

14.1 Evidence Subject to Exclusion

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A. Categories

There are three basic types of evidence subject to exclusion:

- physical evidence (as well as observations or other information) obtained through a search or seizure;
- confessions or statements; and
- identifications.

See also supra § 12.2A, Suppressing Prior Uncounseled Conviction (2d ed. 2013).

B. Grounds for Exclusion

Various constitutional and statutory provisions govern the above types of evidence, discussed in greater detail in the following sections. As a general matter, if the State obtains evidence in violation of a suspect’s constitutional rights, the evidence must be excluded from trial. *See Mapp v. Ohio*, 367 U.S. 643 (1961); *State v. Carter*, 322 N.C. 709 (1988). Violations of statutory rights also may provide the basis for suppression.

The exclusionary rule is codified in North Carolina in Section 15A-974(a) of the North Carolina General Statutes (hereinafter G.S.), which states that evidence must be suppressed if:

- (1) its exclusion is required by the Constitution of the United States or the Constitution of North Carolina, or
- (2) the evidence is obtained as a result of a “substantial violation” of the Criminal Procedure Act (G.S. Chapter 15A).

The Official Commentary to the statute explains that subdivision (1) of subsection (a) is intended to track case law developed by the United States Supreme Court and the Supreme Court of North Carolina on the reach of constitutional exclusionary rules. The same approach applies to derivative evidence, also called the “fruit of the poisonous tree.” If case law interpreting the federal or state constitution prohibits the admission of derivative evidence, so will subdivision (1) of subsection (a) of the statute.

Subdivision (2) of subsection (a) of G.S. 15A-974 goes beyond constitutional requirements and mandates the exclusion of evidence that is obtained in “substantial

violation” of state criminal procedure requirements. For a discussion of the meaning of a “substantial violation,” see *infra* § 14.5, Substantial Violations of Criminal Procedure Act.