

Chapter 10

Jurisdiction

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This chapter addresses the different types of jurisdiction that must be present for a court to hear a case or issue a ruling. Section 10.1 addresses the three basic types of jurisdiction. Section 10.2 addresses the limits of North Carolina’s territorial jurisdiction. Section 10.3 briefly discusses the rules governing federal territorial jurisdiction over criminal acts committed within “federal enclaves,” such as military bases or federal buildings. Section 10.4 discusses personal jurisdiction, including portions of the Uniform Criminal Extradition Act. Sections 10.5 through 10.7 cover the subject matter jurisdiction of the district court, juvenile court, and superior court. Section 10.8 addresses the jurisdictional limits on individual judges.

10.1 Types of Jurisdiction

A. Three Types

Jurisdiction is the “court’s power to decide a case or issue a decree.” BLACK’S LAW DICTIONARY 927 (9th ed. 2009). There are three basic types of jurisdiction:

- territorial jurisdiction,
- personal jurisdiction, and
- subject matter jurisdiction.

Territorial jurisdiction concerns whether an offense occurred within the sovereign boundaries of North Carolina or has a close enough nexus with the state of North Carolina to justify this state punishing the crime.

Personal jurisdiction concerns jurisdiction over the defendant. For the court to obtain personal jurisdiction, the defendant must be physically present in the state of North

Carolina. Further, once the court obtains personal jurisdiction, the defendant ordinarily must be present for the trial to proceed and a conviction to be entered. *See State v. Buchanan*, 330 N.C. 202 (1991) (defendant has constitutional right to presence at trial and significant pretrial proceedings); *State v. Stockton*, 13 N.C. App. 287, 289 (1971) (questioning whether court had jurisdiction to enter judgment where defendant fled before sentencing). Once a trial commences, if a noncapital defendant flees or declines to attend his or her trial, the flight constitutes a waiver of the right to presence, and the trial may proceed without the defendant. *See State v. Richardson*, 330 N.C. 174 (1991) (burden is on defendant to explain absence once trial has commenced and, if burden not met, waiver of right to presence at trial is inferred); *Stockton*, 13 N.C. App. at 292 (defendant's voluntary absence from court after trial began constituted waiver of his right to be present during trial in noncapital case, but court erred in entering judgment and sentence of imprisonment in defendant's absence). A capital defendant cannot waive his or her right to presence. *See State v. Payne*, 320 N.C. 138 (1987). To ensure the return of alleged offenders beyond state borders, North Carolina has entered into extradition agreements with sister states by signing the Uniform Criminal Extradition Act, discussed *infra* § 10.4C, Extradition of Defendants to North Carolina. For a further discussion of the right to presence, see 2 NORTH CAROLINA DEFENDER MANUAL Ch. 21 (Personal Rights of Defendant) (UNC School of Government, 2d ed. 2012).

Subject matter jurisdiction concerns the court's authority to hear the type of case or matter in question. Original trial-level jurisdiction over all criminal cases in North Carolina is divided between superior and district court. *See* N.C. CONST. art. IV, sec. 12; N.C. GEN. STAT. § 7A-271, § 7A-272 (hereinafter G.S.). There are limitations on the jurisdiction of each level of court to hear cases. There are also limitations on the jurisdiction of individual judges to hear matters or issue rulings out of their home county and district or out of session. *See generally* Michael Crowell, *Out-of-Term, Out-of-Session, Out-of-County*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/05 (UNC School of Government, Nov. 2008), available at <http://sogpubs.unc.edu/electronicversions/pdfs/aojb0805.pdf>.

B. Waiver of Jurisdiction

To try a case or issue a ruling, a court must have all three types of jurisdiction: territorial jurisdiction over the offense, personal jurisdiction over the defendant, and subject matter jurisdiction over the cause. Territorial and subject matter jurisdiction cannot be waived by the defendant. *See State v. De la Sancha Cobos*, 211 N.C. App. 536 (2011) (defendant's consent to amendment of fatally flawed indictment did not confer jurisdiction on the court; defendant cannot consent to subject matter jurisdiction). An objection to territorial or subject matter jurisdiction may be raised at any time and may be considered *sua sponte* by the court. *See State v. Boone*, 310 N.C. 284, 288 (1984) ("Jurisdictional questions which relate to the power and authority of the court to act in a given situation may be raised at any time."), *superseded by statute on other grounds as stated in State v. Oates*, ___ N.C. ___, 732 S.E.2d 571 (2012); *State v. Morrow*, 31 N.C. App. 592 (1976) (where lack of jurisdiction is apparent on record, appellate court must note it *ex mero motu*). A defendant can waive an objection to personal jurisdiction by voluntarily entering North Carolina. *See State v. Speller*, 345 N.C. 600 (1997).

C. Topics not Covered

A court may lack subject matter jurisdiction to hear or rule in a case if the State has failed to invoke the court's jurisdiction through a proper pleading—for example, the State has failed to allege an essential element of the offense in the warrant in district court or the indictment in superior court. *See, e.g., State v. Perry*, 291 N.C. 586 (1977). Because this jurisdictional defect concerns the rules for proper pleadings, it is primarily addressed in Chapter 8 of this manual on Criminal Pleadings rather than in this chapter.

Specific statutes also may limit the subject matter jurisdiction of a court to hear certain matters—for example, in proceedings to revoke probation or require satellite-based monitoring for a person subject to sex offender registration. *See, e.g., State v. Black*, 197 N.C. App. 373 (2009) (holding that trial court lacked jurisdiction and authority to revoke defendant's probation where State failed to comply with statutory requirements for conducting hearing after expiration of probation [the statutory requirements on which the decision was based in G.S. 15A-1344(f) were amended in 2008 N.C. Sess. Laws Ch. 129 (H 1003) for hearings held on or after Dec. 1, 2008]); *State v. Clayton*, 206 N.C. App. 300 (2010) (holding that trial court lacked subject matter jurisdiction to impose satellite based monitoring following probation violation by person subject to sex offender registration).

Discussion of proceedings to modify or revoke probation is beyond the scope of this manual. The pertinent statutes on venue and jurisdiction for probation proceedings are: G.S. 15A-1345(d) (preliminary hearing on probation violation); G.S. 15A-1344 (probation violation hearing); G.S. 15A-1342(a1) (violation of probation pursuant to deferred prosecution); G.S. 90-96 (violation of probation pursuant to conditional discharge); G.S. 15A-1344(a1) (violation of probation in drug treatment or therapeutic court case); *see also* G.S. 7A-271(e) (violation of probation pursuant to guilty plea in district court to Class H or I felony).

10.2 Territorial Jurisdiction

A. Constitutional Basis for Requirement

The Sixth Amendment to the U.S. Constitution guarantees the right to trial by jury “of the state and district wherein the crime shall have been committed . . .” *State v. Darroch*, 305 N.C. 196, 201 (1982) (noting Sixth Amendment basis for the limitation on State's territorial jurisdiction).

B. Location of Essential Element of Crime

The basic rule is that North Carolina courts have territorial jurisdiction over a crime if any of the essential acts forming the offense occurred in this state. For example, in *State v. White*, 134 N.C. App. 338 (1999), *habeas corpus granted sub nom., White v. Hall*, 2010 WL 2572654 (E.D.N.C. 2010), the N.C. Court of Appeals held that North Carolina

had jurisdiction over a heroin trafficking offense where the defendant was observed to have cut, bagged, and attempted to sell heroin in North Carolina, even though the defendant was arrested and the heroin was seized from the defendant's person in New York. The acts essential for a trafficking charge—cutting, bagging, and selling—all took place in this state. *See also State v. Rick*, 342 N.C. 91 (1995) (evidence as whole amounted to prima facie showing of jurisdiction to carry case to jury and permit jury to infer that murder occurred in North Carolina).

In contrast, in *State v. Bright*, 131 N.C. App. 57 (1998), the victim was kidnapped from a North Carolina home, driven across the Virginia border, and at some point sexually assaulted by the defendant. Because the evidence was in dispute about whether the sexual offenses occurred in North Carolina or in Virginia, the Court of Appeals held that the trial court erred in failing to instruct the jury to determine whether North Carolina had jurisdiction over those offenses. *See also State v. Williams*, 74 N.C. App. 131 (1985) (North Carolina did not have jurisdiction to prosecute possession of stolen goods charge against defendant found in possession of stolen car in the District of Columbia where there was no evidence that the defendant possessed the car in North Carolina; for North Carolina to have jurisdiction, there must be evidence that the offense occurred wholly or partly within the state). For a discussion of instructing the jury on jurisdiction, see *infra* § 10.2F, Procedure to Determine Territorial Jurisdiction.

