

NORTH CAROLINA GENERAL ASSEMBLY  
1977 SESSION

CHAPTER 711  
SENATE BILL 239

AN ACT TO AMEND THE LAWS RELATING TO CRIMINAL PROCEDURE.

The General Assembly of North Carolina enacts:

**Section 1.** Chapter 15A is amended by adding the following:

"ARTICLE 59.

"Maintenance of Order in the Courtroom.

**"§ 15A-1031. Custody and restraint of defendant and witnesses.** — A trial judge may order a defendant or witness subjected to physical restraint in the courtroom when the judge finds the restraint to be reasonably necessary to maintain order, prevent the defendant's escape, or provide for the safety of persons. If the judge orders a defendant or witness restrained, he must:

- (1) Enter in the record out of the presence of the jury and in the presence of the person to be restrained and his counsel, if any, the reasons for his action; and
- (2) Give the restrained person an opportunity to object; and
- (3) Unless the defendant or his attorney objects, instruct the jurors that the restraint is not to be considered in weighing evidence or determining the issue of guilt.

If the restrained person controverts the stated reasons for restraint, the judge must conduct a hearing and make findings of fact.

**"§ 15A-1032. Removal of disruptive defendant.** — (a) A trial judge, after warning a defendant whose conduct is disrupting his trial, may order the defendant removed from the trial if he continues conduct which is so disruptive that the trial cannot proceed in an orderly manner. When practicable, the judge's warning and order for removal must be issued out of the presence of the jury.

(b) If the judge orders a defendant removed from the courtroom, he must:

- (1) Enter in the record the reasons for his action; and
- (2) Instruct the jurors that the removal is not to be considered in weighing evidence or determining the issue of guilt.

A defendant removed from the courtroom must be given the opportunity of learning of the trial proceedings through his counsel at reasonable intervals as directed by the court and must be given opportunity to return to the courtroom during the trial upon assurance of his good behavior.

**"§ 15A-1033. Removal of disruptive witnesses and spectators.** — The judge in his discretion may order any person other than a defendant removed from a courtroom when his conduct disrupts the conduct of the trial.

**"§ 15A-1034. Controlling access to the courtroom.** — (a) The presiding judge may impose reasonable limitations on access to the courtroom when necessary to ensure the orderliness of courtroom proceedings or the safety of persons present.

(b) The judge may order that all persons entering or any person present and choosing to remain in the courtroom be searched for weapons or devices that could be used to disrupt or impede the proceedings and may require that belongings carried by persons entering the courtroom be inspected. An order under this subsection must be entered on the record.

"§ 15A-1035. **Other powers.** — In addition to the use of the powers provided in this Article, a presiding judge may maintain courtroom order through the use of his contempt powers as provided in Chapter 5A, Contempt, and through the use of other inherent powers of the court. (Articles 60 and 61 are as previously codified.)

"ARTICLE 62.

"Mistrial.

"§ 15A-1061. **Mistrial for prejudice to defendant.** — Upon motion of a defendant or with his concurrence the judge may declare a mistrial at any time during the trial. The judge must declare a mistrial upon the defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant's case. If there are two or more defendants, the mistrial may not be declared as to a defendant who does not make or join in the motion.

"§ 15A-1062. **Mistrial for prejudice to the State.** — Upon motion of the State, the judge may declare a mistrial if there occurs during the trial, either inside or outside the courtroom, misconduct resulting in substantial and irreparable prejudice to the State's case and the misconduct was by a juror or the defendant, his lawyer, or someone acting at the behest of the defendant or his lawyer. If there are two or more defendants, the mistrial may not be declared as to a defendant who does not join in the motion of the State if:

- (1) Neither he, his lawyer, nor a person acting at his or his lawyer's behest participated in the misconduct; or
- (2) The State's case is not substantially and irreparably prejudiced as to him.

"§ 15A-1063. **Mistrial for impossibility of proceeding.** — Upon motion of a party or upon his own motion, a judge may declare a mistrial if:

- (1) It is impossible for the trial to proceed in conformity with law; or
- (2) It appears there is no reasonable probability of the jury's agreement upon a verdict.

"§ 15A-1064. **Mistrial; finding of facts required.** — Before granting a mistrial, the judge must make finding of facts with respect to the grounds for the mistrial and insert the findings in the record of the case.

"§ 15A-1065. **Procedure following mistrial.** — When a mistrial is ordered, the judge must direct that the case be retained for trial or such other proceedings as may be proper.

(G.S. 15A-1066 to G.S. 15A-1070 reserved for future codification.)

"ARTICLE 63.

(G.S. 15A-1071 to G.S. 15A-1080 reserved for future codification.)

"ARTICLE 64.

(G.S. 15A-1081 to G.S. 15A-1100 reserved for future codification.)

## "SUBCHAPTER XI. TRIAL PROCEDURE IN DISTRICT COURT.

"ARTICLE 65.

"§ 15A-1101. **Applicability of superior court procedure.** — Trial procedure in the district court is in accordance with the provisions of Subchapter XII, Trial in Superior Court, except for provisions:

- (1) Relating to jury trial.
- (2) Requiring recordation of proceedings unless they specify their applicability to the district court.
- (3) That specify their applicability to superior court.

(G.S. 15A-1102 to G.S. 15A-1110 reserved for future codification.)

"ARTICLES 66 through 70.

(G.S. 15A-1111 to G.S. 15A-1200 reserved for future codification.)

## "SUBCHAPTER XII. TRIAL PROCEDURE IN SUPERIOR COURT.

"ARTICLE 71.

"Right to Trial by Jury.

**"§ 15A-1201. Right to trial by jury.** — In all criminal cases the defendant has the right to be tried by a jury of 12 whose verdict must be unanimous. In the district court the judge is the finder of fact in criminal cases, but the defendant has the right to appeal for trial de novo in superior court as provided in G.S. 15A-1431. In superior court all criminal trials in which the defendant enters a plea of not guilty must be tried before a jury.

(G.S. 15A-1202 to G.S. 15A-1210 reserved for future codification.)

"ARTICLE 72.

"Selecting and Impaneling the Jury.

**"§ 15A-1211. Selection procedure generally, role of judge, challenge to the panel; authority of judge to excuse jurors.** — (a) The provisions of Chapter 9 of the General Statutes, Jurors, pertinent to criminal cases apply except when this Chapter specifically provides a different procedure.

(b) The trial judge must decide all challenges to the panel and all questions concerning the competency of jurors.

(c) The State or the defendant may challenge the jury panel. A challenge to the panel:

- (1) May be made only on the ground that the jurors were not selected or drawn according to law.
- (2) Must be in writing.
- (3) Must specify the facts constituting the ground of challenge.
- (4) Must be made and decided before any juror is examined.

If a challenge to the panel is sustained, the judge must discharge the panel.

(d) The judge may excuse a juror without challenge by any party if he determines that grounds for challenge for cause are present.

**"§ 15A-1212. Grounds for challenge for cause.** — A challenge for cause to an individual juror may be made by any party on the ground that the juror:

- (1) Does not have the qualifications required by G.S. 9-3.
- (2) Is incapable by reason of mental or physical infirmity of rendering jury service.
- (3) Has been or is a party, a witness, a grand juror, a trial juror, or otherwise has participated in civil or criminal proceedings involving a transaction which relates to the charge against the defendant.
- (4) Has been or is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.
- (5) Is related by blood or marriage within the sixth degree to the defendant or the victim of the crime.
- (6) Has formed or expressed an opinion as to the guilt or innocence of the defendant. It is improper for a party to elicit whether the opinion formed is favorable or adverse to the defendant.
- (7) Is presently charged with a felony.
- (8) As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina.
- (9) For any other cause is unable to render a fair and impartial verdict.

**"§ 15A-1213. Informing prospective jurors of case.** — Prior to selection of jurors, the judge must identify the parties and their counsel and briefly inform the prospective jurors, as to each defendant, of the charge, the date of the alleged offense, the name of any victim alleged in the pleading, the defendant's plea to the charge, and any affirmative defense of which the defendant has given pretrial notice as required by Article 52, Motions Practice. The judge may not read the pleadings to the jury.

**"§ 15A-1214. Selection of jurors; procedure.** — (a) The clerk, under the supervision of the presiding judge, must call jurors from the panel by a system of random selection which

precludes advance knowledge of the identity of the next juror to be called. When a juror is called and he is assigned to the jury box, he retains the seat assigned until excused.

(b) The judge must inform the prospective jurors of the case in accordance with G.S. 15A-1213. He may briefly question prospective jurors individually or as a group concerning general fitness and competency to determine whether there is cause why they should not serve as jurors in the case.

(c) The prosecutor and the defense counsel, or the defendant if not represented by counsel, may personally question prospective jurors individually concerning their fitness and competency to serve as jurors in the case to determine whether there is a basis for a challenge for cause or whether to exercise a peremptory challenge. The prosecution or defense is not foreclosed from asking a question merely because the court has previously asked the same or similar question.

(d) The prosecutor must conduct his examination of the first 12 jurors seated and make his challenges for cause and exercise his peremptory challenges. If the judge allows a challenge for cause, or if a peremptory challenge is exercised, the clerk must immediately call a replacement into the box. When the prosecutor is satisfied with the 12 in the box, they must then be tendered to the defendant. Until the prosecutor indicates his satisfaction, he may make a challenge for cause or exercise a peremptory challenge to strike any juror, whether an original or replacement juror.

(e) Each defendant must then conduct his examination of the jurors tendered him, making his challenges for cause and his peremptory challenges. If a juror is excused, no replacement may be called until all defendants have indicated satisfaction with those remaining, at which time the clerk must call replacements for the jurors excused. The judge in his discretion must determine order of examination among multiple defendants.

(f) Upon the calling of replacement jurors, the prosecutor must examine the replacement jurors and indicate satisfaction with a completed panel of 12 before the replacement jurors are tendered to a defendant. Only replacement jurors may be examined and challenged. This procedure is repeated until all parties have accepted 12 jurors.

(g) If at any time after a juror has been accepted by a party, and before the jury is impaneled, it is discovered that the juror has made an incorrect statement during voir dire or that some other good reason exists:

- (1) The judge may examine, or permit counsel to examine, the juror to determine whether there is a basis for challenge for cause.
- (2) If the judge determines there is a basis for challenge for cause, he must excuse the juror or sustain any challenge for cause that has been made.
- (3) If the judge determines there is no basis for challenge for cause, any party who has not exhausted his peremptory challenges may challenge the juror.

Any replacement juror called is subject to examination, challenge for cause, and peremptory challenge as any other unaccepted juror.

(h) In order for a defendant to seek reversal of the case on appeal on the ground that the judge refused to allow a challenge made for cause, he must have:

- (1) Exhausted the peremptory challenges available to him;
- (2) Renewed his challenge as provided in subsection (i) of this section; and
- (3) Had his renewal motion denied as to the juror in question.

(i) A party who has exhausted his peremptory challenges may move orally or in writing to renew a challenge for cause previously denied if the party either:

- (1) Had peremptorily challenged the juror; or
- (2) States in the motion that he would have challenged that juror peremptorily had his challenges not been exhausted.

The judge may reconsider his denial of the challenge for cause, reconsidering facts and arguments previously adduced or taking cognizance of additional facts and arguments

presented. If upon reconsideration the judge determines that the juror should have been excused for cause, he must allow the party an additional peremptory challenge.

(j) In capital cases the trial judge for good cause shown may direct that jurors be selected one at a time, in which case each juror must first be passed by the State. These jurors may be sequestered before and after selection.

**"§ 15A-1215. Alternate jurors.** — The judge may permit the seating of one or more alternate jurors. Alternate jurors must be sworn and seated near the jury with equal opportunity to see and hear the proceedings. They must attend the trial at all times with the jury, and obey all orders and admonitions of the judge.

When the jurors are ordered kept together, the alternate jurors must be kept with them. If before final submission of the case to the jury, any juror dies, becomes incapacitated or disqualified, or is discharged for any other reason, an alternate juror becomes a juror, in the order in which selected, and serves in all respects as those selected on the regular trial panel. Alternate jurors receive the same compensation as other jurors and, unless they become jurors, must be discharged upon the final submission of the case to the jury.

**"§ 15A-1216. Impaneling jury.** — (a) After all jurors, including alternate jurors, have been selected, the clerk impanels the jury by instructing them as follows: 'Members of the jury, you have been sworn and are now impaneled to try the issue in the case of State of North Carolina versus \_\_\_\_\_. You will sit together, hear the evidence, and render your verdict accordingly.'

**"§ 15A-1217. Number of peremptory challenges.** — (a) Capital cases.

- (1) Each defendant is allowed 14 challenges.
- (2) The State is allowed 14 challenges for each defendant.

(b) Noncapital cases.

- (1) Each defendant is allowed six challenges.
- (2) The State is allowed six challenges for each defendant.

(c) Each party is entitled to one peremptory challenge for each alternate juror in addition to any unused challenges. (G.S. 15A-1218 to G.S. 15A-1220 reserved for future codification.)

