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7.1 Statutory Protections against Delayed Prosecution

A. Statute of Limitations for Misdemeanors

G.S. 15-1 requires that prosecutions for misdemeanor offenses be initiated within two years of the commission of the offense. G.S. 15-1 was amended in 2017, and the differences between the former and current versions are discussed below.

Before 2017 amendments. Former G.S. 15-1 stated that prosecutions for misdemeanors must be initiated by indictment or presentment (discussed further in the next section) within that time frame. Although the former statute referred only to prosecutions initiated by grand jury action, it was interpreted as also applying to offenses prosecuted on a warrant. Thus, for prosecutions initiated by warrant or other criminal process, the process must have issued within the statute of limitations period. *See State v. Hundley*, 272 N.C. 491 (1968); *State v. Underwood*, 244 N.C. 68 (1956).

Then, in *State v. Turner*, ___ N.C. App. ___, 793 S.E.2d 287 (2016), the court of appeals interpreted former G.S. 15-1 to require an indictment, presentment, or arrest warrant—and only those types of pleadings—in order to toll the statute of limitations. Under *Turner*, other pleadings, such as a citation or magistrate’s order, did not toll the statute.

The holding in *Turner* was short lived. In *State v. Curtis*, ___ N.C. ___, 817 S.E.2d 187 (2018), the North Carolina Supreme Court overruled *Turner*, finding that any valid criminal pleading was sufficient to toll the statute of limitations under former G.S. 15-1. For the reasons stated in *Curtis*, the court reversed *Turner*. ___ N.C. ___, 817 S.E.2d 173 (2018).

The previous version of the statute also stated that if a prosecutor obtained a timely but defective indictment, the State had one year to reindict the defendant from the time the original indictment was dismissed as long as the dismissal occurred within the original two-year time period from the date of offense. Thus, as long as an indictment issued within the two-year statute of limitations and the dismissal occurred within that time frame, the State had an additional twelve months to obtain a new, sufficient indictment. This ability to refile applied only to indictments; no exception existed for other types of

criminal pleadings. This aspect of the former statute was not affected by *Turner* or *Curtis*; however, new G.S. 15-1, discussed next, broadens the ability of the State to refile after the dismissal of any defective pleading.

After 2017 amendments. New G.S. 15-1 continues to require that misdemeanor prosecutions be initiated within two years of the date of offense. The new statute contains two significant changes, effective for offenses committed on or after December 1, 2017. See [S.L. 2017-212](#), sec. 5.3.

First, the current statute specifies that all pleadings toll the statute of limitations. This change is consistent with the *Curtis* decision, discussed above, which overruled *Turner*. Thus, under either the current or former version of G.S. 15-1, an indictment or presentment is no longer required to toll the statute as long as some pleading issues within the two-year period.

Second, under the current version of the statute, a defective pleading of any kind (not just indictments) may be reinitiated within one year from the time that the original pleading is dismissed. The dismissal and recharging need not occur within the original two-year period as long as the defective pleading was issued within that time period. Under both versions of the statute, tolling of the time period applies only to the offense charged. For example, an arrest warrant for possession of marijuana would toll the statute of limitations as to that offense. After the two-year mark, the statute of limitations would still bar trying the defendant on a related drug paraphernalia charge where no charging document had issued for that offense within the two-year period. For a further discussion of refiling charges following a dismissal of a defective pleading, see *infra* § 7.1B, Compliance with Statute of Limitations.

Misdemeanors not subject to two-year statute of limitations. G.S. 15-1 retains archaic language making an exception to the statute of limitations for “malicious misdemeanors.” There are no modern cases construing this part of the statute, although an earlier case held that “malicious misdemeanors” are those in which malice is a necessary element of the offense. See *State v. Frisbee*, 142 N.C. 671 (1906) (holding that assault is not a malicious misdemeanor). A defendant charged with a “malicious misdemeanor” outside the statute of limitations period may have a strong argument that the phrase “malicious misdemeanors” is void for vagueness. See *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) (Florida vagrancy statute held void for vagueness where it failed to give a person of ordinary intelligence fair notice that certain conduct was forbidden by the statute); *United States v. Habig*, 390 U.S. 222, 227 (1968) (courts urged to construe statutes of limitation in favor of repose).

There are also some isolated misdemeanors, specifically designated by statute, for which there is a longer statute of limitations. See, e.g., G.S. 105-236(9) (establishing six-year statute of limitations for prosecutions for willful failure to file tax return or pay tax).

