

Chapter 15A.

Criminal Procedure Act.

SUBCHAPTER I. GENERAL.

Article 1.

Definitions and General Provisions.

§§ 15A-1 through 15A-100. Reserved for future codification purposes.

§ 15A-101. Definitions.

Unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Appeal. – When used in a general context, the term "appeal" also includes appellate review upon writ of certiorari.
- (1a) Attorney of Record. – An attorney who, under Article 4 of this Chapter, Entry and Withdrawal of Attorney in Criminal Case, has entered a criminal proceeding and has not withdrawn.
- (2) Clerk. – Any clerk of superior court, acting clerk, or assistant or deputy clerk.
- (3) District Court. – The District Court Division of the General Court of Justice.
- (4) District Attorney. – The person elected and currently serving as district attorney in his prosecutorial district.
- (4a) Entry of Judgment. – Judgment is entered when sentence is pronounced. Prayer for judgment continued upon payment of costs, without more, does not constitute the entry of judgment.
- (5) Judicial Official. – A magistrate, clerk, judge, or justice of the General Court of Justice.
- (6) Officer. – Law-enforcement officer.
- (7) Prosecutor. – The district attorney, any assistant district attorney or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney.
- (8) State. – The State of North Carolina, all land or water in respect to which the State of North Carolina has either exclusive or concurrent jurisdiction, and the airspace above that land or water. "Other state" means any state or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico.
- (9) Superior Court. – The Superior Court Division of the General Court of Justice.
- (10) Superior Court Judge. – A superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in the district or set of districts as defined in G.S. 7A-41.1.
- (11) Vehicle. – Aircraft, watercraft, or landcraft or other conveyance. (1973, c. 1286, s. 1; 1975, c. 166, s. 2; 1977, c. 711, s. 19; 1987 (Reg. Sess., 1988), c. 1037, s. 52; 1997-456, s. 27.)

§ 15A-101.1. Electronic technology in criminal process and procedure.

As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General Statutes, and in all other provisions of the General Statutes that deal with criminal process or procedure:

- (1) "Attach" or "attached" means, when referring to documents existing in paper form, physical attachment by staples, clips, or other mechanical means, or managed such that neither document is stored or delivered without the other. When referring to documents stored in electronic form, the term means either storage as a single digital file or storage in a manner that a user interface for access to the documents displays clearly the logical association between them, to the exclusion of other, unassociated documents displayed with them. When referring to documents delivered in electronic form, the term means documents delivered simultaneously and via the same mechanism or medium, including, but not limited to, any of the following: (i) delivery via a single email message, (ii) delivery on a single unit of removable electronic media, or (iii) delivery in immediate, contemporaneous sequence with one another from the same source to the same recipient. It is not necessary that the relationship between documents appear on the face of the documents in order to be deemed attached.
- (1a) "Copy" means all identical versions of a document created or existing in paper or electronic form, including the original and all other identical versions of the document. Except where otherwise expressly provided by law or when authority is vested only in a certified copy, a copy of a document is equally authoritative as the original.
- (2) "Document" means any pleading, criminal process, subpoena, complaint, motion, application, notice, affidavit, commission, waiver, consent, dismissal, order, judgment, or other writing intended in a criminal or contempt proceeding to authorize or require an action, to record a decision or to communicate or record information. A document may be created and exist in paper form or in electronic form or in both forms. Each document shall contain the legible, printed name of the person who signed the document.
- (3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, Internet, or similar capabilities.
- (3a) "Electronic monitoring" or "electronically monitor" or "satellite-based monitoring" means monitoring with an electronic monitoring device that is not removed from a person's body, that is utilized by the supervising agency in conjunction with a Web-based computer system that actively monitors, identifies, tracks, and records a person's location at least once every minute 24 hours a day, that has a battery life of at least 48 hours without being recharged, that timely records and reports or records the person's presence near or within a crime scene or prohibited area or the person's departure from a specified geographic location, and that has incorporated into the software the ability to automatically compare crime scene data with locations of all persons being electronically monitored so as to provide any correlation daily or in real time. In areas of the State where lack of cellular coverage requires the use of an alternative device, the supervising agency shall use an alternative device that works in concert with the software and records location and tracking data for later download and crime scene comparison.
- (4) "Electronic Repository" means an automated electronic repository for criminal process created and maintained pursuant to G.S. 15A-301.1.
- (5) Repealed by Session Laws 2022-47, s. 16(d), effective July 7, 2022.

- (6) "Entered" means signed and filed in the office of the clerk of superior court of the county in which the document is to be entered. A document may be entered in either paper form or electronic form.
- (7) "Filing" or "filed" means:
 - a. When the document is in paper form, delivering the original document to the office where the document is to be filed. Filing is complete when the original document is received in the office where the document is to be filed.
 - b. When the document is in electronic form, creating and saving the document, or transmitting it, in such a way that it is unalterably retained in the electronic records of the office where the document is to be filed. A document is "unalterably retained" in an electronic record when it may not be edited or otherwise altered except by a person with authorization to do so.
- (8) "Issued" applies to documents in either paper form or electronic form. A document that is first created in paper form is issued when it is signed. A document that is first created in electronic form is issued when it is signed and filed in the office of the clerk of superior court of the county for which it is to be issued.
- (9) "Original" means:
 - a. A document first created and existing only in paper form, bearing the original signature of the person who signed it. The term also includes each copy in paper form that is printed through the facsimile transmission of the copy bearing the original signature of the person who signed it.
 - b. A document existing in electronic form, including the electronic form of the document and any copy that is printed from the electronic form.
- (10) "Signature" means any symbol, including, but not limited to, the name of an individual, which is executed by that individual, personally or through an authorized agent, with the intent to authenticate or to effect the issuance or entry of a document. A document may be signed by the use of any manual, mechanical or electronic means that causes the individual's signature to appear in or on the document. Any party challenging the validity of a signature shall have the burden of pleading, producing evidence, and proving that the signature was not the act of the person whose signature it appears to be. (2002-64, s. 1; 2011-245, s. 2(a); 2012-194, s. 6; 2021-47, s. 10(b); 2022-47, s. 16(d).)

Article 2.

Jurisdiction.

§§ 15A-102 through 15A-130. Reserved for future codification purposes.

Article 3.

Venue.

§ 15A-131. Venue generally.

(a) Venue for pretrial and trial proceedings in district court of cases within the original jurisdiction of the district court lies in the county where the charged offense occurred.

(b) Except for the probable cause hearing, venue for pretrial proceedings in cases within the original jurisdiction of the superior court lies in the superior court district or set of districts as defined in G.S. 7A-41.1 embracing the county where the venue for trial proceedings lies.

(c) Except as otherwise provided in this subsection, venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court lies in the county where the charged offense occurred. Except as otherwise provided in this subsection, if the alleged offense is committed within the corporate limits of a municipality which is the seat of superior court and is located in more than one county, venue lies in the superior court which sits within that municipality, but upon timely objection of the defendant or the district attorney in the county in which the alleged offense occurred the case must be transferred to the county in which the alleged offense occurred. However, for charges brought by municipal law enforcement officers only, if the alleged offense is committed within the corporate limits of a municipality that extends into four or more counties, each of which is in a separate superior court district, offenses committed within the corporate limits of the municipality but in a superior court district other than the one for which the municipality is the seat of superior court shall be disposed of in the municipality with no allowance for objections by the defendant or the district attorney.

(d) Venue for misdemeanors appealed for trial de novo in superior court lies in the county where the misdemeanor was first tried.

(e) An offense occurs in a county if any act or omission constituting part of the offense occurs within the territorial limits of the county.

(f) For the purposes of this Article, pretrial proceedings are proceedings occurring after the initial appearance and prior to arraignment. (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, s. 134; 1983, c. 727; 1987 (Reg. Sess., 1988), c. 1037, s. 53; 2009-398, s. 3; 2022-47, s. 16(e).)

§ 15A-132. Concurrent venue.

(a) If acts or omissions constituting part of the commission of the charged offense occurred in more than one county, each county has concurrent venue.

(b) If charged offenses which may be joined in a single criminal pleading under G.S. 15A-926 occurred in more than one county, each county has concurrent venue as to all charged offenses.

(c) When counties have concurrent venue, the first county in which a criminal process is issued in the case becomes the county with exclusive venue. (1973, c. 1286, s. 1.)

§ 15A-133. Waiver of venue; motion for change of venue; indictment may be returned in other county.

(a) A waiver of venue must be in writing and signed by the defendant and the prosecutor indicating the consent of all parties to the waiver. The waiver must specify what stages of the proceedings are affected by the waiver, and the county to which venue is changed. If the venue is to be laid in a county in another prosecutorial district, the consent in writing of the prosecutor in that district must be filed with the clerks of both counties.

(b) Repealed by Session Laws 1989, c. 688, s. 2.

(c) Motions for change of venue by the defendant are made under G.S. 15A-957. If venue is laid in a county in another prosecutorial district by order of the judge ruling on the motion, no consent of any prosecutor is required.

(d) If venue is changed to a county in another prosecutorial district, whether upon waiver of venue or by order of a judge, the prosecutor of the prosecutorial district where the case originated must prosecute the case unless the prosecutor of the district to which venue has been changed consents to conduct the prosecution.

(e) If venue is changed, whether upon waiver of venue or by order of a judge, the grand jury in the county to which venue has been transferred has the power to return an indictment in the case. If an indictment has already been returned before the change of venue, no new indictment is necessary and prosecution may be had in the new county under the original indictment. (1921, c. 12, ss. 1, 2; C.S., ss. 4606(a), 4606(b); 1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1987 (Reg. Sess., 1988), c. 1037, s. 54; 1989, c. 688, s. 2.)

§ 15A-134. Offense occurring in part outside North Carolina.

If a charged offense occurred in part in North Carolina and in part outside North Carolina, a person charged with that offense may be tried in this State if he has not been placed in jeopardy for the identical offense in another state. (1973, c. 1286, s. 1.)

§ 15A-135. Allegation of venue conclusive in absence of timely motion.

Allegations of venue in any criminal pleading become conclusive in the absence of a timely motion to dismiss for improper venue under G.S. 15A-952. A defendant may move to dismiss for improper venue upon trial de novo in superior court, provided he did not in the district court with benefit of counsel stipulate venue or expressly waive his right to contest venue. (1973, c. 1286, s. 1.)

§ 15A-136. Venue for sexual offenses.

If a person is transported by any means, with the intent to violate any of the provisions of Article 7B of Chapter 14 (§ 14-27.20 et seq.) of the General Statutes and the intent is followed by actual violation thereof, the defendant may be tried in the county where transportation was offered, solicited, begun, continued or ended. (1979, c. 682, s. 2; 2015-181, ss. 19, 47.)

§§ 15A-137 through 15A-140. Reserved for future codification purposes.

Article 4.

Entry and Withdrawal of Attorney in Criminal Case.

§ 15A-141. When entry of attorney in criminal proceeding occurs.

An attorney enters a criminal proceeding when he:

- (1) Files a written notice of entry with the clerk indicating an intent to represent a defendant in a specified criminal proceeding; or
- (2) Appears in a criminal proceeding without limiting the extent of his representation; or
- (3) Appears in a criminal proceeding for a limited purpose and indicates the extent of his representation by filing written notice thereof with the clerk; or
- (4) Accepts assignment to represent an indigent defendant under the terms of Article 36 of Chapter 7A of the General Statutes; or
- (5) Files a written waiver of arraignment, except that representation in this instance may not be limited pursuant to subdivision (3). (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, s. 135.)

§ 15A-142. Requirement that clerk record entry.

The clerk must note each entry by an attorney in the records of the proceeding. (1973, c. 1286, s. 1.)

§ 15A-143. Attorney making general entry obligated to represent defendant at all subsequent stages.

An attorney who enters a criminal proceeding without limiting the extent of his representation pursuant to G.S. 15A-141(3) undertakes to represent the defendant for whom the entry is made at all subsequent stages of the case until entry of final judgment, at the trial stage. An attorney who appears for a limited purpose under the provisions of G.S. 15A-141(3) undertakes to represent the defendant only for that purpose and is deemed to have withdrawn from the proceedings, without the need for permission of the court, when that purpose is fulfilled. (1973, c. 1286, s. 1; 1977, c. 1117.)

§ 15A-144. Withdrawal of attorney with permission of court.

The court may allow an attorney to withdraw from a criminal proceeding upon a showing of good cause. (1973, c. 1286, s. 1.)

Article 5.

Expunction of Records.

§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court of the county where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.

- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the State Bureau of Investigation using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the State Bureau of Investigation and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(a1) Nothing in this section shall be interpreted to allow the expunction of any offense involving impaired driving as defined in G.S. 20-4.01(24a) or any offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information.

(b1) No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(c) The court shall also order that the misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the court. The court shall direct all law-enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also

expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation.

(d) The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(d1) Repealed by Session Laws 2012-191, s. 3, effective December 1, 2012.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the State Bureau of Investigation for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent. (1973, c. 47, s. 2; c. 748; 1975, c. 650, s. 5; 1977, c. 642, s. 1; c. 699, ss. 1, 2; 1979, c. 431, ss. 1, 2; 1985, c. 636, s. 1; 1999-406, s. 8; 2002-126, ss. 29A.5(a), (b); 2004-133, s. 1; 2005-276, s. 43.1(e); 2007-509, s. 1; 2008-187, s. 35; 2009-510, s. 4(a), (b); 2009-577, s. 10; 2010-174, ss. 2, 3; 2011-145, s. 19.1(h); 2012-191, s. 3; 2013-360, s. 18B.16(a); 2014-100, s. 17.1(o); 2015-150, s. 2; 2017-186, s. 2(qq); 2017-195, s. 1; 2021-115, s. 2; 2021-180, s. 19C.9(s); 2023-134, s. 19F.4(oo).)

§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

(a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court of the county where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

- (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the State Bureau of Investigation using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the State Bureau of Investigation and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information, and that the record be expunged from the records of the court.

(b1) No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(b2) The court shall also direct all law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the State Bureau of Investigation for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent. (2009-577, s. 1; 2010-174, s. 4; 2011-145, s. 19.1(h); 2013-360, s. 18B.16(b); 2014-100, s. 17.1(o); 2017-186, s. 2(rr); 2017-195, s. 1; 2021-180, s. 19C.9(s); 2023-134, s. 19F.4(oo).)

§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court of the county where charged for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the petition the following:

- (1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;
- (3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the State Bureau of Investigation using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the State Bureau of Investigation and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was not over 21 years of age at the time of the

offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information.

(a1) No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(a2) The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3), upon dismissal by the State of the charges against the person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his or her arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

(c) Whenever any person who has not previously been convicted of (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, except as provided in G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty,

judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the State Bureau of Investigation for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent. (2009-577, s. 2; 2010-174, s. 5; 2011-145, s. 19.1(h); 2011-192, s. 5(b); 2011-412, s. 2.6(a); 2013-360, s. 18B.16(c); 2014-100, s. 17.1(o); 2017-186, s. 2(ss); 2017-195, s. 1; 2021-180, s. 19C.9(oo); 2023-134, s. 19F.4(oo).)

§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of

the offense, may apply to the court of the county where charged for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the petition the following:

- (1) An affidavit by the petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that his or her character and reputation are good;
- (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the State Bureau of Investigation using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the State Bureau of Investigation and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22, upon dismissal by the State of the charges against the person or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to the person's arrest, indictment or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such

order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(b1) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, except as provided in G.S. 15A-151.5. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the State Bureau of Investigation for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent. (2009-577, s. 3; 2010-174, s. 6; 2013-360, s. 18B.16(d); 2014-100, s. 17.1(o); 2017-195, s. 1; 2023-134, s. 19F.4(oo).)

§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.

(a) For purposes of this section, the term "nonviolent felony" means any felony except the following:

- (1) A Class A through G felony.
- (2) A felony that includes assault as an essential element of the offense.
- (3) A felony that is an offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
- (5) Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- (6) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine; except that if a prayer for judgment continued has been entered for an offense classified as either a Class G, H, or I felony, the prayer for judgment continued shall be subject to expunction under the procedures in this section.
- (7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any felony offense for which punishment was determined pursuant to G.S. 14-3(c).
- (8) A felony offense under G.S. 14-401.16.
- (9) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.
- (10) Any felony offense involving impaired driving as defined in G.S. 20-4.01(24a).

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court of the county where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

- (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the State Bureau of Investigation using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the State Bureau of Investigation for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the State Bureau of Investigation and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.
- (6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.
- (7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district

attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

(d) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a nonviolent felony under this section:

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the four-year period since the date of conviction of the nonviolent felony in question.
- (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile records remain separate from adult records and files and are withheld from public inspection as provided under Article 30 of Chapter 7B of the General Statutes.
- (3) Review the amount of restitution made by the petitioner to the victim of the nonviolent felony to be expunged and give consideration to whether or not restitution was paid in full.
- (4) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of nonviolent felonies committed by the petitioner.

(e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

- (1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.
- (2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (5) The petitioner was less than 18 years old at the time of the commission of the offense in question.
- (6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.
- (7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

(f) No person as to whom an order has been entered pursuant to subsection (e) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest,

indictment, information, trial, or conviction. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(f1) Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(f2) Persons pursuing certification under the provisions of Article 1 of Chapter 17C or Article 2 of Chapter 17E of the General Statutes, however, shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

(f3) Persons requesting a disclosure statement be prepared by the North Carolina Sheriffs' Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of the General Statutes, however, shall disclose any and all felony convictions to the North Carolina Sheriffs' Education and Training Standards Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

(g) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(h) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(i) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

(j) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the State Bureau of Investigation for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent. (2011-278, s. 1; 2012-191, s. 2; 2013-53, s. 1; 2013-360, s. 18B.16(e); 2014-100, s. 17.1(o); 2015-150, s. 3; 2015-181, s. 44; 2017-195, s. 1; 2021-107, s. 7(b); 2023-134, s. 19F.4(o).)

§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

(1) A Class A through G felony or a Class A1 misdemeanor.

- (2) An offense that includes assault as an essential element of the offense.
- (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- (5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
- (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
- (7) An offense under G.S. 14-401.16.
- (7a) An offense under G.S. 14-54(a1).
- (8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.
- (8a) Repealed by Session Laws 2021-118, s. 1, effective December 1, 2021, and applicable to petitions filed on or after that date.
- (9) Any offense that is an attempt to commit an offense described in subdivisions (1) through (8) of this subsection.
 - (a1) An offense involving impaired driving as defined in G.S. 20-4.01(24a) is not eligible for expunction.
 - (b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court, then the multiple nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in accordance with this section.
 - (c) A person may file a petition, in the court of the county where the person was convicted. [The following applies:]
 - (1) For expunction of one or more nonviolent misdemeanor convictions, the petition shall not be filed earlier than one of the following:
 - a. For expunction of one nonviolent misdemeanor, five years after the date of the conviction or when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.
 - b. For expunction of more than one nonviolent misdemeanor, seven years after the date of the person's last conviction, other than a traffic offense not listed in the petition for expunction, or seven years after any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.
 - (2) For expunction of up to three nonviolent felony convictions, the petition shall not be filed earlier than one of the following:
 - a. For expunction of one nonviolent felony not subject to the waiting period set forth in sub-subdivision a1. of this subdivision, 10 years after the date of the conviction or 10 years after any active sentence, period of

probation, or post-release supervision, related to the conviction listed in the petition, has been served, whichever occurs later.

- a1. For expunction of one nonviolent felony under G.S. 14-54(a), 15 years after the date of the conviction or 15 years after any active sentence, period of probation, or post-release supervision, related to the conviction listed in the petition, has been served, whichever occurs later.
- b. For expunction of two or three nonviolent felonies, 20 years after the date of the most recent conviction listed in the petition, or 20 years after any active sentence, period of probation, or post-release supervision, related to a conviction listed in the petition, has been served, whichever occurs later.

A person previously granted an expunction under this section is not eligible for relief under this section for any offense committed after the date of the previous order for expunction. Except as provided in subsections (c4) and (c5) of this section, a person previously granted an expunction under this section for one or more misdemeanors is not eligible for expunction of additional misdemeanors under this section and a person previously granted an expunction under this section for one or more felonies is not eligible for expunction of additional felonies under this section.

(c1) A petition filed pursuant to this section shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that the petitioner is of good moral character and one of the following statements:
 - a. If the petition is for the expunction of one or more nonviolent misdemeanors, that the petitioner has not been convicted of any other felony or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state during the applicable waiting period set forth in subsection (c) of this section.
 - b. If the petition is for the expunction of one or up to three nonviolent felonies, that the petitioner has not been convicted under the laws of the United States or the laws of this State or any other state of any misdemeanor, other than a traffic violation, in the five years preceding the petition, or any felony during the applicable waiting period set forth in subsection (c) of this section.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the State Bureau of Investigation using any information required by the Administrative Office of the Courts to identify the individual, a search by the State Bureau of Investigation for any outstanding warrants on pending criminal cases, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward

the application to the State Bureau of Investigation and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.
- (6) An affidavit by the petitioner providing information on any additional petitions the petitioner has submitted, or intends to submit, in other counties pursuant to subsection (c4) of this section seeking expunction of additional convictions.
- (7) An acknowledgement by the petitioner that, except as provided in subsection (c5) of this section, the expunction of one nonviolent misdemeanor prior to the seven-year waiting period or one nonviolent felony prior to the 20-year waiting period will preclude the petitioner from expunging additional nonviolent misdemeanors or nonviolent felonies that might otherwise be eligible for expunction pursuant to sub-subdivision b. of subdivision (1) of subsection (c) of this section or sub-subdivision b. of subdivision (2) of subsection (c) of this section.

Upon filing of the petition, the petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing. Upon request by the victim, the victim has a right to be present at any hearing on the petition for expunction and the victim's views and concerns shall be considered by the court at such hearing.

The presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

(c2) The court, after hearing a petition for expunction of one or more nonviolent misdemeanors, shall order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information, except as provided in G.S. 15A-151.5, if the court finds all of the following:

- (1) One of the following:
 - a. The petitioner has not previously been granted an expunction under this section for one or more nonviolent misdemeanors.
 - b. Any previous expunction granted to the petitioner under this section for one or more nonviolent misdemeanors was granted pursuant to a petition filed prior to December 1, 2021.
- (2) The petitioner is of good moral character.
- (3) The petitioner has no outstanding warrants or pending criminal cases, is not under indictment, and no finding of probable cause exists against the defendant for a felony, in any federal court or state court in the United States.

- (3a) The petitioner is not free on bond or personal recognizance pending trial, appeal, or sentencing in any federal court or state court in the United States for a crime which would prohibit the person from having his or her petition for expunction under this section granted.
- (4) The petitioner has no other felony or misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, during the applicable waiting period set forth in subsection (c) of this section.
- (5) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (6) The petitioner has no convictions for a misdemeanor or felony that is listed as an exception to the terms "nonviolent misdemeanor" or "nonviolent felony" as provided in subsection (a) of this section.
- (7) The petitioner was convicted of an offense or offenses eligible for expunction under this section.
- (8) The petitioner has completed the applicable waiting period set forth in subsection (c) of this section.

If the court denies the petition, the order shall include a finding as to the reason for the denial.

(c3) The court, after hearing a petition for expunction of one or up to three nonviolent felonies, may order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information, except as provided in G.S. 15A-151.5, if the court finds all of the following:

- (1) One of the following:
 - a. The petitioner has not previously been granted an expunction under this section for one or more nonviolent felonies.
 - b. Any previous expunction granted to the petitioner under this section for a felony was granted pursuant to a petition filed prior to December 1, 2021.
- (2) The petitioner is of good moral character.
- (3) The petitioner has no outstanding warrants or pending criminal cases, is not under indictment, and no finding of probable cause exists against the defendant for a felony, in any federal court or state court in the United States.
- (3a) The petitioner is not free on bond or personal recognizance pending trial, appeal, or sentencing in any federal court or state court in the United States for a crime which would prohibit the person from having his or her petition for expunction under this section granted.
- (4) If the petition is for the expunction of one felony, the petitioner has no misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, in the five years preceding the petition, and no other felony convictions during the applicable waiting period set forth in subsection (c) of this section.
- (4a) If the petition is for the expunction of two or three felonies, or if the petitioner has filed petitions in more than one county pursuant to subsection (c4) of this section, the petitioner has no misdemeanor convictions other than a traffic violation not listed in the petition for expunction in the five years preceding the petition, and no other felony convictions during the applicable waiting period set forth in subsection (c) of this section.

- (4b) If the petition is for the expunction of two or three felonies, if the petitioner has filed petitions in more than one county pursuant to subsection (c4) of this section, or if the petition is filed pursuant to subsection (c5) of this section, the felony offenses were committed within the same 24-month period.
- (5) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (6) The petitioner has no convictions for a misdemeanor that is listed as an exception to the term "nonviolent misdemeanor" as provided in subsection (a) of this section or any other felony offense.
- (7) The petitioner was convicted of an offense eligible for expunction under this section.
- (8) The petitioner has completed the applicable waiting period set forth in subsection (c) of this section.

If the court denies the petition, the order shall include a finding as to the reason for the denial.

(c4) A person petitioning for expunction of multiple convictions pursuant to sub-subdivision b. of subdivision (1) of subsection (c) of this section or sub-subdivision b. of subdivision (2) of subsection (c) of this section, where the convictions were obtained in more than one county, shall file a petition in each county of conviction. All petitions shall be filed within a 120-day period. The granting of one petition shall not preclude the granting of any other petition filed within the same 120-day period. Notwithstanding the provisions of this subsection, upon good cause shown for the failure to file a petition within the 120-day period, the court may grant a petition for expunction filed outside the 120-day period.

(c5) A person granted an expunction under this section of one or more nonviolent misdemeanors pursuant to a petition filed prior to December 1, 2021, may petition for the expunction of additional nonviolent misdemeanors if the offenses were committed prior to the date of the previous expunction. A person granted an expunction under this section of one nonviolent felony pursuant to a petition filed prior to December 1, 2021, may petition for the expunction of up to two additional nonviolent felonies if the offenses were committed prior to the date of the previous expunction and within the same 24-month period as the previously expunged felony.

(d) No person as to whom an order has been entered pursuant to subsection (c) of this section shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(d1) Persons pursuing certification under the provisions of Article 1 of Chapter 17C or Article 2 of Chapter 17E of the General Statutes, however, shall disclose any and all convictions to the certifying Commission, regardless of whether or not the convictions were expunged pursuant to the provisions of this section.

(d2) Persons requesting a disclosure statement be prepared by the North Carolina Sheriffs' Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of the General Statutes, however, shall disclose any and all felony convictions to the North Carolina Sheriffs' Education and Training Standards Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

(d3) Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(e) The court shall also order that the conviction or convictions be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order, as provided in G.S. 15A-150.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction or convictions ordered expunged under this section upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent. (2012-191, s. 1; 2013-53, s. 2; 2013-410, s. 4; 2014-100, s. 17.1(o); 2014-119, ss. 1(a), 11(a); 2015-150, s. 4; 2015-181, s. 43; 2017-195, s. 1; 2020-35, s. 4(a); 2021-107, s. 7(c); 2021-118, s. 1; 2021-167, s. 2.3(a); 2022-47, s. 3(a); 2023-103, s. 14(a); 2023-134, s. 19F.4(oo).)

§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.

(a) The following definitions apply in this section:

- (1) Prostitution offense. – A conviction for (i) violation of G.S. 14-204 or (ii) engaging in prostitution in violation of G.S. 14-204(7) for an offense that occurred prior to October 1, 2013.
- (2) Violent felony or violent misdemeanor. – A Class A through G felony or a Class A1 misdemeanor that includes assault as an essential element of the offense.

(b) A person who has been convicted of a prostitution offense may file a petition in the court of the county where the person was convicted for expunction of the prostitution offense from the person's criminal record provided that all the following criteria are met:

- (1) The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.
- (2) The person satisfies any one of the following criteria:
 - a. Repealed by Session Laws 2019-158, s. 4(a), effective December 1, 2019, and applicable to petitions filed on or after that date.
 - b. The person has no prior convictions for a prostitution offense and at least three years have passed since the date of conviction or the completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.
 - c. The person was discharged and the charge was dismissed upon completion of a conditional discharge under G.S. 14-204(b).

(c) The petition shall contain all of the following:

- (1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of a violent felony or violent misdemeanor, (ii) has been of good moral character since the date of conviction of the prostitution offense in question, and (iii) has not been convicted of any felony or misdemeanor under the laws of the United States or the laws of this State or any other state since the date of the conviction of the prostitution offense in question.
- (2) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the State Bureau of Investigation using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the State Bureau of Investigation for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the State Bureau of Investigation and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(d) The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

(e) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a prostitution offense under this section:

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the period since the date of conviction of the prostitution offense in question.
- (2) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers and district attorneys.

(f) The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

- (1) The criteria set out in subsection (b) of this section are satisfied.
- (2) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, since the date of conviction of the prostitution offense in question.
- (3) The petitioner has no outstanding warrants or pending criminal cases.

- (4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense.

(g) No person as to whom an order has been entered pursuant to subsection (f) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(g1) Persons pursuing certification under the provisions of Article 1 of Chapter 17C or Article 2 of Chapter 17E of the General Statutes, however, shall disclose any and all prostitution convictions to the certifying Commission regardless of whether or not the prostitution convictions were expunged pursuant to the provisions of this section.

(g2) Persons requesting a disclosure statement be prepared by the North Carolina Sheriffs' Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of the General Statutes, however, shall disclose any and all felony convictions to the North Carolina Sheriffs' Education and Training Standards Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

(g3) Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(h) The court shall also order that the conviction of the prostitution offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(i) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(j) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the prostitution offense which is to be expunged under this section. (2013-368, s. 11; 2014-100, s. 17.1(o); 2017-195, s. 1; 2019-158, s. 4(a); 2021-107, s. 7(d); 2023-134, s. 19F.4(oo).)

§ 15A-145.7. Expunction of records for first offenders under 20 years of age at the time of the offense of certain offenses.

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 14-277.8, and the person was under 20 years of age at the time of the offense, the person may apply to the court of the county where charged for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to

the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the petition the following:

- (1) An affidavit by the petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that the petitioner's character and reputation are good;
- (3) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the State Bureau of Investigation using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the State Bureau of Investigation and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was under 20 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information.

(b) No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(c) The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the State Bureau of Investigation for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for

expunctions under this section. This subsection does not apply to petitions filed by an indigent. (2018-72, s. 4; 2021-180, s. 19C.9(s); 2023-134, s. 19F.4(oo).)

§ 15A-145.8. Expunction of records when charges are remanded to district court for juvenile adjudication.

(a) Upon remand pursuant to G.S. 7B-2200.5(d), the court shall order expunction of all remanded charges. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his or her failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(b) The court shall also order the expunction of DNA records when the person's charges have been remanded to district court for juvenile adjudication and the person's DNA record or profile has been included in the State DNA Database and the person's DNA sample is stored in the State DNA Databank as a result of the charges that were remanded. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting expungement as required by subsection (c) of this section.

(c) Upon receiving an order of expungement entered pursuant to subsection (b) of this section, the North Carolina State Crime Laboratory shall purge the DNA record and all other identifying information from the State DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.

(d) Upon order of expungement, the clerk shall send a certified copy of the expungement order to the defendant, the defendant's attorney, the Administrative Office of the Courts, and the State and local agencies listed in G.S. 15A-150(b). An agency receiving a certified copy of an order under this subsection shall delete any public records made as a result of the charges that have been remanded to district court for juvenile adjudication, in accordance with G.S. 15A-150. Any records related to the juvenile adjudication shall not be deleted but shall be maintained as confidential records pursuant to Article 30 of Chapter 7B of the General Statutes. (2019-186, s. 11; 2019-243, s. 21(a).)

§ 15A-145.8A. Expunction of records for offenders under the age of 18 at the time of commission of certain misdemeanors and felonies upon completion of the sentence.

(a) A person, the district attorney, or an attorney at the request of a person eligible for expunction under this section, may file, in the court of the county where the person was convicted, a petition for expunction from the person's criminal record of any misdemeanor or Class H or I felony not excluded by subsection (b) of this section if the offense was committed prior to December 1, 2019, and while the person was less than 18 years of age, but at least 16 years of age. The petition shall not be filed until (i) any active sentence, period of probation, and post-release supervision ordered for the offense has been served and (ii) the person has no restitution orders for the offense or outstanding civil judgments representing amounts ordered for restitution for the offense.

(b) An offense is not eligible for expunction under this section if it is (i) a violation of the motor vehicle laws under Chapter 20 of the General Statutes, including any offense involving impaired driving as defined in G.S. 20-4.01(24a) or (ii) an offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

(c) If the petition was not filed by the district attorney, the petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing. Upon request by the victim, the victim has a right to be present at any hearing on the petition for expunction and the victim's views and concerns shall be considered by the court at such hearing.

(d) If the court, after hearing, finds that (i) the offense was a misdemeanor or Class H or I felony eligible for expunction under this section, (ii) the offense was committed prior to December 1, 2019, and while the person was less than 18 years of age, but at least 16 years of age, (iii) any active sentence, period of probation, and post-release supervision ordered for the offense was completed, and (iv) the person has no restitution orders for the offense or outstanding civil judgments representing amounts ordered for restitution for the offense, the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information, and that the record be expunged from the records of the court. A person convicted of multiple offenses shall be eligible to have those convictions expunged pursuant to this section.

(e) Any petition for expunction under this section shall be on a form approved by the Administrative Office of the Courts and shall be filed with the clerk of superior court in the county where the person was convicted. Upon order of expunction, the clerk shall forward the order to the Administrative Office of the Courts.

(f) No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(g) The court shall also order that the conviction be expunged from the records of the court. The court shall direct all law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(h) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of fifty-two dollars and fifty cents (\$52.50) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent. (2020-35, s. 1(a); 2021-118, s. 2; 2021-180, s. 19C.9(s); 2023-134, s. 19F.4(oo).)

§ 15A-145.9. Expunctions of certain offenses committed by human trafficking victims.

(a) Definition. – For purposes of this section, the following terms apply:

- (1) Nonviolent offense. – Any misdemeanor or felony except the following:
 - a. A Class A through G felony.
 - b. An offense that includes assault as an essential element of the offense.
 - c. An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
 - d. Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3A, or 14-321.1.
 - e. An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
 - f. An offense under G.S. 14-401.16.
 - g. A traffic offense.
 - h. Any offense that is an attempt to commit an offense described in sub-subdivisions a. through g. of this subdivision.
- (2) Trafficking victim. – A person that meets the definition for the term "victim" set forth in G.S. 14-43.10 or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

(b) Expunction Authorized. – A person who has been convicted of a nonviolent offense may file a petition in the court of the county where the person was convicted for expunction of the nonviolent offense from the person's criminal record if the court finds that the person was coerced or deceived into committing the offense as a direct result of having been a trafficking victim.

(c) Petition Requirements. – The petition shall contain all of the following:

- (1) An affidavit by the petitioner that the petitioner is a victim of human trafficking and was coerced or deceived into committing the offense as a direct result of their status as a trafficking victim.
- (2) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (3) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a search by the State Bureau of Investigation for any outstanding warrants. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the State Bureau of Investigation, which shall conduct the search and report its findings to the court.
- (4) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

(d) Service of Petition. – The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

(e) Issues for Consideration. – The court in which the petition was filed may take the following steps and may consider the following issues in rendering a decision upon a petition for expunction of records of an offense under this section:

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the period since the date of conviction of the offense in question.
 - (2) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, or licensed social workers.
- (f) Restoration of Status. – The court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:
- (1) The criteria set out in subsection (b) of this section are satisfied.
 - (2) The petitioner has no outstanding warrants.
 - (3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (g) Effect. – No person as to whom an order has been entered pursuant to subsection (f) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.
- (h) Law Enforcement Certification. – Persons pursuing certification under the provisions of Article 1 of Chapter 17C of 17E of the General Statutes, however, shall disclose all convictions to the certifying Commission regardless of whether or not the convictions were expunged pursuant to the provisions of this section.
- (i) Records Expunged. – The court shall also order that the conviction of the offenses be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.
- (j) Additional Records Expunged. – Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.
- (k) Costs Waived. – The costs of expunging the records shall not be taxed against the petitioner. (2019-158, s. 4(b); 2021-180, s. 16.4(a); 2023-134, s. 19F.4(oo).)

§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(a) Dismissal of Single Charge. – If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, that person or the district attorney may petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to that person's apprehension or trial. Upon a finding that the sole charge was dismissed, the court shall order the expunction.

(a1) Multiple Dismissals. – If a person is charged with multiple offenses and any charges are dismissed, then that person or the district attorney may petition to have each of the dismissed

charges expunged. If the court finds that all of the charges were dismissed, the court shall order the expunction. If the court finds that any charge resulted in a conviction on the day of the dismissal or had not yet reached final disposition, the court may order the expunction of any charge that was dismissed.

(a2) Finding of Not Guilty. – If any person is charged with one or more crimes, either a misdemeanor or a felony, or an infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not responsible is entered for any or all of the charges, that person or the district attorney may petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to apprehension or trial of that crime. Upon determining that a finding of not guilty or not responsible was entered and all related criminal charges have reached final disposition, the court shall order the expunction of any charges disposed by a finding of not guilty or not responsible.

(a3) Effect of Expunction. – Except as provided in G.S. 15A-151.5(b)(5), no person as to whom an order has been entered by a court or by operation of law under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(a4) Dismissal, Not Guilty, or Not Responsible on or After December 1, 2021. – If any person is charged with a crime, either a misdemeanor or a felony, or is charged with an infraction, the charges in the case are expunged by operation of law if all of the following apply:

- (1) All charges in the case are disposed on or after December 1, 2021.
- (2) All charges in the case are dismissed without leave, dismissed by the court, or result in a finding of not guilty or not responsible.

Notwithstanding the provisions of this subsection, no case with a felony charge that was dismissed pursuant to a plea agreement will be expunged pursuant to this subsection. Prior to December 1, 2021, the Administrative Office of the Courts shall develop and have in place procedures to automate the expunction of records pursuant to this subsection.

(a5) Notwithstanding the provisions of subsections (a), (a1), and (a2) of this section, an arresting agency may maintain investigative records related to a charge that has been expunged pursuant to this section.

(a6) Hearing. – Except as otherwise specifically provided in this section, a court may grant a petition for expunction under this section without a hearing.

(b) The court may also order that the said entries, including civil revocations of drivers licenses as a result of the underlying charge, shall be expunged from the records of the court, and direct all law-enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries, including civil revocations of drivers licenses as a result of the underlying charge being expunged. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(b1) Any person entitled to expungement under this section may also apply to the court for an order expunging DNA records when the person's case has been dismissed by the trial court and the person's DNA record or profile has been included in the State DNA Database and the person's DNA sample is stored in the State DNA Databank. A copy of the application for expungement of the DNA record or DNA sample shall be served on the district attorney for the judicial district in which the felony charges were brought not less than 20 days prior to the date of the hearing on the application. If the application for expungement is granted, a certified copy of the trial court's order dismissing the charges shall be attached to an order of expungement. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting expungement as required by subsection (b2) of this section.

(b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this section, the North Carolina State Crime Laboratory shall purge the DNA record and all other identifying information from the State DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.

(c) Any petition required to be filed for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Excluding any expunction granted by operation of law pursuant to subsection (a4) of this section, upon order of expungement by a court, the clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150 and forward the petition to the Administrative Office of the Courts.

(d) A person charged with a crime that is dismissed pursuant to compliance with a deferred prosecution agreement or the terms of a conditional discharge and who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the State Bureau of Investigation for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent. (1979, c. 61; 1985, c. 636, ss. 1-7; 1991, c. 326, s. 1; 1997-138, s. 1; 1999-406, s. 9; 2001-108, s. 2; 2001-282, s. 1; 2002-126, s. 29A.5(c); 2005-452, s. 1; 2007-509, s. 2; 2009-510, s. 5(a), (b); 2009-577, ss. 3.1, 8, 9; 2011-145, s. 19.1(h); 2012-191, s. 4; 2013-360, ss. 17.6(e), 18B.16(f); 2014-100, s. 17.1(o); 2014-119, s. 2(d); 2017-186, s. 2(tt); 2017-195, s. 1; 2020-35, s. 3(a); 2021-180, s. 19C.9(s); 2023-134, s. 19F.4(o).)

§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft or mistaken identity.

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person or mistaken identity and a finding of not guilty is entered, or the conviction is set aside, the named

person may petition the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(a1) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person or mistaken identity, and the charge against the named person is dismissed, the prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court of the dismissal, and the court shall order the expunction of all official records containing any entries relating to the person's apprehension, charge, or trial.

(a2) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner, or the person eligible for automatic expungement under subsection (a1) of this section, as bearing record of the same to expunge their records of the entries. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) The Department of Adult Correction and any other applicable State or local government agency shall expunge its records as provided in G.S. 15A-150. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement.

(g) For purposes of this section, the term "mistaken identity" means the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime. (2001-108, s. 1; 2005-414, s. 8; 2009-510, s. 6; 2011-145, s. 19.1(h); 2015-202, s. 1; 2017-186, s. 2(uu); 2017-195, s. 1; 2021-180, s. 19C.9(s).)

§ 15A-148. Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted.

(a) Upon a motion by the defendant following the issuance of a final order by an appellate court reversing and dismissing a conviction of an offense for which a DNA analysis was done in accordance with Article 13 of Chapter 15A of the General Statutes, or upon receipt of a pardon of innocence with respect to any such offense, the court shall issue an order of expungement of the DNA record and samples in accordance with subsection (b) of this section. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting expungement as required by subsection (b) of this section.

(b) When an order of expungement has been issued pursuant to subsection (a) of this section, the order of expungement, together with a certified copy of the final appellate court order reversing and dismissing the conviction or a certified copy of the instrument granting the pardon of innocence, shall be provided to the North Carolina State Crime Laboratory by the clerk of court. Upon receiving an order of expungement for an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State DNA Databank, the DNA profile shall be expunged and the DNA sample destroyed by the North Carolina State Crime Laboratory, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and the defendant's attorney at the address specified by the court in the order of expungement. The North Carolina State Crime Laboratory shall adopt procedures to comply with this subsection.

(c) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of expungement, the clerk shall forward the petition to the Administrative Office of the Courts. (2001-282, s. 2; 2013-360, s. 17.6(e); 2017-195, s. 1.)

§ 15A-149. Expunction of records when pardon of innocence is granted.

(a) If any person is convicted of a crime and receives a pardon of innocence, the person may petition the court in which the person was convicted on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. Upon receipt of the petition, the clerk of court shall verify that an attested copy of the warrant and return granting a pardon of innocence has been filed with the court in accordance with G.S. 147-25. Upon verification by the clerk that the warrant and return have been filed, the court shall issue an order of expunction.

(b) The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all

law enforcement agencies, the Department of Adult Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150 and shall forward the petition to the Administrative Office of the Courts. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(c) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial. (2005-319, s. 1; 2009-510, s. 7; 2011-145, s. 19.1(h); 2017-186, s. 2(vv); 2017-195, s. 1; 2021-180, s. 19C.9(s).)

§ 15A-150. Notification requirements.

(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the petitions granted under this Article, any orders of expunction, and the names of the following:

- (1) Persons granted an expunction under this Article.
- (2), (3) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and applicable to conditional discharges granted on or after that date.
- (4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.
- (5) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and applicable to conditional discharges granted on or after that date.
- (6) Persons granted a dismissal upon completion of a conditional discharge under G.S. 14-50.29, 14-204, 14-277.8, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14.

(b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, the clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to (i) all of the agencies listed in this subsection and (ii) the person granted the expunction. Expunctions granted pursuant to G.S. 15A-146(a4) are excluded from all clerk of superior court notice provisions of this subsection. An agency receiving an order under this subsection shall purge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

- (1) The sheriff, chief of police, or other arresting agency.
- (2) When applicable, the Division of Motor Vehicles.
- (3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
- (4) The Department of Adult Correction, Combined Records Section.
- (5) The State Bureau of Investigation.

(c) Notification to FBI. – The State Bureau of Investigation shall forward the order received under this section to the Federal Bureau of Investigation.

(d) Notification to Private Entities. – A State agency that receives a certified copy of an order under this section shall notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency criminal record database to delete the record in question. The private entity shall notify any other entity to which it subsequently provides in a bulk extract data from the agency criminal database to delete the record in question from its database.

(e) The Director of the Administrative Office of the Courts may enter into an agreement with any of the State agencies listed in subsection (b) of this section for electronic or facsimile transmission of any information that must be provided under this section. The Administrative Office of the Courts also may provide notice to State and local agencies, in a manner and format determined by the Administrative Office of the Courts, of expunctions granted pursuant to G.S. 15A-146(a4). (2009-510, s. 1; 2010-174, s. 7; 2011-145, s. 19.1(h); 2013-368, s. 12; 2014-100, s. 17.1(eeee), (ffff), (gggg); 2014-115, s. 27(a); 2015-40, s. 3; 2015-247, s. 8; 2015-264, s. 5; 2017-195, s. 1; 2018-72, s. 5; 2020-35, s. 3(b); 2021-47, s. 15; 2022-47, s. 18(a); 2022-58, s. 19(a); 2022-74, s. 19A.1(c).)

§ 15A-151. Confidential agency files; exceptions to expunction.

(a) The Administrative Office of the Courts shall maintain a confidential file for expungements containing the petitions granted under this Article and the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

- (1) Upon request of a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.
- (2) Upon request of a person requesting confirmation of the person's own discharge or expunction.
- (3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.
- (4) Upon request of State or local law enforcement, if the criminal record was expunged under this Chapter for employment purposes only.
- (5) Upon the request of the North Carolina Criminal Justice Education and Training Standards Commission, if the criminal record was expunged under this Chapter for certification purposes only.
- (6) Upon request of the North Carolina Sheriff's Education and Training Standards Commission, if the criminal record was expunged under this Chapter for certification purposes only.
- (7) To the district attorney in accordance with G.S. 15A-151.5.
- (8) Upon request of the North Carolina Sheriffs' Education and Training Standards Commission, if the criminal record was expunged under this Chapter for purposes of preparing a disclosure statement in accordance with Article 3 of Chapter 17E of the General Statutes.
- (9) For disclosure of records of previous dismissal pursuant to conditional discharge, upon joint request of the district attorney and the defendant in a pending proceeding for the purpose of determining eligibility for a conditional discharge. Any report disclosed in response to the joint request shall be delivered only to the clerk of superior court of the county in which the matter is pending. Upon receipt of the report from the Administrative Office of the

Courts, the clerk shall provide a copy to the district attorney and to the defendant. The clerk shall otherwise maintain the information as a confidential record in the court file for the case.

(b) All agencies required under G.S. 15A-150 to expunge from records all entries made as a result of a charge or conviction ordered expunged who maintain a licensing agreement to provide record information to a private entity shall maintain a confidential file containing information verifying the expunction and subsequent notification to private entities as required by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person requesting confirmation of expunction of the record of the person's own discharge or expunction, as provided in G.S. 15A-152.

(c) The Division of Motor Vehicles shall not be required to expunge a record if the expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle Safety Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations adopted pursuant to either act. (2009-510, s. 1; 2010-174, s. 8; 2011-278, s. 2; 2012-191, s. 5; 2013-368, s. 13; 2015-40, s. 4; 2017-195, s. 1; 2020-35, s. 2(b); 2021-107, s. 6; 2021-118, s. 3; 2022-47, s. 12(a).)

§ 15A-151.5. Prosecutor access to expunged files.

(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

- (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.
- (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.
- (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.
- (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.
- (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.
- (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.
- (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- (7a) G.S. 15A-145.7. Expunction of records for first offenders under 20 years of age at the time of the offense of certain offenses.
- (7b) G.S. 15A-145.8A. Expunction of records for offenders under the age of 18 at the time of commission of certain misdemeanors and felonies upon completion of the sentence.
- (7c) G.S. 15A-145.9. Expunction of records of certain offenses committed by human trafficking victims.
- (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed.

(b) For any expungement granted on or after July 1, 2018, the record of a criminal conviction expunged under subdivisions (1) through (7b) of subsection (a) of this section may be considered a prior conviction and used for any of the following purposes:

- (1) To calculate prior record level and prior conviction level if the named person is convicted of a subsequent criminal offense.
- (2) To serve as a basis for indictment for a habitual offense pursuant to G.S. 14-7.1 or G.S. 14-7.26.
- (3) When a conviction of a prior offense raises the offense level of a subsequent offense.
- (4) To determine eligibility for relief under G.S. 90-96(a).
- (5) When permissible in a criminal case under Rule 404(b) or Rule 609 of the North Carolina Rules of Evidence.

(c) For any expungement granted on or after July 1, 2018, the information maintained by the Administrative Office of the Courts, and made available under subsection (a) of this section, is prima facie evidence of the expunged conviction for the purposes provided in subsection (b) of this section and is admissible into evidence. The expungement of a conviction shall not serve as a basis to challenge a conviction or sentence entered before the expungement of that conviction.

(d) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all records of dismissals pursuant to conditional discharge maintained under G.S. 15A-151 electronically available to all prosecutors of this State. (2017-195, s. 1; 2019-158, s. 4(c); 2020-35, s. 2(a); 2020-69, s. 8(a), (b); 2020-78, s. 10.1(a), (b); 2021-88, s. 3; 2021-118, s. 4.)

§ 15A-152. Civil liability for dissemination of certain criminal history information.

(a) **Duty to Delete Record.** – A private entity that holds itself out as being in the business of compiling and disseminating criminal history record information for compensation shall destroy and shall not disseminate any information in the possession of the entity with respect to which the entity has received a notice to delete the record in question. The private entity shall delete the record within the specified time and pursuant to the terms of the licensing agreement with the State agency. If the license does not specify a time for deletion, or if no license agreement exists between the private entity and state agency, the private entity shall delete the record within 10 business days of receiving notice to delete the record in question.

(b) **Dissemination of Information.** – Unless the entity is regulated by the federal Fair Credit Reporting, Act 15 U.S.C. § 1681, et seq. or the Gramm-Leach-Bliley Act 15 U.S.C. §§ 6801-6809, a private entity described by subsection (a) of this section that is licensed to access a State agency's criminal history record database may disseminate that information only if, within the 90-day period preceding the date of dissemination, the entity originally obtained the information or received the information as an updated record information to its database. The private entity must notify the State agency from which it receives the information of any other entity to which it subsequently provides a bulk extract of the information.

(c) **Civil Liability.** – A private entity subject to the provisions of this section that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorneys' fees. This subsection does not apply to an entity regulated by and subject to the civil liability remedies of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., or the Gramm-Leach-Bliley Act, 15 U.S.C. 6801-6809, et seq.

(d) Certificate of Verification. – Prior to filing an action under this section, a person who is the subject of a record that has been expunged may apply to the Administrative Office of the Courts for a certificate verifying that the person is the subject of a record that has been expunged and that notice of the expunction was made in accordance with G.S. 15A-150. The application must include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person who was the subject of the record in question and identifying the specific case expunged. A notary or official taking an acknowledgment, oath, or affirmation of an applicant's affidavit under this subsection may not disclose the nature or content of the application, except as required in a court action related to the application. Unless made part of the record of a subsequent court proceeding, a certificate of verification and an application for the certificate are not public records under G.S. 132-1. The Administrative Office of the Courts may establish procedures pertaining to the application for and issuance of certificates of verification.

(e) Notice of Record Removal. – Prior to filing an action under this section, a person who is the subject of a record that has been expunged may request a notice of record removal of the expunction and subsequent notification to private entities as required by G.S. 15A-150(d) from an agency required under G.S. 15A-150 to expunge that person's record who maintains a licensing agreement to provide record information to a private entity. The application must include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person who was the subject of the record in question and identifying the specific case expunged. A notary or official taking an acknowledgment, oath, or affirmation of an applicant's affidavit under this subsection may not disclose the nature or content of the application, except as required in a court action related to the application. Unless made part of the record of a subsequent court proceeding, a notice of record removal and an application for the notice are not public records under G.S. 132-1. State and local agencies may establish procedures pertaining to the application for and issuance of notices of record removal. (2009-510, s. 1; 2010-174, s. 9.)

§ 15A-153. Effect of expunction; prohibited practices by employers, educational institutions, agencies of State and local governments.

(a) Purpose. – The purpose of this section is to clear the public record of any entry of any arrest, criminal charge, or criminal conviction that has been expunged so that (i) the person who is entitled to and obtains the expunction may omit reference to the charges or convictions to potential employers and others and (ii) a records check for prior arrests and convictions will not disclose the expunged entries. Nothing in this section shall be construed to prohibit an employer from asking a job applicant about criminal charges or convictions that have not been expunged and are part of the public record.

(b) Nondisclosure Protected. – No person as to whom an order of expunction has been entered pursuant to this Article shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge any expunged arrest, apprehension, charge, indictment, information, trial, or conviction in response to any inquiry made of him or her for any purpose other than as provided in subsection (e) of this section.

(c) Employer or Educational Institution Inquiry Regarding Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged and shall not knowingly and willingly inquire about any arrest, charge, or

conviction that they know to have been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests, charges, or convictions that have been expunged. This subsection does not apply to State or local law enforcement agencies authorized pursuant to G.S. 15A-151 to obtain confidential information for employment purposes.

(d) State or Local Government Agency, Official, and Employee Inquiry Regarding Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – Agencies, officials, and employees of the State and local governments who request disclosure of information concerning any arrest, criminal charge, or criminal conviction of the applicant shall first advise the applicant that State law allows the applicant to not refer to any arrest, charge, or conviction that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges or convictions that have been expunged. Such application shall not be denied solely because of the applicant's refusal or failure to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

(e) Exceptions. – The provisions of subsection (d) of this section do not apply to any applicant or licensee seeking or holding any certification issued by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to Article 1 of Chapter 17C of the General Statutes or the North Carolina Sheriffs Education and Training Standards Commission pursuant to Article 2 of Chapter 17E of the General Statutes:

- (1) Convictions expunged pursuant to G.S. 15A-145.4. – Persons pursuing certification under the provisions of Article 1 of Chapter 17C or Article 2 of Chapter 17E of the General Statutes shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of G.S. 15A-145.4.
- (2) Convictions expunged pursuant to G.S. 15A-145.5. – Persons pursuing certification under the provisions of Article 1 of Chapter 17C or Article 2 of Chapter 17E of the General Statutes shall disclose any and all convictions to the certifying Commission regardless of whether or not the convictions were expunged pursuant to the provisions of G.S. 15A-145.5.

(e1) The provisions of subsection (d) of this section do not apply to any individual requesting a disclosure statement be prepared by the North Carolina Sheriffs' Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of the General Statutes.

(f) Penalty for Violation. – Upon investigation by the Commissioner of Labor or the Commissioner's authorized representative, any employer found to be in violation of subsection (c) of this section shall be issued a written warning for a first violation and shall be subject to a civil penalty of up to five hundred dollars (\$500.00) for each additional violation occurring after receipt of the written warning. In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations. The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the

determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act. The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for carrying out the provisions of this subsection.

Nothing in this section shall be construed to create a private cause of action against any employer or its agents or employees, any educational institutions or their agents or employees, or any State or local government agencies, officials, or employees. (2013-53, s. 3; 2021-107, s. 7(a); 2023-134, s. 19F.4(oo).)

§ 15A-154: Reserved for future codification purposes.

§ 15A-155: Reserved for future codification purposes.

§ 15A-156: Reserved for future codification purposes.

§ 15A-157: Reserved for future codification purposes.

§ 15A-158: Reserved for future codification purposes.

§ 15A-159: Reserved for future codification purposes.

§ 15A-160. Reporting requirement.

The State Bureau of Investigation, in conjunction with the Department of Justice and the Administrative Office of the Courts, shall report jointly to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety Oversight by September 1 of each year regarding expunctions. The report shall include all of the following information:

- (1) The number and types of expunctions granted during the fiscal year in which the report is made.
- (2) The number and type of expunctions granted each fiscal year for the five fiscal years preceding the date of the report.
- (3) A full accounting of how the agencies have spent the receipts generated by the expunction fees received during the fiscal year in which the report is made and for the five preceding fiscal years. (2013-360, s. 18B.16(h); 2015-241, s. 16B.5(a); 2023-134, s. 19F.4(oo).)

§ 15A-161: Reserved for future codification purposes.

§ 15A-162: Reserved for future codification purposes.

§ 15A-163: Reserved for future codification purposes.

§ 15A-164: Reserved for future codification purposes.

§ 15A-165: Reserved for future codification purposes.

§ 15A-166: Reserved for future codification purposes.

§ 15A-167: Reserved for future codification purposes.

§ 15A-168: Reserved for future codification purposes.

§ 15A-169: Reserved for future codification purposes.

§ 15A-170: Reserved for future codification purposes.

§ 15A-171: Reserved for future codification purposes.

§ 15A-172: Reserved for future codification purposes.

§ 15A-173: Reserved for future codification purposes.

Article 6.

Certificate of Relief.

§ 15A-173.1. Definitions.