#### "ARTICLE 73.

##### "Criminal Jury Trial in Superior Court.

**"§ 15A-1221. Order of proceedings in jury trial.** — The order of a jury trial, in general, is as follows:

- (1) The defendant must be arraigned and must have his plea recorded, out of the presence of the prospective jurors, unless he has waived arraignment under G.S. 15A-945.
- (2) The judge must inform the prospective jurors of the case in accordance with G.S. 15A-1213.
- (3) The jury must be sworn, selected and impaneled in accordance with Article 72, Selecting and Impaneling Jury.
- (4) Each party must be given the opportunity to make a brief opening statement, but the defendant may reserve his opening statement.
- (5) The State must offer evidence.
- (6) The defendant may offer evidence and, if he has reserved his opening statement, may precede his evidence with that statement.
- (7) The State and the defendant may then offer successive rebuttals as provided in G.S. 15A-1226.
- (8) At the conclusion of the evidence, the parties may make arguments to the jury in accordance with the provisions of G.S. 15A-1230.
- (9) The judge must deliver a charge to the jury in accordance with the provisions of G.S. 15A-1231 and G.S. 15A-1232.

- (10) The jury must retire to deliberate, and alternate jurors who have not been seated must be excused as provided in G.S. 15A-1215.

**"§ 15A-1222. Expression of opinion prohibited.** — The judge may not express during any stage of the trial, any opinion in the presence of the jury on any question of fact to be decided by the jury.

**"§ 15A-1223. Disqualification of judge.** — (a) A judge on his own motion may disqualify himself from presiding over a criminal trial or other criminal proceeding.

(b) A judge, on motion of the State or the defendant, must disqualify himself from presiding over a criminal trial or other criminal proceeding if he is:

- (1) Prejudiced against the moving party or in favor of the adverse party; or
- (2) A witness for or against one of the parties in the case; or
- (3) Closely related to the defendant by blood or marriage; or
- (4) For any other reason unable to perform the duties required of him in an impartial manner.

(c) A motion to disqualify must be in writing and must be accompanied by one or more affidavits setting forth facts relied upon to show the grounds for disqualification.

(d) A motion to disqualify a judge must be filed no less than five days before the time the case is called for trial unless good cause is shown for failure to file within that time. Good cause includes the discovery of facts constituting grounds for disqualification less than five days before the case is called for trial.

**"§ 15A-1224. Death or disability of trial judge.** — (a) If by reason of sickness or other disability a judge before whom the defendant is being tried is unable to continue presiding over the trial without the necessity of a continuance, he may in his discretion order a mistrial.

(b) If by reason of absence, death, sickness, or other disability, the judge before whom the defendant is being or has been tried is unable to perform the duties required of him before entry of judgment, and has not ordered a mistrial, any other judge assigned to the court may perform those duties, but if the other judge is satisfied that he cannot perform those duties because he did not preside at an earlier stage of the proceedings or for any other reason, he must order a mistrial.

**"§ 15A-1225. Exclusion of witnesses.** — Upon motion of a party the judge may order all or some of the witnesses other than the defendant to remain outside of the courtroom until called to testify, except when a minor child is called as a witness the parent or guardian may be present while the child is testifying even though his parent or guardian is to be called subsequently.

**"§ 15A-1226. Rebuttal evidence; additional evidence.** — (a) Each party has the right to introduce rebuttal evidence concerning matters elicited in the evidence in chief of another party. The judge may permit a party to offer new evidence during rebuttal which could have been offered in the party's case in chief or during a previous rebuttal, but if new evidence is allowed, the other party must be permitted further rebuttal.

(b) The judge in his discretion may permit any party to introduce additional evidence at any time prior to verdict.

**"§ 15A-1227. Motion for dismissal.** — (a) A motion for dismissal for insufficiency of the evidence to sustain a conviction may be made at the following times:

- (1) Upon close of the State's evidence.
- (2) Upon close of all the evidence.
- (3) After return of a verdict of guilty and before entry of judgment.
- (4) After discharge of the jury without a verdict and before the end of the session.

(b) Failure to make the motion at the close of the State's evidence or after all the evidence is not a bar to making the motion at a later time as provided in subsection (a).

(c) The judge must rule on a motion to dismiss for insufficiency of the evidence before the trial may proceed.

(d) The sufficiency of all evidence introduced in a criminal case is reviewable on appeal without regard to whether a motion has been made during trial, as provided in G.S. 15A-1446(d)(5).

**"§ 15A-1228. Notes by the jury.** — Jurors may make notes and take them into the jury room during their deliberations. Upon objection of any party, the judge must instruct the jurors that notes may not be taken.

**"§ 15A-1229. View by jury.** — (a) The trial judge in his discretion may permit a jury view. If a view is ordered, the judge must order the jury to be conducted to the place in question in the custody of an officer. The officer must be instructed to permit no person to communicate with the jury on any subject connected with the trial, except as provided in subsection (b), nor to do so himself, and to return the jurors to the courtroom without unnecessary delay or at a specified time. The judge, prosecutor, and counsel for the defendant must be present at the view by the jury. The defendant is entitled to be present at the view by the jury.

(b) A judge in his discretion may permit a witness under oath to testify at the site of the jury view and point out objects and physical characteristics material to his testimony. The testimony must be recorded.

**"§ 15A-1230. Limitations on argument to the jury.** — (a) During a closing argument to the jury an attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record except for matters concerning which the court may take judicial notice. An attorney may, however, on the basis of his analysis of the evidence, argue any position or conclusion with respect to a matter in issue.

(b) Length, number, and order of arguments allotted to the parties are governed by G.S. 84-14.

**"§ 15A-1231. Jury instructions.** — (a) At the close of the evidence or at an earlier time directed by the judge, any party may tender written instructions. A party tendering instructions must furnish copies to the other parties at the time he tenders them to the judge.

(b) On request of either party, the judge must, before the arguments to the jury, hold a recorded conference on instructions out of the presence of the jury. At the conference the judge must inform the parties of the offenses, lesser included offenses, and affirmative defenses on which he will charge the jury and must inform them of what, if any, parts of tendered instructions will be given. A party is also entitled to be informed, upon request, whether the judge intends to include other particular instructions in his charge to the jury. The failure of the judge to comply fully with the provisions of this section does not constitute grounds for appeal unless his failure, not corrected prior to the end of the trial, materially prejudiced the case of the defendant.

(c) After the arguments are completed, the judge must instruct the jury must instruct the jury in accordance with G.S. 15A-1232.

(d) All instructions given and tendered instructions which have been refused become a part of the record. Failure to object to an erroneous instruction or to the erroneous failure to give an instruction does not constitute a waiver of the right to appeal on that error in accordance with G.S. 15A-1446(d)(13).

**"§ 15A-1232. Jury instructions; explanation of law; opinion prohibited.** — In instruction the jury, the judge must declare and explain the law arising on the evidence. He is not required to state the evidence except to the extent necessary to explain the application of the law to the evidence. He must not express an opinion whether a fact has been proved.

**"§ 15A-1233. Review of testimony; use of evidence by the jury.** — (a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The judge in his discretion, after notice to the prosecutor

and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. In his discretion the judge may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) Upon request by the jury and with consent of all parties, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the Judge permits the jury to take to the jury room requested exhibits and writings, he may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, he must, upon request, instruct the jury not to conduct any experiments with the exhibit.

**"§ 15A-1234. Additional instructions.** — (a) After the jury retires for deliberation, the judge may give appropriate additional instructions to:

- (1) Respond to an inquiry of the jury made in open court, or
- (2) Correct or withdraw an erroneous instruction; or
- (3) Clarify an ambiguous instruction; or
- (4) Instruct the jury on a point of law which should have been covered in the original instructions.

(b) At any time the judge gives additional instructions, he may also give or repeat other instructions to avoid giving undue prominence to the additional instructions.

(c) Before the judge gives additional instructions, he must inform the parties generally of the instructions he intends to give and afford them an opportunity to be heard. The parties upon request must be permitted additional argument to the jury if the additional instructions change, by restriction or enlargement, the permissible verdicts of the jury. Otherwise, the allowance of additional argument is within the discretion of the judge.

(d) All additional instructions must be given in open court and must be made a part of the record.

**"§ 15A-1235. Length of deliberations; deadlocked jury.** — (a) Before the jury retires for deliberation, the judge must give an instruction which informs the jury that in order to return a verdict, all 12 jurors must agree to a verdict of guilty or not guilty.

(b) Before the jury retires for deliberation, the judge may give an instruction which informs the jury that:

- (1) Jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment;
- (2) Each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors;
- (3) In the course of deliberations, a juror should not hesitate to reexamine his own views and change his opinion if convinced it is erroneous; and
- (4) No juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

(c) If it appears to the judge that the jury has been unable to agree, the judge may require the jury to continue its deliberations and may give or repeat the instructions provided in subsections (a) and (b). The judge may not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals.

(d) If it appears that there is no reasonable possibility of agreement, the judge may declare a mistrial and discharge the jury.

**"§ 15A-1236. Admonitions to jurors; regulation and separation of jurors.** — (a) The judge at appropriate times must admonish the jurors that it is their duty:



- (1) Not to talk among themselves about the case except in the jury room after their deliberations have begun;
- (2) Not to talk to anyone else, or to allow anyone else to talk with them or in their presence about the case and that they must report to the judge immediately the attempt of anyone to communicate with them about the case;
- (3) Not to form an opinion about the guilt or innocence of the defendant, or express any opinion about the case;
- (4) To avoid reading, watching, or listening to accounts of the trial; and
- (5) Not to talk during trial to parties, witnesses, or counsel.

The judge may also admonish them with respect to other matters which he considers appropriate.

(b) The judge in his discretion may direct that the jurors be sequestered.

(c) If the jurors are committed to the charge of an officer, he must be sworn by the clerk to keep the jurors together and not to permit any person to speak or otherwise communicate with them on any subject connected with the trial nor to do so himself, and to return the jurors to the courtroom as directed by the judge.

**"§ 15A-1237. Verdict.** — (a) The verdict must be in writing, signed by the foreman, and made a part of the record of the case.

(b) The verdict must be unanimous, and must be returned by the jury in open court.

(c) If the jurors find the defendant not guilty on the ground that he was insane at the time of the commission of the offense charged, their verdict must so state.

(d) If there are two or more defendants, the jury must return a separate verdict with respect to each defendant. If the jury agrees upon a verdict for one defendant but not another, it must return that verdict upon which it agrees.

(e) If there are two or more offenses for which the jury could return a verdict, it may return a verdict with respect to any offense, including a lesser included offense on which the judge charged, as to which it agrees.

**"§ 15A-1238. Polling the jury.** — Upon the motion of any party made after a verdict has been returned and before the jury has dispersed, the jury must be polled. The judge may also upon his own motion require the polling of the jury. The poll may be conducted by the judge or by the clerk by asking each juror individually whether the verdict announced is his verdict. If upon the poll there is not unanimous concurrence, the jury must be directed to retire for further deliberations.

**"§ 15A-1239. Judicial comment on verdict.** — The trial judge may not comment upon the verdict of a jury in open court in the presence or hearing of any member of the jury panel. If he does so, any defendant whose case is calendared for that session of court is entitled, upon motion, to a continuance of his case to a time when all members of the entire jury panel are no longer serving.

**"§ 15A-1240. Impeachment of the verdict.** — (a) Upon an inquiry into the validity of a verdict, no evidence may be received to show the effect of any statement, conduct, event, or condition upon the mind of a juror or concerning the mental processes by which the verdict was determined.

(b) The limitations in subsection (a) do not bar evidence concerning whether the verdict was reached by lot.

(c) After the jury has dispersed, the testimony of a juror may be received to impeach the verdict of the jury on which he served, subject to the limitations in subsection (a), only when it concerns:

- (1) Matters not in evidence which came to the attention of one or more jurors under circumstances which would violate the defendant's constitutional right to confront the witnesses against him; or

- (2) Bribery, intimidation, or attempted bribery or intimidation of a juror.

**"§ 15A-1241. Record of proceedings.** — (a) The trial judge must require that the reporter make a true, complete, and accurate record of all statements from the bench and all other proceedings except:

- (1) Selection of the jury in noncapital cases;
- (2) Opening statements and final arguments of counsel to the jury; and
- (3) Arguments of counsel on questions of law.

(b) Upon motion of any party or on the judge's own motion, proceedings excepted under subdivisions (1) and (2) of subsection (a) must be recorded. The motion for recordation of jury arguments must be made before the commencement of any argument and if one argument is recorded all must be. Upon suggestion of improper argument, when no recordation has been requested or ordered, the judge in his discretion may require the remainder to be recorded.

(c) When a party makes an objection to unrecorded statements or other conduct in the presence of the jury, upon motion of either party the judge must reconstruct for the record, as accurately as possible, the matter to which objection was made.

(d) The trial judge may review the accuracy of the reporter's record of the proceedings, but may not make substantive changes in the transcript concerning his charge, rulings, and comments without notice to the State, the defense, and the reporter. When any correction of a transcript is ordered made by a judge, each party is entitled to receive, upon request, a copy of the transcript indicating the text as submitted by the reporter and as changed by the judge. Upon motion of any party, the judge must afford the parties a hearing upon any change ordered by the judge.

**"§ 15A-1242. Defendant's election to represent himself at trial.** — A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

**"§ 15A-1243. Standby counsel for defendant representing himself.** — When a defendant has elected to proceed without the assistance of counsel, the trial judge in his discretion may appoint standby counsel to assist the defendant when called upon and to bring to the judge's attention matters favorable to the defendant upon which the judge should rule upon his own motion.

(G.S. 15A-1244 to G.S. 15A-1250 reserved for future codification.)

"ARTICLE 74.

(G.S. 15A-1251 to G.S. 15A-1260 reserved for future codification.)

"ARTICLE 75.

(G.S. 15A-1261 to G.S. 15A-1280 reserved for future codification.)

"ARTICLE 76.

(G.S. 15A-1281 to G.S. 15A-1290 reserved for future codification.)

"ARTICLE 77.

(G.S. 15A-1291 to G.S. 15A-1300 reserved for future codification.)

