NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1286
HOUSE BILL 256

AN ACT TO AMEND THE LAWS RELATING TO PRETRIAL CRIMINAL PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are hereby amended by inserting therein immediately following Chapter 15 of the General Statutes a new Chapter 15A entitled "Criminal Procedure Act" to read as follows:

"**Chapter 15A.**
"**CRIMINAL PROCEDURE ACT.**
"**SUBCHAPTER 1.**
"**GENERAL.**
"Article 1.
"Definitions and General Provisions.

"**§ 15A-101. Definitions. —** Unless the context clearly requires otherwise, the following words have the listed meanings:

(1) 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4 of this Chapter, Entry and Withdrawal of Attorney in Criminal Case, has entered a criminal proceeding and has not withdrawn.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 person authorized to perform the functions of the clerk of superior court in a county.
(3) District court. — The District Court Division of the General Court of Justice.
(4) District solicitor. — The person elected and currently serving as solicitor in his solicitorial district.
(5) Judicial official. — A magistrate, clerk, judge, or justice of the General Court of Justice.
(6) Officer. — Law enforcement officer.
(7) Solicitor. — The district solicitor, any assistant solicitor, or any other attorney designated by the district solicitor to act for the State or on behalf of the district solicitor.
(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 air space 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. — Any judge assigned to preside over a session of superior court in the judicial district, any resident superior court judge of the judicial district, or any special judge of superior court residing in the judicial district.
(11) Vehicle. — Aircraft, watercraft, or landcraft or other conveyance.

"Article 2.
"Jurisdiction.

(Reserved for future codification)

"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 judicial district embracing the county where venue for trial proceedings lies.

(c) 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.

(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 include all proceedings prior to arraignment.

"**§ 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.

"**§ 15A-133. Waiver of venue; motion for change of venue; indictment may be returned in other county. —** (a) Except for a waiver of venue made as required in Article 35 of this Chapter, Speedy Trial, a waiver of venue must be in writing and signed by the defendant and the solicitor 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 judicial district, the consent in writing of the solicitor in that district must be filed with the clerks of both counties.

(b) If a waiver of venue is made by the defendant as provided in Article 35 of this Chapter, Speedy Trial, the solicitor in his discretion may elect the county in the district in which to proceed. He may also elect not to proceed in another county, but the State is subject to the sanctions provided in Article 35.

(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 judicial district by order of the judge ruling on the motion, no consent of any solicitor is required.

(d) If venue is changed to a county in another judicial district, whether upon waiver of venue or by order of a judge, the solicitor of the district where the case originated must prosecute the case unless the solicitor 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.

"**§ 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.

"**§ 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.

"Article 4.

"Entry and Withdrawal of Attorney in Criminal Case.

"**§ 15A-141. Entry and withdrawal of attorney, when entry 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 entering oral notice thereof in open court at the time of his initial appearance.

(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).

"**§ 15A-142. Requirement that clerk record entry. —** The clerk must note each entry by an attorney in the records of the proceeding.

"**§ 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 stages of the case in that division of the court - District, Superior or Appellate. 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.

"**§ 15A-144. Entry and withdrawal of attorney; withdrawal with permission of court. —** The court may allow an attorney to withdraw from a criminal proceeding upon a showing of good cause.

"Articles 5 and 6.

(Reserved for future codification)

"**SUBCHAPTER 2.**

"LAW ENFORCEMENT AND INVESTIGATIVE PROCEDURES.

"Article 7.

(Reserved for future codification)

"Article 8.

(Reserved for future codification)

"Article 9.

"Search and Seizure by Consent.

"**§ 15A-221. General authorization. —** (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.

"**§ 15A-222. Requirements of effective consent. —** 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.

"**§ 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.

"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.

"Article 11.

"Search Warrants.

"**§ 15A-241. Definition of search warrant. —** A search warrant is a court order and process directing a law enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items and accounting for any items so obtained to the court which issued the warrant.

"**§ 15A-242. Items subject to seizure under a search warrant. —** An item is subject to seizure pursuant to a search warrant if there is probable cause to believe that it:

(1) Is stolen or embezzled; or

(2) Is contraband or otherwise unlawfully possessed; or

(3) Has been used or is possessed for the purpose of being used to commit or conceal the commission of a crime; or

(4) Constitutes evidence of an offense or the identity of a person participating in an offense.

"**§ 15A-243. Who may issue a search warrant. —** (a) A search warrant 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.

(b) Other search warrants may be issued by:

(1) A judge of the district court as provided in G.S. 7A-291.

(2) A clerk as provided in G.S. 7A-180 and 7A-181.

(3) A magistrate as provided in G.S. 7A-273.

"**§ 15A-244. Contents of the application for a search warrant. —** Each application for a search warrant must be made in writing upon oath or affirmation. All applications must contain:

(1) The name and title of the applicant; and

(2) A statement that there is probable cause to believe that items subject to seizure under G.S. 15A-242 may be found in or upon a designated or described place, vehicle, or person; and

(3) Allegations of fact supporting the statement. The statements must be supported by one or more affidavits particularly setting forth the facts and circumstances establishing probable cause to believe that the items are in the places or in the possession of the individuals to be searched; and

(4) A request that the court issue a search warrant directing a search for and the seizure of the items in question.

"**§ 15A-245. Basis for issuance of a search warrant. —** (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.

(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.

"**§ 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.

"**§ 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.

"**§ 15A-248. Time of execution. —** 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.

"**§ 15A-249. Notice of identity and purpose. —** The officer executing a search warrant must, before entering the premises, give appropriate notice of his identity and purpose to the person to be searched, or the person in apparent control of the premises to be searched. If it is unclear whether anyone is present at the premises to be searched, he must give the notice in a manner likely to be heard by anyone who is present.

"**§ 15A-251. Entry by force. —** An officer may break and enter any premises or vehicle when necessary to the execution of the warrant if:

(1) The officer has previously announced his identity and purpose as required by G.S. 15A-249 and reasonably believes either that admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or

(2) The officer has probable cause to believe that the giving of notice would endanger the life or safety of any person.

"**§ 15A-252. Service of a search warrant. —** Before undertaking any search or seizure pursuant to the warrant, the officer must read the warrant and give a copy of the warrant application and affidavit to the person to be searched, or the person in apparent control of the premises or vehicle to be searched. If no one in apparent and responsible control is occupying the premises or vehicle, the officer must leave a copy of the warrant affixed to the premises or vehicle.

"**§ 15A-253. Scope of the search; seizure of items not named in the warrant. —** The scope of the search may be only such as is authorized by the warrant and is reasonably necessary to discover the items specified therein. Upon discovery of the items specified, the officer must take possession or custody of them. If in the course of the search the officer inadvertently discovers items not specified in the warrant which are subject to seizure under G.S. 15A-242, he may also take possession of the items so discovered.

"**§ 15A-254. List of items seized. —** Upon seizing items pursuant to a search warrant, an officer must write and sign a receipt itemizing the items taken and containing the name of the court by which the warrant was issued. If the items were taken from a person, the receipt must be given to the person. If items are taken from a place or vehicle, the receipt must be given to the owner, or person in apparent control of the premises or vehicle if the person is present; or if he is not, the officer must leave the receipt in the premises or vehicle from which the items were taken.

"**§ 15A-255. Frisk of persons present in premises or vehicle to be searched. —** An officer executing a warrant directing a search of premises or of a vehicle may, if the officer reasonably believes that his safety or the safety of others then present so requires, search for any dangerous weapons by an external patting of the clothing of those present. If in the course of such a frisk he feels an object which he reasonably believes to be a dangerous weapon, he may take possession of the object.