B. Compliance with Statute of Limitations

Issuance of indictment or presentment. In cases initiated by grand jury indictment or presentment, the indictment or presentment must be issued before the statute of limitations expires. A presentment is a grand jury request to the prosecutor to investigate an alleged crime. A presentment tolls the statute of limitations even though under our current law a presentment does not formally initiate criminal proceedings. *See State v. Whittle*, 118 N.C. App. 130 (1995) (amendment to criminal procedure act precluding prosecution initiated by presentment does not nullify provision that statute of limitations is satisfied by timely presentment).

Issuance of arrest warrant or other pleading. For cases initiated by an arrest warrant or other criminal process, the process likewise must be issued before the statute of limitations expires. A prosecution is timely if a warrant or other process issues before the two-year statute of limitations runs, even if the case does not reach superior court on appeal for more than two years. *See State v. Underwood*, 244 N.C. 68 (1956) (valid arrest warrant tolled the statute of limitations despite trial de novo not occurring for more than two years). Under both the previous and revised version of G.S. 15-1, any pleading (including an arrest warrant) tolls the statute of limitations. *See supra* § 7.1A. Statute of Limitations for Misdemeanors.

Modification of warrant. If a prosecutor files a statement of charges that substantially modifies or adds to the charges alleged in a warrant, the statement of charges must be filed within the statute of limitations period. *See State v. Caudill*, 68 N.C. App. 268 (1984) (prosecution barred by statute of limitations where statement of charges was issued after statute of limitations period had expired and statement of charges changed nature of offense charged). The same rule would presumably apply if a prosecutor sought an indictment modifying the charges alleged in a warrant.

The nature of the modification matters. Under current G.S. 15-1, if the State “abandons” a timely prosecution due to a defective pleading, it has an additional twelve months following dismissal in which to recharge the defendant with the dismissed offense. This additional time seems to be limited to situations involving a fatally defective pleading. *See* G.S. 15-1 (stating that “[p]rovided, that if any pleading is defective, *so that no judgment can be given thereon*, another prosecution may be instituted for the same offense, within one year after the first shall have been abandoned by the State”) (emphasis added). Thus, the statute does not give the State additional time in which to issue a modified charge that changes the factual allegations or adds related charges. Further, G.S. 15-1 refers to institution of a new prosecution for the “same offense,” which likewise limits the ability of the State to substitute or add charges after the two year period. On the other hand, where the pleading is fatally flawed and fails to confer jurisdiction on the trial court, a modified charge involving the same offense appears to be permissible if brought within the twelve-month period. For more information on pleading defects, see *infra* Chapter 8, Criminal Pleadings (2d ed. 2013).

Issuance of void warrant or invalid indictment. Under the previous version of G.S. 15-1, an invalid warrant did *not* toll or arrest the statute of limitations—that is, it did not stop the clock from running. *See State v. Hundley*, 272 N.C. 491 (1968). Thus, even though it was permissible as a matter of pleading practice for a prosecutor to issue a statement of charges to modify a void warrant, such a statement of charges was nevertheless barred if it was issued after the statute of limitations had expired (in most misdemeanor cases, two years from the offense date). *See State v. Madry*, 140 N.C. App. 600 (2000). The former statute allowed a defective indictment to be dismissed and reissued for the same offense, but only within the two-year period from the date of the offense.

In contrast, an invalid pleading does toll the statute of limitations under G.S. 15-1 as revised. The new statute provides that if a pleading obtained within the statute of limitations period is found to be defective, the State has one year from the time it abandons the pleading to correct the error and recharge the defendant.

Practice note: Three important limitations exist on the ability of the State to dismiss a timely pleading and refile after the expiration of the statute of limitations. One, the language of the statute indicates that the right to refile a pleading after it has been dismissed is limited to situations involving a fatally flawed pleading, one that fails to confer jurisdiction on the court. Not any defect will do; the pleading must be flawed in such a way that “no judgment can be given thereon.” For example, a pleading that failed to charge the named offense but effectively charged a lesser-included offense would not appear to qualify—after the expiration of the two-year time period, the State would not be able to take a dismissal and refile the more serious offense (as the original pleading was not so flawed as to prevent a judgment thereupon). Two, the dismissal must be because of a defective pleading. A dismissal for other reasons, such as the court’s denial of the State’s continuance request, does not extend the statute of limitations. *See infra* 7.4E, District Court Proceedings (discussing this scenario). Three, any dismissal and recharging after the expiration of the two-year period is still limited to the same offense; the State may not add offenses or change the original offense with a new pleading after the two-year statute of limitations.