**"SUBCHAPTER XIII. DISPOSITION OF DEFENDANTS.**

"ARTICLE 78.

"Order of Commitment to Imprisonment.

**"§ 15A-1301. Order of commitment to imprisonment when not otherwise specified.** — When a judicial official orders that a defendant be imprisoned he must issue an appropriate written commitment order.

(G.S. 15A-1302 to G.S. 15A-1310 reserved for future codification.)

"ARTICLE 79.

(G.S. 15A-1311 to G.S. 15A-1320 reserved for future codification.)

"ARTICLE 80.

"Defendants Found Not Guilty by Reason of Insanity.

**"§ 15A-1321. Civil commitment of defendants found not guilty by reason of insanity. —**

When a defendant charged with a crime is found not guilty by reason of insanity by jury verdict or upon motion pursuant to G.S. 15A-959(c), the trial court upon such additional hearing as it determines to be necessary, may direct that there be civil proceedings to determine whether the person should be involuntarily committed pursuant to Article 5A of Chapter 122 of the General Statutes. The trial judge may issue an order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122-58.3 or G.S. 122-58.18. Proceedings thereafter are in accordance with Article 5A, of Chapter 122 of the General Statutes.

**"§ 15A-1322. Temporary restraint. —** If the judge finds that there are reasonable grounds to believe that the defendant-respondent is mentally ill, as defined in G.S. 122-36, and is imminently dangerous to himself or others, and the judge determines upon appropriate findings of fact that it is appropriate to proceed under the provisions of this Article, he may order that the respondent be held under appropriate restraint pending proceedings under G.S. 15A-1321.

(G.S. 15A-1323 to G.S. 15A-1330 reserved for future codification.)

"ARTICLE 81.

"General Sentencing Provisions.

**"§ 15A-1331. Authorized sentences; conviction. —** (a) The criminal judgment entered against a person in either district or superior court may, unless the offense for which his guilt has been established is a capital offense, or unless a statute otherwise specifically provides, include a sentence in accordance with the provision of this Article to one or a combination of the following alternatives:

- (1) Probation as authorized by Article 82, Probation, or a term of imprisonment as authorized by Article 83, Imprisonment; or
- (2) A fine as authorized by Article 84, Fines; or
- (3) Other punishment authorized or required by law.

(b) For the purpose of imposing sentence, a person has been convicted when he has been adjudged guilty or has entered a plea of guilty or no contest.

**"§ 15A-1332. Presentence reports. —** (a) Presentence Reports Generally. To obtain a presentence report, the court may order either a presentence investigation as provided in subsection (b) or a presentence commitment for study as provided in subsection (c).

(b) Presentence Investigation. The court may order a probation officer to make a presentence investigation of any defendant. The court may order the investigation only after conviction unless the defendant moves for an earlier presentence investigation. A motion for an earlier presentence investigation may be addressed only to the judge of the session of court for which the defendant's case is calendared or, if the case has not been calendared, to a resident superior court judge if the case is in the jurisdiction of the superior court or to the chief district court judge if the case is in the jurisdiction of the district court. When the court orders a presentence investigation, the probation officer must promptly investigate all circumstances relevant to sentencing and submit either a written report or an oral report either on the record or with defense counsel and the prosecutor present. The report may include sentence recommendations only if such recommendations are requested by the court.

(c) Presentence Commitment for Study. When the court desires more detailed information as a basis for determining the sentence to be imposed than can be provided by a presentence investigation, the court may, after conviction of a crime or crimes for which the

defendant may be imprisoned for more than six months, and with the consent of the defendant, commit him for study to the Department of Correction for the shortest period necessary to complete the study, not to exceed 90 days. The period of commitment must end when the study is completed, and may not exceed 90 days. The department must conduct a complete study of a defendant committed to it under this subsection, inquiring into such matters as the defendant's previous delinquency or criminal experience, his social background, his capabilities, his mental, emotional and physical health, and the availability of resources or programs appropriate to the defendant. Upon completion of the study or the end of the 90-day period, whichever occurs first, the Department of Correction must release the defendant to the sheriff of the county in which his case is docketed. The department must forward the study to the clerk in that county, including whatever recommendations the department believes will be helpful to a proper resolution of the case. When a defendant is returned from a presentence commitment for study, the conditions of pretrial release which obtained for the defendant before the commitment continue until judgment is entered, unless the conditions are modified under the provisions of G.S. 15A-534(e).

**"§ 15A-1333. Availability of presentence report.** — (a) Presentence Reports Not Public Records. A written presentence report and the record of an oral presentence report are not public records and may not be made available to any person except as provided in this section.

(b) Access to Reports. The defendant, his counsel, the prosecutor, or the court may have access at any reasonable time to a written presentence report or to any record of an oral presentence report.

(c) Expunging Reports. On motion of the defendant, the court in its discretion may order a written presentence report or the record of an oral presentence report expunged from the court record.

**"§ 15A-1334. The sentencing hearing.** — (a) Time of Hearing. Unless the defendant waives the hearing, the court must hold a hearing on the sentence. Either the defendant or the State may, upon a showing which the judge determines to be good cause, obtain a continuance of the sentencing hearing.

(b) Proceeding at Hearing. The defendant at the hearing may make a statement in his own behalf. The defendant and prosecutor may present witnesses and arguments on facts relevant to the sentencing decision and may cross-examine the other party's witnesses. No person other than the defendant, his counsel, the prosecutor, and one making a presentence report may comment to the court on sentencing unless called as a witness by the defendant, the prosecutor, or the court. Formal rules of evidence do not apply at the hearing.

(c) Sentence Hearing in Other District. The judge who orders a presentence report may, in his discretion, direct that the sentencing hearing be held before him in another county or another judicial district during or after the session in which the defendant was convicted. If sentence is imposed in a county other than the one where the defendant was convicted, the clerk of the county where sentence is imposed must forward the records of the sentencing proceeding to the clerk of the county of conviction.

(d) Sentencing in capital cases shall be as set out in G.S. \_\_\_\_\_.

**"§ 15A-1335. Resentencing after appellate review.** — When a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served.

(G.S. 15A-1336 to G.S. 15A-1340 reserved for future codification.)

"ARTICLE 82.

"Probation.

**"§ 15A-1341. Probation generally.** — (a) Use of Probation. A person who has been convicted of any noncapital criminal offense not punishable by a minimum term of life imprisonment may be placed on probation as provided in this Article.

(b) Supervised and Unsupervised Probation. The court may place a person on supervised or unsupervised probation. A person on unsupervised probation is subject to all incidents of probation except supervision by a probation officer.

(c) Election to Serve Sentence. Any person placed on probation may at any time during the probationary period elect to serve his suspended sentence of imprisonment in lieu of the remainder of his probation.

**"§ 15A-1342. Incidents of probation.** — (a) Period. The court may place an offender on probation for a maximum of five years. The probation remains conditional and subject to revocation during the period of probation imposed, unless terminated as provided in subsection (b) or G.S. 15A-1341(c).

(b) Early Termination. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (a) if warranted by the conduct of the defendant and the ends of justice.

(c) Conditions; Suspended Sentence. When the court places an offender on probation, it must determine conditions of probation as provided in G.S. 15A-1343. In addition, it must impose a suspended sentence of imprisonment, determined as provided in Article 83, Imprisonment, which may be activated upon violation of conditions of probation.

(d) Mandatory Review of Probation. Each probation officer must bring all probationers assigned to him before a court with jurisdiction to review the probation when the probationer has served three years of a probationary period greater than three years. The court must review the case file of a probationer so brought before it and determine whether to terminate his probation.

(e) Out-of-State Supervision. Probationers are subject to out-of-state supervision under the provisions of G.S. 148-65.1.

(f) Appeal from Judgment of Probation. A defendant may seek post-trial relief from a judgment which includes probation notwithstanding the authority of the court to modify or revoke the probation.

(g) Invalid Conditions; Timing of Objection. A court may not revoke probation for violation of an invalid condition. The failure of a defendant to object to a condition of probation at the time it is imposed does not constitute a waiver of the right to object at a later time to the condition.

(h) Limitation on Jurisdiction to Alter or Revoke Unsupervised Probation. In the judgment placing a person on unsupervised probation, the judge may limit jurisdiction to alter or revoke the sentence under G.S. 15A-1344. When jurisdiction to alter or revoke is limited, the effect is as provided in G.S. 15A-1344(b).

**"§ 15A-1343. Conditions of probation.** — (a) In General. The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Appropriate Conditions. When placing a defendant on probation, the court may, as a condition of the probation, require that during the period of probation the defendant comply with one or more of the following conditions:

- (1) Not commit any criminal offense.
- (2) Work faithfully at suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment.
- (3) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (4) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on probation.

- (5) Support his dependents and meet other family responsibilities.
- (6) Make restitution or reparation for loss or injury resulting from the crime for which the defendant is convicted. When restitution or reparation is a condition of the sentence, the amount must be limited to that supported by the evidence. The court may direct a probation officer to fix the manner of performing the restitution or reparation.
- (7) Pay a fine authorized by Article 84, Fines.
- (8) Refrain from possessing a firearm or destructive device or other dangerous weapon unless granted written permission by the court or the probation officer.
- (9) Report to a probation officer at reasonable times and in a reasonable manner, as directed by the court or the probation officer.
- (10) Permit the probation officer to visit him at reasonable times at his home or elsewhere.
- (11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- (12) Answer all reasonable inquiries by the probation officer and obtain prior approval from the probation officer for any change in address or employment.
- (13) Promptly notify the probation officer of any change in address or employment.
- (14) Pay court costs and costs for appointed counsel or public defender to represent him in the case in which he was convicted.
- (15) Submit at reasonable times to warrantless searches by a probation officer of his person, and of his vehicle and premises while he is present, for purposes reasonably related to his probation supervision. The court may not require as a condition of probation that the probationer submit to any other search that would otherwise be unlawful.
- (16) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).
- (17) Satisfy any other conditions reasonably related to his rehabilitation.

(c) Statement of Conditions. A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

**"§ 15A-1344. Response to violations; alteration and revocation.** — (a) Authority to Alter or Revoke. Except as provided in subsection (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. The district attorney of the district in which probation was imposed must be given reasonable notice if the hearing is to be held in any other district.

(b) Limits on Jurisdiction to Alter or Revoke Unsupervised Probation. If the sentencing judge has entered an order to limit jurisdiction to consider a sentence of unsupervised probation under G.S. 15A-1342(h), a sentence of unsupervised probation may be reduced, terminated, continued, extended, modified, or revoked only by the sentencing judge or, if the sentencing judge is no longer on the bench, by a presiding judge in the court where the defendant was sentenced.

(c) Procedure On Altering or Revoking Probation; Returning Probationer to District Where Sentenced. When a judge reduces, terminates, extends, modifies, or revokes probation outside the county where the judgment was entered, the clerk must send a copy of the order and

any other records to the court where probation was originally imposed. A court on its own motion may return the probationer to the district where probation was imposed or where the probationer resides for reduction, termination, continuation, extension, modification, or revocation of probation.

(d) Extension and Modification; Response to Violations. At any time prior to the expiration or termination of the probation period, the court may after notice and hearing and for good cause shown extend the period of probation up to the maximum allowed under G.S. 15A-1342(a) and may modify the conditions of probation. The hearing may be held in the absence of the defendant, if he fails to appear for the hearing after a reasonable effort to notify him. If a defendant violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may continue him on probation, with or without modifying the conditions, may place the defendant on special probation as provided in subsection (e), or, if continuation, modification, or special probation is not appropriate, may revoke the probation and activate the suspended sentence imposed at the time of initial sentencing. The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the sentence. A sentence activated upon revocation of probation commences on the day probation is revoked and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period unless the revoking judge specifies that it is to run consecutively with the other period.

(e) Special Probation in Response to Violation. When a defendant has violated a condition of probation, the court may modify his probation to place him on special probation as provided in this subsection. In placing him on special probation, the court may continue or modify the conditions of his probation and in addition require that he submit to a period or periods of imprisonment, either consecutive or nonconsecutive, at whatever time or intervals within the period of probation the court determines. If imprisonment is for consecutive periods, the confinement may be in either the custody of the Department of Correction or a local confinement facility. Nonconsecutive periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. The total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed six months or one-fourth the maximum penalty allowed by law for the offense, whichever is less. No confinement other than an activated suspended sentence may be required beyond the period of probation or beyond two years of the time the special probation is imposed, whichever comes first.

(f) Revocation After Period of Probation. The court may revoke probation after the expiration of the period of probation if:

- (1) Before the expiration of the period of probation the State has filed a written motion with the clerk indicating its intent to conduct a revocation hearing; and
- (2) The court finds that the State has made reasonable effort to notify the probationer and to conduct the hearing earlier.

**"§ 15A-1345. Arrest and hearing on probation violation.** — (a) Arrest for Violation of Probation. A probationer is subject to arrest for violation of conditions of probation upon either an order for arrest issued by the court or upon the written request of a probation officer, accompanied by a written statement signed by the probation officer that the probationer has violated specified conditions of his probation. However, a probation revocation hearing under subsection (e) may be held without first arresting the probationer.

(b) Bail Following Arrest for Probation Violation. If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534.

(c) When Preliminary Hearing on Probation Violation Required. Unless the hearing required by subsection (e) is first held or the probationer waives the hearing, a preliminary hearing on probation violation must be held within five working days of an arrest of a probationer to determine whether there is probable cause to believe that he violated a condition of probation. Otherwise, the probationer must be released four working days after his arrest to continue on probation pending a hearing.

