

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 254

Short Title: Speedy Trial Law.

(Public)

Sponsors: Representatives Hensley, R. Hunter, McCrary, and Michaux (Co-sponsors).

Referred to: Judiciary II.

February 23, 1995

A BILL TO BE ENTITLED

AN ACT TO ADOPT A SPEEDY TRIAL LAW FOR CRIMINAL CASES IN SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding the following new Article to read:

**"ARTICLE 35A.**

**"SPEEDY TRIAL ACT.**

**"§ 15A-705. Time limits.**

(a) It is the public policy of the State of North Carolina that criminal charges be resolved without undue delay.

(b) Unless the time is extended by an order of a judge as provided in subsection (d) of this section, the trial of the defendant charged with a criminal offense, except a capital offense, shall begin within 180 days of the following:

(1) The date the defendant is arrested for or served with a criminal summons for the criminal offense;

(2) The first regularly scheduled criminal session of superior court, for which a calendar has not been published at the time of notice of appeal, held after the defendant has given notice of appeal in a misdemeanor case for trial de novo in the superior court;

- 1           (3)    When a charge is dismissed, other than under G.S. 15A-702 or a finding  
2           of no probable cause pursuant to G.S. 15A 612, and the defendant is  
3           afterwards charged with the same offense or an offense based on the  
4           same act or transactions connected together or constituting parts of a  
5           single scheme or plan, then from the date that the defendant was  
6           arrested for or served with a criminal summons for the original charge;  
7           (4)    The date a mistrial is declared; or  
8           (5)    From the date the action occasioning the new trial becomes final when  
9           the defendant is to be tried again following an appeal or collateral  
10          attack.
- 11       (c)    The following periods of time shall be excluded in computing the time within  
12       which the trial of a criminal offense must begin:
- 13           (1)    The time from which the prosecutor enters a dismissal with leave for the  
14           nonappearance of the defendant until the prosecutor reinstates the  
15           proceedings pursuant to G.S. 15A-932.
- 16           (2)    The time during which the defendant is being examined to determine  
17           whether the defendant is incapable of proceeding.
- 18           (3)    The time during which the defendant has been found to be incapable of  
19           proceeding pursuant to Article 56 of Chapter 15A of the General  
20           Statutes.
- 21           (4)    The time during which prosecution is deferred pursuant to G.S. 15A-  
22           1341(a1).
- 23           (5)    The time during which the defendant is being tried on other charges.
- 24           (6)    The time during which the defendant is being extradited from another  
25           state.
- 26           (7)    The time during which the defendant or an essential witness is absent or  
27           unavailable. For purposes of this subsection, a defendant or essential  
28           witness shall be considered absent when that person's whereabouts are  
29           unknown, and, in addition, that person is attempting to avoid  
30           apprehension or prosecution or the whereabouts cannot be determined  
31           by due diligence. A defendant or essential witness shall be considered  
32           unavailable whenever that person's whereabouts are known but the  
33           person's presence for trial cannot be obtained by due diligence or that  
34           person resists appearing at or being returned for trial.
- 35           (8)    The time during which the defendant or State has undertaken an  
36           interlocutory appeal.
- 37       (d)    Upon motion of the State or the defendant, when exceptional circumstances are  
38       shown to exist, a superior court judge assigned to hold court in the district or a resident  
39       superior court judge of the district may enter a written order specifying a later date within  
40       which the criminal trial shall begin. For felony cases in which the superior court has not  
41       yet acquired jurisdiction, a district court judge of the district may enter the order.  
42       Additional extension orders may be entered on the same grounds. Exceptional  
43       circumstances shall not include general congestion of the court's docket, lack of diligent

1 preparation, failure to obtain available witnesses, or other avoidable or foreseeable  
2 delays. Exceptional circumstances are those that as a matter of substantial justice to the  
3 accused or the State or both require an order by the court. Such circumstances include:

- 4 (1) Unexpected illness, unexpected incapacity, or unforeseeable and  
5 unavoidable absence of a person whose presence or testimony is  
6 uniquely necessary for a full and adequate trial;  
7 (2) A showing by the State that the case is so unusual and so complex, due  
8 to the number of defendants or the nature of the prosecution or  
9 otherwise, that it is unreasonable to expect adequate investigation or  
10 preparation within the periods of time established by this section;  
11 (3) A showing by the State that specific evidence or testimony is not  
12 available despite diligent efforts to secure it, but will become available  
13 at a later time.

14 **"§ 15A-706. Sanctions.**

15 (a) If a defendant is not brought to trial within the time required by G.S. 15A-701,  
16 then upon motion of the defendant the court shall do one of the following:

- 17 (1) Enter an order dismissing the action with prejudice; or  
18 (2) Enter an order dismissing the action without prejudice.

19 In determining the order to be entered, the court shall consider, among other matters, the  
20 seriousness of the offense, the facts and circumstances of the case which led to the failure  
21 to begin the trial within the time allowed, and the impact of reprosecution on the  
22 administration of justice.

23 (b) A dismissal with prejudice shall bar further prosecution of the defendant for  
24 the same offense or an offense based upon the same act or transaction, or on the same  
25 series of acts or transactions connected together or constituting parts of a single scheme  
26 or plan.

27 (c) A dismissal without prejudice shall not bar further prosecution. However, the  
28 case must be refiled, and either the trial begun or the case otherwise finally disposed of  
29 within 60 days after the dismissal with prejudice, or the court, upon motion of the  
30 defendant, must enter a dismissal with prejudice. The periods for excluding time under  
31 G.S. 15A-705(c) apply to this subsection.

32 (d) Failure of the defendant to move for dismissal prior to trial or entry of a plea of  
33 guilty or no contest shall constitute a waiver of the right to dismissal under this section.

34 (e) The sanctions authorized by this section shall not apply to proceedings in the  
35 district court division of the General Court of Justice.

36 **"§ 15A-707. Expedited trial.**

37 Upon motion of the defendant and for good cause shown, a judge may enter an order  
38 for an expedited trial of a pending criminal case. In ruling on such a motion, the judge  
39 shall consider, among other matters, prejudice to the defendant if an expedited trial is not  
40 ordered and the ability of the State, with available resources, to expedite the trial."

41 Sec. 2. This act becomes effective January 1, 1996, and applies to offenses  
42 occurring on or after January 1, 1996.