Effect of dismissal with leave and voluntary dismissal. G.S. 15A-932 authorizes dismissal with leave to re prosecute when the defendant has failed to appear or pursuant to a deferred prosecution agreement. *See also* G.S. 15A-1009 (permitting dismissal with leave if defendant found incapable to proceed [repealed effective for offenses committed on or after Dec. 1, 2013]). Although there is no case law directly on point, it is reasonable to assume that the statute of limitations does not bar the State from reviving the same charges as long as the original process was timely issued. *See* G.S. 15A-932(b) (outstanding process retains its validity after dismissal with leave); *see also State v. Reekes*, 59 N.C. App. 672 (1982) (under repealed statutory speedy trial act, speedy trial clock stopped running when prosecutor entered dismissal with leave based on defendant’s failure to appear, and clock did not start running again until proceedings were reinstated; however, State was required to reinstate proceedings within “reasonable time”); *State v. McKoy*, 294 N.C. 134 (1978) (a defendant who creates delay cannot claim

violation of constitutional speedy trial right; in this case, State was cause of delay, and charges were dismissed for violation of speedy trial right).

Generally, the statute of limitations is not tolled when the prosecutor takes a voluntary dismissal pursuant to G.S. 15A-931(b). *See State v. Lamb*, 84 N.C. App. 569 (1987), *aff'd*, 321 N.C. 633 (1988). Because a voluntary dismissal completely terminates the charges, the prosecution would need to refile the charges within two years of the offense date to satisfy the statute of limitations for most misdemeanors. Thus, if the State dismissed because its witnesses were not present or the judge was unwilling to continue the case, the State would be unable to refile once two years had passed from the date of the offense. *See infra* 7.4E, District Court Proceedings (discussing this scenario). The additional one-year period time for refiling applies only to dismissals based on a fatally flawed pleading, discussed above.

For a further discussion of the impact of a dismissal in a case involving a claim of improper post-accusation delay, see *infra* “Effect of dismissal” and “Dismissal with leave under G.S. 15A-932” in § 7.3C, When Right Attaches. For a discussion of the effect of a dismissal after jeopardy has attached, see *infra* § 30.4, Effect of Dismissal.

C. Waiver of Statute of Limitations

G.S. 15A-954(a)(2) requires the court to dismiss charges against a defendant if the statute of limitations has run. The defendant must affirmatively raise the statute of limitations at or before trial to preserve the right to dismissal. *See State v. Brinkley*, 193 N.C. 747 (1927) (plea of guilty waived statute of limitations defense); *State v. Holder*, 133 N.C. 709 (1903) (statute of limitations defense could not be raised for first time on appeal).

The failure to raise the statute of limitations in district court probably does not waive the right to raise it in superior court on appeal for trial de novo. *See* G.S. 15A-953 (“except as provided in G.S. 15A-135 [stipulations to or express waivers of improper venue], no motion in superior court is prejudiced by any ruling upon, or a failure to make timely motion on, the subject in district court”).

In misdemeanor cases that originate in superior court (that is, misdemeanors joined with felonies or initiated by presentment), notice of intent to rely on the statute of limitations as an affirmative defense is not required as a matter of reciprocal defense discovery obligations under G.S. 15A-905(c)(1). The defendant still must affirmatively raise the issue before trial under G.S. 15A-954 or the issue is waived.

D. Statutory Limitations on Jurisdiction of Juvenile Court

Based on juvenile’s age. The juvenile court traditionally had exclusive, original jurisdiction over all offenses committed by a person who was less than sixteen years of age at the time of the offense. *See* G.S. 7B-1501(7). “Raise the Age” legislation recently passed in North Carolina expanded the jurisdiction of the juvenile court to people over

the age of sixteen and under the age of eighteen for most offenses, effective for offenses committed on or after December 1, 2019.