The following definitions apply in this Article:

- (1) Collateral consequence. – A collateral sanction or a disqualification.
- (2) Collateral sanction. – A penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, post-release supervision, forfeiture, restitution, fine, assessment, or costs of prosecution.
- (3) Disqualification. – A penalty, disability, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding may impose on an individual on grounds relating to the individual's conviction of an offense.
- (4) District attorney. – The office of the district attorney that prosecuted the offense giving rise to the collateral consequence from which relief is sought. (2011-265, s. 1.)

§ 15A-173.2. Certificate of Relief.

(a) An individual who is convicted of no more than (i) three Class H or I felonies and (ii) any misdemeanors may petition the court where the individual was convicted for a Certificate of Relief relieving collateral consequences as permitted by this Article. If the person is convicted of more than one Class H or I felony in the same session of court, then the multiple felony convictions shall be treated as one felony conviction under this section. Except as otherwise provided in this subsection, the petition shall be heard by the senior resident superior court judge if the convictions were in superior court, or the chief district court judge if the convictions were in district court. The senior resident superior court judge and chief district court judge in each district may delegate their authority to hold hearings and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that district.

(b) Except as otherwise provided in G.S. 15A-173.3, the court may issue a Certificate of Relief if, after reviewing the petition, the individual's comprehensive criminal history as provided by the district attorney, any information provided by a victim under G.S. 15A-173.6 or the district attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence all of the following:

- (1) Twelve months have passed since the individual has completed his or her sentence. For purposes of this subdivision, an individual has not completed his or her sentence until the individual has served all of the active time, if any, imposed for each offense and has also completed any period of probation, post-release supervision, and parole related to the offense that is required by State law or court order.
- (2) The individual is engaged in, or seeking to engage in, a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support.
- (3) The individual has complied with all requirements of the individual's sentence, including any terms of probation, that may include substance abuse treatment, anger management, and educational requirements.
- (4) The individual is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial.
- (5) A criminal charge is not pending against the individual.
- (6) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) The Certificate of Relief shall specify any restriction imposed and collateral sanction or disqualification from which relief has not been granted under G.S. 15A-173.4(a).

(d) Unless modified or revoked, a Certificate of Relief relieves all collateral sanctions, except those listed in G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law, and any others specifically excluded in the certificate. A Certificate of Relief does not automatically relieve a disqualification; however, an administrative agency, governmental official, or court in a civil proceeding shall consider a Certificate of Relief favorably in determining whether a conviction should result in disqualification.

(e) A Certificate of Relief issued under this Article does not result in the expunction of any criminal history record information, nor does it constitute a pardon.

(f) A Certificate of Relief is automatically revoked pursuant to G.S. 15A-173.4(b) if the individual is subsequently convicted of a felony or misdemeanor other than a traffic violation. The Administrative Office of the Courts shall provide the following declaration on the Petition and Order for a Certificate of Relief: "Any Certificate of Relief is automatically revoked for a subsequent conviction of a felony or misdemeanor other than a traffic violation in this State."

(g) The denial of a petition for a Certificate of Relief shall state the reasons for the denial, and the petitioner may file a subsequent petition 12 months from the denial and shall demonstrate that the petitioner has remedied the defects in the previous petition and has complied with any conditions for reapplication set by the court pursuant to G.S. 15A-173.4(a) in order to have the petition granted.

(h) A petitioner who files a petition under this section shall pay a one-time fee of fifty dollars (\$50.00) to the clerk of superior court at the time of filing. Fees collected under this subsection shall be deposited in the General Fund. This subsection shall not apply to a petition filed

by an indigent. The fee shall be waived by the clerk of superior court on a showing by the petitioner that the one-time fee was previously paid, even if in another county.

(i) Any person who is granted a Certificate of Relief under this Article shall notify any employer, landlord, or other party who has relied on the Certificate of Relief of any conviction, modification, or revocation subsequent to the Certificate of Relief within 10 days of the conviction, modification, or revocation. (2011-265, s. 1; 2018-79, s. 1; 2018-145, s. 19; 2019-91, s. 1.)

§ 15A-173.3. Collateral sanctions not subject to order of limited relief or Certificate of Relief.

A Certificate of Relief shall not be issued to relieve any of the following collateral sanctions:

- (1) Requirements imposed by, and any statutory requirements or prohibitions imposed as a result of registration pursuant to, Article 27A of Chapter 14 of the General Statutes.
- (2) Prohibitions on possession of firearms imposed by Articles 54A and 54B of Chapter 14 of the General Statutes.
- (3) A motor vehicle license suspension, revocation, limitation, or ineligibility imposed pursuant to Chapter 20 of the General Statutes.
- (4) Ineligibility for certification pursuant to Article 1 of Chapter 17C or 17E of the General Statutes.
- (5) Ineligibility for employment as any of the following if the ineligibility is a sanction imposed by a statute or session law of North Carolina.
 - a. A corrections or probation officer.
 - b. A prosecutor or investigator in either the Department of Justice or in the office of a district attorney. For purposes of this subdivision, the term district attorney shall include any district attorney authorized pursuant to G.S. 7A-60. (2011-265, s. 1; 2018-5, s. 17.1(a).)

§ 15A-173.4. Issuance, modification, and revocation of Certificate of Relief by the court.

(a) When a petition is filed under G.S. 15A-173.2, including a petition for enlargement of an existing Certificate of Relief, the court shall notify the district attorney at least three weeks before the hearing on the matter. The court may issue a Certificate of Relief subject to restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking a Certificate of Relief, the court may impose conditions for reapplication.

(b) The court shall revoke a Certificate of Relief it issued if it finds by a preponderance of the evidence that the individual has a subsequent conviction for an offense in another jurisdiction that is deemed a felony or misdemeanor other than a traffic violation in this State. The court may modify or revoke a Certificate of Relief it issued if it finds by a preponderance of the evidence that the petitioner made a material misrepresentation in the petition for Certificate of Relief. A motion for modification or revocation of a Certificate of Relief may be initiated by the court on its own motion, or upon motion of the district attorney or the individual for whom the Certificate of Relief has been issued. The individual for whom the Certificate of Relief has been issued, and the district attorney, shall be given notice of the motion at least three weeks before any hearing on the matter.

(c) The district attorney shall have the right to appear and be heard at any proceeding relating to the issuance, modification, or revocation of the Certificate of Relief.

(d) The court is authorized to call upon a probation officer for any additional investigation or verification of the individual's conduct it reasonably believes necessary to its decision to issue,

modify, or revoke a Certificate of Relief. If there are material disputed issues of fact or law, the individual and the district attorney may submit evidence and be heard on those issues.

(e) The issuance, modification, and revocation of Certificates of Relief shall be a public record. (2011-265, s. 1; 2018-79, s. 2.)

§ 15A-173.5. Reliance on order or Certificate of Relief as evidence of due care.

In a judicial or administrative proceeding alleging negligence, a Certificate of Relief is a bar to any action alleging lack of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the Certificate of Relief was issued, if the person against whom the judicial or administrative proceeding is brought relied on the Certificate of Relief at the time of the alleged negligence. (2011-265, s. 1; 2018-79, s. 3.)

§ 15A-173.6. Victim's rights.

The victim of the underlying offense for which a Certificate of Relief is sought may appear and be heard, or may file a statement for consideration by the court, in a proceeding for issuance, modification, or revocation of the Certificate of Relief. Notification to the victim shall be made through the Victim Witness Coordinator in the office of the district attorney. (2011-265, s. 1.)

§ 15A-174: Reserved for future codification purposes.

§ 15A-175: Reserved for future codification purposes.

§ 15A-176: Reserved for future codification purposes.

§ 15A-177: Reserved for future codification purposes.

§ 15A-178: Reserved for future codification purposes.

§ 15A-179: Reserved for future codification purposes.

§ 15A-180: Reserved for future codification purposes.

§ 15A-181: Reserved for future codification purposes.

§ 15A-182: Reserved for future codification purposes.

§ 15A-183: Reserved for future codification purposes.

§ 15A-184: Reserved for future codification purposes.

§ 15A-185: Reserved for future codification purposes.

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§ 15A-190: Reserved for future codification purposes.

§ 15A-191: Reserved for future codification purposes.

§ 15A-192: Reserved for future codification purposes.

§ 15A-193: Reserved for future codification purposes.

§ 15A-194: Reserved for future codification purposes.

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§ 15A-196: Reserved for future codification purposes.

§ 15A-197: Reserved for future codification purposes.

§ 15A-198: Reserved for future codification purposes.

§ 15A-199: Reserved for future codification purposes.

§ 15A-200: Reserved for future codification purposes.

SUBCHAPTER II. LAW-ENFORCEMENT AND INVESTIGATIVE PROCEDURES.

Article 7.

§§ 15A-201 through 15A-210. Reserved for future codification purposes.

Article 8.

Electronic Recording of Interrogations.

§ 15A-211. Electronic recording of interrogations.

(a) Purpose. – The purpose of this Article is to require the creation of an electronic record of an entire custodial interrogation in order to eliminate disputes about interrogations, thereby improving prosecution of the guilty while affording protection to the innocent and increasing court efficiency and confidence.

(b) Application. – The provisions of this Article shall apply to all custodial interrogations of juveniles in criminal investigations conducted at any place of detention. The provisions of this Article shall also apply to any custodial interrogation of any person in a felony criminal investigation conducted at any place of detention.

(c) Definitions. – The following definitions apply in this Article:

- (1) Electronic recording. – An audio recording that is an authentic, accurate, unaltered record; or a visual recording that is an authentic, accurate, unaltered

record. A visual and audio recording shall be simultaneously produced whenever reasonably feasible, provided that a defendant may not raise this as grounds for suppression of evidence.

(2) In its entirety. – An uninterrupted record that begins at the start of the custodial interrogation, including a law enforcement officer's advice to the person in custody of that person's constitutional rights, and ends when the custodial interrogation has completely finished. If the record is a visual recording of a custodial interrogation, the camera recording the custodial interrogation must be placed so that the camera films both the interrogator and the suspect. Brief periods of recess, upon request by the person in custody or the law enforcement officer, do not constitute an "interruption" of the record. The record will reflect all starting and ending times and dates, including the starting time and date of the recess and the resumption of the interrogation.

(3) Place of detention. – A jail, police or sheriff's station, correctional or detention facility, holding facility for prisoners, or other facility where persons are held in custody in connection with criminal charges.

(d) Electronic Recording of Interrogations Required. – Any law enforcement officer conducting a custodial interrogation, in a place of detention, of (i) a juvenile involved in a criminal investigation or (ii) any person involved in a felony criminal investigation shall make an electronic recording of the custodial interrogation in its entirety.

(e) Admissibility of Electronic Recordings. – During the prosecution of any offense to which this Article applies, an oral, written, nonverbal, or sign language statement of a defendant made in the course of a custodial interrogation may be presented as evidence against the defendant if an electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible. If the court finds that the defendant was subjected to a custodial interrogation that was not electronically recorded in its entirety, any statements made by the defendant after that non-electronically recorded custodial interrogation, even if made during an interrogation that is otherwise in compliance with this section, may be questioned with regard to the voluntariness and reliability of the statement. The State may establish through clear and convincing evidence that the statement was both voluntary and reliable and that law enforcement officers had good cause for failing to electronically record the interrogation in its entirety. Good cause shall include, but not be limited to, the following:

(1) The accused refused to have the interrogation electronically recorded, and the refusal itself was electronically recorded.

(2) The failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure, and obtaining replacement equipment was not feasible.

(e1) Recordings of nondefendant custodial interrogations under this Article shall be provided to the juvenile or criminal defendant as part of discovery requirements under Chapters 7B and 15A of the General Statutes.

(f) Remedies for Compliance or Noncompliance. – All of the following remedies shall be granted as relief for compliance or noncompliance with the requirements of this section:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress a statement of the defendant made during or after a custodial interrogation.

SBI and State Crime Laboratory Access to View and Analyze Recordings.

§ 15A-220. SBI and State Crime Laboratory access to view and analyze recordings.

Any State or local law enforcement agency that uses the services of the State Bureau of Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory. (2016-88, s. 2(d).)

Article 9.

Search and Seizure by Consent.

§ 15A-221. General authorization; definition of "consent".

(a) Authority to Search and Seize Pursuant to Consent. – Subject to the limitations in the other provisions of this Article, a law-enforcement officer may conduct a search and make seizures, without a search warrant or other authorization, if consent to the search is given.

(b) Definition of "Consent". – As used in this Article, "consent" means a statement to the officer, made voluntarily and in accordance with the requirements of G.S. 15A-222, giving the officer permission to make a search. (1973, c. 1286, s. 1.)

§ 15A-222. Person from whom effective consent may be obtained.

The consent needed to justify a search and seizure under G.S. 15A-221 must be given:

- (1) By the person to be searched;
- (2) By the registered owner of a vehicle to be searched or by the person in apparent control of its operation and contents at the time the consent is given;
- (3) By a person who by ownership or otherwise is reasonably apparently entitled to give or withhold consent to a search of premises. (1973, c. 1286, s. 1.)

§ 15A-223. Permissible scope of consent search and seizure.

(a) Search Limited by Scope of Consent. – A search conducted pursuant to the provisions of this Article may not exceed, in duration or physical scope, the limits of the consent given.

(b) Items Seizable as Result of Consent Search. – The things subject to seizure in the course of a search pursuant to this Article are the same as those specified in G.S. 15A-242. Upon completion of the search, the officer must make a list of the things seized, and must deliver a receipt embodying the list to the person who consented to the search and, if known, to the owner of the vehicle or premises searched. (1973, c. 1286, s. 1.)

§§ 15A-224 through 15A-230. Reserved for future codification purposes.

Article 10.

Other Searches and Seizures.

§ 15A-231. Other searches and seizures.

Constitutionally permissible searches and seizures which are not regulated by the General Statutes of North Carolina are not prohibited. (1973, c. 1286, s. 1.)

§§ 15A-232 through 15A-240. Reserved for future codification purposes.

- (4) A request that the court issue a search warrant directing a search for and the seizure of the items in question. (1973, c. 1286, s. 1.)

§ 15A-245. Basis for issuance of a search warrant; duty of the issuing official.

(a) Before acting on the application, the issuing official may examine on oath the applicant or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the issuing official in determining whether probable cause exists for the issuance of the warrant unless the information is either recorded or contemporaneously summarized in the record or on the face of the warrant by the issuing official. The information must be shown by one or both of the following:

- (1) Affidavit.
- (2) Oral testimony under oath or affirmation before the issuing official.
- (3) Repealed by Session Laws 2021-47, s. 10(c), effective June 18, 2021, and applicable to proceedings occurring on or after that date.

(b) If the issuing official finds that the application meets the requirements of this Article and finds there is probable cause to believe that the search will discover items specified in the application which are subject to seizure under G.S. 15A-242, he must issue a search warrant in accordance with the requirements of this Article. The issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. If he does not so find, the official must deny the application. (1973, c. 1286, s. 1; 2005-334, s. 1; 2021-47, s. 10(c).)

§ 15A-246. Form and content of the search warrant.

A search warrant must contain:

- (1) The name and signature of the issuing official with the time and date of issuance above his signature; and
- (2) The name of a specific officer or the classification of officers to whom the warrant is addressed; and
- (3) The names of the applicant and of all persons whose affidavits or testimony were given in support of the application; and
- (4) A designation sufficient to establish with reasonable certainty the premises, vehicles, or persons to be searched; and
- (5) A description or a designation of the items constituting the object of the search and authorized to be seized. (1868-9, c. 178, subch. 3, s. 39; Code, s. 1172; Rev., s. 3164; C.S., s. 4530; 1961, c. 1069; 1969, c. 869, s. 8; 1973, c. 1286, s. 1.)

§ 15A-247. Who may execute a search warrant.

A search warrant may be executed by any law-enforcement officer acting within his territorial jurisdiction, whose investigative authority encompasses the crime or crimes involved. (1868-9, c. 178, subch. 3, s. 38; Code, s. 1171; Rev., s. 3163; C.S., s. 4529; 1941, c. 53; 1949, c. 1179; 1955, c. 7; 1965, c. 377; 1969, c. 869, s. 8; 1973, c. 1286, s. 1.)

§ 15A-248. Time of execution of a search warrant.

A search warrant must be executed within 48 hours from the time of issuance. Any warrant not executed within that time limit is void and must be marked "not executed" and returned without unnecessary delay to the clerk of the issuing court. (1973, c. 1286, s. 1.)

billing, or recording as an incident to billing, for communication services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business, nor shall the term include any device which allows the listening or recording of communications transmitted on the telephone line to which the device is attached.

- (3) "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted. (1987 (Reg. Sess., 1988), c. 1104, s. 1.)

§ 15A-261. Prohibition and exceptions.

(a) In General. – Except as provided in subsection (b) of this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order as provided in this Article.

(b) Exception. – The prohibition of subsection (a) of this section does not apply to the use of a pen register or a trap and trace device by a provider of wire or electronic communication service:

- (1) Relating to the operation, maintenance, or testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; or
- (2) To record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or
- (3) With the consent of the user of that service.

(c) Penalty. – A person who willfully and knowingly violates subsection (a) of this section is guilty of a Class 1 misdemeanor. (1987 (Reg. Sess., 1988), c. 1104, s. 1; 1993, c. 539, s. 297; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 15A-262. Application for order for pen register or trap and trace device.

(a) Application. – A law enforcement officer may make an application for an order or an extension of an order under G.S. 15A-263 authorizing or approving the installation and use of a pen register or a trap and trace device, in writing under oath or affirmation, to a superior court judge.

(b) Contents of application. – An application under subsection (a) of this section shall include:

- (1) The identity of the law enforcement officer making the application and the identity of the law enforcement agency conducting the investigation; and
- (2) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency. (1987 (Reg. Sess., 1988), c. 1104, s. 1.)

§ 15A-263. Issuance of order for pen register or trap and trace device.

(a) In General. – Following application made under G.S. 15A-262, a superior court judge may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the State if the judge finds:

- (1) That there is reasonable suspicion to believe that a felony offense, or a Class A1 or Class 1 misdemeanor offense has been committed;
 - (2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense, if that person is known and can be named or described; and
 - (3) That the results of procedures involving pen registers or trap and trace devices will be of material aid in determining whether the person named in the affidavit committed the offense.
- (b) Contents of Order. – An order issued under this section:
- (1) Shall specify:
 - a. The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;
 - b. The identity, if known, of the person who is the subject of the criminal investigation;
 - c. The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and
 - d. The offense to which the information likely to be obtained by the pen register or trap and trace device relates; and
 - (2) Shall direct, upon request of the applicant, the furnishing of information, facilities, or technical assistance necessary to accomplish the installation of the pen register or trap and trace device under G.S. 15A-264.
- (c) Time Period and Extension.
- (1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.
 - (2) An extension of an order issued under this section may be granted, but only upon an application for an order under G.S. 15A-262 and upon the judicial finding required by subsection (a) of this section. The period of extension shall not exceed 60 days.
- (d) Nondisclosure of Existence of Pen Register or a Trap and Trace Device. – An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:
- (1) The order be sealed until otherwise ordered by the judge; and
 - (2) The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the judge to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any person, unless otherwise ordered by the judge.

The provisions of G.S. 15A-903 and 15A-904 shall apply to this Article. (1987 (Reg. Sess., 1988), c. 1104, s. 1; 1997-80, s. 13.)

§ 15A-264. Assistance in installation and use of a pen register or a trap and trace device.

(a) Pen Registers. – Upon the request of a law enforcement officer authorized to install and use a pen register under this Article, a provider of wire or electronic communication service, a landlord, a custodian, or other person shall furnish the officer promptly with all information, facilities, or technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the communication services, if the assistance is directed by a court order as provided in G.S. 15A-263(b)(2).

(b) Trap and Trace Devices. – Upon the request of a law enforcement officer authorized to receive the results of a trap and trace device under this Article, a provider of a wire or electronic communication service, a landlord, a custodian, or other person shall install the device immediately on the appropriate line and shall furnish the officer all additional information, facilities, or technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the communication services, if the installation and assistance are directed by court order as provided in G.S. 15A-263(b)(2). Unless otherwise ordered by the judge, the results of the trap and trace device shall be furnished to the law enforcement officer designated in the court order at reasonable intervals during regular business hours for the duration of the order.

(c) Compensation. – A provider of a wire or electronic communication service, a landlord, a custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be compensated for the reasonable expenses incurred in providing the facilities and assistance.

(d) No Cause of Action Against a Provider Giving Information or Assistance Under this Article. – No cause of action shall be allowed in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this Article.

(e) Defense. – A good faith reliance on a court order or a statutory authorization is a complete defense against any civil or criminal action brought under this Article or any other law. (1987 (Reg. Sess., 1988), c. 1104, s. 1.)

§ 15A-265. Reserved for future codification purposes.

Article 13.

DNA Database and Databank.

§ 15A-266. Short title.

This Article may be cited as the DNA Database and Databank Act of 1993. (1993, c. 401, s. 1.)

§ 15A-266.1. Policy.

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of felonies or violent crimes against the person. Identification, detection, and exclusion are facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters. (1993, c. 401, s. 1; 2003-376, s. 1; 2009-203, s. 1.)

§ 15A-266.2. Definitions.

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "Arrestee" means any person arrested for an offense in G.S. 15A-266.3A(f) or (g).
- (1a) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by federal, State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index System (NDIS) administered and operated by the Federal Bureau of Investigation.
- (1b) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity or mental disease or defect.
- (1c) "Crime Laboratory" [means] the North Carolina State Crime Laboratory of the Department of Justice.
- (1d) "Criminal Justice Agency" means an agency or institution of a federal, State, or local government, other than the office of the public defender, that performs as part of its principal function, activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders.
- (1e) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution.
- (2) "DNA" means deoxyribonucleic acid. DNA is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.
- (3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA analysis. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.
- (4) "DNA Sample" means blood, cheek swabs, or any biological sample containing cells provided by any person with respect to offenses covered by this Article or submitted to the State Crime Laboratory pursuant to this Article for analysis pursuant to a criminal investigation or storage or both.
- (5) "FBI" means the Federal Bureau of Investigation.
- (5a) "NDIS" means the National DNA Index System that is the national DNA database system of DNA records that meet federal quality assurance and privacy standards.
- (6) Repealed by Session Laws 2013-360, s. 17.6(i), effective July 1, 2013.
- (7) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article.
- (8) "State DNA Database" means the Crime Laboratory's DNA identification record system to support law enforcement. It is administered by the Crime

Laboratory and provides DNA records to the FBI for storage and maintenance in CODIS. The Crime Laboratory's DNA Database system is the collective capability provided by computer software and procedures administered by the Crime Laboratory to store and maintain DNA records related to: forensic casework; convicted offenders and arrestees required to provide a DNA sample under this Article; persons required to register as sex offenders under G.S. 14-208.7; unidentified persons or body parts; missing persons; relatives of missing persons; and anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database for use by criminal justice agencies. (1993, c. 401, s. 1; 2009-203, s. 2; 2010-94, s. 2; 2011-19, s. 5; 2013-360, s. 17.6(i); 2014-100, s. 17.1(cc).)

§ 15A-266.3. Establishment of State DNA database and databank.

There is established under the administration of the Crime Laboratory, the State DNA Database and State DNA Databank. The Crime Laboratory shall provide DNA records to the FBI for the searching of DNA records nationwide and storage and maintenance by CODIS. The State DNA Databank shall serve as the repository for DNA samples obtained pursuant to this Article. The State DNA Database shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory and computer equipment, supplies and computer platform and software. The State DNA Database shall have the capability provided by computer software and procedures administered by the Crime Laboratory to store and maintain DNA records related to all of the following:

- (1) Crime scene evidence and forensic casework.
- (2) Arrestees, offenders, and persons found not guilty by reason of insanity, who are required to provide a DNA sample under this Article.
- (3) Persons required to register as sex offenders under G.S. 14-208.7.
- (4) Unidentified persons or body parts.
- (5) Missing persons.
- (6) Relatives of missing persons.
- (7) Anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database, for use by criminal justice agencies. (1993, c. 401, s. 1; 2010-94, s. 3; 2013-360, s. 17.6(f).)

§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that record and sample has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (f) or (g) of this section.

(b) The arresting law enforcement officer shall obtain, or cause to be obtained, a DNA sample from an arrested person at the time of arrest, or when fingerprinted. However, if the person is arrested without a warrant, then the DNA sample shall not be taken until a probable cause determination has been made pursuant to G.S. 15A-511(c)(1). The DNA sample shall be by cheek swab unless a court order authorizes that a DNA blood sample be obtained. If a DNA blood sample

is taken, it shall comply with the requirements of G.S. 15A-266.6(b). The arresting law enforcement officer shall forward, or cause to be forwarded, the DNA sample to the appropriate laboratory for DNA analysis and testing.

(c) At the time a DNA sample is taken pursuant to this section, the person obtaining the DNA sample shall record, on a form promulgated by the Crime Laboratory, the date and time the sample was taken, the name of the person taking the DNA sample, the name and address of the person from whom the sample was taken, and the offense or offenses for which the person was arrested. This record shall be maintained in the case file and shall be available to the prosecuting district attorney for the purpose of completing the requirements of subsection (j) of this section.

(d) After taking a DNA sample from an arrested person required to provide a DNA sample pursuant to this section, the person taking the DNA sample shall provide the arrested person with a written notice of the procedures for seeking an expunction of the DNA sample pursuant to subsections (h), (i), (j), (k), and (l) of this section. The Department of Justice shall provide the written notice required by this subsection.

(e) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the Crime Laboratory in the State DNA Databank pursuant to this Article.

(f) This section applies to a person arrested for violating any one of the following offenses in Chapter 14 of the General Statutes:

- (1) G.S. 14-16.6(b), Assault with a deadly weapon on executive, legislative, or court officer; and G.S. 14-16.6(c), Assault inflicting serious bodily injury on executive, legislative, or court officer.
- (1a) G.S. 14-17, First and Second Degree Murder.
- (2) G.S. 14-18, Manslaughter.
- (2a) Any felony offense in Article 6A, Unborn Victims.
- (3) Any offense in Article 7B, Rape and Other Sex Offenses.
- (4) G.S. 14-28, Malicious castration; G.S. 14-29, Castration or other maiming without malice aforethought; G.S. 14-30, Malicious maiming; G.S. 14-30.1, Malicious throwing of corrosive acid or alkali; G.S. 14-31, Maliciously assaulting in a secret manner; G.S. 14-32, Felonious assault with deadly weapon with intent to kill or inflicting serious injury; G.S. 14-32.1(e), Aggravated assault or assault and battery on an individual with a disability; G.S. 14-32.2(a) when punishable pursuant to G.S. 14-32.2(b)(1), Patient abuse and neglect, intentional conduct proximately causes death; G.S. 14-32.3(a), Domestic abuse of disabled or elder adults resulting in injury; G.S. 14-32.4, Assault inflicting serious bodily injury or injury by strangulation; G.S. 14-33.2, Habitual misdemeanor assault; G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers; G.S. 14-34.4, Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death; intent to extort; G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician; G.S. 14-34.7, Assault inflicting serious injury on a law

enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.9, Discharging a firearm from within an enclosure; and G.S. 14-34.10, Discharge firearm within enclosure to incite fear.

- (5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.
- (5a) Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.
- (6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of dwelling house burglary; G.S. 14-54(a1), Breaking or entering buildings with intent to terrorize or injure; G.S. 14-54.1, Breaking or entering a place of religious worship; and G.S. 14-57, Burglary with explosives.
- (7) Any offense in Article 15, Arson.
- (8) G.S. 14-87, Armed robbery; Common law robbery punishable pursuant to G.S. 14-87.1; and G.S. 14-88, Train robbery.
- (8a) G.S. 14-163.1(a1), Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal willfully killing the animal.
- (9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.
- (10) G.S. 14-196.3, Cyberstalking.
- (10a) G.S. 14-202, Secretly peeping into room occupied by another person.
- (10b) G.S. 14-258.2, Possession of dangerous weapon in prison resulting in bodily injury or escape; G.S. 14-258.3, Taking of hostage, etc., by prisoner; and G.S. 14-258.4, Malicious conduct by prisoner.
- (11) G.S. 14-277.3A, Stalking.
- (12) G.S. 14-288.9, Assault on emergency personnel with a dangerous weapon or substance.
- (13) G.S. 14-288.21, Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; and G.S. 14-288.22, Unlawful use of a nuclear, biological, or chemical weapon of mass destruction.
- (14) G.S. 14-318.4(a), Child abuse inflicting serious injury and G.S. 14-318.4(a3), Child abuse inflicting serious bodily injury.
- (15) G.S. 14-360(a1), Cruelty to animals; maliciously kill by intentional deprivation of necessary sustenance; and G.S. 14-360(b), Cruelty to animals; maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill.
- (16) G.S. 14-401.22(e), Attempt to conceal evidence of non-natural death by dismembering or destroying remains.

(g) This section also applies to a person arrested for attempting, solicitation of another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the violations included in subsection (f) of this section.

(h) The Crime Laboratory shall remove a person's DNA record, and destroy any DNA biological samples that may have been retained, from the State DNA Database and DNA Databank if both of the following are determined pursuant to subsection (i) of this section:

- (a) The tests to be performed on each DNA sample are:
 - (1) To analyze and type only the genetic markers that are used for identification purposes contained in or derived from the DNA.
 - (2) For law enforcement identification purposes.
 - (3) For research and administrative purposes, including:
 - a. Development of a population database when personal identifying information is removed.
 - b. To support identification research and protocol development of forensic DNA analysis methods.
 - c. For quality control purposes.
 - d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the Crime Laboratory in the State DNA Database. The DNA sample itself will be stored and maintained by the Crime Laboratory in the State DNA Databank.

(c) The Crime Laboratory shall report annually to the Joint Legislative Oversight Committee on Justice and Public Safety, on or before September 1, with information for the previous fiscal year, which shall include: a summary of the operations and expenditures relating to the DNA Database and DNA Databank; the number of DNA records from arrestees entered; the number of DNA records from arrestees that have been expunged; and the number of DNA arrestee matches or hits that occurred with an unknown sample, and how many of those have led to an arrest and conviction; and how many letters notifying defendants that a record and sample have been expunged, along with the number of days it took to complete the expunction and notification process, from the date of the receipt of the verification form from the State.

(d) The Department of Justice, in consultation with the Administrative Office of the Courts and the Conference of District Attorneys, shall study, develop, and recommend an automated procedure to facilitate the process of expunging DNA samples and records taken pursuant to G.S. 15A-266.3A, and shall report to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Justice and Public Safety, and the Courts Commission, on or before February 1, 2011. (1993, c. 401, s. 1; 2010-94, s. 6; 2011-291, s. 2.3; 2013-360, s. 17.6(f); 2015-241, s. 17.2.)

§ 15A-266.5A. Statewide sexual assault examination kit testing protocol.

(a) Legislative Intent. – The General Assembly finds that deoxyribonucleic acid (DNA) evidence is a powerful law enforcement tool that can identify unknown suspects, create case linkages, connect crimes to known perpetrators, and exonerate the innocent. Timely testing is vital to solve cases, punish offenders, bring justice to victims, and prevent future crimes. It is the intent of the General Assembly that every sexual assault examination kit reported to law enforcement in this State be tested and to eliminate the inventory of untested sexual assault examination kits located statewide. The purpose of this section is to address the manner in which sexual assault examination kits are processed and the protocol for testing the statewide inventory of untested sexual assault examination kits identified pursuant to the findings of the statewide audit completed pursuant to Section 17.7 of S.L. 2017-57.

(b) Definitions. – The following definitions apply in this section:

- (1) CODIS – As defined in G.S. 15A-266.2.

5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The defendant shall continue to be subject to the court's order to provide a DNA sample until such time as his or her DNA sample is analyzed and a record is successfully entered into the State DNA Database.

(b) If, for any reason, the defendant provides a DNA blood sample instead of a cheek swab, only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with phlebotomy training shall draw the DNA blood sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in obtaining a DNA sample by any method.

(c) The Crime Laboratory shall provide the materials, supplies, and postage prepaid envelopes necessary to obtain a DNA sample from a person required to provide a DNA sample pursuant to this Article and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. Any DNA sample obtained pursuant to this Article, other than a DNA sample obtained from a person who is incarcerated, shall be taken using the materials and supplies provided by the Crime Laboratory. (1993, c. 401, s. 1; 2003-376, s. 3; 2010-94, s. 7; 2013-360, s. 17.6(f).)

§ 15A-266.7. Procedures for conducting DNA analysis of DNA sample.

(a) The Crime Laboratory shall:

- (1) Adopt procedures to be used in the collection, security, submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet audit standards for laboratories which submit DNA records to the State DNA Database.
- (2) Adopt Quality Assurance Guidelines for DNA Testing Laboratories and DNA Databasing Laboratories that meet or exceed the quality assurance guidelines established for such laboratories by the CODIS unit of the Federal Bureau of Investigation.
- (3) Notify the office of the district attorney for all CODIS matches.

(b) DNA samples shall be securely stored in the State DNA Databank. The typing results shall be securely stored in the State DNA Database.

(c) Records of testing shall be retained on file at the Crime Laboratory. (1993, c. 401, s. 1; 2010-94, s. 8; 2013-360, s. 17.6(f); 2023-74, s. 3(a).)

§ 15A-266.8. DNA database exchange.

(a) It shall be the duty of the Crime Laboratory to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the Crime Laboratory, classify, and file the DNA record of identification characteristic profiles of DNA samples submitted pursuant to this Article and to make such information available as provided in this section. The Crime Laboratory may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the Crime Laboratory. The results of the DNA profile of individuals in the State Database shall be made available to local, State, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in

convicted of a felony who is currently incarcerated in connection with the case, the defendant's counsel of record for that case, and the Office of Indigent Defense Services. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the custodial agency. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

- (3) The written notification from the district attorney specified the following:
 - a. That the custodial agency would destroy the evidence collected in connection with the case unless the custodial agency received a written request that the evidence not be destroyed.
 - b. The address of the custodial agency where the written request was to be sent.
 - c. That the written request from the defendant, or his or her representative, must be received by the custodial agency within 90 days of the date of receipt by the defendant of the district attorney's written notification.
 - d. That the written request must ask that the evidence not be destroyed or disposed of for one of the following reasons:
 - 1. The case is currently on appeal.
 - 2. The case is currently in postconviction proceedings.
 - 3. The defendant will file a motion for DNA testing pursuant to G.S. 15A-269 within 180 days of the postmark of the defendant's response to the district attorney's written notification of the custodial agency's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the custodial agency.
 - 4. The case has been referred to the North Carolina Innocence Inquiry Commission pursuant to Article 92 of Chapter 15A of the General Statutes.
- (4) The custodial agency did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the custodial agency that intends to dispose of the sample of evidence. The custodial agency may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

§ 15A-281. Nontestimonial identification order at request of defendant.

A person arrested for or charged with a felony offense, or a Class A1 or Class 1 misdemeanor offense may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge to whom the request was directed must order the State to conduct the identification procedures. (1973, c. 1286, s. 1; 1997-80, s. 15.)

§ 15A-282. Copy of results to person involved.

A person who has been the subject of nontestimonial identification procedures or his attorney must be provided with a copy of any reports of test results as soon as the reports are available. (1973, c. 1286, s. 1.)

§§ 15A-283 through 15A-284.49 Reserved for future codification purposes.

Article 14A.

Eyewitness Identification Reform Act.

§ 15A-284.50. Short title.

This Article shall be called the "Eyewitness Identification Reform Act." (2007-421, s. 1.)

§ 15A-284.51. Purpose.

The purpose of this Article is to help solve crime, convict the guilty, and exonerate the innocent in criminal proceedings by improving procedures for eyewitness identification of suspects. (2007-421, s. 1.)

§ 15A-284.52. Eyewitness identification reform.

(a) Definitions. – The following definitions apply in this Article:

- (1) Eyewitness. – A person, including a law enforcement officer, whose identification by sight of another person may be relevant in a criminal proceeding.
- (2) Filler. – A person or a photograph of a person who is not suspected of an offense and is included in a lineup.
- (3) Independent administrator. – A lineup administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspect.
- (4) Lineup. – A photo lineup or live lineup.
- (5) Lineup administrator. – The person who conducts a lineup.
- (6) Live lineup. – A procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.
- (7) Photo lineup. – A procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.
- (8) Show-up. – A procedure in which an eyewitness is presented with a single live suspect for the purpose of determining whether the eyewitness is able to identify the perpetrator of a crime.

(b) Eyewitness Identification Procedures. – Lineups conducted by State, county, and other local law enforcement officers shall meet all of the following requirements:

- (1) A lineup shall be conducted by an independent administrator or by an alternative method as provided by subsection (c) of this section.
- (2) Individuals or photos shall be presented to witnesses sequentially, with each individual or photo presented to the witness separately, in a previously determined order, and removed after it is viewed before the next individual or photo is presented.
- (3) Before a lineup, the eyewitness shall be instructed that:
 - a. The perpetrator might or might not be presented in the lineup,
 - b. The lineup administrator does not know the suspect's identity,
 - c. The eyewitness should not feel compelled to make an identification,
 - d. It is as important to exclude innocent persons as it is to identify the perpetrator, and
 - e. The investigation will continue whether or not an identification is made. The eyewitness shall acknowledge the receipt of the instructions in writing. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the acknowledgement.
- (4) In a photo lineup, the photograph of the suspect shall be contemporary and, to the extent practicable, shall resemble the suspect's appearance at the time of the offense.
- (5) The lineup shall be composed so that the fillers generally resemble the eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand out from the fillers. In addition:
 - a. All fillers selected shall resemble, as much as practicable, the eyewitness's description of the perpetrator in significant features, including any unique or unusual features.
 - b. At least five fillers shall be included in a photo lineup, in addition to the suspect.
 - c. At least five fillers shall be included in a live lineup, in addition to the suspect.
 - d. If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates shall be different from the fillers used in any prior lineups.
- (6) If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup or photo array for each eyewitness.
- (7) In a lineup, no writings or information concerning any previous arrest, indictment, or conviction of the suspect shall be visible or made known to the eyewitness.
- (8) In a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.
- (9) In a live lineup, all lineup participants must be out of view of the eyewitness prior to the lineup.

(d) Remedies. – All of the following shall be available as consequences of compliance or noncompliance with the requirements of this section:

- (1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress eyewitness identification.
- (2) Failure to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.
- (3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications.

(e) Nothing in this section shall be construed to require a law enforcement officer while acting in his or her official capacity to be required to participate in a show-up as an eyewitness. (2007-421, s. 1; 2015-212, s. 1; 2019-47, s. 2.)

§ 15A-284.53. Training of law enforcement officers.

Pursuant to its authority under G.S. 17C-6 and G.S. 17E-4, the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission, in consultation with the Department of Justice, shall create educational materials and conduct training programs on how to conduct lineups and show-ups in compliance with this Article. (2007-421, s. 1; 2015-212, s. 2.)

Article 15.

Urgent Necessity.

§ 15A-285. Non-law-enforcement actions when urgently necessary.

When an officer reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe, the officer may take one or more of the following actions:

- (1) Enter buildings, vehicles, and other premises.
- (2) Limit or restrict the presence of persons in premises or areas.
- (3) Exercise control over the property of others.

An action taken to enforce the law or to seize a person or evidence cannot be justified by authority of this section. (1973, c. 1286, s. 1.)

Article 16.

Electronic Surveillance.

§ 15A-286. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) "Aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.
- (2) "Attorney General" means the Attorney General of the State of North Carolina, unless otherwise specified.

- (3) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.
- (4) "Chapter 119 of the United States Code" means Chapter 119 of Part I of Title 18, United States Code, being Public Law 90-351, the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Electronic Communications Privacy Act of 1986.
- (5) "Communications common carrier" shall have the same meaning which is given the term "common carrier" by section 153(h) of Title 47 of the United States Code.
- (6) "Contents" when used with respect to any wire, oral, or electronic communication means and includes any information concerning the substance, purport, or meaning of that communication.
- (7) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than:
 - a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof:
 - 1. Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
 - 2. Being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of the officer's duties.
 - b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.
- (8) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce but does not include:
 - a. Any wire or oral communication;
 - b. Any communication made through a tone-only paging device; or
 - c. Any communication from a tracking device (as defined in section 3117 of Title 18 of the United States Code).
- (9) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.
- (10) "Electronic communication system" means any wire, radio, electronic, magnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the storage of such communications.
- (11) "Electronic surveillance" means the interception of wire, oral, or electronic communications as provided by this Article.
- (12) "Electronic storage" means:

- a. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
 - b. Any storage of such communication by an electronic communication service for the purposes of backup protection of the communication.
- (13) "Intercept" means the aural or other acquisition of the contents of any wire, oral, or electronic communication through the use of any electronic, mechanical, or other device.
- (14) "Investigative or law enforcement officer" means any officer of the State of North Carolina or any political subdivision thereof, who is empowered by the laws of this State to conduct investigations of or to make arrests for offenses enumerated in G.S. 15A-290, and any attorney authorized by the laws of this State to prosecute or participate in the prosecution of those offenses, including the Attorney General of North Carolina.
- (15) "Judge" means any judge of the trial divisions of the General Court of Justice.
- (16) "Judicial review panel" means a three-judge body, composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North Carolina, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice.
- (17) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but the term does not include any electronic communication.
- (18) "Person" means any employee or agent of the United States or any state or any political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.
- (19) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not:
 - a. Scrambled or encrypted;
 - b. Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;
 - c. Carried on a subcarrier or other signal subsidiary to a radio transmission;
 - d. Transmitted over a communications system provided by a common carrier, unless the communication is a tone-only paging system communication; or
 - e. Transmitted on frequencies allocated under Part 25, Subpart D, E, or F or Part 94 of the Rules of the Federal Communications Commission as provided by 18 U.S.C. § 2510(16)(E).
- (20) "User" means any person or entity who:
 - a. Uses an electronic communications service; and
 - b. Is duly authorized by the provider of the service to engage in the use.
- (21) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point

necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, provided that a provider of wire or electronic communication service may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(d) It is not unlawful under this Article for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(e) Any person who, as a result of the person's official position or employment, has obtained knowledge of the contents of any wire, oral, or electronic communication lawfully intercepted pursuant to an electronic surveillance order or of the pendency or existence of or implementation of an electronic surveillance order who shall knowingly and willfully disclose such information for the purpose of hindering or thwarting any investigation or prosecution relating to the subject matter of the electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as shall be required or allowed by law, shall be guilty of a Class G felony.

(f) Any person who shall, knowingly or with gross negligence, divulge the existence of or contents of any electronic surveillance order in a way likely to hinder or thwart any investigation or prosecution relating to the subject matter of the electronic surveillance order or anyone who shall, knowingly or with gross negligence, release the contents of any wire, oral, or electronic communication intercepted under an electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as is required or allowed by law, shall be guilty of a Class 1 misdemeanor.

(g) Any public officer who shall violate subsection (a) or (d) of this section or who shall knowingly violate subsection (e) of this section shall be removed from any public office he may hold and shall thereafter be ineligible to hold any public office, whether elective or appointed. (1995, c. 407, s. 1.)

§ 15A-288. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited.

(a) Except as otherwise specifically provided in this Article, a person is guilty of a Class H felony if the person:

- (1) Manufactures, assembles, possesses, purchases, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or
- (2) Places in any newspaper, magazine, handbill, or other publication, any advertisement of:
 - a. Any electronic, mechanical, or other device knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or
 - b. Any other electronic, mechanical, or other device where the advertisement promotes the use of the device for the purpose of the surreptitious interception of wire, oral, or electronic communications.

(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(e) Before acting on the application, the judicial review panel may examine on oath the person requesting the application or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the panel in determining whether probable cause exists for the issuance of the order unless the information is either recorded or contemporaneously summarized in the record or on the face of the order by the panel. (1995, c. 407, s. 1; 1997-435, s. 2; 2005-207, s. 1.)

§ 15A-292. Request for application for electronic surveillance order.

(a) The head of any municipal, county, or State law enforcement agency or any district attorney may submit a written request to the Attorney General that the Attorney General apply to a judicial review panel for an electronic surveillance order to be executed within the requesting agency's jurisdiction. The written requests shall be on a form approved by the Attorney General and shall provide sufficient information to form the basis for an application for an electronic surveillance order. The head of a law enforcement agency shall also submit a copy of the request to the district attorney, who shall review the request and forward it to the Attorney General along with any comments he may wish to include. The Attorney General is authorized to review the request and decide whether it is appropriate to submit an application to a judicial review panel for an electronic surveillance order. If a request for an application is deemed inappropriate, the Attorney General shall send a signed, written statement to the person submitting the request, and to the district attorney, summarizing the reasons for failing to make an application. If the Attorney General decides to submit an application to a judicial review panel, he shall so notify the requesting agency head, the district attorney, and the head of the local law enforcement agency which has the primary responsibility for enforcing the criminal laws in the location in which it is anticipated the majority of the surveillance will take place, if not the same as the requesting agency head, unless the Attorney General has probable cause to believe that the latter notifications should substantially jeopardize the success of the surveillance or the investigation in general. If a judicial review panel grants an electronic surveillance order, a copy of such order shall be sent to the requesting agency head and the district attorney, and a summary of the order shall be sent to the head of the local law enforcement agency with primary responsibility for enforcing the criminal laws in the jurisdiction where the majority of the surveillance will take place, if not the same as the requesting agency head, unless the judicial review panel finds probable cause to believe that the latter notifications would substantially jeopardize the success of the surveillance or the investigation.

(b) This Article does not limit the authority of the Attorney General to apply for electronic surveillance orders independent of, or contrary to, the requests of law enforcement agency heads, nor does it limit the discretion of the Attorney General in determining whether an application is appropriate under any given circumstances.

(c) The Chief Justice of the North Carolina Supreme Court shall receive a report concerning each decision of a judicial review panel. (1995, c. 407, s. 1.)

§ 15A-293. Issuance of order for electronic surveillance; procedures for implementation.

(a) Upon application by the Attorney General pursuant to the procedures in G.S. 15A-291, a judicial review panel may enter an ex parte order, as requested or as modified, authorizing the

interception of wire, oral, or electronic communications, if the panel determines on the basis of the facts submitted by the applicant that:

- (1) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense set out in G.S. 15A-290;
- (2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;
- (3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and
- (4) Except as provided in G.S. 15A-294(i), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection.

(b) Each order authorizing the interception of any wire, oral, or electronic communications must specify:

- (1) The identity of the person, if known, whose communications are to be intercepted;
- (2) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, and the means by which such interceptions may be made;
- (3) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;
- (4) The identity of the agency authorized to intercept the communications and of the person requesting the application; and
- (5) The period of time during which such interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication has been first obtained.

(c) No order entered under this Article may authorize the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Such 30-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with G.S. 15A-291 and the panel making the findings required by subsection (a) of this section. The period of extension shall be no longer than the panel determines to be necessary to achieve the purpose for which it was granted and in no event for longer than 30 days. Every order and extension thereof must contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Article, and terminate upon attainment of the authorized objective, or in any event in 30 days, as is appropriate. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception. An interception under this Article may be conducted in whole or in part by State or federal government personnel, or by an individual operating under a contract with the State or federal government, acting under

- (1) From an order granting a motion to suppress made under subdivision (1) of this subsection, if the district attorney certifies to the judge granting the motion that the appeal is not taken for purposes of delay. The appeal must be taken within 30 days after the date the order of suppression was entered and must be prosecuted as are other interlocutory appeals; or
- (2) From an order denying an application for an order of authorization, and the appeal may be made ex parte and must be considered in camera and in preference to all other pending appeals.
 - (i) The requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:
 - (1) In the case of an application with respect to the interception of an oral communication:
 - a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;
 - b. The application contains a full and complete statement as to why the specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and
 - c. The judicial review panel finds that the specification is not practical.
 - (2) In the case of an application with respect to a wire or electronic communication:
 - a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;
 - b. The application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;
 - c. The judicial review panel finds that the showing has been adequately made; and
 - d. The order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which the communication will be or was transmitted.

(j) An interception of a communication under an order with respect to which the requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) do not apply by reason of subdivision (i)(1) of this section shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subdivision (i)(2) of this section may move the court to modify or quash the order on the grounds that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously. (1995, c. 407, s. 1; 1997-435, s. 3; 2005-207, s. 4.)

§ 15A-295. Reports concerning intercepted wire, oral, or electronic communications.

In January of each year, the Attorney General of this State must report to the Administrative Office of the United States Court the information required to be filed by section 2519 of Title 18 of the United States Code, as heretofore or hereafter amended, and file a copy of the report with the Administrative Office of the Courts of North Carolina. (1995, c. 407, s. 1.)

§ 15A-296. Recovery of civil damages authorized.

(a) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this Article, has a civil cause of action against any person who intercepts, discloses, uses, or procures any other person to intercept, disclose, or use such communications, and is entitled to recover from any other person:

- (1) Actual damages, but not less than liquidated damages, computed at the rate of one hundred dollars (\$100.00) a day for each day of violation or one thousand dollars (\$1,000), whichever is higher;
- (2) Punitive damages; and
- (3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

(b) Good faith reliance on a court order or on a representation made by the Attorney General or a district attorney is a complete defense to any civil or criminal action brought under this Article. (1995, c. 407, s. 1.)

§ 15A-297. Conformity to provisions of federal law.

It is the intent of this Article to conform the requirements of all interceptions of wire, oral, or electronic communications conducted by investigative or law enforcement officers in this State to provisions of Chapter 119 of the United States Code, except where the context indicates a purpose to provide safeguards even more protective of individual privacy and constitutional rights. (1995, c. 407, s. 1.)

§ 15A-298. Subpoena authority.

The Director of the State Bureau of Investigation or the Director's designee may issue an administrative subpoena to a communications common carrier or an electronic communications service to compel production of business records if the records:

- (1) Disclose information concerning local or long-distance toll records or subscriber information; and
- (2) Are material to an active criminal investigation being conducted by the State Bureau of Investigation. (1995, c. 407, s. 1; 1997-435, s. 4; 2014-100, s. 17.1(ee); 2015-276, s. 4.)

Article 16A.

Discontinuation of Telecommunications Services.

§ 15A-299. Discontinuation of telecommunications services used for unlawful purposes.

(a) The legislature finds that some persons use telecommunications services to violate State or federal criminal law. The legislature further finds that some persons use telecommunications services or technology, such as call forwarding and cellular radio transmission, to avoid detection or arrest.

(b) A customer of a telecommunications company operating within the State may use telecommunications services only for lawful purposes.

(c) If a local, State, or federal law enforcement officer acting within the scope of the officer's duties obtains evidence that telecommunications services are being used or have been used by a customer or by the employee or agent of the customer to violate State or federal criminal law, the officer may request either the district attorney or the Attorney General as appropriate to apply to the district court of the county in which the suspected violation of State or federal criminal law occurred for an order requiring the telecommunications company to discontinue service to the customer. The court shall hold a hearing on the application as soon as possible, but no sooner than 48 hours after notice of the application for discontinuation of service is delivered to the address at which the telecommunications services are furnished or to the address to which bills for telecommunications services are mailed, according to the telecommunications company records. Notice must also be given to the registered agent for the service of process upon the telecommunications company at least 48 hours prior to the hearing. Notices required under this section shall be given pursuant to the provisions of Rule 4 of the North Carolina Rules of Civil Procedure. If the court finds clear and convincing evidence that the telecommunications services are being used or have been used to violate State or federal criminal law, the court may order the telecommunications company to discontinue such service immediately.

(d) Telecommunications services discontinued under this section may be reinstated only by court order, and call forwarding or message referrals, whether recorded or live, may not be provided until reinstatement of service is ordered by the court. The court may order reinstatement of telecommunications services if it finds that the customer is not likely to use the services to violate State or federal criminal law. The standard of proof shall be the same as that used for the disconnect order.

(e) A telecommunications company shall be held harmless from liability to any person when complying with any court order issued under this section. (1997-372, s. 1.)

§ 15A-300. Reserved for future codification purposes.

Article 16B.

Use of Unmanned Aircraft Systems.

§ 15A-300.1. Restrictions on use of unmanned aircraft systems.

(a) Definitions. – The following definitions apply to this Article:

- (1) Manned aircraft. – An aircraft, as defined in G.S. 63-1, that is operated with a person in or on the aircraft.
- (2) Repealed by Session Laws 2017-160, s. 1, effective December 1, 2017, and applicable to offenses committed on or after that date and acts occurring and causes of action arising on or after that date.
- (3) Unmanned aircraft. – An aircraft, as defined in G.S. 63-1, that is operated without the possibility of human intervention from within or on the aircraft.
- (4) Unmanned aircraft system. – An unmanned aircraft and associated elements, including communication links and components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(b) General Prohibitions. – Except as otherwise provided in this section, no person, entity, or State agency shall use an unmanned aircraft system to do any of the following:

- (1) Conduct surveillance of:

- a. A person or a dwelling occupied by a person and that dwelling's curtilage without the person's consent.
- b. Private real property without the consent of the owner, easement holder, or lessee of the property.

(2) Photograph an individual, without the individual's consent, for the purpose of publishing or otherwise publicly disseminating the photograph. This subdivision shall not apply to newsgathering, newsworthy events, or events or places to which the general public is invited.

(c) Law Enforcement Exceptions. – Notwithstanding the provisions of subsection (b) of this section, the use of unmanned aircraft systems by law enforcement agencies of the State or a political subdivision of the State is not prohibited in the following instances:

- (1) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security or the Secretary of the North Carolina Department of Public Safety determines that credible intelligence indicates that such a risk exists.
- (2) To conduct surveillance in an area that is within a law enforcement officer's plain view when the officer is in a location the officer has a legal right to be.
- (3) If the law enforcement agency first obtains a search warrant authorizing the use of an unmanned aircraft system.
- (4) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, to conduct pursuit of an escapee or suspect, or to facilitate the search for a missing person.
- (5) To photograph gatherings to which the general public is invited on public or private land.

(c1) Emergency Management Exception. – Notwithstanding the provisions of subsection (b) of this section, an emergency management agency, as defined in G.S. 166A-19.3, may use unmanned aircraft systems for all functions and activities related to emergency management, including incident command, area reconnaissance, search and rescue, preliminary damage assessment, hazard risk management, and floodplain mapping.

(d) Repealed by Session Laws 2017-160, s. 2, effective July 21, 2017.

(e) Any person who is the subject of unwarranted surveillance, or whose photograph is taken in violation of the provisions of this section, shall have a civil cause of action against the person, entity, or State agency that conducts the surveillance or that uses an unmanned aircraft system to photograph for the purpose of publishing or otherwise disseminating the photograph. In lieu of actual damages, the person whose photograph is taken may elect to recover five thousand dollars (\$5,000) for each photograph or video that is published or otherwise disseminated, as well as reasonable costs and attorneys' fees and injunctive or other relief as determined by the court.

(f) Evidence obtained or collected in violation of this section is not admissible as evidence in a criminal prosecution in any court of law in this State except when obtained or collected under the objectively reasonable, good-faith belief that the actions were lawful. (2014-100, s. 34.30(a); 2017-160, ss. 1-3.)

§ 15A-300.2. Regulation of launch and recovery sites.

(a) No unmanned aircraft system may be launched or recovered from any State or private property without consent.

(b) A unit of local government may adopt an ordinance to regulate the use of the local government's property for the launch or recovery of unmanned aircraft systems. (2014-100, s. 34.30(a).)

§ 15A-300.3. Use of an unmanned aircraft system near a confinement or correctional facility prohibited.

(a) Prohibition. – No person, entity, or State agency shall use an unmanned aircraft system within either a horizontal distance of 500 feet, or a vertical distance of 250 feet from any local confinement facility, as defined in G.S. 153A-217, or State or federal correctional facility. For the purpose of this section, horizontal distance shall extend outward from the furthest exterior building walls, perimeter fences, and permanent fixed perimeter, or from another boundary clearly marked with posted notices. Posted notices shall be conspicuously posted not more than 100 yards apart along a marked boundary and comply with Department of Transportation guidelines.

(b) Exceptions. – Unless the use of the unmanned aircraft system is otherwise prohibited under State or federal law, the distance restrictions of subsection (a) of this section do not apply to any of the following:

- (1) A person operating an unmanned aircraft system with written consent from the official in responsible charge of the facility.
- (2) A law enforcement officer using an unmanned aircraft system in accordance with G.S. 15A-300.1(c).
- (3) A public utility, as defined in G.S. 62-3(23), a provider, as defined in G.S. 146-29.2(a)(6), or a commercial entity, provided that the public utility, provider, or commercial entity complies with all of the following:
 - a. The unmanned aircraft system must not be used within either a horizontal distance of 150 feet, or within a vertical distance of 150 feet from any local confinement facility or State or federal correctional facility.
 - b. Notifies the official in responsible charge of the facility at least 24 hours prior to operating the unmanned aircraft system. A commercial entity operating in compliance with G.S. 15A-300.1 and pursuant to the provisions of this subdivision is exempt from the 24-hour notice requirement.
 - c. Uses the unmanned aircraft system for the purpose of inspecting public utility or provider transmission lines, equipment, or communication infrastructure or for another purpose directly related to the business of the public utility, provider, or commercial entity.
 - d. Uses the unmanned aircraft system for commercial purposes pursuant to and in compliance with (i) Federal Aviation Administration regulations, authorizations, or exemptions and (ii) Article 10 of Chapter 63 of the General Statutes.
 - e. The person operating the unmanned aircraft system does not physically enter the prohibited space without an escort from the facility.