"**§ 15A-256. Detention and search of persons present in private premises or vehicle to be searched. —** An officer executing a warrant directing a search of premises not generally open to the public or of a vehicle other than a common carrier may detain any person present for such time as is reasonably necessary to execute the warrant. If the search of such premises or vehicle and of any persons designated as objects of the search in the warrant fails to produce the items named in the warrant, the officer may then search any person present at the time of the officer's entry to the extent reasonably necessary to find property particularly described in the warrant which may be concealed upon the person, but no property of a different type from that particularly described in the warrant may be seized or may be the basis for prosecution of any person so searched. For the purpose of this section, all controlled substances are the same type of property.

"**§ 15A-257. Return of the executed warrant —** An officer who has executed a search warrant must, without unnecessary delay, return to the clerk of the issuing court the warrant together with a written inventory of items seized. The inventory, if any, and return must be signed and sworn to by the officer who executed the warrant.

"**§ 15A-258. Disposition of seized property. —** Property seized shall be held in the custody of the person who applied for the warrant, or of the officer who executed it, or of the agency or department by which the officer is employed, or of any other law enforcement agency or person for purposes of evaluation or analysis, upon condition that upon order of the court the items may be retained by the court or delivered to another court.

"**§ 15A-259. Application of Article to all warrants; exception as to inspection warrants and special riot situations. —** The requirements of this Article apply to search warrants issued for any purpose, except that the contents of and procedure relating to inspection warrants are to be governed by the provisions of Article 4 A of Chapter 15 and warrants to inspect vehicles in riot areas or approaching municipalities during emergencies are subject to the special

procedures set out in G.S. 14-288.11. Nothing in this Article is intended to alter or affect the emergency search doctrine.

"Article 12.

(Reserved for future codification)

"Article 13.

(Reserved for future codification)

"Article 14.

"Nontestimonial Identification.

"**§ 15A-271. Authority to issue order. —** A nontestimonial identification order authorized by this Article may be issued by any judge upon request of a solicitor. As used in this Article, 'nontestimonial identification' means identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or similar identification procedures requiring the presence of a suspect.

"**§ 15A-272. Time of application. —** A request for a nontestimonial identification order may be made prior to the arrest of a suspect or after arrest and prior to trial. Nothing in this Article shall preclude such additional investigative procedures as are otherwise permitted by law.

"**§ 15A-273. Basis for order. —** An order may issue only on an affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

(1) That there is probable cause to believe that an offense punishable by imprisonment for more than one year has been committed;

(2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense; and

(3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense.

"**§ 15A-274. Issuance. —** Upon a showing that the grounds specified in G.S. 15A-273 exist, the judge may issue an order requiring the person named or described with reasonable certainty in the affidavit to appear at a designated time and place and to submit to designated nontestimonial identification procedures. Unless the nature of the evidence sought makes it likely that delay will adversely affect its probative value, the order must be served at least 72 hours before the time designated for the nontestimonial identification procedures.

"**§ 15A-275. Modification of order. —** At the request of a person ordered to appear, the judge may modify the order with respect to time and place of appearance whenever it appears reasonable under the circumstances to do so.

"**§ 15A-276. Failure to appear. —** Any person who fails without adequate excuse to obey an order to appear served upon him pursuant to this Article may be held in contempt of the court which issued the order.

"**§ 15A-277. Service of order. —** An order to appear pursuant to this Article may be served by a law enforcement officer. The order must be served upon the person named or described in the affidavit by delivery of a copy to him personally. The order must be served at least 72 hours in advance of the time of compliance, unless the judge issuing the order has determined, in accordance with G.S. 15A-274, that delay will adversely affect the probative value of the evidence sought.

"**§ 15A-278. Contents of order. —** An order to appear must be signed by the judge and must state:

(1) That the presence of the person named or described in the affidavit is required for the purpose of permitting nontestimonial identification procedures in order to aid in the investigation of the offense specified therein;

(2) The time and place of the required appearance;

(3) The nontestimonial identification procedures to be conducted, the methods to be used, and the approximate length of time such procedures will require;

(4) The grounds to suspect that the person named or described in the affidavit committed the offense specified therein;

(5) That the person is entitled to be represented by counsel at the procedure, and to the appointment of counsel if he cannot afford to retain one;

(6) That the person will not be subjected to any interrogation or asked to make any statement during the period of his appearance except that required for voice identification;

(7) That the person may request the judge to make a reasonable modification of the order with respect to time and place of appearance, including a request to have any nontestimonial identification procedure other than a lineup conducted at his place of residence; and

(8) That the person, if he fails to appear, may be held in contempt of court.

"**§ 15A-279. Implementation of order. —** (a) Nontestimonial identification procedures may be conducted by any law enforcement officer or other person designated by the judge issuing the order. The extraction of any bodily fluid must be conducted by a qualified member of the health professions and the judge may require medical supervision for any other test ordered pursuant to this Article when he considers such supervision necessary.

(b) In conducting authorized identification procedures, no unreasonable or unnecessary force may be used.

(c) No person who appears under an order of appearance issued under this Article may be detained longer than is reasonably necessary to conduct the specified nontestimonial identification procedures, and in no event for longer than six hours, unless he is arrested for an offense.

(d) Any such person is entitled to have counsel present and must be advised prior to being subjected to any nontestimonial identification procedures of his right to have counsel present during any nontestimonial identification procedure and to the appointment of counsel if he cannot afford to retain counsel. No statement made during nontestimonial identification procedures by the subject of the procedures shall be admissible in any criminal proceeding against him, unless his counsel was present at the time the statement was made.

(e) Any person who resists compliance with the authorized nontestimonial identification procedures may be held in contempt of the court which issued the order.

"**§ 15A-280. Return. —** Within 90 days after the nontestimonial identification procedure, a return must be made to the judge who issued the order or to a judge designated in the order setting forth an inventory of the products of the nontestimonial identification procedures obtained from the person named in the affidavit. If, at the time of the return, probable cause does not exist to believe that the person has committed the offense named in the affidavit or any other offense, the person named in the affidavit is entitled to move that the authorized judge issue an order directing that the products and reports of the nontestimonial identification procedures, and all copies thereof, be destroyed. The motion must, except for good cause shown, be granted.

"**§ 15A-281. Nontestimonial identification order at request of defendant. —** A person arrested for or charged with an offense punishable by imprisonment for more than one year 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.

"**§ 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.

"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.

"**SUBCHAPTER 3.**

"CRIMINAL PROCESS.

"Article 17.

"Criminal Process.

"**§ 15A-301. Criminal process; generally. —** (a) Formal Requirements.

(1) A copy of each criminal process issued in the trial division of the General Court of Justice must be filed in the office of the clerk.
(2) Criminal process, other than a citation, must be signed and dated by the justice, judge, magistrate, or clerk 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. The citation must be directed to the person cited to appear.

(c) Service.

(1) A law enforcement officer receiving criminal process for service or execution must note thereon the date of its receipt. 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 who serves or executes criminal process must enter the date of the service or execution on the process and return it to the clerk of court in the county in which issued.
(2) If criminal process is not served or executed within the number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with the reason for the failure of service or execution noted thereon.
    a. Warrant for arrest-90 days.
    b. Order for arrest-90 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 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 is made may redeliver the process to a law enforcement officer for further attempts at service.

(e) Copies to be Made by Clerk.

(1) The clerk may make a certified copy of any criminal process 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.

(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.

(f) Protection of Officer. An officer receiving criminal process which is complete and regular on its face may execute 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.