In most cases, the jurisdiction of the juvenile court over any cause of action automatically terminates when a person reaches the age of eighteen. *See* G.S. 7B-1601(b). Amendments to G.S. 7B-1601 passed as a part of “Raise the Age” legislation allow the court to retain jurisdiction after age eighteen when the offense was committed by a person sixteen or seventeen years old and the court acquired jurisdiction while the person was a juvenile. *See* G.S. 7B-1601(b1). When a juvenile is committed to the custody of the Department of Juvenile Justice and Delinquency Prevention for placement in a youth development center for a serious felony, the juvenile court may retain extended jurisdiction until the juvenile reaches the age of nineteen or twenty-one, depending on the felony. *See* G.S. 7B-1602; *see also* NORTH CAROLINA JUVENILE DEFENDER MANUAL § 3.3, Jurisdiction (UNC School of Government, 2017). The rules on extended jurisdiction for juveniles in youth development centers apply whether the offense was committed before or after the effective date of the “Raise the Age” legislation.

In *State v. Dellinger*, 343 N.C. 93 (1996), the N.C. Supreme Court held that the State was barred from initiating a prosecution in superior court against an adult for an offense committed by that adult when he was less than sixteen years of age. At the time *Dellinger* was decided, there was no provision in the Juvenile Code giving the juvenile court jurisdiction over an adult offender and thus no court had jurisdiction to prosecute the case. The court in *Dellinger* therefore dismissed the prosecution for lack of subject matter jurisdiction.

North Carolina’s juvenile code was thereafter revised to provide that the juvenile court may assert jurisdiction over a person 18 years of age or older, an adult, for the limited purpose of determining whether to dismiss or transfer to superior court any felony charges and related misdemeanors alleged to have been committed by the adult defendant when he or she was between the ages of thirteen and sixteen. *See* G.S. 7B-1601(d). This provision applies to offenses committed before or after December 1, 2019. In addition, for offenses committed on or after December 1, 2019, the court may assert jurisdiction over a person nineteen years old for any offense alleged to have been committed when the person was sixteen years old if jurisdiction was not obtained before the person was nineteen. *See* G.S. 7B-1601(d1). Similarly, the court may assert jurisdiction over a person twenty years old for any offense alleged to have occurred when the person was seventeen years old if jurisdiction was not obtained before the person was twenty years old. In both instances, the court is limited to determining whether to dismiss the petition or transfer the matter to superior court. *Id.*

The juvenile code has similar rules extending the juvenile court’s jurisdiction when a delinquency proceeding initially began in juvenile court. For offenses committed before December 1, 2019, when a delinquency proceeding has been initiated but is not concluded before the juvenile’s 18th birthday, the juvenile court retains limited jurisdiction to determine whether the juvenile petition will be dismissed or the case will be transferred to superior court for trial as an adult. *See* G.S. 7B-1601(c). For offenses

committed after December 1, 2019, the juvenile court likewise has extended jurisdiction to decide on transfer, but the length of time depends on whether the juvenile was under 16, at least 16 but under 17, and at least 17 but under 18 at the time of the offense. *See* G.S. 7B-1601(c), (c1).

If you represent a client in this situation and you believe that the delay in prosecution was intentional or strategic on the part of the State—an attempt, for example, to prosecute a case in superior court that likely would not have been bound over had it been prosecuted during the juvenile’s minority—you would have a strong argument that due process was violated under the case law discussed *infra* in § 7.2, Pre-Accusation Delay. You might also have an equal protection argument that your client was unjustly singled out and denied the benefits of prosecution within the juvenile system granted to other similarly situated juveniles.

Based on time of filing of petition. In several decisions, the court of appeals considered the impact of G.S. 7B-1703(b), which requires that a juvenile petition be filed within 15 days after the complaint is received by the juvenile court counselor and allows an extension of up to 15 days in the chief court counselor’s discretion. The court of appeals held that the trial court lacks jurisdiction to hear the matter if the petition is filed more than 15 days after the juvenile court counselor receives the complaint and the court counselor has not granted an extension *or* the petition is filed more than 30 days after receipt of the complaint. *See, e.g., In re K.W.*, 191 N.C. App. 812 (2008); *In re M.C.*, 183 N.C. App. 152 (2007); *see also* NORTH CAROLINA JUVENILE DEFENDER MANUAL § 6.3C, Timeliness of Filing (UNC School of Government, 2017) (discussing court of appeals’ decisions on time limit on juvenile petitions).