(d) Procedure for Preliminary Hearing on Probation Violation. The preliminary hearing on probation violation must be conducted by a judge who is sitting in the county where the probationer was arrested or where probation was imposed. If no judge is sitting in the county where the hearing would otherwise be held, the hearing may be held anywhere in the judicial district. The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged. At the hearing the probationer may appear and speak in his own behalf, may present relevant information, and may, on request, personally question adverse informants unless the court finds good cause for not allowing confrontation. Formal rules of evidence do not apply at the hearing. If probable cause is found or if the probable cause hearing is waived, the probationer may be held for a revocation hearing, subject to release under the provisions of subsection (b). If the hearing is held and probable cause is not found, the probationer must be released to continue on probation.

(e) Revocation Hearing. Before revoking or extending probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke or extend probation and must make findings to support the decision and a summary record of the proceedings. The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged. The notice, unless waived by the probationer, must be given at least 24 hours before the hearing. At the hearing, evidence against the probationer must be disclosed to him, and the probationer may appear and speak in his own behalf, may present relevant information, and may confront and cross-examine adverse witnesses unless the court finds good cause for not allowing confrontation. The probationer is entitled to be represented by counsel at the hearing and, if indigent, to have counsel appointed. Formal rules of evidence do not apply at the hearing, but the record or recollection of evidence or testimony introduced at the preliminary hearing on probation violation are inadmissible as evidence at the revocation hearing. When the violation alleged is the nonpayment of fine or costs, the issues and procedures at the hearing include those specified in G.S. 15A-1364 for response to nonpayment of fine.

**"§ 15A-1346. Commencement of probation; multiple sentence.** — (a) Commencement of Probation. Except as provided in subsection (b), a period of probation commences on the day it is imposed and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period.

(b) Consecutive and Concurrent Sentences. If a period of probation is being imposed at the same time a period of imprisonment is being imposed or if it is being imposed on a person already subject to an undischarged term of imprisonment, the period of probation may run either concurrently or consecutively with the term of imprisonment, as determined by the court. If not specified, it runs concurrently.

**"§ 15A-1347. Appeal from revocation of probation or imposition of special probation upon violation.** — When a district court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, the defendant may appeal to the superior court for a de novo revocation hearing. At the hearing the probationer has all rights and the court has all authority they have in a revocation hearing held before the superior court in the first instance. Appeals from lower courts to the superior courts from judgments revoking probation may be heard in term or out of term, in the county or out of the county by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court commissioned to hold court in the district, or a special



superior court judge residing in the district. When a superior court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, either in the first instance or upon a de novo hearing after appeal from a district court, the defendant may appeal under G.S. 7A-27.

(G.S. 15A-1348 to G.S. 15A-1350 reserved for future codification.)

"ARTICLE 83.

"Imprisonment.

**"§ 15A-1351. Sentence of imprisonment; incidents; special probation.** — (a) The judge may sentence a defendant convicted of an offense for which the maximum penalty does not exceed 10 years to special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation as provided in Article 82, Probation, and in addition require that the defendant submit to a period or periods of imprisonment in the custody of the Department of Correction or a designated local confinement or treatment facility at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court determines. The total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed six months or one-fourth the maximum penalty allowed by law for the offense, whichever is less, and no confinement other than an activated suspended sentence may be required beyond two years of conviction. In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation. The period of probation, including the period of imprisonment required for special probation, may not exceed five years. The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences.

(b) A sentence to imprisonment must impose maximum term and may impose a minimum term. The judgment may state the minimum term or may state that a term constitutes both the minimum and maximum terms. If the judgment states no minimum term, the defendant becomes eligible for parole in accordance with G.S. 15A-1371(a).

(c) Reduction of Minimum. A superior court judge, or any district court judge if the offender is serving a sentence imposed in district court, sitting or resident in the district where the offender was sentenced may remove or reduce an imposed minimum term at any time upon motion of the Department of Correction and Paroles Commission. When the Department of Correction moves that a minimum sentence be removed or reduced, it must send a copy of the motion to the district attorney in the district where the defendant was convicted.

(d) Alternative to Minimum Term. In lieu of imposing a minimum term, the court may recommend to the Parole Commission a minimum period of imprisonment the offender should serve before being granted parole. The recommendation has the effect provided in G.S. 15A-1371(c).

(e) Youthful Offenders. If an offender is under the age of 21 years at the time of conviction, the court may sentence the offender as a youthful offender under the provisions of Article 3A of Chapter 148 of the General Statutes.

(f) Work Release. The sentencing court may recommend that the sentenced offender be granted work release as authorized in G.S. 148-33.1.

**"§ 15A-1352. Commitment to Department of Correction or local confinement facility.** —

A person sentenced to imprisonment for a felony or a misdemeanor under this Article or for nonpayment of a fine under Article 84, Fines, must be committed for the term designated by the court to the custody of the Department of Correction or to a local confinement facility. If the sentence imposed is for a period less than 180 days, the commitment must be to a facility other than one maintained by the Department of Correction.

**"§ 15A-1353. Order of commitment when imprisonment imposed; release pending appeal.** — (a) When a sentence includes a term or terms of imprisonment, the court must issue

an order of commitment setting forth the judgment. Unless otherwise specified in the order of commitment, the date of the order is the date service of the sentence is to begin.

(b) There must be included in the commitment, or in a separate order referred to in the commitment, any provisions with regard to release under Article 26, Bail, if an appeal is taken, and the conditions of the release. If the commitment has been entered before appeal or the setting of the conditions for release, appropriate copies of those documents must be forwarded to the agency having custody of the defendant.

(c) Unless a later time is directed in the order of commitment or the defendant has been released from custody pursuant to Article 26, Bail, the sheriff must cause the defendant to be placed in the custody of the agency specified in the judgment on the day service of the sentence is to begin or as soon thereafter as practicable.

(d) A certified copy of the order of commitment, together with any separate order providing for release of the defendant pending appeal, must be delivered to the custodian of the confinement facility.

(e) When a defendant has been committed pursuant to this section:

- (1) If appeal has been entered and conditions of release have been set as provided in Article 26, Bail, the agency having custody of the defendant may effect his release in the manner provided in G.S. 15A-537; or
- (2) If appeal is entered and the conditions of release are not set until after the order of commitment has been issued, and the defendant has been placed in the custody of the agency directed therein, appropriate copies of the conditions of release must be certified by the clerk and forwarded to the agency, which then may effect his release in the manner provided in G.S. 15A-537.

**"§ 15A-1354. Concurrent and consecutive terms of imprisonment.** — (a) Authority of Court. When multiple sentences of imprisonment are imposed on a person at the same time or when a term of imprisonment is imposed on a person who is already subject to an undischarged term of imprisonment, including a term of imprisonment in another jurisdiction, the sentences may run either concurrently or consecutively, as determined by the court. If not specified, sentences shall run concurrently.

(b) Effect of Consecutive Terms. In determining the effect of consecutive sentences imposed under authority of this Article and the manner in which they will be served, the Department of Correction must treat the defendant as though he has been committed for a single term with the following incidents:

- (1) The maximum prison sentence consists of the total of the maximum terms of the consecutive sentences; and
- (2) The minimum term, if any, consists of the total of the minimum terms of the consecutive sentences.

**"§ 15A-1355. Calculation of terms of imprisonment.** — (a) Commencement of Sentence. The commencement date of a sentence of imprisonment under authority of this Article is as provided in G.S. 15A-1353(a), except when the sentence is a consecutive sentence. When it is a consecutive sentence, it commences to run when the State has custody of the defendant following completion of the prior sentence.

(b) Credit. To the extent that credit has not been given in the judgment or parole revocation order, the Department of Correction must give credit toward service of the maximum term and any minimum term of a sentence to imprisonment for:

- (1) All time spent committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence or for all time spent in a mental institution following a civil commitment arising from the criminal proceedings; and

- (2) All time spent in confinement in another jurisdiction as a result of conviction for an offense which is based on the same facts and which contains all the elements of the offense for which sentence is being served in this State or of a lesser included offense.

(c) Credit for Good Behavior. The Department of Correction may give credit toward service of the maximum term and any minimum term of imprisonment for allowances of time as provided in rules and regulations made under G.S. 148-11 and G.S. 148-13.

"ARTICLE 84.

"Fines.

**"§ 15A-1361. Authorized fines.** — A person who has been convicted of an offense may be ordered to pay a fine as provided by law.

**"§ 15A-1362. Imposition of fines.** — (a) General Criteria. In determining the method of payment of a fine, the court should consider the burden that payment will impose in view of the financial resources of the defendant.

(b) Installment or Delayed Payments. When a defendant is ordered to pay a fine, the court may provide for the payment to be made within a specified period of time or in specified installments. If no such provision is made a part of the sentence, the fine is payable forthwith.

(c) Nonpayment. When a defendant is ordered, other than as a condition of probation, to pay a fine, costs, or both, the court may impose at the same time a sentence to be served in the event that the fine is not paid. The court also may impose an order that the defendant appear, if he fails to make the required payment, at a specified time to show cause why he should not be imprisoned.

**"§ 15A-1363. Remission of a fine or costs.** — A defendant who has been required to pay a fine or costs, including a requirement to pay fine or costs as a condition of probation, or a prosecutor, may at any time petition the sentencing court for a remission or revocation of the fine or costs or any unpaid portion of it. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine or costs no longer exist, that it would otherwise be unjust to require payment, or that the proper administration of justice requires resolution of the case, the court may remit or revoke the fine or costs or the unpaid portion in whole or in part or may modify the method of payment.

**"§ 15A-1364. Response to nonpayment.** — (a) Response to Default. When a defendant who has been required to pay a fine or costs or both defaults in payment or in any installment, the court, upon the motion of the prosecutor or upon its own motion, may require the defendant to appear and show cause why he should not be imprisoned or may rely upon a conditional show cause order entered under G.S. 15A-1362(c). If the defendant fails to appear, an order for his arrest may be issued.

(b) Imprisonment; Criteria. Following a requirement to show cause under subsection (a), unless the defendant shows inability to comply and that his nonpayment was not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, the court may order the suspended sentence, if any, activated, or, if the law provides no term of imprisonment for the offense for which the defendant was convicted or if no suspended sentence was imposed, the court may order the defendant imprisoned for a term not to exceed 30 days. The court, before activating a sentence of imprisonment, may reduce the sentence. The court may provide in its order that payment or satisfaction at any time of the fine and costs imposed by the court will entitle the defendant to his release from the imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.

(c) Modification of Fine or Costs. If it appears that the default in the payment of a fine or costs is not attributable to failure on the defendant's part to make a good faith effort to obtain the necessary funds for payment, the court may enter an order:

- (1) Allowing the defendant additional time for payment; or

- (2) Reducing the amount of the fine or costs or of each installment; or
- (3) Revoking the fine or costs or the unpaid portion in whole or in part.

(d) Organizations. When an organization is required to pay a fine or costs or both, it is the duty of the person or persons authorized to make disbursement of the assets of the organization to make payment from assets of the organization, and a failure to do so constitutes contempt of court.

**"§ 15A-1365. Judgment for fines docketed; lien and execution.** — When a defendant has defaulted in payment of a fine or costs, the judge may order that the judgment be docketed. Upon being docketed, the judgment becomes a lien on the real estate of the defendant in the same manner as do judgments in civil actions. Executions on docketed judgments may be stayed only when an appeal is taken and security is given as required in civil cases. If the judgment is affirmed on appeal to the appellate division, the clerk of the superior court, on receipt of the certificate from the appellate division, must issue execution on the judgment. No execution may issue if the defendant elects to serve the suspended sentence or, if no suspended sentence was imposed, a term of 30 days.

(G.S. 15A-1366 to G.S. 15A-1370 reserved for future codification.)

"ARTICLE 85.

"Parole.

**"§ 15A-1371. Parole eligibility, consideration, and refusal.** — (a) Eligibility. Unless his sentence includes a minimum sentence, a prisoner serving a term other than life imprisonment or one included in a sentence of special probation imposed under authority of this Subchapter is eligible for release on parole at any time. A prisoner whose sentence includes a minimum term of imprisonment imposed under authority of this Subchapter is eligible for release on parole only upon completion of the service of that minimum term or one-fifth of the maximum penalty allowed by law for the offense for which the prisoner is sentenced, whichever is less, less any credit allowed under G.S. 15A-1355(b) and (c). Under this section, when the maximum allowed by law for the offense is life imprisonment, one fifth of the maximum is calculated as 20 years. A prisoner whose sentence includes a minimum sentence imposed only because required by law is eligible for release upon completion of one-fourth of the minimum time.

(b) Consideration for Parole. The Parole Commission must consider the desirability of parole for each person sentenced for a maximum term of 18 months or longer:

- (1) At least 60 days prior to his eligibility for parole, if he is ineligible for parole until he has served more than a year; or
- (2) At least 60 days prior to the expiration of the first year of the sentence, if he is eligible for parole at any time. Whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole. If the district attorney makes a written request in such cases, the Commission must publicly conduct its consideration of parole. Following its consideration, the Commission must issue a formal order granting or denying parole. If parole is denied, the Commission must consider its decision while the prisoner is eligible for parole at least once a year until parole is granted and must issue a formal order granting or denying parole at least once a year.

(c) Statement of Reasons for Release Before Minimum. If parole is granted before the expiration of a minimum period of imprisonment imposed by the court under G.S. 15A-1351(b) or recommended by the court under G.S. 15A-1351(d), the Commission must state in writing the reasons why the imposed or recommended minimum was not followed.