Under the “duty to account” doctrine, North Carolina courts have territorial jurisdiction over the crime of embezzlement, even where the defendant misappropriates property in another state, if the defendant had a pre-existing obligation to account for the property in North Carolina. *See State v. Tucker*, ___ N.C. App. ___, 743 S.E.2d 55 (2013). In *Tucker*, the defendant was a long-distance driver for a moving company located in North Carolina. The defendant received payment from a customer in Nevada, used a portion of the money to buy a plane ticket in Arizona, and failed to remit any of the proceeds from the move to his employer. The court found that an essential act of embezzlement was committed in North Carolina in light of the defendant's duty to account to the company headquartered in North Carolina.

North Carolina statutes codify the essential acts approach in general and for certain offenses. *See* G.S. 15A-134 (jurisdiction to try charged offense occurring in part within and in part outside North Carolina); G.S. 15-131 (jurisdiction to try homicide where person is assaulted in this state and dies in another state); G.S. 15-133 (jurisdiction to try homicide where person is assaulted outside the state and dies within the state); *see also* G.S. 15-132 (action in this state injuring person in another state).

C. Inchoate Offenses

Territorial jurisdiction over an offense can become complicated where the crime consists primarily of a mental act and the mental act occurs outside of North Carolina. Examples include a conspiracy entered into out of state or an out-of-state solicitation of a crime that physically occurs in North Carolina.

General approach. In *State v. Darroch*, 305 N.C. 196 (1982), the court adopted a flexible approach to the question of territorial jurisdiction. In *Darroch*, the defendant, while in Virginia, hired or encouraged two people to kill her estranged husband in North Carolina. The court held that North Carolina had jurisdiction to prosecute the defendant as an accessory before the fact to murder, holding that if the principal felony takes place within this state, North Carolina may prosecute any accessorial acts even if they take place outside this state. *Darroch* rested on *Strassheim v. Daily*, 221 U.S. 280, 285 (1911), which held that “[a]cts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if [the defendant] had been present at the effect” The reasoning of *Strassheim* and *Darroch* would justify prosecuting out-of-state solicitations or accessorial acts if they result in a crime actually being committed in North Carolina. *See also* G.S. 14-202.3 (jurisdiction over offense of solicitation of child by computer to commit an unlawful sex act if transmission originates or is received in North Carolina). However, North Carolina’s interest in prosecution may be too remote to support territorial jurisdiction if the contemplated crime never takes place here.

Conspiracy. Our courts have held that North Carolina may prosecute any member of a conspiracy if any of the co-conspirators commit an overt act in furtherance of the conspiracy in North Carolina, even if the conspiracy was entered into out of state. *See State v. Drakeford*, 104 N.C. App. 298 (1991) (North Carolina had jurisdiction over conspiracy charge where defendant arranged to sell drugs to undercover agent in North Carolina, then drove to Maryland to meet co-conspirator and continued to New York to procure drugs).

D. Continuing Offenses

A continuing offense is a “breach of the criminal law . . . which subsists for a definite period” or consists of numerous similar occurrences. *State v. Manning*, 139 N.C. App. 454, 467 (2000), *aff’d per curiam*, 353 N.C. 449 (2001). Drug trafficking, kidnapping, and failure to pay child support are examples of continuing offenses. If any part of a continuing offense takes place in North Carolina, the state has concurrent jurisdiction with other involved states over the offense. *See State v. Johnson*, 212 N.C. 566, 570 (1937) (“When [a continuing offense] runs through several jurisdictions, the offense is committed and cognizable in each.”).

E. Concurrent Jurisdiction

In some instances North Carolina will have concurrent jurisdiction over an offense with another state. There is no double jeopardy bar to a defendant being tried for the same offense by two different sovereigns. *See Heath v. Alabama*, 474 U.S. 82 (1985) (successive prosecutions for same offense in two states did not violate double jeopardy). The full faith and credit clause of the United States Constitution does not require one state to accept the judicial determination of another state as to which possesses jurisdiction over a criminal case. *See State v. Batdorf*, 293 N.C. 486 (1977) (citing *Thompson v. Whitman*, 85 U.S. 457 (1873)).

However, by North Carolina statute, if a charged offense occurs in part within and in part outside North Carolina, a person may be tried in North Carolina only “if he has not been placed in jeopardy for the identical offense in another state.” G.S. 15A-134. Additionally, for drug offenses, the General Assembly has created a statutory bar to prosecuting an offense that has resulted in a conviction or acquittal under federal law or the law of another state for the same act. *See* G.S. 90-97. The N.C. courts have also said that it would violate the spirit if not the letter of the prohibition against double jeopardy to try a defendant in two different states for the same crime. *See Batdorf*, 293 N.C. at 493–94.

Practice note: As a practical matter, there would be little sense in North Carolina expending its resources to try a person for a crime for which he or she is being punished elsewhere. Therefore, if there is any question about the location of a crime, you should check to see what actions, if any, the other state has taken to prosecute the crime.

F. Procedure to Determine Territorial Jurisdiction

Pretrial motion to dismiss. G.S. 15A-954(a)(8) provides that the court on motion of the defendant must dismiss the charges if the court determines that it has no jurisdiction over the offense charged. Thus, the defendant may, although is not required to, make a motion before trial to dismiss for want of territorial jurisdiction. *See State v. Rick*, 342 N.C. 91, 98 (1995) (trial court held evidentiary hearing on motion before trial). If the evidence is insufficient to show that North Carolina has territorial jurisdiction over the offense, the court must dismiss the charges. *See State v. Batdorf*, 293 N.C. 486 (1977). If the court defers hearing the motion until the end of trial, the defendant should renew the motion at the close of the evidence. *See Rick*, 342 N.C. at 98 (indicating that court must dismiss charges if evidence is not sufficient to allow jury to find territorial jurisdiction).

The court’s denial of a motion to dismiss for want of territorial jurisdiction, either before trial or at the close of the evidence, does not necessarily end the matter. If the question of territorial jurisdiction is in dispute, the jury must resolve the question, as described below.

Requirement of jury finding. If territorial jurisdiction is open to question and is contested by the defendant, the court must instruct the jury that unless the State has proven beyond a reasonable doubt that the crime occurred in North Carolina, a verdict of not guilty must be returned. The jury must be instructed to return a special verdict indicating a lack of jurisdiction if the State does not prove jurisdiction. Failure to give these instructions is reversible error. *See State v. Rick*, 342 N.C. 91 (1995) (new trial awarded where court did not give required jury instruction); *State v. Batdorf*, 293 N.C. 486 (1977) (when facts establishing jurisdiction are contested, jury must find that if the offense occurred, it took place in North Carolina).

If there is no real dispute regarding the location of the alleged offense, the defendant may not be able to get a jurisdiction instruction. *See State v. Drakeford*, 104 N.C. App. 298 (1991) (defendant not entitled to jurisdiction jury instruction; State presented evidence establishing beyond reasonable doubt that conspiracy occurred in North Carolina); *State v.*

Callahan, 77 N.C. App. 164 (1985) (defendant not entitled to jury instruction on jurisdiction where he denied participating in offense but did not contest that location of drug sale in question was in North Carolina); *see also State v. Tucker*, ___ N.C. App. ___, 743 S.E.2d 55, 61–62 (2013) (“Where . . . a defendant's challenge is not to the factual basis for jurisdiction but rather to ‘the *theory* of jurisdiction relied upon by the State,’ the trial court is not required to give these instructions since the issue regarding ‘[w]hether the theory supports jurisdiction is a legal question’ for the court.” (citation omitted)).

The N.C. Court of Appeals has held that once a jury has decided the question of jurisdiction, it is the law of the case. *See State v. Dial*, 122 N.C. App. 298 (1996) (jury returned special verdict finding jurisdiction but was unable to reach verdict on guilt or innocence; court holds that principles of collateral estoppel barred defendant from relitigating issue of territorial jurisdiction at retrial); *cf. State v. Harris*, 198 N.C. App. 371 (2009) (noting that *Dial* is limited to verdicts entered and does not apply to evidentiary rulings; where judge in first trial excluded Rule 404(b) evidence and then declared a mistrial after jury deadlocked, judge in second trial was not bound by that evidentiary ruling); 2 NORTH CAROLINA DEFENDER MANUAL § 31.10B (Rulings from Previous Trials) (UNC School of Government, 2d ed. 2012).