Since the issuance of those decisions, the N.C. Supreme Court has held that violation of these time limits *does not* deprive the district court of jurisdiction to act. According to the Court, the time limits are directory, not mandatory. *In re D.S.*, 364 N.C. 184 (2010). The court of appeals has expressed concern over this interpretation of the statutory time limits but has recognized it as binding. *See, e.g., In re J.A.G.*, 206 N.C. App. 318, 322 (2010) (expressing concern that failure to comply with deadlines disregards best interests of children, but following supreme court’s decision in *In re D.S.*).

The extent to which protections for pre-accusation delay and speedy trial rights under the state and federal constitutions apply in juvenile cases is not clear; no U.S. Supreme court or North Carolina court decision has decided the issue. Defense counsel should consider arguing that these protections apply to juveniles in the appropriate case—from a policy standpoint, the justifications underlying speedy trial and related constitutional protections for adults may even be stronger in juvenile cases. Speedy trial and pre-accusation delay protections are discussed *infra* in § 7.2, Pre-Accusation Delay, and § 7.3, Post-Accusation Delay.

E. Rights of Prisoners

When a defendant who is incarcerated for a criminal offense has other criminal charges pending against him or her, there are statutorily defined time-frames for when the State must proceed on the other charges. A motion to dismiss for violation of these statutory provisions is not the same as a motion or demand for a speedy trial, which is governed by the United States and North Carolina Constitutions. *See State v. Doisey*, 162 N.C. App. 447 (2004); *see also infra* “Prisoners’ right to a speedy trial” in § 7.3C, When Right Attaches. These statutory provisions enable a defendant to make the State proceed on pending charges while he or she is incarcerated elsewhere, which may facilitate a concurrent sentence on the pending charges, reduce the overall length of the defendant’s sentence, and allow the defendant additional privileges while incarcerated. In some circumstances, the provisions also require dismissal of pending charges if the State fails to comply with the statutory requirements.

In-state prisoners. G.S. 15A-711 sets two deadlines for proceeding on pending in-state charges against a defendant incarcerated in North Carolina. First, a defendant who is incarcerated in North Carolina pursuant to a criminal proceeding and who has other state charges pending against him or her can require the prosecutor to “proceed” in the pending case by filing a written request with the clerk where the charges are pending and serving a copy of it on the prosecutor. *See* G.S. 15A-711(c). This provision protects defendants who are already serving a sentence of imprisonment on other charges or who are in pretrial custody awaiting trial. It allows defendants to request that the State proceed on pending charges whether or not the State has lodged a detainer against them. [A detainer is a notice to corrections officials that an inmate has other pending charges and should not be released except to the custody of another law enforcement or corrections officer. Detainers typically affect an inmate’s privileges within prison, including the ability to work or participate in programs.] Within six months of a properly-filed request, the prosecutor must “proceed” by requesting that the defendant be returned to the custody of local law enforcement so that he or she can stand trial on the pending charges. *See* G.S. 15A-711(a). If the State fails to make a written request for temporary release within the six-month period, the charges must be dismissed. *See* G.S. 15A-711(c).

Second, G.S. 15A-711 sets a deadline of eight months for trial of a defendant following a properly-filed request, although that deadline is flexible and may be unenforceable under court opinions. The State has up to six months under G.S. 15A-711(c) to request custody of the defendant, plus a period of temporary release of up to 60 days under G.S. 15A-711(a), to try the defendant. The cases initially interpreting G.S. 15A-711 recognized that these provisions established an eight-month time limit for trying the defendant, although the State had some leeway in completing the trial. *See State v. Dammons*, 293 N.C. 263 (1977) (State made request for custody of defendant within six months, and case was scheduled to begin within eight months of defendant’s request but was continued because of absence of key State’s witness; G.S. 15A-711 not violated); *see also* G.S. 15A-711(b) (trial court has authority to decide precedence of trials). More recently, the court of appeals has held that the State complies with G.S. 15A-711 by making a written request to secure the defendant’s presence at trial within six months of the defendant’s request,

whether or not the trial takes place within the eight-month statutory period. *See State v. Doisey*, 162 N.C. App. 447, 450–51 (2004); *see also State v. Howell*, 211 N.C. App. 613 (2011) (noting that G.S. 15A-711 is not a “speedy trial” statute and does not guarantee a trial within a specific time frame). Even under *Doisey*, G.S. 15A-711 continues to require dismissal if the State fails to request custody of the defendant within the six-month deadline. In *Doisey*, the court of appeals remanded the case for the trial court to determine whether the State had met that deadline. *See also State v. Williamson*, 212 N.C. App. 393 (2011) (case remanded to determine whether the prosecutor made a timely written request for the defendant’s transfer; calendaring of case insufficient to comply with statute).