(d) Criteria. The Parole Commission may refuse to release on parole a prisoner it is considering for parole if it believes:

- (1) There is a substantial risk that he will not conform to reasonable conditions of parole; or
  - (2) His release at that time would unduly depreciate the seriousness of his crime or promote disrespect for law; or
  - (3) His continued correctional treatment, medical care, or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date; or
  - (4) There is a substantial risk that he would engage in further criminal conduct.
- (e) Refusal of Parole. A prisoner who has been granted parole may elect to refuse parole and to serve the remainder of his term of imprisonment.
- (f) Mandatory Parole at End of Felony Term. No later than six months prior to completion of his maximum term, the Parole Commission must parole every person convicted of a felony and sentenced to a maximum term of not less than 18 months of imprisonment, unless:
- (1) The person is to serve a period of probation following his imprisonment;
  - (2) The person has been reimprisoned following parole as provided in G.S. 15A-1373(e); or
  - (3) The Parole Commission finds facts demonstrating a strong likelihood that the health or safety of the person or public would be endangered by his release at that time.
- (g) Automatic Parole in Absence of Finding. A prisoner eligible for parole under subsection (a) and serving a sentence of not less than six months for a misdemeanor or serving a sentence not less than six months nor as great as 18 months for a felony must be released on parole when he completes service of one-third of his maximum sentence unless the Parole Commission finds in writing that:
- (1) There is a substantial risk that he will not conform to reasonable conditions of parole; or
  - (2) His release at that time would unduly depreciate the seriousness of his crime or promote disrespect for law; or
  - (3) His continued correctional treatment, medical care, or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date; or
  - (4) There is a substantial risk that he would engage in further criminal conduct.
- If a prisoner is released on parole by operation of this subsection, the term of parole is the unserved portion of the sentence to imprisonment, and the conditions of parole, unless otherwise specified by the Parole Commission, are those authorized in G.S. 15A-1374(b)(4) through (10).

**"§ 15A-1372. Length and effect of parole term. —** (a) Minimum Term of Parole. The term of parole for any person released from imprisonment may be no less than:

- (1) One year, if the remainder of the maximum term of imprisonment is one year or more; or
  - (2) The remainder of the maximum term, if the remainder of the term of imprisonment is less than one year.
- (b) Maximum Term of Parole. The maximum term of parole is the lesser of the following:
- (1) The remainder of the maximum term; or
  - (2) Five years when the maximum prison sentence imposed is greater than 20 years; or
  - (3) Three years when the maximum prison sentence imposed is greater than 10 years but no greater than 20 years; or

- (4) Two years when the maximum prison sentence imposed is not greater than 10 years.

(c) Termination of Sentence. When a parolee completes his period of parole, the sentence or sentences from which he was paroled are terminated.

**"§ 15A-1373. Incidents of parole.** — (a) Conditionality of Parole. Unless terminated sooner as provided in subsection (b), parole remains conditional and subject to revocation.

(b) Early Termination. The Parole Commission may terminate a period of parole and discharge the parolee at any time after the expiration of one year of successful parole if warranted by the conduct of the parolee and the ends of justice.

(c) Modification of Conditions. The Parole Commission may for good cause shown modify the conditions of parole at any time prior to the expiration or termination of the period for which the parole remains conditional.

(d) Effect of Violation. If the parolee violates a condition at any time prior to the expiration or termination of the period, the Commission may continue him on the existing parole, with or without modifying the conditions, or, if continuation or modification is not appropriate, may revoke the parole as provided in G.S. 15A-1376 and reimprison the parolee for a term consistent with the following requirements:

- (1) The recommitment must be for the unserved portion of the maximum term of imprisonment imposed by the court under G.S. 15A-1351, or six months, whichever is greater.
- (2) The prisoner must be given credit against the term of reimprisonment for all time spent in custody as a result of revocation proceedings under G.S. 15A-1376.

(e) Re-parole. A prisoner who has been reimprisoned following parole may be re-paroled by the Parole Commission subject to the provisions which govern initial parole. In the event that a defendant serves the final six months of his maximum imprisonment as a result of being recommitted for violation of parole, he may not be required to serve a further period on parole.

(f) Timing of Revocation. The Parole Commission may revoke parole for violation of a condition during the period of parole. The Commission also may revoke following the period of parole if:

- (1) Before the expiration of the period of parole, the Commission has recorded its intent to conduct a revocation hearing, and
- (2) The Commission finds that every reasonable effort has been made to notify the parolee and conduct the hearing earlier.

**"§ 15A-1374. Conditions of parole.** — (a) In General. The Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(b) Appropriate Conditions. As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.
- (4) Support his dependents and meet other family responsibilities.

- (5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.
- (6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.
- (7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.
- (8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.
- (9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.
- (10) Promptly notify the parole officer of any change in address or employment.
- (11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful.
- (12) Satisfy other conditions reasonably related to his rehabilitation.

**"§ 15A-1375. Commencement of parole, multiple sentences.** — A period of parole commences on the day the prisoner is released from imprisonment. Periods of parole run concurrently with any federal or state prison, jail, probation, or parole term to which the defendant is subject during the period.

**"§ 15A-1376. Arrest and hearing on parole violation.** — (a) Arrest for Violation of Parole. A parolee is subject to arrest for violation of conditions of parole only upon the issuance of an order of temporary or conditional revocation of parole by the Parole Commission. However, a parole revocation hearing under subsection (e) may be held without first arresting the parolee.

(b) When and Where Preliminary Hearing on Parole Violation Required. Unless the hearing required by subsection (e) is first held or the parolee waives the hearing, a preliminary hearing on parole violation must be held reasonably near the place of the alleged violation or arrest and within four working days of the arrest of a parolee to determine whether there is probable cause to believe that he violated a condition of parole. Otherwise, the parolee must be released four working days after his arrest to continue on parole pending a hearing.

(c) Officers to Conduct Hearing. The preliminary hearing on parole violation must be conducted by a judicial official, or by a hearing officer designated by the Parole Commission. No person employed by the Department of Correction may serve as a hearing officer at a hearing provided in this section unless he is a member of the Parole Commission or is employed solely as a hearing officer.

(d) Procedure for Preliminary Hearing on Parole Violation. The Department of Correction must give the parolee notice of the preliminary hearing and its purpose, including a statement of the violations alleged. At the hearing, the parolee may appear and speak in his own behalf, may present relevant information, and may, on request, personally question witnesses and adverse informants, unless the court finds good cause for not allowing confrontation. If the person holding the hearing determines there is probable cause to believe the parolee violated his parole, he must summarize the reasons for his determination and the evidence he relied on. Formal rules of evidence do not apply at the hearing. If probable cause is found, the parolee may be held in the custody of the Department of Correction to serve the appropriate term of imprisonment, subject to the outcome of a revocation hearing under subsection (e).

(e) Revocation Hearing. Before finally revoking parole, the Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The hearing is governed by the provisions of Article 3 of Chapter 150A of the General Statutes except:

- (1) The parolee is entitled to appear and speak in his own behalf and to confront and cross-examine adverse witnesses unless good cause is found for not allowing confrontation; and
- (2) The hearing examiner must meet the requirements of subsection (c).

**"§ 15A-1377. Appeal from revocation of parole.** — A person whose parole has been revoked may appeal the revocation under the provisions of Article 4 of Chapter 150A of the General Statutes.

(G.S. 15A-1378 to G.S. 15A-1380 reserved for future codification.)

"ARTICLE 86.

(G.S. 15A-1381 to G.S. 15A-1390 reserved for future codification.)

"ARTICLE 87.

(G.S. 15A-1391 to G.S. 15A-1400 reserved for future codification.)

**"SUBCHAPTER XIV. CORRECTION OF ERRORS AND APPEAL.**

"ARTICLE 88.

"Post-Trial Motions and Appeal.

**"§ 15A-1401. Post-trial motions and appeal.** — Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

- (1) Motion for appropriate relief, as provided in Article 89.
- (2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.
- (3) Appeal, as provided in Article 91.

(G.S. 15A-1402 to G.S. 15A-1410 reserved for future codification.)

"ARTICLE 89.

"Motion for Appropriate Relief and Other Post-Trial Relief.

**"§ 15A-1411. Motion for appropriate relief.** — (a) Relief from errors committed in the trial division, or other post-trial relief, may be sought by a motion for appropriate relief. Procedure for the making of the motion is as set out in G.S. 15A-1420.

(b) A motion for appropriate relief, whether made before or after the entry of judgment, is a motion in the original cause and not a new proceeding.

(c) The relief formerly available by motion in arrest of judgment, motion to set aside the verdict, motion for new trial, post conviction proceedings, coram nobis and all other post-trial motions is available by motion for appropriate relief. The availability of relief by motion for appropriate relief is not a bar to relief by writ of habeas corpus.

**"§ 15A-1412. Provisions of article procedural.** The provision in this Article for the right to seek relief by motion for appropriate relief is procedural and is not determinative of the question of whether the moving party is entitled to the relief sought or to other appropriate relief.

**"§ 15A-1413. Trial judges empowered to act.** — (a) A motion for appropriate relief made pursuant to G.S. 15A-1415 may be heard and determined in the trial division by any judge who is empowered to act in criminal matters in the judicial district and trial division in which the judgment was entered.

(b) The judge who presided at the trial is empowered to act upon a motion for appropriate relief made pursuant to G.S. 15A-1414. He may act even though he is in another district or even though his commission has expired.

(c) When a motion for appropriate relief may be made before a judge who did not hear the case, he may, if it is practicable to do so, refer all or a part of the matter for decision to the judge who heard the case.

**"§ 15A-1414. Motion by defendant for appropriate relief made within 10 days after verdict.** — (a) After the verdict but not more than 10 days after entry of judgment, the defendant by motion may seek appropriate relief for any error committed during or prior to the trial.



(b) Unless included in G.S. 15A-1415, all errors, including but not limited to the following, must be asserted within 10 days after entry of judgment:

- (1) Any error of law, including the following:
  - a. The court erroneously failed to dismiss the charge prior to trial pursuant to G.S. 15A-954.
  - b. The court's ruling was contrary to law with regard to motions made before or during the trial, or with regard to the admission or exclusion of evidence.
  - c. The evidence, at the close of all the evidence, was insufficient to justify submission of the case to the jury, whether or not a motion so asserting was made before verdict.
  - d. The court erroneously instructed the jury.
- (2) The verdict is contrary to the weight of the evidence.
- (3) For any other cause the defendant did not receive a fair and impartial trial.

(c) The motion may be made and acted upon in the trial court whether or not notice of appeal has been given.

**"§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict and without limitation as to time .** — (a) At any time after verdict, the defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section.

(b) The following are the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment:

- (1) The acts charged in the criminal pleading did not at the time they were committed constitute a violation of criminal law.
- (2) The trial court lacked jurisdiction over the person of the defendant or over the subject matter.
- (3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.
- (4) The defendant was convicted or sentenced under a statute that was in violation of the Constitution of the United States or the Constitution of North Carolina.
- (5) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
- (6) Evidence is available which was unknown or unavailable to the defendant at the time of the trial, which could not with due diligence have been discovered or made available at that time, and which has a direct and material bearing upon the guilt or innocence of the defendant.
- (7) There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.
- (8) The sentence imposed was unauthorized at the time imposed, exceeded the maximum authorized by law, was illegally imposed, or is otherwise invalid as a matter of law.
- (9) The defendant is in confinement and is entitled to release because his sentence has been fully served.

**"§ 15A-1416. Motion by the State for appropriate relief.** — (a) After the verdict but not more than 10 days after entry of judgment, the State by motion may seek appropriate relief for any error which it may assert upon appeal.

(b) At any time after verdict the State may make a motion for appropriate relief for:

- (1) The imposition of sentence when prayer for judgment has been continued and grounds for the imposition of sentence are asserted.

- (2) The initiation of any proceeding authorized under Article 82, Probation; Article 83, Imprisonment; and Article 84, Fines with regard to the modification of sentences. The procedural provisions of those Articles are controlling.

**"§ 15A-1417. Relief available.** — (a) The following relief is available when the court grants a motion for appropriate relief:

- (1) New trial on all or any of the charges.
- (2) Dismissal of all or any of the charges.
- (3) The relief sought by the State pursuant to G.S. 15A-1416.
- (4) Any other appropriate relief.

(b) When relief is granted in the trial court and the offense is divided into degrees or necessarily includes lesser offenses, and the court is of the opinion that the evidence does not sustain the verdict but is sufficient to sustain a finding of guilty of a lesser degree or of a lesser offense necessarily included in the one charged, the court may, with consent of the State, accept a plea of guilty to the lesser degree or lesser offense.

(c) If resentencing is required, the trial division may enter an appropriate sentence. If a motion is granted in the appellate division and resentencing is required, the case must be remanded to the trial division for entry of a new sentence.

**"§ 15A-1418. Motion for appropriate relief in the appellate division.** — (a) When a case is in the appellate division for review, a motion for appropriate relief based upon grounds set out in G.S. 15A-1415 must be made in the appellate division. For the purpose of this section a case is in the appellate division when the jurisdiction of the trial court has been divested as provided in G.S. 15A-1448, or when a petition for a writ of certiorari has been granted.

When a petition for a writ of certiorari has been filed but not granted, a copy or written statement of any motion made in the trial court, and of any disposition of the motion, must be filed in the appellate division.

(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, or whether it is necessary to remand the case to the trial division for taking evidence or conducting other proceedings. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case.

(c) The order of remand must provide that the time periods for perfecting or proceeding with the appeal are tolled, and direct that the order of the trial division with regard to the motion be transmitted to the appellate division so that it may proceed with the appeal or enter an appropriate order terminating it.