G. Relationship of Jurisdiction and Venue

Under article IV, section 12 of the North Carolina Constitution, jurisdiction for criminal offenses is statewide. *See also* G.S. 7A-272 (implementing state constitution by granting statewide jurisdiction to district courts). Any court within this state has jurisdiction to consider criminal matters appropriate for that division of court, no matter where in the state the offense occurred. *See State v. Carter*, 96 N.C. App. 611 (1989) (noting that jurisdiction is statewide and thus that jurisdictional issues arise only in terms of whether North Carolina courts can hear the case and whether the case should be tried first in district or superior court); *accord State v. Bolt*, 81 N.C. App. 133 (1986).

Questions about which county within the state should properly try a case is a matter of venue, not jurisdiction. This distinction is significant because a defendant may request a change of venue but may not confer territorial jurisdiction on a court by request or consent. Moreover, objections to venue may be waived, while lack of territorial jurisdiction is a non-waivable error, which may be raised at any time. For a further discussion of venue, see *infra* Chapter 11, Venue.

10.3 Federal Enclaves

Although North Carolina ordinarily has territorial jurisdiction over crimes committed within its borders, in some instances federal law displaces state jurisdiction—namely, when crimes are committed within federal enclaves. As with any defect in territorial jurisdiction, the defendant may make a pretrial motion to dismiss on the ground that the federal government has exclusive jurisdiction over the offense.

A. Definition

A “federal enclave” is a building or geographical area within a state that is under the control of a branch of the federal government and over which the United States government has declared jurisdiction. For example, military installations, federal courthouses, and post offices may be federal enclaves. *See State v. Smith*, 328 N.C. 161 (1991) (Camp Lejeune Marine Corps Base is federal enclave); *State v. Evangelista*, 319 N.C. 152 (1987) (Amtrak passenger car *not* federal enclave because Amtrak is not federal agency or establishment). The federal government has exclusive jurisdiction to prosecute offenses that occur in federal enclaves. *See United States v. Unzeuta*, 281 U.S. 138 (1930); *Smith*, 328 N.C. at 165 (State had no jurisdiction over offenses committed at Camp Lejeune).

B. Establishment of Federal Enclaves

On federally controlled lands, there are three broad categories of jurisdiction. First, the federal government may have exclusive jurisdiction, meaning that it has the sole power to prosecute crimes committed on federal lands. Second, federal and state governments may have concurrent jurisdiction, meaning that either government has the authority to prosecute crimes on federal lands. Third, the federal government may retain a proprietary interest only, meaning that the State generally prosecutes crimes committed on federal lands. ROBERT L. FARB, *ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA* 20–22 (UNC School of Government, 4th ed. 2011) [hereinafter FARB].

The method by which the federal government acquired the land determines the type of jurisdiction. For example, the state may grant land to the federal government. In this instance, the terms of the grant will determine whether the state retains jurisdiction on the ceded land. *See FARB* at 20 n.70. The federal government also may acquire state land by buying or condemning it without the state’s consent. When this occurs, the state retains jurisdiction to enforce its laws on the land. *Id.* Last, the federal government may purchase state land or buildings with the consent of the state legislature pursuant to Article I, Section 8, Clause 17 of the United States Constitution. *See also* G.S. 104-7 (giving consent pursuant to federal constitution to acquisition of land by federal government for certain purposes); *State v. De Berry*, 224 N.C. 834 (1945) (noting constitutional basis for federal government’s authority to assume control of physical locations).

When the federal government purchases state lands with the consent of the state legislature, the date of acquisition is key to determining whether the state retains jurisdiction to prosecute crimes. For property acquired before 1887, the type of jurisdiction depends on the language of the legislative act giving consent to the federal government to acquire the land. For property acquired between 1887 and 1905, the federal government has exclusive jurisdiction. For property acquired between 1905 and 1907, concurrent federal and state jurisdiction exists. For property acquired between 1907 and 1940, the federal government once again has exclusive jurisdiction. *See FARB* at 20–21 n.70. During the time periods before 1940 in which the federal government has exclusive jurisdiction, such jurisdiction automatically attached on acquisition of the land.

After 1940 and before May 27, 2005, when the federal government acquired land with the consent of the state legislature, the federal government did not automatically obtain jurisdiction (exclusive or concurrent) over criminal cases. Instead, the United States government must have affirmatively asserted jurisdiction over the site. *See* 40 U.S.C. 3112 (formerly 40 U.S.C. 255; amended in 1940 to require assertion of jurisdiction by U.S. government); *State v. Smith*, 328 N.C. 161 (1991) (State could not prosecute defendant for murders committed at Camp Lejeune military reservation where federal government purchased the land in 1941 and accepted jurisdiction); *State v. Burrell*, 256 N.C. 288 (1962) (state court retains jurisdiction over offenses committed at Cherry Point Marine Air Corps Station where U.S. government had not followed statutory procedures to acquire jurisdiction); *State v. Graham*, 47 N.C. App. 303 (1980) (State has exclusive jurisdiction over offense occurring in post office; although federal government operated post office, record did not reveal that it had accepted exclusive jurisdiction).

In 2005, the North Carolina General Assembly amended G.S. 104-7 to give the State concurrent power to enforce its criminal law on lands purchased or otherwise obtained by the United States. This provision appears to apply prospectively to lands obtained by the United States on or after May 27, 2005. *See* FARB at 20–21 n.70. (G.S. 104-7 was further amended in 2009 to provide that North Carolina’s consent is not given to the United States for the acquisition of land for an outlying landing field in a county with no existing military base at which aircraft squadrons are stationed; exclusive jurisdiction over such land acquired by the United States is not ceded to the United States for any purpose.)

Generally speaking, the question of whether jurisdiction has been accepted is one of federal law. If the federal government has exclusive jurisdiction over crimes committed on federal lands, North Carolina is powerless to exercise concurrent jurisdiction. *See State v. Smith*, 328 N.C. 161, 169 (1991) (“Bound as we are by the federal court’s interpretation of this federal question, we must hold that the Superior Court, Onslow County does not have jurisdiction to try the defendant.”).

10.4 Personal Jurisdiction

A. Service

In civil cases, once the defendant is properly served, the court may enter judgment even if the defendant is not present. *See* G.S. 1-75.3(b) (service ordinarily required for court to enter judgment in civil case); G.S. 1-75.7 (service of summons not required in civil case if defendant makes general appearance).

In criminal cases, in contrast, the defendant ordinarily must be present to be tried. *See, e.g.,* G.S. 15A-1011(a) (guilty plea must be received by defendant in open court except in limited circumstances). Because the defendant ordinarily must be present in a criminal case, technical defects in service are ordinarily not at issue. *See State v. McKenna*, 289 N.C. 668 (1976) (service of warrant is not constitutional requirement; due process

satisfied where defendant received copy of indictment, was advised of charges, and had adequate time to prepare defense), *vacated on other grounds*, 429 U.S. 912 (1976); *State v. Ferguson*, 105 N.C. App. 692 (1992) (by entering plea and proceeding to trial without challenging citation's sufficiency, defendant waived any objection to officer's lack of signature on citation attesting to delivery); *State v. Able*, 13 N.C. App. 365 (1971) (failure to serve warrant did not affect validity of trial on indictment).

B. Requirement of Presence

As a general matter, criminal defendants cannot be tried in absentia. They have a constitutional right under the Due Process Clause of the Fourteenth Amendment, the Sixth Amendment Confrontation Clause, and article I, section 23 of the North Carolina Constitution to be present at their trial. *See, e.g., State v. Richardson*, 330 N.C. 174 (1991). A noncapital defendant may waive his or her right to presence by absconding after the trial has commenced, and the trial may proceed without him or her. *Id.* (defendant's voluntary and unexplained absence from court subsequent to commencement of trial constituted waiver of right to presence). However, the cases indicate that if a defendant is absent when the trial concludes, the court lacks jurisdiction to impose a sentence of imprisonment. *See State v. Stockton*, 13 N.C. App. 287 (1971) (setting aside judgment and sentence of imprisonment where entered in defendant's absence); *cf. G.S. 15A-1011(d)* (allowing express waiver of right to presence).

A capital defendant may not waive the right to presence. *See, e.g., State v. Huff*, 325 N.C. 1 (1989), *vacated on other grounds*, 497 U.S. 1021 (1990); *State v. Payne*, 320 N.C. 138 (1987). In one case, where a defendant escaped during a capital sentencing proceeding, a mistrial was declared, and the defendant was given a new sentencing proceeding after he was captured. *State v. Meyer*, 330 N.C. 738 (1992).