"**§ 15A-302. Citation. —** (a) Definition. A citation is a directive, issued by a law enforcement officer, that a person appear in court and answer criminal charges.

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

(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 must be delivered to the person cited who must sign a receipt on the original, which the officer must file with the clerk.

(e) Dismissal by Solicitor. If the solicitor finds that no crime 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; Enforcement of Citation in Motor Vehicle Offenses.

(1) A criminal summons or a warrant may issue, notwithstanding the prior issuance of a citation for the same offense.

(2) Suspension of the driving privilege of a person who fails to appear when cited for a violation of the motor vehicle laws is as provided in G.S. 20-16.4.

(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).

"**§ 15A-303. Criminal summons. —** (a) Definition. A criminal summons consists of a statement of the crime 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. The criminal summons must contain a statement of the crime 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.

(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.

(e) Enforcement.

(1) 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) 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 wilfully fails to appear as directed may be punished for contempt as provided in G.S. 5-1.

(4) A person served with a criminal summons for a violation of the motor vehicle laws who fails to appear is subject to suspension of his driving privilege pursuant to G.S. 20-16.4.

(f) Who May Issue. A criminal summons may be issued by any person authorized to issue warrants for arrest.

"**§ 15A-304. Warrant for arrest. —** (a) Definition. A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused, and an order directing that the person so accused be arrested and held to answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

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

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

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

(1) Affidavit,

(2) Oral testimony under oath or affirmation before the issuing official. If the information is insufficient to show probable cause, the warrant may not be issued.

(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.

"**§ 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.
(4) A defendant has violated the conditions of probation or suspension of his sentence.
(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.

(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.

"Articles 18 and 19.

(Reserved for future codification)

"**SUBCHAPTER 4.**

"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.

(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 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.

(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,

(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 for the arrest of a person or 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.

"**§ 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.

(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).

"**§ 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.

"**§ 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.

"**§ 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) To be treated as a citizen duly deputized as a deputy by a sheriff or other law enforcement officer in an emergency for the purposes of G.S. 143-166(m) (Law Enforcement Officers' Benefit and Retirement Fund);
(2) Entitled to the same benefits as a 'law enforcement officer' as that term is defined in G.S. 143-166.2(4) (Law Enforcement Officers' 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) (Workmen's 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 subdivisions (1) and (3) when no other source is available for the payment of such benefits and when they determine that such allocation is necessary and appropriate.

"Articles 21 and 22.

(Reserved for future codification)

"**SUBCHAPTER 5.**

"CUSTODY.

"Article 23.

"Police Processing and Duties Upon Arrest.

"**§ 15A-501. Police processing and duties upon arrest. —** 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.

(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 of 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.

"**§ 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.

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a misdemeanor under Chapter 20 of the General Statutes, 'Motor Vehicles', for which the penalty authorized does not exceed a fine of five hundred dollars ($500.00), imprisonment for six months, or both.

(c) This section does not authorize the taking of photographs or fingerprints of a 'child' as defined in G.S. 7A-278, unless the case has been transferred to the Superior Court Division pursuant to G.S. 7A-280.

(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) may be forwarded to the State Bureau of Investigation, the Federal Bureau of Investigation, or other law enforcement agencies.

"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 statement of the crime with which the defendant is charged.

(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 pretrial release.

(c) Procedure When Arrest is Without Warrant; Magistrate's Order. If the person has been arrested 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.

"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.

(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,

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 him.

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 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.

(3) Upon releasing the prisoner pursuant to the terms of the order, or upon delivering the prisoner to the court, the jailer must note the time and date on the order and return it to the clerk.

(4) When a judicial official issues an order of commitment, or an order supplemental to an order of commitment, a copy must be filed in the office of the clerk. The clerk must keep the copy separately available until the original order or supplemental order is returned to him, at which time both may be placed in the case file. Upon a change of venue the copies must be transmitted with the other papers in the case.

(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.

"Article 26.

"Bail.

"**§ 15A-531. Definitions. —** As used in this Article the following definitions apply unless the context clearly requires otherwise:

(1) Bail Bond. An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 109-25, and an appearance bond secured by at least one solvent surety.

(2) Obligor. A principal or a surety on a bail bond.

(3) Principal. A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(4) Surety. One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

"**§ 15A-532. Persons authorized to determine conditions for release. —** Judicial officials may determine conditions for release of persons brought before them, in accordance with this Article.

"**§ 15A-533. Right to pretrial release in capital and noncapital cases. —** (a) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(b) 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.

"**§ 15A-534. Procedure for determining conditions of pretrial release. —** (a) In determining conditions of pretrial release a judicial official must impose 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. 109-25, or by at least one solvent surety.

If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If a judicial official orders release of a defendant under conditions (1), (2), or (3), he may also place restrictions on the travel, associations, conduct, or place of abode of the defendant.

(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) in subsection(a) above instead of condition (1), (2), or (3).

(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; 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.

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the initial appearance before the district court judge. At or after such initial 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(b); or
(4) Prayer for judgment has been continued indefinitely in the district court.

"**§ 15A-535. Issuance of policies on pretrial release. —** Subject to the provisions of this Article, the senior resident superior court judge of each judicial district in consultation with the chief district court judge must devise and issue recommended policies to be followed within the district in determining whether, and upon what conditions, a defendant may be released before trial.

"**§ 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 judicial district, 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.

"**§ 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, or in the absence of a judicial official, the sheriff or any law enforcement officer having custody must effect the release of the person upon the official's satisfying himself that the conditions of release, if any, have been met. In no event shall there be civil liability to any judicial official, sheriff, or law enforcement officer for his actions in good faith pursuant to this subsection.

(b) A sheriff or other officer having custody of any person who has been imprisoned because of failure to meet conditions (3) or (4) of G.S. 15A-534(a) must release him upon determination that the conditions imposed by the judicial official authorizing release have been met. Any surety bond taken by the officer is to be regarded in every respect as any other bail bond. Upon the release of the person in question, the officer must file a return and with it the bond, deposit, or mortgage, if any, with the clerk.

(c) For the limited purposes of this section, any officer acting under the authority of this section may administer oaths to sureties and take other actions necessary in carrying out the duties imposed by this section.

"**§ 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 solicitor under the provisions of G.S. 15A-539.

"**§ 15A-539. Modification upon motion of solicitor. —** A solicitor 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.

"**§ 15A-540. Surrender of a principal by a surety, setting new conditions of release. —** (a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to appear. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of which must be filed with the clerk. Upon application by the surety after the surrender of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate him from his bond.

(b) A principal surrendered by his surety is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.

"**§ 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 misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both.

"**§ 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 misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both.

"**§ 15A-543. Penalties for failure to appear. —** (a) In addition to forfeiture imposed under G.S. 15A-544, any person released pursuant to this Article who wilfully 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 felony punishable by a fine not to exceed three thousand dollars ($3,000), imprisonment for not more than three years, or both, 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 misdemeanor punishable

by a fine not to exceed five hundred dollars ($500.00), imprisonment not to exceed six months, or both.

"**§ 15A-544. Forfeiture. —** (a) By entering into a bail bond the obligor submits himself to the jurisdiction of the court and irrevocably appoints the clerk as his agent for any proceedings with reference to the bond. His liability may be enforced on motion without the necessity of an independent action.

(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after 30 days must be served on each obligor. Service is to be made by the sheriff by delivery of the order and notice to him or by delivery at his dwelling house or place of abode with some person of suitable age and discretion residing therein. If the sheriff is unable to effect service because an obligor cannot be found or has no dwelling house or place of abode known to the sheriff, he must file a return to this effect; the clerk must then mail a copy of the order of forfeiture and notice to the obligor at his address of record and note on the original the date of mailing. Service is complete three days after the mailing.

