

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1320

Short Title: Speedy Trial Changes.

(Public)

Sponsors: Representative Hackney.

Referred to: Judiciary.

April 12, 1989

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE SPEEDY TRIAL STATUTES.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 15A-701 through G.S. 15A-703 are repealed.

5 Sec. 2. Article 35 of Chapter 15A of the General Statutes is amended by  
6 adding the following new sections to read:

7 **"§ 15A-703.1. Time limits.**

8 (a) It is the public policy of the State of North Carolina that criminal charges be  
9 resolved without undue delay.

10 (b) Unless the time is extended by an order of a superior court judge as provided  
11 by subsection (d), the trial of the defendant charged with a criminal offense shall begin  
12 within 150 days after the following:

13 (1) The date the defendant is arrested, is served with criminal process,  
14 waives an indictment, or is indicted, whichever occurs last;

15 (2) The first regularly scheduled criminal session of superior court, for  
16 which a calendar has not been published at the time of notice of  
17 appeal, held after the defendant has given notice of appeal in a  
18 misdemeanor case for trial **de novo** in the superior court;

19 (3) When a charge is dismissed, other than under G.S. 15A-703.2 or upon  
20 a finding of no probable cause pursuant to G.S. 15A-612, and the  
21 defendant is afterwards charged with the same offense or an offense  
22 based on the same act or transactions connected together or  
23 constituting parts of a single scheme or plan, then from the date that  
24 the defendant was arrested, was served with criminal process, waived

1                    an indictment, or was indicted, whichever occurs last, for the original  
2                    charge;

3                    (4)    The date a mistrial is declared; or

4                    (5)    The date the action occasioning the new trial becomes final when the  
5                    defendant is to be tried again following an appeal or collateral attack.

6                    (c)    The following periods shall be excluded in computing the time within which  
7                    the trial of a criminal offense must begin:

8                    (1)    The period of time from the time the district attorney enters a dismissal  
9                    with leave for the nonappearance of the defendant until the district  
10                    attorney reinstates the proceedings pursuant to G.S. 15A-932.

11                    (2)    Any period of time during which the defendant is judicially declared to  
12                    be mentally incapacitated or physically unable to stand trial, or any  
13                    period of time during which the defendant is undergoing treatment or  
14                    examination regarding his mental or physical capacity to stand trial.

15                    (3)    Any period of time during which an interlocutory appeal is pending.

16                    (4)    Any period of time during which the prosecution is deferred by the  
17                    prosecutor pursuant to written agreement with the defendant with the  
18                    approval of the court, for the purpose of allowing the defendant to  
19                    demonstrate his good conduct.

20                    (5)    Any period of time during which the defendant or an essential witness  
21                    for the defendant or the State is absent or unavailable. For the purpose  
22                    of this subdivision, a defendant or an essential witness shall be  
23                    considered

24                    a.     Absent when his whereabouts are unknown and he is attempting  
25                    to avoid apprehension or prosecution or when his whereabouts  
26                    cannot be determined by due diligence; and

27                    b.     Unavailable when his whereabouts are known but his presence  
28                    for testifying at the trial cannot be obtained by due diligence or  
29                    he resists appearing at or being returned for trial.

30                    (d)    Upon motion of the State or the defendant and for good cause shown, a  
31                    superior court judge assigned to hold court in the district or a resident superior court  
32                    judge of the district may enter a written order specifying a later date within which the  
33                    criminal trial shall begin. For good cause shown, additional extension orders may be  
34                    entered.

35                    In considering whether to extend the time for beginning the trial, the judge shall  
36                    consider whether the ends of justice will be served by the extension of time and whether  
37                    the reasons for the extension outweigh the interests of the public and the defendant in an  
38                    earlier trial. The factors which a judge shall consider in determining whether to extend  
39                    the time include:

40                    (1)    Whether the failure to extend the time would be likely to result in a  
41                    miscarriage of justice;

42                    (2)    Whether the delay is due to the limited number of court sessions  
43                    scheduled for the county;

1           (3) Whether the case taken as a whole is so unusual and so complex, due  
2 to the number of defendants or the nature of the prosecution or  
3 otherwise, that it is unreasonable to expect adequate preparation within  
4 the time limits established; and

5           (4) Whether the case involves physical or sexual child abuse when a  
6 victim or witness is under 16 years of age, and whether further delay  
7 would have an adverse impact on the well-being of the child.

8           Good cause for extending the time shall include those instances when the defendant,  
9 a witness, or counsel of record has an obligation of service to the State, including  
10 service as a member of the General Assembly.