Although the defendant may not suffer a conviction if he or she does not appear for trial, a failure to appear may result in other consequences. It is a felony for a person who has been released before trial to fail to appear in connection with a felony charge, and it is a misdemeanor for a released person to fail to appear in connection with a misdemeanor charge. *See G.S. 15A-543; State v. Goble*, 205 N.C. App. 310 (2010). A defendant who fails to appear also may be arrested and prosecuted for contempt of court. *See G.S. 5A-11(a)(3); see also G.S. 15A-276* (providing that person may be held in contempt of court for failing to appear in response to nontestimonial identification order). *But see supra* "Citation" in § 8.2C, Types of Misdemeanor Pleadings (person may not be arrested or held in contempt for failing to appear for infraction alleged in citation). DMV also may revoke the driver's license of a person who fails to appear for trial on a motor vehicle offense. *See G.S. 20-24.1*.

For a further discussion of the right to presence, see 2 NORTH CAROLINA DEFENDER MANUAL § 21.1 (Right to Be Present) (UNC School of Government, 2d ed. 2012).

C. Extradition of Defendants to North Carolina

To ensure the return of defendants who leave the state, North Carolina has entered into the Uniform Criminal Extradition Act. *See* G.S. 15A-721 through 15A-750. Under the Act, the governor of North Carolina agrees to extradite any person charged with a crime in another state who has fled from justice and is found in this state. Correspondingly, other states that have adopted the Act agree to return those accused of crimes in North Carolina to this state. The focus of this discussion is on extradition of defendants to North Carolina, a prerequisite to the state's establishing of personal jurisdiction over a defendant who has left the state. For a fuller discussion of both extradition to another state and extradition to North Carolina, see ROBERT L. FARB, *STATE OF NORTH CAROLINA EXTRADITION MANUAL* (UNC School of Government, 3d ed. 2013) [hereinafter *NORTH CAROLINA EXTRADITION MANUAL*].

A person objecting to his or her extradition to North Carolina generally must file a petition for writ of habeas corpus in the state from which he or she is being extradited. *See Michigan v. Doran*, 439 U.S. 282 (1978); *State v. Mourning*, 4 N.C. App. 569, 572 (1969) (“[T]he regularity of extradition proceedings may be attacked only in the asylum state; after an alleged fugitive has been delivered into the jurisdiction of the demanding state, the proceedings may not be challenged.” (citation omitted)); *see also State v. Speller*, 345 N.C. 600 (1997) (declining to reach issue of whether asylum state complied with Uniform Extradition Act in obtaining waiver of extradition from defendant). The issues that may be raised at a habeas proceeding are generally limited to: (i) whether the demand for extradition was proper; (ii) whether the defendant is the fugitive sought; (iii) whether the defendant has been charged with a “substantial crime” in the demanding state; and (iv) whether the defendant's statutory right to counsel in the asylum state was honored (if the asylum state gives a right to counsel). *See Doran*, 439 U.S. at 289; *see also* *NORTH CAROLINA EXTRADITION MANUAL*.

If a person is returned to North Carolina for trial on one charge, he or she may be tried for any other crimes that the person allegedly committed in this state. *See* G.S. 15A-748. However, the person may not be served with civil process for any action arising out of the same facts that gave rise to the crime until the person has been convicted in the criminal proceeding or, if acquitted, has had a reasonable opportunity to return to the state from which he or she was extradited. *See* G.S. 15A-745.

If the defendant voluntarily returns to North Carolina and is taken into custody, North Carolina obtains personal jurisdiction and is able to proceed with the prosecution. *See State v. Speller*, 345 N.C. 600 (1997).

D. Detainers

The state of North Carolina can place a detainer on a person incarcerated in another state and extradite him or her to North Carolina for trial. *See* Interstate Agreement on Detainers, codified at G.S. 15A-761 through G.S. 15A-767. Because it has been approved by the United States Congress, the Interstate Detainer Agreement is treated as a federal

law. *See Cuyler v. Adams*, 449 U.S. 433 (1981). Thus, North Carolina courts are bound by federal law interpreting the agreement as well as by state case law. As a matter of federal law, the demanding state's failure to comply with the agreement requires dismissal of the prosecution with prejudice. *See Alabama v. Bozeman*, 533 U.S. 146 (2001). For further discussion of detainers, see *supra* § 7.1E, Rights of Prisoners.

10.5 Subject Matter Jurisdiction of District Court

A. Misdemeanors and Infractions

With three principal exceptions—misdemeanors joined with felonies, misdemeanors that are lesser included offenses of felonies for which indictments have been issued, and misdemeanors initiated by presentment—the district court has exclusive original jurisdiction over all misdemeanors. *See* G.S. 7A-271; G.S. 7A-272. Generally, misdemeanors may be tried in superior court only on appeal from district court. *See State v. Wall*, 271 N.C. 675 (1967) (superior court is without jurisdiction to try defendant on misdemeanor charge absent district court conviction and appeal).

G.S. 7A-253 provides that the district court has original, exclusive jurisdiction over infractions. There is one exception to this rule. If the infraction is a lesser included offense of, or a charge related to, a crime within the original jurisdiction of the superior court, then the superior court may hear or accept a plea to the infraction. *See* G.S. 7A-271(d). For example, if a defendant is indicted for involuntary manslaughter for causing a death by vehicle, a plea to a related traffic infraction may be taken in superior court.

For a further discussion of limits on superior court trials of misdemeanors, see *infra* § 10.7B, Misdemeanor Appeals from District Court, and § 10.7C, Misdemeanors Tried Initially in Superior Court.

B. Felony Pleas in District Court

With the consent of the judge and all parties, the district court has jurisdiction to accept guilty pleas to Class H and I felonies. *See* G.S. 7A-272(c). If there is a subsequent probation revocation hearing, the superior court has jurisdiction over the hearing, but the district court may hear the matter with the consent of the State and the defendant. *See* G.S. 7A-271(e). It may benefit the defendant to have the probation revocation hearing in district court if the State is willing to do so because the defendant has the right, discussed next, to appeal a revocation to superior court for a de novo hearing.

Appeal of a guilty plea to a felony in district court lies in the court of appeals, *not* in superior court. *See* G.S. 7A-272(d). If the superior court holds a revocation hearing on a felony plea originally taken in district court, appeal is to the court of appeals. However, if the district court revokes probation on a felony plea taken in district court, the defendant's appeal is to superior court for a de novo revocation hearing rather than to the appellate division. *See* G.S. 15A-1347; *State v. Hooper*, 358 N.C. 122 (2004) (Court of

Appeals lacked jurisdiction to hear defendant's appeal from probation revocation in district court where defendant had been placed on probation following pleas of guilty in district court to felony offenses; defendant's right of appeal was to superior court for de novo revocation hearing); *State v. Harless*, 160 N.C. App. 78 (2003) (same).

Legislative note: Effective for probation violations occurring on or after December 1, 2013, S.L. 2013-385 (S 321) adds G.S. 15A-1347(b) to provide that if a defendant waives a probation revocation hearing in district court, a finding of a probation violation, activation of a sentence, or imposition of special probation may not be appealed to superior court.

C. Motions for Appropriate Relief

A motion for appropriate relief may be brought in district court if the original conviction was in district court. *See* G.S. 15A-1413(a); G.S. 15A-1414(b)(4); G.S. 15A-1417(c); *In re Fuller*, 345 N.C. 157 (1996) (trial court improperly entered judgment on offense that was not a lesser included offense of the offense before the court; prosecutor brought motion for appropriate relief in district court); *State v. Morgan*, 108 N.C. App. 673 (1993) (trial court has authority following conviction to initiate own motion for appropriate relief and change original sentence upon finding that sentence was unsupported by evidence), *cf.* *State v. Surles*, 55 N.C. App. 179 (1981) (court upheld district court's decision to set aside its own verdict of guilty; however, appellate court remanded case for new trial, holding that district court could not enter verdict of not guilty after setting aside verdict on ground that it was against weight of evidence under G.S. 15A-1414(b)(2)); *accord Morgan*, 108 N.C. App. 673 (following *Surles*).

For a further discussion of the authority of a judge to modify his or her judgment, see *infra* § 10.8G, Modifying Judgment After Session. For a further discussion of motions for appropriate relief, see 2 NORTH CAROLINA DEFENDER MANUAL § 35.3 (Motions for Appropriate Relief) (UNC School of Government, 2d ed. 2012).

D. District Court Responsibilities for Felonies before Indictment

Generally. Often defendants are arrested on warrants before indictment. If an arrestee is indicted for a felony, or the district court finds probable cause that the defendant committed a felony or the defendant waives a probable cause hearing, jurisdiction over the case moves to superior court. *See* G.S. 7A-271(a); G.S. 15A-606(c); G.S. 15A-612(a)(1). Several months may elapse between a defendant's arrest on a felony charge and the transfer of jurisdiction to superior court. During this time the district court will have various administrative responsibilities for the case, including setting conditions of pretrial release. The district court also will hold the probable cause hearing if one is required. There are statutory timeframes for holding a probable cause hearing, but they are not always easy to enforce. For a discussion of possible remedies for violation of those timelines, see *supra* § 3.2C, Scheduling Requirements; *see also* Alyson Grine, *No Probable Cause?*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Apr. 23, 2009), (discussing probable cause hearing requirement), <http://nccriminallaw.sog.unc.edu/?p=285>.