(c) If the principal does not appear before the court having jurisdiction within 30 days of the date of service, or on the first day of the next session of court commencing more than 30 days after the date of service, and satisfy the court that his appearance on the date set was impossible or that his failure to appear was without his fault, the court must enter judgment for the State against the principal and his sureties for the amount of the bail and the costs of the proceedings. If the principal appears within the time allowed following the date of service and satisfies the court that his appearance on the date set was impossible or that his failure to appear was without his fault, the order of forfeiture must be set aside. If the principal appears but is unable to satisfy the court that his appearance on the date set was impossible or that his failure to appear was without his fault, but the court determines that justice does not require the forfeiture of the full amount of the bond, the court may enter judgment in an amount it considers appropriate.

(d) To facilitate the procedure under this section, the clerk in each county must present a forfeiture roll at the first session of superior court commencing more than 30 days after the entry of any order of forfeiture in either the district or superior court. The forfeiture roll must list the names of all principals as to which forfeiture has been ordered in the county in the past three years and as to which judgments of forfeiture against obligors have not been entered or, if entered, not yet satisfied by execution. In addition, the forfeiture roll must show the amount of the bond ordered forfeited in each case and the names of all sureties liable on each bond.

(e) At any time within 90 days after entry of the judgment against a principal or his surety, or on the first day of the next session of court commencing more than 90 days after the entry of the judgment, the court may direct that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment.

(f) If a judgment has not been remitted within the period provided in subsection (e) above, the clerk must issue execution on the judgment within 30 days, and remit the clear proceeds to the county for use in maintaining free public schools. Any clerk who fails to perform his duty as required in this subsection is subject to a penalty of five hundred dollars ($500.00).

(g) If a return of execution upon a judgment against an obligor remains unsatisfied for 10 days, the obligor may not become surety on any bail bond in the judicial district so long as the judgment remains unsatisfied.

(h) For extraordinary cause shown, the court which has entered judgment upon a forfeiture of a bond may, after execution, remit the judgment in whole or in part and order the clerk to refund such amounts as the court considers appropriate. Any person moving for

remission of judgment must do so by verified petition, and a copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing on the motion. The moving party must notify the attorney for the school board of the time and place of the hearing, and such attorney, if he so desires, must be given an opportunity to appear and be heard. If money has been paid to the county pursuant to execution on a judgment of forfeiture, it must refund to the person entitled the amount of any remission granted under the terms of this subsection upon receipt of a certified copy of the judgment of remission from the clerk.

"**§ 15A-546. Contempt. —** Nothing in this Article is intended to interfere with or prevent the exercise by the court of its contempt powers.

"**§ 15A-547. Right to habeas corpus. —** Nothing in this Article is intended to abridge the right of habeas corpus.

"Articles 27 and 28.

(Reserved for future codification)

"**SUBCHAPTER 6.**

"PRELIMINARY PROCEEDINGS.

"Article 29.

"First Appearance Before District Court Judge.

"**§ 15A-601. First appearance before a district court judge; right in felony and other cases in original jurisdiction of superior court; consolidation of first appearance before magistrate and before district court judge. —** (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 judicial district 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.

(b) When a district court judge conducts an initial appearance as provided in G.S. 15A-511, he may consolidate those proceedings and the proceedings under this Article.

(c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, 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, within 96 hours after being taken into custody, first appearance must be held at the next session of district court held in the county. With the consent of the defendant and the solicitor, it may be continued for not more than seven additional days, or until the next session of district court, whichever period is greater. 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.

"**§ 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.

"**§ 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.

(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 7 A 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.

"**§ 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 a criminal offense within the original jurisdiction of the superior 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, he must notify the solicitor 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) With the consent of the solicitor, set the case for trial in the district court if the charge is found to be within the original jurisdiction of the district court.

"**§ 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.

"**§ 15A-606. Demand or waiver of probable cause hearing. —** (a) The judge must schedule a probable cause hearing unless the defendant waives in writing his 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 his right to a probable cause hearing without the written consent of the defendant and his 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 solicitor.

(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.

"Article 30.

"Probable Cause Hearing.

"**§ 15A-611. Probable cause hearing; procedure. —** (a) At the probable cause hearing:

(1) A solicitor 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.

"**§ 15A-612. Probable cause hearing; disposition of charge. —** (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 warrant or information, 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.

"**§ 15A-613. Probable cause hearing; 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 solicitor; or

(2) Proceed to try the offense immediately, with the consent of both the defendant and the solicitor.

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.

"**§ 15A-614. Probable cause hearing, 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.

"Article 31.

"The Grand Jury and Its Proceedings.

"**§ 15A-621. Grand jury; definition. —** 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.

"**§ 15A-622. Formation and organization of grand jury; 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.

(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.

(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 solicitor or upon his own motion, order the grand jury reconvened for the purpose of dealing with a matter requiring grand jury action.

"**§ 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.

"**§ 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.

"**§ 15A-626. Who may call witnesses before grand jury, no right to appear without consent of solicitor 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 solicitor to the grand jury, the clerk must call as witnesses the persons whose names are listed on the bills by the solicitor. If the grand jury desires to hear any witness not named on the bill under consideration, it must through its foreman request the solicitor to call the witness. The solicitor 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 solicitor or to a superior court judge. The judge or the district solicitor 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.

"**§ 15A-627. Submission of bill of indictment to grand jury by solicitor. —** (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 solicitor, 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 solicitor may submit a bill of indictment charging an offense within the original jurisdiction of the superior court.

"**§ 15A-628. Functions of the grand jury.—** (a) A grand jury:

(1) Must return a bill submitted to it by the solicitor 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 solicitor 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 solicitor 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 solicitor 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 solicitor.

(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 judicial district when there has been a waiver of venue in accordance with Article 3 of this Chapter, Venue.

(c) Bills of indictment submitted by the solicitor 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.

"**§ 15A-629. Grand jury procedure upon finding of not a true bill; dismissal of charge; release of defendant; restrictions upon further prosecution. —** (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 solicitor 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.

"**§ 15A-630. Service of notice upon defendant required when grand jury returns true bill of indictment. —** (a) Except as provided in subsection (b) and (c), upon the return of a bill of indictment as a true bill the presiding judge must immediately cause notice of the indictment to be served upon the defendant. 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.

(b) The provisions of subsection (a) do not apply if;

(1) The defendant was afforded or waived a probable cause hearing authorized under Article 30 of this Chapter, Probable Cause Hearing, on the charge in the indictment;

(2) The defendant was represented by counsel of record, under Article 4 of this Chapter, Entry and Withdrawal of Attorney in Criminal Case, at the time the probable cause hearing was held or waived; and

(3) The defendant is still represented by counsel of record at the time the indictment is returned.

"Article 32.

"Indictment and Related Instruments.

"**§ 15A-641. Indictment and related instruments; definition of indictment, information, and presentment. —** (a) An 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 solicitor, 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 solicitor 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.

"**§ 15A-642. 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.

"**§ 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.

"**§ 15A-644. Form and content of indictments and information. —** (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 solicitor, 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 solicitor 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.

"**§ 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.

"**§ 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.

"Articles 33 and 34.

(Reserved for future codification)

"**SUBCHAPTER 7.**

"SPEEDY TRIAL; ATTENDANCE OF WITNESSES.

"Article 35.

"Speedy Trial.

