

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 787
HOUSE BILL 718

AN ACT TO INSURE THE SPEEDY TRIAL OF PERSONS CHARGED WITH CRIMINAL
OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. Article 35 of Chapter 15A of the General Statutes is rewritten to read as follows:

"ARTICLE 35.

"Speedy Trial.

"§ 15A-701. **Time limits and exclusions.** — (a) The trial of the defendant charged with a criminal offense shall begin within the time limits specified below:

- (1) within 90 days from the date the defendant is arrested, served with criminal process, waives an indictment or is notified pursuant to G.S. 15A-630 that an indictment has been filed with the superior court against him, whichever occurs last;
- (2) within 90 days of the giving of notice of appeal in a misdemeanor case for a trial de novo in the superior court;
- (3) when a charge is dismissed, other than under G.S. 15A-703, and the defendant is afterwards charged with the same offense or an offense based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan, then within 90 days from the date that the defendant was arrested, served with criminal process, waived an indictment, or was notified pursuant to G.S. 15A-630 that an indictment has been filed with the superior court against him, whichever occurs last, for the original charge;
- (4) when the defendant is to be tried again following a declaration by the trial judge of a mistrial, then within 60 days of that declaration; or
- (5) within 60 days from the date the action occasioning the new trial becomes final when the defendant is to be tried again following an appeal or collateral attack.

(a1) Notwithstanding the provisions of G.S. 15A-701(a) the trial of a defendant charged with a criminal offense who is arrested, served with criminal process, waives an indictment or is notified pursuant to G.S. 15A-630 that an indictment has been filed against him, on or after October 1, 1978, and before October 1, 1980, shall begin within the time limits specified below:

- (1) within 120 days from the date the defendant is arrested, served with criminal process, waives an indictment, or is notified pursuant to G.S. 15A-630 that an indictment has been filed against him, whichever occurs last;
- (2) within 120 days of the giving of notice of appeal in a misdemeanor case for a trial de novo in the superior court;
- (3) when a charge is dismissed, other than under G.S. 15A-703, and the defendant is afterwards charged with the same offense or an offense based on the same act or transaction or on the same series of acts or transactions

connected together or constituting parts of a single scheme or plan, then within 120 days from the date that the defendant was arrested, served with criminal process, waived an indictment, or was notified pursuant to G.S. 15A-630 that an indictment has been filed with the superior court against him, whichever occurs last, for the original charge;

- (4) when the defendant is to be tried again following a declaration by the trial judge of a mistrial, then within 120 days of that declaration; or
- (5) within 120 days from the date the action occasioning the new trial becomes final when the defendant is to be tried again following an appeal or collateral attack.

(b) The following periods shall be excluded in computing the time within which the trial of a criminal offense must begin:

- (1) any period of delay resulting from other proceedings concerning the defendant including, but not limited to, delays resulting from
 - a. a mental or physical examination of the defendant, or a hearing on his mental or physical incapacity;
 - b. trials with respect to other charges against the defendant;
 - c. interlocutory appeals; or
 - d. hearings on pretrial motions or the granting or denial of such motions;
- (2) any period of delay during which the prosecution is deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct;
- (3) any period of delay resulting from the absence or unavailability of the defendant or an essential witness for the defendant or the State. For the purpose of this subdivision, a defendant or an essential witness shall be considered
 - a. absent when his whereabouts are unknown and he is attempting to avoid apprehension or prosecution or when his whereabouts cannot be determined by due diligence; and
 - b. unavailable when his whereabouts are known but his presence for testifying at the trial cannot be obtained by due diligence or he resists appearing at or being returned for trial;
- (4) any period of delay resulting from the fact that the defendant is mentally incapacitated or physically unable to stand trial;
- (5) when a charge is dismissed by the prosecutor under the authority of G.S. 15A-931 and afterwards a new indictment or information is filed against the same defendant or the same defendant is arrested or served with criminal process for the same offense, or an offense based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan, any period of delay from the date the initial charge was dismissed to the date the time limits for trial under this section would have commenced to run as to the subsequent charge;
- (6) a period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted;
- (7) any period of delay resulting from a continuance granted by any judge if the judge granting the continuance finds that the ends of justice served by granting the continuance outweigh the best interests of the public and the

defendant in a speedy trial and sets forth in writing in the record of the case the reasons for so finding.