- (4) An emergency management agency, as defined in G.S. 166A-19.3, emergency medical services personnel, firefighters, and law enforcement officers, when using an unmanned aircraft system in response to an emergency.
- (c) Penalty. – The following penalties apply for violations of this section:
 - (1) A person who uses an unmanned aircraft system (i) in violation of subsection (a) of this section or (ii) pursuant to an exception in subsection (b) of this section and who delivers, or attempts to deliver, a weapon to a local confinement facility or State or federal correctional facility is guilty of a Class H felony, which shall include a fine of one thousand five hundred dollars (\$1,500). For purposes of this subdivision, the term "weapon" is as defined in G.S. 14-401.24(c).
 - (2) A person who uses an unmanned aircraft system (i) in violation of subsection (a) of this section or (ii) pursuant to an exception in subsection (b) of this section and who delivers, or attempts to deliver, contraband to a local confinement facility or State or federal correctional facility is guilty of a Class I felony, which shall include a fine of one thousand dollars (\$1,000). For purposes of this subdivision, the term "contraband" includes controlled substances, as defined in G.S. 90-87, cigarettes, alcohol, and communication devices, but does not include weapons.
 - (3) A person who uses an unmanned aircraft system in violation of subsection (a) of this section for any other purpose is guilty of a Class 1 misdemeanor, which shall include a fine of five hundred dollars (\$500.00).

(d) Seizure, Forfeiture, and Disposition of Seized Property. – A law enforcement agency may seize an unmanned aircraft system and any attached property, weapons, and contraband used in violation of this section. An unmanned aircraft system used in violation of this section and seized by a law enforcement agency is subject to forfeiture and disposition pursuant to G.S. 18B-504. An innocent owner or holder of a security interest applying to the court for release of the unmanned aircraft system, in accordance with G.S. 18B-504(h), shall also provide proof of ownership or security interest and written certification that the unmanned aircraft system will not be returned to the person who was charged with the violation of subsection (a) of this section. The court shall forfeit and dispose of any other property, weapons, or contraband seized by a law enforcement agency in connection with a violation of this section pursuant to G.S. 18B-504, 14-269.1, 90-112, or any combination thereof. (2017-179, s. 1.)

§ 15A-300.4. Use of an unmanned aircraft system near a forest fire prohibited.

(a) Prohibition. – No person, entity, or State agency shall use an unmanned aircraft system within either a horizontal distance of 3,000 feet or a vertical distance of 3,000 feet from any forest fire within the jurisdiction of the North Carolina Forest Service. For purposes of this section, the horizontal distance shall extend outward from the furthest exterior perimeter of the forest fire or forest fire control lines.

(b) Exceptions. – Unless the use of the unmanned aircraft system is otherwise prohibited under State or federal law, the prohibitions in subsection (a) of this section do not apply to any of the following:

- (1) A person operating an unmanned aircraft system with the consent of the official in responsible charge of management of the forest fire.

- (2) A law enforcement officer using an unmanned aircraft system in accordance with G.S. 15A-300.1(c).
 - (3) A North Carolina Forest Service employee or a person acting under the direction of a North Carolina Forest Service employee.
- (c) Penalties. – The following penalties apply for violations of this section:
- (1) A person who uses an unmanned aircraft system in violation of subsection (a) of this section and such use is the proximate cause of the death of another person is guilty of a Class D felony and shall also be fined not less than one thousand dollars (\$1,000).
 - (2) A person who uses an unmanned aircraft system in violation of subsection (a) of this section and such use is the proximate cause of serious bodily injury to another person is guilty of a Class E felony and shall also be fined not less than one thousand dollars (\$1,000).
 - (3) A person who uses an unmanned aircraft system in violation of subsection (a) of this section and such use is the proximate cause of serious physical or mental injury to another person is guilty of a Class F felony and shall also be fined not less than one thousand dollars (\$1,000).
 - (4) A person who uses an unmanned aircraft system in violation of subsection (a) of this section and such use interferes with emergency operations and such interference proximately causes damage to any real or personal property or any tree, wood, underwood, timber, garden, crops, vegetables, plants, lands, springs, or any other matter or thing growing or being on the land is guilty of a Class G felony and shall also be fined not less than one thousand dollars (\$1,000).
 - (5) A person who uses an unmanned aircraft system in violation of subsection (a) of this section and such use interferes with emergency operations is guilty of a Class H felony and shall be fined not less than one thousand dollars (\$1,000).
 - (6) A person who uses an unmanned aircraft system in violation of subsection (a) of this section and such use is the proximate cause of physical or mental injury to another person is guilty of a Class I felony and shall also be fined not less than one thousand dollars (\$1,000).
 - (7) A person who uses an unmanned aircraft system in violation of subsection (a) of this section and such use is not covered under another provision of law providing greater punishment is guilty of a Class A1 misdemeanor and shall be fined not less than one thousand dollars (\$1,000).

(d) Seizure, Forfeiture, and Disposition of Seized Property. – A law enforcement agency may seize an unmanned aircraft system and any attached property used in violation of this section. An unmanned aircraft system used in violation of this section and seized by a law enforcement agency is subject to forfeiture and disposition pursuant to G.S. 18B-504. An innocent owner or holder of a security interest applying to the court for release of the unmanned aircraft system, in accordance with G.S. 18B-504(h), shall also provide proof of ownership or security interest and written certification that the unmanned aircraft system will not be returned to the person who was charged with the violation of subsection (a) of this section.

- (e) Definitions. – For purposes of this section, the following definitions apply:
- (1) Physical or mental injury. – Cuts, scrapes, bruises, or other physical or mental injury that does not constitute serious bodily injury or serious physical or mental injury.

- (2) Serious bodily injury. – Bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.
- (3) Serious physical or mental injury. – Physical or mental injury that causes great pain and suffering. (2023-63, s. 10(a).)

SUBCHAPTER III. CRIMINAL PROCESS.

Article 17.

Criminal Process.

§ 15A-301. Criminal process generally.

(a) Formal Requirements. –

- (1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the clerk in either paper form or in electronic form in the Electronic Repository as provided in G.S. 15A-301.1.
- (2) Criminal process, other than a citation, must be signed and dated by the judicial official who issues it. The citation must be signed and dated by the law-enforcement officer who issues it.

(b) To Whom Directed. – Warrants for arrest and orders for arrest must be directed to a particular officer, a class of officers, or a combination thereof, having authority and territorial jurisdiction to execute the process. A criminal summons must be directed to the person summoned to appear and must be delivered to and may be served by any law-enforcement officer having authority and territorial jurisdiction to make an arrest for the offense charged, except that in those instances where the defendant is called into a law-enforcement agency to receive a summons, any employee so designated by the agency's chief executive officer may serve a criminal summons at the agency's office. The citation must be directed to the person cited to appear.

(b1) Approval by District Attorney; school personnel. – Notwithstanding any other provision of law, no warrant for arrest, order for arrest, criminal summons, or other criminal process shall be issued by a magistrate against a school employee, as defined in G.S. 14-33(c)(6), for an offense that occurred while the school employee was in the process of discharging his or her duties of employment, without the prior written approval of the district attorney or the district attorney's designee. For purposes of this subsection, the term "district attorney" means the person elected to the office of district attorney. This subsection does not apply if the offense is a traffic offense or if the offense occurred in the presence of a sworn law enforcement officer. The district attorney may decline to accept the authority set forth in this subsection; in such case, the procedure and review authority shall be as set forth in subsection (b2) of this section.

(b2) (For effective date, see note) Magistrate review; school personnel. – A district attorney may decline the authority provided under subsection (b1) of this section by filing a letter so indicating with the clerk of superior court. The district attorney shall provide a copy of the filed letter to the chief district court judge. Upon receipt of the letter from the district attorney, the chief district court judge shall appoint a magistrate or magistrates to review any application for a warrant for arrest, order for arrest, criminal summons, or other criminal process against a school employee, as defined in G.S. 14-33(c)(6), where the allegation is that the school employee committed a misdemeanor offense while discharging his or her duties of employment. The failure to comply

with any of the requirements in this subsection shall not affect the validity of any warrant, order, summons, or other criminal process. The following exceptions apply to the requirements in this subsection:

- (1) The offense is a traffic offense.
 - (2) The offense occurred in the presence of a sworn law enforcement officer.
 - (3) There is no appointed magistrate available to review the application.
- (c) Service. –
- (1) A law-enforcement officer or other employee designated as provided in subsection (b) receiving for service or execution a criminal process that was first created and exists only in paper form must note thereon the date and time of its receipt. A law enforcement officer receiving a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall cause the date of receipt to be recorded as provided in that section. Upon execution or service, a copy of the process must be delivered to the person arrested or served.
 - (2) A corporation may be served with criminal summons as provided in G.S. 15A-773.
- (d) Return. –
- (1) The officer or other employee designated as provided in subsection (b) who serves or executes a criminal process that was first created and exists only in paper form must enter the date and time of the service or execution on the process and return it to the clerk of court in the county in which issued. The officer or other employee designated as provided in subsection (b) of this section who serves or executes a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall promptly cause the date of the service or execution to be recorded as provided in that section.
 - (2) If criminal process that was created and exists only in paper form is not served or executed within a number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with a reason for the failure of service or execution noted thereon.
 - a. Warrant for arrest – 180 days.
 - b. Order for arrest – 180 days.
 - c. Criminal summons – 90 days or the date the defendant is directed to appear, whichever is earlier.
 - (3) Failure to return the process to the clerk as required by subdivision (2) of this subsection does not invalidate the process, nor does it invalidate service or execution made after the period specified in subdivision (2).
 - (4) The clerk to which return of a criminal process that was created and exists only in paper form is made may redeliver the process to a law-enforcement officer or other employee designated as provided in subsection (b) for further attempts at service. If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance.
- (e) Copies to Be Made by Clerk. –
- (1) The clerk may make a certified copy of any criminal process that was created and exists only in paper form filed in his office pursuant to subsection (a) when the original process has been lost or when the process has been returned pursuant to subdivision (d)(2). The copy may be executed as effectively as the

original process whether or not the original has been redelivered as provided in G.S. 15A-301(d)(4).

- (2) When criminal process is returned to the clerk pursuant to subdivision (d)(1) and it appears that the appropriate venue is in another county, the clerk must make and retain a certified copy of the process and transmit the original process to the clerk in the appropriate county.
- (3) Upon request of a defendant, the clerk must make and furnish to him without charge one copy of every criminal process filed against him.
- (4) Nothing in this section prevents the making and retention of uncertified copies of process for information purposes under G.S. 15A-401(a)(2) or for any other lawful purpose.

(f) Protection of Process Server. – An officer or other employee designated as provided in subsection (b), and serving process as provided in subsection (b), receiving under this section or under G.S. 15A-301.1 criminal process which is complete and regular on its face may serve the process in accordance with its terms and need not inquire into its regularity or continued validity, nor does he incur criminal or civil liability for its due service.

(g) Recall of Process – Authority. – A criminal process that has not been served on the defendant, other than a citation, shall be recalled by a judicial official or by a person authorized to act on behalf of a judicial official as follows:

- (1) A warrant or criminal summons shall be recalled by the issuing judicial official when that official determines that probable cause did not exist for its issuance.
- (2) Any criminal process other than a warrant or criminal summons may be recalled for good cause by any judicial official of the trial division in which it was issued. Good cause includes, without limitation, the fact that:
 - a. A copy of the process has been served on the defendant.
 - b. All charges on which the process is based have been disposed.
 - c. The person named as the defendant in the process is not the person who committed the charged offense.
 - d. It has been determined that grounds for the issuance of an order for arrest did not exist, no longer exist or have been satisfied.
- (3) The disposition of all charges on which a process is based shall effect the recall, without further action by the court, of that process and of all other outstanding process issued in connection with the charges, including all orders for arrest issued for the defendant's failure to appear to answer the charges.

When the process was first created and exists only in paper form, the recall shall promptly be communicated by any reasonable means to each law enforcement agency known to be in possession of the original or a copy of the process, and each agency shall promptly return the process to the court, unserved. When the process is in the Electronic Repository, the recall shall promptly be entered in the Electronic Repository, and no further copies of the process shall be printed in paper form. The recall shall also be communicated by any reasonable means to each agency that is known to be in possession of a copy of the process in paper form and that does not have remote electronic access to the Electronic Repository. (1868-9, c. 178, subch. 3, s. 4; Code, s. 1135; Rev., s. 3159; C.S., s. 4525; 1957, c. 346; 1969, c. 44, s. 28; 1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, ss. 136, 137; 1979, c. 725, ss. 1-3; 1989, c. 262, s. 3; 2002-64, s. 3; 2012-149, s. 5; 2022-47, s. 16(f); 2023-46, s. 17.)

§ 15A-301.1. Electronic Repository.

(a) The Administrative Office of the Courts shall maintain, in cooperation with State and local law enforcement agencies, an automated electronic repository or repositories for criminal process (hereinafter referred to collectively as the Electronic Repository), which shall comprise a secure system of electronic data entry, storage, and retrieval that provides for creating, signing, issuing, entering, filing, and retaining criminal process in electronic form, and that provides for the following with regard to criminal process in electronic form:

- (1) Tracking criminal process.
- (2) Accessing criminal process through remote electronic means by all authorized judicial officials and employees and all authorized law enforcement officers and agencies that have compatible electronic access capacity.
- (3) Printing any criminal process in paper form by any authorized judicial official or employee or any authorized law enforcement officer or agency.

(b) Any criminal process may be created, signed, and issued in electronic form, filed electronically in the office of a clerk of superior court, and retained in electronic form in the Electronic Repository.

(c) Any process that was first created, signed, and issued in paper form may subsequently be filed in electronic form and entered in the Electronic Repository by the judicial official who issued the process or by any person authorized to enter it on behalf of the judicial official. All copies of the process in paper form are then subject to the provisions of subsections (i) and (k) of this section.

(d) Any criminal process in the Electronic Repository shall be part of the official records of the clerk of superior court of the county for which it was issued and shall be maintained in the office of that clerk as required by G.S. 15A-301(a).

(e) Any criminal process in the Electronic Repository may, at any time and at any place in this State, be printed in paper form and delivered to a law enforcement agency or officer by any judicial official, law enforcement officer, or other authorized person.

(f) When printed in paper form pursuant to subsection (e) of this section, any copy of a criminal process in the Electronic Repository confers the same authority and has the same force and effect for all other purposes as the original of a criminal process that was created and exists only in paper form.

(g) Service of any criminal process in the Electronic Repository may be effected by delivering to the person to be served a copy of the process that was printed in paper form pursuant to subsection (e) of this section.

(h) The tracking information specified in subsection (i) of this section shall promptly be entered in the Electronic Repository when one or both of the following occurs:

- (1) A process is first created, signed, and issued in paper form and subsequently entered in electronic form in the Electronic Repository as provided in subsection (c) of this section.
- (2) A copy of a process in the Electronic Repository is printed in paper form pursuant to subsection (e) of this section.

(i) The following tracking information shall be entered in the Electronic Repository in accordance with subsections (c) and (h) of this section:

- (1) The date and time when the process was printed in paper form.
- (2) The name of the law enforcement agency by or for which the process was printed in paper form.

- (3) If available, the name and identification number of the law enforcement officer to whom any copy of the process was delivered.
- (j) The service requirements set forth in subsection (k) of this section shall apply to:
 - (1) Each copy of a criminal process that is first created in paper form and subsequently entered into the Electronic Repository as provided in subsection (c) of this section.
 - (2) Each copy of a criminal process in the Electronic Repository that is printed in paper form pursuant to subsection (e) of this section.

(k) Service Requirements for Process Entered in the Electronic Repository. – The copy of a process printed for the purpose of service shall be served not later than 24 hours after it has been printed. The date, time, and place of service shall promptly be recorded in the Electronic Repository and shall be part of the official records of the court. If the process is not served within 24 hours, that fact shall promptly be recorded in the Electronic Repository and all copies of the process in paper form shall be destroyed. The process may again be printed in paper form at later times and at the same or other places. Subsection (f) of this section applies to each successively printed copy of the process.

(l) A law enforcement officer or agency that does not have compatible remote access to the Electronic Repository shall promptly communicate, by any reasonable means, the information required by subsection (k) of this section to the clerk of superior court of the county in which the process was issued or to any other person authorized to enter information into the Electronic Repository, and the information shall promptly be entered in the Electronic Repository.

(m) Failure to enter any information as required by subsection (i) or (k) of this section does not invalidate the process, nor does it invalidate service or execution made after the period specified in subsection (k) of this section.

(n) A warrant created and existing only in paper form is returned within the meaning of G.S. 132-1.4(k) when it is returned as provided in G.S. 15A-301(d). A warrant that exists only in electronic form in the Electronic Repository is returned within the meaning of G.S. 132-1.4(k), when it has been served or when service of the warrant is no longer being actively pursued, as either fact is entered in the Electronic Repository pursuant to subsection (k) of this section.

(o) At the time an individual is taken into custody, the custodial law enforcement agency shall attempt to identify all outstanding warrants against that individual and notify the appropriate law enforcement agencies of the location of the individual.

(p) Prior to the entry of any order of the court in a criminal case, the court shall attempt to identify all outstanding warrants against that individual, if in custody, and notify the appropriate law enforcement agencies of the location of the individual. (2002-64, s. 2; 2015-48, s. 1; 2017-101, s. 1; 2022-47, s. 16(g).)

§ 15A-302. Citation.

(a) Definition. – A citation is a directive, issued by a law enforcement officer or other person authorized by statute, that a person appear in court and answer a misdemeanor or infraction charge or charges.

(b) When Issued. – An officer may issue a citation to any person who he has probable cause to believe has committed a misdemeanor or infraction.

(c) Contents. – The citation must:

- (1) Identify the crime charged, including the date, and where material, identify the property and other persons involved,

- (2) Contain the name and address of the person cited, or other identification if that cannot be ascertained,
- (3) Identify the officer issuing the citation, and
- (4) Cite the person to whom issued to appear in a designated court, at a designated time and date.

(d) **Service.** – A copy of the citation shall be delivered to the person cited. The original shall then be filed with the clerk by the officer. Failure of the person cited to accept delivery of the citation shall not constitute grounds for an arrest or the requirement that he or she post a bond. When a citation is issued for a parking offense, a copy shall be delivered to the operator of a vehicle who is present at the time of service, or shall be delivered to the registered owner of the vehicle if the operator is not present by affixing a copy of the citation to the vehicle in a conspicuous place.

(e) **Dismissal by Prosecutor.** – If the prosecutor finds that no crime or infraction is charged in the citation, or that there is insufficient evidence to warrant prosecution, he may dismiss the charge and so notify the person cited. An appropriate entry must be made in the records of the clerk. It is not necessary to enter the dismissal in open court or to obtain consent of the judge.

(f) **Citation No Bar to Criminal Summons or Warrant.** – If the offense is a misdemeanor, a criminal summons or a warrant may issue notwithstanding the prior issuance of a citation for the same offense. If a defendant fails to appear in court as directed by a citation that charges the defendant with a misdemeanor, an order for arrest for failure to appear may be issued by a judicial official.

(g) **Preparation of Form.** – The form and content of the citation is as prescribed by the Administrative Officer of the Courts. The form of citation used for violation of the motor vehicle laws must contain a notice that the driving privilege of the person cited may be revoked for failure to appear as cited, and must be prepared as provided in G.S. 7A-148(b). (1973, c. 1286, s. 1; 1975, c. 166, ss. 3, 27; 1983, c. 327, s. 4; 1985, c. 385; c. 764, s. 4; 1989, c. 243, s. 1; 2003-15, s. 1; 2022-47, s. 16(h).)

§ 15A-303. Criminal summons.

(a) **Definition.** – A criminal summons consists of a statement of the crime or infraction of which the person to be summoned is accused, and an order directing that the person so accused appear and answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) **Statement of the Crime or Infraction.** – The criminal summons must contain a statement of the crime or infraction of which the person summoned is accused. No criminal summons is invalid because of any technicality of pleading if the statement is sufficient to identify the crime or infraction.

(c) **Showing of Probable Cause; Record.** – The showing of probable cause for the issuance of a criminal summons, and the record thereof, is the same as provided in G.S. 15A-304(d) for the issuance of a warrant for arrest.

(d) **Order to Appear.** – The summons must order the person named to appear in a designated court at a designated time and date and answer to the charges made against him and advise him that he may be held in contempt of court for failure to appear. Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the issuance or reissuance of the criminal summons.

(e) **Enforcement.** –

- (1) If the offense charged is a criminal offense, a warrant for arrest, based upon the same or another showing of probable cause, may be issued by the same or another issuing official, notwithstanding the prior issuance of a criminal summons.
 - (2) If the offense charged is a criminal offense, an order for arrest, as provided in G.S. 15A-305, may issue for the arrest of any person who fails to appear as directed in a duly executed criminal summons.
 - (3) A person served with criminal summons who willfully fails to appear as directed may be punished for contempt as provided in G.S. 5A-11.
 - (4) Repealed by Session Laws 1975, c. 166, s. 4.
- (f) **Who May Issue.** – A criminal summons, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, ss. 4, 5; 1975, 2nd Sess., c. 983, s. 138; 1983, c. 294, s. 3; 1985, c. 764, s. 5.)

§ 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.** –

- (1) **Generally.** – 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.
- (2) Repealed by Session Laws 2018-40, s. 7.1. See editor's note for effective date and applicability.
- (3) **When Citizen-initiated.** – If the finding of probable cause pursuant to subsection (d) of this section is based solely upon an affidavit or oral testimony under oath or affirmation of a person who is not a sworn law enforcement officer, the issuing official shall not issue a warrant for arrest and instead shall issue a criminal summons, unless one of the following circumstances exists:
 - a. There is corroborating testimony of the facts establishing probable cause from a sworn law enforcement officer or at least one disinterested witness.
 - b. The official finds that obtaining investigation of the alleged offense by a law enforcement agency would constitute a substantial burden for the complainant.
 - c. The official finds substantial evidence of one or more of the circumstances listed in subdivision (1) of this subsection.

(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 both of the following:

- (1) Affidavit.
- (2) Oral testimony under oath or affirmation before the issuing official.
- (3) Repealed by Session Laws 2021-47, s. 10(d), effective June 18, 2021, and applicable to proceedings occurring on or after that date.

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

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

- (f) Who May Issue. – A warrant for arrest, valid throughout the State, may be issued by:
- (1) A Justice of the Supreme Court.
 - (2) A judge of the Court of Appeals.
 - (3) A judge of the superior court.
 - (4) A judge of the district court, as provided in G.S. 7A-291.
 - (5) A clerk, as provided in G.S. 7A-180 and 7A-181.
 - (6) A magistrate, as provided in G.S. 7A-273. (1868-9, c. 178, subch. 3, ss. 1-3; Code, ss. 1132-1134; 1901, c. 668; Rev., ss. 3156-3158; C.S., ss. 4522-4524; 1955, c. 332; 1969, c. 44, s. 27; c. 1062, s. 1; 1973, c. 1286, s. 1; 1997-268, s. 2; 2004-186, s. 15.1; 2017-176, s. 5(a); 2018-40, s. 7.1; 2021-47, s. 10(d).)

§ 15A-305. Order for arrest.

(a) Definition. – As used in this section, an order for arrest is an order issued by a justice, judge, clerk, or magistrate that a law-enforcement officer take a named person into custody.

- (b) When Issued. – An order for arrest may be issued when:
- (1) A grand jury has returned a true bill of indictment against a defendant who is not in custody and who has not been released from custody pursuant to Article 26 of this Chapter, Bail, to answer to the charges in the bill of indictment.
 - (2) A defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required.
 - (3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to G.S. 15A-303 that charged the defendant with a criminal offense, or a citation issued by a law enforcement officer or other person authorized by statute pursuant to G.S. 15A-302 that charged the defendant with a misdemeanor.
 - (4) A defendant has violated the conditions of probation.
 - (5) In any criminal proceeding in which the defendant has become subject to the jurisdiction of the court, it becomes necessary to take the defendant into custody.
 - (6) It is authorized by G.S. 15A-803 in connection with material witness proceedings.

- (7) The common-law writ of *capias* has heretofore been issuable.
- (8) When a defendant fails to appear as required in a show cause order issued in a criminal proceeding.
- (9) It is authorized by G.S. 5A-16 in connection with contempt proceedings.
- (c) Statement of Cause and Order; Copy of Indictment. –
 - (1) The process must state the cause for its issuance and order an officer described in G.S. 15A-301(b) to take the person named therein into custody and bring him before the court. If the defendant is to be held without bail, the order must so provide.
 - (2) When the order is issued pursuant to subdivision (b)(1), a copy of the bill of indictment must be attached to each copy of the order for arrest.
- (d) Who May Issue. – An order for arrest, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, s. 6; 1977, c. 711, s. 21; 2003-15, s. 2; 2021-47, s. 6(a).)

§ 15A-306: Reserved for future codification purposes.

§ 15A-307: Reserved for future codification purposes.

§ 15A-308: Reserved for future codification purposes.

§ 15A-309: Reserved for future codification purposes.

§ 15A-310: Reserved for future codification purposes.

Article 18.

Identification Documents.

§ 15A-311. Consulate documents not acceptable as identification.

(a) The following documents are not acceptable for use in determining a person's actual identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other government official:

- (1) A *matricula consular* or other similar document, other than a valid passport, issued by a consulate or embassy of another country.
- (2) An identity document issued or created by any person, organization, county, city, or other local authority, except where expressly authorized to be used for this purpose by the General Assembly.

(b) No local government or law enforcement agency may establish, by policy or ordinance, the acceptability of any of the documents described in subsection (a) of this section as a form of identification to be used to determine the identity or residency of any person. Any local government policy or ordinance that contradicts this section is hereby repealed.

(c) Notwithstanding subsection (a) of this section, documents described in subdivision (2) of subsection (a) of this section may be used by a law enforcement officer to assist in determining the identity or residency of a person when they are the only documents providing an indication of identity or residency available to the law enforcement officer at the time. (2015-264, s. 36.3; 2015-294, s. 11.)

§ 15A-312: Reserved for future codification purposes.

§ 15A-313: Reserved for future codification purposes.

§ 15A-314: Reserved for future codification purposes.

§ 15A-315: Reserved for future codification purposes.

§ 15A-316: Reserved for future codification purposes.

§ 15A-317: Reserved for future codification purposes.

§ 15A-318: Reserved for future codification purposes.

§ 15A-319: Reserved for future codification purposes.

§ 15A-320: Reserved for future codification purposes.

§ 15A-321: Reserved for future codification purposes.

§ 15A-322: Reserved for future codification purposes.

§ 15A-323: Reserved for future codification purposes.

§ 15A-324: Reserved for future codification purposes.

§ 15A-325: Reserved for future codification purposes.

§ 15A-326: Reserved for future codification purposes.

§ 15A-327: Reserved for future codification purposes.

§ 15A-328: Reserved for future codification purposes.

§ 15A-329: Reserved for future codification purposes.

§ 15A-330: Reserved for future codification purposes.

§ 15A-331: Reserved for future codification purposes.

§ 15A-332: Reserved for future codification purposes.

§ 15A-333: Reserved for future codification purposes.

§ 15A-334: Reserved for future codification purposes.

§ 15A-335: Reserved for future codification purposes.

§ 15A-336: Reserved for future codification purposes.

§ 15A-337: Reserved for future codification purposes.

§ 15A-338: Reserved for future codification purposes.

§ 15A-339: Reserved for future codification purposes.

§ 15A-340: Reserved for future codification purposes.

§ 15A-341: Reserved for future codification purposes.

§ 15A-342: Reserved for future codification purposes.

§ 15A-343: Reserved for future codification purposes.

§ 15A-344: Reserved for future codification purposes.

§ 15A-345: Reserved for future codification purposes.

§ 15A-346: Reserved for future codification purposes.

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§ 15A-350: Reserved for future codification purposes.

§ 15A-351: Reserved for future codification purposes.

§ 15A-352: Reserved for future codification purposes.

§ 15A-353: Reserved for future codification purposes.

Article 19.

§§ 15A-354 through 15A-400. Reserved for future codification purposes.

SUBCHAPTER IV. ARREST.

Article 20.

Arrest.

§ 15A-401. Arrest by law-enforcement officer.

- (a) Arrest by Officer Pursuant to a Warrant. –
 - (1) Warrant in Possession of Officer. – An officer having a warrant for arrest in his possession may arrest the person named or described therein at any time and at any place within the officer's territorial jurisdiction.
 - (2) Warrant Not in Possession of Officer. – An officer who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his possession, may arrest the person named therein at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him as soon as possible. This subdivision applies even though the arrest process has been returned to the clerk under G.S. 15A-301.
- (b) Arrest by Officer Without a Warrant. –
 - (1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense, or has violated a pretrial release order entered under G.S. 15A-534 or G.S. 15A-534.1(a)(2), in the officer's presence.
 - (2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:
 - a. Has committed a felony; or
 - b. Has committed a misdemeanor, and:
 - 1. Will not be apprehended unless immediately arrested, or
 - 2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or
 - c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or
 - d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or
 - e. Has committed a misdemeanor under G.S. 50B-4.1(a); or
 - f. Has violated a pretrial release order entered under G.S. 15A-534 or G.S. 15A-534.1(a)(2).
 - (3) Repealed by Session Laws 1991, c. 150.
 - (4) A law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by the State Health Director or local health director pursuant to such order. The person may be detained in such area until the initial appearance before a judicial official pursuant to G.S. 15A-511 and G.S. 15A-534.5.
- (c) How Arrest Made. –
 - (1) An arrest is complete when:
 - a. The person submits to the control of the arresting officer who has indicated his intention to arrest, or
 - b. The arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force.
 - (2) Upon making an arrest, a law-enforcement officer must:

- a. Identify himself as a law-enforcement officer unless his identity is otherwise apparent,
 - b. Inform the arrested person that he is under arrest, and
 - c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest, unless the cause appears to be evident.
- (d) Use of Force in Arrest. –
- (1) Subject to the provisions of subdivision (2), a law-enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary:
 - a. To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or
 - b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.
 - (2) A law-enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:
 - a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;
 - b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or
 - c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.

Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

(d1) Duty to Intervene and Report Excessive Use of Force. – A law enforcement officer, while in the line of duty, who observes another law enforcement officer use force against another person that the observing officer reasonably believes exceeds the amount of force authorized by subsection (d) of this section and who possesses a reasonable opportunity to intervene, shall, if it is safe to do so, attempt to intervene to prevent the use of excessive force. Additionally, the observing officer shall, within a reasonable period of time not to exceed 72 hours thereafter, report what the officer reasonably believes to be an unauthorized use of force to a superior law enforcement officer within the agency of the observing officer, even if the observing officer did not have a reasonable opportunity to intervene. If the head of the law enforcement agency of the observing officer was involved or present during what the observing officer reasonably believes to be unauthorized use of force, the observing officer shall make the report to the highest ranking law enforcement officer of that officer's agency who was not involved in or present during the use of force.

- (e) Entry on Private Premises or Vehicle; Use of Force. –

- (1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:
 - a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of a law enforcement agency located in the county where the officer is employed and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued,
 - b. The officer has reasonable cause to believe the person to be arrested is present, and
 - c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.
- (2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose.
- (f) Use of Deadly Weapon or Deadly Force to Resist Arrest. –
 - (1) A person is not justified in using a deadly weapon or deadly force to resist an arrest by a law-enforcement officer using reasonable force, when the person knows or has reason to know that the officer is a law-enforcement officer and that the officer is effecting or attempting to effect an arrest.
 - (2) The fact that the arrest was not authorized under this section is no defense to an otherwise valid criminal charge arising out of the use of such deadly weapon or deadly force.
 - (3) Nothing contained in this subsection (f) shall be construed to excuse or justify the unreasonable or excessive force by an officer in effecting an arrest. Nothing contained in this subsection (f) shall be construed to bar or limit any civil action arising out of an arrest not authorized by this Article.
- (g) Care of minor children. – When a law enforcement officer arrests an adult who is supervising minor children who are present at the time of the arrest, the minor children must be placed with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children with a responsible adult approved by a parent or guardian within a reasonable period of time, the law enforcement officer shall contact the county department of social services. (1868-9, c. 178, subch. 1, ss. 3, 5; Code, ss. 1126, 1128; Rev., ss. 3178, 3180; C.S., ss. 4544, 4546; 1955, c. 58; 1973, c. 1286, s. 1; 1979, c. 561, s. 3; c. 725, s. 4; 1983, c. 762, s. 1; 1985, c. 548; 1991, c. 150, s. 1; 1995, c. 506, s. 10; 1997-456, s. 3; 1999-23, s. 7; 1999-399, s. 1; 2002-179, s. 14; 2004-186, s. 13.1; 2009-544, s. 2; 2011-245, s. 1; 2021-137, s. 1(a); 2021-138, s. 16(a).)

§ 15A-402. Territorial jurisdiction of officers to make arrests.

(a) Territorial Jurisdiction of State Officers. – Law-enforcement officers of the State of North Carolina may arrest persons at any place within the State.

(b) Territorial Jurisdiction of County and City Officers. – Law-enforcement officers of cities and counties may arrest persons within their particular cities or counties and on any property and rights-of-way owned by the city or county outside its limits.

(c) City Officers, Outside Territory. – Law-enforcement officers of cities may arrest persons at any point which is one mile or less from the nearest point in the boundary of such city. Law enforcement officers of cities may transport a person in custody to or from any place within the State for the purpose of that person attending criminal court proceedings. While engaged in the transportation of persons for the purpose of attending criminal court proceedings, law enforcement officers of cities may arrest persons at any place within the State for offenses occurring in connection with and incident to the transportation of persons in custody.

(d) County and City Officers, Immediate and Continuous Flight. – Law-enforcement officers of cities and counties may arrest persons outside the territory described in subsections (b) and (c) when the person arrested has committed a criminal offense within that territory, for which the officer could have arrested the person within that territory, and the arrest is made during such person's immediate and continuous flight from that territory.

(e) County Officers, Outside Territory, for Felonies. – Law-enforcement officers of counties may arrest persons at any place in the State of North Carolina when the arrest is based upon a felony committed within the territory described in subsection (b). For purposes of this subsection, law enforcement officers of counties shall include all officers of consolidated county-city law enforcement agencies.

(f) Campus Police Officers, Immediate and Continuous Flight. – A campus police officer: (i) appointed by a campus law-enforcement agency established pursuant to G.S. 116-40.5(a); (ii) appointed by a campus law enforcement agency established under G.S. 115D-21.1(a); or (iii) commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes and employed by a college or university which is licensed, or exempted from licensure, by G.S. 116-15 may arrest a person outside his territorial jurisdiction when the person arrested has committed a criminal offense within the territorial jurisdiction, for which the officer could have arrested the person within that territory, and the arrest is made during such person's immediate and continuous flight from that territory. (1935, c. 204; 1973, c. 1286, s. 1; 1987, c. 671, s. 3; 1989, c. 518, s. 4; 1991 (Reg. Sess., 1992), c. 1043, s. 3; 1995, c. 206, s. 1; 1999-68, s. 2; 2005-231, s. 7; 2007-45, s. 1.)

§ 15A-403. Arrest by officers from other states.

(a) Any law-enforcement officer of a state contiguous to the State of North Carolina who enters this State in fresh pursuit and continues within this State in such fresh pursuit of a person who is in immediate and continuous flight from the commission of a criminal offense, has the same authority to arrest and hold in custody such person on the ground that he has committed a criminal offense in another state which is a criminal offense under the laws of the State of North Carolina as law-enforcement officers of this State have to arrest and hold in custody a person on the ground that he has committed a criminal offense in this State.

(b) If an arrest is made in this State by a law-enforcement officer of another state in accordance with the provisions of subsection (a), he must, without unnecessary delay, take the person arrested before a judicial official of this State, who must conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judicial official determines that the arrest was lawful, he must commit the person arrested to await a reasonable time for the issuance of an extradition warrant by the Governor of this State or release him pursuant to Article 26 of this

Chapter, Bail. If the judicial official determines that the arrest was unlawful, he must discharge the person arrested.

(c) This section applies only to law-enforcement officers of a state which by its laws has made similar provision for the arrest and custody of persons closely pursued within its territory. (1973, c. 1286, s. 1.)

§ 15A-404. Detention of offenders by private persons.

(a) No Arrest; Detention Permitted. – No private person may arrest another person except as provided in G.S. 15A-405. A private person may detain another person as provided in this section.

(b) When Detention Permitted. – A private person may detain another person when he has probable cause to believe that the person detained has committed in his presence:

- (1) A felony,
- (2) A breach of the peace,
- (3) A crime involving physical injury to another person, or
- (4) A crime involving theft or destruction of property.

(c) Manner of Detention. – The detention must be in a reasonable manner considering the offense involved and the circumstances of the detention.

(d) Period of Detention. – The detention may be no longer than the time required for the earliest of the following:

- (1) The determination that no offense has been committed.
- (2) Surrender of the person detained to a law-enforcement officer as provided in subsection (e).

(e) Surrender to Officer. – A private person who detains another must immediately notify a law-enforcement officer and must, unless he releases the person earlier as required by subsection (d), surrender the person detained to the law-enforcement officer. (1973, c. 1286, s. 1.)

§ 15A-405. Assistance to law-enforcement officers by private persons to effect arrest or prevent escape; benefits for private persons.

(a) Assistance upon Request; Authority. – Private persons may assist law-enforcement officers in effecting arrests and preventing escapes from custody when requested to do so by the officer. When so requested, a private person has the same authority to effect an arrest or prevent escape from custody as the officer making the request. He does not incur civil or criminal liability for an invalid arrest unless he knows the arrest to be invalid. Nothing in this subsection constitutes justification for willful, malicious or criminally negligent conduct by such person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

(b) Benefits to Private Persons. – A private person assisting a law-enforcement officer pursuant to subsection (a) is:

- (1) Repealed by Session Laws 1989, c. 290, s. 1.
- (2) Entitled to the same benefits as a "law-enforcement officer" as that term is defined in G.S. 143-166.2, the Public Safety Employees' Death Benefit Act; and
- (3) To be treated as an employee of the employer of the law-enforcement officer within the meaning of G.S. 97-2(2) (Workers' Compensation Act).

The Governor and the Council of State are authorized to allocate funds from the Contingency and Emergency Fund for the payment of benefits under subdivision (3) when no other source is available for the payment of such benefits and when they determine that such allocation is necessary and appropriate. (1868-9, c. 178, subch. 1, s. 2; Code, s. 1125; Rev., s. 3181; C.S., s. 4547; 1973, c. 1286, s. 1; 1979, c. 714, s. 2; 1989, c. 290, s. 1; 2018-5, s. 35.29(b).)

§ 15A-406. Assistance by federal officers.

(a) For purposes of this section, "federal law enforcement officer" means any of the following persons who are employed as full-time law enforcement officers by the federal government and who are authorized to carry firearms in the performance of their duties:

- (1) United States Secret Service special agents.
- (2) Federal Bureau of Investigation special agents.
- (3) Bureau of Alcohol, Tobacco and Firearms special agents.
- (4) Special agents of the Department of Defense, including:
 - a. Army Criminal Investigation Division.
 - b. Naval Criminal Investigative Service.
 - c. Air Force Office of Special Investigations.
 - d. Defense Criminal Investigative Service.
- (5) Drug Enforcement Administration special agents.
- (6) United States Customs Service officers.
- (7) United States Postal Service inspectors.
- (8) Internal Revenue Service special agents.
- (9) United States Marshals Service marshals and deputies.
- (10) United States Forest Service officers.
- (11) National Park Service officers.
- (12) United States Fish and Wildlife Service officers.
- (13) Immigration and Naturalization Service officers.
- (14) Tennessee Valley Authority officers.
- (15) Veterans Administration police officers.

(b) A federal law enforcement officer is authorized under the following circumstances to enforce criminal laws anywhere within the State:

- (1) If the federal law enforcement officer is asked by the head of a state or local law enforcement agency, or his designee, to provide temporary assistance and the request is within the scope of the state or local law enforcement agency's subject matter and territorial jurisdiction; or
- (2) If the federal law enforcement officer is asked by a state or local law enforcement officer to provide temporary assistance when at the time of the request the state or local law enforcement officer is acting within the scope of his subject matter and territorial jurisdiction.

(c) A federal law enforcement officer shall have the same powers as those invested by statute or common law in a North Carolina law enforcement officer, and shall have the same legal immunity from personal civil liability as a North Carolina law enforcement officer, while acting pursuant to this section.

(d) A federal law enforcement officer who acts pursuant to this section shall not be considered an officer, employee, or agent of any state or local law enforcement agency.

(e) For purposes of the Federal Tort Claims Act, a federal law enforcement officer acts within the scope of his office or employment while acting pursuant to this section.

(f) Nothing in this section shall be construed to expand the authority of federal officers to initiate or conduct an independent investigation into violation of North Carolina law. (1991, c. 262, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 8; 1993 (Reg. Sess., 1994), c. 571, s. 1; 2001-257, s. 1; 2003-36, s. 1; 2022-73, s. 6.)

§§ 15A-407 through 15A-409. Reserved for future codification purposes.

Article 21.

§§ 15A-410 through 15A-453. Reserved for future codification purposes.

Article 22.

§§ 15A-454 through 15A-500: Reserved for future codification purposes.

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. 14-32.5 (Misdemeanor crime of domestic violence), 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.

(f) If a person is charged with an offense for which fingerprints are required pursuant to this section but the person is not arrested for that offense, the court before which the charge is pending shall order the defendant to submit to fingerprinting by the Sheriff or other appropriate law enforcement agency at the earliest practical opportunity. If the person fails to appear for fingerprinting as ordered by the court, the Sheriff or other designated agency shall so inform the court, and the court may initiate proceedings for criminal contempt against the person pursuant to G.S. 5A-15, including issue of an order for arrest pursuant to G.S. 5A-16, if necessary. The defendant shall continue to be subject to the court's order to provide fingerprints until submitted. (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); 2017-176, s. 4(a); 2019-243, s. 6; 2023-121, s. 15(a).)

§ 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.

Article 24.

Initial Appearance.

§ 15A-511. Initial appearance.

- (a) Appearance before Magistrate. –
 - (1) A law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate as provided in G.S. 15A-501.
 - (2) The magistrate must proceed in accordance with this section, except in those cases in which he has the power to determine the matter pursuant to G.S. 7A-273. In those cases, if the arrest has been without a warrant, the magistrate must prepare a magistrate's order containing a statement of the crime with which the defendant is charged.
 - (3) If the defendant brought before a magistrate is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, upon order of the magistrate he may be confined or otherwise secured. If this is done, the magistrate's order must provide for an initial appearance within a reasonable time so as to make certain that the defendant has an opportunity to exercise his rights under this Chapter.
- (a1) Repealed by Session Laws 2021-47, s. 10(e), effective June 18, 2021, and applicable to proceedings occurring on or after that date.
- (b) Statement by the Magistrate. – The magistrate must inform the defendant of:
 - (1) The charges against him;
 - (2) His right to communicate with counsel and friends; and
 - (3) The general circumstances under which he may secure release under the provisions of Article 26, Bail.
- (c) Procedure When Arrest Is without Warrant; Magistrate's Order. – If the person has been arrested, for a crime, without a warrant:
 - (1) The magistrate must determine whether there is probable cause to believe that a crime has been committed and that the person arrested committed it, and in the manner provided by G.S. 15A-304(d).
 - (2) If the magistrate determines that there is no probable cause the person must be released.

- (3) If the magistrate determines that there is probable cause, he must issue a magistrate's order:
 - a. Containing a statement of the crime of which the person is accused in the same manner as is provided in G.S. 15A-304(c) for a warrant for arrest, and
 - b. Containing a finding that the defendant has been arrested without a warrant and that there is probable cause for his detention.
- (4) Following the issuance of the magistrate's order, the magistrate must proceed in accordance with subsection (e) and must file the order with any supporting affidavits and records in the office of the clerk.

(d) Procedure When Arrest Is Pursuant to Warrant. – If the arrest is made pursuant to a warrant, the magistrate must proceed in accordance with subsection (e).

(e) Commitment or Bail. – If the person arrested is not released pursuant to subsection (c), the magistrate must release him in accordance with Article 26 of this Chapter, Bail, or commit him to an appropriate detention facility pursuant to G.S. 15A-521 pending further proceedings in the case.

(f) Powers Not Limited to Magistrate. – Any judge, justice, or clerk of the General Court of Justice may also conduct an initial appearance as provided in this section. (1868-9, c. 178, subch. 1, s. 7; Code, s. 1130; Rev., s. 3182; C.S., s. 4548; 1973, c. 1286, s. 1; 1975, c. 166, ss. 9-11; 1975, 2nd Sess., c. 983, s. 141; 1997-268, s. 1; 2021-47, s. 10(e).)

§§ 15A-512 through 15A-520. Reserved for future codification purposes.

Article 25.

Commitment.

§ 15A-521. Commitment to detention facility pending trial.

(a) Commitment. – Every person charged with a crime and held in custody who has not been released pursuant to Article 26 of this Chapter, Bail, must be committed by a written order of the judicial official who conducted the initial appearance as provided in Article 24 to an appropriate detention facility as provided in this section. If the person being committed by written order is under the age of 18, that person must be committed to a detention facility approved by the Division of Juvenile Justice to provide secure confinement and care for juveniles, or to a holdover facility as defined in G.S. 7B-1501(11). If the person being committed reaches the age of 18 years while held in custody, the person shall be transported by personnel of the Juvenile Justice Division, or personnel approved by the Juvenile Justice Division, to the custody of the sheriff of the county where the charges arose.

(b) Order of Commitment; Modification. – The order of commitment must:

- (1) State the name of the person charged or identify him if his name cannot be ascertained.
- (2) Specify the offense charged.
- (3) Designate the place of confinement.
- (4) If release is authorized pursuant to Article 26 of this Chapter, Bail, state the conditions of release. If a separate order stating the conditions has been entered, the commitment may make reference to that order, a copy of which must be attached to the commitment.

- (5) Subject to the provisions of subdivision (4), direct, as appropriate, that the defendant be:
 - a. Produced before a district court judge pursuant to Article 29 of this Chapter, First Appearance before District Court Judge,
 - b. Produced before a district court judge for a probable cause hearing as provided in Article 30 of this Chapter, Probable-Cause Hearing,
 - c. Produced for trial in the district or superior court, or
 - d. Held for other specified purposes.
- (6) State the name and office of the judicial official making the order and be signed by that judicial official.

The order of commitment may be modified or continued by the same or another judicial official by supplemental order.

(c) Copies and Use of Order, Receipt of Prisoner. –

- (1) The order of commitment must be delivered to a law-enforcement officer, who must deliver the order and the prisoner to the detention facility named therein.
- (2) The jailer or personnel of the Juvenile Justice Division must receive the prisoner and the order of commitment, and note on the order of commitment the time and date of receipt. As used in this subdivision, "jailer" includes any person having control of a detention facility and "personnel of the Juvenile Justice Division" includes personnel approved by the Juvenile Justice Division.
- (3) Upon releasing the prisoner pursuant to the terms of the order, or upon delivering the prisoner to the court, the jailer or personnel of the Juvenile Justice Division must note the time and date on the order and return it to the clerk. Personnel of the Juvenile Justice Division, or personnel approved by the Juvenile Justice Division, shall transport the person under the age of 18 from the juvenile detention facility or holdover facility to court and shall transfer the person back to the juvenile detention facility or holdover facility.
- (4) Repealed by Session Laws 1975, 2nd Sess., c. 983, s. 142.

(d) Commitment of Witnesses. – If a court directs detention of a material witness pursuant to G.S. 15A-803, the court must enter an order in the manner provided in this section, except that the order must:

- (1) State the reason for the detention in lieu of the description of the offense charged, and
- (2) Direct that the witness be brought before the appropriate court when his testimony is required. (1868-9, c. 178, subch. 3, ss. 24, 32; Code, ss. 1155, 1163; Rev., ss. 3230, 3232; C.S., ss. 4597, 4599; 1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, s. 142; 2020-83, s. 8(c); 2021-180, s. 19C.9(pp).)

§§ 15A-522 through 15A-530. Reserved for future codification purposes.

Article 26.

Bail.

Part 1. General Provisions.

§ 15A-531. Definitions.

As used in this Article the following definitions apply unless the context clearly requires otherwise:

- (1) "Accommodation bondsman" means a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. "Consideration" as used in this subdivision does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the defendant's liability to the surety by reason of a breach in the conditions of said bail bond.
- (2) "Address of record" means:
 - a. For a defendant or an accommodation bondsman, the address entered on the bail bond under G.S. 15A-544.2, or any later address filed by that person with the clerk of superior court.
 - b. For an insurance company, the address registered with the Administrative Office of the Courts under G.S. 58-71-140.
 - c. For a bail agent, the address shown on the bail agent's license from the Department of Insurance, as registered with the Administrative Office of the Courts under G.S. 58-71-140.
 - d. For a professional bondsman, the address shown on that bondsman's license from the Department of Insurance, as registered with the Administrative Office of the Courts under G.S. 58-71-140.
- (3) "Bail agent" means any person who is licensed by the Commissioner as a surety bondsman under Article 71 of Chapter 58 of the General Statutes, is appointed by an insurance company by power of attorney to execute or countersign bail bonds for the insurance company in connection with judicial proceedings, and receives or is promised consideration for doing so.
- (4) "Bail bond" means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage under G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond signed by any surety, as defined in G.S. 15A-531(8)a. and b., is considered the same as a cash deposit for all purposes in this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.
- (5) "Defendant" means a person obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.
- (5a) House arrest with electronic monitoring. – Pretrial release in which the offender is required to remain at his or her residence unless the court authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which

permits the supervising agency to electronically monitor the offender's compliance with the condition.

- (6) "Insurance company" means any domestic, foreign, or alien surety company which has qualified under Chapter 58 of the General Statutes generally to transact surety business and specifically to transact bail bond business in this State.
- (7) "Professional bondsman" means any person who is approved and licensed by the Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.
- (8) "Surety" means:
 - a. The insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.
 - b. The professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.
 - c. The accommodation bondsman, when a bail bond is executed by an accommodation bondsman. (1973, c. 1286, s. 1; 1975, c. 166, s. 12; 1995, c. 290, s. 1; c. 503, s. 1; 2000-133, s. 1; 2009-547, s. 2; 2013-139, s. 1; 2022-47, s. 16(i).)

§ 15A-532. Persons authorized to determine conditions for release.

Judicial officials may determine conditions for release of persons in proceedings over which they are presiding, in accordance with this Article. (1973, c. 1286, s. 1; 1993, c. 30, s. 1; 2021-47, s. 10(f).)

§ 15A-533. Right to pretrial release in capital and noncapital cases.

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A judge shall determine in the judge's discretion whether a defendant charged with any of the following crimes may be released before trial:

- (1) G.S. 14-17 (First or second degree murder) or an attempt to commit first or second degree murder.
- (2) G.S. 14-27.21 (First degree forcible rape).
- (3) G.S. 14-27.22 (Second degree forcible rape).
- (4) G.S. 14-27.23 (Statutory rape of a child by an adult).
- (5) G.S. 14-27.24 (First degree statutory rape).
- (6) G.S. 14-27.25 (Statutory rape of person who is 15 years of age or younger).

- (7) G.S. 14-27.26 (First degree forcible sexual offense).
- (8) G.S. 14-27.27 (Second degree forcible sexual offense).
- (9) G.S. 14-27.28 (Statutory sexual offense with a child by an adult).
- (10) G.S. 14-27.29 (First degree statutory sexual offense).
- (11) G.S. 14-27.30 (Statutory sexual offense with a person who is 15 years of age or younger).
- (12) G.S. 14-32(a) (Assault with a deadly weapon with intent to kill inflicting serious injury).
- (13) G.S.14-34.1 (Discharging certain barreled weapons or a firearm into occupied property).
- (14) G.S. 14-39 (First or second degree kidnapping).
- (15) G.S. 14-43.11 (Human trafficking).
- (16) First degree burglary pursuant to G.S. 14-51.
- (17) First degree arson pursuant to G.S. 14-58.
- (18) G.S. 14-87 (Robbery with firearms or other dangerous weapons).

If the judge determines that release is warranted for a defendant charged with a crime listed under any of the subdivisions of this subsection, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534.

A defendant charged with a noncapital offense that is not listed under any of the subdivisions of this subsection, must otherwise have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- (2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds all of the following:

- (1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal gang, as defined in G.S. 14-50.16A(1).
- (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense.
- (3) The person (i) has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20 or (ii) has been convicted of a criminal offense and received an enhanced sentence for that offense pursuant to

G.S. 15A-1340.16E, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:

- (1) The offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm.
- (2) The person has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later.

(g) Persons who are considered for bond under the provisions of subsections (d), (e), and (f) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community.

(h) If a defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release for another pending proceeding, the judicial official who determines the conditions of pretrial release for the new offense shall be a judge. The judge shall direct a law enforcement officer, pretrial services program, or a district attorney to provide a criminal history report and risk assessment, if available, for the defendant and shall consider the criminal history when setting conditions of pretrial release. After setting conditions of pretrial release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. Notwithstanding the provisions of this subsection, a magistrate may set the conditions of pretrial release at any time if the new offense is a violation of Chapter 20 of the General Statutes, other than a violation of G.S. 20-138.1, 20-138.2, 20-138.2A, 20-138.2B, 20-138.5, or 20-141.4.

A defendant may be retained in custody pursuant to this subsection not more than 48 hours from the time of arrest without a judge making a determination of conditions of pretrial release. If a judge has not acted pursuant to this subsection within 48 hours from the time of arrest of the defendant, the magistrate shall set conditions of pretrial release in accordance with G.S. 15A-534. (1973, c. 1286, s. 1; 1981, c. 936, s. 2; 1997-443, s. 11A.118(a); 1998-208, s. 1; 2008-214, s. 4; 2013-298, s. 1; 2017-194, s. 19; 2023-75, s. 2(a).)

§ 15A-534. Procedure for determining conditions of pretrial release.

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

- (1) Release the defendant on his written promise to appear.
- (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
- (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

- (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.
- (5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1), (a2), (a4), or (a6), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release. The judicial official may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction, and that any violation of this condition be reported by the monitoring provider to the district attorney.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant and any surety, or the agent thereof who is executing the bond for the defendant's release pursuant to that order.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet

been required for the charges, in the amount of at least one thousand dollars (\$1,000). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter. [The following applies:]

- (1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2), or (3).
- (2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.
- (3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:
 - a. The defendant is being held pursuant to this subdivision.
 - b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.
 - c. A date, within 72 hours or 96 hours if the courthouse is closed for transactions for a period longer than 72 hours, of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(d3) When conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense, the judicial official may require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars (\$1,000).

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a

district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

- (1) In a misdemeanor case tried in the district court, the noting of an appeal; and
- (2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

- (1) A judge authorized to do so releases the obligor from his bond; or
- (2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or
- (3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or
- (4) Prayer for judgment has been continued indefinitely in the district court; or
- (5) The court has placed the defendant on probation pursuant to a deferred prosecution or conditional discharge.

(i) Repealed by Session Laws 2012-146, s. 1(b), effective December 1, 2012. (1973, c. 1286, s. 1; 1975, c. 166, s. 13; 1977, 2nd Sess., c. 1134, s. 5; 1987, c. 481, s. 1; 1989, c. 259; 2001-487, s. 46.5(b); 2009-412, s. 1; 2009-547, ss. 3, 4, 4.1; 2010-94, s. 12.1; 2010-96, s. 3; 2011-191, s. 5; 2012-146, s. 1(a), (b); 2013-298, s. 2; 2015-195, s. 11(n); 2015-247, s. 9(a); 2016-107, s. 1; 2017-186, s. 2(ww); 2021-180, s. 19C.9(t); 2021-182, s. 2.5(b).)

§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.

(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge. The judge shall direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions of release. After setting conditions of release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's

criminal history report. The following provisions shall apply in addition to the provisions of G.S. 15A-534:

- (1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
- (2) A judge may impose the following conditions on pretrial release:
 - a. That the defendant stay away from the home, school, business or place of employment of the alleged victim.
 - b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim.
 - c. That the defendant refrain from removing, damaging or injuring specifically identified property.
 - d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.
 - e. That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction, and that any violation of this condition be reported by the monitoring provider to the district attorney.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

- (3) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

(b) A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section. (1979, c. 561, s. 4; 1989, c. 290, s. 2; 1995, c. 527, s. 3; 2001-518, s. 2; 2007-14, s. 1; 2010-135, s. 1; 2012-146, s. 2; 2015-62, s. 4(c); 2015-181, s. 47; 2017-186, s. 2(xx); 2021-180, s. 19C.9(t).)

§ 15A-534.2. Detention of impaired drivers.

(a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede a defendant's right to communicate with counsel and friends.