"**§ 15A-701. Policy of appropriate promptness. —** It is the policy of this State to minimize undue delay and to further the prompt disposition of criminal cases. The powers granted by this Article should be used to pursue this policy.

"**§ 15A-702. Speedy trial for defendants. —** (a) A superior court judge presiding over a mixed or criminal session may order prompt trial as provided in subsection (b) for a defendant charged with an offense within the original jurisdiction of the superior court or a misdemeanor docketed in superior court for trial de novo. A district court judge may order prompt trial as provided in subsection (b) for any person charged with a misdemeanor pending in district court.

(b) A judge authorized by subsection (a) to order a defendant's prompt trial may order the defendant's case brought to trial or disposed of within a period not less than 30 days, determined by the judge, when:

(1) The venue of the defendant's case lies in the county in which the judge is presiding and the defendant has been confined awaiting trial of that case for a period greater than 60 days; or

(2) The defendant has been confined awaiting trial for a period greater than 30 days and files with the judge a petition requesting prompt trial, as authorized by G.S. 15A-703; or

(3) The venue of the defendant's case lies in the county in which the judge is presiding and the defendant has been awaiting trial for a period greater than 90 days; or

(4) The defendant has been awaiting trial for a period greater than 60 days and files a petition with the judge requesting prompt trial, as authorized by G.S. 15A-703.

The judge's order may provide that, if the case is not brought to trial or disposed of within the period specified by his order, the defendant must be released upon his own recognizance or the charges against the defendant must be dismissed with prejudice.

(c) The period of a defendant's awaiting trial or of confinement awaiting trial commences to run upon a date determined according to the provisions of G.S. 15A-705 and excludes those periods specified in G.S. 15A-706.

"**§ 15A-703. Petition for speedy trial. —** (a) A defendant may file a petition for prompt trial of his case when:

(1) He has been confined awaiting trial of that case for a period more than 30 days; or

(2) He has been awaiting trial for a period greater than 60 days.

(b) The defendant must file the petition for prompt trial with a judge authorized by G.S. 15A-702(a) to order prompt trial of his case and presiding in the county in which venue of his case lies, or, in the event that no such judge is presiding in that county, in the judicial district embracing the county in which venue lies.

"**§ 15A-704. Consequences to defendant of petition for speedy trial —** A defendant who files a petition for prompt trial, as authorized by G.S. 15A-703, accepts venue anywhere within the judicial district and may not continue or delay his case except on the basis of matters which arise after he files the petition and which he or his counsel could not have reasonably anticipated. The defendant may withdraw the petition for prompt trial only on order of the court, for good cause shown or with consent of the State.

"**§ 15A-705. When period of awaiting trial or confinement begins. —** (a) A defendant commences his period of confinement awaiting trial on the latest of the following:

(1) The date he is first confined awaiting trial on that charge; or

(2) The date he is reconfined after his escape from confinement awaiting trial on that charge; or

(3) The date of his confinement awaiting trial on that charge following a mistrial, order for a new trial, remand for a new trial upon that charge, or notice of appeal for trial de novo.

(b) A defendant commences his period of awaiting trial on a charge on the latest of the following:

(1) In misdemeanor cases, the date that the criminal pleading is served upon the defendant, and in felony cases, the later of the service of criminal process or the return of a bill of indictment; or

(2) The date of a mistrial, order for a new trial, remand for a new trial upon that charge, or notice of appeal for trial de novo.

(c) The charge for which a person is awaiting trial includes the charge upon which he is to be tried and any other charge with which it may be joined under the provisions of G.S. 15A-926.

"**§ 15A-706. Excluded periods. —** (a) The period of awaiting trial or confinement awaiting trial does not include periods of delay resulting from other proceedings concerning the

defendant, from the absence or unavailability of the defendant, or from the defendant's incapacity to proceed.

(b) The period of confinement awaiting trial does not include periods during which the defendant is released under Article 26 of this Chapter, Bail.

"Article 36.

"Special Criminal Process for Attendance of Defendants.

"**§ 15A-711. Securing Attendance of Criminal defendants confined in institutions within the State; requiring solicitor 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 solicitor 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 solicitor 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 judicial district, the defendant and the solicitor 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 district 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 solicitor prosecuting such charges to proceed pursuant to this section. A copy of the request must be served upon the solicitor in the manner provided by the Rules of Civil Procedure, G.S. 1A-1, Rule 5(b). If the solicitor 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 solicitor, 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) and his right to a speedy trial pursuant to Article 35 of this Chapter, Speedy Trial.

(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) and his right to a speedy trial under Article 35 of this Chapter, Speedy Trial.

(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 solicitor, and the clerk must notify the custodian, who must notify the defendant.

"Article 37.

"Uniform Criminal Extradition Act.
"Article 38.
"Interstate Agreement on Detainers.
"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 solicitor, 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.

"**§ 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 solicitor 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 solicitor'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 solicitor'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.

"**§ 15A-773. Corporate defendants; securing attendance; appearance. —** (a) The court attendance of a corporation for purposes of commencing or prosecuting a criminal action against it may be accomplished by the issuance and service of a criminal summons. The criminal summons must be directed to the corporation, and must be served upon the corporation by delivery thereof to an officer, director, managing or general agent, cashier or

assistant cashier of such corporation, or to any other agent of such corporation authorized by appointment or by law to receive service of process.

(b) At all stages of a criminal action, a corporate defendant may appear by counsel or agent having authority to transact the business of the corporation.

"Articles 40 and 41.

(Reserved for future codification)

"**SUBCHAPTER 8.**

"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. 1-1A.

"**§ 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. 1-1A.

"**§ 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. 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.

"**§ 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.

"**§ 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 solicitor 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.

"Article 43.

"Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings.

"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 State Department of 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 judicial district 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.

"**§ 15A-822. Securing attendance of prisoner outside the State as witness in criminal action or 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.

"**§ 15A-823. Securing attendance of prisoner in federal institution as witness in criminal action 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.

"Article 45.

"Depositions.

(Reserved for future codification)

"Articles 46 and 47.

(Reserved for future codification)

"**SUBCHAPTER 9.**

"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.

"**§ 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. 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, 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, he may as a matter of right request voluntary discovery from the State under subsection (a) above not later than the tenth working day after either the probable cause hearing or the date he 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 he has been afforded or waived a probable cause hearing, he may as a matter of right request voluntary discovery from the State under subsection (a) above not later than the tenth working day after

(1) the defendant's consent to be tried upon a bill of information, or the service of notice upon him that a true bill of indictment has been found by the grand jury, or

(2) the appointment of counsel — whichever is later.

For the purposes of this subsection a defendant is represented by counsel only if counsel was retained by or appointed for him prior to or during a probable cause hearing or prior to execution by him 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.

"**§ 15A-903. Disclosure of evidence by the State; information subject to disclosure. —** (a) Statement of Defendant. Upon motion of a defendant, the court must order the solicitor:

(1) To permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the State the existence of which is known or by the exercise of due diligence may become known to the solicitor; and

(2) To divulge, in written or recorded form, the substance of any oral statement made by the defendant which the State intends to offer in evidence at the trial.

(b) Statement of a co-defendant. Upon motion of a defendant, the court must order the solicitor:

(1) To permit the defendant to inspect and copy or photograph any written or recorded statement of a co-defendant which the State intends to offer in evidence at their joint trial; and

(2) To divulge, in written or recorded form, the substance of any oral statement made by a co-defendant which the State intends to offer in evidence at their joint trial.

