Article 52.

Motions Practice.

§ 15A-951. Motions in general; definition, service, and filing.

(a) A motion must:

(1) Unless made during a hearing or trial, be in writing;

(2) State the grounds of the motion; and

(3) Set forth the relief or order sought.

(b) Each written motion must be served upon the attorney of record for the opposing party or upon the defendant if he is not represented by counsel. Service upon the attorney or upon a party shall be made as provided in G.S. 1A-1, Rule 5.

(c) All written motions must be filed with the court. Proof of service must be made by filing with the court a certificate of service as provided in G.S. 1A-1, Rule 5(b1). (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 2021-47, s. 16(a).)

§ 15A-952. Pretrial motions; time for filing; sanction for failure to file; motion hearing date.

(a) Any defense, objection, or request which is capable of being determined without the trial of the general issue may be raised before trial by motion.

(b) Except as provided in subsection (d), when the following motions are made in superior court they must be made within the time limitations stated in subsection (c) unless the court permits filing at a later time:

(1) Motions to continue.

(2) Motions for a change of venue under G.S. 15A-957.

(3) Motions for a special venire under G.S. 9-12 or G.S. 15A-958.

(4) Motions to dismiss under G.S. 15A-955.

(5) Motions to dismiss for improper venue.

(6) Motions addressed to the pleadings, including:

a. Motions to dismiss for failure to plead under G.S. 15A-924(e).

b. Motions to strike under G.S. 15A-924(f).

c. Motions for bills of particulars under G.S. 15A-924(b) or G.S. 15A-925.

d. Motions for severance of offenses, to the extent required by G.S. 15A-927.

e. Motions for joinder of related offenses under G.S. 15A-926(c).

(c) Unless otherwise provided, the motions listed in subsection (b) must be made at or before the time of arraignment if a written request is filed for arraignment and if arraignment is held prior to the session of court for which the trial is calendared. If arraignment is to be held at the session for which trial is calendared, the motions must be filed on or before five o'clock P.M. on the Wednesday prior to the session when trial of the case begins.

If a written request for arraignment is not filed, then any motion listed in subsection (b) of this section must be filed not later than 21 days from the date of the return of the bill of indictment as a true bill.

(d) Motions concerning jurisdiction of the court or the failure of the pleading to charge an offense may be made at any time.

(e) Failure to file the motions in subsection (b) within the time required constitutes a waiver of the motion. The court may grant relief from any waiver except failure to move to dismiss for improper venue.

(f) When a motion is made before trial, the court in its discretion may hear the motion before trial, on the date set for arraignment, on the date set for trial before a jury is impaneled, or during trial.

(g) In superior or district court, the judge shall consider at least the following factors in determining whether to grant a continuance:

(1) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;

(2) 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 more time is needed for adequate preparation; and

(3) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child.

(4) Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina. A continuance requested to fulfill an obligation of service by carrying out any duties as a member of the General Assembly, or service on the Rules Review Commission or any other board, commission, or authority as an appointee of the Governor, the Lieutenant Governor, or the General Assembly, must be granted. (1973, c. 1286, s. 1; 1989, c. 688, s. 5; 1995 (Reg. Sess., 1996), c. 725, s. 9; 1997-34, s. 12; 2019-243, s. 30(b); 2020-72, s. 2(b); 2021-180, s. 1.69(a).)

§ 15A-953. Motions practice in district court.

In misdemeanor prosecutions in the district court motions should ordinarily be made upon arraignment or during the course of trial, as appropriate. A written motion may be made prior to trial in district court. With the consent of other parties and the district court judge, a motion may be heard before trial. Upon trial de novo in superior court, motions are subject to the provisions of G.S. 15A-952, and except as provided in G.S. 15A-135, no motion in superior court is prejudiced by any ruling upon, or a failure to make timely motion on, the subject in district court. (1973, c. 1286, s. 1.)

§ 15A-954. Motion to dismiss – Grounds applicable to all criminal pleadings; dismissal of proceedings upon death of defendant.

(a) The court on motion of the defendant must dismiss the charges stated in a criminal pleading if it determines that:

(1) The statute alleged to have been violated is unconstitutional on its face or as applied to the defendant.

(2) The statute of limitations has run.

(3) The defendant has been denied a speedy trial as required by the Constitution of the United States and the Constitution of North Carolina.

(4) The defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.

(5) The defendant has previously been placed in jeopardy of the same offense.

(6) The defendant has previously been charged with the same offense in another North Carolina court of competent jurisdiction, and the criminal pleading charging the offense is still pending and valid.
(7) An issue of fact or law essential to a successful prosecution has been previously adjudicated in favor of the defendant in a prior action between the parties.
(8) The court has no jurisdiction of the offense charged.
(9) The defendant has been granted immunity by law from prosecution.
(10) The pleading fails to charge an offense as provided in G.S. 15A-924(e).

(b) Upon suggestion to the court that the defendant has died, the court upon determining that the defendant is dead must dismiss the charges.

(c) A motion to dismiss for the reasons set out in subsection (a) may be made at any time. (1973, c. 1286, s. 1.)

§ 15A-955. Motion to dismiss – Grounds applicable to indictments.

The court on motion of the defendant may dismiss an indictment if it determines that:

(1) There is ground for a challenge to the array,
(2) The requisite number of qualified grand jurors did not concur in finding the indictment, or
(3) All of the witnesses before the grand jury on the bill of indictment were incompetent to testify. (1973, c. 1286, s. 1.)

§ 15A-956. Deferral of ruling on motion to dismiss when charge to be reinstituted.

If a motion to dismiss is made at arraignment or trial, upon motion of the prosecutor the court may recess the proceedings for a period of time requested by the prosecutor, not to exceed 24 hours, prior to ruling upon the motion. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-957. Motion for change of venue.

If, upon motion of the defendant, the court determines that there exists in the county in which the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial, the court must either:

(1) Transfer the proceeding to another county in the prosecutorial district as defined in G.S. 7A-60 or to another county in an adjoining prosecutorial district as defined in G.S. 7A-60, or
(2) Order a special venire under the terms of G.S. 15A-958.

The procedure for change of venue is in accordance with the provisions of Article 3 of this Chapter, Venue. (1973, c. 1286, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 63.)

§ 15A-958. Motion for a special venire from another county.

Upon motion of the defendant or the State, or on its own motion, a court may issue an order for a special venire of jurors from another county if in its discretion it determines the action to be necessary to insure a fair trial. The procedure for securing this special venire is governed by G.S. 9-12. (1973, c. 1286, s. 1.)

§ 15A-959. Notice of defense of insanity; pretrial determination of insanity.

(a) If a defendant intends to raise the defense of insanity, the defendant must file a notice of the defendant's intention to rely on the defense of insanity as provided in G.S. 15A-905(c) and, if the case is not subject to that section, within a reasonable time prior to trial. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(b) In cases not subject to the requirements of G.S. 15A-905(c), if a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether the defendant had the mental state required for the offense charged, the defendant must within a reasonable time prior to trial file a notice of that intention. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(c) Upon motion of the defendant and with the consent of the State the court may conduct a hearing prior to the trial with regard to the defense of insanity at the time of the offense. If the court determines that the defendant has a valid defense of insanity with regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a finding to that effect. The court's denial of relief under this subsection is without prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no reference to the hearing may be made at the trial, and recorded testimony or evidence taken at the hearing is not admissible as evidence at the trial. (1973, c. 1286, s. 1; 1977, c. 711, s. 25; 2004-154, s. 10.)

§§ 15A-960 through 15A-970. Reserved for future codification purposes.