Motions. District court judges may hear motions before indictment, and there may be times when an early hearing before a district court judge is advisable. For example, if the defendant’s mental status is at issue, counsel may want to seek a capacity examination or funds for a psychological expert. *See supra* § 2.4, Obtaining an Expert Evaluation. Additionally, the defendant may need to make a motion to preserve evidence of a fleeting nature, such as a recording of a 911 call; or the defendant may need access to records held by third parties and may want to move for their production and disclosure. *See supra* § 4.2C, Preserving Evidence for Discovery; § 4.6A, Evidence in Possession of Third Parties. The district court has jurisdiction to hear such motions. *See State v. Jones*, 133 N.C. App. 448 (1999), *rev’d in part on other grounds*, 353 N.C. 159 (2000).

Ordinarily, however, defense counsel should seek to have evidentiary motions in felony cases heard by a superior court judge because those proceedings are recorded, allowing for later review. Additionally, the superior court may be authorized to issue a new ruling, which could negate the district court’s initial determination. *See State v. Lay*, 56 N.C. App. 796 (1982) (granting of motion to suppress in district court in misdemeanor case on basis that search warrant was invalid did not bar State from asserting validity of same search warrant in felony prosecution). Generally, the superior court will hear such motions after indictment, although it may hear some motions in felony matters before indictment. *See State v. Jackson*, 77 N.C. App. 491 (1985) (holding that superior court had authority to order capacity examination before indictment).

E. Powers of Magistrates and Clerks of Court

District court judges have general jurisdiction over all matters that are heard in district court. Magistrates and clerks of court have similar responsibilities in some circumstances. *See G.S. 7A-180; G.S. 7A-181* (setting out powers of clerks); *G.S. 7A-273* (powers of magistrates).

Magistrates. Under *G.S. 7A-273*, magistrates have the power to:

- accept pleas of guilty or admissions of responsibility for minor infractions (where the maximum fine is less than \$50), Class 3 misdemeanors, and offenses for which the defendant may waive a court appearance and plead guilty (“waivable offenses”);
- try worthless check cases when the amount of the check is \$2,000 or less and under the conditions set out in the statute;
- issue search warrants, valid in the county of issue;
- issue arrest warrants, valid anywhere in the state;
- set conditions of pretrial release for most noncapital offenses; and
- conduct initial appearances.

Clerks. Clerks of court may issue warrants, set bail under some conditions, accept guilty pleas to minor infractions, and take other actions as authorized by statute. *See G.S. 7A-180; State v. Pennington*, 327 N.C. 89 (1990) (deputy clerk of court has jurisdiction to issue search warrant valid within county of issue); *see also G.S. 20-28.3(e1)* (authorizing clerks to determine whether to release to “innocent owner” vehicle forfeited because

driver was driving while impaired with revoked license for impaired driving offense); *cf.* G.S. 15A-544.5(d)(4) (clerk of court must enter an order setting aside forfeiture of bond, regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either, if neither the district attorney nor the attorney for the board of education files a written objection to the motion by the twentieth day after the motion is served).

10.6. Subject Matter Jurisdiction of Juvenile Court

For a discussion of the authority of the courts to hear cases in which a juvenile is alleged to be delinquent for an act that would be a crime if committed by an adult, see NORTH CAROLINA JUVENILE DEFENDER MANUAL (UNC School of Government, 2008), *available at* www.ncids.org (select “Training & Resources,” then “Reference Manuals”). Chapter 3 discusses the jurisdiction of the juvenile court (district court) over delinquency cases, while Chapter 9 addresses the transfer of jurisdiction over such cases to superior court for trial of the juvenile as an adult.

10.7 Subject Matter Jurisdiction of Superior Court

The superior court has general jurisdiction over felonies. It also has jurisdiction over misdemeanors that are: (i) lesser included offenses of felonies, (ii) joined with felonies or (iii) initiated by presentment. *See* G.S. 7A-271(a). The superior court also has jurisdiction to hear misdemeanor cases on appeal from the district court. *See* G.S. 7A-271(b).

A. Felonies

Generally. The superior court has original jurisdiction over all felonies, including possibly the authority to hear motions before indictment. *See State v. Jackson*, 77 N.C. App. 491 (1985) (court notes jurisdiction of superior court before indictment to enter commitment order to determine defendant’s capacity to stand trial). The district court also has authority to hear pretrial motions in felony cases before indictment. *See supra* § 10.5D, District Court Responsibilities for Felonies before Indictment. Evidentiary matters ordinarily should be brought before the superior court because these proceedings are recorded and can be reviewed by an appellate court.

When a felony indictment is returned, the superior court has jurisdiction to hear the offense charged in the indictment notwithstanding that misdemeanor warrants are pending in district court involving the same conduct. *See State v. Austin*, 31 N.C. App. 20 (1976) (trial court properly denied defendant’s motion to dismiss indictment, rejecting defendant’s argument that district court had exclusive jurisdiction because misdemeanor warrants had issued first). However, if the misdemeanors are resolved first (by trial or plea), the State may be barred on double jeopardy grounds from proceeding on the felony in superior court. *See supra* § 8.6, Limits on Successive Prosecution.

Infamous misdemeanors. Certain common law misdemeanors for which no specific punishment is prescribed may be elevated to Class H felonies if the misdemeanor is “infamous,” done “in secrecy and [with] malice,” or committed “with deceit and intent to defraud.” See G.S. 14-3(b); *see also State v. Glidden*, 317 N.C. 557 (1986) (discussing the test for determining whether offense is infamous, done in secrecy and malice, or committed with deceit and intent to defraud). If a misdemeanor is elevated to a felony in this way, then the superior court has jurisdiction. The allegation that a misdemeanor is infamous or is otherwise elevated to a felony must be stated in the pleading to confer superior court jurisdiction. See *State v. Rambert*, 116 N.C. App. 89 (1994) (indictment that fails to allege that misdemeanor offense is infamous will not confer superior court jurisdiction), *aff’d in pertinent part*, 341 N.C. 173 (1995). The circumstance that elevates the offense to a Class H felony must be submitted to the jury and proved beyond a reasonable doubt unless the defendant admits to it. See *Blakely v. Washington*, 542 U.S. 296 (2004).

B. Misdemeanor Appeals from District Court

Scope of jurisdiction on appeal. The superior court has jurisdiction to hear misdemeanor cases on appeal from the district court. See G.S. 7A-271(b). This appellate jurisdiction of the superior court is derivative of the district court’s jurisdiction and is therefore limited—generally, the superior court is authorized to impose judgment only for the same offense, or a lesser included offense of the crime, for which there was a conviction in the district court below. See *State v. Hardy*, 298 N.C. 191 (1979) (defendant was charged with and convicted of assault on officer in district court; on appeal, superior court did not have jurisdiction to try defendant for resisting arrest); *State v. Guffey*, 283 N.C. 94 (1973) (appeal from district court conviction of fourth DWI offense will support superior court trial for lesser included offense of first DWI offense); *State v. Reeves*, ___ N.C. App. ___, 721 S.E.2d 317 (2012) (finding that superior court lacked jurisdiction on appeal to try defendant on reckless driving charge that was voluntarily dismissed by the State, without a plea agreement, in district court); *State v. Phillips*, 127 N.C. App. 391 (1997) (in district court, defendant was tried and convicted of impaired driving, but State took voluntary dismissal of speeding charge; superior court lacked jurisdiction to try speeding charge on appeal of impaired driving conviction); *State v. Martin*, 97 N.C. App. 19 (1990) (defendant could not be tried in superior court for misdemeanor possession of drug paraphernalia without prior district court conviction for same offense); *State v. Caldwell*, 21 N.C. App. 723 (1974) (defendant was charged and convicted of assault on officer in district court; on appeal, superior court did not have jurisdiction to try defendant for assault by pointing gun).

Generally, superior court jurisdiction over appeals from district court does *not* include the authority to try new or different offenses, even if the new offense is transactionally related to the district court conviction. Except in limited circumstances, discussed below, if the State wants to charge a new misdemeanor, it must start again in district court or initiate a misdemeanor prosecution by presentment in superior court (a rare occurrence).

The district court record must demonstrate the existence of a proper conviction to support superior court jurisdiction. *See State v. Wesson*, 16 N.C. App. 683 (1972) (jurisdiction of superior court demonstrated by record that showed trial and sentence, notwithstanding that portions of the judgment form were left blank).