(c) Defendant's Prior Record. Upon motion of the defendant, the court must order the State to furnish to the defendant a copy of his prior criminal record, if any, as is available to the solicitor.

(d) Documents and Tangible Objects. Upon motion of the defendant, the court must order the solicitor to permit the defendant 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 State and which are material to the preparation of his defense, are intended for use by the State as evidence at the trial, or were obtained from or belong to the defendant.

(e) Reports of Examinations and Tests. Upon motion of a defendant, the court must order the solicitor to provide a copy of or to permit the defendant 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, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the solicitor. In addition, upon motion of a defendant, the court must order the solicitor to permit the defendant to inspect, examine, and test, subject to appropriate safeguards, any physical evidence, or a sample of it, available to the solicitor if the State intends to offer the evidence, or tests or experiments made in connection with the evidence, as an exhibit or evidence in the case.

"**§ 15A-904. Disclosure of evidence by the State; certain reports not subject to disclosure. —** (a) Except as provided in G.S. 15A-903(a), (b), (c) and (e), this Article does not require the production of reports, memoranda, or other internal documents made by the solicitor, law enforcement officers, or other persons acting on behalf of the State in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective witnesses of the State to anyone acting on behalf of the State.

(b) Nothing in this section prohibits a solicitor from making voluntary disclosures in the interests of justice.

"**§ 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(d), 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(e), 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 a solicitor, the court must order the defendant to permit the solicitor 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.

"**§ 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.

"**§ 15A-907. Continuing duty to disclose. —** If a party, subject to compliance with an order issued pursuant to this Article, discovers prior to or during trial additional evidence or decides to use additional evidence, and the evidence is or may be subject to discovery or inspection under this Article, he must promptly notify the attorney for the other party of the existence of the additional evidence or the name of each additional witness.

"**§ 15A-908. Regulation of discovery, protective orders. —** (a) Upon written motion of a party and a finding of good cause, the court may at any time order that discovery or inspection be denied, restricted, or deferred, or may make other appropriate orders.

(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.

"**§ 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.

"**§ 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
(4) Enter other appropriate orders.

(b) If a party calls a witness other than a rebuttal witness without first having given notice to the other party of the name of the witness as required in this Article, upon motion of the aggrieved party, the court must either:

(1) Prohibit the party from eliciting testimony from the witness, or
(2) Recess the case for such time as the court deems necessary for the aggrieved party to prepare to cross-examine the witness effectively, or
(3) Subject to the provisions of subsection (c), grant a mistrial.

(c) The court may grant a mistrial as provided in subsection (b)(3) above only with the consent of the defendant or upon his motion. Otherwise, the granting of the mistrial is in the discretion of the court under applicable rules of law.

"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(c) after arrest without warrant.
(5) Statement of charges.
(6) Information.
(7) Indictment.

"**§ 15A-922. Use of pleadings in misdemeanor cases. —** (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 solicitor 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 solicitor 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 solicitor is permitted to file a statement of charges pursuant to subsection (e), the order of the judge must allow the solicitor 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 solicitor 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 Solicitor. The solicitor 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 solicitor 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, 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 or 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.

"**§ 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.

"**§ 15A-924. Contents of pleadings. —** (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.

(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.

"**§ 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.

"**§ 15A-926. Joinder of offenses and defendants—** (a) Joinder of Offenses. Two or more offenses may be joined in one pleading 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 solicitor, 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 solicitor 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 solicitor 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.

"**§ 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 solicitor 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 solicitor 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 solicitor 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 co-defendant makes reference to him but is not admissible against him, the court must require the solicitor 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 solicitor, 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 solicitor 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 solicitor 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 solicitor.

"**§ 15A-928. Allegations of previous convictions prohibited —** (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 solicitor'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.

"Article 50.

"Voluntary Dismissal.

"**§ 15A-931. Voluntary dismissal of criminal charges by the State. —** (a) The solicitor may dismiss any charges stated in a criminal pleading 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 solicitor and note in the case file whether a jury has been impaneled or evidence has been introduced.

(b) No statute of limitations is tolled by charges which have been dismissed pursuant to this section.

"Article 51.

"Arraignment.

"**§ 15A-941. Arraignment before judge. —** Arraignment consists of bringing a defendant in open court before a judge having jurisdiction to try the offense, advising him of the charges pending against him, and directing him to plead. The solicitor must read the charges or fairly summarize them to the defendant. If the defendant fails to plead, the court must record that fact, and the defendant must be tried as if he had pleaded not guilty.

"**§ 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.

"**§ 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 solicitor 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.

"**§ 15A-944. Arraignment in superior court; optional calendaring. —** In counties other than those described in G.S. 15A-943 the solicitor may, but is not required to, calendar arraignments in the manner described in that section.

"**§ 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.

"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 may be made by delivering a copy of the motion to him or by mailing it to him at his address of record. Delivery of a copy within the meaning of this Article means handing it to the attorney or to the party or leaving it at the attorney's office with an associate or employee. Service by mail is complete upon deposit of the motion enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the Postal Service of the United States.

(c) All written motions must be filed with the court. Proof of service must be made by filing with the court a certificate:

(1) By the solicitor, attorney, or defendant making the motion that the paper was served in the manner prescribed; or

(2) Of acceptance of service by the solicitor, attorney, or defendant to be served.

The certificate must show the date and method of service or the date of acceptance of service.

"**§ 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 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.

(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.

"**§ 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.

"**§ 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 anytime.

"**§ 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.

"**§ 15A-956. Deferral of ruling on motion to dismiss when charge to be reinstituted. —** If a motion to dismiss is made at arraignment or trial, upon motion of the solicitor the court may recess the proceedings for a period of time requested by the solicitor, not to exceed 24 hours, prior to ruling upon the motion.

"**§ 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 judicial district or to another county in an adjoining judicial district, 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.

"**§ 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.

"**§ 15A-959. Notice of defense of insanity. —** (a) If a defendant intends to raise the defense of insanity, he must within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of his intention to rely on the defense of insanity. 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) If a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he must within the time provided for the filing of pretrial motions under G.S. 15A-952(b) 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.

"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 solicitor, 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.

"**§ 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.

"**§ 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 solicitor and the district court judge, the motion may be heard prior to trial.

"**§ 15A-974. Exclusion or suppression of unlawfully obtained evidence. —** 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 wilful;

d. The extent to which exclusion will tend to deter future violations of this Chapter.

"**§ 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.

"**§ 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.

"**§ 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.

"**§ 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.

"**§ 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 solicitor 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.

(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.

"Articles 54 and 55.

(Reserved for future codification)

"**SUBCHAPTER 10.**

"TRIAL.

"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.

"**§ 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 by the solicitor, the defendant, the defense counsel, or the court on its own motion.

(b) When the capacity of the defendant to proceed is questioned, the court:

(1) May appoint one or more impartial medical experts 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 and the court may call any expert so appointed to testify at the hearing. In addition, any expert so appointed may be called to testify at the hearing by the court at the request of either party.

(2) May commit the defendant to a State mental health facility for observation and treatment for the period necessary to determine the defendant's capacity to proceed. In no event may the period exceed 60 days. The superintendent of the facility must direct his report on defendant's condition to the defense

attorney and to the clerk of superior court, who must bring it to the attention of the court. The report is admissible at the hearing.

a. If the report indicates that the defendant lacks capacity to proceed, proceedings for judicial hospitalization may be instituted on the basis of the report in either the county where the criminal proceedings are pending or in the county in which the defendant is hospitalized.

b. If the report indicates that the defendant has capacity to proceed, the clerk must direct the sheriff to return him to the county.

