Article 49.

Pleadings and Joinder.

§ 15A-921. Pleadings in criminal cases.

Subject to the provisions of this Article, the following may serve as pleadings of the State in criminal cases:

(1) Citation.
(2) Criminal summons.
(3) Warrant for arrest.
(4) Magistrate's order pursuant to G.S. 15A-511 after arrest without warrant.
(5) Statement of charges.
(6) Information.
(7) Indictment. (1973, c. 1286, s. 1; 1975, c. 166, s. 18.)

§ 15A-922. Use of pleadings in misdemeanor cases generally.

(a) Process as Pleadings. – The citation, criminal summons, warrant for arrest, or magistrate's order serves as the pleading of the State for a misdemeanor prosecuted in the district court, unless the prosecutor files a statement of charges, or there is objection to trial on a citation. When a statement of charges is filed it supersedes all previous pleadings of the State and constitutes the pleading of the State.

(b) Statement of Charges.

(1) A statement of charges is a criminal pleading which charges a misdemeanor. It must be signed by the prosecutor who files it.
(2) Upon appropriate motion, a defendant is entitled to a period of at least three working days for the preparation of his defense after a statement of charges is filed, or the time the defendant is first notified of the statement of charges, whichever is later, unless the judge finds that the statement of charges makes no material change in the pleadings and that no additional time is necessary.
(3) If the judge rules that the pleadings charging a misdemeanor are insufficient and a prosecutor is permitted to file a statement of charges pursuant to subsection (e), the order of the judge must allow the prosecutor three working days, unless the judge determines that a longer period is justified, in which to file the statement of charges, and must provide that the charges will be dismissed if the statement of charges is not filed within the period allowed.

(c) Objection to Trial on Citation. – A defendant charged in a citation with a criminal offense may by appropriate motion require that the offense be charged in a new pleading. The prosecutor must then file a statement of charges unless it appears that a criminal summons or a warrant for arrest should be secured in order to insure the attendance of the defendant, and in addition serve as the new pleading.

(d) Statement of Charges upon Determination of Prosecutor. –The prosecutor may file a statement of charges upon his own determination at any time prior to arraignment in the district court. It may charge the same offenses as the citation, criminal summons, warrant for arrest, or magistrate's order or additional or different offenses.

(e) Objection to Sufficiency of Criminal Summons; Warrant for Arrest or Magistrate's Order as Pleading. – If the defendant by appropriate motion objects to the sufficiency of a criminal summons, warrant for arrest, or magistrate's order as a pleading, at the time of or after arraignment in the district court or upon trial de novo in the superior court, and the judge rules that the pleading

is insufficient, the prosecutor may file a statement of charges, but a statement of charges filed pursuant to this authorization may not change the nature of the offense.

(f) Amendment of Pleadings prior to or after Final Judgment. – A statement of charges, criminal summons, warrant for arrest, citation, or magistrate's order may be amended at any time prior to or after final judgment when the amendment does not change the nature of the offense charged.

(g) Pleadings When Misdemeanor Prosecution Initiated in Superior Court. – When the prosecution of a misdemeanor is initiated in the superior court as permitted by G.S. 7A-271, the prosecution must be upon information or indictment.

(h) Allegations in Superior Court of Prior Convictions. – When charges in the district court involve allegations of prior convictions and there is an appeal to the superior court for trial de novo, a statement of charges must be filed in the superior court to charge the offense in the manner provided in G.S. 15A-928. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1979, c. 770; 1985, c. 689, s. 6.)

§ 15A-923. Use of pleadings in felony cases and misdemeanor cases initiated in the superior court division.

(a) Prosecution on Information or Indictment. – The pleading in felony cases and misdemeanor cases initiated in the superior court division must be a bill of indictment, unless there is a waiver of the bill of indictment as provided in G.S. 15A-642. If there is a waiver, the pleading must be an information. A presentment by the grand jury may not serve as the pleading in a criminal case.

(b) Form of Information or Indictment. – An information and a bill of indictment charge the crime or crimes in the same manner. An information has entered upon it or attached to it the defendant's written waiver of a bill of indictment. The bill of indictment has entered upon it the finding of the grand jury that it is a true bill.

(c) Waiver of Indictment. – The defendant may waive a bill of indictment as provided in G.S. 15A-642.

(d) Amendment of Information. – An information may be amended only with the consent of the defendant.

(e) No Amendment of Indictment. – A bill of indictment may not be amended. (1973, c. 1286, s. 1.)

§ 15A-924. Contents of pleadings; duplicity; alleging and proving previous convictions; failure to charge crime; surplusage.

(a) A criminal pleading must contain:

(1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.

(2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.

(3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.

(4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with

respect to the charge and the error or omission did not mislead the defendant to his prejudice.

(5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.

(6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.

(7) A statement that the State intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise factual statement indicating the factor or factors it intends to use under the authority of that subdivision.

