

Chapter 10: Jurisdiction

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Summary

Types of Jurisdiction

- Jurisdiction is the power and authority of a court to hear and decide a judicial proceeding. To hear a matter, a court must have three types of jurisdiction: territorial jurisdiction over the offense, personal jurisdiction over the offender, and subject matter jurisdiction over the case.
- Territorial jurisdiction requires that the offense, or an essential act that constitutes part of an offense, have occurred within North Carolina. If there is an issue of fact as to where an offense took place, the jury must resolve the issue through a special verdict.
- Personal jurisdiction requires that the defendant be present in the state to be tried. For purposes of obtaining the return of indicted suspects who have fled the state, North Carolina has adopted the Uniform Criminal Extradition Act, which requires states to extradite individuals sought by sister states for criminal prosecution.
- Subject matter jurisdiction over criminal cases is divided between district and superior court.
- Territorial jurisdiction and subject matter jurisdiction may not be waived by the defendant and may not be conferred by consent. An objection to territorial or subject matter jurisdiction may be raised at any time. Any objection to personal jurisdiction may be waived if the defendant voluntarily returns to North Carolina.

Subject Matter Jurisdiction of Superior and District Court

- The superior court has original jurisdiction over felony cases; it also has trial level jurisdiction over misdemeanors that are joined with felonies, that are lesser included offenses of charged felonies, or that are initiated by presentment. The superior court has appellate jurisdiction over misdemeanor convictions from district court.
- The district court has original trial level jurisdiction over all other misdemeanors and infractions. One branch of the district court is the juvenile court, which has original jurisdiction over all acts of delinquency committed by children ages six through sixteen. In certain situations, the juvenile court may transfer jurisdiction over juvenile cases to superior court for trial as an adult.

Jurisdiction of Individual Judges

- As a general matter, visiting or rotating superior court judges have jurisdiction to hear criminal matters and enter orders, whether in court or in chambers, only during the session of court and in the county and district where the judge is assigned.
- Resident judges have slightly broader authority to hear matters in-chambers. Thus, a resident superior court judge has in-chambers jurisdiction whenever present in his or her home district, regardless of whether he or she has been assigned to hold court there.

Chapter 10: Jurisdiction

This chapter address 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 “power and authority of a court to hear and determine a judicial proceeding.” BLACK’S LAW DICTIONARY 853 (6th ed. 1990). 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, 410 S.E.2d 832 (1991) (defendant has constitutional right to presence at trial and significant pre-trial proceedings); *State v. Stockton*, 13 N.C. App. 287, 185 S.E.2d 459 (1971) (questioning whether court had jurisdiction to enter judgment where defendant fled state prior to sentencing). Once a trial commences, if a non-capital 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, 410 S.E.2d 61 (1991); *State v. Stockton, supra*. A capital defendant cannot waive his or her right to presence. To ensure the return of alleged offenders who flee beyond state borders, North Carolina has entered into extradition

agreements with sister states by signing the Uniform Criminal Extradition Act, discussed further in § 10.4C, below.

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, §12; G.S. 7A-271, -272. 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.

A court also 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. Because this jurisdictional defect concerns the rules for proper pleadings, it is addressed in Chapter 8 on Criminal Pleadings (forthcoming) rather than in this chapter

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 offender, and subject matter jurisdiction over the cause. Territorial and subject matter jurisdiction cannot be waived by the defendant. An objection to the territorial or subject matter jurisdiction of the court may be raised at any time and may be considered *sua sponte* by the court. *See State v. Boone*, 310 N.C. 284, 311 S.E.2d 552 (1984) (jurisdictional questions that relate to the power and authority of the court to act in a given situation may be raised at any time); *State v. Morrow*, 31 N.C. App. 592, 230 S.E.2d 182 (1976) (where lack of jurisdiction is apparent on record, court must note it *ex mero motu*, that is, on its own motion). A defendant can waive an objection to personal jurisdiction by voluntarily entering North Carolina. *See State v. Speller*, 345 N.C. 600, 481 S.E.2d 284 (1997).

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.” *See also State v. Darroch*, 305 N.C. 196, 287 S.E.2d 856 (1982) (noting 6th 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, 517 S.E.2d 664 (1999), the 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.

In contrast, in *State v. Bright*, 131 N.C. App. 57, 505 S.E.2d 317 (1998), the victim was kidnapped from a North Carolina home, driven across the Virginia border, and 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 infra* § 10.2F on instructing the jury on jurisdiction).

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, 287 S.E.2d 856 (1982), the court adopted a flexible approach to the question of territorial jurisdiction. In *Darroch*, the defendant, from Virginia, hired or encouraged two men 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, 284–85 (1911), which held that “acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm . . . if the State should succeed in getting [the offender] within its power.” Although 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, 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, 409 S.E.2d 319 (1991) (North Carolina had jurisdiction over conspiracy charge where defendant arranged to sell drugs to undercover agent in North Carolina, then drove to Virginia to meet coconspirator and continued to New York to procure drugs). *Cf.* G.S. 14-202.3 (stating that North Carolina has jurisdiction over solicitation of child by computer to commit sex act if transmission originates or is received in North Carolina).

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, 534 S.E.2d 219, 227 (2000), *aff’d per curiam*, 353 N.C. 449, 545 S.E.2d 211 (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, North Carolina has concurrent jurisdiction with other involved states over the offense. *See State v. Johnson*, 212 N.C. 566, 570, 194 S.E. 319, 321 (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, 238 S.E.2d 497 (1977) (citing *Thompson v. Whitman*, 85 U.S. 457 (1873)).

