

11.4 Alternative Relief

- A. Special Venire
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11.4. Alternative Relief

A. Special Venire

In response to a defendant's motion for a change of venue, or on its own motion, the court may order a special venire of jurors from a neighboring county to be brought into the county where the crime occurred. *See* G.S. 15A-957; G.S. 15A-958; *State v. Golphin*, 352 N.C. 364 (2000) (trial judge had authority to order a special venire from Johnston County for a trial in Cumberland County); *see also* 2 NORTH CAROLINA DEFENDER MANUAL § 25.1F, Supplemental Jurors from Outside the County (July 2018).

Practice note: Try to avoid special venires. As a general rule, special venires are not a favorable alternative for defendants. Jurors may view the inconvenience of being transported to another county as the defendant's fault. In addition, bus trips or van rides from county to county provide opportunities for improper contact among jurors.

B. Individual Voir Dire

In capital cases, the trial court may in its discretion permit individual voir dire of jurors. *See* G.S. 15A-1214(j). Although there is no explicit statutory authority to do so in noncapital cases, cases indicate that the court has the inherent authority to permit individual voir dire where it would be necessary to select a fair and impartial jury. *See State v. Abbott*, 320 N.C. 475 (1987) (in noncapital case, trial court allowed individual voir dire as alternative to change of venue); *State v. Burke*, 342 N.C. 113 (1995) (in noncapital murder case, court states that decision whether to grant individual voir dire is within trial court's discretion). Further, the trial court's duty to oversee jury selection almost certainly implies that it has the authority to order individual voir dire (or partial individual voir dire) if necessary to select an impartial jury. *Cf. State v. Barfield*, 298 N.C. 306 (1979) (court has inherent authority to order change of venue in interests of justice), *disavowed in part on other grounds by State v. Johnson*, 317 N.C. 193 (1986).

Counsel may also seek partial individual voir dire, where jurors are questioned individually only about sensitive topics, such as jurors' exposure to pretrial publicity and pre-formed opinions about the case. If individual voir dire is not granted or likely to be granted, counsel may consider as an alternative requesting the use of written jury questionnaires to aid in selecting an impartial jury.

For a further discussion of individual voir dire, see 2 NORTH CAROLINA DEFENDER MANUAL § 25.3G, Right to Individual Voir Dire (July 2018).

C. Continuance

If a motion for a change of venue is unsuccessful, counsel might consider requesting a continuance. Over time, media interest in the crime may decline and the influence of prejudicial coverage may dissipate. A continuance may be a good remedy where some other event is creating increased media interest in your client's story. For example, an attorney representing a defendant charged with a capital crime sought a continuance beyond the time when a local person was to be executed because the pending execution created a great deal of media interest in all of the county's death penalty cases. Such a continuance motion should specifically detail the potential for prejudice to the defendant. When possible, attach any documentary or other evidence in support to the motion.