(b) If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection (c) is met; provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

(c) A defendant subject to detention under this section has the right to pretrial release under G.S. 15A-534 when the judicial official determines either that:

- (1) The defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or others or of damage to property if he is released; or
- (2) A sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the defendant is released to the custody of another, the judicial official may impose any other condition of pretrial release authorized by G.S. 15A-534, including a requirement that the defendant execute a secured appearance bond.

The defendant may be denied pretrial release under this section for a period no longer than 24 hours, and after such detention may be released only upon meeting the conditions of pretrial release set in accordance with G.S. 15A-534. If the defendant is detained for 24 hours, a judicial official must immediately determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

(d) In making his determination whether a defendant detained under this section remains impaired, the judicial official may request that the defendant submit to periodic tests to determine his alcohol concentration. Instruments acceptable for making preliminary breath tests under G.S. 20-16.3 may be used for this purpose as well as instruments for making evidentiary chemical analyses. Unless there is evidence that the defendant is still impaired from a combination of alcohol and some other impairing substance or condition, a judicial official must determine that a defendant with an alcohol concentration less than 0.05 is no longer impaired. The results of any periodic test to determine alcohol concentration may not be introduced in evidence:

- (1) Against the defendant by the State in any criminal, civil, or administrative proceeding arising out of an offense involving impaired driving; or
- (2) For any purpose in any proceeding if the test was not performed by a method approved by the Commission for Public Health under G.S. 20-139.1 and by a person licensed to administer the test by the Department of Health and Human Services.

The fact that a defendant refused to comply with a judicial official's request that he submit to a chemical analysis may not be admitted into evidence in any criminal action, administrative proceeding, or a civil action to review a decision reached by an administrative agency in which the defendant is a party. (1983, c. 435, s. 4; 1997-443, s. 11A.118(a); 2007-182, s. 2.)

§ 15A-534.3. Detention for communicable diseases.

If a judicial official conducting an initial appearance or first appearance hearing finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by such defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148. (1989, c. 499, s. 1; 2009-501, s. 1.)

§ 15A-534.4. Sex offenses and crimes of violence against child victims: bail and pretrial release.

(a) In all cases in which the defendant is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of G.S. 14-202.1, with rape or any other sex offense in violation of Article 7B, Chapter 14 of the General Statutes, against a minor victim, with incest with a minor in violation of G.S. 14-178, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of G.S. 14-320.1, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim, in addition to the provisions of G.S. 15A-534 a judicial official shall impose the following conditions on pretrial release:

- (1) That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim.
- (2) That the defendant refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges.
- (3) That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

The conditions set forth above shall be imposed in addition to any other conditions that the judicial official may impose on pretrial release.

(b) Notwithstanding the provisions of subsection (a) of this section, upon request of the defendant, the judicial official may waive one or more of the conditions required by subdivisions (1) and (2) of subsection (a) of this section if the judicial official makes written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed on the defendant. (1993 (Reg. Sess., 1994), c. 723, s. 5; 2007-172, s. 1; 2015-181, s. 47.)

§ 15A-534.5. Detention to protect public health.

If a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 poses a threat to the health and safety of others, the judicial official shall deny pretrial release and shall order the person to be confined in an area or facility designated by the judicial official. Such pretrial confinement shall terminate when a judicial official determines that the confined person does not pose a threat to the health and safety of others. These determinations shall be made only after the State Health Director or local health director has made recommendations to the court. (2002-179, s. 15.)

§ 15A-534.6. Bail in cases of manufacture of methamphetamine.

In all cases in which the defendant is charged with any violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., in determining bond and other conditions of release, the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the State shows by clear and convincing evidence both:

- (1) The person was arrested for a violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., relating to the manufacture of methamphetamine or possession of an immediate precursor chemical with knowledge or reasonable cause to know that the chemical will be used to manufacture methamphetamine.
- (2) The person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the violation referred to in

subdivision (1) of this section was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner. (2005-434, s. 6; 2007-484, s. 4.)

§ 15A-534.7. Communicating a threat of mass violence; bail and pretrial release.

(a) In all cases in which the defendant is charged with communicating a threat of mass violence on educational property in violation of G.S. 14-277.6 or communicating a threat of mass violence at a place of religious worship in violation of G.S. 14-277.7, except as provided in subsection (b) of this section, the judicial official who determines the conditions of pretrial release shall be a judge. The judge shall direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions of release. After setting conditions of release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. The following provisions shall apply in addition to the provisions of G.S. 15A-534:

- (1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to persons and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
- (2) A judge may impose the following conditions on pretrial release:
 - a. That the defendant stay away from the educational property or place of religious worship against which the threat was communicated.
 - b. That the defendant stay away from any other educational property or place of religious worship unless permission to be present is granted by the person in control of the property.

The conditions set forth in this subdivision may be imposed in addition to requiring that the defendant execute a secured appearance bond.

- (3) Should the defendant be mentally ill and dangerous to himself or herself or others or a substance abuser and dangerous to himself or herself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

(b) A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section. (2018-72, s. 6.)

§ 15A-534.8. Rioting or looting; bail and pretrial release.

(a) In all cases in which the defendant is charged with a violation of G.S. 14-288.2 or G.S. 14-288.6, the judicial official who determines the conditions of pretrial release shall be a judge. The judge shall direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions of release. After setting conditions of release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. The following provisions shall apply in addition to the provisions of G.S. 15A-534:

- (1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to persons and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
- (2) A judge may order the defendant to stay away from specific locations or property where the offense occurred. This condition may be imposed in addition to requiring that the defendant execute a secured appearance bond.
- (3) Should the defendant be mentally ill and dangerous to himself or herself or others, or a substance abuser and dangerous to himself or herself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

(b) A defendant may be retained in custody not more than 24 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 24 hours of arrest, the magistrate shall act under the provisions of this section. (2023-6, s. 4.)

§ 15A-535. Issuance of policies on pretrial release.

(a) Subject to the provisions of this Article, the senior resident superior court judge for each district or set of districts as defined in G.S. 7A-41.1(a) in consultation with the chief district court judge or judges of all the district court districts in which are located any of the counties in the senior resident superior court judge's district or set of districts, must devise and issue recommended policies to be followed within each of those counties in determining whether, and upon what conditions, a defendant may be released before trial and may include in such policies, or issue separately, a requirement that each judicial official who imposes condition (4) or (5) in G.S. 15A-534(a) must record the reasons for doing so in writing.

(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by judicial officials to supervision of such programs, and subject to its rules and regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a). (1973, c. 1286, s. 1; 1975, c. 791, s. 1; 1987, c. 481, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 55; 2009-547, s. 5.)

§ 15A-536. Release after conviction in the superior court.

(a) A defendant whose guilt has been established in the superior court and is either awaiting sentence or has filed an appeal from the judgment entered may be ordered released upon conditions in accordance with the provisions of this Article.

(b) If release is ordered, the judge must impose the conditions set out in G.S. 15A-534(a) which will reasonably assure the presence of the defendant when required and provide adequate protection to persons and the community. If no single condition gives the assurance, the judge may impose the condition in G.S. 15A-534(a)(3) in addition to any other condition and may also, or in lieu of the condition in G.S. 15A-534(a)(3), place restrictions on the travel, associations, conduct, or place of abode of the defendant.

(c) In determining what conditions of release to impose, the judge must, on the basis of available information, consider the appropriate factors set out in G.S. 15A-534(c).

(d) A judge authorizing release of a defendant under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any such violation. The order of release must be filed with the clerk and a copy given the defendant.

(e) An order of release may be modified or revoked by any superior court judge who has ordered the release of a defendant under this section or, if that judge is absent from the superior court district or set of districts as defined in G.S. 7A-41.1, by any other superior court judge. If the defendant is placed in custody as the result of a revocation or modification of an order of release, the defendant is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.

(f) In imposing conditions of release and in modifying and revoking orders of release under this section, the judge must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials. (1973, c. 1286, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 56.)

§ 15A-537. Persons authorized to effect release.

(a) Following any authorization of release of any person in accordance with the provisions of this Article, any judicial official must effect the release of that person upon satisfying himself that the conditions of release have been met. In the absence of a judicial official, any law-enforcement officer or custodial official having the person in custody must effect the release upon satisfying himself that the conditions of release have been met, but law-enforcement and custodial agencies may administratively direct which officers or officials are authorized to effect release under this section. Satisfying oneself whether conditions of release are met includes determining if sureties are sufficiently solvent to meet the bond obligation, but no judicial official, officer, or custodial official may be held civilly liable for actions taken in good faith under this section.

(b) Upon release of the person in question, the person effecting release must file any bond, deposit, or mortgage and other documents pertaining to the release with the clerk of the court in which release was authorized.

(c) For the limited purposes of this section, any law-enforcement officer or custodial official may administer oaths to sureties and take other actions necessary in carrying out the duties imposed by this section. Any surety bond so taken is to be regarded in every respect as any other bail bond. (1973, c. 1286, s. 1; 1977, c. 711, s. 23; 2022-47, s. 16(j).)

§ 15A-538. Modification of order on motion of person detained; substitution of surety.

(a) A person who is detained or objects to the conditions required for his release which were imposed or allowed to stand by order of a district court judge may apply in writing to a superior court judge to modify the order.

(b) The power to modify an order includes the power to substitute sureties upon any bond. Substitution or addition of acceptable sureties may be made at the request of any obligor on a bond or, in the interests of justice, at the request of a prosecutor under the provisions of G.S. 15A-539. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-539. Modification upon motion of prosecutor.

(a) A prosecutor may at any time apply to an appropriate district court judge or superior court judge for modification or revocation of an order of release under this Article.

(b) A district or superior court judge may, upon motion of the State or upon the judge's own motion, and for good cause shown, conduct a hearing into the source of money or property to be posted for any defendant who is about to be released on a secured appearance bond. The court may refuse to accept offered money or property as security for the appearance bond that, because of its source, will not reasonably assure the appearance of the person as required. The State shall have the burden of proving, by a preponderance of the evidence, the facts supporting the court's decision to refuse to accept the offered money or property as security for the bond.

(c) Nothing in this section shall affect the legal rights of any surety on a bail bond, bonding company, or a professional bondsman. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 2005-375, s. 1.)

§ 15A-540. Surrender of a defendant by a surety; setting new conditions of release.

(a) **Going Off the Bond Before Breach.** – Before there has been a breach of the conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-71-20. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond.

(b) **Surrender After Breach of Condition.** – After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant, the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a copy of the bail bond, forfeiture, or release order. Upon surrender of the defendant, the sheriff shall provide a receipt to the surety.

(c) **New Conditions of Pretrial Release.** – When a defendant is surrendered by a surety under subsection (b) of this section, the sheriff shall without unnecessary delay take the defendant before a judicial official, along with a copy of the undertaking received from the surety and a copy of the receipt provided to the surety. The judicial official shall then determine whether the defendant is again entitled to release and, if so, upon what conditions.

(d) A surety may utilize the services and assistance of any surety bondsman, professional bondsman, or runner licensed under G.S. 58-71-40 to effect the arrest or surrender of a defendant under subsection (a) or (b) of this section. (1973, c. 1286, s. 1; 1995, c. 290, s. 2; 2000-133, s. 2; 2001-487, s. 46.5(a); 2013-139, s. 2; 2014-120, s. 12(b).)

§ 15A-541. Persons prohibited from becoming surety.

(a) No sheriff, deputy sheriff, other law-enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of the General Court of Justice, other public employee assigned to duties relating to the administration of criminal justice, or spouse of any such person may in any case become surety on a bail bond for any person other than a member of his immediate family. In addition no person covered by this section may act as agent for any bonding company or professional bondsman. No such person may have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as bondsman.

(b) A violation of this section is a Class 2 misdemeanor. (1973, c. 1286, s. 1; 1993, c. 539, s. 299; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 15A-542. False qualification by surety.

(a) No person may sign an appearance bond as surety knowing or having reason to know that he does not own sufficient property over and above his exemption allowed by law to enable him to pay the bond should it be ordered forfeited.

(b) A violation of this section is a Class 2 misdemeanor. (1973, c. 1286, s. 1; 1993, c. 539, s. 300; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 15A-543. Penalties for failure to appear.

(a) In addition to forfeiture imposed under Part 2 of this Article, any person released pursuant to this Article who willfully fails to appear before any court or judicial official as required is subject to the criminal penalties set out in this section.

(b) A violation of this section is a Class I felony if:

(1) The violator was released in connection with a felony charge against him; or

(2) The violator was released under the provisions of G.S. 15A-536.

(c) If, except as provided in subsection (b) above, a violator was released in connection with a misdemeanor charge against him, a violation of this section is a Class 2 misdemeanor. (1973, c. 1286, s. 1; 1983, c. 294, s. 4; 1993, c. 539, s. 301; 1994, Ex. Sess., c. 14, s. 16; c. 24, s. 14(c); 2000-133, s. 3.)

§ 15A-544: Repealed by Session Laws 2000-133, s. 4.

Part 2. Bail Bond Forfeiture.

§ 15A-544.1. Forfeiture jurisdiction.

By executing a bail bond the defendant and each surety submit to the jurisdiction of the court and irrevocably consent to be bound by any notice given in compliance with this Part. The liability of the defendant and each surety may be enforced as provided in this Part, without the necessity of an independent action. (2000-133, s. 6.)

§ 15A-544.2. Identifying information on bond.

(a) The following information shall be entered on each bail bond executed under Part 1 of this Article:

(1) The name and mailing address of the defendant.

(2) The name and mailing address of any accommodation bondsman executing the bond as surety.

(3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

(b) If a defendant is released upon execution of a bail bond that does not contain all the information required by subsection (a) of this section, the defendant's order of pretrial release may be revoked as provided in G.S. 15A-534(f). (2000-133, s. 6.)

§ 15A-544.3. Entry of forfeiture.

(a) If a defendant who was released under Part 1 of this Article upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a forfeiture for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

(b) The forfeiture shall contain the following information:

- (1) The name and address of record of the defendant.
- (2) The file number of each case in which the defendant's appearance is secured by the bail bond.
- (3) The amount of the bail bond.
- (4) The date on which the bail bond was executed.
- (5) The name and address of record of each surety on the bail bond.
- (6) The name, address of record, license number, and power of appointment number of any bail agent who executed the bail bond on behalf of an insurance company.
- (7) The date on which the forfeiture is entered.
- (8) The date on which the forfeiture will become a final judgment under G.S. 15A-544.6 if not set aside before that date.
- (9) The following notice: "TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A forfeiture for the amount of the bail bond shown above was entered in favor of the State against the defendant and each surety named above on the date of forfeiture shown above. This forfeiture will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question as evidenced by a copy of an official court record, including an electronic record, (v) the defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate, (vi) the defendant was incarcerated in a unit of the Division of Prisons of the Department of Adult Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear as evidenced by a copy of an official court record or a copy of a document from the Division of Prisons of the Department of Adult Correction or Federal Bureau of Prisons, (vii) the defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, or between the failure to appear and the final judgment date, and the district attorney for the

county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed, (viii) notice of forfeiture was not provided pursuant to G.S. 15A-544.4(e), or (ix) the court refused to issue an order for arrest for the defendant's failure to appear, as evidenced by a copy of an official court record, including an electronic record. The forfeiture will not be set aside for any other reason. If this forfeiture is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the forfeiture will become a final judgment on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full." (2000-133, s. 6; 2007-105, s. 2; 2011-145, s. 19.1(h); 2012-83, s. 25; 2017-186, s. 2(yy); 2021-180, s. 19C.9(p); 2022-73, s. 3(a).)

§ 15A-544.4. Notice of forfeiture.

(a) The court shall give notice of the entry of forfeiture by mailing a copy of the forfeiture to the defendant and to each surety whose name appears on the bail bond.

(b) The notice shall be sent by first-class mail to the defendant and to each surety named on the bond at the surety's address of record.

(c) If a bail agent on behalf of an insurance company executed the bond, the court shall also provide a copy of the forfeiture to the bail agent, but failure to provide notice to the bail agent shall not affect the validity of any notice given to the insurance company.

(d) Notice given under this section is effective when the notice is mailed.

(e) Notice under this section shall be mailed not later than the 30th day after the date on which the defendant fails to appear as required and a call and fail is ordered. (2000-133, s. 6; 2009-550, s. 1; 2022-73, s. 3(b).)

§ 15A-544.5. Setting aside forfeiture.

(a) Relief Exclusive. – There shall be no relief from a forfeiture except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified in subsections (c) and (d) of this section. Subsections (f), (g), and (h) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside. – Except as provided by subsection (f) of this section, a forfeiture shall be set aside for any one of the following reasons, and none other:

- (1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

- (2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.
- (3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.
- (4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question as evidenced by a copy of an official court record, including an electronic record.
- (5) The defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate.
- (6) The defendant was incarcerated in a unit of the Division of Prisons of the Department of Adult Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear as evidenced by a copy of an official court record or a copy of a document from the Division of Prisons of the Department of Adult Correction or Federal Bureau of Prisons, including an electronic record.
- (7) The defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, or any time between the failure to appear and the final judgment date, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.
- (8) Notice of the forfeiture was not provided pursuant to G.S. 15A-544.4(e).
- (9) The court refused to issue an order for arrest for the defendant's failure to appear, as evidenced by a copy of an official court record, including an electronic record.

(c) Procedure When Failure to Appear Is Stricken. – If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court shall simultaneously enter an order setting aside any forfeiture of that bail bond. When an order setting aside a forfeiture is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

- (1) Any of the following parties on a bail bond may make a written motion that the forfeiture be set aside:
 - a. The defendant.
 - b. Any surety.
 - c. A professional bondsman or a runner acting on behalf of a professional bondsman.
 - d. A bail agent acting on behalf of an insurance company.

The written motion shall state the reason for the motion and attach to the motion the evidence specified in subsection (b) of this section.

- (1a) A motion to set aside a forfeiture for the reason described in subdivision (8) of subsection (b) of this section shall be filed within 30 days of the date notice was given pursuant to G.S. 15A-544.4(d). A motion to set aside a forfeiture for any other reason in subsection (b) of this section may be filed at any time before the expiration of 150 days after the date on which notice was given pursuant to G.S. 15A-544.4(d).
- (2) The motion shall be filed in the office of the clerk of superior court of the county in which the forfeiture was entered. The moving party shall, under G.S. 1A-1, Rule 5, serve a copy of the motion on the district attorney for that county and on the attorney for the county board of education.
- (3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.
- (4) If neither the district attorney nor the attorney for the board of education has filed a written objection to the motion by the twentieth day after a copy of the motion is served by the moving party pursuant to Rule 5 of the Rules of Civil Procedure, the clerk shall enter an order setting aside the forfeiture, regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either.
- (5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.
- (6) If at the hearing the court allows the motion, the court shall enter an order setting aside the forfeiture.
- (7) If at the hearing the court does not enter an order setting aside the forfeiture, the forfeiture shall become a final judgment of forfeiture on the later of:
 - a. The date of the hearing.
 - b. The date of final judgment specified in G.S. 15A-544.6.
- (8) If at the hearing the court determines that the motion to set aside was not signed or that the documentation required to be attached pursuant to subdivision (1) of this subsection is fraudulent or was not attached to the motion at the time the motion was filed, the court may order monetary sanctions against the surety filing the motion, unless the court also finds that the failure to sign the motion or attach the required documentation was unintentional. A motion for sanctions and notice of the hearing thereof shall be served on the surety not later than 10 days before the time specified for the hearing. If the court concludes that a sanction should be ordered, in addition to ordering the denial of the motion to set aside, sanctions shall be imposed as follows: (i) twenty-five percent (25%) of the bond amount for failure to sign the motion; (ii) fifty percent (50%) of the bond amount for failure to attach the required documentation; and (iii) not less than one hundred percent (100%) of the bond amount for the filing of fraudulent documentation. Sanctions awarded under this subdivision shall be docketed by the clerk of superior court as a civil judgment as provided in G.S. 1-234. The

- (2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a notice of the judgment, showing the date on which the judgment was docketed.

(d) **Sureties, Professional Bail Bondsmen, Bail Agents, and Runners May Not Execute Bonds in County.** – After a final judgment is docketed as provided in this section, no surety named in the judgment shall become a surety on any bail bond in the county in which the judgment is docketed until the judgment is satisfied in full. In addition, no professional bail bondsman, bail agent, or runner whose name appears on a bond posted in that person's licensed capacity for which a final judgment of forfeiture has been entered shall sign any bond in any licensed capacity statewide until the judgment is satisfied in full. (2000-133, s. 6; 2006-188, s. 2; 2016-107, s. 2.)

§ 15A-544.8. Relief from final judgment of forfeiture.

(a) **Relief Exclusive.** – There is no relief from a final judgment of forfeiture except as provided in this section.

(b) **Reasons.** – The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

- (1) The person seeking relief was not given notice as provided in G.S. 15A-544.4. However, the court shall not grant relief under this subdivision solely due to the court's failure to provide notice within 30 days as required by G.S. 15A-544.4(e).
- (2) Other extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.

(c) **Procedure.** – The procedure for obtaining relief from a final judgment under this section is as follows:

- (1) At any time before the expiration of three years after the date on which a judgment of forfeiture became final, any of the following parties named in the judgment may make a written motion for relief under this section:
 - a. The defendant.
 - b. Any surety.
 - c. A professional bondsman or a runner acting on behalf of a professional bondsman.
 - d. A bail agent acting on behalf of an insurance company.

The written motion shall state the reasons for the motion and set forth the evidence in support of each reason.

- (2) The motion shall be filed in the office of the clerk of superior court of the county in which the final judgment was, entered. The moving party shall, under G.S. 1A-1, Rule 5, serve a copy of the motion on the district attorney for that county and on the attorney for the county board of education.
- (3) A hearing on the motion shall be scheduled within a reasonable time in the trial division in which the defendant was bonded to appear.
- (4) At the hearing the court may grant the party any relief from the judgment that the court considers appropriate, including the refund of all or a part of any money paid to satisfy the judgment.

(d) **Only One Motion.** – No more than one motion by any party for relief under this section may be considered by the court.

(e) Finality of Judgment as to Other Parties Not Affected. – The finality of a final judgment of forfeiture shall not be affected, as to any party to the judgment, by the filing of a motion by, or the granting of relief to, any other party.

(f) Appeal. – An order on a motion for relief from a final judgment of forfeiture is a final order or judgment of the trial court for purposes of appeal. Appeal is the same as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on any conditions it considers appropriate. (2000-133, s. 6; 2011-377, ss. 9, 10; 2013-139, s. 5; 2022-73, s. 3(d).)

§ 15A-545. Reserved for future codification purposes.

Part 3. Other Provisions.

§ 15A-546. Contempt.

Nothing in this Article is intended to interfere with or prevent the exercise by the court of its contempt powers. (1973, c. 1286, s. 1.)

§ 15A-547. Right to habeas corpus.

Nothing in this Article is intended to abridge the right of habeas corpus. (1973, c. 1286, s. 1.)

§ 15A-547.1. Remit bail bond if defendant sentenced to community or intermediate punishment.

If a defendant is convicted and sentenced to community punishment or intermediate punishment and no appeal is pending, then the court shall remit the bail bond to the obligor in accordance with the provisions of this Article and shall not require that the bail bond continue to be posted while the defendant serves his or her sentence. (1995, c. 290, s. 4.)

§§ 15A-547.2 through 15A-547.6. Reserved for future codification purposes.

Article 27.

§§ 15A-548 through 15A-574: Reserved for future codification purposes.

Article 28.

§§ 15A-575 through 15A-600: Reserved for future codification purposes.

SUBCHAPTER VI. PRELIMINARY PROCEEDINGS.

Article 29.

First Appearance Before District Court Judge.

§ 15A-601. First appearance before a district court judge; consolidation of first appearance before magistrate and before district court judge; first appearance before clerk of superior court.

(a) Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a crime in the original jurisdiction of the superior court must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a misdemeanor offense and held in custody must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

(a1), (a2) Repealed by Session Laws 2021-47, s. 10(g), effective June 18, 2021, and applicable to proceedings occurring on or after that date.

(b) When a district court judge conducts an initial appearance as provided in G.S. 15A-511, the judge may consolidate those proceedings and the proceedings under this Article.

(c) Unless the courthouse is closed for transactions for a period longer than 72 hours or the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within 72 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the courthouse is closed for transactions for a period longer than 72 hours, the first appearance before a district court judge must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the defendant is not taken into custody, or is released pursuant to Article 26 of this Chapter, Bail, prior to a first appearance, the first appearance must be held at the next session of district court held in the county. This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).

(d) Upon motion of the defendant, the first appearance before a district court judge may be continued to a time certain. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding.

(e) The clerk of the superior court in the county in which the defendant is taken into custody may conduct a first appearance as provided in this Article if a district court judge is not available in the county within 72 hours after the defendant is taken into custody, or 96 hours after the defendant is taken into custody if the courthouse is closed for transactions for a period longer than 72 hours. A magistrate may conduct the first appearance if the clerk is not available. For the limited purpose of conducting a first appearance and notwithstanding any other provision of law, the clerk or magistrate shall proceed under this Article as a district court judge would and shall have the same authority that a district court judge would have at a first appearance. (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, ss. 139, 140; 1979, c. 651; 1987 (Reg. Sess., 1988), c. 1037, s. 58; 1993, c. 30, s. 2; 2021-47, s. 10(g); 2021-138, s. 14(a); 2021-182, s. 2.5(a); 2022-6, s. 8.4; 2022-47, s. 15(a).)

§ 15A-602. Warning of right against self-incrimination.

Except when he is accompanied by his counsel, the judge must inform the defendant of his right to remain silent and that anything he says may be used against him. (1973, c. 1286, s. 1.)

§ 15A-603. Assuring defendant's right to counsel.

(a) The judge must determine whether the defendant has retained counsel or, if indigent, has been assigned counsel.

(b) If the defendant is not represented by counsel, the judge must inform the defendant that he has important legal rights which may be waived unless asserted in a timely and proper manner and that counsel may be of assistance to the defendant in advising him and acting in his behalf. The

judge must inform the defendant of his right to be represented by counsel and that he will be furnished counsel if he is indigent. The judge shall also advise the defendant that if he is convicted and placed on probation, payment of the expense of counsel assigned to represent him may be made a condition of probation, and that if he is acquitted, he will have no obligation to pay the expense of assigned counsel.

(c) If the defendant asserts that he is indigent and desires counsel, the judge must proceed in accordance with the provisions of Article 36 of Chapter 7A of the General Statutes.

(d) If the defendant is found not to be indigent and indicates that he desires to be represented by counsel, the judge must inform him that he should obtain counsel promptly.

(e) If the defendant desires to waive representation by counsel, the waiver must be in writing in accordance with the provisions of Article 36 of Chapter 7A of the General Statutes except as otherwise provided in this Article. (1973, c. 1286, s. 1; 1981, c. 409, s. 1.)

§ 15A-604. Determination of sufficiency of charge.

(a) The judge must examine each criminal process or magistrate's order and determine whether each charge against the defendant charges either [of the following]:

(1) A criminal offense within the original jurisdiction of the superior court.

(2) A misdemeanor offense within the original jurisdiction of the district court.

(b) If the judge determines that the process or order fails to charge a criminal offense within the original jurisdiction of the superior court or a misdemeanor within the original jurisdiction of the district court, the judge must notify the prosecutor and take further appropriate action, including one or more of the following:

(1) Dismiss the charge.

(2) Permit the State to amend the statement of the crime in the process or order.

(3) Continue the proceedings, for not more than 24 hours, to permit the State to initiate new charges.

(4) For a pleading that purported to allege a criminal offense within the original jurisdiction of the superior court, with the consent of the prosecutor, set the case for trial in the district court if the charge is found to be within the original jurisdiction of the district court. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 2022-47, s. 15(b).)

§ 15A-605. Additional proceedings at first appearance before judge.

The judge must:

(1) Inform the defendant of the charges against him;

(2) Determine that the defendant or his counsel has been furnished a copy of the process or order; and

(3) Determine or review the defendant's eligibility for release under Article 26 of this Chapter, Bail. (1973, c. 1286, s. 1.)

§ 15A-606. Demand or waiver of probable-cause hearing.

(a) If a defendant is charged with a criminal offense within the original jurisdiction of the superior court, the judge must schedule a probable-cause hearing unless the defendant waives in writing the defendant's right to such hearing. A defendant represented by counsel, or who desires to be represented by counsel, may not before the date of the scheduled hearing waive the defendant's

right to a probable-cause hearing without the written consent of the defendant and the defendant's counsel.

(b) Evidence of a demand or waiver of a probable-cause hearing may not be admitted at trial.

(c) If the defendant waives a probable-cause hearing, the district court judge must bind the defendant over to the superior court for further proceedings in accordance with this Chapter.

(d) If the defendant does not waive a probable-cause hearing, the district court judge must schedule a hearing not later than 15 working days following the initial appearance before the district court judge; if no session of the district court is scheduled in the county within 15 working days, the hearing must be scheduled for the first day of the next session. The hearing may not be scheduled sooner than five working days following such initial appearance without the consent of the defendant and the prosecutor.

(e) If an unrepresented defendant is not indigent and has indicated his desire to be represented by counsel, the district court judge must inform him that he has a choice of appearing without counsel at the probable-cause hearing or of securing the attendance of counsel to represent him at the hearing. The judge must further inform him that the judge presiding at the hearing will not continue the hearing because of the absence of counsel except for extraordinary cause.

(f) Upon a showing of good cause, a scheduled probable-cause hearing may be continued by the district court upon timely motion of the defendant or the State. Except for extraordinary cause, a motion is not timely unless made at least 48 hours prior to the time set for the probable-cause hearing.

(g) If after the first appearance before a district court judge a defendant with consent of counsel desires to waive his right to a probable-cause hearing, he may do so in writing filed with the court signed by defendant and his counsel. Upon waiver the defendant must be bound over to the superior court. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 2022-47, s. 15(c).)

§§ 15A-607 through 15A-610. Reserved for future codification purposes.

Article 30.

Probable-Cause Hearing.

§ 15A-611. Probable-cause hearing procedure.

(a) At the probable-cause hearing:

(1) A prosecutor must represent the State.

(2) The defendant may be represented by counsel.

(3) The defendant may testify as a witness in his own behalf and call and examine other witnesses, and produce other evidence in his behalf.

(4) Each witness must testify under oath or affirmation and is subject to cross-examination.

(b) The State must by nonhearsay evidence, or by evidence that satisfies an exception to the hearsay rule, show that there is probable cause to believe that the offense charged has been committed and that there is probable cause to believe that the defendant committed it, except:

(1) A report or copy of a report made by a physicist, chemist, firearms identification expert, fingerprint technician, or an expert or technician in some other scientific, professional, or medical field, concerning the results of an examination, comparison, or test performed by him in connection with the case

in issue, when stated by such person in a report made by him, is admissible in evidence.

- (2) If there is no serious contest, reliable hearsay is admissible to prove value, ownership of property, possession of property in another than the defendant, lack of consent of the owner, possessor, or custodian of property to its taking or to the breaking or entering of premises, chain of custody, authenticity of signatures, and the existence and text of a particular ordinance or regulation of a governmental unit or agency.

The district court judge is not required to exclude evidence on the ground that it was acquired by unlawful means.

(c) If a defendant appears at a probable-cause hearing without counsel, the judge must determine whether counsel has been waived. If he determines that counsel has been waived, he may proceed without counsel. If he determines that counsel has not been waived, except in a situation covered by G.S. 15A-606(e) he must take appropriate action to secure the defendant's right to counsel.

(d) A probable-cause hearing may not be held if an information in superior court is filed upon waiver of indictment before the date set for the hearing. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-612. Disposition of charge on probable-cause hearing.

(a) At the conclusion of a probable-cause hearing the judge must take one of the following actions:

- (1) If he finds that the defendant probably committed the offense charged, or a lesser included offense of such offense within the original jurisdiction of the superior court, he must bind the defendant over to a superior court for further proceedings in accordance with this Chapter. The judge must note his findings in the case records.
- (2) If he finds no probable cause as to the offense charged but probable cause with respect to a lesser included offense within the original jurisdiction of the district court, he may set the case for trial in the district court in accordance with the terms of G.S. 15A-613. In the absence of a new pleading, the judge may not set a case for trial in the district court on any offense which is not lesser included.
- (3) If he finds no probable cause pursuant to subdivisions (1) or (2) as to any charge, he must dismiss the proceedings in question.

(b) No finding made by a judge under this section precludes the State from instituting a subsequent prosecution for the same offense. (1973, c. 1286, s. 1; 1975, c. 166, s. 14.)

§ 15A-613. Setting offense for trial in district court.

If an offense set for trial in the district court under the terms of G.S. 15A-604(b)(4) or any provision of G.S. 15A-612 is a lesser included offense of the charge before the court on a pleading, the judge may:

- (1) Accept a plea of guilty or no contest, with the consent of the prosecutor; or
- (2) Proceed to try the offense immediately, with the consent of both the defendant and the prosecutor.

Otherwise, the judge must enter an appropriate order for subsequent calendaring of the case for trial in the district court. The trial so ordered may not be earlier than five working days nor later

than 15 working days from the date of the order. The judge must note in the case records the new offense with which the defendant is charged, has been tried, or to which he entered a plea of guilty or no contest. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-614. Review of eligibility for pretrial release.

Upon binding a defendant in custody over to the superior court for trial or upon entering an order for subsequent calendaring of the case of such a defendant for trial in the district court, the judge must again review the eligibility of the defendant for release under Article 26 of this Chapter, Bail. (1973, c. 1286, s. 1.)

§ 15A-615. Testing of certain persons for sexually transmitted infections.

(a) After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral intercourse; an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or less; or an offense under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years old; the victim or the parent, guardian, or guardian ad litem of a minor victim may request that a defendant be tested for the following sexually transmitted infections:

- (1) Chlamydia;
- (2) Gonorrhea;
- (3) Hepatitis B;
- (3a) Herpes;
- (4) HIV; and
- (5) Syphilis.

In the case of herpes, the defendant, pursuant to the provisions of this section, shall be examined for oral and genital herpetic lesions and, if a suggestive but nondiagnostic lesion is present, a culture for herpes shall be performed.

(b) Upon a request under subsection (a) of this section, the district attorney shall petition the court on behalf of the victim for an order requiring the defendant to be tested. Upon finding that there is probable cause to believe that the alleged sexual contact involved in the offense would pose a significant risk of transmission of a sexually transmitted infection listed in subsection (a) of this section, the court shall order the defendant to submit to testing for these infections. A defendant ordered to be tested under this section shall be tested not later than 48 hours after the date of the court order. A test for HIV ordered pursuant to this section shall use the HIV-RNA Detection Test for determining HIV infection.

(c) If the defendant is in the custody of the Division of Prisons of the Department of Adult Correction, the defendant shall be tested by the Division of Prisons of the Department of Adult Correction. If the defendant is not in the custody of the Division of Prisons of the Department of Adult Correction, the defendant shall be tested by the local health department. The Division of Prisons of the Department of Adult Correction shall inform the local health director of all test results. The local health director shall ensure that the victim is informed of the results of the tests and counseled appropriately. The agency conducting the tests shall inform the defendant of the results of the tests and ensure that the defendant is counseled appropriately. The results of the tests shall not be admissible as evidence in any criminal proceeding. (1993, c. 489, s. 1; 1994, Ex. Sess., c. 8, s. 1; 2006-226, s. 10; 2006-264, s. 33(a); 2007-403, s. 1; 2011-145, s. 19.1(h); 2017-186, s. 2(aaa); 2021-180, s. 19C.9(p).)

§§ 15A-616 through 15A-620. Reserved for future codification purposes.

Article 31.

The Grand Jury and Its Proceedings.

§ 15A-621. "Grand jury" defined.

A grand jury is a body consisting of not less than 12 nor more than 18 persons, impaneled by a superior court and constituting a part of such court. (1973, c. 1286, s. 1.)

§ 15A-622. Formation and organization of grand juries; other preliminary matters.

(a) The mode of selecting grand jurors and of drawing and impaneling grand jurors is governed by this Article and Chapter 9 of the General Statutes, Jurors. Challenges to the panel from which grand jurors were drawn are governed by the procedure in G.S. 15A-1211.

(b) To impanel a new grand jury, the presiding judge must direct that the names of all persons returned as jurors be separately placed in a container. The clerk must draw out the names of 18 persons to serve as grand jurors. Of these 18, the first nine drawn serve until the first session of court at which criminal cases are heard held in the county after the following January 1, and thereafter until their replacements are selected and sworn. The next nine serve until the first session of court at which criminal cases are heard held in the county after the following July 1, and thereafter until their replacements are selected and sworn. If this formula results in any term likely to be shorter than two months or longer than 15 months, the presiding judge impaneling the grand jury may modify the terms. Thereafter, beginning with the first session of superior court at which criminal cases are heard held in the county following January 1 and July 1 of each year, nine new grand jurors must be selected in the manner provided above to replace the jurors whose terms have expired. All new grand jurors so selected serve until the first session of court at which criminal cases are heard held after January 1 or July 1 which most nearly results in a 12-month term, and thereafter until their replacements are selected and sworn. If a vacancy occurs in the membership of the grand jury, the superior court judge next convening the jury or next holding a session of court at which criminal cases are heard in the county may order that a new juror be drawn in the manner provided above to fill the vacancy.

The senior resident superior court judge of the district may impanel a second grand jury in any county of the district to serve concurrently with the first. The second grand jury shall be impaneled as provided in the first paragraph of this subsection. The court shall continue to have two grand juries until the senior resident superior court judge orders the second grand jury to terminate.

In any county the senior resident superior court judge, if he finds that grand jury service is placing a disproportionate burden on grand jurors and their employers, may fix the term of service of a grand juror at six months rather than 12 months. In doing so, he shall prescribe procedures, consistent with this section, for replacement of half of the jurors of the grand jury or grand juries approximately every three months.

(c) Neither the grand jury panel nor any individual grand juror may be challenged, but a superior court judge may:

- (1) At any time before new grand jurors are sworn, discharge them, or discharge the grand jury, and cause new grand jurors or a new grand jury to be drawn if he finds that jurors have not been selected in accordance with law or that the grand jury is illegally constituted; or
- (2) At any time after a grand juror is drawn, refuse to swear him, or discharge him after he has been sworn, upon a finding that he is disqualified from service,

incapable of performing his duties, or guilty of misconduct in the performance of his duties so as to impair the proper functioning of the grand jury.

(d) The presiding judge may excuse a grand juror from service of the balance of his term, upon his own motion or upon the juror's request for good cause shown. The foreman may excuse individual jurors from attending particular sessions of the grand jury, except that he may not excuse more than two jurors for any one session.

(e) After the impaneling of a new grand jury, or the impaneling of nine new jurors under the terms of this section, the presiding judge must appoint one of the grand jurors as foreman and may appoint another to act as foreman during any absence or disability of the foreman. Unless removed for cause by a superior court judge, the foreman serves until his successor is appointed and sworn.

(f) The foreman and other new grand jurors must take the oath prescribed in G.S. 11-11. After new grand jurors have been sworn, the presiding judge may give the grand jurors written or oral instructions relating to the performance of their duties. At subsequent sessions of court, the presiding judge is not required to give any additional instructions to the grand jurors.

(g) At any time when a grand jury is in recess, a superior court judge may, upon application of the prosecutor or upon his own motion, order the grand jury reconvened for the purpose of dealing with a matter requiring grand jury action.

(h) A written petition for convening of grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6, with the approval of a committee of at least three members of the North Carolina Conference of District Attorneys, and with the concurrence of the Attorney General, with the Clerk of the North Carolina Supreme Court. The Chief Justice shall appoint a panel of three judges to determine whether to order the grand jury convened. A grand jury under this section may be convened if the three-judge panel determines that:

- (1) The petition alleges the commission of or a conspiracy to commit a violation of G.S. 90-95(h) or G.S. 90-95.1, any part of which violation or conspiracy occurred in the county where the grand jury sits, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury; and
- (2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed. Upon receiving a petition under this subsection, the Chief Justice shall appoint a panel to determine whether the grand jury should be convened as an investigative grand jury.

A grand jury authorized by this subsection may be convened from an existing grand jury or grand juries authorized by subsection (b) of this section or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding subsection (b) of this section, grand jurors impaneled pursuant to this subsection shall serve for a period of 12 months, and, if an

additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(i) An investigative grand jury may be convened pursuant to subsection (h) of this section if the petition alleges the commission of, attempt to commit or solicitation to commit, or a conspiracy to commit a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude).

(j) Any grand juror who serves the full term of service under subsection (b) or subsection (h) of this section shall not be required to serve again as a grand juror or as a juror for a period of six years. (1779, c. 157, s. 11, P.R.; R.C., c. 31, s. 33; 1879, c. 12; Code, ss. 404, 1742; Rev., ss. 1969, 1971; C.S., ss. 2333, 2336; 1929, c. 228; 1967, c. 218, s. 1; 1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1977, c. 711, s. 24; 1979, c. 177, s. 1; 1981, c. 440, s. 1; 1985 (Reg. Sess., 1986), c. 843, ss. 2, 6; 1987 (Reg. Sess., 1988), c. 1040, ss. 1, 3; 1989 (Reg. Sess., 1990), c. 1039, s. 4; 1991, c. 686, ss. 1, 3; 1995, c. 362, s. 1; 2013-148, s. 3; 2013-368, s. 21.)

§ 15A-623. Grand jury proceedings and operation in general.

(a) The finding of an indictment, the return of a presentment, and every other affirmative official action or decision of the grand jury requires the concurrence of at least 12 members of the grand jury.

(b) The foreman presides over all hearings and has the power to administer oaths or affirmations to all witnesses.

(c) The foreman must indicate on each bill of indictment or presentment the witness or witnesses sworn and examined before the grand jury. Failure to comply with this provision does not vitiate a bill of indictment or presentment.

(d) During the deliberations and voting of a grand jury, only the grand jurors may be present in the grand jury room. During its other proceedings, the following persons, in addition to a witness being examined, may, as the occasion requires, also be present:

(1) An interpreter, if needed.

(2) A law-enforcement officer holding a witness in custody.

Any person other than a witness who is permitted in the grand jury room must first take an oath before the grand jury that he will keep secret all matters before it within his knowledge.

(e) Grand jury proceedings are secret and, except as expressly provided in this Article, members of the grand jury and all persons present during its sessions shall keep its secrets and refrain from disclosing anything which transpires during any of its sessions.

(f) The presiding judge may direct that a bill of indictment be kept secret until the defendant is arrested or appears before the court. The clerk must seal the bill of indictment and no person including a witness may disclose the finding of the bill of indictment, or the proceedings leading to the finding, except when necessary for the issuance and execution of an order of arrest.

(g) Any grand juror or other person authorized to attend sessions of the grand jury and bound to keep its secrets who discloses, other than to his attorney, matters occurring before the grand jury other than in accordance with the provisions of this section is in contempt of court and subject to proceedings in accordance with law.

(h) If a grand jury is convened pursuant to G.S. 15A-622(h), notwithstanding subsection (d) of this section, a prosecutor shall be present to examine witnesses, and a court reporter shall be present and record the examination of witnesses. The record shall be transcribed. If the prosecutor

determines that it is necessary to compel testimony from the witness, he may grant use immunity to the witness. The grant of use immunity shall be given to the witness in writing by the prosecutor and shall be signed by the prosecutor. The written grant of use immunity shall also be read into the record by the prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury room to consult with his counsel at reasonable intervals and for a reasonable period of time upon the request of the witness. Notwithstanding subsection (e) of this section, the record of the examination of witnesses shall be made available to the examining prosecutor, and he may disclose contents of the record to other investigative or law-enforcement officers, the witness or his attorney to the extent that the disclosure is appropriate to the proper performance of his official duties. The record of the examination of a witness may be used in a trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings convened pursuant to this act may be made upon written order of a superior court judge if the judge determines disclosure is essential:

- (1) To prosecute a witness who appeared before the grand jury for contempt or perjury; or
- (2) To protect a defendant's constitutional rights or statutory rights to discovery pursuant to G.S. 15A-903.

Upon the convening of the investigative grand jury pursuant to approval by the three-judge panel, the district attorney shall subpoena the witnesses. The subpoena shall be served by the investigative grand jury officer, who shall be appointed by the court. The name of the person subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that information. The presiding superior court judge shall hear any matter concerning the investigative grand jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter for the investigative grand jury shall be present and record and transcribe the in camera proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A. When an investigative grand jury has completed its investigation of the crimes alleged in the petition, the investigative functions of the grand jury shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina Supreme Court. (1973, c. 1286, s. 1; 1985 (Reg. Sess., 1986), c. 843, ss. 3, 6; 1987 (Reg. Sess., 1988), c. 1040, ss. 1, 4; 1989 (Reg. Sess., 1990), c. 1039, s. 4; 1991, c. 686, ss. 2, 3.)

§ 15A-624. Grand jury the judge of facts; judge the source of legal advice.

- (a) The grand jury is the exclusive judge of the facts with respect to any matter before it.
- (b) The legal advisor of the grand jury is the presiding or convening judge. (1973, c. 1286, s. 1.)

§ 15A-625. Reserved for future codification purposes.

§ 15A-626. Who may call witnesses before grand jury; no right to appear without consent of prosecutor or judge.

- (a) Except as provided in this section, no person has a right to call a witness or appear as a witness in a grand jury proceeding.

(b) In proceedings upon bills of indictment submitted by the prosecutor to the grand jury, the clerk must call as witnesses the persons whose names are listed on the bills by the prosecutor. If the grand jury desires to hear any witness not named on the bill under consideration, it must through its foreman request the prosecutor to call the witness. The prosecutor in his discretion may call, or refuse to call, the witness.

(c) In considering any matter before it a grand jury may swear and hear the testimony of a member of the grand jury.

(d) Any person not called as a witness who desires to testify before the grand jury concerning a criminal matter which may properly be considered by the grand jury must apply to the district attorney or to a superior court judge. The judge or the district attorney in his discretion may call the witness to appear before the grand jury.

(e) An official who is required or authorized to call a witness before the grand jury does so by issuing a subpoena for the witness or by causing one to be issued. If the official is assured that the witness will appear when requested without issuance of a subpoena, he may call the witness simply by notifying him of the time and place his presence is requested before the grand jury. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-627. Submission of bill of indictment to grand jury by prosecutor.

(a) When a defendant has been bound over for trial in the superior court upon any charge in the original jurisdiction of such court, the prosecutor, unless he dismisses the charge under the terms of Article 50 of this Chapter, Voluntary Dismissal by the State, or proceeds upon a bill of information, must submit a bill of indictment charging the offense to the grand jury for its consideration.

(b) A prosecutor may submit a bill of indictment charging an offense within the original jurisdiction of the superior court. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-628. Functions of grand jury; record to be kept by clerk.

(a) A grand jury:

- (1) Must return a bill submitted to it by the prosecutor as a true bill of indictment if it finds from the evidence probable cause for the charge made.
- (2) Must return a bill submitted to it by the prosecutor as not a true bill of indictment if it fails to find probable cause for the charge made. Upon returning a bill of indictment as not a true bill, the grand jury may request the prosecutor to submit a bill of indictment as to a lesser included or related offense.
- (3) May return the bill to the court with an indication that the grand jury has not been able to act upon it because of the unavailability of witnesses.
- (4) May investigate any offense as to which no bill of indictment has been submitted to it by the prosecutor and issue a presentment accusing a named person or named persons with one or more criminal offenses if it has found probable cause for the charges made. An investigation may be initiated upon the concurrence of 12 members of the grand jury itself or upon the request of the presiding or convening judge or the prosecutor.
- (5) Must inspect the jail and may inspect other county offices or agencies and must report the results of its inspections to the court.

(b) In proceeding under subsection (a), the grand jury may consider any offense which may be prosecuted in the courts of the county, or in the courts of the superior court district or set of

districts as defined in G.S. 7A-41.1 when there has been a waiver of venue in accordance with Article 3 of this Chapter, Venue.

(c) Bills of indictment submitted by the prosecutor to the grand jury, whether found to be true bills or not, must be returned by the foreman of the grand jury to the presiding judge in open court. Presentments must also be returned by the foreman of the grand jury to the presiding judge in open court.

(d) The clerk must keep a permanent record of all matters returned by the grand jury to the judge under the provisions of this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1987 (Reg. Sess., 1988), c. 1037, s. 59.)

§ 15A-629. Procedure upon finding of not a true bill; release of defendant, etc.; institution of new charge.

(a) Upon the return of a bill of indictment as not a true bill, the presiding judge must immediately examine the case records to determine if the defendant is in custody or subject to bail or conditions of pretrial release. If so, except as provided in subsection (b), the judge must immediately order release from custody, exoneration of bail, or release from conditions of pretrial release, as the case may be.

(b) Upon the return of a bill of indictment as not a true bill but with a request that the prosecutor submit a bill of indictment to a lesser included or related offense, the judge may defer the action required in subsection (a) for a reasonable period, not to extend past the end of that session of superior court, to allow the institution of the new charge. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-630. Notice to defendant of true bill of indictment.

Upon the return of a bill of indictment as a true bill the presiding judge must immediately cause notice of the indictment to be mailed or otherwise given to the defendant unless he is then represented by counsel of record. The notice must inform the defendant of the time limitations upon his right to discovery under Article 48 of this Chapter, Discovery in the Superior Court, and a copy of the indictment must be attached to the notice. If the judge directs that the indictment be sealed as provided in G.S. 15A-623(f), he may defer the giving of notice under this section for a reasonable length of time. (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, s. 143.)

§ 15A-631. Grand jury venue.

In the General Court of Justice, the place for returning a presentment or indictment is a matter of venue and not jurisdiction. A grand jury shall have venue to present or indict in any case where the county in which it is sitting has venue for trial pursuant to the laws relating to trial venue. (1985, c. 553, s. 1.)

§§ 15A-632 through 15A-640. Reserved for future codification purposes.

Article 32.

Indictment and Related Instruments.

§ 15A-641. Indictment and related instruments; definitions of indictment, information, and presentment.

(a) Any indictment is a written accusation by a grand jury, filed with a superior court, charging a person with the commission of one or more criminal offenses.

(b) An information is a written accusation by a prosecutor, filed with a superior court, charging a person represented by counsel with the commission of one or more criminal offenses.

(c) A presentment is a written accusation by a grand jury, made on its own motion and filed with a superior court, charging a person, or two or more persons jointly, with the commission of one or more criminal offenses. A presentment does not institute criminal proceedings against any person, but the district attorney is obligated to investigate the factual background of every presentment returned in his district and to submit bills of indictment to the grand jury dealing with the subject matter of any presentments when it is appropriate to do so. (1797, c. 474, s. 3, P.R.; R.C., c. 35, s. 6; 1879, c. 12; Code, s. 1175; Rev., s. 3240; C.S., s. 4607; 1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-642. Prosecutions originating in superior court to be upon indictment or information; waiver of indictment.

(a) Prosecutions originating in the superior court must be upon pleadings as provided in Article 49 of this Chapter, Pleadings and Joinder.

(b) Indictment may not be waived in a capital case or in a case in which the defendant is not represented by counsel.

(c) Waiver of indictment must be in writing and signed by the defendant and his attorney. The waiver must be attached to or executed upon the bill of information. (1907, c. 71; C.S., s. 4610; 1951, c. 726, ss. 1, 2; 1971, c. 377, s. 30.1; 1973, c. 1286, s. 1.)

§ 15A-643. Joinder of offenses and defendants and consolidation of indictments and informations.

The rules with respect to joinder of offenses and defendants and the consolidation of charges in indictments and informations are provided in Article 49 of this Chapter, Pleadings and Joinder. (1917, c. 168; C.S., s. 4622; 1921, c. 100; 1973, c. 1286, s. 1.)

§ 15A-644. Form and content of indictment, information or presentment.

(a) An indictment must contain:

- (1) The name of the superior court in which it is filed;
- (2) The title of the action;
- (3) Criminal charges pleaded as provided in Article 49 of this Chapter, Pleadings and Joinder;
- (4) The signature of the prosecutor, but its omission is not a fatal defect; and
- (5) The signature of the foreman or acting foreman of the grand jury attesting the concurrence of 12 or more grand jurors in the finding of a true bill of indictment.

(b) An information must contain everything required of an indictment in subsection (a) except that the accusation is that of the prosecutor and the provisions of subdivision (a)(5) do not apply. The information must also contain or have attached the waiver of indictment pursuant to G.S. 15A-642(c).

(c) A presentment must contain everything required of an indictment in subsection (a) except that the provisions of subdivisions (a)(4) and (5) do not apply and the foreman must by his signature attest the concurrence of 12 or more grand jurors in the presentment. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-644.1. Filing of information when plea of guilty or no contest in district court to Class H or I felony.

A defendant who pleads guilty or no contest in district court pursuant to G.S. 7A-272(c)(1) shall enter that plea to an information complying with G.S. 15A-644(b), except it shall contain the name of the district court in which it is filed. (1995 (Reg. Sess., 1996), c. 725, s. 3.)

§ 15A-645. Allegations of previous convictions.

Trial upon indictments and informations involving allegation of previous convictions is subject to the provisions of G.S. 15A-928. (1973, c. 1286, s. 1.)

§ 15A-646. Superseding indictments and informations.

If at any time before entry of a plea of guilty to an indictment or information, or commencement of a trial thereof, another indictment or information is filed in the same court charging the defendant with an offense charged or attempted to be charged in the first instrument, the first one is, with respect to the offense, superseded by the second and, upon the defendant's arraignment upon the second indictment or information, the count of the first instrument charging the offense must be dismissed by the superior court judge. The first instrument is not, however, superseded with respect to any count contained therein which charged an offense not charged in the second indictment or information. (1973, c. 1286, s. 1.)

Article 33.

§§ 15A-647 through 15A-673. Reserved for future codification purposes.

Article 34.

§§ 15A-674 through 15A-700. Reserved for future codification purposes.

SUBCHAPTER VII. SPEEDY TRIAL; ATTENDANCE OF DEFENDANTS.

Article 35.

Speedy Trial.

§§ 15A-701 through 15A-710: Repealed by Session Laws 1989, c. 688, s. 1.

Article 36.

Special Criminal Process for Attendance of Defendants.

§ 15A-711. Securing attendance of criminal defendants confined in institutions within the State; requiring prosecutor to proceed.

(a) When a criminal defendant is confined in a penal or other institution under the control of the State or any of its subdivisions and his presence is required for trial, the prosecutor may make written request to the custodian of the institution for temporary release of the defendant to the custody of an appropriate law-enforcement officer who must produce him at the trial. The period of the temporary release may not exceed 60 days. The request of the prosecutor is sufficient authorization for the release, and must be honored, except as otherwise provided in this section.

(b) If the defendant whose presence is sought is confined pursuant to another criminal proceeding in a different prosecutorial district as defined in G.S. 7A-60, the defendant and the prosecutor prosecuting the other criminal action must be given reasonable notice and opportunity

to object to the temporary release. Objections must be heard by a superior court judge having authority to act in criminal cases in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the defendant is confined, and he must make appropriate orders as to the precedence of the actions.

(c) A defendant who is confined in an institution in this State pursuant to a criminal proceeding and who has other criminal charges pending against him may, by written request filed with the clerk of the court where the other charges are pending, require the prosecutor prosecuting such charges to proceed pursuant to this section. A copy of the request must be served upon the prosecutor in the manner provided by the Rules of Civil Procedure, G.S. 1A-1, Rule 5(b). If the prosecutor does not proceed pursuant to subsection (a) within six months from the date the request is filed with the clerk, the charges must be dismissed.

(d) Detainer. –

- (1) When a criminal defendant is imprisoned in this State pursuant to prior criminal proceedings, the clerk upon request of the prosecutor, must transmit to the custodian of the institution in which he is imprisoned, a copy of the charges filed against the defendant and a detainer directing that the prisoner be held to answer to the charges made against him. The detainer must contain a notice of the prisoner's right to proceed pursuant to G.S. 15A-711(c).
- (2) Upon receipt of the charges and the detainer, the custodian must immediately inform the prisoner of its receipt and furnish him copies of the charges and the detainer, must explain to him his right to proceed pursuant to G.S. 15A-711(c).
- (3) The custodian must notify the clerk who transmitted the detainer of the defendant's impending release at least 30 days prior to the date of release. The notice must be given immediately if the detainer is received less than 30 days prior to the date of release. The clerk must direct the sheriff to take custody of the defendant and produce him for trial. The custodian must release the defendant to the custody of the sheriff, but may not hold the defendant in confinement beyond the date on which he is eligible for release.
- (4) A detainer may be withdrawn upon request of the prosecutor, and the clerk must notify the custodian, who must notify the defendant. (1949, c. 303; 1953, c. 603; 1957, c. 349, s. 10; c. 1067, ss. 1, 2; 1967, c. 996, ss. 13, 15; 1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1979, c. 107, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 61; 1989, c. 688, s. 3.)

§§ 15A-712 through 15A-720. Reserved for future codification purposes.

Article 37.

Uniform Criminal Extradition Act.

§ 15A-721. Definitions.

Where appearing in this Article the term "Governor" includes any person performing the functions of Governor by authority of the law of this State. The term "executive authority" includes the Governor, and any person performing the functions of governor in a state other than this State. The term "state," referring to a state other than this State, includes any other state or territory, organized or unorganized, of the United States of America. (1937, c. 273, s. 1; 1973, c. 1286, s. 16.)

