

# Chapter 9

## Grand Jury Proceedings

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The grand jury in North Carolina is charged with determining probable cause in all felony cases and all misdemeanor cases in which original jurisdiction over the case lies in the superior court (primarily, misdemeanors joined with felonies). Unless the defendant waives his or her right to indictment, the State must obtain an indictment for all criminal prosecutions within the superior court's original jurisdiction. The right to indictment cannot be waived by a capital defendant or

by a non-capital defendant who is not represented by counsel. *See* N.C. GEN. STAT. § 15A-642(b) (hereinafter G.S.).

Because its proceedings are secret and because the grand jury has a great deal of discretion, challenging grand jury actions is difficult. However, the grand jury is not immune from review. Broadly speaking, a criminal defendant may object to an indictment returned by the grand jury on two grounds:

- the jury was illegally constituted; or
- significant procedural irregularities tainted the grand jury proceedings.

In either case the indictment must be dismissed. Both types of challenges are discussed in further detail below.

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**Practice note:** All objections to the grand jury's composition or actions must be raised before arraignment, or they may be considered waived. *See* G.S. 15A-952(b)(4), (e); G.S. 15A-955; *State v. Lynch*, 300 N.C. 534 (1980). The defendant is entitled to arraignment only if he or she files a timely written request for arraignment with the clerk of court. If arraignment is waived, certain pretrial motions, including challenges to grand jury proceedings, must be filed within 21 days of the return of the indictment. *See* G.S. 15A-941(d); G.S. 15A-952(c).

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Section 9.1 reviews the qualifications and selection process for grand jurors and the foreperson of the grand jury. Section 9.2 discusses potential challenges to the composition of the grand jury and to the method for selecting a foreperson. Section 9.3 addresses the procedures to be followed by the grand jury, and Section 9.4 covers errors in grand jury procedure that may result in a defective indictment. Section 9.5 discusses provisions for special grand juries that may be convened in certain drug cases. Section 9.6 lists additional references on the grand jury.