

Article 32.

Indictment and Related Instruments.

§ 15A-641. Indictment and related instruments; definitions of indictment, information, and presentment.

(a) Any indictment is a written accusation by a grand jury, filed with a superior court, charging a person with the commission of one or more criminal offenses.

(b) An information is a written accusation by a prosecutor, filed with a superior court, charging a person represented by counsel with the commission of one or more criminal offenses.

(c) A presentment is a written accusation by a grand jury, made on its own motion and filed with a superior court, charging a person, or two or more persons jointly, with the commission of one or more criminal offenses. A presentment does not institute criminal proceedings against any person, but the district attorney is obligated to investigate the factual background of every presentment returned in his district and to submit bills of indictment to the grand jury dealing with the subject matter of any presentments when it is appropriate to do so. (1797, c. 474, s. 3, P.R.; R.C., c. 35, s. 6; 1879, c. 12; Code, s. 1175; Rev., s. 3240; C.S., s. 4607; 1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-642. Prosecutions originating in superior court to be upon indictment or information; waiver of indictment.

(a) Prosecutions originating in the superior court must be upon pleadings as provided in Article 49 of this Chapter, Pleadings and Joinder.

(b) Indictment may not be waived in a capital case or in a case in which the defendant is not represented by counsel.

(c) Waiver of indictment must be in writing and signed by the defendant and his attorney. The waiver must be attached to or executed upon the bill of information. (1907, c. 71; C.S., s. 4610; 1951, c. 726, ss. 1, 2; 1971, c. 377, s. 30.1; 1973, c. 1286, s. 1.)

§ 15A-643. Joinder of offenses and defendants and consolidation of indictments and informations.

The rules with respect to joinder of offenses and defendants and the consolidation of charges in indictments and informations are provided in Article 49 of this Chapter, Pleadings and Joinder. (1917, c. 168; C.S., s. 4622; 1921, c. 100; 1973, c. 1286, s. 1.)

§ 15A-644. Form and content of indictment, information or presentment.

(a) An indictment must contain:

- (1) The name of the superior court in which it is filed;
- (2) The title of the action;
- (3) Criminal charges pleaded as provided in Article 49 of this Chapter, Pleadings and Joinder;
- (4) The signature of the prosecutor, but its omission is not a fatal defect; and
- (5) The signature of the foreman or acting foreman of the grand jury attesting the concurrence of 12 or more grand jurors in the finding of a true bill of indictment.

(b) An information must contain everything required of an indictment in subsection (a) except that the accusation is that of the prosecutor and the provisions of subdivision (a)(5) do not apply. The information must also contain or have attached the waiver of indictment pursuant to

G.S. 15A-642(c).

(c) A presentment must contain everything required of an indictment in subsection (a) except that the provisions of subdivisions (a)(4) and (5) do not apply and the foreman must by his signature attest the concurrence of 12 or more grand jurors in the presentment. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-644.1. Filing of information when plea of guilty or no contest in district court to Class H or I felony.

A defendant who pleads guilty or no contest in district court pursuant to G.S. 7A-272(c)(1) shall enter that plea to an information complying with G.S. 15A-644(b), except it shall contain the name of the district court in which it is filed. (1995 (Reg. Sess., 1996), c. 725, s. 3.)

§ 15A-645. Allegations of previous convictions.

Trial upon indictments and informations involving allegation of previous convictions is subject to the provisions of G.S. 15A-928. (1973, c. 1286, s. 1.)

§ 15A-646. Superseding indictments and informations.

If at any time before entry of a plea of guilty to an indictment or information, or commencement of a trial thereof, another indictment or information is filed in the same court charging the defendant with an offense charged or attempted to be charged in the first instrument, the first one is, with respect to the offense, superseded by the second and, upon the defendant's arraignment upon the second indictment or information, the count of the first instrument charging the offense must be dismissed by the superior court judge. The first instrument is not, however, superseded with respect to any count contained therein which charged an offense not charged in the second indictment or information. (1973, c. 1286, s. 1.)