11 **"§ 15A-703.2. Sanctions.**

12           (a) If a defendant is not brought to trial within the time required by G.S. 15A-  
13 703.1, then upon motion of the defendant the court shall (i) enter an order dismissing  
14 the action with prejudice; (ii) enter an order dismissing the action without prejudice; or  
15 (iii) enter any other order as may be appropriate under the circumstances. In  
16 determining the order to be entered, the court shall consider, among other matters, the  
17 seriousness of the offense, the facts and circumstances of the case which led to the  
18 failure to begin the trial within the time allowed, and the impact of reprosecution on the  
19 administration of justice.

20           (b) A dismissal with prejudice shall bar further prosecution of the defendant for  
21 the same offense or an offense based on the same act or transaction, or on the same  
22 series of acts or transactions connected together or constituting parts of a single scheme  
23 or plan. A dismissal without prejudice does not bar further prosecution.

24           (c) Failure of the defendant to move for dismissal before trial or entry of a plea  
25 of guilty or no contest shall constitute a waiver of the right to dismissal under this  
26 section.

27           (d) The sanctions authorized by this section do not apply to proceedings in the  
28 district court division of the General Court of Justice.

29 **"§ 15A-703.3. Expedited trial.**

30           Upon motion of the defendant and for good cause shown, a judge may enter an order  
31 for an expedited trial of a pending criminal case. In ruling on such a motion, the judge  
32 shall consider, among other matters, prejudice to the defendant if an expedited trial is  
33 not ordered and the ability of the State, with available resources, to expedite the trial."

34           Sec. 3. G.S. 15A-133 reads as rewritten:

35 **"§ 15A-133. Waiver of venue; motion for change of venue; indictment may be**  
36 **returned in other county.**

37           (a) ~~Except for a waiver of venue made as required in Article 35 of this Chapter, Speedy~~  
38 ~~Trial, a~~ A waiver of venue must be in writing and signed by the defendant and the  
39 prosecutor indicating the consent of all parties to the waiver. The waiver must specify  
40 what stages of the proceedings are affected by the waiver, and the county to which  
41 venue is changed. If the venue is to be laid in a county in another prosecutorial district,  
42 the consent in writing of the prosecutor in that district must be filed with the clerks of  
43 both counties.

1 (b) If a waiver of venue is made by the defendant as provided in Article 35 of this  
2 Chapter, Speedy Trial, the prosecutor in his discretion may elect the county in the  
3 prosecutorial district as defined in G.S. 7A-60 in which to proceed. He may also elect  
4 not to proceed in another county, but the State is subject to the sanctions provided in  
5 Article 35.

6 (c) Motions for change of venue by the defendant are made under G.S. 15A-957.  
7 If venue is laid in a county in another prosecutorial district by order of the judge ruling  
8 on the motion, no consent of any prosecutor is required.

9 (d) If venue is changed to a county in another prosecutorial district, whether upon  
10 waiver of venue or by order of a judge, the prosecutor of the prosecutorial district where  
11 the case originated must prosecute the case unless the prosecutor of the district to which  
12 venue has been changed consents to conduct the prosecution.

13 (e) If venue is changed, whether upon waiver of venue or by order of a judge, the  
14 grand jury in the county to which venue has been transferred has the power to return an  
15 indictment in the case. If an indictment has already been returned before the change of  
16 venue, no new indictment is necessary and prosecution may be had in the new county  
17 under the original indictment."

18 Sec. 4. G.S. 15A-1381 reads as rewritten:

19 **"§ 15A-1381. Disposition defined.**

20 As used in this Article, the term 'disposition' means any action which results in  
21 termination or indeterminate suspension of the prosecution of a criminal charge. A  
22 disposition may be any one of the following actions:

- 23 (1) A finding of no probable cause pursuant to G.S. 15A-511(c)(2);
- 24 (2) An order of dismissal pursuant to G.S. 15A-604;
- 25 (3) A finding of no probable cause pursuant to G.S. ~~15A-612(3)~~15A-  
26 612(a)(3);
- 27 (4) A return of not a true bill pursuant to G.S. 15A-629;
- 28 (5) Dismissal of a charge pursuant to ~~G.S. 15A-703~~; G.S. 15A-703.2;
- 29 (6) Dismissal pursuant to G.S. 15A-931 or 15A-932;
- 30 (7) Dismissal pursuant to G.S. 15A-954, 15A-955 or 15A-959;
- 31 (8) Finding of a defendant's incapacity to proceed pursuant to G.S. 15A-  
32 1002 or dismissal of charges pursuant to G.S. 15A-1008;
- 33 (9) Entry of a plea of guilty or no contest pursuant to G.S. 15A-1011,  
34 without regard to the sentence imposed upon the plea, and even though  
35 prayer for judgment on the plea be continued;
- 36 (10) Dismissal pursuant to G.S. 15A-1227;
- 37 (11) Return of verdict pursuant to G.S. 15A-1237, without regard to the  
38 sentence imposed upon such verdict and even though prayer for  
39 judgment on such verdict be continued."

40 Sec. 5. This act shall become effective October 1, 1989, and shall apply to  
41 offenses committed on or after that date.