(b) If any count of an indictment or information charges more than one offense, the defendant may by timely filing of a motion require the State to elect and state a single offense alleged in the count upon which the State will proceed to trial. A count may be dismissed for duplicity if the State fails to make timely election.

(c) In trials in superior court, allegations of previous convictions are subject to the provisions of G.S. 15A-928.

(d) In alleging and proving a prior conviction, it is sufficient to state that the defendant was at a certain time and place convicted of the previous offense, without otherwise fully alleging all the elements. A duly certified transcript of the record of a prior conviction is, upon proof of the identity of the person of the defendant, sufficient evidence of a prior conviction. If the surname of a defendant charged is identical to the surname of a defendant previously convicted and there is identity with respect to one given name, or two initials, or two initials corresponding with the first letters of given names, between the two defendants, and there is no evidence that would indicate the two defendants are not one and the same, the identity of name is prima facie evidence that the two defendants are the same person.

(e) Upon motion of a defendant under G.S. 15A-952(b) the court must dismiss the charges contained in a pleading which fails to charge the defendant with a crime in the manner required by subsection (a), unless the failure is with regard to a matter as to which an amendment is allowable.

(f) Upon motion of a defendant under G.S. 15A-952(b) the court may strike inflammatory or prejudicial surplusage from the pleading. (1973, c. 1286, s. 1; 1975, c. 642, s. 2; 1989, c. 290, s. 3; 2005-145, s. 3.)

§ 15A-925. Bill of particulars.

(a) Upon motion of a defendant under G.S. 15A-952, the court in which a charge is pending may order the State to file a bill of particulars with the court and to serve a copy upon the defendant.

(b) A motion for a bill of particulars must request and specify items of factual information desired by the defendant which pertain to the charge and which are not recited in the pleading, and

must allege that the defendant cannot adequately prepare or conduct his defense without such information.

(c) If any or all of the items of information requested are necessary to enable the defendant adequately to prepare or conduct his defense, the court must order the State to file and serve a bill of particulars. Nothing contained in this section authorizes an order for a bill of particulars which requires the State to recite matters of evidence.

(d) The bill of particulars must be filed with the court and must recite every item of information required in the order. A copy must be served upon the defendant, or his attorney. The proceedings are stayed pending the filing and service.

(e) A bill of particulars may not supply an omission or cure a defect in a criminal pleading. The evidence of the State, as to those matters within the scope of the motion, is limited to the items set out in the bill of particulars. The court may permit amendment of a bill of particulars at any time prior to trial. (1973, c. 1286, s. 1.)

§ 15A-926. Joinder of offenses and defendants.

(a) Joinder of Offenses. – Two or more offenses may be joined in one pleading or for trial when the offenses, whether felonies or misdemeanors or both, are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan. Each offense must be stated in a separate count as required by G.S. 15A-924.

(b) Separate Pleadings for Each Defendant and Joinder of Defendants for Trial.

- (1) Each defendant must be charged in a separate pleading.
- (2) Upon written motion of the prosecutor, charges against two or more defendants may be joined for trial:
  - a. When each of the defendants is charged with accountability for each offense; or
  - b. When, even if all of the defendants are not charged with accountability for each offense, the several offenses charged:
    1. Were part of a common scheme or plan; or
    2. Were part of the same act or transaction; or
    3. Were so closely connected in time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others.

(c) Failure to Join Related Offenses.

- (1) When a defendant has been charged with two or more offenses joinable under subsection (a) his timely motion to join them for trial must be granted unless the court determines that because the prosecutor does not have sufficient evidence to warrant trying some of the offenses at that time or if, for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to make this motion constitutes a waiver of any right of joinder of offenses joinable under subsection (a) with which the defendant knew he was charged.
- (2) A defendant who has been tried for one offense may thereafter move to dismiss a charge of a joinable offense. The motion to dismiss must be made prior to the second trial, and must be granted unless
  - a. A motion for joinder of these offenses was previously denied, or
  - b. The court finds that the right of joinder has been waived, or

c. The court finds that because the prosecutor did not have sufficient evidence to warrant trying this offense at the time of the first trial, or because of some other reason, the ends of justice would be defeated if the motion were granted.

(3) The right to joinder under this subsection is not applicable when the defendant has pleaded guilty or no contest to the previous charge. (1973, c. 1286, s. 1; 1975, c. 166, ss. 19, 27.)

§ 15A-927. Severance of offenses; objection to joinder of defendants for trial.

(a) Timeliness of Motion; Waiver; Double Jeopardy.

(1) A defendant's motion for severance of offenses must be made before trial as provided in G.S. 15A-952, except as provided in G.S. 15A-953, and except that a motion for severance may be made before or at the close of the State's evidence if based upon a ground not previously known. Any right to severance is waived if the motion is not made at the appropriate time.

(2) If a defendant's pretrial motion for severance is overruled, he may renew the motion on the same grounds before or at the close of all the evidence. Any right to severance is waived by failure to renew the motion.

