

# Chapter 30

## Motions to Dismiss Based on Insufficient Evidence

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A motion to dismiss is the procedural device used to test the sufficiency of the evidence presented at trial to convict the defendant. The motion should always be made outside the presence of the jury. The importance of making this motion at the appropriate times and in the appropriate manner cannot be overestimated.

The scope of this chapter is limited to motions to dismiss based on the insufficiency of the evidence. Other types of motions to dismiss are covered in other chapters of this manual. *See* NORTH CAROLINA DEFENDER MANUAL, VOL. 1, PRETRIAL (2d ed. 2013). These include:

- Motions to dismiss for pre-accusation delay or for violation of the right to a speedy trial. *See* Chapter 7 (Speedy Trial and Related Issues).
- Motions to dismiss based on defective pleadings. *See* Chapter 8 (Criminal Pleadings).

- Motions to dismiss based on improper grand jury procedures. *See* Chapter 9 (Grand Jury Proceedings).
- Motions to dismiss based on lack of jurisdiction (other than lack of jurisdiction as a result of a defective pleading). *See* Chapter 10 (Jurisdiction).
- Motions to dismiss based on improper venue. *See* Chapter 11 (Venue).
- Motions to dismiss on double jeopardy grounds or for vindictive or selective prosecution. *See* Chapter 13 (Motions Practice).