Legislative note: For violations committed on or after December 1, 2013, S.L. 2013-385 (H 182) amends G.S. 15A-1115 to delete subsection (a), which provided defendants with the right to appeal to superior court for a trial de novo when the defendant denied responsibility for an infraction in district court and was found responsible.

Exceptions to derivative jurisdiction rule. There are two exceptions to the above limits on superior court jurisdiction over misdemeanor appeals. First, if the defendant appeals a district court judgment imposed pursuant to a plea agreement, the superior court has jurisdiction over any misdemeanor that was dismissed, reduced, or modified pursuant to that agreement. *See* G.S. 15A-1431(b); G.S. 7A-271(b).

Second, on appeal of a misdemeanor conviction, the superior court has jurisdiction to accept a guilty plea (but not to try the defendant) on any “related charge.” G.S. 7A-271(a)(5). To utilize this provision, the prosecution must file an information in superior court charging the related misdemeanor, to which the defendant then enters a guilty plea. *See State v. Craig*, 21 N.C. App. 51 (1974) (on appeal of impaired driving conviction, superior court accepted plea to reckless driving; assuming that reckless driving is a “related charge” for which superior court may accept guilty plea, prosecution must file written information); G.S. 15A-922(g) (when misdemeanor is initiated in superior court, prosecution must be on information or indictment). If the defendant pleads guilty or is found guilty in superior court, the defendant also may request permission to enter a guilty plea to misdemeanor charges pending in the same or other districts if certain procedural rules are followed. *See* G.S. 15A-1011(c); *see also infra* “Waiver by certain guilty pleas” in § 11.2D, Waiver (venue waived in this instance).

Other limits on new charges in superior court. Following a district court misdemeanor conviction and appeal by the defendant, the State may not charge a felony in superior court based on the same conduct. The bringing of such a charge is considered presumptively vindictive in violation of due process. *See Blackledge v. Perry*, 417 U.S. 21 (1974) (where defendant was convicted of misdemeanor and appealed for trial de novo in superior court, State’s later indictment of defendant for felony assault arising out of same incident violated due process, regardless of whether prosecutor acted in good or bad faith); *State v. Bissette*, 142 N.C. App. 669 (2001) (State reduced initial charge of felony larceny by employee to misdemeanor larceny, and defendant appealed for trial de novo after pleading not guilty to reduced charge and being found guilty in district court; under *Blackledge*, State could not charge defendant with larceny by employee in superior court); *State v. Mayes*, 31 N.C. App. 694 (1976) (after defendant appealed district court conviction for misdemeanor assault, State could not seek felony indictment for same offense; showing of actual vindictiveness not required).

The only situation in which the U.S. Supreme Court has suggested that this presumption may be rebutted is when subsequent events form the basis for new charges (for example, the victim dies after appeal). *See Blackledge*, 417 U.S. at 28–29 n.7.

If the defendant appeals from a plea of guilty in district court, offenses that were dismissed as part of any plea agreement, including felonies, may be charged in superior court. *See State v. Fox*, 34 N.C. App. 576 (1977) (State may indict defendant on felony breaking and entering and felony larceny where defendant was initially charged with those offenses but pled guilty to misdemeanor breaking and entering pursuant to a plea agreement in district court and then appealed to superior court for trial de novo). If, however, the defendant is charged with a misdemeanor, pleads guilty in district court without any plea agreement, and then appeals, *Blackledge* bars the State from initiating felony charges based on the same conduct.

C. Misdemeanors Tried Initially in Superior Court

Generally. The superior court has original jurisdiction over misdemeanors where the misdemeanor is:

- a lesser included offense of a properly charged felony,
- initiated by presentment, or
- properly joined for trial with a felony.

See G.S. 7A-271(a).

Joinder of misdemeanor with felony. If the superior court has original jurisdiction over a misdemeanor because it is properly joined with a felony, the superior court retains jurisdiction even if the felony is dismissed. *See State v. Pergerson*, 73 N.C. App. 286 (1985) (superior court retains jurisdiction over unauthorized use of automobile even after felony charge of larceny of same automobile is dismissed; court rejects as unsupported on these facts defendant’s argument that felony charge was “sham,” manufactured to create superior court jurisdiction). Under G.S. 15A-922(g), where a misdemeanor is first tried in superior court, the misdemeanor must be brought before the superior court by indictment, information, or presentment. *See State v. Price*, 170 N.C. App. 57 (2005) (superior court lacked jurisdiction over misdemeanors that, although joinable with felony charge, were not included in the indictment); *see also State v. Bowden*, 177 N.C. App. 718 (2006) (habitual impaired driving is a substantive offense, and the superior court had jurisdiction to try transactionally related misdemeanors set out in the indictment charging habitual impaired driving).

Misdemeanors initiated by presentment. A presentment is a written accusation by the grand jury accusing a defendant of one or more crimes. It is submitted to the prosecutor, who is statutorily required to investigate the allegations and to submit a bill of indictment to the grand jury if appropriate. A misdemeanor initiated by presentment is tried in superior court. *See State v. Petersilie*, 334 N.C. 169 (1993) (misdemeanor charges in superior court that are not joined with a felony may be initiated by presentment); *accord*

State v. Guffey, 283 N.C. 94 (1973). For more on presentments, see *supra* Chapter 9, Grand Jury Proceedings.

When a presentment is issued, the superior court obtains jurisdiction over the offense, notwithstanding that the defendant may already be charged with the same offense in district court. See *State v. Gunter*, 111 N.C. App. 621 (1993) (superior court obtains jurisdiction over DWI charge following issuance of presentment, despite previous citation in district court charging same offense).

If a misdemeanor is initiated in superior court by presentment, the defendant may be tried only for the matters set out in the presentment. The standard is whether the accusation in the presentment and the charge in the subsequent indictment “are substantively identical.” See *State v. Birdsong*, 325 N.C. 418 (1989).

Misdemeanor guilty pleas in superior court. Under G.S. 7A-271(a)(4), the superior court has jurisdiction to accept pleas of guilty to misdemeanors that are “tendered in lieu of a felony charge.” In other words, if a defendant who is charged with a felony is offered a misdemeanor plea, the plea may be taken in superior court even when the misdemeanor is not a lesser included offense of the felony. See *State v. Snipes*, 16 N.C. App. 416 (1972) (noting superior court jurisdiction to accept plea of guilty to misdemeanor charge of assault with a deadly weapon following indictment for felony offense of discharging a firearm into a vehicle). This is done by the prosecution’s dismissal of the indictment and filing of an information charging the related misdemeanor, to which the defendant then enters a guilty plea. *Id.* at 418. See also *infra* “Waiver by certain guilty pleas” in § 11.2D, Waiver (discussing superior court’s authority to receive guilty pleas to misdemeanors from other districts).

10.8 Jurisdiction of Individual Judges

School of Government faculty member Michael Crowell, who specializes in judicial administration, has written about the jurisdiction of individual judges in *Out-of-Term, Out-of-Session, Out-of-County*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/05 (UNC School of Government, Nov. 2008) [hereinafter Crowell], available at www.sog.unc.edu/pubs/electronicversions/pdfs/aojb0805.pdf. This discussion therefore highlights the principal issues only.

A. Limitations on Jurisdiction While Out of County, District, and Session

General rule. Generally, judges only have jurisdiction to hear matters and make rulings (i) during the session of court, (ii) in the county and district where the judge is assigned, and (iii) in the county and district where the matter arose. Except in certain instances, discussed below, an order entered out of county, district, and session is void ab initio—that is, void from its inception. Thus, once a visiting superior court judge rotates out of a district, he or she ordinarily loses jurisdiction over the matters in that district. See *State v. Trent*, 359 N.C. 583 (2005) (pretrial order denying suppression motion was void where

rendered after session and term of court had expired and without defendant's consent); *State v. Boone*, 310 N.C. 284 (1984) (pretrial order denying suppression motion was nullity where entered out of session, out of county, and out of district where suppression motion was heard; thus, when defendant renewed his motion to suppress, new judge was obligated to conduct another hearing, and failure to do so was reversible error), *superseded by statute on other grounds as stated in State v. Oates*, ___ N.C. ___, 732 S.E.2d 571 (2012); *State v. Humphrey*, 186 N.C. 533 (1923) (stating rule); *see also State v. Sams*, 317 N.C. 230, 235 (1986) (order entered without jurisdiction is "a nullity and may be attacked either directly or collaterally, or may simply be ignored").

