

## 4D Basic Information

### Applicable Statutes

- § 7A-272. Jurisdiction of district court; concurrent jurisdiction in guilty or no contest pleas for certain felony offenses; appellate and appropriate relief procedures applicable.
- (a) Except as provided in this Article, the district court has exclusive, original jurisdiction for the trial of criminal actions, including municipal ordinance violations, below the grade of felony, and the same are hereby declared to be petty misdemeanors.
- (b) The district court has jurisdiction to conduct preliminary examinations and to bind the accused over for trial upon waiver of preliminary examination or upon a finding of probable cause, making appropriate orders as to bail or commitment.
- (c) With the consent of the presiding district court judge, the prosecutor, and the defendant, the district court has jurisdiction to accept a defendant's plea of guilty or no contest to a Class H or I felony if:
- (1) The defendant is charged with a felony in an information filed pursuant to G.S. 15A-644.1, the felony is pending in district court, and the defendant has not been indicted for the offense; or
  - (2) The defendant has been indicted for a criminal offense but the defendant's case is transferred from superior court to district court pursuant to G.S. 15A-1029.1.
- (d) Provisions in Chapter 15A of the General Statutes apply to a plea authorized under subsection (c) of this section as if the plea had been entered in superior court, so that a district court judge is authorized to act in these matters in the same manner as a superior court judge would be authorized to act if the plea had been entered in superior court, and appeals that are authorized in these matters are to the appellate division.
- (e) With the consent of the chief district court judge and the senior resident superior court judge, the district court has jurisdiction to preside over the supervision of a probation judgment entered in superior court in which the defendant is required to participate in a drug treatment court program pursuant to G.S. 15A-1343(b1)(2b) or a therapeutic court as defined in subsection (f) of this section, or is participating in the drug treatment court pursuant to a deferred prosecution agreement under G.S. 15A-1341(a2). The district court may modify or extend the probation judgment, but jurisdiction to revoke probation supervised under this subsection is as provided in G.S. 7A-271(f).
- (f) As used in subsection (e) of this section, the term "therapeutic court" refers to a court, other than drug treatment court established pursuant to Article 62 of Chapter 7A of the General Statutes, in which a criminal defendant, either as a condition of probation or pursuant to a deferred prosecution agreement under G.S. 15A-1341, is ordered to participate in specified activities designed to address underlying problems of substance abuse and mental illness that contribute to the person's criminal activity. The ordered activities shall, at a minimum, require the person to participate in treatment and attend regular court sessions of the therapeutic court over an extended period of time. The senior resident superior court judge and the chief district court judge shall agree in writing that the therapeutic court is being established and shall file the written agreement with the

Administrative Office of the Courts before jurisdiction established by subsection (e) of this section may be exercised by the district court. (1965, c. 310, s. 1; 1995 (Reg. Sess., 1996), c. 725, ss. 1, 2; 2009□452, s. 2; 2009□516, s. 8(a), (b); 2010□96, s. 26(b); 2010□97, s. 13.)

**§ 15A□606. Demand or waiver of probable□cause hearing.**

- (a) The judge must schedule a probable□cause hearing unless the defendant waives in writing his right to such hearing. A defendant represented by counsel, or who desires to be represented by counsel, may not before the date of the scheduled hearing waive his right to a probable□cause hearing without the written consent of the defendant and his counsel.
- (b) Evidence of a demand or waiver of a probable□cause hearing may not be admitted at trial.
- (c) If the defendant waives a probable□cause hearing, the district court judge must bind the defendant over to the superior court for further proceedings in accordance with this Chapter.
- (d) If the defendant does not waive a probable□cause hearing, the district court judge must schedule a hearing not later than 15 working days following the initial appearance before the district court judge; if no session of the district court is scheduled in the county within 15 working days, the hearing must be scheduled for the first day of the next session. The hearing may not be scheduled sooner than five working days following such initial appearance without the consent of the defendant and the prosecutor.
- (e) If an unrepresented defendant is not indigent and has indicated his desire to be represented by counsel, the district court judge must inform him that he has a choice of appearing without counsel at the probable□cause hearing or of securing the attendance of counsel to represent him at the hearing. The judge must further inform him that the judge presiding at the hearing will not continue the hearing because of the absence of counsel except for extraordinary cause.
- (f) Upon a showing of good cause, a scheduled probable□cause hearing may be continued by the district court upon timely motion of the defendant or the State. Except for extraordinary cause, a motion is not timely unless made at least 48 hours prior to the time set for the probable□cause hearing.
- (g) If after the first appearance before a district court judge a defendant with consent of counsel desires to waive his right to a probable□cause hearing, he may do so in writing filed with the court signed by defendant and his counsel. Upon waiver the defendant must be bound over to the superior court. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

