

8.1 Importance of Criminal Pleadings

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A. Purposes of Pleadings

Pleadings are the tools that the State uses to charge criminal offenses. In cases tried in district court and on appeal for trial de novo in superior court, pleadings include arrest warrants, criminal summonses, citations, magistrate's orders, and statements of charges. In cases initially tried in superior court, the State must obtain an indictment or information. For a discussion of the pleading in juvenile cases (the petition), see Chapter 6, Petitions and Summons, of the North Carolina Juvenile Defender Manual (Oct. 2017).

A properly-drafted criminal pleading fulfills three main functions. It:

- provides the court with jurisdiction to enter judgment on the offense charged;
- provides notice of the charges against which the defendant must defend; and
- enables the defendant to raise a double jeopardy bar to a subsequent prosecution for the same offense.

See generally State v. Greer, 238 N.C. 325 (1953) (stating above purposes).

Proper pleadings protect important constitutional entitlements, such as the Sixth Amendment right to fair notice of the charge and the Due Process protection against double jeopardy. *See Hamling v. United States*, 418 U.S. 87 (1974) (recognizing these constitutional requirements); *Russell v. United States*, 369 U.S. 749 (1962) (to same effect); *see also* N.C. CONST. art. 1, §23 (right to be informed of accusation).

Also, under North Carolina law, certain pleading defects strip the court of jurisdiction to enter judgment against the defendant. *See State v. Wallace*, 351 N.C. 481 (2000) (where an indictment is invalid on its face, it deprives the court of jurisdiction); *accord State v. Lawrence*, 352 N.C. 1 (2000); *State v. Sturdivant*, 304 N.C. 293 (1981).

Thus, it is critical to examine the pleadings closely, compare the allegations in the pleadings to the State's proof at trial, and be prepared to raise timely objections to deficiencies in the pleadings.

B. Chapter Summary

Section 8.2 below summarizes the different types of pleadings that may be used in district court and common pleading problems that arise in that forum. Section 8.3 addresses pleading issues that may arise on appeal from district to superior court. Sections 8.4 and 8.5 address pleading requirements and issues that arise in superior court. Section 8.6 addresses post trial challenges involving pleadings, including double jeopardy and due process bars to successive prosecutions for the same offense. And, section 8.7 discusses the need for the State to plead what were formerly characterized as sentencing factors to avoid *Blakely* error.

C. References

Consult the following materials from the School of Government for additional information about some of the issues discussed in this chapter:

JEFFREY B. WELTY, [ARREST WARRANT AND INDICTMENT FORMS](#) (UNC School of Government, 2019 ed.) (contains form language for charging criminal offenses)

Jessica Smith, [North Carolina Sentencing after Blakely v. Washington and the Blakely Bill](#) (UNC School of Government, Sept. 2005)

Daniel Shatz, [Beyond Blakely](#) (Spring Public Defender Conference, May 2006)

Jeff Welty, [North Carolina's Habitual Felon, Violent Habitual Felon, and Habitual Breaking and Entering Laws](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2013/07 (UNC School of Government, Aug. 2013); *see also infra* § 8.4E, Habitual Felon Pleading Requirements.

Jessica Smith, [The Criminal Indictment: Fatal Defect, Fatal Variance, and Amendment](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2008/03 (UNC School of Government, July 2008) [Smith, *Criminal Indictment*] (reviews general pleading requirements, such as allegation of victim's name, date of offense, etc., and specific pleading requirements for particular types of offenses, such as arson, robbery, drug offenses, etc.)

Jessica Smith, [CRIMINAL PROCEEDINGS BEFORE NORTH CAROLINA MAGISTRATES](#) (UNC School of Government, 2014) (summarizes criminal procedure for magistrates, including criminal process and pleadings)

Robert L. Farb, [The "Or" Issue in Criminal Pleadings, Jury Instructions, and Verdicts; Unanimity in Jury Verdict](#) (UNC School of Government, Feb. 2010) (discusses disjunctive pleadings and jury instructions); *see also infra* § 8.6G, Disjunctive Pleadings.

Robert L. Farb, [Criminal Pleadings, State's Appeal from District Court, and Double Jeopardy Issues](#) (UNC School of Government, Feb. 2010)