notification under this subsection, a representative from the district attorney's office shall notify that principal of the final disposition at the trial court level. This notification shall be in writing and shall be made within five days of the disposition. As used in this subsection, the term "school" means any public or private school in the State that is authorized under Chapter 115C of the General Statutes. (1983, c. 681, s. 1; 1994, Ex. Sess., c. 26, s. 1; 1997-443, s. 8.29(g).)

**§§ 15A-506 through 15A-510: Reserved for future codification purposes.**