Article 30.

Probable□Cause Hearing.

**§ 15A□611. Probable□cause hearing procedure.**

- (a) At the probable□cause hearing:
  - (1) A prosecutor must represent the State.
  - (2) The defendant may be represented by counsel.
  - (3) The defendant may testify as a witness in his own behalf and call and examine other

witnesses, and produce other evidence in his behalf.

(4) Each witness must testify under oath or affirmation and is subject to cross-examination.

(b) The State must by nonhearsay evidence, or by evidence that satisfies an exception to the hearsay rule, show that there is probable cause to believe that the offense charged has been committed and that there is probable cause to believe that the defendant committed it, except:

(1) A report or copy of a report made by a physicist, chemist, firearms identification expert, fingerprint technician, or an expert or technician in some other scientific, professional, or medical field, concerning the results of an examination, comparison, or test performed by him in connection with the case in issue, when stated by such person in a report made by him, is admissible in evidence.

(2) If there is no serious contest, reliable hearsay is admissible to prove value, ownership of property, possession of property in another than the defendant, lack of consent of the owner, possessor, or custodian of property to its taking or to the breaking or entering of premises, chain of custody, authenticity of signatures, and the existence and text of a particular ordinance or regulation of a governmental unit or agency.

The district court judge is not required to exclude evidence on the ground that it was acquired by unlawful means.

(c) If a defendant appears at a probable-cause hearing without counsel, the judge must determine whether counsel has been waived. If he determines that counsel has been waived, he may proceed without counsel. If he determines that counsel has not been waived, except in a situation covered by G.S. 15A-606(e) he must take appropriate action to secure the defendant's right to counsel.

(d) A probable-cause hearing may not be held if an information in superior court is filed upon waiver of indictment before the date set for the hearing. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

#### **§ 15A-612. Disposition of charge on probable-cause hearing.**

(a) At the conclusion of a probable-cause hearing the judge must take one of the following actions:

(1) If he finds that the defendant probably committed the offense charged, or a lesser included offense of such offense within the original jurisdiction of the superior court, he must bind the defendant over to a superior court for further proceedings in accordance with this Chapter. The judge must note his findings in the case records.

(2) If he finds no probable cause as to the offense charged but probable cause with respect to a lesser included offense within the original jurisdiction of the district court, he may set the case for trial in the district court in accordance with the terms of G.S. 15A-613. In the absence of a new pleading, the judge may not set a case for trial in the district court on any offense which is not lesser included.

(3) If he finds no probable cause pursuant to subdivisions (1) or (2) as to any charge, he must dismiss the proceedings in question.

(b) No finding made by a judge under this section precludes the State from instituting a subsequent prosecution for the same offense. (1973, c. 1286, s. 1; 1975, c. 166, s.

14.)

**§ 15A-613. Setting offense for trial in district court.**

If an offense set for trial in the district court under the terms of G.S. 15A-604(b)(4) or any provision of G.S. 15A-612 is a lesser included offense of the charge before the court on a pleading, the judge may:

- (1) Accept a plea of guilty or no contest, with the consent of the prosecutor; or
- (2) Proceed to try the offense immediately, with the consent of both the defendant and the prosecutor.