Another statute, G.S. 15-10.2, provides a similar mechanism for a prisoner to require the State to proceed to trial on pending criminal charges. A prisoner may proceed under both G.S. 15A-711 and G.S. 15-10.2, if applicable. G.S. 15-10.2 applies to people who are already serving a sentence in North Carolina and who have had a detainer lodged against them. *See State v. Wright*, 290 N.C. 45 (1976) (noting adverse consequences on prisoner of having detainer lodged against him or her). The statute explicitly provides that a prisoner must be brought to trial on pending charges within eight months of a properly-filed request by the prisoner. The time limit in G.S. 15-10.2 was not addressed in *Doisey*, so this provision may provide some relief for a prisoner subject to a detainer who is not tried within eight months. Note, however, that G.S. 15-10.2 allows the court to grant “any necessary and reasonable continuance.” Thus, while the time frame of G.S. 15-10.2 may be firmer than that of G.S. 15A-711, neither provision guarantees the right to a trial within a particular time frame.

Practice note: The two statutes provide a useful mechanism for making the State move forward on pending charges when the defendant is imprisoned on other matters, but a defendant seeking relief for delay in trial of the case may need to look more to constitutional speedy trial authority and pertinent calendaring requirements, discussed further below. Where requests under G.S. 15A-711 or G.S. 15-10.2 are being made, counsel should therefore consider making a motion for speedy trial under the state and federal constitutions at the same time.

A prisoner who is requesting trial under G.S. 15A-711 or G.S. 15-10.2 must comply with the notice and service requirements described therein. The two statutes’ provisions are similar but not identical. If the defendant fails to comply with the requirements, the request may be considered invalid and dismissal may be barred. *See State v. Pickens*, 346 N.C. 628 (1997) (request did not comply with G.S. 15A-711); *State v. Doisey*, 162 N.C. App. 447 (2004) (request complied with G.S. 15A-711); *State v. Hege*, 78 N.C. App. 435 (1985) (request did not comply with G.S. 15A-711); *State v. McKoy*, 294 N.C. 134 (1978) (request did not comply with G.S. 15-10.2). A properly-filed request under G.S. 15A-711 must be in writing and filed with the clerk of court in the county where the charges sought to be resolved are pending, and a copy of the request must be served on the prosecutor. A request addressed to the wrong division of the trial court or without referencing the correct file number for the matter sought to be resolved is probably not sufficient. *State v. Armistead*, ___ N.C. App. ___, 807 S.E.2d 664 (2017). It is the

defendant's burden to demonstrate proper form and service of a request under G.S. 15A-711. *Id.*

Three-recently enacted statutes address service of outstanding warrants while a prisoner is in custody. The statutes direct law enforcement agencies, the Division of Adult Correction, prosecutors, and the courts to identify and attempt to resolve outstanding warrants while other charges are pending or the defendant is in custody. *See* John Rubin, [What to Do about Outstanding Arrest Warrants](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Jan. 5, 2016) (discussing G.S. 15A-301.1(o) on obligations of law enforcement, G.S. 15A-301.1(p) on obligations of courts [amended in 2017 to apply to in-custody defendants only], and G.S. 148-10.5 on obligations of corrections). These statutes do not mandate service of outstanding warrants, but the failure to do so may strengthen a speedy trial claim. *See infra* "Prisoners' right to a speedy trial" in § 7.3C, When Right Attaches.

Out-of-state prisoners. The Interstate Agreement on Detainers, a multi-article agreement codified at G.S. 15A-761, governs prisoners incarcerated outside North Carolina and charged with a North Carolina offense. Because it is an interstate compact, state courts are bound by federal law interpreting the agreement as well as North Carolina case law. *See Alabama v. Bozeman*, 533 U.S. 146, 148 (2001) (agreement "creates uniform procedures for lodging and executing a detainer"). The Agreement creates a number of distinct rights. *See generally* Donald M. Zupanec, Annotation, *Validity, Construction, and Application of Interstate Agreement on Detainers*, 98 A.L.R.3d 160 (1980); George L. Blum, Annotation, *Construction and Application of Article III of Interstate Agreement on Detainers (IAD)—Issues Related to "Speedy Trial" Requirement, and Construction of Essential Terms*, 70 A.L.R.6th 361 (2011).