§ 15A-722. Duty of Governor as to fugitives from justice of other states.

Subject to the provisions of this Article, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State. (1937, c. 273, s. 2; 1973, c. 1286, s. 16.)

§ 15A-723. Form of demand for extradition.

No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under G.S. 15A-726, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. (1937, c. 273, s. 3; 1973, c. 1286, s. 16.)

§ 15A-724. Governor may cause investigation to be made.

When a demand shall be made upon the Governor of this State by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. (1937, c. 273, s. 4; 1973, c. 1286, s. 16.)

§ 15A-725. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.

When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State who is charged in the manner provided in G.S. 15A-743 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. (1937, c. 273, s. 5; 1973, c. 1286, s. 16.)

§ 15A-726. Extradition of persons not present in demanding state at time of commission of crime.

The Governor of this State may also surrender, on demand of the executive authority of any other state, any person in this State charged in such other state in the manner provided in G.S. 15A-723 with committing an act in this State, or in a third state, intentionally resulting in a crime in

the state whose executive authority is making the demand, and the provisions of this Article, not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. (1937, c. 273, s. 6; 1973, c. 1286, s. 16.)

§ 15A-727. Issue of Governor's warrant of arrest; its recitals.

If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the State seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. (1937, c. 273, s. 7; 1973, c. 1286, s. 16.)

§ 15A-728. Manner and place of execution of warrant.

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the State, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this Article, to the duly authorized agent of the demanding state. (1937, c. 273, s. 8; 1973, c. 1286, s. 16.)

§ 15A-729. Authority of arresting officer.

Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. (1937, c. 273, s. 9; 1973, c. 1286, s. 16.)

§ 15A-730. Rights of accused person; application for writ of habeas corpus.

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state. (1937, c. 273, s. 10; 1973, c. 1286, s. 16.)

§ 15A-731. Penalty for noncompliance with § 15A-730.

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant, in willful disobedience to G.S. 15A-730, shall be guilty of a Class 2 misdemeanor. (1937, c. 273, s. 11; 1973, c. 1286, s. 16; 1993, c. 539, s. 302; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 15A-732. Confinement in jail when necessary.

The officer or person executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive

and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this State. (1937, c. 273, s. 12; 1973, c. 1286, s. 16.)

§ 15A-733. Arrest prior to requisition.

Whenever any person within this State shall be charged on the oath of any credible person before any judge or magistrate of this State with the commission of any crime in any other state and, except in cases arising under G.S. 15A-726, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this State, setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state, and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under G.S. 15A-726, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this State, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this State, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. (1937, c. 273, s. 13; 1973, c. 1286, s. 16.)

§ 15A-734. Arrest without a warrant.

The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in G.S. 15A-733; and thereafter his answer shall be heard as if he had been arrested on a warrant. (1937, c. 273, s. 14; 1973, c. 1286, s. 16.)

§ 15A-735. Commitment to await requisition; bail.

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under G.S. 15A-726, that he has fled from justice, the judge or magistrate must, by a warrant reciting the

accusation, commit him to the county jail for such a time, not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in G.S. 15A-736, or until he shall be legally discharged. (1937, c. 273, s. 15; 1973, c. 1286, s. 16.)

§ 15A-736. Bail in certain cases; conditions of bond.

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor of this State. (1937, c. 273, s. 16; 1973, c. 1286, s. 16.)

§ 15A-736.1: Recodified as G.S. 15A-534.6 by Session Laws 2007-484, s. 4, effective August 30, 2007.

§ 15A-737. Extension of time of commitment; adjournment.

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed 60 days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in G.S. 15A-736, but within a period not to exceed 60 days after the date of such new bond. (1937, c. 273, s. 17; 1973, c. 1286, s. 16.)

§ 15A-738. Forfeiture of bail.

If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State. (1937, c. 273, s. 18; 1973, c. 1286, s. 16.)

§ 15A-739. Persons under criminal prosecution in this State at time of requisition.

If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this State. (1937, c. 273, s. 19; 1973, c. 1286, s. 16.)

§ 15A-740. Guilt or innocence of accused, when inquired into.

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime. (1937, c. 273, s. 20; 1973, c. 1286, s. 16.)

§ 15A-741. Governor may recall warrant or issue alias.

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. (1937, c. 273, s. 21; 1973, c. 1286, s. 16.)

§ 15A-742. Fugitives from this State; duty of governors.

Whenever the Governor of this State shall demand a person charged with a crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this State from the executive authority of any other state, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this State, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed. (1937, c. 273, s. 22; 1973, c. 1286, s. 16.)

§ 15A-743. Application for issuance of requisition; by whom made; contents.

(a) When the return to this State of a person charged with crime in this State is required, the prosecuting attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation, post-release supervision, or parole, the prosecuting attorney of the county in which the offense was committed, the Post-Release Supervision and Parole Commission, the Director of Prisons, the Director of Community Corrections, or sheriff of the county from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. A copy of all papers shall be forwarded with the Governor's requisition. (1937, c. 273, s. 23; 1973, c. 1286, s. 16; 1975, c. 132; 1993, c. 83, s. 1; 2016-77, s. 6.)

§ 15A-744. Costs and expenses.

Subject to the requirements and restrictions set forth in this section, if the crime is a felony or if a person convicted in this State of a misdemeanor has broken the terms of the person's probation or parole, reimbursements for expenses shall be paid out of the State treasury on the certificate of the Governor. In all other cases, such expenses or reimbursements shall be paid out of the county treasury of the county where the crime is alleged to have been committed according to regulations

as the board of county commissioners may promulgate. In all cases, the expenses, for which repayment or reimbursement may be claimed, shall consist of the reasonable and necessary travel expense and subsistence costs of the extradition agent or fugitive officer, as well as the fugitive, together with legal fees as were paid to the officials of the state on whose governor the requisition is made. The person or persons designated to return the fugitive shall not be allowed, paid or reimbursed for any expenses in connection with any requisition or extradition proceeding unless the expenses are itemized, the statement of same be sworn to under oath, and shall not then be paid or reimbursed unless a receipt is obtained showing the amount, the purpose for which the item or sum was expended, the place, date and to whom paid, and said receipt or receipts attached to the sworn statement and filed with the Governor. The Governor shall have the authority, upon investigation, to increase or decrease any item or expenses shown in the sworn statement, or to include items of expenses omitted by mistake or inadvertence. The decision or determination of the Governor as to the correct amount to be paid for the expenses or reimbursements shall be final. When it is deemed necessary for more than one agent, extradition agent, fugitive officer or person, to be designated to return a fugitive from another state to this State, the district attorney or prosecuting officer shall file with a written application to the Governor of this State, an affidavit setting forth in detail the grounds or reasons why it is necessary to have more than one extradition agent, fugitive officer or person to be so designated. Among other things, and not by way of limitation, the affidavit shall set forth whether or not the alleged fugitive is a dangerous person, the fugitive's previous criminal record if any, and any record of the fugitive on file with the Federal Bureau of Investigation or with the prison authorities of this State. As a further ground or reason for more than one extradition agent or fugitive officer to be designated, it may be shown in the affidavit the number of fugitives to be returned to this State and any other grounds or reasons for which more than one extradition agent or fugitive officer is desired. If the Governor finds or determines from the Governor's own investigation and from the information made available to the Governor that more than one extradition agent or fugitive officer is necessary for the return of a fugitive or fugitives to this State, the Governor may designate more than one extradition agent or fugitive officer for that purpose. All travel for which expenses or reimbursements are paid or allowed under this section shall be by the nearest, direct, convenient route of travel. If the extradition agent or agents or person or persons designated to return a fugitive or fugitives from another state to this State shall elect to travel by automobile, a sum not exceeding seven cents (7¢) per mile may be allowed in lieu of all travel expense, and which shall be paid upon a basis of mileage for the complete trip. The Governor may promulgate executive orders, rules and regulations governing travel, forms of statements, receipts or any other matter or objective provided for in this section. The Governor may delegate any or all of the duties, powers and responsibilities conferred upon the Governor by this section to any executive agent or executive clerk on the Governor's staff or in the Governor's office, and that executive agent or executive clerk, when properly authorized, may perform any or all of the duties, powers and responsibilities conferred upon the Governor. Provided that if the fugitive from justice is an alleged felon, and the fugitive from justice be returned without the service of extradition process by the sheriff or the agent of the sheriff of the county in which the felony was alleged to have been committed, the expense of the return shall be borne by the State of North Carolina under the rules and regulations made and promulgated by the Governor of North Carolina or the executive agent or the executive clerk to whom the Governor may have delegated the Governor's duties under this section. (1937, c. 273, s. 24; 1953, c. 1203; 1955, c. 289; 1973, c. 1286, s. 16; 1975, c. 166, s. 27; 1981, c. 859, s. 13.9; 2022-47, s. 16(l).)

§ 15A-745. Immunity from service of process in certain civil actions.

A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned until he has been convicted in the criminal proceeding or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited. (1937, c. 273, s. 25; 1973, c. 1286, s. 16.)

§ 15A-746. Written waiver of extradition proceedings.

Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in G.S. 15A-727 and 15A-728 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this State or a clerk of the superior court a writing which states that he consents to return to the demanding state: Provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge or clerk of superior court to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in G.S. 15A-730.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge or clerk of superior court shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State. (1937, c. 273, s. 25a; 1959, c. 271; 1973, c. 1286, s. 16.)

§ 15A-747. Nonwaiver by this State.

Nothing in this Article contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this Article which result in, or fail to result in, extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever. (1937, c. 273, s. 25b; 1973, c. 1286, s. 16.)

§ 15A-748. No right of asylum; no immunity from other criminal prosecution while in this State.

After a person has been brought back to this State by, or after waiver of, extradition proceedings, he may be tried in this State for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. (1937, c. 273, s. 26; 1973, c. 1286, s. 16.)

§ 15A-749. Interpretation.

The provisions of this Article shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it. (1937, c. 273, s. 27; 1973, c. 1286, s. 16.)

§ 15A-750. Short title.

This Article may be cited as the Uniform Criminal Extradition Act. (1937, c. 273, s. 30; 1973, c. 1286, s. 16.)

§§ 15A-751 through 15A-760. Reserved for future codification purposes.

Article 38.

Interstate Agreement on Detainers.

§ 15A-761. Agreement on Detainers entered into; form and contents.

This Agreement on Detainers is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows: The contracting states solemnly agree:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days

after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with

Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: And provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

- (1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.
- (2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively

the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1965, c. 295, s. 1; 1973, c. 1286, s. 22.)

§ 15A-762. Meaning of "appropriate court."

The phrase "appropriate court" as used in the Agreement on Detainers shall, with reference to the courts of this State, mean court of record with criminal jurisdiction. (1965, c. 295, s. 2; 1973, c. 1286, s. 22.)

§ 15A-763. Cooperation in enforcement.

All courts, departments, agencies, officers and employees of this State and its political subdivisions are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose. (1965, c. 295, s. 3; 1973, c. 1286, s. 22.)

§ 15A-764. Escape from temporary custody.

Any prisoner released to temporary custody under the provisions of the Agreement on Detainers from a place of imprisonment in North Carolina who shall escape or attempt to escape from such temporary custody, whether within or without the borders of this State, shall be dealt with in the same manner as if the escape or attempt to escape were from the original place of imprisonment. (1965, c. 295, s. 4; 1973, c. 1286, s. 22.)

§ 15A-765. Authority and duty of official in charge of institution.

It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this State to give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers. (1965, c. 295, s. 5; 1973, c. 1286, s. 22.)

§ 15A-766. Designation of central administrator of and information agent for agreement.

The Governor is hereby authorized and empowered to designate the officer who shall serve as central administrator of and information agent for the Agreement on Detainers, pursuant to the provisions of Article VII of the agreement. (1965, c. 295, s. 6; 1973, c. 1286, s. 22.)

§ 15A-767. Distribution of copies of Article.

Copies of this Article shall, upon its approval, be transmitted to the governor of each state, the Attorney General and the Administrator of General Services of the United States, and the Council of State Governments. (1965, c. 295, s. 7; 1973, c. 1286, s. 22.)

§§ 15A-768 through 15A-770. Reserved for future codification purposes.

Article 39.

Other Special Process for Attendance of Defendants.

§ 15A-771. Securing attendance of defendants confined in federal prisons.

(a) A defendant against whom a criminal action is pending in this State, and who is confined in a federal prison or custody either within or outside the State, may, with the consent of the Attorney General of the United States, be produced in such court for the purpose of criminal prosecution, pursuant to the provisions of:

- (1) Section 4085 of Title 18 of the United States Code; or
- (2) Subsection (b) of this section.

(b) When such a defendant is in federal custody as specified in subsection (a), a superior court may, upon application of the prosecutor, issue a certificate, addressed to the Attorney General of the United States, certifying the charges and the court in which they are pending, and that attendance of the defendant in such court for the purpose of criminal prosecution thereon is necessary in the interest of justice, and requesting the Attorney General of the United States to cause such defendant to be produced in such court, under custody of a federal public servant, upon a designated date and for a period of time necessary to complete the prosecution. Upon issuing such a certificate, the court may deliver it, or cause or authorize it to be delivered, together with a certified copy of the charges upon which it is based, to the Attorney General of the United States or to his representative authorized to entertain the request. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-772. Securing attendance of defendants who are outside the United States.

(a) When a criminal action for an offense committed in this State is pending in a criminal court of this State against a defendant who is in a foreign country with which the United States has an extradition treaty, and when the offense charged is one which is declared in such treaty to be an extraditable one, the prosecutor may make an application to the Governor, requesting him to make an application to the President of the United States to institute extradition proceedings for the return of the defendant to this country and State for the purpose of prosecution of such action. The prosecutor's application must comply with rules, regulations, and guidelines established by the Governor for such applications and must be accompanied by all the charges, affidavits, and other documents required thereby.

(b) Upon receipt of the prosecutor's application, the Governor, if satisfied that the defendant is in the foreign country in question, that the offense charged is an extraditable one pursuant to the treaty in question, and that there are no factors or impediments which in law preclude such an extradition, may in his discretion make an application, addressed to the Secretary of State of the United States, requesting that the President of the United States institute extradition

proceedings for the return of the defendant from such foreign country. The Governor's application must comply with applicable treaties and acts of Congress and with rules, regulations, and guidelines established by the Secretary of State for such applications and must be accompanied by all the charges, affidavits, and other documents required thereby.

(c) The provisions of this section apply equally to extradition or attempted extradition of a person who is a fugitive following the entry of a judgment of conviction against him in a criminal court of this State. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-773. Securing attendance of organizations; appearance.

(a) The court attendance of an organization for purposes of commencing or prosecuting a criminal action against it may be accomplished by:

- (1) Issuance and service of a criminal summons; or
- (2) Issuance of an information and waiver of indictment by an authorized officer or agent of the organization and by counsel for the organization, as provided in G.S. 15A-642(c); or
- (3) Service of the notice of the indictment, as provided in G.S. 15A-630.

The criminal summons or notice of indictment must be directed to the organization, and must be served by delivery to an officer, director, managing or general agent, cashier or assistant cashier of the organization, or to any other agent of the organization authorized by appointment or by law to receive service of process.

(b) At all stages of a criminal action, an organization may appear by counsel or agent having authority to transact the business of the organization.

(c) For purposes of this section, "organization" means corporation, unincorporated association, partnership, body politic, consortium, or other group, entity, or organization. (1973, c. 1286, s. 1; 1977, c. 557.)

Article 40.

§§ 15A-774 through 15A-786. Reserved for future codification purposes.

Article 41.

§§ 15A-787 through 15A-800. Reserved for future codification purposes.

SUBCHAPTER VIII. ATTENDANCE OF WITNESSES; DEPOSITIONS.

Article 42.

Attendance of Witnesses Generally.

§ 15A-801. Subpoena for witness.

The presence of a person as a witness in a criminal proceeding may be obtained by subpoena, which must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure, G.S. 1A-1, except that subdivision (2) of subsection (b) of the rule does not apply to subpoenas issued under this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 15; 2003-276, s. 2.)

§ 15A-802. Subpoena for the production of documentary evidence.

The production of records, books, papers, documents, or tangible things in a criminal proceeding may be obtained by subpoena which must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure, G.S. 1A-1, except that subdivision (2) of subsection (b)

of the rule does not apply to subpoenas issued under this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 15; 2003-276, s. 3.)

§ 15A-803. Attendance of witnesses.

(a) **Material Witness Order Authorized.** – A judge may issue an order assuring the attendance of a material witness at a criminal proceeding. This material witness order may be issued when there are reasonable grounds to believe that the person whom the State or a defendant desires to call as a witness in a pending criminal proceeding possesses information material to the determination of the proceeding and may not be amenable or responsive to a subpoena at a time when his attendance will be sought.

(b) **When Order Issued.** – A material witness order may be issued by a judge of superior court at any time after the initiation of criminal proceedings. A judge of district court may issue a material witness order only at the time that a defendant is bound over to superior court at a probable-cause hearing.

(c) **How Long Effective.** – A material witness order remains in effect during the period indicated in the order by the issuing judge unless it is sooner modified or vacated by a judge of superior court. In no event may a material witness order which provides for incarceration of the material witness be issued for a period longer than 20 days, but upon review a superior court judge in his discretion may renew an order one or more times for periods not to exceed five days each.

(d) **Procedure.** – A material witness order may be obtained upon motion supported by affidavit showing cause for its issuance. The witness must be given reasonable notice, opportunity to be heard and present evidence, and the right of representation by counsel at a hearing on the motion. Counsel for a material witness may be appointed and compensated in the same manner as counsel for an indigent defendant. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. The order must be based on findings of fact supporting its issuance.

(e) **Order.** – If the court makes a material witness order:

(1) It may direct release of the witness in the same manner that a defendant may be released under G.S. 15A-534.

(2) It may direct the detention of the witness.

(f) **Modification or Vacation.** – A material witness order may be modified or vacated by a judge of superior court upon a showing of new or changed facts or circumstances by the witness, the State, or any defendant.

(g) **Securing Attendance or Custody of Material Witness.** – The witness may be required to attend the hearing by subpoena, or if the court considers it necessary, by order for arrest. An order for arrest also may be issued if it becomes necessary to take the witness into custody after issuance of a material witness order. (1973, c. 1286, s. 1; 2000-144, s. 29.)

§ 15A-804. Voluntary protective custody.

(a) Upon request of a witness, a judge of superior court may determine whether he is a material witness, and may order his protective custody. The order may provide for confinement, custody in other than a penal institution, release to the custody of a law-enforcement officer or other person, or other provisions appropriate to the circumstances.

(b) A person having custody of the witness may not release him without his consent unless directed to do so by a superior court judge, or unless the order so provides.

(c) The issuance of either a material witness order or an order for voluntary protective custody does not preclude the issuance of the other order.

(d) An order for voluntary protective custody may be modified or vacated as appropriate by a superior court judge upon the request of the witness or upon the court's own motion. (1973, c. 1286, s. 1.)

§ 15A-805. Securing attendance of witnesses confined in institutions within the State.

(a) Upon motion of the State or any defendant, the judge of a court in which a criminal proceeding is pending must, for good cause shown, enter an order requiring that any person confined in an institution in this State be produced and compelled to attend as a witness in the action or proceeding.

(b) If the witness is confined pursuant to another pending criminal proceeding, and the judge determines that the production of the witness would result in an unreasonable interference with the conduct of the prior proceeding, he may deny the order. If an order for production is issued, a judge or justice of the appellate division of the General Court of Justice may, upon application of a defendant or prosecutor in the other district for good cause shown, vacate the order for production.

(c) The costs of production of the witness are assessed as are other witness fees. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§§ 15A-806 through 15A-810. Reserved for future codification purposes.

Article 43.

Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings.

§ 15A-811. Definitions.

The word "state" shall include any territory of the United States and District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

"Witness" as used in this Article shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. (1937, c. 217, s. 1; 1973, c. 1286, s. 9.)

§ 15A-812. Summoning witness in this State to testify in another state.

If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this State certifies, under the seal of such court, that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this State is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other

state through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence, at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing, being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents (10¢) a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars (\$5.00) for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State. (1937, c. 217, s. 2; 1973, c. 1286, s. 9.)

§ 15A-813. Witness from another state summoned to testify in this State.

If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court, stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this State he shall be compensated at the rate allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a) for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars (\$5.00) for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees when traveling in the State. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State. (1937, c. 217, s. 3; 1973, c. 1286, s. 9; 1998-212, s. 16.25(b).)

§ 15A-814. Exemption from arrest and service of process.

If a person comes into this State in obedience to a summons directing him to attend and testify in this State he shall not, while in this State pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

If a person passes through this State while going to another state in obedience to a summons to attend and testify in that state, or while returning therefrom, he shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons. (1937, c. 217, s. 4; 1973, c. 1286, s. 9.)

§ 15A-815. Uniformity of interpretation.

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. (1937, c. 217, s. 5; 1973, c. 1286, s. 9.)

§ 15A-816. Title of Article.

This Article may be cited as "Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings." (1937, c. 217, s. 6; 1973, c. 1286, s. 9.)

§§ 15A-817 through 15A-820. Reserved for future codification purposes.

Article 44.

Securing Attendance of Prisoners as Witnesses.

§ 15A-821. Securing attendance of prisoner in this State as witness in proceeding outside the State.

(a) If a judge of a court of general jurisdiction in any other state, which by its laws has made provision for commanding a prisoner within that state to attend and testify in this State, certifies under the seal of that court that there is a criminal prosecution pending in the court or that a grand jury investigation has commenced, and that a person confined in an institution under the control of the Division of Prisons of the Department of Adult Correction of North Carolina, other than a person confined as criminally insane, is a material witness in the prosecution or investigation and that his presence is required for a specified number of days, upon presentment of the certificate to a superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the person is confined, upon notice to the Attorney General, the judge must fix a time and place for a hearing and order the person having custody of the prisoner to produce him at the hearing.

(b) If at the hearing the judge determines that the prisoner is a material and necessary witness in the requesting state, the judge must order that the prisoner attend in the court where the prosecution or investigation is pending, upon such terms and conditions as the judge prescribes, including among other things, provision for the return of the prisoner at the conclusion of his testimony, proper safeguard for his custody, and proper financial reimbursement or other payment, including payment in advance, by the demanding jurisdiction for all expenses incurred in the production and return of the prisoner.

(c) The Attorney General may, as agent for the State of North Carolina, enter into such agreements with the demanding jurisdiction as necessary to ensure proper compliance with the order of the court. (1973, c. 1286, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 62; 2011-145, s. 19.1(h); 2012-83, s. 27; 2017-186, s. 2(bbb); 2021-180, s. 19C.9(p).)

§ 15A-822. Securing attendance of prisoner outside the State as witness in proceeding in the State.

(a) When

- (1) A criminal action or proceeding is pending in a court of this State, and
- (2) There is reasonable cause to believe that a person confined in a correctional institution or prison of another state, other than a person confined as mentally ill, possesses information material to such criminal action or proceeding, and
- (3) The attendance of the person as a witness in such proceeding is desired by a party thereto, and
- (4) The state in which such person is confined possesses a statute equivalent to G.S. 15A-821, the court in which such proceeding is pending may issue a certificate under the seal of the court, certifying all such facts and certifying that the attendance of the person as a witness in such court is required for a specified number of days.

(b) The certificate may be issued upon application of either the State or a defendant setting forth the facts specified in subsection (a).

(c) Upon issuing such a certificate, the court may cause it to be delivered to a court of such other state which is authorized to initiate or undertake action for the delivery of such prisoners to this State as witnesses. (1973, c. 1286, s. 1.)

§ 15A-823. Securing attendance of prisoner in federal institution as witness in proceeding in the State.

(a) When

- (1) A criminal proceeding is pending in a court of this State; and
- (2) There is reasonable cause to believe that a person confined in a federal prison or other federal custody, either within or outside this State, possesses information material to such criminal proceeding; and
- (3) His attendance as a witness in such action or proceeding is desired by a party thereto, the court may issue a certificate, known as a writ of habeas corpus ad testificandum, addressed to the Attorney General of the United States certifying all such facts and requesting the Attorney General of the United States to cause the attendance of such person as a witness in such court for a specified number of days under custody of a federal public servant.

(b) The certificate may be issued upon application of either the State or a defendant, setting forth the facts specified in subsection (a).

(c) Upon issuing the certificate, the court may cause it to be delivered to the Attorney General of the United States or to his representative authorized to entertain the request. (1973, c. 1286, s. 1.)

SUBCHAPTER VIII-A. RIGHTS OF CRIME VICTIMS AND WITNESSES.

Article 45.

Fair Treatment for Certain Victims and Witnesses.

§ 15A-824. Definitions.

The following definitions apply in this Article:

- (1) Crime. – A felony or serious misdemeanor as determined in the sole discretion of the district attorney, except those included in Article 46 of this Chapter, or an act by a juvenile as provided in Article 20A of Chapter 7B of the General Statutes.
- (2) Family member. – A spouse, child, parent, guardian, legal custodian, sibling, or grandparent of the victim. The term does not include the accused.
- (3) Victim. – A person against whom there is probable cause to believe a crime has been committed.
- (4) Witness. – A person who has been or is expected to be summoned to testify for the prosecution in a criminal action concerning a felony, or who by reason of having relevant information is subject to being called or is likely to be called as a witness for the prosecution in such an action, whether or not an action or proceeding has been commenced. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 1; 1998-212, s. 19.4(a), (b); 2019-216, s. 1(a).)

§ 15A-825. Treatment due victims and witnesses.

(a) To the extent reasonably possible and subject to available resources, the employees of law enforcement agencies, the prosecutorial system, the judicial system, and the correctional system should make a reasonable effort to assure that each victim and witness within their jurisdiction:

- (1) Is provided information regarding immediate medical assistance when needed and is not detained for an unreasonable length of time before having such assistance administered.
- (2) Is provided information about available protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and receives such protection.
- (2a) Is provided information that testimony as to one's home address is not relevant in every case, and that the victim or witness may request the district attorney to object to that line of questioning when appropriate.
- (3) Has any stolen or other personal property expeditiously returned by law enforcement agencies when it is no longer needed as evidence, and the property's return would not impede an investigation or prosecution of the case. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property whose ownership is disputed, should be photographed and returned to the owner within a reasonable period of time of being recovered by law enforcement officials.
- (4) Is provided appropriate employer intercession services to seek the employer's cooperation with the criminal justice system and minimize the employee's loss of pay and other benefits resulting from such cooperation whenever possible.
- (5) Is provided, whenever practical, a secure waiting area during court proceedings that does not place the victim or witness in close proximity to defendants and families or friends of defendants.
- (6) Is informed of the procedures to be followed to apply for and receive any appropriate witness fees or victim compensation.
- (6a) Is informed of the right to be present throughout the entire trial of the defendant, subject to the right of the court to sequester witnesses.

- (7) Is given the opportunity to be present during the final disposition of the case or is informed of the final disposition of the case, if the victim or witness has requested to be present or be informed.
- (8) Is notified, whenever possible, that a court proceeding to which the victim or witness has been subpoenaed will not occur as scheduled.
- (9) Is given the opportunity to prepare a victim impact statement for consideration by the court.
- (9a) Prior to trial, is provided information about plea bargaining procedures and is informed that the district attorney may recommend a plea bargain to the court.
- (10) Is informed that civil remedies may be available and that statutes of limitation apply in civil cases.
- (11) Upon the victim's written request, is notified before a proceeding is held at which the release of the offender from custody is considered, if the crime for which the offender was placed in custody is a Class G or more serious felony.
- (12) Upon the victim's written request, is notified if the offender escapes from custody or is released from custody, if the crime for which the offender was placed in custody is a Class G or more serious felony.
- (13) Has family members of a homicide victim offered all the guarantees in this section, except those in subdivision (1).

(b) Nothing in this section shall be construed to create a cause of action for failure to comply with the requirements described in this section. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 2; 2019-216, s. 1(b).)

§ 15A-826. District attorney legal assistants.

In addition to providing administrative and legal support to the district attorney's office, district attorney legal assistants are responsible for coordinating efforts within the law-enforcement and judicial systems to assure that each victim and witness is treated in accordance with this Article. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1997-443, s. 18.7(e); 2015-241, s. 18A.8(c).)

§ 15A-827. Scope.

This Article does not create any civil or criminal liability on the part of the State of North Carolina or any criminal justice agency, employee, or volunteer. (1985 (Reg. Sess., 1986), c. 998, s. 1.)

§§ 15A-828 through 15A-829. Reserved for future codification purposes.

Article 46.

Crime Victims' Rights Act.

§ 15A-830. Definitions.

- (a) The following definitions apply in this Article:
 - (1) Accused. – A person who has been arrested and charged with committing a crime covered by this Article.
 - (2) Arresting law enforcement agency. – The law enforcement agency that makes the arrest of an accused.
 - (2a) Court proceeding. – A critical stage of the post-arrest process heard by a judge in open court involving a plea that disposes of the case or the conviction,

sentencing, or release of the accused, including the hearings described in G.S. 15A-837. The term does not include the preliminary proceedings described in Article 29 of Chapter 15A of the General Statutes. If it is known by law enforcement and the district attorney's office that (i) the defendant and the victim have a personal relationship as defined in G.S. 50B-1(b) and (ii) the hearing may result in the defendant's release, efforts will be made to contact the victim.

- (3) Custodial agency. – The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, facilities designated under G.S. 122C-252 for the custody and treatment of involuntary clients, the Department of Adult Correction, or the Department of Public Safety.
- (3a) Family member. – A spouse, child, parent, guardian, legal custodian, sibling, or grandparent of the victim. The term does not include the accused.
- (3b) Felony property crime. – An act which constitutes a felony violation of one of the following:
 - a. Subchapter IV of Chapter 14 of the General Statutes.
 - b. Subchapter V of Chapter 14 of the General Statutes.
- (4) Investigating law enforcement agency. – The law enforcement agency with primary responsibility for investigating the crime committed against the victim.
- (5) Law enforcement agency. – An arresting law enforcement agency, a custodial agency, or an investigating law enforcement agency.
- (6) Repealed by Session Laws 2019-216, s. 2, effective August 31, 2019, and applicable to offenses and acts of delinquency committed on or after that date.
- (6a) Offense against the person. – An offense against or involving the person of the victim which constitutes a violation of one of the following:
 - a. Subchapter III of Chapter 14 of the General Statutes.
 - b. Subchapter VII of Chapter 14 of the General Statutes.
 - c. Article 39 of Chapter 14 of the General Statutes.
 - d. Chapter 20 of the General Statutes, if an element of the offense involves impairment of the defendant, or injury or death to the victim.
 - e. A valid protective order under G.S. 50B-4.1, including, but not limited to, G.S. 14-134.3 and G.S. 14-269.8.
 - f. Article 35 of Chapter 14 of the General Statutes, if the elements of the offense involve communicating a threat or stalking.
 - g. An offense that triggers the enumerated victims' rights, as required by the North Carolina Constitution.
- (7) Victim. – A person against whom there is probable cause to believe an offense against the person or a felony property crime has been committed.
 - (b) If the victim is a minor or is legally incapacitated, a parent, guardian, or legal custodian may assert the victim's rights under this Article. The accused may not assert the victim's rights. If the victim is deceased, then a family member, in the order set forth in the definition contained in this section, may assert the victim's rights under this Article, with the following limitations:
 - (1) The guardian or legal custodian of a deceased minor has priority over a family member.

- (3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.
- (4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.
- (5) Information about an accused's opportunity for pretrial release.
- (6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.
- (7) The informational sheet described in G.S. 50B-3(c1), if there was a personal relationship, as defined in G.S. 50B-1(b), with the accused.
- (8) A list of each right enumerated under G.S. 15A-830.5(b).
- (9) Information about any other rights afforded to victims by law.

(b) Within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. Following receipt of this information, the investigating law enforcement agency shall notify the victim of the arrest within an additional 72 hours.

(c) Within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall also forward to the district attorney's office that will be responsible for prosecuting the case the defendant's name and the victim's name, address, and telephone number or other contact information, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form created by the Conference of District Attorneys and provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement agency on the status of the accused during the pretrial process. If the victim elects to receive further notices during the pretrial process, the victim shall return the form to the investigating law enforcement agency within 10 business days of receipt of the form. The victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number.

(e) Upon receiving a form from the victim pursuant to subsection (d) of this section, the investigating law enforcement agency shall promptly share the form with the district attorney's office to facilitate compliance with the victim's preferences on notification. (1998-212, s. 19.4(c); 2001-433, s. 2; 2001-487, s. 120; 2008-4, s. 1; 2019-216, s. 4.)

§ 15A-831.1. Polygraph examinations of victims of sexual assaults.

(a) A criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual assault or claiming to be a witness regarding the sexual assault of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter.

(b) An agency wishing to perform a polygraph examination of a person claiming to be a victim or witness of sexual assault shall inform the person of the following:

- (1) That taking the polygraph examination is voluntary.
- (2) That the results of the examination are not admissible in court.

(3) That the person's decision to submit to or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.

(c) An agency which declines to investigate an alleged case of sexual assault following a decision by a person claiming to be a victim not to submit to a polygraph examination shall provide to that person, in writing, the reasons why the agency did not pursue the investigation at the request of the person. (2007-294, s. 1.)

§ 15A-832. Responsibilities of the district attorney's office.

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

- (1) The victim's rights under this Article, including the right to reasonably confer with the district attorney's office about the disposition of the case and the right to provide a victim impact statement.
- (2) The responsibilities of the district attorney's office under this Article.
- (3) The victim's eligibility for compensation under the Crime Victims Compensation Act and the deadlines by which the victim must file a claim for compensation.
- (4) The steps generally taken by the district attorney's office when prosecuting a crime.
- (5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.
- (6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number or other contact information. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all court proceedings of the type that the victim has elected to receive notice, except as provided in G.S. 15A-835(b)(2) and G.S. 15A-837(a)(2). All notices required to be given by the district attorney's office shall be reasonable, accurate, and timely. The notices shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding. The district attorney's office may provide the required notification electronically or by telephone, unless the victim requests otherwise. The notifications required by this section shall be documented by the district attorney's office.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) Repealed by Session Laws 2019-216, s. 5, effective August 31, 2019, and applicable to offenses and acts of delinquency committed on or after that date.

(f) The district attorney's office shall offer the victim the opportunity to reasonably confer with an attorney from the district attorney's office to obtain the views of the victim about, at a minimum, dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the information set forth in G.S. 15A-831(c) and subsection (b) of this section, including the victim's election to receive further notices under this Article. The clerk of superior court shall include the form with the final judgment and commitment, or judgment suspending sentence, transmitted to the Department of Public Safety, the Department of Adult Correction, or other agency receiving custody of the defendant. The clerk and custodial agency shall maintain the form as a confidential record.

(h) When a person is a victim of a human trafficking offense and is entitled to benefits and services pursuant to G.S. 14-43.11(d), the district attorney's office shall so notify the Office of the Attorney General and Legal Aid of North Carolina, Inc., in addition to providing services under this Article.

(i) The district attorney's office shall make every effort to ensure that a victim's personal information is not disclosed unless otherwise required by law. The district attorney's office shall inform the victim that personal information such as the victim's telephone number, home address, and bank account number are not relevant in every case and that the victim may request the district attorney to object to that line of questioning when appropriate.

(j) The responsibilities of the district attorney's office extend to a victim of an act of delinquency if the juvenile's case is transferred to criminal court. (1998-212, s. 19.4(c); 2001-433, s. 3; 2001-487, s. 120; 2007-547, s. 3; 2011-145, s. 19.1(h); 2017-186, s. 2(ddd); 2019-216, s. 5; 2019-243, s. 21.5(a); 2021-180, s. 19C.9(rr); 2022-47, s. 16(m).)

§ 15A-832.1. Responsibilities of judicial officials.

(a) In issuing a pleading as provided in G.S. 15A-921, for any misdemeanor offense against the person based on testimony or evidence from a complaining witness rather than from a law enforcement officer, a judicial official shall record the defendant's name and the victim's name, address, and telephone number electronically or on a form separate from the pleading and developed by the Administrative Office of the Courts for the purpose of recording that information, unless the victim refuses to disclose any or all of the information, in which case the judicial official shall so indicate.

(b) A judicial official issuing a pleading for any misdemeanor offense against the person based on testimony or evidence from a complaining witness rather than from a law enforcement officer shall deliver the court's copy of the warrant and the victim-identifying information to the office of the clerk of superior court by the close of the next business day. Within 72 hours, the office of the clerk of superior court shall forward to the district attorney's office a copy of the victim-identifying information set forth in subsection (a) of this section. The clerk shall maintain the clerk's copy of the form as a confidential record.

(c) The judge, in any court proceeding subject to this Article, shall inquire as to whether the victim is present and wishes to be heard. If the victim is present and wishes to be heard, the court shall grant the victim an opportunity to be reasonably heard. The right to be reasonably heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement, or submission of an audio or video statement.

(d) A judge notified by the clerk of court that a victim has filed a motion alleging a violation of the rights provided in this Article shall review the motion. The judge involved in the

criminal proceeding that gave rise to the rights in question may, on the judge's own motion, recuse himself or herself if justice requires it and report the recusal to the Administrative Office of the Courts. The judge, or a judge appointed by the Administrative Office of the Courts in the event of recusal, shall dispose of the motion or set the motion for hearing as required by G.S. 15A-834.5.

(e) The court shall make every effort to provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family. (2001-433, s. 4; 2001-487, s. 120; 2019-216, s. 6; 2022-47, s. 16(n); 2022-73, s. 9.)

§ 15A-833. Evidence of victim impact.

(a) A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following:

- (1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.
- (2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.
- (3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime. At the victim's request and with the consent of the defendant, a representative of the district attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court. (1998-212, s. 19.4(c); 2001-433, s. 5; 2001-487, s. 120.)

§ 15A-834. Restitution.

A victim has the right to receive restitution as ordered by the court pursuant to Article 81C of Chapter 15A of the General Statutes. (1998-212, s. 19.4(c).)

§ 15A-834.5. Enforcement of the rights of a victim.

(a) A victim may assert the rights provided in this Article pursuant to Section 37 of Article I of the North Carolina Constitution. In no event shall any underlying proceeding be subject to undue delay for the enforcement provided in this section. The procedure by which a victim may assert the rights provided under this Article shall be by motion to the court of jurisdiction. For the purposes of this section, the term "victim" includes the following individuals acting on behalf of the victim:

- (1) The victim's attorney.
- (2) The prosecutor, at the request of the victim.
- (3) A parent, guardian, or legal custodian, if the victim is a minor or is legally incapacitated, as provided in G.S. 15A-830.
- (4) A family member, if the victim is deceased, as provided in G.S. 15A-830.

(b) A victim may allege a violation of the rights provided in this Article by filing a motion with the office of the clerk of superior court. The motion must be filed within the same criminal proceeding giving rise to the rights in question.

(c) If the motion involves an allegation that the district attorney failed to comply with the rights of a victim provided by this Article, the victim must first file a written complaint with the

district attorney's office, to afford the district attorney's office an opportunity to resolve the issue stated in the written complaint in a timely manner.

(d) If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided by this Article, the victim must first file a written complaint with that agency, to afford the agency an opportunity to resolve the issue stated in the written complaint in a timely manner.

(e) A victim has the right to consult with an attorney regarding an alleged violation of the rights provided in this Article, but the victim does not have the right to counsel provided by the State.

(f) The Administrative Office of the Courts shall create a form to serve as the motion and enable a victim to allege a violation of the rights provided in this Article. The form will indicate what specific right has allegedly been violated. The form will also provide the victim the opportunity to describe the substance of the alleged violation in detail. If the motion involves an allegation that the district attorney failed to comply with the rights of a victim provided in this Article, the victim must attach a copy of the written complaint that was previously filed with the district attorney as required by subsection (c) of this section. If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided in this Article, the victim must attach a copy of the written complaint that was previously filed with that law enforcement agency as required by subsection (d) of this section.

(g) The clerk of superior court of each county shall provide the form created by the Administrative Office of the Courts to enable a victim to allege a violation of the rights provided in this Article. No fees shall be assessed for the filing of this motion. A copy of the motion required in subsection (b) of this section shall be given to the prosecutor if other than the elected District Attorney, the elected District Attorney, and the judge involved in the criminal proceeding that gave rise to the rights in question. If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided by this Article, a copy of the motion required in subsection (b) of this section shall also be provided to the head of the law enforcement agency referenced in the motion.

(h) The judge shall review the motion and dispose of it or set it for hearing in a timely manner. Review may include conferring with the victim, the prosecutor if other than the District Attorney, and the District Attorney in order to inquire as to compliance with this Article. If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided by this Article, the judge may confer with the head of that law enforcement agency as part of the review. At the conclusion of the review, the judge shall dispose of the motion or set the motion for hearing.

(i) If the judge fails to review the motion and dispose of it or set it for hearing in a timely manner, a victim may petition the North Carolina Court of Appeals for a writ of mandamus. The petition shall be filed without unreasonable delay. The court for good cause shown may shorten the time for filing a response.

(j) The failure or inability of any person to provide a right or service under this Article, including a service provided through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission, may not be used by a defendant in a criminal case, by an inmate, by any other accused, or by any victim or any family member of a victim, as a ground for relief in any criminal or civil proceeding, except as provided in Section 37 of Article I of the North Carolina Constitution. (2019-216, s. 7.)

§ 15A-835. Posttrial responsibilities.

(a) Within 30 days after the final court proceeding in the case, the district attorney's office shall notify the victim, in writing, of:

- (1) The final disposition of the case.
- (2) The crimes of which the defendant was convicted.
- (3) The defendant's right to appeal, if any.
- (4) The telephone number of offices to contact in the event of nonpayment of restitution by the defendant.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's office the defendant's name and the victim's name, address, and telephone number. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's office shall provide the victim with the following:

- (1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.
- (2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.
- (3) The final disposition of an appeal.

(b1) Although the victim does not have a right to be heard, the victim is permitted to be present at any appellate proceeding that is an open hearing.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practicable, and within 72 hours of receipt of the notification the investigating law enforcement agency shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

(e) Repealed by Session Laws 2001-302, s. 1. (1998-212, s. 19.4(c); 2001-302, s. 1; 2001-433, s. 6; 2001-487, s. 120; 2019-216, s. 7.5.)

§ 15A-836. Responsibilities of agency with custody of defendant.

(a) When a form is included with the final judgment and commitment pursuant to G.S. 15A-832(g), or when the victim has otherwise filed a written request for notification with the custodial agency, the custodial agency shall notify the victim of:

- (1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.
- (2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.
- (3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.
- (4) The defendant's escape from custody, within 72 hours, except that if a victim has notified the agency in writing that the defendant has issued a specific threat

against the victim, the agency shall notify the victim as soon as possible and within 24 hours at the latest.

- (5) The defendant's capture, within 24 hours.
- (6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release. In no event shall notice be given less than seven days before release.
- (7) The defendant's death.
- (8) The procedure for alleging a failure of the custodial agency to notify the victim as required by this section.

(b) Notifications required in this section shall be provided within 60 days of the date the custodial agency takes custody of the defendant or within 60 days of the event requiring notification, or as otherwise specified in subsection (a) of this section. (1998-212, s. 19.4(c); 2001-433, s. 7; 2001-487, s. 120; 2019-216, s. 8.)

§ 15A-837. Responsibilities of Division of Community Supervision and Reentry.

- (a) The Division of Community Supervision and Reentry shall notify the victim of:
- (1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.
 - (2) The date and location of any hearing to determine whether the defendant's supervision should be revoked, continued, modified, or terminated.
 - (3) The final disposition of any hearing referred to in subdivision (2) of this subsection.
 - (4) Any restitution modification.
 - (5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).
 - (6) The defendant's absconding supervision, within 72 hours.
 - (7) The capture of a defendant described in subdivision (6) of this subsection, within 72 hours.
 - (8) The date when the defendant is terminated or discharged.
 - (9) The defendant's death.

(b) Notifications required in this section shall be provided within 30 days of the event requiring notification, or as otherwise specified in subsection (a) of this section. (1998-212, s. 19.4(c); 2001-433, s. 8; 2001-487, ss. 47(a), 120; 2011-145, s. 19.1(k); 2017-186, s. 2(eee); 2021-180, s. 19C.9(v).)

§ 15A-838. Notice of commuted sentence or pardon.

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision. (1998-212, s. 19.4(c).)

§ 15A-839. No money damages.

This Article, including the provision of a service pursuant to this Article through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission, does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees. (1998-212, s. 19.4(c); 1999-169, s. 1.)

§ 15A-840: Repealed by Session Laws 2019-216, s. 9, effective August 31, 2019, and applicable to offenses and acts of delinquency committed on or after that date.

§ 15A-841: Repealed by Session Laws 2019-216, s. 9, effective August 31, 2019, and applicable to offenses and acts of delinquency committed on or after that date.

§§ 15A-842 through 15A-849. Reserved for future codification purposes.

Article 47.

§§ 15A-850 through 15A-900. Reserved for future codification purposes.

SUBCHAPTER IX. PRETRIAL PROCEDURE.

Article 48.

Discovery in the Superior Court.

§ 15A-901. Application of Article.

This Article applies to cases within the original jurisdiction of the superior court. (1973, c. 1286, s. 1.)

§ 15A-902. Discovery procedure.

(a) A party seeking discovery under this Article must, before filing any motion before a judge, request in writing that the other party comply voluntarily with the discovery request. A written request is not required if the parties agree in writing to voluntarily comply with the provisions of Article 48 of Chapter 15A of the General Statutes. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery under the provisions of this Article concerning any matter as to which voluntary discovery was not made pursuant to request.

(b) To the extent that discovery authorized in this Article is voluntarily made in response to a request or written agreement, the discovery is deemed to have been made under an order of the court for the purposes of this Article.

(c) A motion for discovery under this Article must be heard before a superior court judge.

(d) If a defendant is represented by counsel, the defendant may as a matter of right request voluntary discovery from the State under subsection (a) of this section not later than the tenth working day after either the probable-cause hearing or the date the defendant waives the hearing. If a defendant is not represented by counsel, or is indicted or consents to the filing of a bill of information before the defendant has been afforded or waived a probable-cause hearing, the defendant may as a matter of right request voluntary discovery from the State under subsection (a) of this section not later than the tenth working day after the later of:

- (1) The defendant's consent to be tried upon a bill of information, or the service of notice upon the defendant that a true bill of indictment has been found by the grand jury, or
- (2) The appointment of counsel.

For the purposes of this subsection a defendant is represented by counsel only if counsel was retained by or appointed for the defendant prior to or during a probable-cause hearing or prior to execution by the defendant of a waiver of a probable-cause hearing.

(e) The State may as a matter of right request voluntary discovery from the defendant, when authorized under this Article, at any time not later than the tenth working day after disclosure by the State with respect to the category of discovery in question.

(f) A motion for discovery made at any time prior to trial may be entertained if the parties so stipulate or if the judge for good cause shown determines that the motion should be allowed in whole or in part. (1973, c. 1286, s. 1; 2004-154, s. 3.)

§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.

- (a) Upon motion of the defendant, the court must order:
 - (1) The State to make available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and prosecutors' offices involved in the investigation of the crimes committed or the prosecution of the defendant.
 - a. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. When any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including, but not limited to, preliminary test or screening results and bench notes.
 - b. The term "prosecutor's office" refers to the office of the prosecuting attorney.
 - b1. The term "investigatory agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor's office in connection with the investigation of the crimes committed or the prosecution of the defendant.
 - c. Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is significantly new or different information in the oral statement from a prior statement made by the witness.
 - d. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.
 - (2) The prosecuting attorney to give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness

shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court. Standardized fee scales shall be developed by the Administrative Office of the Courts and Indigent Defense Services for all expert witnesses and private investigators who are compensated with State funds.

- (3) The prosecuting attorney to give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the prosecuting attorney certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

- (b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section.

- (c) On a timely basis, law enforcement and investigatory agencies shall make available to the prosecutor's office a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a). Investigatory agencies that obtain information and materials listed in subdivision (1) of subsection (a) of this section shall ensure that such information and materials are fully disclosed to the prosecutor's office on a timely basis for disclosure to the defendant.

- (d) Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to subdivision (1) of subsection (a) of this section, or required to be provided to the prosecutor's office pursuant to subsection (c) of this section, shall be guilty of a Class H felony. Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to any other provision of this section shall be guilty of a Class 1 misdemeanor. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1983, c. 759, ss. 1-3; 1983, Ex. Sess., c. 6, s. 1; 2001-282, s. 5; 2004-154, s. 4; 2007-183, s. 1; 2007-377, s. 1; 2007-393, s. 1; 2011-19, s. 9; 2011-250, s. 1.)

§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.

- (a) The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

- (a1) The State is not required to disclose the identity of a confidential informant unless the disclosure is otherwise required by law.

(a2) The State is not required to provide any personal identifying information of a witness beyond that witness's name, address, date of birth, and published phone number, unless the court determines upon motion of the defendant that such additional information is necessary to accurately identify and locate the witness.

(a3) The State is not required to disclose the identity of any individual providing information about a crime or criminal conduct to a Crime Stoppers organization under promise or assurance of anonymity unless ordered by the court. For purposes of this Article, a Crime Stoppers organization or similarly named entity means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance between the news media, the community, and law enforcement officials.

(a4) The State is not required to disclose the Victim Impact Statement or its contents unless otherwise required by law. For purposes of this Chapter, a Victim Impact Statement is a document submitted by the victim or the victim's family to the State pursuant to the Victims' Rights Amendment.

(b) Nothing in this section prohibits the State from making voluntary disclosures in the interest of justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 2004-154, s. 5; 2007-377, s. 2; 2011-250, s. 2.)

§ 15A-905. Disclosure of evidence by the defendant – Information subject to disclosure.

(a) Documents and Tangible Objects. – If the court grants any relief sought by the defendant under G.S. 15A-903, the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the defendant and which the defendant intends to introduce in evidence at the trial.

(b) Reports of Examinations and Tests. – If the court grants any relief sought by the defendant under G.S. 15A-903, the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements or experiments made in connection with the case, or copies thereof, within the possession and control of the defendant which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial, when the results or reports relate to his testimony. In addition, upon motion of the State, the court must order the defendant to permit the State to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it available to the defendant if the defendant intends to offer such evidence, or tests or experiments made in connection with such evidence, as an exhibit or evidence in the case.

(c) Notice of Defenses, Expert Witnesses, and Witness Lists. – If the court grants any relief sought by the defendant under G.S. 15A-903, or if disclosure is voluntarily made by the State pursuant to G.S. 15A-902(a), the court must, upon motion of the State, order the defendant to:

- (1) Give notice to the State of the intent to offer at trial a defense of alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, involuntary intoxication, or voluntary intoxication. Notice of defense as described in this subdivision is inadmissible against the defendant. Notice of defense must be given within 20 working days after the date the case is set for trial pursuant to G.S. 7A-49.4, or such other later time as set by the court.
 - a. As to the defense of alibi, the court may order, upon motion by the State, the disclosure of the identity of alibi witnesses no later than two weeks before trial. If disclosure is ordered, upon a showing of good cause, the court shall order the State to disclose any rebuttal alibi witnesses no later than one week before trial. If the parties agree, the court may specify different time periods for this exchange so long as the exchange occurs within a reasonable time prior to trial.
 - b. As to only the defenses of duress, entrapment, insanity, automatism, or involuntary intoxication, notice by the defendant shall contain specific information as to the nature and extent of the defense.
- (2) Give notice to the State of any expert witnesses that the defendant reasonably expects to call as a witness at trial. Each such witness shall prepare, and the defendant shall furnish to the State, a report of the results of the examinations or tests conducted by the expert. The defendant shall also furnish to the State the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The defendant shall give the notice and furnish the materials required by this subdivision within a reasonable time prior to trial, as specified by the court. Standardized fee scales shall be developed by the Administrative Office of the Courts and Indigent Defense Services for all expert witnesses and private investigators who are compensated with State funds.
- (3) Give the State, at the beginning of jury selection, a written list of the names of all other witnesses whom the defendant reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the defendant certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the defendant did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(d) If the defendant voluntarily provides discovery under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (c) of this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 2004-154, s. 6; 2011-250, s. 3.)

§ 15A-906. Disclosure of evidence by the defendant – Certain evidence not subject to disclosure.

Except as provided in G.S. 15A-905(b) this Article does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant or

his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution witnesses or defense witnesses, to the defendant, his agents, or attorneys. (1973, c. 1286, s. 1.)

§ 15A-907. Continuing duty to disclose.

If a party, who is required to give or who voluntarily gives discovery pursuant to this Article, discovers prior to or during trial additional evidence or witnesses, or decides to use additional evidence or witnesses, and the evidence or witness is or may be subject to discovery or inspection under this Article, the party must promptly notify the attorney for the other party of the existence of the additional evidence or witnesses. (1973, c. 1286, s. 1; 1975, c. 166, s. 16; 2004-154, s. 7.)

§ 15A-908. Regulation of discovery – Protective orders.

(a) Upon written motion of a party and a finding of good cause, which may include, but is not limited to a finding that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, the court may at any time order that discovery or inspection be denied, restricted, or deferred, or may make other appropriate orders. A party may apply ex parte for a protective order and, if an ex parte order is granted, the opposing party shall receive notice that the order was entered, but without disclosure of the subject matter of the order.

(b) The court may permit a party seeking relief under subsection (a) to submit supporting affidavits or statements to the court for in camera inspection. If thereafter the court enters an order granting relief under subsection (a), the material submitted in camera must be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal. (1973, c. 1286, s. 1; 1983, Ex. Sess., c. 6, s. 2; 2004-154, s. 8.)

§ 15A-909. Regulation of discovery – Time, place, and manner of discovery and inspection.

An order of the court granting relief under this Article must specify the time, place, and manner of making the discovery and inspection permitted and may prescribe appropriate terms and conditions. (1973, c. 1286, s. 1.)

§ 15A-910. Regulation of discovery – Failure to comply.

(a) If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

- (1) Order the party to permit the discovery or inspection, or
- (2) Grant a continuance or recess, or
- (3) Prohibit the party from introducing evidence not disclosed, or
- (3a) Declare a mistrial, or
- (3b) Dismiss the charge, with or without prejudice, or
- (4) Enter other appropriate orders.

(b) Prior to finding any sanctions appropriate, the court shall consider both the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply with this Article or an order issued pursuant to this Article.

(c) For purposes of determining whether to impose personal sanctions for untimely disclosure of law enforcement and investigatory agencies' files, courts and State agencies shall presume that prosecuting attorneys and their staffs have acted in good faith if they have made a

reasonably diligent inquiry of those agencies under G.S. 15A-903(c) and disclosed the responsive materials.

(d) If the court imposes any sanction, it must make specific findings justifying the imposed sanction. (1973, c. 1286, s. 1; 1975, c. 166, s. 17; 1983, Ex. Sess., c. 6, s. 3; 2004-154, s. 9; 2011-250, s. 4.)

§§ 15A-911 through 15A-920. Reserved for future codification purposes.

Article 49.

Pleadings and Joinder.

§ 15A-921. Pleadings in criminal cases.

Subject to the provisions of this Article, the following may serve as pleadings of the State in criminal cases:

- (1) Citation.
- (2) Criminal summons.
- (3) Warrant for arrest.
- (4) Magistrate's order pursuant to G.S. 15A-511 after arrest without warrant.
- (5) Statement of charges.
- (6) Information.
- (7) Indictment. (1973, c. 1286, s. 1; 1975, c. 166, s. 18.)

§ 15A-922. Use of pleadings in misdemeanor cases generally.

(a) Process as Pleadings. – The citation, criminal summons, warrant for arrest, or magistrate's order serves as the pleading of the State for a misdemeanor prosecuted in the district court, unless the prosecutor files a statement of charges, or there is objection to trial on a citation. When a statement of charges is filed it supersedes all previous pleadings of the State and constitutes the pleading of the State.

(b) Statement of Charges.

- (1) A statement of charges is a criminal pleading which charges a misdemeanor. It must be signed by the prosecutor who files it.
- (2) Upon appropriate motion, a defendant is entitled to a period of at least three working days for the preparation of his defense after a statement of charges is filed, or the time the defendant is first notified of the statement of charges, whichever is later, unless the judge finds that the statement of charges makes no material change in the pleadings and that no additional time is necessary.
- (3) If the judge rules that the pleadings charging a misdemeanor are insufficient and a prosecutor is permitted to file a statement of charges pursuant to subsection (e), the order of the judge must allow the prosecutor three working days, unless the judge determines that a longer period is justified, in which to file the statement of charges, and must provide that the charges will be dismissed if the statement of charges is not filed within the period allowed.

(c) Objection to Trial on Citation. – A defendant charged in a citation with a criminal offense may by appropriate motion require that the offense be charged in a new pleading. The prosecutor must then file a statement of charges unless it appears that a criminal summons or a warrant for arrest should be secured in order to insure the attendance of the defendant, and in addition serve as the new pleading.