The factors, among others, which a judge shall consider in determining whether to grant a continuance are as follows:

- a. whether the failure to grant a continuance would be likely to result in a miscarriage of justice;
 - b. whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the time limits established by this section; and
 - c. whether delay after the grand jury proceedings have begun, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the State;
- (8) any period of delay occasioned by the venue of the defendant's case being within a county where due to limited number of court sessions scheduled for the county, the time limitations of this section cannot reasonably be met;
 - (9) a period of delay resulting from the defendant's being in the custody of a penal or other institution of a jurisdiction other than the jurisdiction in which the criminal offense is to be tried;
 - (10) a period of delay when the defendant or his attorney has an obligation of service to the State of North Carolina or to the United States Government and the court, with the consent of both the defendant and the State, continues the case for a period of time consistent with that obligation.

(c) If trial does not begin within the time limitations specified in this section because the defendant entered a plea of guilty or no contest which was subsequently withdrawn to any or all charges, the applicable period of time limits as specified in this section shall begin to run on the day the order permitting withdrawal of the plea of guilty or no contest becomes final.

"§ 15A-702. Counties with limited court sessions. — (a) If the venue of the defendant's case lies within a county where, due to the limited number of court sessions scheduled for the county, the applicable time limit specified by G.S. 15A-701 has not been met, the defendant may file a motion for prompt trial with (1) a superior court judge presiding over a mixed or criminal session within the same judicial district where the defendant is charged with an offense within the original jurisdiction of the superior court or with a misdemeanor docketed in the superior court for trial de nova, or (2) a district court judge presiding in the county in which the venue of the case lies, or in the event that there is no district court judge presiding in that county, in the judicial district embracing the county in which the venue lies where the defendant is charged with a misdemeanor pending in district court.

(b) The judge with whom the petition for prompt trial is filed may order the defendant's case be brought to trial within not less than 30 days.

(c) A defendant who files a petition for prompt trial under this section accepts venue anywhere within the judicial district and may not continue or delay his case except on the basis of matters which arise after he files the petition and which he or his counsel could not have reasonably anticipated. The defendant may withdraw the petition for prompt trial only on order of the court, for good cause shown or with the consent of the prosecutor.

"§ 15A-703. Sanctions. — If a defendant is not brought to trial within the time limits required by G.S. 15A-701 or within the time prescribed by the judge in his order for prompt trial under G.S. 15A-702(b), the charge shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting that motion but the State shall have the burden of going forward with evidence in connection with excluding periods from computation of time in determining whether or not the time limitations under this Article have been complied with. In

determining whether to order the charge's dismissal with or without prejudice, the court shall consider, among other matters, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; the impact of a re-prosecution on the administration of this Article and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of the plea of guilty or no contest shall constitute a waiver of the right to dismissal under this section. A dismissal with prejudice shall bar further prosecution of the defendant for the same offense or an offense based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan; a dismissal without prejudice shall not bar further prosecution.

"§ 15A-704. No bar to claim of denial of speedy trial. — No provision of this Article shall be interpreted as a bar to any claim of denial of a speedy trial as required by the Sixth Amendment to the Constitution of the United States."

Sec. 2. This act shall apply to any person who is arrested, served with criminal process, waives an indictment, or is notified pursuant to G.S. 15A-630 that an indictment has been filed with the superior court against him, on or after October 1, 1978.

Sec. 3. Subsection (a1) of G.S. 15A-701 is repealed effective July 1, 1980.

Sec. 4. This act shall become effective October 1, 1978.

In the General Assembly read three times and ratified, this the 29th day of June, 1977.