**"§ 15A-1419. When motion for appropriate relief denied.** — (a) The following are grounds for the denial of a motion for appropriate relief:

- (1) Upon a previous motion made pursuant to this Article, the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so. This subdivision does not apply to a motion based upon deprivation of the right to counsel at the trial or upon failure of the trial court to advise the defendant of such right. This subdivision does not apply when the previous motion was made within 10 days after entry of judgment.
- (2) The ground or issue underlying the motion was previously determined on the merits upon an appeal from the judgment or upon a previous motion or proceeding in the courts of this State or a federal court, unless since the time of such previous determination there has been a retroactively effective change in the law controlling such issue.
- (3) Upon a previous appeal the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so.

(b) Although the court may deny the motion under any of the circumstances specified in this section, in the interest of justice and for good cause shown it may in its discretion grant the motion if it is otherwise meritorious.

**"§ 15A-1420. Motion for appropriate relief; procedure.** — (a) Form, Service, Filing.

- (1) A motion for appropriate relief must:
    - a. Be made in writing unless it is made:
      1. In open court;
      2. Before the judge who presided at trial;
      3. Before the end of the session if made in superior court; and
      4. Within 10 days after entry of judgment;
    - b. State the grounds for the motion; and
    - c. Set forth the relief sought.
  - (2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.
  - (3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).
- (b) Supporting Affidavits.
- (1) A motion for appropriate relief made after the entry of judgment must be supported by affidavit or other documentary evidence if based upon the existence or occurrence of facts which are not ascertainable from the records and any transcript of the case or which are not within the knowledge of the judge who hears the motion.
  - (2) The opposing party may file affidavits or other documentary evidence.
- (c) Hearings, Showing of Prejudice; Findings.
- (1) Any party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing information presented unless the court determines that the motion is without merit. The court must determine, on the basis of these materials and the requirements of this subsection, whether an evidentiary hearing is required to resolve questions of fact.
  - (2) An evidentiary hearing is not required when the motion is made in the trial court pursuant to G.S. 15A-1414, but the court may hold an evidentiary hearing if it is appropriate to resolve questions of fact.
  - (3) The court must determine the motion without an evidentiary hearing when the motion and supporting and opposing information present only questions of law.
  - (4) If the court cannot rule upon the motion without the hearing of evidence, it must conduct a hearing for the taking of evidence, and must make findings of fact. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present must be in writing.
  - (5) If an evidentiary hearing is held, the moving party has the burden of proving by a preponderance of the evidence every fact essential to support the motion.

- (6) A defendant who seeks relief by motion for appropriate relief must show the existence of the asserted ground for relief. Relief must be denied unless prejudice appears, in accordance with G.S. 15A-1443.
- (7) The court must rule upon the motion and enter its order accordingly. When the motion is based upon an asserted violation of the rights of the defendant under the Constitution or laws or treaties of the United States, the court must make and enter conclusions of law and a statement of the reasons for its determination to the extent required, when taken with other records and transcripts in the case, to indicate whether the defendant has had a full and fair hearing on the merits of the grounds so asserted.

(d) **Action on Court's Own Motion.** At any time that a defendant would be entitled to relief by motion for appropriate relief, the court may grant such relief upon its own motion. The court must cause appropriate notice to be given to the parties.

**"§ 15A-1421. Indigent defendants.** — The provisions of Chapter 7A of the General Statutes with regard to the appointment of counsel for indigent defendants are applicable to proceedings under this Article. The court also may make appropriate orders relieving indigent defendants of all or a portion of the costs of the proceedings.

**"§ 15A-1422. Review upon appeal.** — (a) The making of a motion for appropriate relief is not a prerequisite for asserting an error upon appeal.

(b) The grant or denial of relief sought pursuant to G.S. 15A-1414 is subject to appellate review only in an appeal regularly taken.

(c) The court's ruling on a motion for appropriate relief pursuant to G.S. 15A-1415 is subject to review:

- (1) If the time for appeal from the conviction has not expired, by appeal.
- (2) If an appeal is pending when the ruling is entered, in that appeal.
- (3) If the time for appeal has expired and no appeal is pending, by writ of certiorari.

(d) There is no right to appeal from the denial of a motion for appropriate relief when the movant is entitled to a trial de novo upon appeal.

(e) When an error asserted upon appeal has also been the subject of a motion for appropriate relief, denial of the motion has no effect on the right to assert error upon appeal. (G.S. 15A-1423 to G.S. 15A-1430 reserved for future codification.)

"ARTICLE 90.

"Appeals from Magistrates and District Court Judges.

**"§ 15A-1431. Appeals by defendants from magistrate and district court judge; trial de novo.** — (a) A defendant convicted before a magistrate may appeal for trial de novo before a district court judge without a jury.

(b) A defendant convicted in the district court before the judge may appeal to the superior court for trial de novo with a jury as provided by law.

(c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk must transfer the case to the appropriate court.

(d) A defendant convicted by a magistrate or district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance must be given by the defendant in person to the magistrate or judge who heard the case or, if he is not available, notice must be given:

- (1) Before a magistrate in the county, in the case of appeals from the magistrate;  
or

- (2) During an open session of district court in the judicial district, in the case of appeals from district court.

The magistrate or district court judge must review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid must be remitted to the defendant, but the judge, clerk or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

(e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order.

(f) Appeal pursuant to this section stays the execution of portions of the judgment relating to fine and costs. Appeal stays portions of the judgment relating to confinement when the defendant has complied with conditions of pretrial release.

(g) The defendant may withdraw his appeal at any time prior to calendaring of the case for trial de novo. The case is then automatically remanded to the court from which the appeal was taken, for execution of the judgment.

**"§ 15A-1432. Appeals by State from district court judge.** — (a) Unless the rule against double jeopardy prohibits further prosecution, the State may appeal from the district court judge to the superior court:

- (1) When there has been a decision or judgment dismissing criminal charges as to one or more counts.
- (2) Upon the granting of a motion for a new trial on the ground of newly discovered or newly available evidence but only on questions of law.

(b) When the State appeals pursuant to subsection (a) the appeal is by written motion specifying the basis of the appeal made within 10 days after the entry of the judgment in the district court. The motion must be filed with the clerk and a copy served upon the defendant.

(c) The motion may be heard by any judge of superior court having authority for the trial of criminal cases in the district. The State and the defendant are entitled to file briefs and are entitled to adequate time for their preparation, consonant with the expeditious handling of the appeal.

(d) If the superior court finds that a judgment, ruling, or order dismissing criminal charges in the district court was in error, it must reinstate the charges and remand the matter to district court for further proceedings. The defendant may appeal this order to the appellate division as in the case of other orders of the superior court.

(e) If the superior court finds that the order of the district court was correct, it must enter an order affirming the judgment of the district court. The State may appeal the order of the superior court to the appellate division upon certificate by the district attorney to the judge who affirmed the judgment that the appeal is not taken for the purpose of delay.

(G.S. 15A-1433 to G.S. 15A-1440 reserved for future codification.)

"ARTICLE 91.

"Appeal.

**"§ 15A-1441. Correction of errors by appellate division.** — Errors of law may be corrected upon appellate review as provided in this Article.

**"§ 15A-1442. Grounds for correction of error by appellate division.** — The following constitute grounds for correction of errors by the appellate division.

- (1) Lack of Jurisdiction.
  - a. The trial court lacked jurisdiction over the offense.
  - b. The trial court did not have jurisdiction over the person of the defendant.
- (2) Error in the Criminal Pleading. Failure to charge a crime, in that:
  - a. The criminal pleading charged acts which at the time they were committed did not constitute a violation of criminal law; or

- b. The pleading fails to state essential elements of an alleged violation as required by G.S. 15A-924(a)(5).
- (3) Insufficiency of the Evidence. The evidence was insufficient as a matter of law.
- (4) Errors in Procedure.
  - a. There has been a denial of pretrial motions or relief to which the defendant is entitled, so as to affect the defendant's preparation or presentation of his defense, to his prejudice.
  - b. There has been a denial of a trial motion or relief to which the defendant is entitled, to his prejudice.
  - c. There has been error in the admission or exclusion of evidence, to the prejudice of the defendant.
  - d. There has been error in the judge's instructions to the jury, to the prejudice of the defendant.
  - e. There has been a denial of a post-trial motion or relief to which the defendant is entitled, to his prejudice. This provision is subject to the provisions of G.S. 15A-1422.
- (5) Constitutionally Invalid Procedure or Statute; Prosecution for Constitutionally Protected Conduct.
  - a. The conviction was obtained by a violation of the Constitution of the United States or of the Constitution of North Carolina.
  - b. The defendant was convicted under a statute that is in violation of the Constitution of the United States or the Constitution of North Carolina.
  - c. The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
- (6) Other Errors of Law. Any other error of law was committed by the trial court to the prejudice of the defendant.

**"§ 15A-1443. Existence and showing of prejudice.** — (a) A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises. The burden of showing such prejudice under this subsection is upon the defendant. Prejudice also exists in any instance in which it is deemed to exist as a matter of law or error is deemed reversible per se.

(b) A violation of the defendant's rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt. The burden is upon the State to demonstrate, beyond a reasonable doubt, that the error was harmless.

(c) A defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct.

**"§ 15A-1444. When defendant may appeal; certiorari.** — (a) A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered.

(b) Procedures for appeal from the magistrate to the district court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(c) Procedures for appeal from the district court to the superior court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(d) Procedures for appeal to the appellate division are as provided in this Article, the rules of the appellate division, and Chapter 7A of the General Statutes. The appeal must be perfected and conducted in accordance with the requirements of those provisions.

(e) Except as provided in G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State.

(f) The ruling of the court upon a motion for appropriate relief is subject to review upon appeal or by writ of certiorari as provided in G.S. 15A-1422.

(g) Review by writ of certiorari is available when provided for by this Chapter, by other rules of law, or by rule of the appellate division.

**"§ 15A-1445. Appeal by the State.** — (a) Unless the rule against double jeopardy prohibits further prosecution, the State may appeal from the superior court to the appellate division:

- (1) When there has been a decision or judgment dismissing criminal charges as to one or more counts.
- (2) Upon the granting of a motion for a new trial on the ground of newly discovered or newly available evidence but only on questions of law.

(b) The State may appeal an order by the superior court granting a motion to suppress as provided in G.S. 15A-979.

**"§ 15A-1446. Requisites for preserving the right to appellate review.** — (a) Except as provided in subsection (d), error may not be asserted upon appellate review unless the error has been brought to the attention of the trial court by appropriate and timely objection or motion. No particular form is required in order to preserve the right to assert the alleged error upon appeal if the motion or objection clearly presented the alleged error to the trial court. Formal exceptions are not required, but when evidence is excluded a record must be made in the manner provided in G.S. 1A-1, Rule 43(c), in order to assert upon appeal error in the exclusion of that evidence.

(b) Failure to make an appropriate and timely motion or objection constitutes a waiver of the right to assert the alleged error upon appeal, but the appellate court may review such errors in the interest of justice if it determines it appropriate to do so.

(c) The making of post-trial motions is not a prerequisite to the assertion of error on appeal.

(d) Errors based upon any of the following grounds, which are asserted to have occurred, may be the subject of appellate review even though no objection, exception or motion has been made in the trial division.

- (1) Lack of jurisdiction of the trial court over the offense of which the defendant was convicted.
- (2) Lack of jurisdiction of the trial court over the person of the defendant.
- (3) The criminal pleading charged acts which, at the time they were committed, did not constitute a violation of criminal law.
- (4) The pleading fails to state essential elements of an alleged violation, as required by G.S. 15A-924(a)(5).
- (5) The evidence was insufficient as a matter of law.
- (6) The defendant was convicted under a statute that is in violation of the Constitution of the United States or the Constitution of North Carolina.
- (7) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.
- (8) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
- (9) Subsequent admission of evidence from a witness when there has been an improperly overruled objection to the admission of evidence on the ground

- that the witness is for a specified reason incompetent or not qualified or disqualified.
- (10) Subsequent admission of evidence involving a specified line of questioning when there has been an improperly overruled objection to the admission of evidence involving that line of questioning.
  - (11) Questions propounded to a witness by the court or a juror.
  - (12) Rulings and orders of the court, not directed to the admissibility of evidence during trial, when there has been no opportunity to make an objection or motion.
  - (13) Error of law in the charge to the jury.
  - (14) The court has expressed to the jury an opinion as to whether a fact is fully or sufficiently proved.
  - (15) The defendant was not present at any proceeding at which his presence was required.
  - (16) Error occurred in the entry of the plea.
  - (17) The form of the verdict was erroneous.
  - (18) The sentence imposed was unauthorized at the time imposed, exceeded the maximum authorized by law, was illegally imposed, or is otherwise invalid as a matter of law.
  - (19) A significant change in law, either substantive or procedural, applies to the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.

**"§ 15A-1447. Relief available upon appeal.** — (a) If the appellate court finds that there has been reversible error which denied the defendant a fair trial conducted in accordance with law, it must grant the defendant a new trial.

(b) If the appellate court finds that the facts charged in a pleading were not at the time charged a crime, the judgment must be reversed and the charge must be dismissed.

(c) If the appellate court finds that the evidence with regard to a charge is insufficient as a matter of law, the judgment must be reversed and the charge must be dismissed unless there is evidence to support a lesser-included offense. In that case the court may remand for trial on the lesser offense.

