

10.1 Types of Jurisdiction

A. Three Types

Jurisdiction is the “court’s power to decide a case or issue a decree.” BLACK’S LAW DICTIONARY 927 (9th ed. 2009). There are three basic types of jurisdiction:

- territorial jurisdiction,
- personal jurisdiction, and
- subject matter jurisdiction.

Territorial jurisdiction concerns whether an offense occurred within the sovereign boundaries of North Carolina or has a close enough nexus with the state of North Carolina to justify this state punishing the crime.

Personal jurisdiction concerns jurisdiction over the defendant. For the court to obtain personal jurisdiction, the defendant must be physically present in the state of North Carolina. Further, once the court obtains personal jurisdiction, the defendant ordinarily must be present for the trial to proceed and a conviction to be entered. *See State v. Buchanan*, 330 N.C. 202 (1991) (defendant has constitutional right to presence at trial and significant pretrial proceedings); *State v. Stockton*, 13 N.C. App. 287, 289 (1971) (questioning whether court had jurisdiction to enter judgment where defendant fled before sentencing). Once a trial commences, if a noncapital defendant flees or declines to attend his or her trial, the flight constitutes a waiver of the right to presence, and the trial may proceed without the defendant. *See State v. Richardson*, 330 N.C. 174 (1991) (burden is on defendant to explain absence once trial has commenced and, if burden not met, waiver of right to presence at trial is inferred); *Stockton*, 13 N.C. App. at 292 (defendant’s voluntary absence from court after trial began constituted waiver of his right to be present during trial in noncapital case, but court erred in entering judgment and sentence of imprisonment in defendant’s absence). A capital defendant cannot waive his or her right to presence. *See State v. Payne*, 320 N.C. 138 (1987). To ensure the return of alleged offenders beyond state borders, North Carolina has entered into extradition agreements with sister states by signing the Uniform Criminal Extradition Act, discussed *infra* § 10.4C, Extradition of Defendants to North Carolina. For a further discussion of the right to presence, see 2 NORTH CAROLINA DEFENDER MANUAL Ch. 21 (Personal Rights of Defendant) (UNC School of Government, 2d ed. 2012).

Subject matter jurisdiction concerns the court’s authority to hear the type of case or matter in question. Original trial-level jurisdiction over all criminal cases in North Carolina is divided between superior and district court. *See* N.C. CONST. art. IV, sec. 12; N.C. GEN. STAT. § 7A-271, § 7A-272 (hereinafter G.S.). There are limitations on the jurisdiction of each level of court to hear cases. There are also limitations on the jurisdiction of individual judges to hear matters or issue rulings out of their home county and district or out of session. *See generally* Michael Crowell, *Out-of-Term, Out-of-Session, Out-of-County*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/05 (UNC School of Government, Nov. 2008), available at <http://sogpubs.unc.edu/electronicversions/pdfs/aojb0805.pdf>.

B. Waiver of Jurisdiction

To try a case or issue a ruling, a court must have all three types of jurisdiction: territorial jurisdiction over the offense, personal jurisdiction over the defendant, and subject matter jurisdiction over the cause. Territorial and subject matter jurisdiction cannot be waived by the defendant. *See State v. De la Sancha Cobos*, 211 N.C. App. 536 (2011) (defendant's consent to amendment of fatally flawed indictment did not confer jurisdiction on the court; defendant cannot consent to subject matter jurisdiction). An objection to territorial or subject matter jurisdiction may be raised at any time and may be considered sua sponte by the court. *See State v. Boone*, 310 N.C. 284, 288 (1984) ("Jurisdictional questions which relate to the power and authority of the court to act in a given situation may be raised at any time."), *superseded by statute on other grounds as stated in State v. Oates*, __ N.C. __, 732 S.E.2d 571 (2012); *State v. Morrow*, 31 N.C. App. 592 (1976) (where lack of jurisdiction is apparent on record, appellate court must note it ex mero motu). A defendant can waive an objection to personal jurisdiction by voluntarily entering North Carolina. *See State v. Speller*, 345 N.C. 600 (1997).

C. Topics not Covered

A court may lack subject matter jurisdiction to hear or rule in a case if the State has failed to invoke the court's jurisdiction through a proper pleading—for example, the State has failed to allege an essential element of the offense in the warrant in district court or the indictment in superior court. *See, e.g., State v. Perry*, 291 N.C. 586 (1977). Because this jurisdictional defect concerns the rules for proper pleadings, it is primarily addressed in Chapter 8 of this manual on Criminal Pleadings rather than in this chapter.

Specific statutes also may limit the subject matter jurisdiction of a court to hear certain matters—for example, in proceedings to revoke probation or require satellite-based monitoring for a person subject to sex offender registration. *See, e.g., State v. Black*, 197 N.C. App. 373 (2009) (holding that trial court lacked jurisdiction and authority to revoke defendant's probation where State failed to comply with statutory requirements for conducting hearing after expiration of probation [the statutory requirements on which the decision was based in G.S. 15A-1344(f) were amended in 2008 N.C. Sess. Laws Ch. 129 (H 1003) for hearings held on or after Dec. 1, 2008]); *State v. Clayton*, 206 N.C. App. 300 (2010) (holding that trial court lacked subject matter jurisdiction to impose satellite based monitoring following probation violation by person subject to sex offender registration).

Discussion of proceedings to modify or revoke probation is beyond the scope of this manual. The pertinent statutes on venue and jurisdiction for probation proceedings are: G.S. 15A-1345(d) (preliminary hearing on probation violation); G.S. 15A-1344 (probation violation hearing); G.S. 15A-1342(a1) (violation of probation pursuant to deferred prosecution); G.S. 90-96 (violation of probation pursuant to conditional discharge); G.S. 15A-1344(a1) (violation of probation in drug treatment or therapeutic court case); *see also* G.S. 7A-271(e) (violation of probation pursuant to guilty plea in district court to Class H or I felony).