(3) Must hold a hearing to determine the defendant's capacity to proceed.

If examination is ordered pursuant to subdivision (1) or (2), the hearing must be held after the examination. Reasonable notice must be given to the defendant and to the solicitor and the State and the defendant may introduce evidence.

(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.

"**§ 15A-1003. Referral of incapable defendant for civil commitment proceedings. —** (a) If a defendant is found to be incapable of proceeding, the court must enter an order directing the initiation of proceedings for judicial hospitalization, and the court's order is a sufficient basis for the initiation of those proceedings.

(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 judicial hospitalization proceedings.

"**§ 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 judicial hospitalization, 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 judicial hospitalization, 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.

(d) If the defendant is placed in the custody of a hospital or institution pursuant to proceedings for judicial hospitalization, 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 annually, 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, 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.

"**§ 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 semi-annually.

"**§ 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, gains capacity to proceed, the individual or institution must notify the clerk in the county in which the criminal proceeding is pending. The clerk must notify the sheriff to return the defendant to the county for trial, and to hold him for trial, subject to the orders of the court entered pursuant to G.S. 15A-1004.

"**§ 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, 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.

"**§ 15A-1008. Dismissal of charges. —** When a defendant lacks capacity to proceed, the court may dismiss the charges:

(1) When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed; or

(2) When the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the maximum permissible period of confinement for the crime or crimes charged; or

(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.

"Article 57.

"Pleas.

"**§ 15A-1011. Pleas. —** (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 when:

(1) The defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer; or

(2) There is a waiver of arraignment and a filing of a written plea of not guilty under G.S. 15A-945; or

(3) In misdemeanor cases there is a written waiver of appearance submitted with the approval of the presiding judge; or

(4) Written pleas in traffic cases are authorized under G.S. 7A-146(8); or

(5) The defendant executes a waiver and plea of not guilty as provided in G.S. 15A-1011(d).

(b) A defendant may plead no contest only with the consent of the solicitor 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 judicial district. A defendant may not enter any plea to crimes charged in another judicial district unless the district solicitor of that district consents in writing to the entry of such plea. The solicitor 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.

(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 solicitor to dismiss the charges, shall be the same as in any other criminal case, except for the absence of defendant.

"**§ 15A-1012. Pleas; 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.

"Article 58.

"Procedures Relating to Guilty Pleas in Superior Court.

"**§ 15A-1021. Plea conference; improper pressure prohibited; submission of arrangement to judge. —** (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 solicitor 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 not 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 solicitor 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 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.

"**§ 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; and
(6) Informing him of the maximum possible sentence on the charge, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge.

(b) By inquiring of the solicitor 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 solicitor.
(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.

"**§ 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 solicitor 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 solicitor 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. A decision by the judge disapproving a plea arrangement is not subject to appeal.

(c) If the parties have entered a plea arrangement relating to the disposition of charges in which the solicitor 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.

"**§ 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.

"**§ 15A-1025. Plea discussion and arrangement inadmissible. —** The fact that the defendant or his counsel and the solicitor 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.

"**§ 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 transcribed. This record must include the judge's advice to the defendant, and his inquiries of the defendant, defense counsel, and the solicitor, 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 solicitor be recorded.

"**§ 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, unless the review is required expressly authorized by G. S. 15-217.

"Articles 59 and 60.

(Reserved for future codification)

"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. No such witness may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled under these provisions to testify or to produce information, nor may testimony or other information so compelled, nor any information or evidence derived therefrom, be used against the witness in any criminal case, except a prosecution for perjury or any other offense arising from a failure to comply with such order.

(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.

"**§ 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 solicitor:

(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 solicitor, 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 solicitor 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.

"**§ 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 solicitor. 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 solicitor has been informed by the foreman of the grand jury that the witness has asserted his privilege against self-incrimination and the district solicitor determines that the testimony or other information is necessary to the public interest. Before making application to the judge, the district solicitor 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.

"**§ 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 solicitor, when the interest of justice requires, may exercise his discretion not to try any suspect for offenses believed to have been committed within the judicial district, 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 solicitor in accordance with the provisions of Article 58 of this Chapter, Procedure Relating to Guilty Pleas in Superior Court.

(c) When a solicitor 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.

"**§ 15A-1055. Evidence of grant of immunity or testimonial arrangement may be fully developed; impact may be argued to the jury. —** (a) Notwithstanding any other rule of evidence to the contrary, any party may examine a witness testifying under a grant of immunity or pursuant to an arrangement under G.S. 15A-1054 with respect to that grant of immunity or arrangement. A party may also introduce evidence or examine other witnesses in corroboration or contradiction of testimony or evidence previously elicited by himself or another party concerning the grant of immunity or arrangement.

(b) A party may argue to the jury with respect to the impact of a grant of immunity or an arrangement under G.S. 15A-1054 upon the credibility of a witness."

Sec. 2. G.S. 5-1 as the same appears in the 1969 Replacement Volume IB of the General Statutes is amended to add a new subdivision (9) to read as follows:

"(9) Refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to Witnesses. Nothing in this subdivision is intended to prevent a proceeding under G.S. 5-8 if there is a continuing need for the testimony or other information."

Sec. 3. G.S. 5-4 as the same appears in the 1969 Replacement Volume 1B of the General Statutes is amended to delete the period at the end of the section and add the following:

", except that the punishment for refusal in violation of G.S. 5-1(9) is a fine not to exceed five hundred dollars ($500.00), imprisonment not to exceed six months, or both, in the discretion of the court."

Sec. 4. G.S. 5-8 is amended by renumbering subdivision (7) as subdivision "(8)", and by inserting the following new subdivision (7):

"(7) Any person served with a criminal summons directing him to appear to answer to criminal charges, who wilfully fails to appear as directed."

Sec. 5. Chapter 7A of the General Statutes is hereby amended by inserting therein a new section, G.S. 7 A- 109.1 to read as follows:

"**§ 7A-109.1. List of jailed defendants furnished to judges. —** (a) The clerk of superior court must furnish to each judge presiding over a criminal court a report listing the name, reason for confinement, period of confinement, and, when appropriate, charge or charges, amount of bail and conditions of release, and next scheduled court appearance of each person listed on the most recent report filed under the provisions of G.S. 153-53.8.

(b) The clerk must file the report with superior court judges presiding over mixed or criminal sessions at the beginning of each session and must file the report with district court judges at each session or weekly, whichever is the less frequent." Sec. 6. G.S. 7 A- 180(6) as the same appears in the 1969 Replacement Volume IB of the General Statutes is amended by inserting in the second line thereof after the words, "set bail," the words "to conduct an initial appearance,".

Sec. 7. G.S. 7A-273 is hereby amended by adding a new subdivision (7) to read as follows:

"(7) To conduct an initial appearance as provided in G.S. 15A-511."

Sec. 8. Article 36 of Chapter 7A of the General Statutes is amended as follows:

(1) G.S. 7A-452 is amended by inserting a new subsection to read:

"(c) (1) The clerk of superior court is authorized to make a determination of indigency and to appoint counsel, as authorized by this Article. The word 'court', as it is used in this Article and in any rules pursuant to this Article, includes the clerk of superior court.

(2) A judge of superior or district court having authority to appoint counsel in a particular case may give directions to the clerk with regard to the appointment of counsel in that case; may, if he finds it appropriate, change or modify the appointment of counsel when counsel has been appointed by the clerk; and may set aside a finding of waiver of counsel made by the clerk."

(2) G.S. 7A-453(b), as the same appears in 1969 Replacement Volume 1B, is hereby amended by striking out the last three sentences thereof.