(d) If the appellate court affirms only some of the charges, or if it finds error relating only to the sentence, it may direct the return of the case to the trial court for the imposition of an appropriate sentence.

(e) If the appellate court affirms one or more of the charges, but not all of them, and makes a finding that the sentence is sustained by the charge or charges which are affirmed and is appropriate, the court may affirm the sentence.

(f) If the appellate court finds that there is an error with regard to the sentence which may be corrected without returning the case to the trial division for that purpose, it may direct the entry of the appropriate sentence.

(g) If the appellate court finds that there has been reversible error and the rule against double jeopardy prohibits further prosecution, it must dismiss the charges with prejudice.

**"§ 15A-1448. Procedures for appeal.** — (a) Time for Entry of Appeal, Jurisdiction Over the Case.

- (1) A case remains open for the taking of an appeal to the appellate division for a period of 10 days after the entry of judgment.
- (2) When a motion for appropriate relief is made during the 10-day period, the case remains open for the taking of an appeal until the expiration of 10 days after the court has ruled on the motion.



- (3) The jurisdiction of the trial court with regard to the case is divested, except as to actions authorized by G.S. 15A-1453, when notice of appeal has been given and
    - a. The period described in (1) and (2) has expired; or
    - b. No motion for appropriate relief is pending and the parties file written consent that the case be transferred immediately to the appellate division; or
    - c. Thirty days after the making of a motion for appropriate relief there has been no ruling and the appealing party files with the clerk a written request that the case be transferred immediately to the appellate division.
  - (4) For the purpose of computing time limitations for settling of the record on appeal, docketing the appeal, or other steps in the appellate process, the appeal is considered as 'taken' on the date the jurisdiction of the trial court is divested under subsection (3), or the date a transcript is delivered to the clerk of court, whichever is later.
  - (5) The right to appeal is not waived by withdrawal of an appeal if the appeal is reentered within the time specified in (1) and (2).
  - (6) The right to appeal is not waived by compliance with all or a portion of the judgment imposed. If the defendant appeals, the court may enter appropriate orders remitting any fines or costs which have been paid. The court may delay the remission pending the determination of the appeal.
- (b) How and When Appeal of Right Taken.
- (1) Oral notice of appeal may be given in open court:
    - a. At the time final judgment is entered; or
    - b. When the court rules upon a post-verdict motion for appropriate relief, if appeal is then available.
  - (2) Written notice of appeal may be filed with the clerk after final judgment and before the time for taking an appeal has expired.
- (c) Certiorari. Petitions for writs of certiorari are governed by rules of the appellate division.
- "§ 15A-1449. Security for costs not required.** — In criminal cases no security for costs is required upon appeal to the appellate division.
- "§ 15A-1450. Withdrawal of appeal.** — An appeal may be withdrawn by filing with the clerk of superior court a written notice of the withdrawal, signed by the defendant and, if he has counsel, his attorney. The clerk must forward a copy of the notice to the clerk of the appellate division in which the case is pending. The appellate division may enter an appropriate order with regard to the costs of the appeal.
- "§ 15A-1451. Stay of sentence; bail; no stay when State appeals.** — (a) When a defendant has given notice of appeal:
- (1) Payment of costs is stayed.
  - (2) Payment of a fine is stayed.
  - (3) Confinement is stayed only when the defendant has been released pursuant to Article 26, Bail.
  - (4) Probation or special probation is stayed.
- (b) The effect of dismissal of charges is not stayed by an appeal by the State, and the defendant is free from such charges unless they are subsequently reinstated as a result of the determination upon appeal.
- "§ 15A-1452. Execution of sentence upon determination of appeal; compliance with directive of appellate court.** — (a) If an appeal is withdrawn, the clerk of superior court must enter an order reflecting that fact and directing compliance with the judgment.

(b) If the appellate division affirms the judgment in whole or in part, the clerk of superior court must file the directive of the appellate division and order compliance with its terms.

(c) If the appellate division orders a new trial or directs other relief or proceedings, the clerk must file the directive of the appellate court and bring the directive to the attention of the district attorney or the court for compliance with the directive.

**"§ 15A-1453. Ancillary actions during appeal.** — (a) While an appeal is pending in the appellate division, the court in which the defendant was convicted has continuing authority to act with regard to the defendant's release pursuant to Article 26, Bail.

(b) The appropriate court of the appellate division may direct that additional steps be taken in the trial court while the appeal is pending, including but not limited to:

- (1) Appointment of counsel.
- (2) Hearings with regard to matters relating to the appeal.
- (3) Taking evidence or conducting other proceedings relating to motions for appropriate relief made in the appellate division, as provided in G.S. 15A-1418."

**Sec. 2.** The title of Subchapter VII of Chapter 15A is amended by striking out the word "Witnesses" and inserting in lieu thereof the word "Defendants". The title of Subchapter X of Chapter 15A is amended to read "General Trial Procedure."

**Sec. 3 (a).** The General Statutes of North Carolina are hereby amended by inserting a new chapter, Chapter 5A, "Contempt" to read as follows:

**"CHAPTER 5A.**

**"Contempt.**

**"ARTICLE 1.**

**"Criminal Contempt.**

**"§ 5A-11. Criminal contempt.** — (a) Except as provided in subsection (b), each of the following is criminal contempt:

- (1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.
- (2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.
- (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.
- (4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.
- (5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.
- (6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.
- (7) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.
- (8) Willful 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.

- (9) Willful communication with a juror in an improper attempt to influence his deliberations.
- (10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

The grounds for criminal contempt specified here are exclusive, regardless of any other grounds for criminal contempt which existed at common law.

(b) No person may be held in contempt under this section on the basis of the content of any broadcast, publication, or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice.

(c) This section is subject to the provisions of G.S. 7A-276.1, Court orders prohibiting publication or broadcast of reports of open court proceedings or reports of public records banned.

**"§ 5A-12. Punishment; circumstances for fine or imprisonment; reduction of punishment; other measures.** — (a) A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three, except that a person who commits a contempt described in G.S. 5A-11(8) is subject to censure, imprisonment not to exceed six months, fine not to exceed five hundred dollars (\$500.00), or any combination of the three and a person who has not been arrested who fails to comply with a nontestimonial identification order, issued pursuant to Article 14 of G.S. 15A is subject to censure, imprisonment not to exceed 90 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three.

(b) Except for contempt under G.S. 5-11(5) or G.S. 5A-11(9), fine or imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless:

- (1) The act or omission was willfully contemptuous; or
- (2) The act or omission was preceded by a clear warning by the court that the conduct is improper.

(c) The judicial official who finds a person in contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt if warranted by the conduct of the contemnor and the ends of justice.

(d) A person held in criminal contempt under this Article may nevertheless, for the same conduct, be found in civil contempt under Article 2 of this Chapter, Civil Contempt. If a person is found in both civil contempt and criminal contempt for the same conduct, the total period of imprisonment is limited as provided in G.S. 5A-21(c).

(e) A person held in criminal contempt under G.S. 5A-11(9) may nevertheless, for the same conduct, be found guilty of a violation of G.S. 14-225.1, but he must be given credit for any imprisonment resulting from the contempt.

**"§ 5A-13. Direct and indirect criminal contempt; proceedings required.** — (a) Criminal contempt is direct criminal contempt when the act:

- (1) Is committed within the sight or hearing of a presiding judicial official; and
- (2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and
- (3) Is likely to interrupt or interfere with matters then before the court.

The presiding judicial official may punish summarily for direct criminal contempt according to the requirements of G.S. 5A-14 or may defer adjudication and sentencing as provided in G.S. 5A-15. If proceedings for direct criminal contempt are deferred, the judicial official must, immediately following the conduct, inform the person of his intention to institute contempt proceedings.

(b) Any criminal contempt other than direct criminal contempt is indirect criminal contempt and is punishable only after proceedings in accordance with the procedure required by G.S. 5A-15.

**"§ 5A-14. Summary proceedings for contempt.** — (a) The presiding judicial official may summarily impose measures in response to direct criminal contempt when necessary to restore order or maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt.

(b) Before imposing measures under this section, the judicial official must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts supporting the summary imposition of measures in response to contempt. The facts must be established beyond a reasonable doubt.

**"§ 5A-15. Plenary proceedings for contempt.** — (a) When a judicial official chooses not to proceed summarily against a person charged with direct criminal contempt or when he may not proceed summarily, he may proceed by an order directing the person to appear before a judge at a reasonable time specified in the order and show cause why he should not be held in contempt of court. A copy of the order must be furnished to the person charged. If the criminal contempt is based upon acts before a judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different judge.

(b) Proceedings under this section are before a district court judge unless a court superior to the district court issued the order, in which case the proceedings are before that court. Venue lies throughout the judicial district where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judge is the trier of facts at the show cause hearing.

(e) The person charged with contempt may not be compelled to be a witness against himself in the hearing.

(f) At the conclusion of the hearing, the judge must enter a finding of guilty or not guilty. If the person is found to be in contempt, the judge must make findings of fact and enter judgment. The facts must be established beyond a reasonable doubt.

(g) The judge presiding over the hearing may appoint a prosecutor or, in the event of an apparent conflict of interest, some other member of the bar to represent the court in hearings for criminal contempt.

**"§ 5A-16. Custody of person charged with criminal contempt.** — (a) A judicial official may orally order that a person he is charging with direct criminal contempt be taken into custody and restrained to the extent necessary to assure his presence for summary proceedings or notice of plenary proceedings.

(b) If a judicial official who initiates plenary proceedings for contempt under G.S. 5A-15 finds, based on sworn statement or affidavit, probable cause to believe the person ordered to appear will not appear in response to the order, he may issue an order for arrest of the person, pursuant to G.S. 15A-305. A person arrested under this subsection is entitled to release under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.

**"§ 5A-17. Appeals.** — A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions, except appeal from a finding of contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge.

(G.S. 5A-18 to G.S. 5A-20 reserved for future codification)

"ARTICLE 2.

"Civil Contempt.

**"§ 5A-21. Civil contempt; imprisonment to compel compliance.** — (a) Failure to comply with an order of a court is a continuing civil contempt as long as:

- (1) The order remains in force;
- (2) The purpose of the order may still be served by compliance with the order; and
- (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable him to comply with the order.

(b) A judge may order a civil contemnor imprisoned as long as his civil contempt continues, unless the contempt is failure by a person not arrested for the crime to comply with a nontestimonial identification order issued pursuant to Article 14, Nontestimonial Identification Order, of Chapter 15A of the General Statutes. In that case, he may not be imprisoned more than 90 days unless he is arrested on probable cause.

(c) A person who is found in civil contempt under this Article may, nevertheless, for the same conduct, be found in criminal contempt under Article 1 of this Chapter, but the total period of imprisonment arising from the conduct may not exceed the greater of:

- (1) The period during which the contemnor may be imprisoned for civil contempt; or
- (2) The period of imprisonment provided in G.S. 5A-12(a).

**"§ 5A-22. Release when civil contempt no longer continues.** — (a) A person imprisoned for civil contempt must be released when his civil contempt no longer continues. The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt. Upon finding compliance with the specifications, the sheriff or other officer having custody may release the person without a further order from the court.

(b) On motion of the contemnor, the court must determine if he is subject to release and, on an affirmative determination, order his release. The motion must be directed to the judge who found civil contempt unless he is not available. Then the motion must be made to a judge of the same division in the same judicial district. The contemnor may also seek his release under other procedures available under the law of this State.

**"§ 5A-23. Proceedings for civil contempt.** — (a) Proceedings for civil contempt are either by the order of a judicial official directing the alleged contemnor to appear at a specified reasonable time and show cause why he should not be held in civil contempt or by the notice of a judicial official that the alleged contemnor will be held in contempt unless he appears at a specified reasonable time and shows cause why he should not be held in contempt. The order or notice must be given at least five days in advance of the hearing unless good cause is shown. The order or notice may be issued on the motion and sworn statement or affidavit of one with an interest in enforcing the order, including a judge, and a finding by the judicial official of probable cause to believe there is civil contempt.

(b) Proceedings under this section are before a district court judge, unless a court superior to the district court issued the order in which case the proceedings are before that court. When the proceedings are before a superior court, venue is in the judicial district of the court which issued the order. Otherwise, venue is in the county where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judge is the trier of facts at the show cause hearing.

(e) At the conclusion of the hearing, the judge must enter a finding for or against the alleged contemnor. If civil contempt is found, the judge must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself of the contempt.

(f) A person with an interest in enforcing the order may present the case for a finding of civil contempt for failure to comply with an order.

(g) A judge conducting a hearing to determine if a person is in civil contempt may at that hearing, upon making the required findings, find the person in criminal contempt for the same conduct, regardless of whether imprisonment for civil contempt is proper in the case.

**"§ 5A-24. Appeals.** — A person found in civil contempt may appeal in the manner provided for appeals in civil actions.

**"§ 5A-25. As for contempt and civil contempt.** — Whenever the laws of North Carolina call for proceedings as for contempt, the proceedings are those for civil contempt set out in this Article."

**Sec. 3(b).** Chapter 7A of the General Statutes of North Carolina is amended to insert a new Article 22A as follows:

"ARTICLE 22A.

"Prohibited Orders.

**"§ 7A-276.1. Court orders prohibiting publication or broadcast of reports of open court proceedings or reports of public records banned.** — No court shall make or issue any rule or order banning, prohibiting, or restricting the publication or broadcast of any report concerning any of the following: any evidence, testimony, argument, ruling, verdict, decision, judgment, or other matter occurring in open court in any hearing, trial, or other proceeding, civil or criminal; and no court shall issue any rule or order sealing, prohibiting, restricting the publication or broadcast of the contents of any public record as defined by any statute of this State, which is required to be open to public inspection under any valid statute, regulation, or rule of common law. If any rule or order is made or issued by any court in violation of the provisions of this statute, it shall be null and void and of no effect, and no person shall be punished for contempt for the violation of any such void rule or order.