(3) Unless consented to by the defendant, a motion by the prosecutor for severance of offenses may be granted only prior to trial.

(4) If a motion for severance of offenses is granted during the trial, a motion by the defendant for a mistrial must be granted.

(b) Severance of Offenses. – The court, on motion of the prosecutor or on motion of the defendant, must grant a severance of offenses whenever:

(1) If before trial, it is found necessary to promote a fair determination of the defendant's guilt or innocence of each offense; or

(2) If during trial, upon motion of the defendant or motion of the prosecutor with the consent of the defendant, it is found necessary to achieve a fair determination of the defendant's guilt or innocence of each offense. The court must consider whether, in view of the number of offenses charged and the complexity of the evidence to be offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.

(c) Objection to Joinder of Charges against Multiple Defendants for Trial; Severance.

(1) When a defendant objects to joinder of charges against two or more defendants for trial because an out-of-court statement of a codefendant makes reference to him but is not admissible against him, the court must require the prosecutor to select one of the following courses:

a. A joint trial at which the statement is not admitted into evidence; or

b. A joint trial at which the statement is admitted into evidence only after all references to the moving defendant have been effectively deleted so that the statement will not prejudice him; or

c. A separate trial of the objecting defendant.

(2) The court, on motion of the prosecutor, or on motion of the defendant other than under subdivision (1) above must deny a joinder for trial or grant a severance of defendants whenever:

a. If before trial, it is found necessary to protect a defendant's right to a speedy trial, or it is found necessary to promote a fair determination of the guilt or innocence of one or more defendants; or

b. If during trial, upon motion of the defendant whose trial is to be severed, or motion of the prosecutor with the consent of the defendant whose trial is to be severed, it is found necessary to achieve a fair determination of the guilt or innocence of that defendant.

(3) The court may order the prosecutor to disclose, out of the presence of the jurors, any statements made by the defendants which he intends to introduce in evidence at the trial when that information would assist the court in ruling on an objection to joinder of defendants for trial or a motion for severance of defendants.

(d) Failure to Prove Grounds for Joinder of Defendants for Trial. – If a defendant moves for severance at the conclusion of the State's case or of all the evidence, and there is not sufficient evidence to support the allegation upon which the moving defendant was joined for trial with the other defendant or defendants, the court must grant a severance if, in view of this lack of evidence, severance is found necessary to achieve a fair determination of that defendant's guilt or innocence.

(e) Severance on Motion of Court. – The court may order a severance of offenses before trial or deny the joinder of defendants for trial if a severance or denial of joinder could be obtained on motion of a defendant or the prosecutor. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-928. Allegation and proof of previous convictions in superior court.

(a) When the fact that the defendant has been previously convicted of an offense raises an offense of lower grade to one of higher grade and thereby becomes an element of the latter, an indictment or information for the higher offense may not allege the previous conviction. If a reference to a previous conviction is contained in the statutory name or title of the offense, the name or title may not be used in the indictment or information, but an improvised name or title must be used which labels and distinguishes the offense without reference to a previous conviction.

(b) An indictment or information for the offense must be accompanied by a special indictment or information, filed with the principal pleading, charging that the defendant was previously convicted of a specified offense. At the prosecutor's option, the special indictment or information may be incorporated in the principal indictment as a separate count. Except as provided in subsection (c) below, the State may not refer to the special indictment or information during the trial nor adduce any evidence concerning the previous conviction alleged therein.

(c) After commencement of the trial and before the close of the State's case, the judge in the absence of the jury must arraign the defendant upon the special indictment or information, and must advise him that he may admit the previous conviction alleged, deny it, or remain silent. Depending upon the defendant's response, the trial of the case must then proceed as follows:

(1) If the defendant admits the previous conviction, that element of the offense charged in the indictment or information is established, no evidence in support thereof may be adduced by the State, and the judge must submit the case to the jury without reference thereto and as if the fact of such previous conviction were not an element of the offense. The court may not submit to the jury any lesser included offense which is distinguished from the offense charged solely by the fact that a previous conviction is not an element thereof.

(2) If the defendant denies the previous conviction or remains silent, the State may prove that element of the offense charged before the jury as a part of its case. This section applies only to proof of a prior conviction when it is an element of the crime charged, and does not prohibit the State from introducing proof of prior convictions when otherwise permitted under the rules of evidence.

(d) When a misdemeanor is tried de novo in superior court in which the fact of a previous conviction is an element of the offense affecting punishment, the State must replace the pleading in the case with superseding statements of charges separately alleging the substantive offense and the fact of any prior conviction, in accordance with the provisions of this section relating to indictments and informations. Any jury trial in superior court on the misdemeanor must be held in accordance with the provisions of subsections (b) and (c).

(e) Nothing contained in this section precludes the State from proving a prior conviction before a grand jury or relieves the State from the obligation or necessity of so doing in order to submit a legally sufficient case. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-929. Reserved for future codification purposes.

§ 15A-930. Reserved for future codification purposes.