

## SUBCHAPTER VI. PRELIMINARY PROCEEDINGS.

### Article 29.

#### First Appearance Before District Court Judge.

#### **§ 15A-601. First appearance before a district court judge; consolidation of first appearance before magistrate and before district court judge; first appearance before clerk of superior court.**

(a) Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a crime in the original jurisdiction of the superior court must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a misdemeanor offense and held in custody must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

(a1), (a2) Repealed by Session Laws 2021-47, s. 10(g), effective June 18, 2021, and applicable to proceedings occurring on or after that date.

(b) When a district court judge conducts an initial appearance as provided in G.S. 15A-511, the judge may consolidate those proceedings and the proceedings under this Article.

(c) Unless the courthouse is closed for transactions for a period longer than 72 hours or the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within 72 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the courthouse is closed for transactions for a period longer than 72 hours, the first appearance before a district court judge must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the defendant is not taken into custody, or is released pursuant to Article 26 of this Chapter, Bail, prior to a first appearance, the first appearance must be held at the next session of district court held in the county. This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).

(d) Upon motion of the defendant, the first appearance before a district court judge may be continued to a time certain. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding.

(e) The clerk of the superior court in the county in which the defendant is taken into custody may conduct a first appearance as provided in this Article if a district court judge is not available in the county within 72 hours after the defendant is taken into custody, or 96 hours after the defendant is taken into custody if the courthouse is closed for transactions for a period longer than 72 hours. A magistrate may conduct the first appearance if the clerk is not available. For the limited purpose of conducting a first appearance and notwithstanding any other provision of law, the clerk or magistrate shall proceed under this Article as a district court judge would and shall have the same authority that a district court judge would have at a first appearance. (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, ss. 139, 140; 1979, c. 651; 1987 (Reg. Sess., 1988), c. 1037,

s. 58; 1993, c. 30, s. 2; 2021-47, s. 10(g); 2021-138, s. 14(a); 2021-182, s. 2.5(a); 2022-6, s. 8.4; 2022-47, s. 15(a).)

**§ 15A-602. Warning of right against self-incrimination.**

Except when he is accompanied by his counsel, the judge must inform the defendant of his right to remain silent and that anything he says may be used against him. (1973, c. 1286, s. 1.)

**§ 15A-603. Assuring defendant's right to counsel.**

(a) The judge must determine whether the defendant has retained counsel or, if indigent, has been assigned counsel.

(b) If the defendant is not represented by counsel, the judge must inform the defendant that he has important legal rights which may be waived unless asserted in a timely and proper manner and that counsel may be of assistance to the defendant in advising him and acting in his behalf. The judge must inform the defendant of his right to be represented by counsel and that he will be furnished counsel if he is indigent. The judge shall also advise the defendant that if he is convicted and placed on probation, payment of the expense of counsel assigned to represent him may be made a condition of probation, and that if he is acquitted, he will have no obligation to pay the expense of assigned counsel.

(c) If the defendant asserts that he is indigent and desires counsel, the judge must proceed in accordance with the provisions of Article 36 of Chapter 7A of the General Statutes.

(d) If the defendant is found not to be indigent and indicates that he desires to be represented by counsel, the judge must inform him that he should obtain counsel promptly.

(e) If the defendant desires to waive representation by counsel, the waiver must be in writing in accordance with the provisions of Article 36 of Chapter 7A of the General Statutes except as otherwise provided in this Article. (1973, c. 1286, s. 1; 1981, c. 409, s. 1.)

**§ 15A-604. Determination of sufficiency of charge.**

(a) The judge must examine each criminal process or magistrate's order and determine whether each charge against the defendant charges either [of the following]:

- (1) A criminal offense within the original jurisdiction of the superior court.
- (2) A misdemeanor offense within the original jurisdiction of the district court.

(b) If the judge determines that the process or order fails to charge a criminal offense within the original jurisdiction of the superior court or a misdemeanor within the original jurisdiction of the district court, the judge must notify the prosecutor and take further appropriate action, including one or more of the following:

- (1) Dismiss the charge.
- (2) Permit the State to amend the statement of the crime in the process or order.
- (3) Continue the proceedings, for not more than 24 hours, to permit the State to initiate new charges.
- (4) For a pleading that purported to allege a criminal offense within the original jurisdiction of the superior court, with the consent of the prosecutor, set the case for trial in the district court if the charge is found to be within the original jurisdiction of the district court. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 2022-47, s. 15(b).)

**§ 15A-605. Additional proceedings at first appearance before judge.**

The judge must:

- (1) Inform the defendant of the charges against him;
- (2) Determine that the defendant or his counsel has been furnished a copy of the process or order; and
- (3) Determine or review the defendant's eligibility for release under Article 26 of this Chapter, Bail. (1973, c. 1286, s. 1.)

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

(a) If a defendant is charged with a criminal offense within the original jurisdiction of the superior court, the judge must schedule a probable-cause hearing unless the defendant waives in writing the defendant's 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 the defendant's right to a probable-cause hearing without the written consent of the defendant and the defendant's 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; 2022-47, s. 15(c).)

**§§ 15A-607 through 15A-610. Reserved for future codification purposes.**