(d) Statement of Charges upon Determination of Prosecutor. –The prosecutor may file a statement of charges upon his own determination at any time prior to arraignment in the district court. It may charge the same offenses as the citation, criminal summons, warrant for arrest, or magistrate's order or additional or different offenses.

(e) Objection to Sufficiency of Criminal Summons; Warrant for Arrest or Magistrate's Order as Pleading. – If the defendant by appropriate motion objects to the sufficiency of a criminal summons, warrant for arrest, or magistrate's order as a pleading, at the time of or after arraignment in the district court or upon trial de novo in the superior court, and the judge rules that the pleading is insufficient, the prosecutor may file a statement of charges, but a statement of charges filed pursuant to this authorization may not change the nature of the offense.

(f) Amendment of Pleadings prior to or after Final Judgment. – A statement of charges, criminal summons, warrant for arrest, citation, or magistrate's order may be amended at any time prior to or after final judgment when the amendment does not change the nature of the offense charged.

(g) Pleadings When Misdemeanor Prosecution Initiated in Superior Court. – When the prosecution of a misdemeanor is initiated in the superior court as permitted by G.S. 7A-271, the prosecution must be upon information or indictment.

(h) Allegations in Superior Court of Prior Convictions. – When charges in the district court involve allegations of prior convictions and there is an appeal to the superior court for trial de novo, a statement of charges must be filed in the superior court to charge the offense in the manner provided in G.S. 15A-928. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1979, c. 770; 1985, c. 689, s. 6.)

§ 15A-923. Use of pleadings in felony cases and misdemeanor cases initiated in the superior court division.

(a) Prosecution on Information or Indictment. – The pleading in felony cases and misdemeanor cases initiated in the superior court division must be a bill of indictment, unless there is a waiver of the bill of indictment as provided in G.S. 15A-642. If there is a waiver, the pleading must be an information. A presentment by the grand jury may not serve as the pleading in a criminal case.

(b) Form of Information or Indictment. – An information and a bill of indictment charge the crime or crimes in the same manner. An information has entered upon it or attached to it the defendant's written waiver of a bill of indictment. The bill of indictment has entered upon it the finding of the grand jury that it is a true bill.

(c) Waiver of Indictment. – The defendant may waive a bill of indictment as provided in G.S. 15A-642.

(d) Amendment of Information. – An information may be amended only with the consent of the defendant.

(e) No Amendment of Indictment. – A bill of indictment may not be amended. (1973, c. 1286, s. 1.)

§ 15A-924. Contents of pleadings; duplicity; alleging and proving previous convictions; failure to charge crime; surplusage.

(a) A criminal pleading must contain:

(1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.

- (2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.
- (3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.
- (4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.
- (5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.
- (6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.
- (7) A statement that the State intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise factual statement indicating the factor or factors it intends to use under the authority of that subdivision.

(b) If any count of an indictment or information charges more than one offense, the defendant may by timely filing of a motion require the State to elect and state a single offense alleged in the count upon which the State will proceed to trial. A count may be dismissed for duplicity if the State fails to make timely election.

(c) In trials in superior court, allegations of previous convictions are subject to the provisions of G.S. 15A-928.

(d) In alleging and proving a prior conviction, it is sufficient to state that the defendant was at a certain time and place convicted of the previous offense, without otherwise fully alleging all the elements. A duly certified transcript of the record of a prior conviction is, upon proof of the identity of the person of the defendant, sufficient evidence of a prior conviction. If the surname of a defendant charged is identical to the surname of a defendant previously convicted and there is identity with respect to one given name, or two initials, or two initials corresponding with the first letters of given names, between the two defendants, and there is no evidence that would indicate the two defendants are not one and the same, the identity of name is prima facie evidence that the two defendants are the same person.

(e) Upon motion of a defendant under G.S. 15A-952(b) the court must dismiss the charges contained in a pleading which fails to charge the defendant with a crime in the manner required by subsection (a), unless the failure is with regard to a matter as to which an amendment is allowable.

(f) Upon motion of a defendant under G.S. 15A-952(b) the court may strike inflammatory or prejudicial surplusage from the pleading. (1973, c. 1286, s. 1; 1975, c. 642, s. 2; 1989, c. 290, s. 3; 2005-145, s. 3.)

§ 15A-925. Bill of particulars.

(a) Upon motion of a defendant under G.S. 15A-952, the court in which a charge is pending may order the State to file a bill of particulars with the court and to serve a copy upon the defendant.

(b) A motion for a bill of particulars must request and specify items of factual information desired by the defendant which pertain to the charge and which are not recited in the pleading, and must allege that the defendant cannot adequately prepare or conduct his defense without such information.

(c) If any or all of the items of information requested are necessary to enable the defendant adequately to prepare or conduct his defense, the court must order the State to file and serve a bill of particulars. Nothing contained in this section authorizes an order for a bill of particulars which requires the State to recite matters of evidence.

(d) The bill of particulars must be filed with the court and must recite every item of information required in the order. A copy must be served upon the defendant, or his attorney. The proceedings are stayed pending the filing and service.

(e) A bill of particulars may not supply an omission or cure a defect in a criminal pleading. The evidence of the State, as to those matters within the scope of the motion, is limited to the items set out in the bill of particulars. The court may permit amendment of a bill of particulars at any time prior to trial. (1973, c. 1286, s. 1.)

§ 15A-926. Joinder of offenses and defendants.

(a) Joinder of Offenses. – Two or more offenses may be joined in one pleading or for trial when the offenses, whether felonies or misdemeanors or both, are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan. Each offense must be stated in a separate count as required by G.S. 15A-924.

(b) Separate Pleadings for Each Defendant and Joinder of Defendants for Trial.

(1) Each defendant must be charged in a separate pleading.

(2) Upon written motion of the prosecutor, charges against two or more defendants may be joined for trial:

a. When each of the defendants is charged with accountability for each offense; or

b. When, even if all of the defendants are not charged with accountability for each offense, the several offenses charged:

1. Were part of a common scheme or plan; or

2. Were part of the same act or transaction; or

3. Were so closely connected in time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others.

(c) Failure to Join Related Offenses.

(1) When a defendant has been charged with two or more offenses joinable under subsection (a) his timely motion to join them for trial must be granted unless the court determines that because the prosecutor does not have sufficient evidence to warrant trying some of the offenses at that time or if, for some other reason,

the ends of justice would be defeated if the motion were granted. A defendant's failure to make this motion constitutes a waiver of any right of joinder of offenses joinable under subsection (a) with which the defendant knew he was charged.

- (2) A defendant who has been tried for one offense may thereafter move to dismiss a charge of a joinable offense. The motion to dismiss must be made prior to the second trial, and must be granted unless
 - a. A motion for joinder of these offenses was previously denied, or
 - b. The court finds that the right of joinder has been waived, or
 - c. The court finds that because the prosecutor did not have sufficient evidence to warrant trying this offense at the time of the first trial, or because of some other reason, the ends of justice would be defeated if the motion were granted.
- (3) The right to joinder under this subsection is not applicable when the defendant has pleaded guilty or no contest to the previous charge. (1973, c. 1286, s. 1; 1975, c. 166, ss. 19, 27.)

§ 15A-927. Severance of offenses; objection to joinder of defendants for trial.

- (a) **Timeliness of Motion; Waiver; Double Jeopardy.**
 - (1) A defendant's motion for severance of offenses must be made before trial as provided in G.S. 15A-952, except as provided in G.S. 15A-953, and except that a motion for severance may be made before or at the close of the State's evidence if based upon a ground not previously known. Any right to severance is waived if the motion is not made at the appropriate time.
 - (2) If a defendant's pretrial motion for severance is overruled, he may renew the motion on the same grounds before or at the close of all the evidence. Any right to severance is waived by failure to renew the motion.
 - (3) Unless consented to by the defendant, a motion by the prosecutor for severance of offenses may be granted only prior to trial.
 - (4) If a motion for severance of offenses is granted during the trial, a motion by the defendant for a mistrial must be granted.
- (b) **Severance of Offenses.** – The court, on motion of the prosecutor or on motion of the defendant, must grant a severance of offenses whenever:
 - (1) If before trial, it is found necessary to promote a fair determination of the defendant's guilt or innocence of each offense; or
 - (2) If during trial, upon motion of the defendant or motion of the prosecutor with the consent of the defendant, it is found necessary to achieve a fair determination of the defendant's guilt or innocence of each offense. The court must consider whether, in view of the number of offenses charged and the complexity of the evidence to be offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.
- (c) **Objection to Joinder of Charges against Multiple Defendants for Trial; Severance.**
 - (1) When a defendant objects to joinder of charges against two or more defendants for trial because an out-of-court statement of a codefendant makes reference to him but is not admissible against him, the court must require the prosecutor to select one of the following courses:

- a. A joint trial at which the statement is not admitted into evidence; or
 - b. A joint trial at which the statement is admitted into evidence only after all references to the moving defendant have been effectively deleted so that the statement will not prejudice him; or
 - c. A separate trial of the objecting defendant.
- (2) The court, on motion of the prosecutor, or on motion of the defendant other than under subdivision (1) above must deny a joinder for trial or grant a severance of defendants whenever:
- a. If before trial, it is found necessary to protect a defendant's right to a speedy trial, or it is found necessary to promote a fair determination of the guilt or innocence of one or more defendants; or
 - b. If during trial, upon motion of the defendant whose trial is to be severed, or motion of the prosecutor with the consent of the defendant whose trial is to be severed, it is found necessary to achieve a fair determination of the guilt or innocence of that defendant.
- (3) The court may order the prosecutor to disclose, out of the presence of the jurors, any statements made by the defendants which he intends to introduce in evidence at the trial when that information would assist the court in ruling on an objection to joinder of defendants for trial or a motion for severance of defendants.

(d) Failure to Prove Grounds for Joinder of Defendants for Trial. – If a defendant moves for severance at the conclusion of the State's case or of all the evidence, and there is not sufficient evidence to support the allegation upon which the moving defendant was joined for trial with the other defendant or defendants, the court must grant a severance if, in view of this lack of evidence, severance is found necessary to achieve a fair determination of that defendant's guilt or innocence.

(e) Severance on Motion of Court. – The court may order a severance of offenses before trial or deny the joinder of defendants for trial if a severance or denial of joinder could be obtained on motion of a defendant or the prosecutor. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-928. Allegation and proof of previous convictions in superior court.

(a) When the fact that the defendant has been previously convicted of an offense raises an offense of lower grade to one of higher grade and thereby becomes an element of the latter, an indictment or information for the higher offense may not allege the previous conviction. If a reference to a previous conviction is contained in the statutory name or title of the offense, the name or title may not be used in the indictment or information, but an improvised name or title must be used which labels and distinguishes the offense without reference to a previous conviction.

(b) An indictment or information for the offense must be accompanied by a special indictment or information, filed with the principal pleading, charging that the defendant was previously convicted of a specified offense. At the prosecutor's option, the special indictment or information may be incorporated in the principal indictment as a separate count. Except as provided in subsection (c) below, the State may not refer to the special indictment or information during the trial nor adduce any evidence concerning the previous conviction alleged therein.

(c) After commencement of the trial and before the close of the State's case, the judge in the absence of the jury must arraign the defendant upon the special indictment or information, and must advise him that he may admit the previous conviction alleged, deny it, or remain silent. Depending upon the defendant's response, the trial of the case must then proceed as follows:

- (1) If the defendant admits the previous conviction, that element of the offense charged in the indictment or information is established, no evidence in support thereof may be adduced by the State, and the judge must submit the case to the jury without reference thereto and as if the fact of such previous conviction were not an element of the offense. The court may not submit to the jury any lesser included offense which is distinguished from the offense charged solely by the fact that a previous conviction is not an element thereof.
- (2) If the defendant denies the previous conviction or remains silent, the State may prove that element of the offense charged before the jury as a part of its case. This section applies only to proof of a prior conviction when it is an element of the crime charged, and does not prohibit the State from introducing proof of prior convictions when otherwise permitted under the rules of evidence.
- (d) When a misdemeanor is tried *de novo* in superior court in which the fact of a previous conviction is an element of the offense affecting punishment, the State must replace the pleading in the case with superseding statements of charges separately alleging the substantive offense and the fact of any prior conviction, in accordance with the provisions of this section relating to indictments and informations. Any jury trial in superior court on the misdemeanor must be held in accordance with the provisions of subsections (b) and (c).
- (e) Nothing contained in this section precludes the State from proving a prior conviction before a grand jury or relieves the State from the obligation or necessity of so doing in order to submit a legally sufficient case. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-929. Reserved for future codification purposes.

§ 15A-930. Reserved for future codification purposes.

Article 50.

Voluntary Dismissal.

§ 15A-931. Voluntary dismissal of criminal charges by the State.

(a) Except as provided in G.S. 20-138.4, the prosecutor may dismiss any charges stated in a criminal pleading including those deferred for prosecution by entering an oral dismissal in open court before or during the trial, or by filing a written dismissal with the clerk at any time. The clerk must record the dismissal entered by the prosecutor and note in the case file whether a jury has been impaneled or evidence has been introduced.

(a1) Unless the defendant or the defendant's attorney has been notified otherwise by the prosecutor, a written dismissal of the charges against the defendant filed by the prosecutor shall be served in the same manner prescribed for motions under G.S. 15A-951. In addition, the written dismissal shall also be served on the chief officer of the custodial facility when the record reflects that the defendant is in custody.

(b) No statute of limitations is tolled by charges which have been dismissed pursuant to this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1983, c. 435, s. 5; 1991, c. 109, s. 1; 1997-228, s. 1.)

§ 15A-932. Dismissal with leave when defendant fails to appear and cannot be readily found or pursuant to a deferred prosecution agreement.

(a) The prosecutor may enter a dismissal with leave for nonappearance when a defendant:

service of the bill of indictment. If a bill of indictment is not required to be served pursuant to G.S. 15A-630, then the written request for arraignment must be filed not later than 21 days from the date of the return of the indictment as a true bill. Upon the return of the indictment as a true bill, the court must immediately cause notice of the 21-day time limit within which the defendant may request an arraignment to be mailed or otherwise given to the defendant and to the defendant's counsel of record, if any. If the defendant does not file a written request for arraignment, then the court shall enter a not guilty plea on behalf of the defendant.

(e) Nothing in this section shall prevent the district attorney from calendaring cases for administrative purposes. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1993, c. 30, s. 3; 1995 (Reg. Sess., 1996), c. 725, s. 7; 2021-47, s. 10(h).)

§ 15A-942. Right to counsel.

If the defendant appears at the arraignment without counsel, the court must inform the defendant of his right to counsel, must accord the defendant opportunity to exercise that right, and must take any action necessary to effectuate the right. If the defendant does not file a written request for arraignment, the court, in addition to entering a plea of not guilty on behalf of the defendant, shall also verify that the defendant is aware of the right to counsel, that the defendant has been given the opportunity to exercise that right, and must take any action necessary to effectuate that right on behalf of the defendant. (1777, c. 115, s. 85, P.R.; R.C., c. 35, s. 13; Code, s. 1182; Rev., s. 3150; C.S., s. 4515; 1973, c. 1286, s. 1; 1995 (Reg. Sess., 1996), c. 725, s. 8.)

§ 15A-943. Arraignment in superior court – Required calendaring.

(a) In counties in which there are regularly scheduled 20 or more weeks of trial sessions of superior court at which criminal cases are heard, and in other counties the Chief Justice designates, the prosecutor must calendar arraignments in the superior court on at least the first day of every other week in which criminal cases are heard. No cases in which the presence of a jury is required may be calendared for the day or portion of a day during which arraignments are calendared.

(b) When a defendant pleads not guilty at an arraignment required by subsection (a), he may not be tried without his consent in the week in which he is arraigned.

(c) Notwithstanding the provisions of subsection (a) of this section, in any county where as many as three simultaneous sessions of superior court, whether criminal, civil, or mixed, are regularly scheduled, the prosecutor may calendar arraignments in any of the criminal or mixed sessions, at least every other week, upon any day or days of a session, and jury cases may be calendared for trial in any other court at which criminal cases may be heard, upon such days. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; c. 471.)

§ 15A-944. Arraignment in superior court – Optional calendaring.

In counties other than those described in G.S. 15A-943 the prosecutor may, but is not required to, calendar arraignments in the manner described in that section. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-945. Waiver of arraignment.

A defendant who is represented by counsel and who wishes to plead not guilty may waive arraignment prior to the day for which arraignment is calendared by filing a written plea, signed by the defendant and his counsel. (1973, c. 1286, s. 1.)

§§ 15A-946 through 15A-950. Reserved for future codification purposes.

Article 52.

Motions Practice.

§ 15A-951. Motions in general; definition, service, and filing.

(a) A motion must:

- (1) Unless made during a hearing or trial, be in writing;
- (2) State the grounds of the motion; and
- (3) Set forth the relief or order sought.

(b) Each written motion must be served upon the attorney of record for the opposing party or upon the defendant if he is not represented by counsel. Service upon the attorney or upon a party shall be made as provided in G.S. 1A-1, Rule 5.

(c) All written motions must be filed with the court. Proof of service must be made by filing with the court a certificate of service as provided in G.S. 1A-1, Rule 5(b1). (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 2021-47, s. 16(a).)

§ 15A-952. Pretrial motions; time for filing; sanction for failure to file; motion hearing date.

(a) Any defense, objection, or request which is capable of being determined without the trial of the general issue may be raised before trial by motion.

(b) Except as provided in subsection (d), when the following motions are made in superior court they must be made within the time limitations stated in subsection (c) unless the court permits filing at a later time:

- (1) Motions to continue.
- (2) Motions for a change of venue under G.S. 15A-957.
- (3) Motions for a special venire under G.S. 9-12 or G.S. 15A-958.
- (4) Motions to dismiss under G.S. 15A-955.
- (5) Motions to dismiss for improper venue.
- (6) Motions addressed to the pleadings, including:
 - a. Motions to dismiss for failure to plead under G.S. 15A-924(e).
 - b. Motions to strike under G.S. 15A-924(f).
 - c. Motions for bills of particulars under G.S. 15A-924(b) or G.S. 15A-925.
 - d. Motions for severance of offenses, to the extent required by G.S. 15A-927.
 - e. Motions for joinder of related offenses under G.S. 15A-926(c).

(c) Unless otherwise provided, the motions listed in subsection (b) must be made at or before the time of arraignment if a written request is filed for arraignment and if arraignment is held prior to the session of court for which the trial is calendared. If arraignment is to be held at the session for which trial is calendared, the motions must be filed on or before five o'clock P.M. on the Wednesday prior to the session when trial of the case begins.

If a written request for arraignment is not filed, then any motion listed in subsection (b) of this section must be filed not later than 21 days from the date of the return of the bill of indictment as a true bill.

(d) Motions concerning jurisdiction of the court or the failure of the pleading to charge an offense may be made at any time.

(e) Failure to file the motions in subsection (b) within the time required constitutes a waiver of the motion. The court may grant relief from any waiver except failure to move to dismiss for improper venue.

(f) When a motion is made before trial, the court in its discretion may hear the motion before trial, on the date set for arraignment, on the date set for trial before a jury is impaneled, or during trial.

(g) In superior or district court, the judge shall consider at least the following factors in determining whether to grant a continuance:

- (1) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;
- (2) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation; and
- (3) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child.
- (4) Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina. A continuance requested to fulfill an obligation of service by carrying out any duties as a member of the General Assembly, or service on the Rules Review Commission or any other board, commission, or authority as an appointee of the Governor, the Lieutenant Governor, or the General Assembly, must be granted. (1973, c. 1286, s. 1; 1989, c. 688, s. 5; 1995 (Reg. Sess., 1996), c. 725, s. 9; 1997-34, s. 12; 2019-243, s. 30(b); 2020-72, s. 2(b); 2021-180, s. 1.69(a).)

§ 15A-953. Motions practice in district court.

In misdemeanor prosecutions in the district court motions should ordinarily be made upon arraignment or during the course of trial, as appropriate. A written motion may be made prior to trial in district court. With the consent of other parties and the district court judge, a motion may be heard before trial. Upon trial de novo in superior court, motions are subject to the provisions of G.S. 15A-952, and except as provided in G.S. 15A-135, no motion in superior court is prejudiced by any ruling upon, or a failure to make timely motion on, the subject in district court. (1973, c. 1286, s. 1.)

§ 15A-954. Motion to dismiss – Grounds applicable to all criminal pleadings; dismissal of proceedings upon death of defendant.

(a) The court on motion of the defendant must dismiss the charges stated in a criminal pleading if it determines that:

- (1) The statute alleged to have been violated is unconstitutional on its face or as applied to the defendant.
- (2) The statute of limitations has run.
- (3) The defendant has been denied a speedy trial as required by the Constitution of the United States and the Constitution of North Carolina.

- (4) The defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.
 - (5) The defendant has previously been placed in jeopardy of the same offense.
 - (6) The defendant has previously been charged with the same offense in another North Carolina court of competent jurisdiction, and the criminal pleading charging the offense is still pending and valid.
 - (7) An issue of fact or law essential to a successful prosecution has been previously adjudicated in favor of the defendant in a prior action between the parties.
 - (8) The court has no jurisdiction of the offense charged.
 - (9) The defendant has been granted immunity by law from prosecution.
 - (10) The pleading fails to charge an offense as provided in G.S. 15A-924(e).
- (b) Upon suggestion to the court that the defendant has died, the court upon determining that the defendant is dead must dismiss the charges.
- (c) A motion to dismiss for the reasons set out in subsection (a) may be made at any time. (1973, c. 1286, s. 1.)

§ 15A-955. Motion to dismiss – Grounds applicable to indictments.

The court on motion of the defendant may dismiss an indictment if it determines that:

- (1) There is ground for a challenge to the array,
- (2) The requisite number of qualified grand jurors did not concur in finding the indictment, or
- (3) All of the witnesses before the grand jury on the bill of indictment were incompetent to testify. (1973, c. 1286, s. 1.)

§ 15A-956. Deferral of ruling on motion to dismiss when charge to be reinstated.

If a motion to dismiss is made at arraignment or trial, upon motion of the prosecutor the court may recess the proceedings for a period of time requested by the prosecutor, not to exceed 24 hours, prior to ruling upon the motion. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-957. Motion for change of venue.

If, upon motion of the defendant, the court determines that there exists in the county in which the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial, the court must either:

- (1) Transfer the proceeding to another county in the prosecutorial district as defined in G.S. 7A-60 or to another county in an adjoining prosecutorial district as defined in G.S. 7A-60, or
- (2) Order a special venire under the terms of G.S. 15A-958.

The procedure for change of venue is in accordance with the provisions of Article 3 of this Chapter, Venue. (1973, c. 1286, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 63.)

§ 15A-958. Motion for a special venire from another county.

Upon motion of the defendant or the State, or on its own motion, a court may issue an order for a special venire of jurors from another county if in its discretion it determines the action to be necessary to insure a fair trial. The procedure for securing this special venire is governed by G.S. 9-12. (1973, c. 1286, s. 1.)

§ 15A-959. Notice of defense of insanity; pretrial determination of insanity.

(a) If a defendant intends to raise the defense of insanity, the defendant must file a notice of the defendant's intention to rely on the defense of insanity as provided in G.S. 15A-905(c) and, if the case is not subject to that section, within a reasonable time prior to trial. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(b) In cases not subject to the requirements of G.S. 15A-905(c), if a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether the defendant had the mental state required for the offense charged, the defendant must within a reasonable time prior to trial file a notice of that intention. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(c) Upon motion of the defendant and with the consent of the State the court may conduct a hearing prior to the trial with regard to the defense of insanity at the time of the offense. If the court determines that the defendant has a valid defense of insanity with regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a finding to that effect. The court's denial of relief under this subsection is without prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no reference to the hearing may be made at the trial, and recorded testimony or evidence taken at the hearing is not admissible as evidence at the trial. (1973, c. 1286, s. 1; 1977, c. 711, s. 25; 2004-154, s. 10.)

§§ 15A-960 through 15A-970. Reserved for future codification purposes.

Article 53.

Motion to Suppress Evidence.

§ 15A-971. Definitions.

As used in this Article the following definitions apply unless the context clearly requires otherwise:

- (1) Evidence. – When referring to matter in the possession of or available to a prosecutor, any tangible property or potential testimony which may be offered in evidence in a criminal action.
- (2) Potential Testimony. – Information or factual knowledge of a person who is or may be available as a witness. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-972. Motion to suppress evidence before trial in superior court in general.

When an indictment has been returned or an information has been filed in the superior court, or a defendant has been bound over for trial in superior court, a defendant who is aggrieved may move to suppress evidence in accordance with the terms of this Article. (1973, c. 1286, s. 1.)

§ 15A-973. Motion to suppress evidence in district court.

In misdemeanor prosecutions in the district court, motions to suppress evidence should ordinarily be made during the course of the trial. A motion to suppress may be made prior to trial. With the consent of the prosecutor and the district court judge, the motion may be heard prior to trial. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-974. Exclusion or suppression of unlawfully obtained evidence.

(a) Upon timely motion, evidence must be suppressed if:

- (1) Its exclusion is required by the Constitution of the United States or the Constitution of the State of North Carolina; or
- (2) It is obtained as a result of a substantial violation of the provisions of this Chapter. In determining whether a violation is substantial, the court must consider all the circumstances, including:
 - a. The importance of the particular interest violated;
 - b. The extent of the deviation from lawful conduct;
 - c. The extent to which the violation was willful;
 - d. The extent to which exclusion will tend to deter future violations of this Chapter.

Evidence shall not be suppressed under this subdivision if the person committing the violation of the provision or provisions under this Chapter acted under the objectively reasonable, good faith belief that the actions were lawful.

(b) The court, in making a determination whether or not evidence shall be suppressed under this section, shall make findings of fact and conclusions of law which shall be included in the record, pursuant to G.S. 15A-977(f). (1973, c. 1286, s. 1; 2011-6, s. 1.)

§ 15A-975. Motion to suppress evidence in superior court prior to trial and during trial.

(a) In superior court, the defendant may move to suppress evidence only prior to trial unless the defendant did not have reasonable opportunity to make the motion before trial or unless a motion to suppress is allowed during trial under subsection (b) or (c).

(b) A motion to suppress may be made for the first time during trial when the State has failed to notify the defendant's counsel or, if he has none, the defendant, sooner than 20 working days before trial, of its intention to use the evidence, and the evidence is:

- (1) Evidence of a statement made by a defendant;
- (2) Evidence obtained by virtue of a search without a search warrant; or
- (3) Evidence obtained as a result of search with a search warrant when the defendant was not present at the time of the execution of the search warrant.

(c) If, after a pretrial determination and denial of the motion, the judge is satisfied, upon a showing by the defendant, that additional pertinent facts have been discovered by the defendant which he could not have discovered with reasonable diligence before the determination of the motion, he may permit the defendant to renew the motion before the trial or, if not possible because of the time of discovery of alleged new facts, during trial.

When a misdemeanor is appealed by the defendant for trial de novo in superior court, the State need not give the notice required by this section. (1973, c. 1286, s. 1.)

§ 15A-976. Timing of pretrial suppression motion and hearing.

(a) A motion to suppress evidence in superior court may be made at any time prior to trial except as provided in subsection (b).

(b) If the State gives notice not later than 20 working days before trial of its intention to use evidence and if the evidence is of a type listed in G.S. 15A-975(b), the defendant may move to suppress the evidence only if its motion is made not later than 10 working days following receipt of the notice from the State.

(c) When the motion is made before trial, the judge in his discretion may hear the motion before trial, on the date set for arraignment, on the date set for trial before a jury is impaneled, or during trial. He may rule on the motion before trial or reserve judgment until trial. (1973, c. 1286, s. 1.)

§ 15A-977. Motion to suppress evidence in superior court; procedure.

(a) A motion to suppress evidence in superior court made before trial must be in writing and a copy of the motion must be served upon the State. The motion must state the grounds upon which it is made. The motion must be accompanied by an affidavit containing facts supporting the motion. The affidavit may be based upon personal knowledge, or upon information and belief, if the source of the information and the basis for the belief are stated. The State may file an answer denying or admitting any of the allegations. A copy of the answer must be served on the defendant's counsel, or on the defendant if he has no counsel.

(b) The judge must summarily grant the motion to suppress evidence if:

- (1) The motion complies with the requirements of subsection (a), it states grounds which require exclusion of the evidence, and the State concedes the truth of allegations of fact which support the motion; or
- (2) The State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(c) The judge may summarily deny the motion to suppress evidence if:

- (1) The motion does not allege a legal basis for the motion; or
- (2) The affidavit does not as a matter of law support the ground alleged.

(d) If the motion is not determined summarily the judge must make the determination after a hearing and finding of facts. Testimony at the hearing must be under oath.

(e) A motion to suppress made during trial may be made in writing or orally and may be determined in the same manner as when made before trial. The hearing, if held, must be out of the presence of the jury.

(f) The judge must set forth in the record his findings of facts and conclusions of law. (1973, c. 1286, s. 1.)

§ 15A-978. Motion to suppress evidence in superior court or district court; challenge of probable cause supporting search on grounds of truthfulness; when identity of informant must be disclosed.

(a) A defendant may contest the validity of a search warrant and the admissibility of evidence obtained thereunder by contesting the truthfulness of the testimony showing probable cause for its issuance. The defendant may contest the truthfulness of the testimony by cross-examination or by offering evidence. For the purposes of this section, truthful testimony is testimony which reports in good faith the circumstances relied on to establish probable cause.

(b) In any proceeding on a motion to suppress evidence pursuant to this section in which the truthfulness of the testimony presented to establish probable cause is contested and the testimony includes a report of information furnished by an informant whose identity is not disclosed in the testimony, the defendant is entitled to be informed of the informant's identity unless:

- (1) The evidence sought to be suppressed was seized by authority of a search warrant or incident to an arrest with warrant; or

- (2) There is corroboration of the informant's existence independent of the testimony in question.

The provisions of subdivisions (b)(1) and (b)(2) do not apply to situations in which disclosure of an informant's identity is required by controlling constitutional decisions.

(c) This section does not limit the right of a defendant to contest the truthfulness of testimony offered in support of a search made without a warrant. (1973, c. 1286, s. 1.)

§ 15A-979. Motion to suppress evidence in superior and district court; orders of suppression; effects of orders and of failure to make motion.

(a) Upon granting a motion to suppress evidence the judge must order that the evidence in question be excluded in the criminal action pending against the defendant. When the order is based upon the ground of an unlawful search and seizure and excludes tangible property unlawfully taken from the defendant's possession, and when the property is not contraband or otherwise subject to lawful retention by the State or another, the judge must order that the property be restored to the defendant at the conclusion of the trial including all appeals.

(b) An order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty.

(c) An order by the superior court granting a motion to suppress prior to trial is appealable to the appellate division of the General Court of Justice prior to trial upon certificate by the prosecutor to the judge who granted the motion that the appeal is not taken for the purpose of delay and that the evidence is essential to the case. The appeal is to the appellate court that would have jurisdiction if the defendant were found guilty of the charge and received the maximum punishment. If there are multiple charges affected by a motion to suppress, the ruling is appealable to the court with jurisdiction over the offense carrying the highest punishment.

(d) A motion to suppress evidence made pursuant to this Article is the exclusive method of challenging the admissibility of evidence upon the grounds specified in G.S. 15A-974. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1979, c. 723.)

§ 15A-980. Right to suppress use of certain prior convictions obtained in violation of right to counsel.

(a) A defendant has the right to suppress the use of a prior conviction that was obtained in violation of his right to counsel if its use by the State is to impeach the defendant or if its use will:

- (1) Increase the degree of crime of which the defendant would be guilty; or
- (2) Result in a sentence of imprisonment that otherwise would not be imposed; or
- (3) Result in a lengthened sentence of imprisonment.

(b) A defendant who has grounds to suppress the use of a conviction in evidence at a trial or other proceeding as set forth in (a) must do so by motion made in accordance with the procedure in this Article. A defendant waives his right to suppress use of a prior conviction if he does not move to suppress it.

(c) When a defendant has moved to suppress use of a prior conviction under the terms of subsection (a), he has the burden of proving by the preponderance of the evidence that the conviction was obtained in violation of his right to counsel. To prevail, he must prove that at the time of the conviction he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves that a prior conviction was obtained in violation of his right to counsel, the judge must suppress use of the conviction at trial or in any other proceeding if its use will contravene the provisions of subsection (a). (1983, c. 513, s. 1.)

§ 15A-981. Reserved for future codification purposes.

§ 15A-982. Reserved for future codification purposes.

§ 15A-983. Reserved for future codification purposes.

§ 15A-984. Reserved for future codification purposes.

Article 54.

Reliability of In-Custody Informant Statements.

§ 15A-985. Corroboration of in-custody informant statement.

(a) Definition. – As used in this section, the term "in-custody informant" means a person, other than a codefendant, accomplice, or coconspirator, whose testimony is based on statements allegedly made by the defendant while both the defendant and the informant were held within a city or county jail or a State correctional institution or otherwise confined, where statements relate to offenses that occurred outside of the confinement.

(b) Recording of In-Custody Informant Interview. – All interviews of in-custody informants by a law enforcement officer shall be recorded using a visual recording device that provides an authentic, accurate, unaltered, and uninterrupted record of the interview that clearly shows both the interviewer and the in-custody informant. This subsection shall not apply to attorneys for the State or defense conducting an interview as part of trial preparation.

(c) Destruction or Modification of Recording After Appeals Exhausted. – The State shall not destroy or alter any electronic recording of an in-custody informant interview until one year after the completion of all State and federal appeals of the conviction, including the exhaustion of any appeal of any motion for appropriate relief or habeas corpus proceedings. Every electronic recording shall be clearly identified and catalogued by law enforcement personnel. (2023-74, s. 4(a).)

§ 15A-986. Reserved for future codification purposes.

§ 15A-987. Reserved for future codification purposes.

§ 15A-988. Reserved for future codification purposes.

§ 15A-989. Reserved for future codification purposes.

§ 15A-990. Reserved for future codification purposes.

Article 55.

§§ 15A-991 through 15A-1000. Reserved for future codification purposes.

SUBCHAPTER X. GENERAL TRIAL PROCEDURE.

Article 56.

Incapacity to Proceed.

§ 15A-1001. No proceedings when defendant mentally incapacitated; exception.

(a) No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner. This condition is hereinafter referred to as "incapacity to proceed."

(b) This section does not prevent the court from going forward with any motions which can be handled by counsel without the assistance of the defendant. (1973, c. 1286, s. 1.)

§ 15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.

(a) The question of the capacity of the defendant to proceed may be raised at any time on motion by the prosecutor, the defendant, the defense counsel, or the court. The motion shall detail the specific conduct that leads the moving party to question the defendant's capacity to proceed.

(b) (1) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to subdivision (1a) or (2) of this subsection, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence.

(1a) In the case of a defendant charged with a misdemeanor or felony, the court may appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of the defendant's mental health. Reports so prepared are admissible at the hearing. The court may call any expert so appointed to testify at the hearing with or without the request of either party.

(2) At any time in the case of a defendant charged with a felony, the court may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to proceed. If a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1a) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's capacity. The sheriff shall return the defendant to the county when notified that the evaluation has been completed. The director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the court. The report is admissible at the hearing.

(3) Repealed by Session Laws 1989, c. 486, s. 1.

(4) A presiding district or superior court judge of this State who orders an examination pursuant to subdivision (1a) or (2) of this subsection shall order the release of relevant confidential information to the examiner, including, but not limited to, the warrant or indictment, arrest records, the law enforcement incident report, the defendant's criminal record, jail records, any prior medical and mental health records of the defendant, and any school records of the

defendant after providing the defendant with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The records may be surrendered to the court for in camera review if surrender is necessary to make the required determinations. The records shall be withheld from public inspection and, except as provided in this subdivision, may be examined only by order of the court.

(b1) The order of the court shall contain findings of fact to support its determination of the defendant's capacity to proceed. The parties may stipulate that the defendant is capable of proceeding but shall not be allowed to stipulate that the defendant lacks capacity to proceed. If the court concludes that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or, if the defendant is hospitalized, in the county in which the defendant is hospitalized.

(b2) Reports made to the court pursuant to this section shall be completed and provided to the court as follows:

- (1) The report in a case of a defendant charged with a misdemeanor shall be completed and provided to the court no later than 10 days following the completion of the examination for a defendant who was in custody at the time the examination order was entered and no later than 20 days following the completion of the examination for a defendant who was not in custody at the time the examination order was entered.
- (2) The report in the case of a defendant charged with a felony shall be completed and provided to the court no later than 30 days following the completion of the examination.
- (3) In cases where the defendant challenges the determination made by the court-ordered examiner or the State facility and the court orders an independent psychiatric examination, that examination and report to the court must be completed within 60 days of the entry of the order by the court.

The court may, for good cause shown, extend the time for the provision of the report to the court for up to 30 additional days. The court may renew an extension of time for an additional 30 days upon request of the State or the defendant prior to the expiration of the previous extension. In no case shall the court grant extensions totaling more than 120 days beyond the time periods otherwise provided in this subsection.

(c) The court may make appropriate temporary orders for the confinement or security of the defendant pending the hearing or ruling of the court on the question of the capacity of the defendant to proceed.

(d) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the defendant and any conclusion as to whether the defendant has or lacks capacity to proceed. If the defendant is being held in the custody of the sheriff, the clerk shall send a copy of the covering statement to the sheriff. The sheriff and

any persons employed by the sheriff shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to defense counsel or to the defendant if he is not represented by counsel. If the question of the defendant's capacity to proceed is raised at any time, a copy of the full report must be forwarded to the district attorney, as provided in G.S. 122C-54(b). Until such report becomes a public record, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be revealed except the report and the relevant confidential information previously ordered released under subdivision (b)(4) of this section shall be released as follows: (i) to clinicians at the program where the defendant is receiving capacity restoration; (ii) to clinicians designated by the Secretary of Health and Human Services, and (iii) as directed by the court. Any report made to the court pursuant to this section shall not be a public record unless introduced into evidence. (1973, c. 1286, s. 1; 1975, c. 166, ss. 20, 27; 1977, cc. 25, 860; 1979, 2nd Sess., c. 1313; 1985, c. 588; c. 589, s. 9; 1989, c. 486, s. 1; 1991, c. 636, s. 19(b); 1995, c. 299, s. 1; 1995 (Reg. Sess., 1996), c. 742, ss. 13, 14; 2013-18, s. 1; 2017-147, s. 1.)

§ 15A-1003. Referral of incapable defendant for civil commitment proceedings.

(a) When a defendant is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a violent crime and that he was found incapable of proceeding.

(b) The court may make appropriate orders for the temporary detention of the defendant pending that proceeding.

(c) Evidence used at the hearing with regard to capacity to proceed is admissible in the involuntary civil commitment proceedings. (1973, c. 1286, s. 1; 1975, c. 166, s. 20; 1983, c. 380, s. 1; 1985, c. 589, s. 10; 1987, c. 596, s. 5.)

§ 15A-1004. Orders for safeguarding of defendant and return for trial.

(a) When a defendant is found to be incapable of proceeding, the trial court must make appropriate orders to safeguard the defendant and to ensure his return for trial in the event that he subsequently becomes capable of proceeding.

(b) If the defendant is not placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, appropriate orders may include any of the procedures, orders, and conditions provided in Article 26 of this Chapter, Bail, specifically including the power to place the defendant in the custody of a designated person or organization agreeing to supervise him.

(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or

supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. The court shall also order that the defendant shall be examined to determine whether the defendant has the capacity to proceed prior to release from custody. A report of the examination shall be provided pursuant to G.S. 15A-1002. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate.

(d) If the defendant is placed in the custody of a hospital or institution pursuant to proceedings for involuntary civil commitment, or if the defendant is placed in the custody of another person pursuant to subsection (b), the orders of the trial court must require that the hospital, institution, or individual report the condition of the defendant to the clerk at the same times that reports on the condition of the defendant-respondent are required under Part 7 of Article 5 of Chapter 122C of the General Statutes, or more frequently if the court requires, and immediately if the defendant gains capacity to proceed. The order must also require the report to state the likelihood of the defendant's gaining capacity to proceed, to the extent that the hospital, institution, or individual is capable of making such a judgment.

(e) The orders must require and provide for the return of the defendant to stand trial in the event that he gains capacity to proceed, unless the charges have been dismissed pursuant to G.S. 15A-1008, and may also provide for the confinement or pretrial release of the defendant in that event.

(f) The orders of the court may be amended or supplemented from time to time as changed conditions require. (1973, c. 1286, s. 1; 1975, c. 166, s. 20; 1983, c. 380, s. 2; c. 460, s. 2; 1985, c. 589, s. 11; 2013-18, s. 2.)

§ 15A-1005. Reporting to court with regard to defendants incapable of proceeding.

The clerk of the court in which the criminal proceeding is pending must keep a docket of defendants who have been determined to be incapable of proceeding. The clerk must submit the docket to the senior resident superior court judge in his district at least semiannually. (1973, c. 1286, s. 1.)

§ 15A-1006. Return of defendant for trial upon gaining capacity.

If a defendant who has been determined to be incapable of proceeding, and who is in the custody of an institution or an individual, has been determined by the institution or individual having custody to have gained capacity to proceed, the individual or institution shall provide written notification to the clerk in the county in which the criminal proceeding is pending. The clerk shall provide written notification to the district attorney, the defendant's attorney, and the sheriff. The sheriff shall return the defendant to the county for a supplemental hearing pursuant to G.S. 15A-1007, if conducted, and trial and hold the defendant for a supplemental hearing and trial, subject to the orders of the court entered pursuant to G.S. 15A-1004. (1973, c. 1286, s. 1; 2013-18, s. 3.)

§ 15A-1007. Supplemental hearings.

(a) When it has been reported to the court that a defendant has gained capacity to proceed, or when the defendant has been determined by the individual or institution having custody of him

to have gained capacity and has been returned for trial, in accordance with G.S. 15A-1004(e) and G.S. 15A-1006, the clerk shall notify the district attorney. Upon receiving the notification, the district attorney shall calendar the matter for hearing at the next available term of court but no later than 30 days after receiving the notification. The court may hold a supplemental hearing to determine whether the defendant has capacity to proceed. The court may take any action at the supplemental hearing that it could have taken at an original hearing to determine the capacity of the defendant to proceed.

(b) The court may hold a supplemental hearing any time upon its own determination that a hearing is appropriate or necessary to inquire into the condition of the defendant.

(c) The court must hold a supplemental hearing if it appears that any of the conditions for dismissal of the charges have been met.

(d) If the court determines in a supplemental hearing that a defendant has gained the capacity to proceed, the case shall be calendared for trial at the earliest practicable time. Continuances that extend beyond 60 days after initial calendaring of the trial shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance. (1973, c. 1286, s. 1; 2013-18, s. 4.)

§ 15A-1008. Dismissal of charges.

(a) When a defendant lacks capacity to proceed, the court shall dismiss the charges upon the earliest of the following occurrences:

(1) When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed.

(2) When as a result of incarceration, involuntary commitment to an inpatient facility, or other court-ordered confinement, the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the maximum term of imprisonment permissible for prior record Level VI for felonies or prior conviction Level III for misdemeanors for the most serious offense charged.

(3) Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges.

(b) A dismissal entered pursuant to subdivision (2) of subsection (a) of this section shall be without leave.

(c) A dismissal entered pursuant to subdivision (1) or (3) of subsection (a) of this section shall be issued without prejudice to the refile of the charges. Upon the defendant becoming capable of proceeding, the prosecutor may reinstitute proceedings dismissed pursuant to subdivision (1) or (3) of subsection (a) of this section by filing written notice with the clerk, with the defendant, and with the defendant's attorney of record.

(d) Dismissal of criminal charges pursuant to this section shall be upon motion of the prosecutor or the defendant or upon the court's own motion. (1973, c. 1286, s. 1; 2013-18, s. 5.)

§ 15A-1009: Repealed by Session Laws 2013-18, s. 6, effective December 1, 2013.

§ 15A-1010. Reserved for future codification purposes.

Article 57.

Pleas.

§ 15A-1011. Pleas in district and superior courts; waiver of appearance.

(a) A defendant may plead not guilty, guilty, or no contest "(nolo contendere)." A plea may be received only from the defendant himself in open court except in any of the following circumstances:

- (1) The defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer.
- (2) There is a waiver of arraignment and a filing of a written plea of not guilty under G.S. 15A-945.
- (3) In misdemeanor cases when there is a written waiver of appearance submitted with the approval of the presiding judge.
- (4) Written pleas for the types of offenses specified in G.S. 7A-273(2) and G.S. 7A-273(2a) are authorized under G.S. 7A-148(a).
- (5) The defendant executes a waiver and plea of not guilty as provided in G.S. 15A-1011(d).
- (6) The defendant, before a magistrate or clerk of court, enters a written appearance, waiver of trial and plea of guilty and at the same time makes restitution in a case wherein the sole allegation is a violation of G.S. 14-107, the check is in an amount provided in G.S. 7A-273(8), and the warrant does not charge a fourth or subsequent violation of this statute.

(b) A defendant may plead no contest only with the consent of the prosecutor and the presiding judge.

(c) Upon entry of a plea of guilty or no contest or after conviction on a plea of not guilty, the defendant may request permission to enter a plea of guilty or no contest as to other crimes with which he is charged in the same or another prosecutorial district as defined in G.S. 7A-60. A defendant may not enter any plea to crimes charged in another prosecutorial district as defined in G.S. 7A-60 unless the district attorney of that district consents in writing to the entry of such plea. The prosecutor or his representative may appear in person or by filing an affidavit as to the nature of the evidence gathered as to these other crimes. Entry of a plea under this subsection constitutes a waiver of venue. A superior court is granted jurisdiction to accept the plea, upon an appropriate indictment or information, even though the case may otherwise be within the exclusive original jurisdiction of the district court. A district court may accept pleas under this section only in cases within the original jurisdiction of the district court and in cases within the concurrent jurisdiction of the district and superior courts pursuant to G.S. 7A-272(c).

(d) A defendant may execute a written waiver of appearance and plead not guilty and designate legal counsel to appear in his behalf in the following circumstances:

- (1) The defendant agrees in writing to waive the right to testify in person and waives the right to face his accusers in person and agrees to be bound by the decision of the court as in any other case of adjudication of guilty and entry of judgment, subject to the right of appeal as in any other case; and
- (2) The defendant submits in writing circumstances to justify the request and submits in writing a request to proceed under this section; and
- (3) The judge allows the absence of the defendant because of distance, infirmity or other good cause.

(e) In the event the judge shall permit the procedure set forth in the foregoing subsection (d), the State may offer evidence and the defendant may offer evidence, with right of cross-examination of witnesses, and the other procedures, including the right of the prosecutor to dismiss the charges, shall be the same as in any other criminal case, except for the absence of defendant. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; c. 626, s. 1; 1983, c. 586, s. 3; 1987, c. 355, s. 4; 1987 (Reg. Sess., 1988), c. 1037, s. 64; 1995 (Reg. Sess., 1996), c. 725, s. 5; 2021-47, s. 7(a).)

§ 15A-1012. Aid of counsel; time for deliberation.

(a) A defendant may not be called upon to plead until he has had an opportunity to retain counsel or, if he is eligible for assignment of counsel, until counsel has been assigned or waived in accordance with Article 36 of Chapter 7A of the General Statutes.

(b) In cases in the original jurisdiction of the superior court a defendant who has waived counsel may not plead within less than seven days following the date he was arrested or was otherwise informed of the charge. (1973, c. 1286, s. 1.)

§§ 15A-1013 through 15A-1020. Reserved for future codification purposes.

Article 58.

Procedures Relating to Guilty Pleas in Superior Court.

§ 15A-1021. Plea conference; improper pressure prohibited; submission of arrangement to judge; restitution and reparation as part of plea arrangement agreement, etc.

(a) In superior court, the prosecution and the defense may discuss the possibility that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses, the prosecutor will not charge, will dismiss, or will move for the dismissal of other charges, or will recommend or not oppose a particular sentence. If the defendant is represented by counsel in the discussions the defendant need not be present. The trial judge may participate in the discussions.

(b) No person representing the State or any of its political subdivisions may bring improper pressure upon a defendant to induce a plea of guilty or no contest.

(c) If the parties have reached a proposed plea arrangement in which the prosecutor has agreed to recommend a particular sentence, they may, with the permission of the trial judge, advise the judge of the terms of the arrangement and the reasons therefor in advance of the time for tender of the plea. The proposed plea arrangement may include a provision for the defendant to make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the defendant. The judge may indicate to the parties whether he will concur in the proposed disposition. The judge may withdraw his concurrence if he learns of information not consistent with the representations made to him.

(d) When restitution or reparation by the defendant is a part of the plea arrangement agreement, if the judge concurs in the proposed disposition he may order that restitution or reparation be made as a condition of special probation pursuant to the provisions of G.S. 15A-1351, or probation pursuant to the provisions of G.S. 15A-1343(d). If an active sentence is imposed the court may recommend that the defendant make restitution or reparation out of any earnings gained by the defendant if he is granted work release privileges under the provisions of G.S. 148-33.1, or that restitution or reparation be imposed as a condition of parole in accordance with the provisions of G.S. 148-57.1. The order or recommendation providing for restitution or reparation shall be in accordance with the applicable provisions of G.S. 15A-1343(d) and Article 81C of this Chapter.

If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and the plea agreement may include a provision that the defendant will be ordered to pay for such treatment.

When restitution or reparation is recommended as part of a plea arrangement that results in an active sentence, the sentencing court shall enter as a part of the commitment that restitution or reparation is recommended as part of the plea arrangement. The Administrative Office of the Courts shall prepare and distribute forms which provide for ample space to make restitution or reparation recommendations incident to commitments. (1973, c. 1286, s. 1; 1975, c. 117; c. 166, s. 27; 1977, c. 614, ss. 3, 4; 1977, 2nd Sess., c. 1147, s. 1; 1979, c. 760, s. 3; 1985, c. 474, s. 2; 1987, c. 598, s. 3; 1997-80, s. 2; 1998-212, s. 19.4(e).)

§ 15A-1022. Advising defendant of consequences of guilty plea; informed choice; factual basis for plea; admission of guilt not required.

(a) Except in the case of corporations or in misdemeanor cases in which there is a waiver of appearance under G.S. 15A-1011(a)(3), a superior court judge may not accept a plea of guilty or no contest from the defendant without first addressing him personally and:

- (1) Informing him that he has a right to remain silent and that any statement he makes may be used against him;
- (2) Determining that he understands the nature of the charge;
- (3) Informing him that he has a right to plead not guilty;
- (4) Informing him that by his plea he waives his right to trial by jury and his right to be confronted by the witnesses against him;
- (5) Determining that the defendant, if represented by counsel, is satisfied with his representation;
- (6) Informing him of the maximum possible sentence on the charge for the class of offense for which the defendant is being sentenced, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge; and
- (7) Informing him that if he is not a citizen of the United States of America, a plea of guilty or no contest may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law.

(b) By inquiring of the prosecutor and defense counsel and the defendant personally, the judge must determine whether there were any prior plea discussions, whether the parties have entered into any arrangement with respect to the plea and the terms thereof, and whether any improper pressure was exerted in violation of G.S. 15A-1021(b). The judge may not accept a plea of guilty or no contest from a defendant without first determining that the plea is a product of informed choice.

(c) The judge may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea. This determination may be based upon information including but not limited to:

- (1) A statement of the facts by the prosecutor.
- (2) A written statement of the defendant.
- (3) An examination of the presentence report.
- (4) Sworn testimony, which may include reliable hearsay.
- (5) A statement of facts by the defense counsel.

(d) The judge may accept the defendant's plea of no contest even though the defendant does not admit that he is in fact guilty if the judge is nevertheless satisfied that there is a factual basis for the plea. The judge must advise the defendant that if he pleads no contest he will be treated as guilty whether or not he admits guilt. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1989, c. 280; 1993, c. 538, s. 10; 1994, Ex. Sess., c. 24, s. 14(b).)

§ 15A-1022.1. Procedure in accepting admissions of the existence of aggravating factors in felonies.

(a) Before accepting a plea of guilty or no contest to a felony, the court shall determine whether the State intends to seek a sentence in the aggravated range. If the State does intend to seek an aggravated sentence, the court shall determine which factors the State seeks to establish. The court shall determine whether the State seeks a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7). The court shall also determine whether the State has provided the notice to the defendant required by G.S. 15A-1340.16(a6) or whether the defendant has waived his or her right to such notice.

(b) In all cases in which a defendant admits to the existence of an aggravating factor or to a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7), the court shall comply with the provisions of G.S. 15A-1022(a). In addition, the court shall address the defendant personally and advise the defendant that:

- (1) He or she is entitled to have a jury determine the existence of any aggravating factors or points under G.S. 15A-1340.14(b)(7); and
- (2) He or she has the right to prove the existence of any mitigating factors at a sentencing hearing before the sentencing judge.

(c) Before accepting an admission to the existence of an aggravating factor or a prior record level point under G.S. 15A-1340.14(b)(7), the court shall determine that there is a factual basis for the admission, and that the admission is the result of an informed choice by the defendant. The court may base its determination on the factors specified in G.S. 15A-1022(c), as well as any other appropriate information.

(d) A defendant may admit to the existence of an aggravating factor or to the existence of a prior record level point under G.S. 15A-1340.14(b)(7) before or after the trial of the underlying felony.

(e) The procedures specified in this Article for the handling of pleas of guilty are applicable to the handling of admissions to aggravating factors and prior record points under G.S. 15A-1340.14(b)(7), unless the context clearly indicates that they are inappropriate. (2005-145, s. 4.)

§ 15A-1023. Action by judge in plea arrangements relating to sentence; no approval required when arrangement does not relate to sentence.

(a) If the parties have agreed upon a plea arrangement pursuant to G.S. 15A-1021 in which the prosecutor has agreed to recommend a particular sentence, they must disclose the substance of their agreement to the judge at the time the defendant is called upon to plead.

(b) Before accepting a plea pursuant to a plea arrangement in which the prosecutor has agreed to recommend a particular sentence, the judge must advise the parties whether he approves the arrangement and will dispose of the case accordingly. If the judge rejects the arrangement, he must so inform the parties, refuse to accept the defendant's plea of guilty or no contest, and advise the defendant personally that neither the State nor the defendant is bound by the rejected

arrangement. The judge must advise the parties of the reasons he rejected the arrangement and afford them an opportunity to modify the arrangement accordingly. Upon rejection of the plea arrangement by the judge the defendant is entitled to a continuance until the next session of court. A decision by the judge disapproving a plea arrangement is not subject to appeal. If a judge rejects a plea arrangement disclosed, in open court, pursuant to subsection (a) of this section, then the judge shall order that the rejection be noted on the plea transcript and shall order that the plea transcript with the notation of the rejection be made a part of the record.

(c) If the parties have entered a plea arrangement relating to the disposition of charges in which the prosecutor has not agreed to make any recommendations concerning sentence, the substance of the arrangement must be disclosed to the judge at the time the defendant is called upon to plead. The judge must accept the plea if he determines that the plea is the product of the informed choice of the defendant and that there is a factual basis for the plea. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1977, c. 186; 2009-179, s. 1.)

§ 15A-1024. Withdrawal of guilty plea when sentence not in accord with plea arrangement.

If at the time of sentencing, the judge for any reason determines to impose a sentence other than provided for in a plea arrangement between the parties, the judge must inform the defendant of that fact and inform the defendant that he may withdraw his plea. Upon withdrawal, the defendant is entitled to a continuance until the next session of court. (1973, c. 1286, s. 1.)

§ 15A-1025. Plea discussion and arrangement inadmissible.

The fact that the defendant or his counsel and the prosecutor engaged in plea discussions or made a plea arrangement may not be received in evidence against or in favor of the defendant in any criminal or civil action or administrative proceedings. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-1026. Record of proceedings.

A verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest and of any preliminary consideration of a plea arrangement by the judge pursuant to G.S. 15A-1021(c) must be made and preserved. This record must include the judge's advice to the defendant, and his inquiries of the defendant, defense counsel, and the prosecutor, and any responses. If the plea arrangement has been reduced to writing, it must be made a part of the record; otherwise the judge must require that the terms of the arrangement be stated for the record and that the assent of the defendant, his counsel, and the prosecutor be recorded. If the judge rejects the plea arrangement under G.S. 15A-1023(b), then the rejection of the plea arrangement must also be made part of the record pursuant to G.S. 15A-1023(b). (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1975, 2nd Sess., c. 983, s. 144; 2009-179, s. 2.)

§ 15A-1027. Limitation on collateral attack on conviction.

Noncompliance with the procedures of this Article may not be a basis for review of a conviction after the appeal period for the conviction has expired. (1973, c. 1286, s. 1; 1975, c. 166, s. 21; 1989, c. 290, s. 4.)

§ 15A-1028. Reserved for future codification purposes.

§ 15A-1029. Reserved for future codification purposes.

Article 58A.

Procedures Relating to Felony Guilty Pleas in District Court.

§ 15A-1029.1. Transfer of case from superior court to district court to accept guilty and no contest pleas for certain felony offenses.

(a) With the consent of both the prosecutor and the defendant, the presiding superior court judge may order a transfer of the defendant's case to the district court for the purpose of allowing the defendant to enter a plea of guilty or no contest to a Class H or I felony.