Otherwise, the judge must enter an appropriate order for subsequent calendaring of the case for trial in the district court. The trial so ordered may not be earlier than five working days nor later than 15 working days from the date of the order. The judge must note in the case records the new offense with which the defendant is charged, has been tried, or to which he entered a plea of guilty or no contest. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

Article 58A.

Procedures Relating to Felony Guilty Pleas in District Court.

**§ 15A-1029.1. Transfer of case from superior court to district court to accept guilty and no contest pleas for certain felony offenses.**

(a) With the consent of both the prosecutor and the defendant, the presiding superior court judge may order a transfer of the defendant's case to the district court for the purpose of allowing the defendant to enter a plea of guilty or no contest to a Class H or I felony.

(b) The provisions of Article 58 of this Chapter apply to a case transferred under this section from superior court to district court in the same manner as if the plea were entered in superior court. Appeals that are authorized in these matters are to the appellate division. (1995 (Reg. Sess., 1996), c. 725, s. 6.)

4D basic operation--

Screeners--job is just what it sounds like. They determine initial plea offer and whether or not case goes to Superior Court. Supposedly, your plea offer in District Court is the best you will get. This is not always true, but you should prepare as if it is.

Drug Unit.

General felony rotation runs on Mondays (both sessions), Tuesday afternoons, Wednesday mornings, and both sessions Thursdays. Drug cases are on Tuesday mornings, Wednesday afternoons, and Friday mornings.

Ways cases go to transfer.

- Waive PC hearing
- Indicted

Why go to Superior Court?

Trial inevitable

May want to consider PI motion prior to waiving.

Don't like your deal or your prosecutor. Exception, drugs.

Motion to suppress.

Concerns about judiciary

Motions practice

Don't be afraid to try a case. Example. Level 1, Class I. Marijuana example. THERE IS NO RULE 11 IN CRIMINAL COURT.

The Habitual Felon Threat

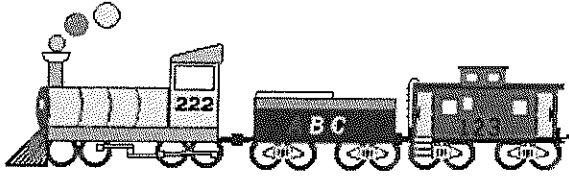
If it is legitimate and the case is remotely strong, you probably need to consider advising your client to take the plea offer.

Article 2A.

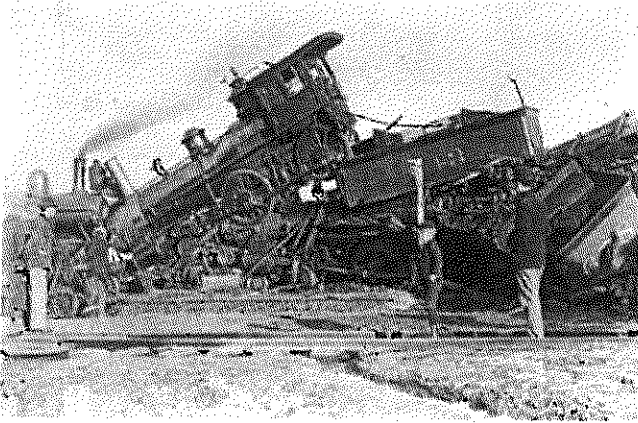
Habitual Felons.

**§ 14-7.1. Persons defined as habitual felons.**

Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual felon. For the purpose of this Article, a felony offense is defined as an offense which is a felony under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. Provided, however, that federal offenses relating to the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article. For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon. (1967, c. 1241, s. 1; 1971, c. 1231, s. 1.)



Habitual felon



**Paulson on the Whistle and Bernanke on the throttle, Co' Man Go!**

<http://www.investor.com/2008/11/04/08110401.html>

Not Habitual