**Sec. 4.** G.S. 7A-27(b) is amended by striking the words "or one entered in a post-conviction hearing under Article 22 of Chapter 15,".

**Sec. 5.** G.S. 7A-31(a) is amended by:

(a) Striking out of the first paragraph the words "and except a cause involving a review of post-conviction proceeding under Article 22, Chapter 15".

(b) Striking out of the second paragraph the words "or any cause involving review of a post-conviction proceeding".

**Sec. 6.** G.S. 7A-271(a)(3) is amended by striking out "G.S. 15-152" and by inserting "G.S. 15A-926".

**Sec. 7.** G.S. 7A-451 is amended to rewrite subdivision (a)(3) as follows:

"(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars (\$500.00) or more, or has been sentenced to a term of imprisonment."

G.S. 7A-451 is further amended to delete "G.S. 15-222" in subdivision (b)(6) and to insert: "Subchapter XIV of Chapter 15A of the General Statutes."

**Sec. 8.** G.S. 7A-451(a)(4) is amended to delete the comma following the word "probation" and to delete the words "if confinement is likely to be adjudged as a result of the hearing".

**Sec. 9.** G.S. 7A-452 is amended to delete the period at the end of the caption and to insert "; **compensation of standby counsel.**" G.S. 7A-452 is further amended by adding a new subsection (d) as follows:

"(d) Unless a public defender or assistant public defender is appointed to serve, the trial judge appointing standby counsel under G.S. 15A-1243 shall award reasonable compensation to be paid by the State."

**Sec. 10.** Amend G.S. 9-3, as the same appears in the 1975 Cumulative Supplement to 1969 Replacement Volume 1B of the General Statutes, by inserting in line 5 after the comma and before the word "who" the following: "who can hear and understand the English language,".

**Sec. 11.** Rewrite G.S. 9-15(c) as follows:

"(c) In civil cases if any juror has a suit pending and at issue in the court in which he is serving, he may be challenged for cause, and he shall be withdrawn from the trial panel, and may be withdrawn from the venire in the discretion of the presiding judge. In criminal cases challenges are governed by Article 72, Selecting and Impaneling the Jury, of Chapter 15A of the General Statutes."

**Sec. 12.** G.S. 9-17 is amended to add the following at the end of the first paragraph: "When sequestration of the jury is ordered in a criminal case, however, the State shall pay for all accommodations of jurors."

**Sec. 13.** G.S. 9-18, as the same appears in the 1969 Replacement Volume 1B of the General Statutes, is amended by rewriting the first line to read:

"§ 9-18. **Alternate jurors.** — (a) Civil Cases. Whenever the presiding judge deems it appropriate and by adding a new subsection (b) to read as follows:

"(b) Criminal cases. Procedures relating to alternate jurors in criminal cases are governed by Article 72, Selecting and Impaneling the Jury, of Chapter 15A of the General Statutes."

**Sec. 14.** Rewrite G.S. 9-21 as follows:

"§ 9-21. **Peremptory challenges in criminal cases governed by Chapter 15A.** — Peremptory challenges in criminal cases are governed by Article 72, Selecting and Impaneling the Jury, of Chapter 15A of the General Statutes."

**Sec. 15.** G.S. 14-2 is amended to delete the second sentence of the section.

**Sec. 16.** (a) Chapter 14 of the General Statutes of North Carolina is amended by inserting a new statute, G.S. 14-225.1, to read as follows:

"§ 14-225.1. **Harassment of and communication with jurors.** — (a) If a person, with intent to influence the official action of another as a juror, communicates with him other than as part of the proceedings in a case, or harasses or alarms him, he is guilty of a felony punishable by fine, imprisonment up to five years, or both. Conduct directed against the juror's spouse or other relative residing in the same household with the juror constitutes conduct directed against the juror.

(b) In this section 'juror' means a grand juror or a petit juror and includes a person who has been drawn or summoned to attend as a prospective juror."

(b) G.S. 14-226 is amended by deleting the words "juror or" in both places that it appears, and by deleting from the caption the words "jurors and".

**Sec. 17.** G.S. 15-196.3, as the same appears in the 1975 Replacement Volume 1C of the General Statutes, is amended to delete the second line and to insert: "the minimum and maximum term of a".

**Sec. 18.** G.S. 15-205 as the same appears in the 1975 Cumulative Supplement to Volume 1C of the General Statutes is amended beginning on the third line thereof by placing a period after the word "Correction" and striking out from lines 3, 4, 5, and 6 the words "and shall report in writing thereon. He shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct him regarding the same."

**Sec. 19.** G.S. 15A-101 is amended to add new subdivisions as follows:

"Entry of judgment. — Judgment is entered when sentence is pronounced. Prayer for judgment continued upon payment of costs, without more, does not constitute the entry of judgment."

"Appeal. — When used in a general context, the term 'appeal' also includes appellate review upon writ of certiorari."

**Sec. 20.** G.S. 15A-279(e) is hereby amended by inserting after the word "order" the following: "pursuant to the provisions of G.S. 5A-12(a) and G.S. 5A-21(b)." G.S. 15A-279 is further amended by inserting therein two new subsections (f) and (g) to read as follows:

"(f) A nontestimonial identification order may not be issued against a person previously subject to a nontestimonial identification order unless it is based on different evidence which was not reasonably available when the previous order was issued.

(g) Resisting compliance with a nontestimonial identification order is not itself grounds for finding probable cause to arrest the suspect, but it may be considered with other evidence in making the determination whether probable cause exists."

**Sec. 21.** G.S. 15A-305(b)(4) is amended by deleting the words "or suspension of his sentence". G.S. 15A-305(b) is further amended by inserting the following subdivisions and renumbering the existing subdivision "(7)" as subdivision "(9)":

"(7) When a defendant fails to appear as required in a show cause order issued in a criminal proceeding.

(8) It is authorized by G.S. 5A-16 in connection with contempt proceedings."

**Sec. 22.** G.S. 15A-502(c) is rewritten to read as follows:

"(c) This section does not authorize the taking of photographs or fingerprints of a 'child' as defined for the purposes of G.S. 7A-278(2), unless the case has been transferred to the Superior Court Division pursuant to G.S. 7A-280."

**Sec. 23.** G.S. 15A-537 is rewritten to read as follows:

**"§ 15A-537. Persons authorized to effect release.** — (a) Following any authorization of release of any person in accordance with the provisions of this Article, any judicial official must effect the release of that person upon satisfying himself that the conditions of release have been met. In the absence of a judicial official, any law-enforcement officer or custodial official having the person in custody must effect the release upon satisfying himself that the conditions of release have been met, but law-enforcement and custodial agencies may administratively direct which officers or officials are authorized to effect release under this section. Satisfying oneself whether conditions of release are met includes determining if sureties are sufficiently solvent to meet the bond obligation, but no judicial official, officer, or custodial official may be held civilly liable for actions taken in good faith under this section.

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

(c) For the limited purposes of this section, any law-enforcement officer or custodial official may administer oaths to sureties and take other actions necessary in carrying out the duties imposed by this section. Any surety bond so taken is to be regarded in every respect as any other bail bond."

**Sec. 24.** Amend G.S. 15A-622(a) by adding a sentence at the end to read: "Challenges to the panel from which grand jurors were drawn are governed by the procedure in G.S. 15A-1211."

**Sec. 25.** G.S. 15A-959 is hereby amended by rewriting the catch line thereof to read as follows: "Notice of defense of insanity; pretrial determination of insanity.", and by inserting therein a new subsection (c) to read as follows:

"(c) Upon motion of the defendant and with the consent of the State the court may conduct a hearing prior to the trial with regard to the defense of insanity at the time of the offense. If the court determines that the defendant has a valid defense of insanity with regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a finding to that effect. The court's denial of relief under this subsection is without prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no reference to the hearing may be made at the trial, and recorded testimony or evidence taken at the hearing is not admissible as evidence at the trial."

**Sec. 26.** G.S. 50-13.3(a) is rewritten to read: "(a) An order providing for the custody of a minor child is enforceable by proceedings for civil contempt and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A, Contempt, of the General Statutes."

G.S. 50-13.4(f)(9) is rewritten to read:

"(9) An order for the payment of child support is enforceable by proceedings for civil contempt and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A, Contempt, of the General Statutes."



G.S. 50-16.7(j) is rewritten to read:

"(j) An order for the payment of alimony or alimony pendente lite is enforceable by proceedings for civil contempt and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A, Contempt, of the General Statutes."

**Sec. 27.** G.S. 148-28 is amended to rewrite the first two sentences of the section as follows: "When a sentenced offender is to be taken to the Central Prison at Raleigh, a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the Central Prison. A person under 16 years of age convicted of a felony shall not be imprisoned in the Central Prison at Raleigh unless:

- (1) The person was convicted of a capital felony; or
- (2) He has previously been imprisoned in a county jail or under the authority of the Department of Correction upon conviction of a felony."

**Sec. 28.** G.S. 148-29, as the same appears in the 1974 Replacement Volume 3C of the General Statutes, is amended to delete from the first line of the section the word "sentenced" and to insert: "to be taken".

**Sec. 29.** G.S. 148-33.1(b) is amended by striking out the following words: "Provided, in any case where the inmate being considered for work-release privileges has not yet served a fourth of his sentence if determinate or a fourth of his minimum sentence if indeterminate," and the colon preceding this phrase, and by inserting in lieu thereof a period and the following: "If the inmate is not eligible for parole,".

**Sec. 30.** G.S. 148-53, as the same appears in the 1975 Cumulative Supplement to the 1974 Replacement Volume 3C of the General Statutes, is amended to add a comma after the word "prisoners" in the second line and to delete the following phrase which reads: "serving both determinate and indeterminate sentences in the State prison, in prison camps, and on prison farms,".

**Sec. 31.** G.S. 162-42 is amended by striking out the last sentence thereof.

**Sec. 32.** G.S. 162-46 is rewritten to read as follows:

**"§ 162-46. Deductions from sentence allowed for good behavior.** — When a defendant has been sentenced to a facility other than one maintained by the Department of Correction, and has faithfully performed the duties assigned to him during his term of sentence, he is entitled to a deduction from the time of his sentence of five days for each month, and he shall be discharged when he has served his sentence, less the number of days he may be entitled to have deducted. The authorities having him in charge shall be the sole judges as to the faithful performance of the duties assigned to him. Should he escape or attempt to escape, he shall forfeit any deduction he may have been entitled to prior to that time."

**Sec. 33.** Chapter 5 of the General Statutes and all of Article 11 of Chapter 15 of the General Statutes and the following listed General Statutes are repealed:

|               |               |
|---------------|---------------|
| G.S. 1-180    | G.S. 15-197.1 |
| G.S. 7A-28    | G.S. 15-198   |
| G.S. 7A-194   | G.S. 15-199   |
| G.S. 14-265   | G.S. 15-200   |
| G.S. 15-103.1 | G.S. 15-200.1 |
| G.S. 15-110   | G.S. 15-200.2 |
| G.S. 15-111   | G.S. 15-205.1 |
| G.S. 15-112   | G.S. 15-217   |
| G.S. 15-113   | G.S. 15-218   |
| G.S. 15-114   | G.S. 15-219   |
| G.S. 15-115   | G.S. 15-220   |
| G.S. 15-116   | G.S. 15-221   |
| G.S. 15-117   | G.S. 15-222   |
| G.S. 15-118   | G.S. 122-83   |

|               |                |
|---------------|----------------|
| G.S. 15-119   | G.S. 122-84    |
| G.S. 15-120   | G.S. 122-84.1  |
| G.S. 15-121   | G.S. 122-88    |
| G.S. 15-122   | G.S. 122-89    |
| G.S. 15-123   | G.S. 148-12(b) |
| G.S. 15-124   | G.S. 148-30    |
| G.S. 15-159   | G.S. 148-32    |
| G.S. 15-173.1 | G.S. 148-42    |
| G.S. 15-174   | G.S. 148-49.3  |
| G.S. 15-179   | G.S. 148-58    |
| G.S. 15-180   | G.S. 148-58.1  |
| G.S. 15-180.1 | G.S. 148-60    |
| G.S. 15-180.2 | G.S. 148-60.2  |
| G.S. 15-180.3 | G.S. 148-60.3  |
| G.S. 15-181   | G.S. 148-61    |
| G.S. 15-182   | G.S. 148-61.1  |
| G.S. 15-183   | G.S. 148-62    |
| G.S. 15-184   | G.S. 162-41    |
| G.S. 15-185   | G.S. 162-45    |
| G.S. 15-186   | G.S. 162-47    |
| G.S. 15-197   | G.S. 162-49    |

**Sec. 34.** All statutes which refer to sections repealed or amended by this act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.

**Sec. 35.** 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. 36.** 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. 37.** All laws and clauses of laws in conflict with this act are hereby repealed.

**Sec. 38.** The eligibility for parole and work release of prisoners not specified in G.S. 15A-1371(a) is determined by the law applicable prior to the effective date of this act. In applying G.S. 15A-1371(a) to sentences entered before the effective date of this act, a sentence to an absolute term of years, with no minimum, is regarded as having a minimum term equal to the absolute term.

**Sec. 39.** This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgement was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978.

In the General Assembly read three times and ratified, this the 23rd day of June, 1977.