First, when a person is serving a term of imprisonment outside of North Carolina, and North Carolina issues a detainer against him or her for untried offenses, the person is entitled to a trial within 180 days of requesting disposition of the North Carolina charges. *See* G.S. 15A-761 (Article III(a)); *see also State v. Prentice*, 170 N.C. App. 593 (2005) (time begins to run only when "detainer" is lodged; case discusses meaning of "detainer"); *State v. Dunlap*, 57 N.C. App. 175 (1982) (Interstate Agreement on Detainers did not apply to defendant who was released from prison in New York after requesting disposition of N.C. charges but before 180 day period expired).

A prisoner in this situation seeking disposition of his or her charges must notify both the prosecutor and the court in the district where the charges are pending of: (i) his or her place of imprisonment; and (ii) his or her request for final disposition of the charges. *See* G.S. 15A-761 (Article III(a)); *State v. Schirmer*, 104 N.C. App. 472 (1991). The statutory period begins to run on the date the prosecutor receives the demand, not on the date the prisoner sends it. *See State v. Treece*, 129 N.C. App. 93 (1998). If the defendant is not tried within the prescribed time period, the charges against him or her must be dismissed with prejudice. G.S. 15A-761 (Article III). However, the trial court may grant continuances where reasonable or necessary, thereby extending the 180-day period. G.S. 15A-761 (Article III(a)); *State v. Capps*, 61 N.C. App. 225 (1983).

Second, if the prosecutor requests temporary custody of an out-of-state inmate for purposes of trial on outstanding charges, the inmate must be tried within *120 days* of arriving in North Carolina. *See* G.S. 15A-761 (Article IV(c)). If the defendant is not tried within the prescribed time period, the charges against him or her must be dismissed with prejudice. G.S. 15A-761 (Article IV). Again, the court may grant continuances where reasonable or necessary. G.S. 15A-761 (Article IV(c)).

Third, once North Carolina obtains custody of an out-of-state prisoner pursuant to the Agreement, the prisoner may not be returned to his or her original place of imprisonment without having been tried. If a state violates this requirement, known as the “antishuttling” provision, the case must be dismissed with prejudice. *See* G.S. 15A-761 (Article III(d), Article IV(e)); *Alabama v. Bozeman*, 533 U.S. 146 (2001) (charges were properly dismissed where the defendant, who was serving time in a Florida federal prison, was taken to Alabama for one day to address pre-trial matters on his pending state charges and was returned to Florida without having been tried by Alabama).

F. Pretrial Release

Although North Carolina no longer has a speedy trial statute, there is an older statute prohibiting lengthy pretrial incarceration. If a defendant is incarcerated in jail on a felony warrant and demands a speedy trial in open court, the defendant must either be indicted during the next term of court or released from custody, unless the State’s witnesses are not available. Similarly, if an incarcerated person accused of a felony demands a speedy trial and is not tried within a statutorily set period (two terms of court, provided the two terms are more than four months apart), the person is entitled to release from incarceration. *See* G.S. 15-10; *State v. Wilburn*, 21 N.C. App. 140 (1974).

G. Other Statutory Deadlines

After issuance of summons. G.S. 15A-303(d) provides that “[e]xcept for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the issuance or reissuance of a criminal summons.”

DWI trials involving motor vehicle forfeitures. G.S. 20-28.3(m) provides that “[d]istrict court trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer’s next court date or within 30 days of the offense, whichever comes first,” and may only be continued for a “compelling reason.”

Probable cause hearings. *See* G.S. 15A-606(d) (deadline for probable cause hearing). For a further discussion of probable cause hearings, see *supra* Chapter 3, Probable Cause Hearings.

Hearings on capacity to proceed. *See supra* Appendix 2-1, Summary of 2013 Legislation (deadline for supplemental hearing after defendant found incapable to proceed, effective for offenses committed on or after Dec. 1, 2013).

Probation violations. There are various deadlines for proceedings in cases involving alleged probation violations. For example, the court does not have jurisdiction to hold a hearing on an alleged violation of probation after the period of probation expires unless the State files a written violation report with the clerk before the period of probation expires indicating its intent to hold a hearing. *See* G.S. 15A-1344(f); *State v. High*, 230 N.C. App. 330 (2013) (trial court lacked jurisdiction to modify probation after expiration of original period of probation). Discussion of probation deadlines is beyond the scope of this manual.