(3) G.S. 7A-453(c), as the same appears in 1969 Replacement Volume 1B, is hereby amended by striking out the word "section" at the end and inserting in lieu thereof the word "Article".

Sec. 9. Article 9 of Chapter 8, "Attendance of witnesses from without the State", is hereby reenacted and recodified as Article 43 of Chapter 15 A, G.S. 15A-811 through 15A-817.

Sec. 10. Chapter 14 of the General Statutes is hereby amended by adding the following new section G.S. 14-43.1:

"**§ 14-43.1. Unlawful arrest by officers from other states. —** A law enforcement officer of a state other than North Carolina who, knowing that he is in the State of North Carolina and purporting to act by authority of his office, arrests a person in the State of North Carolina, other than as is permitted by G.S. 15A-403, is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars ($500.00), imprisonment for not more than six months, or both."

Sec. 11. (a) Chapter 14 of the General Statutes is amended by inserting therein the following new section G.S. 14-277.1:

"**§ 14-277.1. Communicating threats. —** (a) A person is guilty of a misdemeanor if without lawful authority:

(1) He wilfully threatens to physically injure the person or damage the property of another;

(2) The threat is communicated to the other person, orally, in writing, or by any other means;

(3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and

(4) The person threatened believes that the threat will be carried out.

(b) A violation of this section is punishable by a fine of not more than five hundred dollars ($500.00), imprisonment of not more than six months, or both."

(b) Article 5 of Chapter 15 of the General Statutes, "Peace Warrants", is repealed.

(c) G.S. 7A-291(5) is amended by striking out the words "peace and".

(d) G.S. 8-57 is amended by inserting immediately after the words, "assault upon the other spouse," the words, "all criminal prosecutions of a spouse for communicating a threat to the other spouse,".

(e) G.S. 8-58 is hereby repealed.

Sec. 12. G.S. Chapter 15 is amended by inserting therein a new Article, Article 17 A, to read as follows:

"Article 17 A.

"Informing Jury in Case Involving Death Penalty.

"**§ 15-176.3. Informing and questioning potential jurors on consequences of guilty verdict. —** When a jury is being selected for a case in which the defendant is indicted for a crime for which the penalty is a sentence of death, the court, the defense, or the State may inform any person called to serve as a potential juror that the death penalty will be imposed upon the return of a verdict of guilty of that crime and may inquire of any person called to serve as a potential juror whether that person understands the consequences of a verdict of guilty of that crime.

"**§ 15-176.4. Instruction to jury on consequence of guilty verdict. —** When a defendant is indicted for a crime for which the penalty is a sentence of death, the court, upon request by either party, shall instruct the jury that the death penalty will be imposed upon the return of a verdict of guilty of that crime.

"**§ 15-176.5. Argument to jury on consequences of guilty verdict. —** When a case will be submitted to a jury on a charge for which the penalty is a sentence of death, either party in its argument to the jury may indicate the consequences of a verdict of guilty of that charge."

Sec. 13. G.S. 15-179 is amended by striking the first word, "An", and inserting in lieu thereof the following words, "Except as provided in G.S. 15A-979(c), an".

Sec. 14. G.S. 15-182 is hereby amended by putting a period immediately after the phrase, "without security for costs" and striking out the remainder of the section.

Sec. 15. G.S. 15-183 is hereby amended:

(1) By rewriting the catchline to read: "Custody of convicted persons not released.",

(2) By striking out the first paragraph thereof, and

(3) By striking out of the third line of the second paragraph thereof the words, "pursuant to this section.".

Sec. 16. Article 8 of Chapter 15 of the General Statutes, The Uniform Criminal Extradition Act, is hereby reenacted and recodified as Article 37 of Chapter 15A, G.S. 15A-721 through G.S. 15A-750.

Sec. 17. G.S. 113-136(d) is amended by striking out the numbers, "15-41" and inserting in lieu thereof the numbers "15A-401(b)" and by striking out the symbol and numbers "§ 14-224,".

Sec. 18. G.S. 113-139(a) is hereby amended by striking out "Article 4 of Chapter 15" and inserting in lieu thereof, "Article 11 of Chapter 15A".

Sec. 19. The first two paragraphs of G.S. 114-19 are hereby repealed and the section catchline is rewritten to read "Criminal statistics.".

Sec. 20. G.S. 122-83, as the same appears in the 1971 Cumulative Supplement to 1964 Replacement Volume 3B of the General Statutes, is hereby amended by striking out of the fourth and fifth lines thereof the words, "by the court before whom they are or may be arraigned for trial".

Sec. 21. G.S. 122-84 is hereby amended by rewriting the second paragraph thereof to read as follows:

"When a person has been determined to be incapable of proceeding as provided in Article 56 of Chapter 15A of the General Statutes and has been committed to a state hospital, if the hospital authorities feel that an outright discharge or release of said person (in the event he is subsequently tried and found not guilty), would be harmful or dangerous to himself or the public at large involved, and that further care and treatment is necessary, said authorities will when reporting that he is able to proceed, make a request for his return for further care and treatment, in the event he is found not guilty."

Sec. 22. Article 10 of Chapter 148 of the General Statutes, Interstate Agreement on Detainers, codified as G.S. 148-89 through G.S. 148-95, is hereby reenacted and recodified as Article 38 of Chapter 15A, G.S. 15A-761 through G.S. 15A-767.

Sec. 23. Chapter 153 of the General Statutes is hereby amended by inserting therein a new section, G.S. 153-53.8, to read as follows:

"**§ 153-53.8. Jailer's report of jailed defendants. —** A person having administrative control of a local confinement facility each week must file a report with the clerk of court listing the name and period of confinement of each person confined in that facility on Friday noon preceding submission of the report."

Sec. 24. G.S. 160A-286 as it appears in the 1972 Replacement Volume 3D of the General Statutes, is amended by striking out the first sentence of the second paragraph.

Sec. 25. When a case will be submitted to a jury on a charge for which the penalty involves the possibility of the loss of a motor vehicle driver's license, either party in its argument to the jury may indicate the consequences of a verdict of guilty of that charge.

Sec. 26. The following sections of the General Statutes are hereby repealed.

G.S. 8-58 15-27.1 15-50 15-102 15-140.1 122-87 9-22 15-28 15-51 15-103 15-140.2 122-87.1 9-23 15-29 15-52 15-104 15-141 122-91 9-24 15-30 15-85 15-105 15-142 9-25 15-31 15-86 15-106 15-143 9-26 15-32 15-87 15-107 15-147 14-224 15-33 15-88 15-108 15-152 15-2 15-34 15-89 15-109 15-154 15-3 15-35 15-90 15-125 15-155.4 15-9 15-36 15-91 15-126 15-155.5 15-18 15-37 15-92 15-127 15-156 15-19 15-38 15-93 15-128 15-157 15-20 15-39 15-94 15-129 15-158 15-21 15-40 15-95 15-134 15-159 15-22 15-41 15-96 15-135 15-160 15-23 15-42 15-97 15-136 15-161 15-24 15-44 15-98 15-137 15-162 15-25 15-45 15-99 15-138 15-175 15-26 15-46 15-100 15-139 15-177 15-27 15-47 15-101 15-140 18A-23

Sec. 27. All statutes which refer to sections repealed or am ended by this act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the j same or an equivalent purpose.

Sec. 28. None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law.

Sec. 29. If any provisions of this act or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications

of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 30. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except Section 12 of this act which becomes effective on July 1, 1974.

In the General Assembly read three times and ratified, this the 11th day of April, 1974.