Effect of consent. Generally, the consent of the parties cannot confer jurisdiction on a judge to hear a matter that the judge does not have the authority to hear. Thus, the parties cannot give a judge authority to hear a matter arising in a county where the judge is neither assigned nor has resident authority (discussed in subsection C., below). *See Vance Constr. Co., Inc. v. Duane White Land Corp.*, 127 N.C. App. 493 (1997) (jurisdiction cannot be conferred on court by consent, waiver, or estoppel; thus, order void where entered by trial judge not assigned to hold court in district in which hearing was held); *see also State v. Earley*, 24 N.C. App. 387 (1975) (consent cannot confer jurisdiction).

As discussed in subsection E., below, however, consent of the parties most likely allows a judge, after hearing a matter over which the judge has jurisdiction, to issue his or her ruling while out of county, district, and session.

B. Session and Term: Length, Type, and Assignment

Length. Cases sometimes use the words "term" and "session" interchangeably, but they have distinct meanings. Under the rotation system for superior court judges in North Carolina, superior court judges are typically assigned based on six-month schedules, and that six-month assignment is a "term," while a superior court "session" refers to the typical one-week period for holding court within a term. District court judges do not travel and are not assigned to six-month schedules but are assigned to sessions, which typically last one day. *See Crowell* at 1 & cases cited therein; *see also generally Alyson Grine, District Court Is in Session . . . but for How Long?*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 20, 2009) (discussing multiday sessions in district court), <http://sogweb.sog.unc.edu/blogs/ncclaw/?p=876>. The expiration of a "session" is marked by the expiration of the time set for the session or by the announcement in court that the court adjourned sine die—that is, without assigning a day for further hearing.

Civil and criminal sessions. A session of superior court may be designated as criminal, civil, or mixed. *See* G.S. 7A-49.2. Criminal matters may not be heard during a civil session of superior court. *See In re Renfrow*, 247 N.C. 55 (1957); *Whedbee v. Powell*, 41 N.C. App. 250 (1979); *cf. State v. Thomas*, 132 N.C. App. 515 (1999) (trial court assigned to hear civil cases had jurisdiction to conduct criminal trial where authorized by Chief Justice). However, a judge assigned to a civil session still would have in-chambers jurisdiction, discussed in subsection C., below, to hear criminal nonjury matters. *See Crowell* at 2 n.1.

Assignment. Superior court judges ordinarily rotate to different districts within their division every six months. The Chief Justice of the N.C. Supreme Court, acting through the Administrative Office of the Courts, assigns superior court judges and prepares calendars of trial sessions. N.C. CONST. art. IV, sec. 11; G.S. 7A-345. A rotating superior court judge does not have jurisdiction to hold court or rule on matters brought in a particular judicial district unless he or she has been assigned to hold court there. *See Vance Constr. Co. v. Duane White Land Corp.*, 127 N.C. App. 493 (1997). The N.C. appellate courts generally have been lenient regarding mere clerical errors confirming the assignment of a judge to a particular district or session of court. *See State v. Eley*, 326 N.C. 759 (1990) (special superior court judge had jurisdiction to preside over trial despite failure of administrative assistant to file proper documents with court); Crowell at 10. For a detailed discussion of judges' commissions, which generally are issued when a session is added to the master calendar or a judge's assignment changes from the master calendar, see Michael Crowell, *What Is a Judge's Commission?*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (June 20, 2012), <http://nccriminallaw.sog.unc.edu/?p=3682>.

District court judges are permanently assigned to a particular district or county. G.S. 7A-130 through 7A-135. The chief district court judge arranges schedules and assigns district court judges for sessions of district court. G.S. 7A-146(1). A chief district court judge also may assign a specific case to a judge. *See Routh v. Weaver*, 67 N.C. App. 426 (1984).

C. Hearings Out of Session: Jurisdiction in Vacation or in Chambers

Definition. Jurisdiction in chambers in the sense used here means the court's authority to hear or rule on matters outside of a regular session of court. In-chambers jurisdiction in this sense is also referred to as jurisdiction "in vacation"—that is, when there is no session of court scheduled. *See* Crowell at 2 (explaining these terms). The discussion here focuses on a *hearing* held outside of a regular session as opposed to a *ruling* issued after a session for a hearing held during a session, which is discussed in subsection E., below.

Practice note: Defense counsel should invoke in-chambers jurisdiction sparingly. In-chambers proceedings generally are not recorded, and the defendant typically is not present. It is usually best not to allow proceedings to take place that may affect your client's legal interests without his or her participation and without any reviewable record. If you object to a matter being heard in chambers, you may invoke your client's right to be present under the Sixth Amendment to the United States Constitution as well as N.C. Const. art. I, section 18, which provides that "all courts shall be open." *See State v. Callahan*, 102 N.C. App. 344 (1991) (noting defendant's and public's right under article I, section 18 to public trials); *In re Nowell*, 293 N.C. 235 (1977) (same).

A situation in which in-chambers jurisdiction should be invoked by the defendant is to make ex parte requests in a noncapital case for funds for the appointment of an expert (in a capital case, counsel should apply to the Capital Defender). *See supra* § 5.5B, *Obtaining an Expert Ex Parte in Noncapital Cases*.

Authority of superior court judges. G.S. 7A-47.1 addresses the judge’s jurisdiction to hear matters in vacation. The conditions are:

- The judge must be a judge currently assigned to the district, a resident judge of the district, or a special superior court judge who resides in the district.
- The hearing must concern a nonjury matter.
- In a criminal case, the hearing must be in the county in which the matter arose unless the parties agree to be heard outside the county.

See Crowell at 2–3 & cases and statutes cited therein.

It does not appear that the parties must consent for a judge to exercise in-chambers jurisdiction. See Crowell at 2; see also *E-B Grain Co. v. Denton*, 73 N.C. App. 14 (1985) (finding that notwithstanding statement in G.S. 7A-47.1 that parties must “unite” to present matter to superior court in vacation, parties’ consent is not required); cf. *In re Burton*, 257 N.C. 534, 542 (1962) (consent of all parties confers jurisdiction on court to hearing in chambers).

Authority of district court judges. The jurisdiction of district court judges to hear motions in chambers is governed by G.S. 7A-191 and G.S. 7A-192. Under G.S. 7A-191, all trials on the merits must be held in open court, but “[a]ll other proceedings” may be held in chambers (and also may be held outside the district with the consent of “all parties affected thereby”). But see G.S. 7A-191.1 (complete record required where a defendant pleads guilty to Class H or I felony in district court).

G.S. 7A-192 imposes limits on an individual district court judge’s authority to hear matters in chambers. Under that statute, a district court judge may not hear motions or grant interlocutory orders in chambers unless the chief district court judge has granted him or her the authority to do so by written order or rule of court and has filed this authority with the clerk of court. An order entered without this authority is void. See *Stroupe v. Stroupe*, 301 N.C. 656 (1981); *Austin v. Austin*, 12 N.C. App. 286 (1971). Some chief district court judges have granted blanket authority to district court judges in their district to hear matters in chambers. Other chiefs may have granted this authority on a more limited basis. Before obtaining an in-chambers ruling from a district court judge, you should make sure that he or she has been granted the authority to enter one. See generally Crowell at 3.

D. Extending Session to Complete Trial

If a trial in *superior court* is not finished by the close of Friday that the session of court ends, the superior court judge presiding over the trial may extend that session of court to complete the trial. See G.S. 15-167; *State v. Locklear*, 174 N.C. App. 547 (2005) (although statute requires judge to enter order on the record to extend session, extension will be upheld if judge announces it in open court and parties do not object); see also *State v. Hunt*, 198 N.C. App. 488 (2009) (citing *Locklear* with approval).

There is no specific statute authorizing the *district court* to extend a session in criminal cases to complete a trial. *See* Crowell at 3 (noting absence of specific statute but observing that “the authority of the judge to do so when necessary to complete a trial seems to be the accepted practice”). Nor is there a specific statute permitting a district court judge to continue a trial from one session to another to take additional evidence in a criminal case. *Cf.* G.S. 7B-2406 (allowing juvenile court to continue adjudicatory hearing in delinquency case to receive additional evidence). Most likely a district court may continue a session to complete a trial or continue a trial from one session to another, but double jeopardy concerns may arise in some circumstances.