(b) The provisions of Article 58 of this Chapter apply to a case transferred under this section from superior court to district court in the same manner as if the plea were entered in superior court. Appeals that are authorized in these matters are to the appellate division. (1995 (Reg. Sess., 1996), c. 725, s. 6.)

§ 15A-1030. Reserved for future codification purposes.

Article 59.

Maintenance of Order in the Courtroom.

§ 15A-1031. Custody and restraint of defendant and witnesses.

A trial judge may order a defendant or witness subjected to physical restraint in the courtroom when the judge finds the restraint to be reasonably necessary to maintain order, prevent the defendant's escape, or provide for the safety of persons. If the judge orders a defendant or witness restrained, he must:

- (1) Enter in the record out of the presence of the jury and in the presence of the person to be restrained and his counsel, if any, the reasons for his action; and
- (2) Give the restrained person an opportunity to object; and
- (3) Unless the defendant or his attorney objects, instruct the jurors that the restraint is not to be considered in weighing evidence or determining the issue of guilt.

If the restrained person controverts the stated reasons for restraint, the judge must conduct a hearing and make findings of fact. (1977, c. 711, s. 1.)

§ 15A-1032. Removal of disruptive defendant.

(a) A trial judge, after warning a defendant whose conduct is disrupting his trial, may order the defendant removed from the trial if he continues conduct which is so disruptive that the trial cannot proceed in an orderly manner. When practicable, the judge's warning and order for removal must be issued out of the presence of the jury.

(b) If the judge orders a defendant removed from the courtroom, he must:

- (1) Enter in the record the reasons for his action; and
- (2) Instruct the jurors that the removal is not to be considered in weighing evidence or determining the issue of guilt.

A defendant removed from the courtroom must be given the opportunity of learning of the trial proceedings through his counsel at reasonable intervals as directed by the court and must be given opportunity to return to the courtroom during the trial upon assurance of his good behavior. (1977, c. 711, s. 1.)

§ 15A-1033. Removal of disruptive witnesses and spectators.

The judge in his discretion may order any person other than a defendant removed from a courtroom when his conduct disrupts the conduct of the trial. (1977, c. 711, s. 1.)

§ 15A-1034. Controlling access to the courtroom.

(a) The presiding judge may impose reasonable limitations on access to the courtroom when necessary to ensure the orderliness of courtroom proceedings or the safety of persons present.

(b) The judge may order that all persons entering or any person present and choosing to remain in the courtroom be searched for weapons or devices that could be used to disrupt or impede the proceedings and may require that belongings carried by persons entering the courtroom be inspected. An order under this subsection must be entered on the record. (1977, c. 711, s. 1.)

§ 15A-1035. Other powers.

In addition to the use of the powers provided in this Article, a presiding judge may maintain courtroom order through the use of his contempt powers as provided in Chapter 5A, Contempt, and through the use of other inherent powers of the court. (1977, c. 711, s. 1.)

§§ 15A-1036 through 15A-1039. Reserved for future codification purposes.

Article 60.

§§ 15A-1040 through 15A-1050. Reserved for future codification purposes.

Article 61.

Granting of Immunity to Witnesses.

§ 15A-1051. Immunity; general provisions.

(a) A witness who asserts his privilege against self-incrimination in a hearing or proceeding in court or before a grand jury of North Carolina may be ordered to testify or produce other information as provided in this Article. He may not thereafter be excused from testifying or producing other information on the ground that his testimony or other information required of him may tend to incriminate him. Except as provided in G.S. 15A-623(h), no testimony or other information so compelled, or any information directly or indirectly derived from the testimony or other information, may be used against the witness in a criminal case, except a prosecution for perjury or contempt arising from a failure to comply with an order of the court. In the event of a prosecution of the witness he shall be entitled to a record of his testimony.

(b) An order to testify or produce other information authorized by this Article may be issued prior to the witness's assertion of his privilege against self-incrimination, but the order is not effective until the witness asserts his privilege against self-incrimination and the person presiding over the inquiry communicates the order to him.

(c) As used in this Article, "other information" includes any book, paper, document, record, recordation, tangible object, or other material. (1973, c. 1286, s. 1; 1985 (Reg. Sess., 1986), c. 843, s. 4; 1991, c. 636, s. 3.)

§ 15A-1052. Grant of immunity in court proceedings.

(a) When the testimony or other information is to be presented to a court of the trial division of the General Court of Justice, the order to the witness to testify or produce other information must be issued by a superior court judge, upon application of the district attorney:

- (1) Be in writing and filed with the permanent records of the case; or
- (2) If orally made in open court, recorded and transcribed and made a part of the permanent records of the case.

(b) The application may be made whenever, in the judgment of the district attorney, the witness has asserted or is likely to assert his privilege against self-incrimination and his testimony or other information is or will be necessary to the public interest. Before making application to the judge, the district attorney must inform the Attorney General, or a deputy or assistant attorney general designated by him, of the circumstances and his intent to make an application.

(c) In a jury trial the judge must inform the jury of the grant of immunity and the order to testify prior to the testimony of the witness under the grant of immunity. During the charge to the jury, the judge must instruct the jury as in the case of interested witnesses. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-1053. Grant of immunity before grand jury.

(a) When the testimony or other information is to be presented to a grand jury, the order to the witness to testify or produce other information must be issued by the presiding or convening superior court judge, upon application of the district attorney. The order of a superior court judge under this section must be in writing and filed as a part of the permanent records of the court.

(b) The application may be made when the district attorney has been informed by the foreman of the grand jury that the witness has asserted his privilege against self-incrimination and the district attorney determines that the testimony or other information is necessary to the public interest. Before making application to the judge, the district attorney must inform the Attorney General, or a deputy or assistant attorney general designated by him, of the circumstances and his intent to make an application. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-1054. Charge reductions or sentence concessions in consideration of truthful testimony.

(a) Whether or not a grant of immunity is conferred under this Article, a prosecutor, when the interest of justice requires, may exercise his discretion not to try any suspect for offenses believed to have been committed within the prosecutorial district as defined in G.S. 7A-60, to agree to charge reductions, or to agree to recommend sentence concessions, upon the understanding or agreement that the suspect will provide truthful testimony in one or more criminal proceedings.

(b) Recommendations as to sentence concessions must be made to the trial judge by the prosecutor in accordance with the provisions of Article 58 of this Chapter, Procedure[s] Relating to Guilty Pleas in Superior Court.

(c) When a prosecutor enters into any arrangement authorized by this section, written notice fully disclosing the terms of the arrangement must be provided to defense counsel, or to the defendant if not represented by counsel, against whom such testimony is to be offered, a reasonable time prior to any proceeding in which the person with whom the arrangement is made is expected to testify. Upon motion of the defendant or his counsel on grounds of surprise or for other good cause or when the interests of justice require, the court must grant a recess. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1987 (Reg. Sess., 1988), c. 1037, s. 65.)

When a mistrial is ordered, the judge must direct that the case be retained for trial or such other proceedings as may be proper. (1977, c. 711, s. 1.)

§§ 15A-1066 through 15A-1070. Reserved for future codification purposes.

Article 63.

§§ 15A-1071 through 15A-1080. Reserved for future codification purposes.

Article 64.

§§ 15A-1081 through 15A-1100. Reserved for future codification purposes.

SUBCHAPTER XI. TRIAL PROCEDURE IN DISTRICT COURT.

Article 65.

In General.

§ 15A-1101. Applicability of superior court procedure.

Trial procedure in the district court is in accordance with the provisions of Subchapter XII, Trial in Superior Court, except for provisions:

- (1) Relating to jury trial.
- (2) Requiring recordation of proceedings unless they specify their applicability to the district court.
- (3) That specify their applicability to superior court. (1977, c. 711, s. 1.)

§§ 15A-1102 through 15A-1110. Reserved for future codification purposes.

Article 66.

Procedure for Hearing and Disposition of Infractions.

§ 15A-1111. General procedure for disposition of infractions.

The procedure for the disposition of an infraction, as defined in G.S. 14-3.1, is as provided in this Article. If a question of procedure is not governed by this Article, the procedures applicable to the conduct of pretrial and trial proceedings for misdemeanors in district court are applicable unless the procedure is clearly inapplicable to the hearing of an infraction. (1985, c. 764, s. 3.)

§ 15A-1112. Venue.

Venue for the conduct of infraction hearings lies in any county where any act or omission constituting part of the alleged infraction occurred. (1985, c. 764, s. 3.)

§ 15A-1113. Prehearing procedure.

(a) Process. – A law enforcement officer may issue a citation for an infraction in accordance with the provisions of G.S. 15A-302. A judicial official may issue a summons for an infraction in accordance with the provisions of G.S. 15A-303.

(b) Detention of Person Charged. – A law enforcement officer who has probable cause to believe a person has committed an infraction may detain the person for a reasonable period in order to issue and serve him a citation.

- (1) Stipulation, which may be conditioned on each party's consent to the trial judge, signed by both the State and the defendant and served on the counsel for any co-defendants.
- (2) Filing a written notice of intent to waive a jury trial with the court and serving on the State and counsel for any co-defendants within the earliest of (i) 10 working days after arraignment, (ii) 10 working days after service of a calendar setting under G.S. 7A-49.4(b), or (iii) 10 working days after the setting of a definite trial date under G.S. 7A-49.4(c).
- (3) Giving notice of intent to waive a jury trial on the record in open court by the earlier of (i) the time of arraignment or (ii) the calling of the calendar under G.S. 7A-49.4(b) or G.S. 7A-49.4(c).

(d) **Judicial Consent to Jury Waiver.** – Upon notice of waiver by the defense pursuant to subsection (c) of this section, the State shall schedule the matter to be heard in open court to determine whether the judge agrees to hear the case without a jury. The decision to grant or deny the defendant's request for a bench trial shall be made by the judge who will actually preside over the trial. Before consenting to a defendant's waiver of the right to a trial by jury, the trial judge shall do all of the following:

- (1) Address the defendant personally and determine whether the defendant fully understands and appreciates the consequences of the defendant's decision to waive the right to trial by jury.
- (2) Determine whether the State objects to the waiver and, if so, why. Consider the arguments presented by both the State and the defendant regarding the defendant's waiver of a jury trial.

(e) **Revocation of Waiver.** – Once waiver of a jury trial has been made and consented to by the trial judge pursuant to subsection (d) of this section, the defendant may revoke the waiver one time as of right within 10 business days of the defendant's initial notice pursuant to subsection (c) of this section if the defendant does so in open court with the State present or in writing to both the State and the judge. In all other circumstances, the defendant may only revoke the waiver of trial by jury upon the trial judge finding the revocation would not cause unreasonable hardship or delay to the State. Once a revocation has been granted pursuant to this subsection, the decision is final and binding.

(f) **Suppression of Evidence.** – In the event that a defendant who has waived the right to trial by jury pursuant to this section makes a motion to suppress evidence under Article 53 of this Chapter, the court shall make written findings of fact and conclusions of law. (1977, c. 711, s. 1; 2013-300, s. 4; 2015-289, s. 1.)

§§ 15A-1202 through 15A-1210. Reserved for future codification purposes.

Article 72.

Selecting and Impaneling the Jury.

§ 15A-1211. Selection procedure generally; role of judge; challenge to the panel; authority of judge to excuse jurors.

(a) The provisions of Chapter 9 of the General Statutes, Jurors, pertinent to criminal cases apply except when this Chapter specifically provides a different procedure.

(b) The trial judge must decide all challenges to the panel and all questions concerning the competency of jurors.

- (c) The State or the defendant may challenge the jury panel. A challenge to the panel:
- (1) May be made only on the ground that the jurors were not selected or drawn according to law.
 - (2) Must be in writing.
 - (3) Must specify the facts constituting the ground of challenge.
 - (4) Must be made and decided before any juror is examined.

If a challenge to the panel is sustained, the judge must discharge the panel.

(d) The judge may excuse a juror without challenge by any party if he determines that grounds for challenge for cause are present. (1977, c. 711, s. 1.)

§ 15A-1212. Grounds for challenge for cause.

A challenge for cause to an individual juror may be made by any party on the ground that the juror:

- (1) Does not have the qualifications required by G.S. 9-3.
- (2) Is incapable by reason of mental or physical infirmity of rendering jury service.
- (3) Has been or is a party, a witness, a grand juror, a trial juror, or otherwise has participated in civil or criminal proceedings involving a transaction which relates to the charge against the defendant.
- (4) Has been or is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.
- (5) Is related by blood or marriage within the sixth degree to the defendant or the victim of the crime.
- (6) Has formed or expressed an opinion as to the guilt or innocence of the defendant. It is improper for a party to elicit whether the opinion formed is favorable or adverse to the defendant.
- (7) Is presently charged with a felony.
- (8) As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina.
- (9) For any other cause is unable to render a fair and impartial verdict. (1977, c. 711, s. 1.)

§ 15A-1213. Informing prospective jurors of case.

Prior to selection of jurors, the judge must identify the parties and their counsel and briefly inform the prospective jurors, as to each defendant, of the charge, the date of the alleged offense, the name of any victim alleged in the pleading, the defendant's plea to the charge, and any affirmative defense of which the defendant has given pretrial notice as required by Article 52, Motions Practice. The judge may not read the pleadings to the jury. (1977, c. 711, s. 1.)

§ 15A-1214. Selection of jurors; procedure.

(a) The clerk, under the supervision of the presiding judge, must call jurors from the panel by a system of random selection which precludes advance knowledge of the identity of the next juror to be called. When a juror is called and he is assigned to the jury box, he retains the seat assigned until excused.

(b) The judge must inform the prospective jurors of the case in accordance with G.S. 15A-1213. He may briefly question prospective jurors individually or as a group concerning

general fitness and competency to determine whether there is cause why they should not serve as jurors in the case.

(c) The prosecutor and the defense counsel, or the defendant if not represented by counsel, may personally question prospective jurors individually concerning their fitness and competency to serve as jurors in the case to determine whether there is a basis for a challenge for cause or whether to exercise a peremptory challenge. The prosecution or defense is not foreclosed from asking a question merely because the court has previously asked the same or similar question.

(d) The prosecutor must conduct his examination of the first 12 jurors seated and make his challenges for cause and exercise his peremptory challenges. If the judge allows a challenge for cause, or if a peremptory challenge is exercised, the clerk must immediately call a replacement into the box. When the prosecutor is satisfied with the 12 in the box, they must then be tendered to the defendant. Until the prosecutor indicates his satisfaction, he may make a challenge for cause or exercise a peremptory challenge to strike any juror, whether an original or replacement juror.

(e) Each defendant must then conduct his examination of the jurors tendered him, making his challenges for cause and his peremptory challenges. If a juror is excused, no replacement may be called until all defendants have indicated satisfaction with those remaining, at which time the clerk must call replacements for the jurors excused. The judge in his discretion must determine order of examination among multiple defendants.

(f) Upon the calling of replacement jurors, the prosecutor must examine the replacement jurors and indicate satisfaction with a completed panel of 12 before the replacement jurors are tendered to a defendant. Only replacement jurors may be examined and challenged. This procedure is repeated until all parties have accepted 12 jurors.

(g) If at any time after a juror has been accepted by a party, and before the jury is impaneled, it is discovered that the juror has made an incorrect statement during voir dire or that some other good reason exists:

- (1) The judge may examine, or permit counsel to examine, the juror to determine whether there is a basis for challenge for cause.
- (2) If the judge determines there is a basis for challenge for cause, he must excuse the juror or sustain any challenge for cause that has been made.
- (3) If the judge determines there is no basis for challenge for cause, any party who has not exhausted his peremptory challenges may challenge the juror.

Any replacement juror called is subject to examination, challenge for cause, and peremptory challenge as any other unaccepted juror.

(h) In order for a defendant to seek reversal of the case on appeal on the ground that the judge refused to allow a challenge made for cause, he must have:

- (1) Exhausted the peremptory challenges available to him;
- (2) Renewed his challenge as provided in subsection (i) of this section; and
- (3) Had his renewal motion denied as to the juror in question.

(i) A party who has exhausted his peremptory challenges may move orally or in writing to renew a challenge for cause previously denied if the party either:

- (1) Had peremptorily challenged the juror; or
- (2) States in the motion that he would have challenged that juror peremptorily had his challenges not been exhausted.

The judge may reconsider his denial of the challenge for cause, reconsidering facts and arguments previously adduced or taking cognizance of additional facts and arguments presented. If upon

reconsideration the judge determines that the juror should have been excused for cause, he must allow the party an additional peremptory challenge.

(j) In capital cases the trial judge for good cause shown may direct that jurors be selected one at a time, in which case each juror must first be passed by the State. These jurors may be sequestered before and after selection. (1977, c. 711, s. 1.)

§ 15A-1215. Alternate jurors.

(a) The judge may permit the seating of one or more alternate jurors. Alternate jurors must be sworn and seated near the jury with equal opportunity to see and hear the proceedings. They must attend the trial at all times with the jury, and obey all orders and admonitions of the judge. When the jurors are ordered kept together, the alternate jurors must be kept with them. The court should ensure that the alternate jurors do not discuss the case with anyone until that alternate replaces a juror or is discharged. If at any time prior to a verdict being rendered, any juror dies, becomes incapacitated or disqualified, or is discharged for any other reason, an alternate juror becomes a juror, in the order in which selected, and serves in all respects as those selected on the regular trial panel. If an alternate juror replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. In no event shall more than 12 jurors participate in the jury's deliberations. Alternate jurors receive the same compensation as other jurors and, unless they become jurors, must be discharged in the same manner and at the same time as the original jury.

(b) In all criminal actions in which one or more defendants is to be tried for a capital offense, or enter a plea of guilty to a capital offense, the presiding judge shall provide for the selection of at least two alternate jurors, or more as he deems appropriate. The alternate jurors shall be retained during the deliberations of the jury on the issue of guilt or innocence under such restrictions, regulations and instructions as the presiding judge shall direct. In case of sequestration of a jury during deliberations in a capital case, alternates shall be sequestered in the same manner as is the trial jury, but such alternates shall also be sequestered from the trial jury. In no event shall more than 12 jurors participate in the jury's deliberations. (1977, c. 711, s. 1; 1979, c. 711, s. 1; 2021-94, s. 1.)

§ 15A-1216. Impaneling jury.

After all jurors, including alternate jurors, have been selected, the clerk impanels the jury by instructing them as follows: "Members of the jury, you have been sworn and are now impaneled to try the issue in the case of State of North Carolina versus _____. You will sit together, hear the evidence, and render your verdict accordingly." (1977, c. 711, s. 1.)

§ 15A-1217. Number of peremptory challenges.

- (a) Capital cases.
 - (1) Each defendant is allowed 14 challenges.
 - (2) The State is allowed 14 challenges for each defendant.
- (b) Noncapital cases.
 - (1) Each defendant is allowed six challenges.
 - (2) The State is allowed six challenges for each defendant.
- (c) Each party is entitled to one peremptory challenge for each alternate juror in addition to any unused challenges. (1977, c. 711, s. 1.)

§§ 15A-1218 through 15A-1220. Reserved for future codification purposes.

Article 73.

Criminal Jury Trial in Superior Court.

§ 15A-1221. Order of proceedings in jury trial; reading of indictment prohibited.

(a) The order of a jury trial, in general, is as follows:

- (1) Repealed by Session Laws 1995 (Regular Session 1996), c. 725, s. 10.
- (1a) Unless the defendant has filed a written request for an arraignment, the court must enter a not guilty plea on behalf of the defendant in accordance with G.S. 15A-941. If a defendant does file a written request for an arraignment, then the defendant must be arraigned and must have his or her plea recorded out of the presence of the prospective jurors in accordance with G.S. 15A-941.
- (2) The judge must inform the prospective jurors of the case in accordance with G.S. 15A-1213.
- (3) The jury must be sworn, selected and impaneled in accordance with Article 72, Selecting and Impaneling the Jury.
- (4) Each party must be given the opportunity to make a brief opening statement, but the defendant may reserve his opening statement.
- (5) The State must offer evidence.
- (6) The defendant may offer evidence and, if he has reserved his opening statement, may precede his evidence with that statement.
- (7) The State and the defendant may then offer successive rebuttals as provided in G.S. 15A-1226.
- (8) At the conclusion of the evidence, the parties may make arguments to the jury in accordance with the provisions of G.S. 15A-1230.
- (9) The judge must deliver a charge to the jury in accordance with the provisions of G.S. 15A-1231 and 15A-1232.
- (10) The jury must retire to deliberate.

(b) At no time during the selection of the jury or during trial may any person read the indictment to the prospective jurors or to the jury. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, s. 2; 1995 (Reg. Sess., 1996), c. 725, s. 10; 2021-94, s. 2.)

§ 15A-1222. Expression of opinion prohibited.

The judge may not express during any stage of the trial, any opinion in the presence of the jury on any question of fact to be decided by the jury. (1977, c. 711, s. 1.)

§ 15A-1223. Disqualification of judge.

(a) A judge on his own motion may disqualify himself from presiding over a criminal trial or other criminal proceeding.

(b) A judge, on motion of the State or the defendant, must disqualify himself from presiding over a criminal trial or other criminal proceeding if he is:

- (1) Prejudiced against the moving party or in favor of the adverse party; or
- (2) Repealed by Session Laws 1983 (Regular Session 1984), c. 1037, s. 6.
- (3) Closely related to the defendant by blood or marriage; or
- (4) For any other reason unable to perform the duties required of him in an impartial manner.

(c) A motion to disqualify must be in writing and must be accompanied by one or more affidavits setting forth facts relied upon to show the grounds for disqualification.

(d) A motion to disqualify a judge must be filed no less than five days before the time the case is called for trial unless good cause is shown for failure to file within that time. Good cause includes the discovery of facts constituting grounds for disqualification less than five days before the case is called for trial.

(e) A judge must disqualify himself from presiding over a criminal trial or proceeding if he is a witness for or against one of the parties in the case. (1977, c. 711, s. 1; 1983 (Reg. Sess., 1984), c. 1037, s. 6.)

§ 15A-1224. Death or disability of trial judge.

(a) If by reason of sickness or other disability a judge before whom the defendant is being tried is unable to continue presiding over the trial without the necessity of a continuance, he may in his discretion order a mistrial.

(b) If by reason of absence, death, sickness, or other disability, the judge before whom the defendant is being or has been tried is unable to perform the duties required of him before entry of judgment, and has not ordered a mistrial, any other judge assigned to the court may perform those duties, but if the other judge is satisfied that he cannot perform those duties because he did not preside at an earlier stage of the proceedings or for any other reason, he must order a mistrial. (1977, c. 711, s. 1.)

§ 15A-1225. Exclusion of witnesses.

Upon motion of a party the judge may order all or some of the witnesses other than the defendant to remain outside of the courtroom until called to testify, except when a minor child is called as a witness the parent or guardian may be present while the child is testifying even though his parent or guardian is to be called subsequently. (1977, c. 711, s. 1.)

§ 15A-1225.1. Child witnesses; remote testimony.

(a) Definitions:

(1) Child. – For the purposes of this section, a minor who is under the age of 16 years old at the time of the testimony.

(2) Criminal proceeding. – Any hearing or trial in a prosecution of a person charged with violating a criminal law of this State, and any hearing or proceeding conducted under Subchapter II of Chapter 7B of the General Statutes where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult.

(3) Remote testimony. – A method by which a child witness testifies in a criminal proceeding outside of the physical presence of the defendant.

(b) Remote Testimony Authorized. – In a criminal proceeding, a child witness who has been found competent to testify may testify, under oath or affirmation, other than in an open forum when the court determines:

(1) That the child witness would suffer serious emotional distress, not by the open forum in general, but by testifying in the defendant's presence, and

(2) That the child's ability to communicate with the trier of fact would be impaired.

(c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote

testimony. Hearings in the superior court division, and hearings conducted under Subchapter II of Chapter 7B of the General Statutes, shall be recorded. The presence of the child witness is not required at the hearing unless ordered by the presiding judge.

(d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings of fact and conclusions of law that support the court's determination. An order allowing the use of remote testimony shall do the following:

- (1) State the method by which the child is to testify.
- (2) List any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony.
- (3) State any special conditions necessary to facilitate the cross-examination of the child.
- (4) State any condition or limitation upon the participation of individuals in the child's presence during his or her testimony.
- (5) State any other condition necessary for taking or presenting the testimony.

(e) Testimony. – The method used for remote testimony shall allow the judge, jury, and defendant or juvenile respondent to observe the demeanor of the child as the child testifies in a similar manner as if the child were in the open forum. The court shall ensure that the defense counsel, except a pro se defendant, is physically present where the child testifies, has a full and fair opportunity for cross-examination of the child witness, and has the ability to communicate privately with the defendant or juvenile respondent during the remote testimony. Nothing in this section shall be construed to limit the provisions of G.S. 15A-1225.

(f) Nonexclusive Procedure and Standard. – Nothing in this section shall:

- (1) Prohibit the use or application of any other method or procedure authorized or required by statute, common law, or rule for the introduction into evidence of the statements or testimony of a child in a criminal or noncriminal proceeding.
- (2) Be construed to require a court, in noncriminal proceedings, to apply the standard set forth in subsection (b) of this section, or to deviate from a standard or standards authorized by statute, common law, or rule, for allowing the use of remote testimony in noncriminal proceedings.

(g) This section does not apply if the defendant is an attorney pro se, unless the defendant has a court-appointed attorney assisting the defendant in the defense, in which case only the court-appointed attorney shall be permitted in the room with the child during the child's testimony. (2009-356, s. 1.)

§ 15A-1225.2. Witnesses with an intellectual or developmental disability; remote testimony.

(a) Definitions. – The following definitions apply to this section:

- (1) The definitions set out in G.S. 122C-3.
- (2) Remote testimony. – A method by which a witness testifies outside of an open forum and outside of the physical presence of a party or parties.

(b) Remote Testimony Authorized. – An individual with an intellectual or developmental disability who is competent to testify may testify by remote testimony in a prosecution of a person charged with violating a criminal law of this State and in any hearing or proceeding conducted under Subchapter II of Chapter 7B of the General Statutes where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult if the court determines by clear and convincing evidence that the witness would suffer serious emotional

distress from testifying in the presence of the defendant and that the ability of the witness to communicate with the trier of fact would be impaired by testifying in the presence of the defendant.

(c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote testimony. The hearing shall be recorded unless recordation is waived by all parties. The presence of the witness is not required at the hearing unless so ordered by the presiding judge.

(d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings and conclusions of law that support the court's determination. An order allowing the use of remote testimony also shall do all of the following:

- (1) State the method by which the witness is to testify.
- (2) List any individual or category of individuals allowed to be in or required to be excluded from the presence of the witness during testimony.
- (3) State any special conditions necessary to facilitate the cross-examination of the witness.
- (4) State any condition or limitation upon the participation of individuals in the presence of the witness during the testimony.
- (5) State any other conditions necessary for taking or presenting testimony.

(e) Testimony. – The method of remote testimony shall allow the trier of fact and all parties to observe the demeanor of the witness as the witness testifies in a similar manner as if the witness were testifying in the open forum. The court shall ensure that the counsel for all parties, except a pro se defendant, is physically present where the witness testifies and has a full and fair opportunity for examination and cross-examination of the witness. The court shall ensure that the defendant or juvenile respondent has the ability to communicate privately with defense counsel during the remote testimony. A party may waive the right to have counsel physically present where the witness testifies. Nothing in this section limits the provisions of G.S. 15A-1225.

(f) Nonexclusive Procedure and Standard. – Nothing in this section prohibits the use or application of any other method or procedure authorized or required by law for the introduction into evidence of statements or testimony of an individual with an intellectual or developmental disability. (2009-514, s. 2; 2018-47, s. 3(b).)

§ 15A-1225.3. Forensic analyst remote testimony.

(a) Definitions. - The following definitions apply to this section:

- (1) Criminal proceeding. - Any hearing or trial in superior court in a prosecution of a person charged with violating a criminal law of this State and any hearing or proceeding conducted under Subchapter II of Chapter 7B of the General Statutes where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult.
- (1a) District court proceeding. - Any hearing or trial in district court in a prosecution of a person charged with violating a criminal law of this State.
- (2) Remote testimony. - A method by which a forensic analyst testifies from a location other than the location where the hearing or trial is being conducted and outside the physical presence of a party or parties.

(b) Remote Testimony in Real Time Authorized for Criminal Proceeding. - In any criminal proceeding, the testimony of an analyst regarding the results of forensic testing admissible pursuant to G.S. 8-58.20, and reported by that analyst, shall be permitted by remote testimony if all of the following occur:

- (1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by G.S. 8-58.20(d). For purposes of this subdivision, "report" means the full laboratory report package provided to the district attorney.
- (2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the results of forensic testing into evidence using remote testimony.
- (3) The defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the testimony will be presented that the defendant objects to the introduction of the remote testimony.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the analyst shall be allowed to testify by remote testimony.

(b1) Remote Testimony in Real Time Authorized in District Court. - In any district court proceeding, the testimony of an analyst regarding the results of forensic testing admissible pursuant to G.S. 8-58.20, and reported by that analyst, and the testimony of each person in the associated chain of custody admissible pursuant to G.S. 8-58.20(g) shall be permitted by remote testimony if each of the following occurs:

- (1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by G.S. 8-58.20(d) and (g). For purposes of this subdivision, "report" means the full laboratory report package provided to the district attorney.
- (2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the results of forensic testing into evidence using remote testimony in real time.

Nothing in this subsection shall be construed to determine the admissibility of evidence in a criminal proceeding in superior court, including a trial de novo pursuant to G.S. 15A-1431.

(c) Testimony. - The method used for remote testimony authorized by this section shall allow the trier of fact and all parties to observe the demeanor of the remote witness as the witness testifies in a similar manner as if the witness were testifying in the location where the hearing or trial is being conducted. The court shall ensure that the defendant's attorney, or the defendant if that person has no attorney, has a full and fair opportunity for examination and cross-examination of the witness.

(d) Nothing in this section shall preclude the right of any party to call any witness, except an analyst regarding the results of forensic testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in a district court proceeding pursuant to subsection (b1) of this section.

(e) Nothing in this section shall obligate the Administrative Office of the Courts or the State Crime Laboratory to incur expenses related to remote testimony absent an appropriation of funds for that purpose. (2014-119, s. 8(a); 2015-173, s. 2; 2021-180, s. 16.17(c).)

§ 15A-1226. Rebuttal evidence; additional evidence.

(a) Each party has the right to introduce rebuttal evidence concerning matters elicited in the evidence in chief of another party. The judge may permit a party to offer new evidence during rebuttal which could have been offered in the party's case in chief or during a previous rebuttal, but if new evidence is allowed, the other party must be permitted further rebuttal.

(b) The judge in his discretion may permit any party to introduce additional evidence at any time prior to verdict. (1977, c. 711, s. 1.)

§ 15A-1227. Motion for dismissal.

(a) A motion for dismissal for insufficiency of the evidence to sustain a conviction may be made at the following times:

(1) Upon close of the State's evidence.

(2) Upon close of all the evidence.

(3) After return of a verdict of guilty and before entry of judgment.

(4) After discharge of the jury without a verdict and before the end of the session.

(b) Failure to make the motion at the close of the State's evidence or after all the evidence is not a bar to making the motion at a later time as provided in subsection (a).

(c) The judge must rule on a motion to dismiss for insufficiency of the evidence before the trial may proceed.

(d) The sufficiency of all evidence introduced in a criminal case is reviewable on appeal without regard to whether a motion has been made during trial, as provided in G.S. 15A-1446(d)(5). (1977, c. 711, s. 1.)

§ 15A-1228. Notes by the jury.

Except where the judge, on the judge's own motion or the motion of any party, directs otherwise, jurors may make notes and take them into the jury room during their deliberations. (1977, c. 711, s. 1; 1993, c. 498.)

§ 15A-1229. View by jury.

(a) The trial judge in his discretion may permit a jury view. If a view is ordered, the judge must order the jury to be conducted to the place in question in the custody of an officer. The officer must be instructed to permit no person to communicate with the jury on any subject connected with the trial, except as provided in subsection (b), nor to do so himself, and to return the jurors to the courtroom without unnecessary delay or at a specified time. The judge, prosecutor, and counsel for the defendant must be present at the view by the jury. The defendant is entitled to be present at the view by the jury.

(b) A judge in his discretion may permit a witness under oath to testify at the site of the jury view and point out objects and physical characteristics material to his testimony. The testimony must be recorded. (1977, c. 711, s. 1.)

§ 15A-1230. Limitations on argument to the jury.

(a) During a closing argument to the jury an attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record except for matters concerning which the court may take judicial notice. An attorney may, however, on the basis of his analysis of the evidence, argue any position or conclusion with respect to a matter in issue.

(b) Length, number, and order of arguments allotted to the parties are governed by G.S. 7A-97. (1977, c. 711, s. 1; 2010-96, s. 4.)

§ 15A-1231. Jury instructions.

(a) At the close of the evidence or at an earlier time directed by the judge, any party may tender written instructions. A party tendering instructions must furnish copies to the other parties at the time he tenders them to the judge.

(b) Before the arguments to the jury, the judge must hold a recorded conference on instructions out of the presence of the jury. At the conference the judge must inform the parties of the offenses, lesser included offenses, and affirmative defenses on which he will charge the jury and must inform them of what, if any, parts of tendered instructions will be given. A party is also entitled to be informed, upon request, whether the judge intends to include other particular instructions in his charge to the jury. The failure of the judge to comply fully with the provisions of this subsection does not constitute grounds for appeal unless his failure, not corrected prior to the end of the trial, materially prejudiced the case of the defendant.

(c) After the arguments are completed, the judge must instruct the jury in accordance with G.S. 15A-1232.

(d) All instructions given and tendered instructions which have been refused become a part of the record. Failure to object to an erroneous instruction or to the erroneous failure to give an instruction does not constitute a waiver of the right to appeal on that error in accordance with G.S. 15A-1446(d)(13). (1977, c. 711, s. 1; 1983, c. 635.)

§ 15A-1232. Jury instructions; explanation of law; opinion prohibited.

In instructing the jury, the judge shall not express an opinion as to whether or not a fact has been proved and shall not be required to state, summarize or recapitulate the evidence, or to explain the application of the law to the evidence. (1977, c. 711, s. 1; 1985, c. 537, s. 1.)

§ 15A-1233. Review of testimony; use of evidence by the jury.

(a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The judge in his discretion, after notice to the prosecutor and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. In his discretion the judge may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) Upon request by the jury and with consent of all parties, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, he may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, he must, upon request, instruct the jury not to conduct any experiments with the exhibit. (1977, c. 711, s. 1.)

§ 15A-1234. Additional instructions.

(a) After the jury retires for deliberation, the judge may give appropriate additional instructions to:

- (1) Respond to an inquiry of the jury made in open court; or

- (2) Correct or withdraw an erroneous instruction; or
- (3) Clarify an ambiguous instruction; or
- (4) Instruct the jury on a point of law which should have been covered in the original instructions.

(b) At any time the judge gives additional instructions, he may also give or repeat other instructions to avoid giving undue prominence to the additional instructions.

(c) Before the judge gives additional instructions, he must inform the parties generally of the instructions he intends to give and afford them an opportunity to be heard. The parties upon request must be permitted additional argument to the jury if the additional instructions change, by restriction or enlargement, the permissible verdicts of the jury. Otherwise, the allowance of additional argument is within the discretion of the judge.

(d) All additional instructions must be given in open court and must be made a part of the record. (1977, c. 711, s. 1.)

§ 15A-1235. Length of deliberations; deadlocked jury.

(a) Before the jury retires for deliberation, the judge must give an instruction which informs the jury that in order to return a verdict, all 12 jurors must agree to a verdict of guilty or not guilty.

(b) Before the jury retires for deliberation, the judge may give an instruction which informs the jury that:

- (1) Jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment;
- (2) Each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors;
- (3) In the course of deliberations, a juror should not hesitate to reexamine his own views and change his opinion if convinced it is erroneous; and
- (4) No juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

(c) If it appears to the judge that the jury has been unable to agree, the judge may require the jury to continue its deliberations and may give or repeat the instructions provided in subsections (a) and (b). The judge may not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals.

(d) If it appears that there is no reasonable possibility of agreement, the judge may declare a mistrial and discharge the jury. (1977, c. 711, s. 1.)

§ 15A-1236. Admonitions to jurors; regulation and separation of jurors.

(a) The judge at appropriate times must admonish the jurors that it is their duty:

- (1) Not to talk among themselves about the case except in the jury room after their deliberations have begun;
- (2) Not to talk to anyone else, or to allow anyone else to talk with them or in their presence about the case and that they must report to the judge immediately the attempt of anyone to communicate with them about the case;
- (3) Not to form an opinion about the guilt or innocence of the defendant, or express any opinion about the case until they begin their deliberations;

- (4) To avoid reading, watching, or listening to accounts of the trial; and
- (5) Not to talk during trial to parties, witnesses, or counsel.

The judge may also admonish them with respect to other matters which he considers appropriate.

(b) The judge in his discretion may direct that the jurors be sequestered.

(c) If the jurors are committed to the charge of an officer, he must be sworn by the clerk to keep the jurors together and not to permit any person to speak or otherwise communicate with them on any subject connected with the trial nor to do so himself, and to return the jurors to the courtroom as directed by the judge. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, s. 3.)

§ 15A-1237. Verdict.

(a) The verdict must be in writing, signed by the foreman, and made a part of the record of the case.

(b) The verdict must be unanimous, and must be returned by the jury in open court.

(c) If the jurors find the defendant not guilty on the ground that he was insane at the time of the commission of the offense charged, their verdict must so state.

(d) If there are two or more defendants, the jury must return a separate verdict with respect to each defendant. If the jury agrees upon a verdict for one defendant but not another, it must return that verdict upon which it agrees.

(e) If there are two or more offenses for which the jury could return a verdict, it may return a verdict with respect to any offense, including a lesser included offense on which the judge charged, as to which it agrees. (1977, c. 711, s. 1.)

§ 15A-1238. Polling the jury.

Upon the motion of any party made after a verdict has been returned and before the jury has dispersed, the jury must be polled. The judge may also upon his own motion require the polling of the jury. The poll may be conducted by the judge or by the clerk by asking each juror individually whether the verdict announced is his verdict. If upon the poll there is not unanimous concurrence, the jury must be directed to retire for further deliberations. (1977, c. 711, s. 1.)

§ 15A-1239. Judicial comment on verdict.

The trial judge may not comment upon the verdict of a jury in open court in the presence or hearing of any member of the jury panel. If he does so, any defendant whose case is calendared for that session of court is entitled, upon motion, to a continuance of his case to a time when all members of the entire jury panel are no longer serving. (1977, c. 711, s. 1.)

§ 15A-1240. Impeachment of the verdict.

(a) Upon an inquiry into the validity of a verdict, no evidence may be received to show the effect of any statement, conduct, event, or condition upon the mind of a juror or concerning the mental processes by which the verdict was determined.

(b) The limitations in subsection (a) do not bar evidence concerning whether the verdict was reached by lot.

(c) After the jury has dispersed, the testimony of a juror may be received to impeach the verdict of the jury on which he served, subject to the limitations in subsection (a), only when it concerns:

- (1) Matters not in evidence which came to the attention of one or more jurors under circumstances which would violate the defendant's constitutional right to confront the witnesses against him; or
- (2) Bribery, intimidation, or attempted bribery or intimidation of a juror. (1977, c. 711, s. 1.)

§ 15A-1241. Record of proceedings.

(a) The trial judge must require that the reporter make a true, complete, and accurate record of all statements from the bench and all other proceedings except:

- (1) Selection of the jury in noncapital cases;
- (2) Opening statements and final arguments of counsel to the jury; and
- (3) Arguments of counsel on questions of law.

(b) Upon motion of any party or on the judge's own motion, proceedings excepted under subdivisions (1) and (2) of subsection (a) must be recorded. The motion for recordation of jury arguments must be made before the commencement of any argument and if one argument is recorded all must be. Upon suggestion of improper argument, when no recordation has been requested or ordered, the judge in his discretion may require the remainder to be recorded.

(c) When a party makes an objection to unrecorded statements or other conduct in the presence of the jury, upon motion of either party the judge must reconstruct for the record, as accurately as possible, the matter to which objection was made.

(d) The trial judge may review the accuracy of the reporter's record of the proceedings, but may not make substantive changes in the transcript concerning his charge, rulings, and comments without notice to the State, the defense, and the reporter. When any correction of a transcript is ordered made by a judge, each party is entitled to receive, upon request, a copy of the transcript indicating the text as submitted by the reporter and as changed by the judge. Upon motion of any party, the judge must afford the parties a hearing upon any change ordered by the judge. (1977, c. 711, s. 1.)

§ 15A-1242. Defendant's election to represent himself at trial.

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments. (1977, c. 711, s. 1.)

§ 15A-1243. Standby counsel for defendant representing himself.

When a defendant has elected to proceed without the assistance of counsel, the trial judge in his discretion may determine that standby counsel should be appointed to assist the defendant when called upon and to bring to the judge's attention matters favorable to the defendant upon which the judge should rule upon his own motion. Appointment and compensation of standby counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. (1977, c. 711, s. 1; 2000-144, s. 30.)

§§ 15A-1244 through 15A-1250. Reserved for future codification purposes.

Article 74.

§§ 15A-1251 through 15A-1260. Reserved for future codification purposes.

Article 75.

§§ 15A-1261 through 15A-1280. Reserved for future codification purposes.

Article 76.

§§ 15A-1281 through 15A-1290. Reserved for future codification purposes.

Article 77.

§§ 15A-1291 through 15A-1300. Reserved for future codification purposes.

SUBCHAPTER XIII. DISPOSITION OF DEFENDANTS.

Article 78.

Order of Commitment to Imprisonment.

§ 15A-1301. Order of commitment to imprisonment when not otherwise specified.

When a judicial official orders that a defendant be imprisoned he must issue an appropriate written commitment order. When the commitment is to a sentence of imprisonment, the commitment must include the identification and class of the offense or offenses for which the defendant was convicted and, if the sentences are consecutive, the maximum sentence allowed by law upon conviction of each offense for the punishment range used to impose the sentence for the class of offense and prior record or conviction level, and, if the sentences are concurrent or consolidated, the longest of the maximum sentences allowed by law for the classes of offense and prior record or conviction levels upon conviction of any of the offenses. If the person sentenced to imprisonment is under the age of 18, the person must be committed to a detention facility approved by the Division of Juvenile Justice to provide secure confinement and care for juveniles. If the person is under the age of 18, the person may be temporarily confined in a holdover facility as defined in G.S. 7B-1501(11) until the person can be transferred to a juvenile detention facility. Personnel of the Juvenile Justice Division or personnel approved by the Juvenile Justice Division shall transport the person to the juvenile detention facility or the holdover facility. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, s. 4; 1993, c. 538, s. 11; 1994, Ex. Sess., c. 24, s. 14(b); 2020-83, s. 8(d); 2021-180, ss. 19C.9(z), 19C.9(aa).)

§§ 15A-1302 through 15A-1310. Reserved for future codification purposes.

Article 79.

§§ 15A-1311 through 15A-1320: Reserved for future codification purposes.

Article 80.

Defendants Found Not Guilty by Reason of Insanity.

§ 15A-1321. Automatic civil commitment of defendants found not guilty by reason of insanity.

(a) When a defendant charged with a crime, wherein it is not alleged that the defendant inflicted or attempted to inflict serious physical injury or death, is found not guilty by reason of insanity by verdict or upon motion pursuant to G.S. 15A-959(c), the presiding judge shall enter an order finding that the defendant has been found not guilty by reason of insanity of a crime and committing the defendant to a State 24-hour facility designated pursuant to G.S. 122C-252. The court order shall also grant custody of the defendant to a law enforcement officer who shall take the defendant directly to that facility. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes.

(b) When a defendant charged with a crime, wherein it is alleged that the defendant inflicted or attempted to inflict serious physical injury or death, is found not guilty by reason of insanity, by verdict, or upon motion pursuant to G.S. 15A-959(c), notwithstanding any other provision of law, the presiding judge shall enter an order finding that the defendant has been found not guilty by reason of insanity of a crime and committing the defendant to a Forensic Unit operated by the Department of Health and Human Services, where the defendant shall reside until the defendant's release in accordance with Chapter 122C of the General Statutes. The court order shall also grant custody of the defendant to a law enforcement officer who shall take the defendant directly to the facility. Proceedings not inconsistent with this section shall thereafter be in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. (1977, c. 711, s. 1; 1983, c. 380, s. 3; 1985, c. 589, s. 10; 1987, c. 596, s. 6; 1991, c. 37, s. 1; 1998-212, s. 12.35B(a).)

§ 15A-1322. Temporary restraint.

If the judge finds that there are reasonable grounds to believe that the defendant-respondent is mentally ill, as defined in G.S. 122C-3, and is dangerous to himself or others, and the judge determines upon appropriate findings of fact that it is appropriate to proceed under the provisions of this Article, he may order that the respondent be held under appropriate restraint pending proceedings under G.S. 15A-1321. (1977, c. 711, s. 1; 1985, c. 589, s. 12.)

§§ 15A-1323 through 15A-1330. Reserved for future codification purposes.

Article 81.

General Sentencing Provisions.

§ 15A-1331. Authorized sentences; conviction.

(a) The criminal judgment entered against a person in either district or superior court shall be consistent with the provisions of Article 81B of this Chapter and contain a sentence disposition consistent with that Article, unless the offense for which his guilt has been established is not covered by that Article.

(b) For the purpose of imposing sentence, a person has been convicted when he has been adjudged guilty or has entered a plea of guilty or no contest. (1977, c. 711, s. 1; 1993, c. 538, s. 12; 1994, Ex. Sess., c. 24, s. 14(b).)

§ 15A-1331A. Recodified as G.S. 15A-1331.1 by Session Laws 2012-194, s. 45(a), effective July 17, 2012.

§ 15A-1331.1. Forfeiture of licensing privileges after conviction of a felony.

- (a) The following definitions apply in this section:
- (1) Licensing agency. – Any department, division, agency, officer, board, or other unit of State or local government that issues licenses for licensing privileges.
 - (2) Licensing privilege. – The privilege of an individual to be authorized to engage in an activity as evidenced by the following licenses: regular and commercial drivers licenses, occupational licenses, hunting licenses and permits, and fishing licenses and permits.
 - (3) Occupational license. – A licensure, permission, certification, or similar authorization required by statute or rule to practice an occupation or business. The term does not include a tax license issued under Chapter 105 of the General Statutes, Article 7 of Chapter 153A of the General Statutes, or Article 9 of Chapter 160A of the General Statutes.

(b) Upon conviction of a felony, an individual automatically forfeits the individual's licensing privileges for the full term of the period the individual is placed on probation by the sentencing court at the time of conviction for the offense, if:

- (1) The individual is offered a suspended sentence on condition the individual accepts probation and the individual refuses probation, or
- (2) The individual's probation is revoked or suspended, and the judge makes findings in the judgment that the individual failed to make reasonable efforts to comply with the conditions of probation.

(c) Whenever an individual's licensing privileges are forfeited under this section, the judge shall make findings in the judgment of the licensing privileges held by the individual known to the court at that time, the drivers license number and social security number of the individual, and the beginning and ending date of the period of time of the forfeiture. The terms and conditions of the forfeiture shall be transmitted by the clerk of court to the Division of Motor Vehicles, in accordance with G.S. 20-24 and to the licensing agencies specified by the judge in the judgment. A licensing agency, upon receiving notice from the clerk of court, shall require the individual whose licensing privileges were forfeited to surrender the forfeited license issued by the agency and shall not reissue a license to that individual during the period of forfeiture as stated in the notice. Licensing agencies are authorized to establish procedures to implement this section.

(d) Notwithstanding any other provision of this section, the court may order that an individual whose licensing privileges are forfeited under this section be granted a limited driving privilege in accordance with the provisions of G.S. 20-179.3. (1994, Ex. Sess., c. 20, ss. 1, 5; 2012-194, s. 45(a).)

§ 15A-1331.2. Prayer for judgment continued for a period of time that exceeds 12 months is an improper disposition of a Class B1, B2, C, D, or E felony.

The court shall not dispose of any criminal action that is a Class B1, B2, C, D, or E felony by ordering a prayer for judgment continued that exceeds 12 months. If the court orders a prayer for judgment continued in any criminal action that is a Class B1, B2, C, D, or E felony, the court shall include as a condition that the State shall pray judgment within a specific period of time not to exceed 12 months. At the time the State prays judgment, or 12 months from the date of the prayer for judgment continued order, whichever is earlier, the court shall enter a final judgment unless the court finds that it is in the interest of justice to continue the order for prayer for judgment continued. If the court continues the order for prayer for judgment continued, the order shall be continued for a specific period of time not to exceed 12 months. The court shall not continue a

prayer for judgment continued order for more than one additional 12-month period. (2012-149, s. 11; 2012-194, s. 45(e).)

§ 15A-1332. Presentence reports.

(a) Presentence Reports Generally. – To obtain a presentence report, the court may order either a presentence investigation as provided in subsection (b) or a presentence commitment for study as provided in subsection (c).

(b) Presentence Investigation. – The court may order a probation officer to make a presentence investigation of any defendant. The court may order the investigation only after conviction unless the defendant moves for an earlier presentence investigation. A motion for an earlier presentence investigation may be addressed only to the judge of the session of court for which the defendant's case is calendared or, if the case has not been calendared, to a resident superior court judge if the case is in the jurisdiction of the superior court or to the chief district court judge if the case is in the jurisdiction of the district court. When the court orders a presentence investigation, the probation officer must promptly investigate all circumstances relevant to sentencing and submit either a written report or an oral report either on the record or with defense counsel and the prosecutor present. The report may include sentence recommendations only if such recommendations are requested by the court.

(c) Presentence Commitment for Study. – When the court desires more detailed information as a basis for determining the sentence to be imposed than can be provided by a presentence investigation, the court may commit a defendant to the Department of Adult Correction for study for the shortest period necessary to complete the study, not to exceed 90 days, if that defendant has been charged with or convicted of any felony or a Class A1 or Class 1 misdemeanor crime or crimes for which he may be imprisoned for more than six months and if he consents. The period of commitment must end when the study is completed, and may not exceed 90 days. The Department must conduct a complete study of a defendant committed to it under this subsection, inquiring into such matters as the defendant's previous delinquency or criminal experience, his social background, his capabilities, his mental, emotional and physical health, and the availability of resources or programs appropriate to the defendant. Upon completion of the study or the end of the 90-day period, whichever occurs first, the Department of Adult Correction must release the defendant to the sheriff of the county in which his case is docketed. The Department must forward the study to the clerk in that county, including whatever recommendations the Department believes will be helpful to a proper resolution of the case. When a defendant is returned from a presentence commitment for study, the conditions of pretrial release which obtained for the defendant before the commitment continue until judgment is entered, unless the conditions are modified under the provisions of G.S. 15A-534(e). (1977, c. 711, s. 1; 1981, c. 377, s. 1; 1993, c. 538, s. 13; 1994, Ex. Sess., c. 24, s. 14(b); 1995, c. 507, s. 19.5(e); 2011-145, s. 19.1(h); 2017-186, s. 2(fff); 2021-180, s. 19C.9(t); 2023-121, s. 16(e).)

§ 15A-1333. Availability of presentence report.

(a) Presentence Reports and Sentencing Services Information Not Public Records. – A written presentence report, the record of an oral presentence report, and information obtained in the preparation of a sentencing plan by a sentencing services program under Article 61 of Chapter 7A are not public records and may not be made available to any person except as provided in this section.

(b) Access to Reports. – The defendant, his counsel, the prosecutor, or the court may have access at any reasonable time to a written presentence report or to any record of an oral presentence report. Access to a sentencing plan and information obtained in the preparation of a sentencing plan shall be in accordance with the comprehensive sentencing services program plan developed pursuant to G.S. 7A-774.

(c) Expunging Reports. – On motion of the defendant, the court in its discretion may order a written presentence report, the record of an oral presentence report, or a sentencing plan expunged from the court record. (1977, c. 711, s. 1; 2000-67, s. 15.9(c).)

§ 15A-1334. The sentencing hearing.

(a) Time of Hearing. – Unless the defendant waives the hearing, the court must hold a hearing on the sentence. Either the defendant or the State may, upon a showing which the judge determines to be good cause, obtain a continuance of the sentencing hearing.

(b) Proceeding at Hearing. – The defendant at the hearing may make a statement in his own behalf. The defendant and prosecutor may present witnesses and arguments on facts relevant to the sentencing decision and may cross-examine the other party's witnesses. No person other than the defendant, his counsel, the prosecutor, and one making a presentence report may comment to the court on sentencing unless called as a witness by the defendant, the prosecutor, or the court. Formal rules of evidence do not apply at the hearing.

(c) Sentence Hearing in Other District. – The judge who orders a presentence report may, in his discretion, direct that the sentencing hearing be held before him in another county or another district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, during or after the session in which the defendant was convicted. If sentence is imposed in a county other than the one where the defendant was convicted, the clerk of the county where sentence is imposed must forward the records of the sentencing proceeding to the clerk of the county of conviction.

(d) Sentencing in Capital Cases. – Sentencing in capital cases is governed by Article 100 of this Chapter.

(e) Procedure Applicable when Certain Prior Convictions May Be Used. – The procedure in G.S. 15A-980 governs if the State seeks to use a prior conviction in a sentencing hearing. (1977, c. 711, s. 1; 1983, c. 513, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 66.)

§ 15A-1335. Resentencing after appellate review.

When a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served. This section shall not apply when a defendant, on direct review or collateral attack, succeeds in having a plea of guilty vacated. (1977, c. 711, s. 1; 2013-385, s. 3.)

§ 15A-1336. Compliance with criminal case firearm notification requirements of the federal Violence Against Women Act.

The Administrative Office of the Courts, in cooperation with the North Carolina Coalition Against Domestic Violence and the North Carolina Governor's Crime Commission, shall develop a form to comply with the criminal case firearm notification requirements of the Violence Against Women Act of 2005. (2007-294, s.2)

§ 15A-1337. Reserved for future codification purposes.

§ 15A-1338. Reserved for future codification purposes.

§ 15A-1339. Reserved for future codification purposes.

§ 15A-1340. Reserved for future codification purposes.

Article 81A.

Sentencing Persons Convicted of Felonies.

§§ 15A-1340.1 through 15A-1340.7: Repealed by Session Laws 1993, c. 538, s. 14.

§ 15A-1340.8. Reserved for future codification purposes.

§ 15A-1340.9. Reserved for future codification purposes.

Article 81B.

Structured Sentencing of Persons Convicted of Crimes.

Part 1. General Provisions.

§ 15A-1340.10. Applicability of structured sentencing.

This Article applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1 and failure to comply with control measures under G.S. 130A-25, that occur on or after October 1, 1994. This Article does not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 22, s. 35; c. 24, s. 14(a), (b); 1993 (Reg. Sess., 1994), c. 767, s. 17.)

§ 15A-1340.11. Definitions.

The following definitions apply in this Article:

- (1) Active punishment. – A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.
- (2) Community punishment. – A sentence in a criminal case that does not include an active punishment, assignment to a local judicially managed accountability and recovery court, or special probation as defined in G.S. 15A-1351(a). It may include any one or more of the conditions set forth in G.S. 15A-1343(a1).
- (3) Repealed by Session Laws 2011-192, s. 1(h), effective December 1, 2011.
- (3a) Repealed by Session Laws 2022-6, s. 8.2(e), effective March 17, 2022, and applicable to probation imposed on or after that date.
- (4) Repealed by Session Laws 1997-57, s. 2.
- (4a) House arrest with electronic monitoring. – Probation in which the offender is required to remain at his or her residence. The court, in the sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training, or other specific purposes and may modify that authorization. The probation officer may authorize the

offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition.

- (5) Repealed by Session Laws 2011-192, s. 1(i), effective December 1, 2011.
- (6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation. It may include local judicially managed accountability and recovery court, special probation as defined in G.S. 15A-1351(a), and one or more of the conditions set forth in G.S. 15A-1343(a1).
- (6c) Local judicially managed accountability and recovery court program. – Local program in which offenders are required, as a condition of probation, to comply with the rules adopted for the program as provided for in Article 62 of Chapter 7A of the General Statutes and to report on a regular basis for a specified time to participate in any of the following:
 - a. Court supervision.
 - b. Drug screening or testing.
 - c. Drug or alcohol treatment programs.
 - d. Mental, behavioral, or medical health-related treatment programs.
- (7) Prior conviction. – A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime in either:
 - a. The district court, and the person has not given notice of appeal and the time for appeal has expired.
 - b. The superior court, regardless of whether the conviction is on appeal to the appellate division.
 - c. The courts of the United States, another state, the Armed Forces of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina, regardless of whether the crime was committed before or after the effective date of this Article.
- (8) Repealed by Session Laws 2011-192, s. 1(j), effective December 1, 2011. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, s. 17; c. 24, s. 14(b); 1997-57, s. 2; 1997-80, s. 6; 1999-306, s. 2; 2004-128, s. 3; 2009-372, s. 5; 2009-547, s. 6; 2011-183, s. 17; 2011-192, s. 1(a), (b), (h)-(j); 2022-6, s. 8.2(e).)

