

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1766

Short Title: Felony Charge/Sworn Affidavit.

(Public)

Sponsors: Representatives Ray, R. Warren (Primary Sponsors); Setzer and Tarleton.

Referred to: Judiciary II.

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A PERSON TO SIGN AN AFFIDAVIT UNDER OATH IF
THE PERSON ALLEGES THAT HE OR SHE IS THE VICTIM OF A FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-304 reads as rewritten:

"§ 15A-304. Warrant for arrest.

(a) Definition. – A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused, and an order directing that the person so accused be arrested and held to answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) When Issued. – A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.

(c) Statement of the Crime. – The warrant must contain a statement of the crime of which the person to be arrested is accused. No warrant for arrest, nor any arrest made pursuant thereto, is invalid because of any technicality of pleading if the statement is sufficient to identify the crime.

(d) Showing of Probable Cause. – A judicial official may issue a warrant for arrest only when he is supplied with sufficient information, supported by oath or affirmation, to make an independent judgment that there is probable cause to believe that a crime has been committed and that the person to be arrested committed it. The information must be shown by one or more of the following:

(1) Affidavit;

(2) Oral testimony under oath or affirmation before the issuing official; or

1 (3) Oral testimony under oath or affirmation presented by a sworn law
2 enforcement officer to the issuing official by means of an audio and
3 video transmission in which both parties can see and hear each other.
4 Prior to the use of audio and video transmission pursuant to this
5 subdivision, the procedures and type of equipment for audio and video
6 transmission shall be submitted to the Administrative Office of the
7 Courts by the senior regular resident superior court judge and the chief
8 district court judge for a judicial district or set of districts and
9 approved by the Administrative Office of the Courts.

10 If the information is insufficient to show probable cause, the warrant may not be
11 issued. A judicial official shall not refuse to issue a warrant for the arrest of a person
12 solely because a prior warrant has been issued for the arrest of another person involved
13 in the same matter.

14 (d1) A warrant for arrest for a felony offense may not be issued unless the alleged
15 victim of the felony offense has either signed an affidavit, under oath or affirmation, or
16 provided oral testimony under oath or affirmation before the issuing official. If
17 information is provided to the issuing official by the method described in subdivision
18 (d)(1), (d)(2), or (d)(3) that the alleged victim is unavailable for either oral testimony, or
19 to complete the affidavit required by this subsection, and the issuing official finds that
20 the alleged victim is unavailable, then the requirement of this subsection is waived. The
21 issuing official's determination whether the alleged victim is unavailable or available is
22 within the official's sole discretion.

23 (e) Order for Arrest. – The order for arrest must direct that a law-enforcement
24 officer take the defendant into custody and bring him without unnecessary delay before
25 a judicial official to answer to the charges made against him.

26 (f) Who May Issue. – A warrant for arrest, valid throughout the State, may be
27 issued by:

- 28 (1) A Justice of the Supreme Court.
- 29 (2) A judge of the Court of Appeals.
- 30 (3) A judge of the superior court.
- 31 (4) A judge of the district court, as provided in G.S. 7A-291.
- 32 (5) A clerk, as provided in G.S. 7A-180 and 7A-181.
- 33 (6) A magistrate, as provided in G.S. 7A-273."

34 **SECTION 2.** This act becomes effective December 1, 2007, and applies to
35 arrest warrants issued on or after that date.