A mid-trial continuance does not violate double jeopardy if the defendant is subjected to one trial only. *See State v. Carter*, 289 N.C. 35, 43 (1975) (so stating), *vacated in part on other grounds*, 428 U.S. 904 (1976); *see also People v. Valencia*, 169 P.3d 212 (Colo. Ct. App. 2007) (reviewing cases). However, if the trial begins anew following a continuance, as when the defendant enters a new plea, the subsequent proceedings violate double jeopardy. *See State v. Coats*, 17 N.C. App. 407 (1973) (finding violation of double jeopardy where judge, after the trial had commenced and a witness had testified, continued trial for two weeks to allow the State to procure additional evidence, and the defendant reentered plea on second trial date). Likewise, subsequent proceedings before a different trier of fact (judge or jury) may violate double jeopardy. *See Carter*, 289 N.C. at 42 (distinguishing cases in which defendant was tried at a later date before a different jury); *In re Hunt*, 46 N.C. App. 732 (1980) (finding no double jeopardy violation in two juvenile delinquency cases by continuance of adjudicatory hearing and resumption before same judge nine days later in one case and a little more than a month later in the other case). A case from another jurisdiction has held that a mid-trial continuance may violate double jeopardy if its purpose is to allow the State to obtain additional evidence, the lack of evidence is the result of inexcusable prosecutorial neglect, and the continuance is an unreasonable break in the continuity of the trial. *See State v. O’Keefe*, 343 A.2d 509 (N.J. Super. Ct. Law Div. 1975) (two week continuance was unreasonable). *But cf. Webb v. Hutto*, 720 F.2d 375 (4th Cir. 1983) (no speedy trial, due process, or double jeopardy violation where continuance was five days for prosecutor to obtain evidence necessary to prove State’s case).

A mid-trial continuance also may implicate other constitutional rights. *See Carter*, 289 N.C. at 43 (finding no speedy trial violation by continuance of one week within same session of court); *In re Hunt*, 46 N.C. App. at 736 n.3 (suggesting that due process may be violated in some circumstances by continuances to allow the State to obtain additional evidence).

E. Orders Entered after In-Session Hearing

The general rule is that a trial court must enter its ruling during the session in which the matter is heard. *See State v. Trent*, 359 N.C. 583 (2005); *State v. Boone*, 310 N.C. 284 (1984), *superseded by statute on other grounds as stated in State v. Oates*, ___ N.C. ___, 732 S.E.2d 571 (2012). Two general exceptions to this rule are as follows:

- If a judge announces his or her ruling in open court, the judge may issue a written ruling later. *See* Crowell at 5 & cases cited therein; *see also* *State v. Palmer*, 334 N.C. 104, 108–09 (1993) (order entered 57 days after notice of appeal not invalid where trial court announced ruling in open court at end of motion hearing and order was contained in agreed record on appeal, which both parties stipulated to be correct); *State v. Smith*, 320 N.C. 404 (1987).
- Parties may consent to a judge taking a matter under advisement and issuing his or her ruling after session. *See Trent*, 359 N.C. at 586. The failure of a party in a criminal case to object to a judge taking a matter under advisement and ruling after session may not constitute consent, however. *See Boone*, 310 N.C. at 288.

If a judge has in-chambers jurisdiction to rule on a matter—for example, a superior court judge is still assigned for a six-month term to a district even though the session at which he or she heard the matter has expired—the judge also may have authority to issue a ruling after the session. *See* Crowell at 4 & n.4.

F. Imposing Sentence after Session in which Defendant Found Guilty

A trial court is authorized to continue a case to a later date for sentencing. *See State v. Degree*, 110 N.C. App. 638 (1993). This constitutes “an exception to the general rule that the court’s jurisdiction expires with the expiration of the session of court in which the matter is adjudicated.” *Id.* at 641; *see also State v. Williams*, 363 N.C. 689 (2009) (following the guilt phase in a capital case, the first judge declared a mistrial as to the penalty proceeding when defendant attacked his counsel and counsel withdrew; trial court does not lose subject matter jurisdiction if different judge presides over penalty phase and new jury is empaneled).

A continuance for sentencing, sometimes referred to as a prayer for judgment continued or “PJC,” may be for a definite or indefinite period. *See* G.S. 15A-1334(a) (authorizing continuance for sentencing); *State v. Lea*, 156 N.C. App. 178 (2003) (so stating). The court loses jurisdiction, however, if the sentence is not entered within a reasonable time. *See* Crowell at 5–6 & cases cited therein; *State v. Craven*, 205 N.C. App. 393 (2010) (two year delay between judgment and sentencing not unreasonable where defendant never requested sentencing and thus consented to continuance of sentencing), *rev’d in part on other grounds*, ___ N.C. ___, 744 S.E.2d 458 (2013).

The court also loses jurisdiction if it imposes conditions along with the PJC that amount to punishment, which makes the PJC a final judgment and precludes imposition of a different sentence at a later date. *See State v. Brown*, 110 N.C. App. 658 (1993); *see also* Crowell at 6.

G. Modifying Judgment after Session

A court has the authority to modify its judgment during the original session of court. *See State v. Sammartino*, 120 N.C. App. 597 (1995) (during session of court, judgment is in

fieri—not final—so court has the discretion to modify, amend, or set aside judgment). Within ten days of judgment, and on a motion for appropriate relief, the trial judge also has the authority to modify its judgment and sentence for the reasons stated in G.S. 15A-1414 (motion by defendant) or G.S. 15A-1416 (motion by State). *See State v. Morgan*, 108 N.C. App. 673 (1993) (applying G.S. 15A-1414); *see also* G.S. 15A-1413(b) (judge who presided at trial may hear motion for appropriate relief under G.S. 15A-1414 even if he or she is in another district and his or her commission has expired); G.S. 15A-1420(d) (court may grant relief on own motion for any reasons defendant could obtain relief). Given the ten-day window, a motion for appropriate relief (MAR) will often be made after the end of the session in which the judgment was entered. Thus, G.S. 15A-1414 authorizes the judge to enter an order after the session has ended.

After the period for filing a ten-day MAR has expired, a trial court may alter a sentence only if the sentence is unlawful or if necessary to correct a clerical error. *See State v. Roberts*, 351 N.C. 325 (2000) (interpreting G.S. 15A-1415 and G.S. 15A-1417); *State v. Petty*, 212 N.C. App. 368 (2011) (district court judge had authority, after conclusion of session, to correct an unlawful and invalid judgment); *State v. Jarman*, 140 N.C. App. 198 (2000) (court had authority out of term to correct clerical error in judgment); *see also generally* Jessica Smith, *Trial Judge's Authority to Sua Sponte Correct Errors after Entry of Judgment in a Criminal Case*, ADMINISTRATION OF JUSTICE BULLETIN No. 2003/02 (UNC School of Government, May 2003), available at www.sog.unc.edu/sites/www.sog.unc.edu/files/aoj200302.pdf. For a further discussion of this topic, see 2 NORTH CAROLINA DEFENDER MANUAL § 35.6 (Trial Judges' Authority to Correct, Modify, or Amend Judgments) (UNC School of Government, 2d ed. 2012).

H. Writ of Habeas Corpus

Any person imprisoned by the State of North Carolina who believes that he or she is imprisoned without proper authority may apply for a writ of habeas corpus under state law. *See* N.C. CONST. art. I, sec. 21; G.S. 17-1. An application for a writ of habeas corpus may be made to any appellate or superior court judge in the state, either in or out of session. *See* G.S. 17-6. Thus, the statute authorizes a judge to act on a criminal case after a session has ended. If the judge to whom the application is made decides to hold a hearing on the issue of the lawfulness of the applicant's confinement, the judge may hear the matter himself or herself or assign the matter to another judge. *See In re Burton*, 257 N.C. 534, 540 (1962); *see also* N.C. GEN. R. PRAC. SUPER. & DIST. CT. 25(5) (requiring in capital cases in certain instances that an application for writ of habeas corpus be referred to the senior resident superior court judge or designee in the district where the defendant was sentenced).

For a further discussion of this topic, see 2 NORTH CAROLINA DEFENDER MANUAL § 35.4 (State Habeas Corpus) (UNC School of Government, 2d ed. 2012).

I. Out-of-District and Out-of-County Orders

Generally, in the reported cases in which a judge has signed an order while out of county or out of district, the judge also has held the hearing or entered the ruling out of session. It is therefore not clear whether the signing of an order outside the county or district in which the matter was heard, standing alone, renders the order void. In his bulletin, Crowell suggests that the place of signing of the order is not critical because the order still must be sent to and recorded by the clerk in the county where the matter was heard, thus satisfying the requirement that the order be entered in that county. He nevertheless suggests that a judge either should sign the order in the county or district where the matter was heard or should have the parties consent to the signing at a different location. *See* Crowell at 8.

10.9 Appeals, Post-Conviction Litigation, and Writs

For an in-depth discussion of this topic, see 2 NORTH CAROLINA DEFENDER MANUAL Ch. 35 (Appeals, Post-Conviction Litigation, and Writs) (UNC School of Government, 2d ed. 2012). The chapter includes a discussion of the procedures for appealing a conviction in district and superior court and trial counsel's obligations to secure the defendant's right to appeal.