§ 15A-1340.12. Purposes of sentencing.

The primary purposes of sentencing a person convicted of a crime are to impose a punishment commensurate with the injury the offense has caused, taking into account factors that may diminish or increase the offender's culpability; to protect the public by restraining offenders; to assist the offender toward rehabilitation and restoration to the community as a lawful citizen; and to provide a general deterrent to criminal behavior. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b).)

Part 2. Felony Sentencing.

§ 15A-1340.13. Procedure and incidents of sentence of imprisonment for felonies.

(a) Application to Felonies Only. – This Part applies to sentences imposed for felony convictions.

(b) Procedure Generally; Requirements of Judgment; Kinds of Sentences. – Before imposing a sentence, the court shall determine the prior record level for the offender pursuant to G.S. 15A-1340.14. The sentence shall contain a sentence disposition specified for the class of offense and prior record level, and its minimum term of imprisonment shall be within the range specified for the class of offense and prior record level, unless applicable statutes require or authorize another minimum sentence of imprisonment. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment.

(c) Minimum and Maximum Term. – The judgment of the court shall contain a minimum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender. The maximum term of imprisonment applicable to each minimum term of imprisonment is, unless otherwise provided, as specified in G.S. 15A-1340.17. The maximum term shall be specified in the judgment of the court.

(d) Service of Minimum Required; Earned Time Authorization. – An offender sentenced to an active punishment shall serve the minimum term imposed, except as provided in G.S. 15A-1340.18. The maximum term may be reduced to, but not below, the minimum term by earned time credits awarded to an offender by the Division of Prisons of the Department of Adult Correction or the custodian of the local confinement facility, pursuant to rules adopted in accordance with law.

(e) Deviation from Sentence Ranges for Aggravation and Mitigation; No Sentence Dispositional Deviation Allowed. – The court may deviate from the presumptive range of minimum sentences of imprisonment specified for a class of offense and prior record level if it finds, pursuant to G.S. 15A-1340.16, that aggravating or mitigating circumstances support such a deviation. The amount of the deviation is in the court's discretion, subject to the limits specified in the class of offense and prior record level for mitigated and aggravated punishment. Deviations for aggravated or mitigated punishment are allowed only in the ranges of minimum and maximum sentences of imprisonment, and not in the sentence dispositions specified for the class of offense and prior record level, unless a statute specifically authorizes a sentence dispositional deviation.

(f) Suspension of Sentence. – Unless otherwise provided, the court shall not suspend the sentence of imprisonment if the class of offense and prior record level do not permit community or intermediate punishment as a sentence disposition. The court shall suspend the sentence of imprisonment if the class of offense and prior record level require community or intermediate punishment as a sentence disposition. The court may suspend the sentence of imprisonment if the class of offense and prior record level authorize, but do not require, active punishment as a sentence disposition.

(g) Dispositional Deviation for Extraordinary Mitigation. – Except as provided in subsection (h) of this section, the court may impose an intermediate punishment for a class of offense and prior record level that requires the imposition of an active punishment if it finds in writing all of the following:

- (1) That extraordinary mitigating factors of a kind significantly greater than in the normal case are present.
- (2) Those factors substantially outweigh any factors in aggravation.
- (3) It would be a manifest injustice to impose an active punishment in the case.

The court shall consider evidence of extraordinary mitigating factors, but the decision to find any such factors, or to impose an intermediate punishment is in the discretion of the court. The extraordinary mitigating factors which the court finds shall be specified in its judgment.

(h) Exceptions When Extraordinary Mitigation Shall Not Be Used. – The court shall not impose an intermediate sanction pursuant to subsection (g) of this section if:

- (1) The offense is a Class A or Class B1 felony;
- (2) The offense is a drug trafficking offense under G.S. 90-95(h) or a drug trafficking conspiracy offense under G.S. 90-95(i); or
- (3) The defendant has five or more points as determined by G.S. 15A-1340.14. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, ss. 18, 18.1, 19; c. 22, s. 9; c. 24, s. 14(b); 1995, c. 375, s. 1; 2011-145, s. 19.1(h); 2011-192, s. 5(d); 2017-186, s. 2(ggg); 2021-180, s. 19C.9(p).)

§ 15A-1340.14. Prior record level for felony sentencing.

(a) Generally. – The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court, or with respect to subdivision (b)(7) of this section, the jury, finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

- (1) For each prior felony Class A conviction, 10 points.
- (1a) For each prior felony Class B1 conviction, 9 points.
- (2) For each prior felony Class B2, C, or D conviction, 6 points.
- (3) For each prior felony Class E, F, or G conviction, 4 points.
- (4) For each prior felony Class H or I conviction, 2 points.
- (5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.
- (6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.
- (7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction. G.S. 15A-1340.16(a5) specifies the procedure to be used to determine if a point exists under subdivision (7) of this subsection. The State must provide a defendant with written notice of its intent to prove the existence of the prior record point under subdivision (7) of this subsection as required by G.S. 15A-1340.16(a6).

(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

- (1) Level I – Not more than 1 point.
- (2) Level II – At least 2, but not more than 5 points.
- (3) Level III – At least 6, but not more than 9 points.
- (4) Level IV – At least 10, but not more than 13 points.
- (5) Level V – At least 14, but not more than 17 points.
- (6) Level VI – At least 18 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior conviction.
- (3) A copy of records maintained by the Department of Public Safety, the Department of Adult Correction, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
- (4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Department of Public Safety, the Department of Adult Correction, the Division of Motor Vehicle, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this

subsection, "copy" includes, in addition to copy as defined in G.S. 15A-101.1, a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 22, s. 10; c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, ss. 11-13; 1995, c. 507, s. 19.5(f); 1995 (Reg. Sess., 1996), c. 742, s. 15; 1997-80, s. 7; 1997-486, s. 1; 1999-306, s. 3; 1999-408, s. 3; 2005-145, s. 2; 2009-555, s. 1; 2014-100, s. 17.1(q); 2021-180, s. 19C.9(ss); 2022-47, s. 16(o).)

§ 15A-1340.15. Multiple convictions.

(a) Consecutive Sentences. – This Article does not prohibit the imposition of consecutive sentences. Unless otherwise specified by the court, all sentences of imprisonment run concurrently with any other sentences of imprisonment.

(b) Consolidation of Sentences. – If an offender is convicted of more than one offense at the same time, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. The judgment shall contain a sentence disposition specified for the class of offense and prior record level of the most serious offense, and its minimum sentence of imprisonment shall be within the ranges specified for that class of offense and prior record level, unless applicable statutes require or authorize another minimum sentence of imprisonment. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b).)

§ 15A-1340.16. Aggravated and mitigated sentences.

(a) Generally, Burden of Proof. – The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this subsection. Admissions of the existence of an aggravating factor must be consistent with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury may determine if an aggravating factor is present in an offense. The jury impaneled for the trial of the felony may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall

be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If at any time prior to rendering a decision to the court regarding whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If an alternate juror replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. In no event shall more than 12 jurors participate in the jury's deliberations. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue. A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Procedure if Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying felony, a jury shall be impaneled to dispose of the felony charge. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the felony trial.

(a3) Procedure if Defendant Pleads Guilty to the Felony Only. – If the defendant pleads guilty to the felony, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(a4) Pleading of Aggravating Factors. – Aggravating factors set forth in subsection (d) of this section need not be included in an indictment or other charging instrument. Any aggravating factor alleged under subdivision (d)(20) of this section shall be included in an indictment or other charging instrument, as specified in G.S. 15A-924.

(a5) Procedure to Determine Prior Record Level Points Not Involving Prior Convictions. – If the State seeks to establish the existence of a prior record level point under G.S. 15A-1340.14(b)(7), the jury shall determine whether the point should be assessed using the procedures specified in subsections (a1) through (a3) of this section. The State need not allege in an indictment or other pleading that it intends to establish the point.

(a6) Notice of Intent to Use Aggravating Factors or Prior Record Level Points. – The State must provide a defendant with written notice of its intent to prove the existence of one or more aggravating factors under subsection (d) of this section or a prior record level point under G.S. 15A-1340.14(b)(7) at least 30 days before trial or the entry of a guilty or no contest plea. A defendant may waive the right to receive such notice. The notice shall list all the aggravating factors the State seeks to establish.

(a7) Procedure When Jury Trial Waived. – If a defendant waives the right to a jury trial under G.S. 15A-1201, the trial judge shall make all findings that are conferred upon the jury under the provisions of this section.

(b) When Aggravated or Mitigated Sentence Allowed. – If the jury, or with respect to an aggravating factor under G.S. 15A-1340.16(d)(12a) or (18a), the court, finds that aggravating factors exist or the court finds that mitigating factors exist, the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

(c) Written Findings; When Required. – The court shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it departs from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.

(d) Aggravating Factors. – The following are aggravating factors:

- (1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- (2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- (2a) The offense was committed for the benefit of, or at the direction of, any criminal gang as defined by G.S. 14-50.16A(1), with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- (3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- (4) The defendant was hired or paid to commit the offense.
- (5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- (6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Public Safety or the Department of Adult Correction, jailer, fireman, emergency medical technician, ambulance attendant, social worker, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- (6a) The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency animal, an assistance animal, or a search and rescue animal as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties.
- (7) The offense was especially heinous, atrocious, or cruel.
- (8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- (9) The defendant held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment.
- (9a) The defendant is a firefighter or rescue squad worker, and the offense is directly related to service as a firefighter or rescue squad worker.
- (10) The defendant was armed with or used a deadly weapon at the time of the crime.
- (10a) The defendant committed the offense on the property of a hospital as defined in G.S. 131E-76.

- (10b) The defendant committed the offense on the property of a medical practice which is defined as a professional corporation organized under or subject to Chapter 55B of the General Statutes and registered with the North Carolina Medical Board.
- (11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
- (12) The defendant committed the offense while on pretrial release on another charge.
- (12a) The defendant has, during the 10-year period prior to the commission of the offense for which the defendant is being sentenced, been found by a court of this State to be in willful violation of the conditions of probation imposed pursuant to a suspended sentence or been found by the Post-Release Supervision and Parole Commission to be in willful violation of a condition of parole or post-release supervision imposed pursuant to release from incarceration.
- (13) The defendant involved a person under the age of 16 in the commission of the crime.
- (13a) The defendant committed an offense and knew or reasonably should have known that a person under the age of 18 who was not involved in the commission of the offense was in a position to see or hear the offense.
- (14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- (15) The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.
- (16) The offense involved the sale or delivery of a controlled substance to a minor.
- (16a) The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.
- (16b) The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings.
- (17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- (18) The defendant does not support the defendant's family.
- (18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
- (19) The serious injury inflicted upon the victim is permanent and debilitating.
- (19a) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and involved multiple victims.
- (19b) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude), and the victim suffered serious injury as a result of the offense.
- (20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in

aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

Notwithstanding the provisions of subsection (a1) of this section, the determination that an aggravating factor under G.S. 15A-1340.16(d)(18a) is present in a case shall be made by the court, and not by the jury. That determination shall be made in the sentencing hearing.

(e) Mitigating Factors. – The following are mitigating factors:

- (1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- (2) The defendant was a passive participant or played a minor role in the commission of the offense.
- (3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- (4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
- (5) The defendant has made substantial or full restitution to the victim.
- (6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
- (7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
- (8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
- (9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
- (10) The defendant reasonably believed that the defendant's conduct was legal.
- (11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- (12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- (13) The defendant is a minor and has reliable supervision available.
- (14) The defendant has been honorably discharged from the Armed Forces of the United States.
- (15) The defendant has accepted responsibility for the defendant's criminal conduct.
- (16) The defendant has entered and is currently involved in or has successfully completed either (i) a drug treatment program, (ii) an alcohol treatment program, or (iii) a mental, behavioral, or medical health-related treatment program, subsequent to arrest and prior to trial.
- (17) The defendant supports the defendant's family.
- (18) The defendant has a support system in the community.
- (19) The defendant has a positive employment history or is gainfully employed.

(20) The defendant has a good treatment prognosis, and a workable treatment plan is available.

(21) Any other mitigating factor reasonably related to the purposes of sentences.

(f) Notice to State Treasurer of Finding. – If the court determines that an aggravating factor under subdivision (9) of subsection (d) of this section has been proven, the court shall notify the State Treasurer of the fact of the conviction as well as the finding of the aggravating factor. The indictment charging the defendant with the underlying offense must include notice that the State seeks to prove the defendant acted in accordance with subdivision (9) of subsection (d) of this section and that the State will seek to prove that as an aggravating factor. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 7, s. 6; c. 22, s. 22; c. 24, s. 14(b); 1995, c. 509, s. 13; 1997-443, ss. 19.25(w), 19.25(ee); 2003-378, s. 6; 2004-178, s. 2; 2004-186, s. 8.1; 2005-101, s. 1; 2005-145, s. 1; 2005-434, s. 4; 2007-80, s. 2; 2008-129, ss. 1, 2; 2009-460, s. 2; 2011-145, s. 19.1(h); 2011-183, s. 18; 2012-193, s. 9, 10; 2013-284, s. 2(b); 2013-368, s. 14; 2015-62, s. 4(a); 2015-264, s. 6; 2015-289, s. 3; 2017-186, s. 2(hhh); 2017-194, s. 17; 2021-94, s. 3; 2021-180, s. 19C.9(tt); 2022-6, s. 8.2(f); 2022-47, s. 17(a); 2022-58, s. 18(a); 2022-74, s. 19A.1(d); 2023-129, s. 8.3(a).)

§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of the felony.

(a), (b) Repealed by Session Laws 2003-378, s. 2, effective August 1, 2003.

(c) If a person is convicted of a felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and (ii) the person actually possessed the firearm or deadly weapon about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased as follows:

(1) If the felony is a Class A, B1, B2, C, D, or E felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 72 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 72 months, as specified in G.S. 15A-1340.17(e) and (e1).

(2) If the felony is a Class F or G felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 36 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 36 months, as specified in G.S. 15A-1340.17(d).

(3) If the felony is a Class H or I felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 12 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 12 months, as specified in G.S. 15A-1340.17(d).

(d) An indictment or information for the felony shall allege in that indictment or information the facts set out in subsection (c) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the defendant actually possessed the firearm or deadly weapon about the defendant's person. One pleading is sufficient for all felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (c) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (c) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (c) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm or deadly weapon is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment. (1994, Ex. Sess., c. 22, s. 20; 2003-378, s. 2; 2008-214, s. 5; 2013-369, s. 5.)

§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 felony if the victim was 13 years of age or younger and there are no mitigating factors.

(a) If a person is convicted of a Class B1 felony and it is found as provided in this section that: (i) the person committed the felony against a victim who was 13 years of age or younger at the time of the offense and (ii) the person has one or more prior convictions of a Class B1 felony, then the person shall be sentenced to life imprisonment without parole.

(b), (c) Repealed by Session Laws 2003-378, s. 3, effective August 1, 2003.

(d) An indictment or information for the Class B1 felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony against a victim who was 13 years of age or younger at the time of the felony and that the defendant had one or more prior convictions of a Class B1 felony. One pleading is sufficient for all Class B1 felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. The issues shall be presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (a) of this section does not apply if there are mitigating factors present under G.S. 15A-1340.16(e). (1998-212, s. 17.16(a); 2003-378, s. 3.)

§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant was wearing or had in his or her immediate possession a bullet-proof vest during the commission of the felony.

(a) If a person is convicted of a felony and it is found as provided in this section that the person wore or had in his or her immediate possession a bullet-proof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

(b) Repealed by Session Laws 2003-378, s. 4, effective August 1, 2003.

(b1) This section does not apply to law enforcement officers, unless the State proves beyond a reasonable doubt, pursuant to subsection (d) of this section, both of the following:

(1) That the law enforcement officer was not performing or attempting to perform a law enforcement function.

(2) That the law enforcement officer knowingly wore or had in his or her immediate possession a bulletproof vest at the time of the commission of the felony for the purpose of aiding the law enforcement officer in the commission of the felony.

(c) An indictment or information for the felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony while wearing or having in the defendant's immediate possession a bulletproof vest. One pleading is sufficient for all felonies that are tried at a single trial.

(d) The State shall prove the issue set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(e) Subsection (a) of this section does not apply if the evidence that the person wore or had in the person's immediate possession a bulletproof vest is needed to prove an element of the felony. (1999-263, s. 1; 2003-378, s. 4.)

§ 15A-1340.16D. Manufacturing methamphetamine; enhanced sentence.

(a) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter suffered serious injury while discharging or attempting to discharge his or her official duties and that the injury was directly caused by one of the hazards associated with the manufacture of methamphetamine, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(a1) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that:

- (1) A minor under 18 years of age resided on the property used for the manufacture of methamphetamine, or was present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).
- (2) A disabled or elder adult resided on the property used for the manufacture of methamphetamine, or was present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).
- (3) A minor and a disabled or elder adult resided on the property, or were present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced

for that felony increased by 48 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 48 months, as specified in G.S. 15A-1340.17(e) and (e1).

(a2) For the purposes of this section, the terms "disabled adult" and "elder adult" shall be defined as set forth in G.S. 14-32.3(d).

(a3) The penalties set forth in this section are cumulative. The minimum sentence shall be increased by the sum of the number of months for convictions under subsections (a) and (a1) of this section, and the maximum term of imprisonment shall be the maximum term that corresponds to the total number of months, as specified in G.S. 15A-1340.17(e) and (e1).

(b) An indictment or information for the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) shall allege in that indictment or information the facts set out in subsection (a) or (a1) of this section. The pleading is sufficient if it alleges any or all of the following:

- (1) The defendant committed the offense of manufacture of methamphetamine and that as a result of the offense a law enforcement officer, probation officer, parole officer, emergency medical services employee, or firefighter suffered serious injury while discharging or attempting to discharge his or her official duties.
- (2) The defendant committed the offense of manufacture of methamphetamine and that a minor resided on the property used for manufacturing the methamphetamine, or was present at a location where methamphetamine was being manufactured.
- (3) The defendant committed the offense of manufacture of methamphetamine and that a disabled or elder adult resided on the property used for manufacturing the methamphetamine, or was present at a location where methamphetamine was being manufactured.
- (4) The defendant committed the offense of manufacture of methamphetamine and that a minor and a disabled or elder adult resided on the property used for manufacturing the methamphetamine, or were present at a location where methamphetamine was being manufactured.

One pleading is sufficient for all felonies that are tried at a single trial.

(c) The State shall prove the issue or issues set out in subsection (b) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the offense of manufacture of methamphetamine unless the defendant pleads guilty or no contest to the issue. If the defendant pleads guilty or no contest to the offense of manufacture of methamphetamine but pleads not guilty to the issue or issues set out in subsection (b) of this section, then a jury shall be impaneled to determine the issue.

(d) This section does not apply if the offense is packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container. (2004-178, s. 8; 2013-124, s. 2.)

§ 15A-1340.16E. Enhanced sentence for offenses committed by criminal gang members as a part of criminal gang activity.

(a) Except as otherwise provided in subsection (b) of this section, if a person is convicted of any felony other than a Class A, B1, or B2 felony, and it is found that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2), then the person shall be sentenced at a felony class level one class higher than the principal felony for which the person was convicted.

(b) If subsection (a) of this section applies and the person is found to be a criminal gang leader or organizer as defined in G.S. 14-50.16A(3), the person shall be sentenced at a felony class level two classes higher than the principal felony for which the person was convicted.

(c) No defendant sentenced pursuant to this section shall be sentenced at a level higher than a Class C felony. Any sentence imposed under this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(d) An indictment or information for the felony shall allege in that indictment or information the facts that qualify the offense for an enhancement under this section. One pleading is sufficient for all felonies that are tried at a single trial.

(e) The State shall prove the issues set out under subsection (a) or (b) of this section beyond a reasonable doubt. The issues shall be proven and found in the same manner as provided for aggravating factors in G.S. 15A-1340.16(a1), (a2), or (a3) as applicable.

(f) This section shall not apply to any gang offense included under Article 13A of Chapter 14 of the General Statutes. (2017-194, s. 5.)

§ 15A-1340.16F. Aggregation of multiple financial crime offenses.

(a) Definition. – For purposes of this section, the term "financial crime offense" means any of the following:

- (1) Acts of embezzlement punishable under Article 18 of Chapter 14 of the General Statutes.
- (2) Acts of false pretenses punishable under G.S. 14-100.
- (3) Acts of exploitation of an older adult punishable under G.S. 14-112.2.

(b) Aggregation. – If a person is convicted of two or more of the same financial crime offenses, the financial crime offenses may be aggregated for sentencing if it is found that both of the following conditions are met:

- (1) The person committed the financial crime offenses against more than one victim or in more than one county.
- (2) The financial crime offenses are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a common scheme or plan.

(c) Venue. – Each county where a part of the violations aggregated under subsection (b) of this section occurs shall have concurrent venue as described in G.S. 15A-132.

(d) Pleading. – The pleading for financial crime offenses aggregated under this section shall allege the facts set out in subsection (b) of this section and identify the financial crime offenses to which the aggregation shall apply. The pleading is sufficient if it alleges that the defendant committed the financial crime offenses against more than one victim or in more than one county and that the financial crime offenses are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a common scheme or plan.

(e) Procedure. – The State shall prove the issues set out in subsections (b) and (f) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the financial crime offenses unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the financial crime offenses but pleads not guilty to the issues set out in subsection (b) or subsection (f) of this section, then a jury shall be impaneled to determine the issues.

(f) Punishment. – If convictions for two or more of the same financial crime offenses are aggregated in accordance with this section, the court shall use the aggregated value of the money, goods, property, services, chose in action, or other thing of value when determining the level of punishment to be imposed. Notwithstanding any provision of law to the contrary, financial crime offenses aggregated under subsection (b) of this section are punishable as follows:

- (1) If the aggregated value of the money, goods, property, services, chose in action, or other thing of value exceeds one thousand five hundred dollars (\$1,500), then the aggregated offenses shall be punished as one Class H felony.
- (2) If the aggregated value of the money, goods, property, services, chose in action, or other thing of value exceeds twenty thousand dollars (\$20,000), then the aggregated offense shall be punished as one Class G felony.
- (3) If the aggregated value of the money, goods, property, services, chose in action, or other thing of value exceeds fifty thousand dollars (\$50,000), then the aggregated offenses shall be punished as one Class F felony.
- (4) If the aggregated value of the money, goods, property, services, chose in action, or other thing of value exceeds one hundred thousand dollars (\$100,000), then the aggregated offense shall be punished as one Class C felony. (2023-151, s. 2(a).)

§ 15A-1340.17. Punishment limits for each class of offense and prior record level.

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

- (1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.
- (2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.
- (3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(b) The Division of Prisons of the Department of Adult Correction is authorized to create risk reduction incentives consisting of treatment, education, and rehabilitative programs. The incentives shall be designed to reduce the likelihood that the prisoner who receives the incentive will reoffend.

(c) When imposing an active sentence for an eligible defendant, the court, in its discretion and without objection from the prosecutor, may order that the Department of Adult Correction admit the defendant to the ASR program. The Department of Adult Correction shall admit to the ASR program only those defendants for which ASR is ordered in the sentencing judgment.

(d) The court shall impose a sentence calculated pursuant to Article 81B of the General Statutes. The ASR date shall be the shortest mitigated sentence for the offense at the offender's prior record level. If the court utilizes the mitigated range in sentencing the defendant, then the ASR date shall be eighty percent (80%) of the minimum sentence imposed.

(e) The defendant shall be notified at sentencing that if the defendant completes the risk reduction incentives as identified by the Department, then he or she will be released on the ASR date, as determined by the Department pursuant to the provisions of subsection (d) of this section. If the Department determines that the defendant is unable to complete the incentives by the ASR date, through no fault of the defendant, then the defendant shall be released at the ASR date.

(f) Termination from the risk reduction incentive program shall result in the nullification of the ASR date, and the defendant's release date shall be calculated based upon the adjudged sentence. A prisoner who has completed the risk reduction incentives prior to the ASR date may have the ASR date nullified due to noncompliance with Division rules or regulations.

(g) A defendant released on the ASR date is subject to post-release supervision under this Article. Notwithstanding the provisions in G.S. 15A-1368.3(c), if the defendant has been returned to prison for three, three-month periods of confinement, a subsequent violation shall result in the defendant returning to prison to serve the time remaining on the maximum imposed term, and is ineligible for further post-release supervision regardless of the amount of time remaining to be served.

(h) The Division shall adopt policies and procedures for the assessment to occur at diagnostic processing, for documentation of the inmate's progress, and for termination from the incentive program due to a lack of progress or a pattern of noncompliance in the program or with other Division rules or regulations. (2011-145, s. 19.1(h); 2011-192, s. 5(c); 2011-412, ss. 2.7, 2.8; 2017-186, s. 2(iii); 2021-180, s. 19C.9(uu).)

§ 15A-1340.19. Reserved for future codification purposes.

Part 2A. Sentencing for Minors Subject to Life Imprisonment Without Parole.

§ 15A-1340.19A. Applicability.

Notwithstanding the provisions of G.S. 14-17, a defendant who is convicted of first degree murder, and who was under the age of 18 at the time of the offense, shall be sentenced in accordance with this Part. For the purposes of this Part, "life imprisonment with parole" shall mean that the defendant shall serve a minimum of 25 years imprisonment prior to becoming eligible for parole. (2012-148, s. 1.)

§ 15A-1340.19B. Penalty determination.

(a) In determining a sentence under this Part, the court shall do one of the following:

- (1) If the sole basis for conviction of a count or each count of first degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.
- (2) If the court does not sentence the defendant pursuant to subdivision (1) of this subsection, then the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in G.S. 14-17, or a lesser sentence of life imprisonment with parole.

(b) The hearing under subdivision (2) of subsection (a) of this section shall be conducted by the trial judge as soon as practicable after the guilty verdict is returned. The State and the defendant shall not be required to resubmit evidence presented during the guilt determination phase of the case. Evidence, including evidence in rebuttal, may be presented as to any matter that the court deems relevant to sentencing, and any evidence which the court deems to have probative value may be received.

(c) The defendant or the defendant's counsel may submit mitigating circumstances to the court, including, but not limited to, the following factors:

- (1) Age at the time of the offense.
- (2) Immaturity.
- (3) Ability to appreciate the risks and consequences of the conduct.
- (4) Intellectual capacity.
- (5) Prior record.
- (6) Mental health.
- (7) Familial or peer pressure exerted upon the defendant.
- (8) Likelihood that the defendant would benefit from rehabilitation in confinement.
- (9) Any other mitigating factor or circumstance.

(d) The State and the defendant or the defendant's counsel shall be permitted to present argument for or against the sentence of life imprisonment with parole. The defendant or the defendant's counsel shall have the right to the last argument.

(e) The provisions of Article 58 of Chapter 15A of the General Statutes apply to proceedings under this Part. (2012-148, s. 1.)

§ 15A-1340.19C. Sentencing; assignment for resentencing.

(a) The court shall consider any mitigating factors in determining whether, based upon all the circumstances of the offense and the particular circumstances of the defendant, the defendant should be sentenced to life imprisonment with parole instead of life imprisonment without parole. The order adjudging the sentence shall include findings on the absence or presence of any mitigating factors and such other findings as the court deems appropriate to include in the order.

(b) All motions for appropriate relief filed in superior court seeking resentencing under the provisions of this Part may be heard and determined in the trial division by any judge (i) who is empowered to act in criminal matters in the superior court district or set of districts as defined in G.S. 7A-41.1, in which the judgment was entered and (ii) who is assigned pursuant to this section to review the motion for appropriate relief and take the appropriate administrative action to dispense with the motion.

(c) The judge who presided at the trial of the defendant is empowered to act upon the motion for appropriate relief even though the judge is in another district or even though the judge's commission has expired; however, if the judge who presided at the trial is still unavailable to act,

the senior resident superior court judge shall assign a judge who is empowered to act under subsection (b) of this section.

(d) All motions for appropriate relief filed in superior court seeking resentencing under the provisions of this Part shall, when filed, be referred to the senior resident superior court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions. (2012-148, s. 1.)

§ 15A-1340.19D. Incidents of parole.

(a) Except as otherwise provided in this section, a defendant sentenced to life imprisonment with parole shall be subject to the conditions and procedures set forth in Article 85 of Chapter 15A of the General Statutes, including the notification requirement in G.S. 15A-1371(b)(3).

(b) The term of parole for a person released from imprisonment from a sentence of life imprisonment with parole shall be five years and may not be terminated earlier by the Post-Release Supervision and Parole Commission.

(c) A defendant sentenced to life imprisonment with parole who is paroled, and then violates a condition of parole and is returned to prison to serve the life sentence, shall not be eligible for parole for five years from the date of the return to confinement.

(d) Life imprisonment with parole under this Part means that unless the defendant receives parole, the defendant shall remain imprisoned for the defendant's natural life. (2012-148, s. 1.)

Part 3. Misdemeanor Sentencing.

§ 15A-1340.20. Procedure and incidents of sentence of imprisonment for misdemeanors.

(a) Application to Misdemeanors Only. – This Part applies to sentences imposed for misdemeanor convictions.

(b) Procedure Generally; Term of Imprisonment. – A sentence imposed for a misdemeanor shall contain a sentence disposition specified for the class of offense and prior conviction level, and any sentence of imprisonment shall be within the range specified for the class of offense and prior conviction level, unless applicable statutes require otherwise. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment. Except for the work and earned time credits authorized by G.S. 162-60, or earned time credits authorized by G.S. 15A-1355(c), if applicable, an offender whose sentence of imprisonment is activated shall serve each day of the term imposed.

(c) Suspension of Sentence. – Unless otherwise provided, the court shall suspend a sentence of imprisonment if the class of offense and prior conviction level requires community or intermediate punishment as a sentence disposition.

(c1) Active Punishment Exception. – The court may impose an active punishment for a class of offense and prior conviction level that does not otherwise authorize the imposition of an active punishment if the term of imprisonment is equal to or less than the total amount of time the offender has already spent committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence.

(d) Earned Time Authorization. – An offender sentenced to a term of imprisonment that is activated is eligible to receive earned time credit for misdemeanant offenders awarded by the Division of Prisons of the Department of Adult Correction or the custodian of a local confinement facility, pursuant to rules adopted in accordance with law and pursuant to G.S. 162-60. These rules

(a) Limits on Consecutive Sentences. – If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is classified in Class A1, Class 1, or Class 2, the cumulative length of the sentences of imprisonment shall not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense. Consecutive sentences shall not be imposed if all convictions are for Class 3 misdemeanors.

(b) Consolidation of Sentences. – If an offender is convicted of more than one offense at the same session of court, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. Any sentence imposed shall be consistent with the appropriate prior conviction level of the most serious offense. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1995 (Reg. Sess., 1996), c. 742, s. 16.)

§ 15A-1340.23. Punishment limits for each class of offense and prior conviction level.

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a misdemeanor for which there is no classification, it is as classified in G.S. 14-3.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. If a community punishment is authorized, the judgment may consist of a fine only. Unless otherwise provided for a specific offense, the maximum fine that may be imposed is two hundred dollars (\$200.00) for a Class 3 misdemeanor and one thousand dollars (\$1,000) for a Class 2 misdemeanor. The amount of the fine for a Class 1 misdemeanor and a Class A1 misdemeanor is in the discretion of the court.

(c) Punishment for Each Class of Offense and Prior Conviction Level; Punishment Chart Described. – Unless otherwise provided for a specific offense, the authorized punishment for each class of offense and prior conviction level is as specified in the chart below. Prior conviction levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offenses are indicated by the Arabic numbers placed vertically on the left side of the chart. Each grid on the chart contains the following components:

- (1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; and "A" indicates that an active punishment is authorized; and
- (2) A range of durations for the sentence of imprisonment: any sentence within the duration specified is permitted.

MISDEMEANOR OFFENSE CLASS	PRIOR CONVICTION LEVELS		
	LEVEL I No Prior Convictions	LEVEL II One to Four Prior Convictions	LEVEL III Five or More Prior Convictions
A1	1-60 days C/I/A	1-75 days C/I/A	1-150 days C/I/A
1	1-45 days C	1-45 days C/I/A	1-120 days C/I/A
2	1-30 days C	1-45 days C/I	1-60 days C/I/A
3	1-10 days C	1-15 days C if one to three prior convictions	1-20 days C/I/A.

(d) Fine Only for Certain Class 3 Misdemeanors. – Unless otherwise provided for a specific offense, the judgment for a person convicted of a Class 3 misdemeanor who has no more than three prior convictions shall consist only of a fine. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1995, c. 507, s. 19.5(g); 2013-360, s. 18B.13(a).)

§§ 15A-1340.24 through 15A-1340.33. Reserved for future codification purposes.

Article 81C.

Restitution

§ 15A-1340.34. Restitution generally.

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term "victim" means a person directly and proximately harmed as a result of the defendant's commission of the criminal offense.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.

(c) When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. (1998-212, s. 19.4(d).)

§ 15A-1340.35. Basis for restitution.

(a) In determining the amount of restitution, the court shall consider the following:

(1) In the case of an offense resulting in bodily injury to a victim:

- a. The cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the victim;
- b. The cost of necessary physical and occupational therapy and rehabilitation required by the victim; and
- c. Income lost by the victim as a result of the offense.

(2) In the case of an offense resulting in the damage, loss, or destruction of property of a victim of the offense:

- a. Return of the property to the owner of the property or someone designated by the owner; or
- b. If return of the property under sub-subdivision (2)a. of this subsection is impossible, impracticable, or inadequate:
 1. The value of the property on the date of the damage, loss, or destruction; or

2. The value of the property on the date of sentencing, less the value of any part of the property that is returned.
 - (3) Any measure of restitution specifically provided by law for the offense committed by the defendant.
 - (4) In the case of an offense resulting in bodily injury that results in the death of the victim, the cost of the victim's necessary funeral and related services, in addition to the items set out in subdivisions (1), (2), and (3) of this subsection.
- (b) The court may require that the victim or the victim's estate provide admissible evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing. (1998-212, s. 19.4(d).)

§ 15A-1340.36. Determination of restitution.

(a) In determining the amount of restitution to be made, the court shall take into consideration the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, the court shall state on the record the reasons for such an order.

(b) The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.

(c) When an active sentence is imposed, the court shall consider whether it should recommend to the Secretary of the Department of Adult Correction that restitution be made by the defendant out of any earnings gained by the defendant if the defendant is granted work-release privileges, as provided in G.S. 148-33.2. The court shall also consider whether it should recommend to the Post-Release Supervision and Parole Commission that restitution by the defendant be made a condition of any parole or post-release supervision granted the defendant, as provided in G.S. 148-57.1. (1998-212, s. 19.4(d); 2011-145, s. 19.1(i); 2021-180, s. 19C.9(o).)

§ 15A-1340.37. Effect of restitution order; beneficiaries.

(a) An order providing for restitution does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense committed by the defendant. Any amount paid by the defendant under the terms of a restitution order under this Article shall be credited against any judgment rendered against the defendant in favor of the same victim in a civil action arising out of the criminal offense committed by the defendant.

(b) The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims Compensation Fund, that provided assistance to the victim following the commission of the offense by the defendant and is subrogated to the rights of the victim. Restitution shall be made to the victim or the victim's estate before it is made to any other person, organization, corporation, or association under this subsection.

(c) No government agency shall benefit by way of restitution except for particular damage or loss to it over and above its normal operating costs and except that the State may receive restitution for the total amount of a judgment authorized by G.S. 7A-455(b).

(d) Repealed by Session Laws 2016-78, s. 6.4, effective December 1, 2016. (1998-212, s. 19.4(d); 2016-78, s. 6.4.)

§ 15A-1340.38. Enforcement of certain orders for restitution.

(a) In addition to the provisions of G.S. 15A-1340.36, when an order for restitution under G.S. 15A-1340.34(b) requires the defendant to pay restitution in an amount in excess of two hundred fifty dollars (\$250.00) to a victim, the order may be enforced in the same manner as a civil judgment, subject to the provisions of this section.

(b) The order for restitution under G.S. 15A-1340.34(b) shall be docketed and indexed in the county of the original conviction in the same manner as a civil judgment pursuant to G.S. 1-233, et seq., and may be docketed in any other county pursuant to G.S. 1-234. The judgment may be collected in the same manner as a civil judgment unless the order to pay restitution is a condition of probation. If the order to pay restitution is a condition of probation, the judgment may only be executed upon in accordance with subsection (c) of this section.

(c) If the defendant is ordered to pay restitution under G.S. 15A-1340.34(b) as a condition of probation, a judgment docketed under this section may be collected in the same manner as a civil judgment. However, the docketed judgment for restitution may not be executed upon the property of the defendant until the date of notification to the clerk of superior court in the county of the original conviction that the judge presiding at the probation termination or revocation hearing has made a finding that restitution in a sum certain remains due and payable, that the defendant's probation has been terminated or revoked, and that the remaining balance of restitution owing may be collected by execution on the judgment. The clerk shall then enter upon the judgment docket the amount that remains due and payable on the judgment, together with amounts equal to the standard fees for docketing, copying, certifying, and mailing, as appropriate, and shall collect any other fees or charges incurred as in the enforcement of other civil judgments, including accrued interest. However, no interest shall accrue on the judgment until the entry of an order terminating or revoking probation and finding the amount remaining due and payable, at which time interest shall begin to accrue at the legal rate pursuant to G.S. 24-5. The interest shall be applicable to the amount determined at the termination or revocation hearing to be then due and payable. The clerk shall notify the victim by first-class mail at the victim's last known address that the judgment may be executed upon, together with the amount of the judgment. Until the clerk receives notification of termination or revocation of probation and the amount that remains due and payable on the order of restitution, the clerk shall not be required to update the judgment docket to reflect partial payments on the order of restitution as a condition of probation. The stay of execution under this subsection shall not apply to property of the defendant after the transfer or conveyance of the property to another person. When the criminal order of restitution has been paid in full, the civil judgment indexed under this section shall be deemed satisfied and the judgment shall be cancelled. Payment satisfying the civil judgment shall also be credited against the order of restitution.

(d) An appeal of the conviction upon which the order of restitution is based shall stay execution on the judgment until the appeal is completed. If the conviction is overturned, the judgment shall be cancelled. (1998-212, s. 19.4(d).)

§ 15A-1340.39. Remission of restitution, notice, and hearing required.

(a) Notice and Hearing Required. – No court may remit all or part of an order of restitution entered pursuant to G.S. 15A-1340.34 without providing notice and an opportunity to be heard to the district attorney and the victim, victim's estate, or any other entity to which the order directs restitution to be paid. The court shall provide notice to the district attorney and the victim, the victim's estate, or other entity of (i) the date and time of the hearing and (ii) the right to be heard and make an objection to the remission of all or part of the order of restitution, at least 15 days prior to hearing. Notice shall be made to the victim, victim's estate, or other entity by first-class mail to the address provided for receipt of funds paid pursuant to the order of restitution.

(b) Ruling; Criteria. – If the court finds that the remission of the order is warranted and serves the interests of justice, the court may remit the order of restitution.

(c) Civil Action Not Abridged. – The remission of an order of restitution, pursuant to this section, does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense committed by the defendant. (2017-16, s. 1.)

§ 15A-1340.40: Reserved for future codification purposes.

§ 15A-1340.41: Reserved for future codification purposes.

§ 15A-1340.42: Reserved for future codification purposes.

§ 15A-1340.43: Reserved for future codification purposes.

§ 15A-1340.44: Reserved for future codification purposes.

§ 15A-1340.45: Reserved for future codification purposes.

§ 15A-1340.46: Reserved for future codification purposes.

§ 15A-1340.47: Reserved for future codification purposes.

§ 15A-1340.48: Reserved for future codification purposes.

§ 15A-1340.49: Reserved for future codification purposes.

Article 81D.

Permanent No Contact Order Against Convicted Sex Offender.

§ 15A-1340.50. Permanent no contact order prohibiting future contact by convicted sex offender with crime victim.

(a) The following definitions apply in this Article:

- (1) Permanent no contact order. – A permanent injunction that prohibits any contact by a defendant with the victim of the sex offense for which the defendant is convicted. The duration of the injunction is the lifetime of the defendant.
- (2) Sex offense. – Any criminal offense that requires registration under Article 27A of Chapter 14 of the General Statutes.
- (3) Victim. – The person against whom the sex offense was committed.

disposition or if the person is convicted of impaired driving under G.S. 20-138.1. The provisions of subsections (a1), (a2), (a4), and (a5) of this section do not apply and a person is not eligible for deferred prosecution or a conditional discharge under those subsections if the person is being placed on probation under this Article for a conviction of impaired driving under G.S. 20-138.1.

(a1) Deferred Prosecution. – A person who has been charged with a Class H or I felony or a misdemeanor may be placed on probation as provided in this Article on motion of the defendant and the prosecutor if the court finds each of the following facts:

- (1) Prosecution has been deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.
- (2) Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and has been given an opportunity to be heard.
- (3) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.
- (4) The defendant has not previously been placed on probation and so states under oath.
- (5) The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

(a2) Deferred Prosecution for Purpose of Local Judicially Managed Accountability and Recovery Court Program. – A defendant eligible for a local judicially managed accountability and recovery court program pursuant to Article 62 of Chapter 7A of the General Statutes may be placed on probation if the court finds that prosecution has been deferred by the prosecutor, with the approval of the court, pursuant to a written agreement with the defendant, for the purpose of allowing the defendant to participate in and successfully complete the local judicially managed accountability and recovery court program.

(a3) Conditional Discharge for Prostitution. – A defendant for whom the court orders a conditional discharge pursuant to G.S. 14-204(b) may be placed on probation as provided in this Article.

(a4) Conditional Discharge. – Whenever a person pleads guilty to or is found guilty of a Class H or I felony or a misdemeanor, the court may, on joint motion of the defendant and the prosecutor, and without entering a judgment of guilt and with the consent of the person, defer further proceedings and place the person on probation as provided in this Article for the purpose of allowing the defendant to demonstrate the defendant's good conduct if the court finds each of the following facts:

- (1) Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and has been given an opportunity to be heard.
- (2) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.
- (3) The defendant has not previously been placed on probation and so states under oath.
- (4) The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

(a5) Conditional Discharge for Purpose of Local Judicially Managed Accountability and Recovery Court Program. – When a defendant is eligible for a local judicially managed accountability and recovery court program pursuant to Article 62 of Chapter 7A of the General Statutes, the court may, without entering a judgment of guilt and with the consent of the defendant,

discharge or deferred prosecution agreement. Violations of the terms of the agreement or conditional discharge shall be reported to the court as provided in this Article and to the district attorney in the district in which the agreement was entered.

(b) Early Termination. – The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (a) if warranted by the conduct of the defendant and the ends of justice.

(c) Conditions; Suspended Sentence. – When the court places a convicted offender on probation, it must determine conditions of probation as provided in G.S. 15A-1343. In addition, it must impose a suspended sentence of imprisonment, determined as provided in Article 83, Imprisonment, which may be activated upon violation of conditions of probation.

(d) Mandatory Review of Probation. – Each probation officer must bring the cases of each probationer assigned to him before a court with jurisdiction to review the probation when the probationer has served three years of a probationary period greater than three years. The probation officer must give reasonable notice to the probationer, and the probationer may appear. The court must review the case file of a probationer so brought before it and determine whether to terminate his probation.

(e) Out-of-State Supervision. – Supervised probationers are subject to out-of-State supervision under the provisions of Article 4B of Chapter 148 of the General Statutes.

(f) Appeal from Judgment of Probation. – A defendant may seek post-trial relief from a judgment which includes probation notwithstanding the authority of the court to modify or revoke the probation.

(g) Invalid Conditions; Timing of Objection. – The regular conditions of probation imposed pursuant to G.S. 15A-1343(b) are in every circumstance valid conditions of probation. A court may not revoke probation for violation of an invalid condition imposed pursuant to G.S. 15A-1343(b1). The failure of a defendant to object to a condition of probation imposed pursuant to G.S. 15A-1343(b1) at the time such a condition is imposed does not constitute a waiver of the right to object at a later time to the condition.

(h) Limitation on Jurisdiction to Alter or Revoke Unsupervised Probation. – In the judgment placing a person on unsupervised probation, the judge may limit jurisdiction to alter or revoke the sentence under G.S. 15A-1344. When jurisdiction to alter or revoke is limited, the effect is as provided in G.S. 15A-1344(b).

(i) Immunity from Prosecution upon Compliance. – Upon the expiration or early termination as provided in subsection (b) of a period of probation imposed after deferral of prosecution and before conviction or a conditional discharge, the defendant shall be immune from prosecution of the charges deferred or discharged and dismissed.

(j) Immunity for Injury to Defendant Performing Community Service. – Immunity from liability for injury to a defendant performing community service shall be as set forth in G.S. 143B-708(d). (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, ss. 6, 7; 1981, c. 377, ss. 4-6; 1983, c. 435, s. 5.1; c. 561, s. 7; 1985 (Reg. Sess., 1986), c. 960, s. 1; 1993, c. 84, s. 1; 1993 (Reg. Sess., 1994), c. 767, s. 6; 1995, c. 330, s. 1; 2008-129, s. 3; 2009-372, s. 10; 2010-96, s. 5; 2011-145, s. 19.1(h), (k), (ee); 2013-368, s. 8; 2014-119, s. 2(e); 2015-40, s. 5; 2017-186, s. 2(kkk); 2021-180, s. 19C.9(v1).)

§ 15A-1343. Conditions of probation.

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(a1) Community and Intermediate Probation Conditions. – In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

- (1) House arrest with electronic monitoring.
 - (2) Perform community service and pay the fee prescribed by law for this supervision.
 - (3) Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month. If the person being ordered to a period or periods of confinement is under the age of 18, that person must be confined in a detention facility approved by the Division of Juvenile Justice to provide secure confinement and care for juveniles or to a holdover facility as defined in G.S. 7B-1501(11). If the person being ordered to a period or periods of confinement reaches the age of 18 years while in confinement, the person may be transported by personnel of the Division of Juvenile Justice, or personnel approved by the Division of Juvenile Justice, to the custody of the sheriff of the applicable local confinement facility.
 - (4) Substance abuse assessment, monitoring, or treatment.
 - (4a) Abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.
 - (5) Participation in an educational or vocational skills development program, including an evidence-based program.
 - (6) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2), and based on a court's determination, requires the highest possible level of supervision and monitoring.
- (b) Regular Conditions. – As regular conditions of probation, a defendant must:
- (1) Commit no criminal offense in any jurisdiction.
 - (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
 - (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
 - (3a) Not abscond by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.
 - (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

- (5) Possess no firearm, firearm ammunition, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
- (6) Pay a supervision fee as specified in subsection (c1).
- (7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.
- (8) Notify the probation officer if he fails to obtain or retain satisfactory employment.
- (9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).
- (10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.
- (11) Repealed by Session Laws 2011-62, s. 1, as amended by Session Laws 2011-412, s. 2.2, effective December 1, 2011, and applicable to offenses committed on or after December 1, 2011.
- (12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice. A defendant attending an abuser treatment program shall abide by all of the rules of the program.
 - a. If the defendant is placed on supervised probation, the following procedures apply:
 1. The probation officer shall forward a copy of the judgment, including all conditions of probation, to the abuser treatment program.
 2. The program shall notify the probation officer if the defendant fails to participate in the program or if the defendant is discharged from the program for violating any of the program rules.
 3. If the defendant fails to participate in the program or is discharged from the program for failure to comply with the program or its rules, the probation officer shall file a violation report with the court and notify the district attorney of such noncompliance.
 - b. If the defendant is placed on unsupervised probation, the following procedures apply:
 1. The defendant shall be required to notify the district attorney and the abuser treatment program of their choice of program within 10 days of the judgment if the program has not previously been selected.

2. The district attorney shall forward a copy of the judgment, including all conditions of probation, to the abuser treatment program.
 3. If the defendant fails to participate in the program or is discharged from the program for failure to comply with the program or its rules, the program shall notify the district attorney of such noncompliance.
- (13) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes directly related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful.
 - (14) Submit to warrantless searches by a law enforcement officer of the probationer's person and of the probationer's vehicle, upon a reasonable suspicion that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court.
 - (15) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.
 - (16) Submit to drug and alcohol screening for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Community Supervision and Reentry of the Department of Adult Correction for the actual costs of drug or alcohol screening and testing.
 - (17) Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court upon a felony conviction.
 - (18) Submit to the taking of digitized photographs, including photographs of the probationer's face, scars, marks, and tattoos, to be included in the probationer's records.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Division of Prisons of the Department of Adult Correction and, if applicable, the Division of Juvenile Justice of the Department of Public Safety, governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each

regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), (13), (14), (15), (16) and (17) of this subsection.

(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

- (1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose. Notwithstanding the provisions of G.S. 15A-1344(e) or any other provision of law, the defendant may be required to participate in such treatment for its duration regardless of the length of the suspended sentence imposed.
- (2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.
- (2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15, 2002.
- (2b) Participate in and successfully complete a local judicially managed accountability and recovery court program pursuant to Article 62 of Chapter 7A of the General Statutes.
- (2c) Abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.
- (3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).
- (3a) Repealed by Session Laws 1997-57, s. 3.
- (3b) Repealed by Session Laws 2011-192, s. 1(g), effective December 1, 2011.
- (3c) Remain at his or her residence. The court, in the sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training, or other specific purposes and may modify that authorization. The probation officer may authorize the offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically and to pay a fee for the device as specified in subsection (c2) of this section.
- (4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.
- (5) Compensate the Department of Environmental Quality or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environmental Quality or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for

investigative costs as a condition of probation. The court may also include, as a condition of probation, compensation of an agency for any reward paid for information leading to the arrest and conviction of the offender. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

- (6) Perform community or reparation service under the supervision of the Division of Community Supervision and Reentry of the Department of Adult Correction and pay the fee required by G.S. 143B-708.
- (7), (8) Repealed by Session Laws 2009-372, s. 9(b), effective December 1, 2009, and applicable to offenses committed on or after that date.
- (8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.
- (9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.
- (9a) Repealed by Session Laws 2004-186, s. 1.1, effective December 1, 2004, and applicable to offenses committed on or after that date.
- (9b) Any or all of the following conditions relating to criminal gangs as defined in G.S. 14-50.16A(1):
 - a. Not knowingly associate with any known criminal gang members and not knowingly be present at or frequent any place or location where criminal gangs gather or where criminal gang activity is known to occur.
 - b. Not wear clothes, jewelry, signs, symbols, or any paraphernalia readily identifiable as associated with or used by a criminal gang.
 - c. Not initiate or participate in any contact with any individual who was or may be a witness against or victim of the defendant or the defendant's criminal gang.
- (9c) Participate in any Project Safe Neighborhood activities as directed by the probation officer.
- (10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

- (1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).
- (2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- (3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Supervision and Reentry of the Department of Adult Correction may require an offender sentenced to community punishment to do any of the following:

- (1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision.
- (2) Report to the offender's probation officer on a frequency to be determined by the officer.
- (3) Submit to substance abuse assessment, monitoring or treatment.
- (4) Submit to house arrest with electronic monitoring.
- (5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month. If the person being ordered to a period or periods of confinement is under the age of 18, that person must be confined in a detention facility approved by the Division of Juvenile Justice of the Department of Public Safety to provide secure confinement and care for juveniles or to a holdover facility as defined in G.S. 7B-1501(11). If the person being ordered to a period or periods of confinement reaches the age of 18 years while in confinement, the person may be transported by personnel of the Division of Juvenile Justice, or personnel approved by the Division of Juvenile Justice, to the custody of the sheriff of the applicable local confinement facility.
- (6) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
- (7) Participate in an educational or vocational skills development program, including an evidence-based program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (e) of this section after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (5) of this subsection may not be imposed unless the Division determines that the offender failed to comply with one or more of the conditions imposed by the court. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority

manner that is not to be overly burdensome to the Commission, the district attorney, or the claimant's counsel. At least 10 days prior to a Commission hearing, the district attorney or designee is authorized to provide the Commission with a written statement, which shall be part of the record. The Commission shall have an ongoing duty to provide any newly discovered evidence to the district attorney and the claimant's counsel until the hearing begins. Evidence not provided to the district attorney and the claimant's counsel in the initial release of information shall be provided at least 10 days prior to the Commission hearing. The Commission shall keep a clear record of which materials have been previously made available for review and inspection.

(b) The Director shall use all due diligence to notify the victim at least 10 days prior to the initial prehearing conference required in subsection (a2) of this section held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of the victim's intent to attend. Nothing in this section prevents the Director from notifying the victim at an earlier date in the proceedings.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the convicted person or the convicted person's counsel, if any, and the district attorney in noncapital cases or service on both the district attorney and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction.

If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the convicted person or the convicted person's counsel, if any, the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the district attorney, or the district attorney's designee, of the district where the claimant was convicted of the felony upon which the claim of factual innocence is based, the convicted person, and the convicted person's counsel, if the convicted person has counsel.

Court shall consider the punishment imposed as well as any arguments raised on appeal.

- (2) The sentence of death shall be overturned and a sentence of life imprisonment imposed in lieu thereof by the Supreme Court upon a finding that the record does not support the jury's findings of any aggravating circumstance or circumstances upon which the sentencing court based its sentence of death, or upon a finding that the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, or upon a finding that the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The Supreme Court may suspend consideration of death penalty cases until it is prepared to make the comparisons required under this section.
- (3) If the sentence of death and the judgment of the trial court are reversed on appeal for error in the post-verdict sentencing proceeding, the Supreme Court shall order that a new sentencing hearing be conducted in conformity with the procedures of this Article.

(e) **Aggravating Circumstances.** – Aggravating circumstances that may be considered are limited to the following:

- (1) The capital felony was committed by a person lawfully incarcerated.
- (2) The defendant had been previously convicted of another capital felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.
- (3) The defendant had been previously convicted of a felony involving the use or threat of violence to the person or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, B1, B2, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult.
- (4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- (5) The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any homicide, robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.
- (6) The capital felony was committed for pecuniary gain.
- (7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- (8) The capital felony was committed against a law-enforcement officer, employee of the Department of Adult Correction, an employee of the Division of Juvenile Justice of the Department of Public Safety, jailer, fireman, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of official duties or because of the exercise of official duty.
- (9) The capital felony was especially heinous, atrocious, or cruel.

limitations in adaptive functioning, both of which were manifested before the age of 18.

- b. Significant limitations in adaptive functioning. – Significant limitations in two or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure skills and work skills.
- c. Significantly subaverage general intellectual functioning. – An intelligence quotient of 70 or below.

(2) The defendant has the burden of proving significantly subaverage general intellectual functioning, significant limitations in adaptive functioning, and that intellectual disability was manifested before the age of 18. An intelligence quotient of 70 or below on an individually administered, scientifically recognized standardized intelligence quotient test administered by a licensed psychiatrist or psychologist is evidence of significantly subaverage general intellectual functioning; however, it is not sufficient, without evidence of significant limitations in adaptive functioning and without evidence of manifestation before the age of 18, to establish that the defendant has an intellectual disability. An intelligence quotient of 70, as described in this subdivision, is approximate and a higher score resulting from the application of the standard error of measurement to an intelligence quotient of 70 shall not preclude the defendant from being able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. Accepted clinical standards for diagnosing significant limitations in intellectual functioning and adaptive behavior shall be applied in the determination of intellectual disability.

(b) Notwithstanding any provision of law to the contrary, no defendant with an intellectual disability shall be sentenced to death.

(c) Upon motion of the defendant, supported by appropriate affidavits, the court may order a pretrial hearing to determine if the defendant has an intellectual disability. The court shall order such a hearing with the consent of the State. The defendant has the burden of production and persuasion to demonstrate intellectual disability by clear and convincing evidence. If the court determines that the defendant has an intellectual disability, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) If the court does not find that the defendant has an intellectual disability in the pretrial proceeding, upon the introduction of evidence raising the issue of intellectual disability during the sentencing hearing, the court shall submit a special issue to the jury as to whether the defendant has an intellectual disability as defined in this section. This special issue shall be considered and answered by the jury prior to the consideration of aggravating or mitigating factors and the determination of sentence. If the jury determines that the defendant has an intellectual disability, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.

(f) The defendant has the burden of production and persuasion to demonstrate intellectual disability to the jury by a preponderance of the evidence.

(g) If the jury determines that the defendant does not have an intellectual disability as defined by this section, the jury may consider any evidence of intellectual disability presented during the sentencing hearing when determining aggravating or mitigating factors and the defendant's sentence.

(h) The provisions of this section do not preclude the sentencing of an offender with an intellectual disability to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree. (2001-346, s. 1; 2015-247, s. 5.)

§ 15A-2006: Expired pursuant to Session Laws 2001-346, s. 3, effective October 1, 2002.

§ 15A-2007: Reserved for future codification purposes.

§ 15A-2008: Reserved for future codification purposes.

§ 15A-2009: Reserved for future codification purposes.

Article 101.

North Carolina Racial Justice Act.

§§ 15A-2010 through 15A-2012: Repealed by Session Laws 2013-154, s. 5(a), effective June 19, 2013