

# Chapter 21

## Personal Rights of Defendant

<b>21.1</b>	<b>Right to Be Present</b>	<b>21-2</b>
	A. Basis of Right	
	B. Pretrial Proceedings	
	C. Trial Proceedings	
	D. Post-Conviction Proceedings	
	E. Express and Inferred Waivers of Right	
	F. Removal of Disruptive Defendant	
	G. Standard of Review on Appeal	
<b>21.2</b>	<b>Right to Confront Witnesses</b>	<b>21-23</b>
	A. Basis of Right	
	B. Waiver	
	C. Standard of Review on Appeal	
	D. Additional Resources	
<b>21.3</b>	<b>Right to Testify</b>	<b>21-25</b>
	A. Right to Testify	
	B. Right Not to Take the Stand	
<b>21.4</b>	<b>Right to Allocution</b>	<b>21-29</b>
	A. Purpose	
	B. Basis of Right	
<b>21.5</b>	<b>Right to Appear in Civilian Clothes</b>	<b>21-32</b>
	A. Basis of Right	
	B. Preservation of Issue for Appeal	
<b>21.6</b>	<b>Right to Appear Free of Physical Restraints</b>	<b>21-35</b>
	A. Constitutional Basis of Right	
	B. Statutory Basis of Right	
	C. Preservation of Issue for Appeal	

---

The Due Process Clause of the Fourteenth Amendment and the Fifth and Sixth Amendments to the U.S. Constitution, as well as article I, sections 19 and 23 of the N.C. Constitution, guarantee a defendant certain personal rights during his or her trial. North Carolina statutes supplement these rights. This chapter covers six personal rights of an accused:

- the right to be present at his or her trial,
- the right to confront witnesses in the courtroom,
- the right to choose whether to testify,
- the right to allocution,
- the right to appear for trial in civilian clothes, and
- the right to appear for trial free of physical restraints.

The scope of this chapter is limited to the above. It does not cover the right to counsel or the right to self-representation, which are covered in JOHN RUBIN & ALYSON A. GRINE, 1 NORTH CAROLINA DEFENDER MANUAL Ch. 12 (Right to Counsel) (2d ed. 2013). Nor does it discuss the defendant's rights to expert assistance, addressed in JOHN RUBIN & ALYSON A. GRINE, 1 NORTH CAROLINA DEFENDER MANUAL Ch. 5 (Experts and Other Assistance) (2d ed. 2013). This chapter also does not fully address a defendant's confrontation rights during trial or the defendant's privilege against self-incrimination. For a discussion of the constitutional implications of remote testimony—i.e., testimony given by a witness outside of the defendant's physical presence by way of a "live," closed-circuit television system—see *infra* § 29.8, Remote Testimony.