However, our courts have 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, supra*. For drug offenses, our legislature has created a statutory bar to prosecuting an offense that has been prosecuted by the federal government or another state. *See G.S. 90-97*. 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 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 it 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, 463 S.E.2d 182, 186 (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. 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 id.* (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, 463 S.E.2d 182 (1995) (new trial awarded where court did not give required jury instruction); *State v. Batdorf*, 293 N.C. 486, 238 S.E.2d 497 (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 defense may not be able to get a jurisdiction instruction. *See State v. Drakeford*, 104 N.C. App. 298, 409 S.E.2d 319 (1991) (defendant not entitled to jurisdiction jury instructions; state presented evidence establishing beyond reasonable doubt that conspiracy occurred in North Carolina); *State v. Callahan*, 77 N.C. App. 164, 334 S.E.2d 424 (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).

The 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, 470 S.E.2d 84 (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).

G. Relationship of Jurisdiction and Venue

Under Art. IV § 12 of the North Carolina Constitution, jurisdiction for criminal offenses is statewide. 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, 386 S.E.2d 620 (1989) (noting that jurisdiction is statewide and thus that jurisdictional issues arise only in terms of whether North Carolina courts may try an offense or whether case should be tried first in district or superior court); *accord State v. Bolt*, 81 N.C. App. 133, 344 S.E.2d 51 (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.

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, 400 S.E.2d 405 (1991) (Camp Lejeune Marine Corps Base is federal enclave); *State v. Evangelista*, 319 N.C. 152, 353 S.E.2d 375 (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); *State v. Smith, supra* (state had no jurisdiction over juvenile offense committed at Camp Lejeune).

B. Establishment of Federal Enclaves

The federal government has the authority to acquire land or buildings as needed for government purposes. *See* U.S. CONST. Art. I, § 8; *see also* G.S. 104-7 (giving consent pursuant to federal constitution to acquisition of land or buildings by federal government); *State v. De Berry*, 224 N.C. 834, 32 S.E.2d 617 (1945) (noting constitutional basis for federal government’s authority to assume control of physical locations).

For property acquired by the federal government since 1940, jurisdiction over criminal cases is *not* automatically transferred to the federal government. The United States government must affirmatively assert jurisdiction over the site. *See* 40 U.S.C. 255 (amended in 1940 to require assertion of jurisdiction by U.S. government); *State v. Burrell*, 256 N.C. 288, 123 S.E.2d 795 (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, 267 S.E.2d 56 (1980) (state has exclusive jurisdiction over offense occurring in post office; although federal government operated post office, it had not accepted jurisdiction). Note that 40 U.S.C. 255, which requires an affirmative assertion of jurisdiction, partially preempts our state statute, G.S. 104-7, which states that jurisdiction automatically passes upon acquisition of title by the United States government. The question of whether jurisdiction has been accepted is one of federal law. *See State v. Smith*, 328 N.C. 161, 400 S.E.2d 405 (1991).

For property acquired before 1940, the existence of federal jurisdiction depends on the date of acquisition. Thus, for property acquired during certain time periods, exclusive federal jurisdiction was conferred automatically on acquisition. For a discussion of these rules, *see* ROBERT L. FARB, *ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA 19–20 & n.56* (Institute of Government, 2d ed. 1992) (finding that determinative time periods are whether property was acquired before 1887, between 1887 and 1905, between 1905 and 1907, between 1907 and 1940, and after 1940; also discussing jurisdictional issues on Cherokee Indian Reservation).

10.4 Personal Jurisdiction

A. Service

In civil cases, once the defendant is properly served, the court may enter judgment regardless of whether the defendant is present. *See* G.S. 1-75.3(b) (service ordinarily required for court to enter judgment in civil case). In criminal cases, in contrast, the defendant ordinarily must be present to be tried. *See also* G.S. 15A-1011(a) (guilty plea must be received by defendant in open court except in limited circumstances). Because the defendant must be present in a criminal case, technical defects in service are ordinarily not at issue. *See State v. McKenna*, 289 N.C. 668, 224 S.E.2d 537 (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, 414 S.E.2d 769 (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, 185 S.E.2d 422 (1971) (failure to serve warrant did not affect validity of trial on indictment); *cf.* G.S. 1-75.7 (service of summons not required in civil case if defendant makes general appearance).

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, § 23 of the North Carolina Constitution to be present at their trial. *See e.g., State v. Richardson*, 330 N.C. 174, 410 S.E.2d 61 (1991). A non-capital 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. *See id.* (defendant's voluntary and unexplained absence from court subsequent to commencement of trial constitutes waiver of right to presence). However, there is some law suggesting that if a defendant is outside North Carolina when the trial concludes, the court may lack jurisdiction to impose judgment on the defendant. *See State v. Stockton*, 13 N.C. App. 287, 185 S.E.2d 459 (1971) (dicta stating personal jurisdiction may be problem where trial court imposed judgment and sentence on defendant who was absent from state; declining to decide question because parties did not raise it).

A capital defendant may not waive the right to presence. *See e.g., State v. Huff*, 325 N.C. 1, 381 S.E.2d 635 (1989), *vacated on other grounds*, 497 U.S. 1021 (1990). In one case, where a capital defendant escaped during trial, a mistrial was declared, and the defendant was retried after he was captured. *See State v. Meyer*, 330 N.C. 738, 412 S.E.2d 339 (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 to fail to appear for trial of that felony and a misdemeanor to fail to appear for a misdemeanor trial. *See G.S. 15A-543*. A defendant who fails to appear may also be arrested and prosecuted for contempt of court. *See G.S. 15A-276*. DMV may revoke the drivers license of a person who fails to appear for trial on a motor vehicle offense. *See G.S. 20-24.1*.

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 -750*. Under the Uniform Act, the governor of North Carolina agrees to extradite any person charged with a crime who has fled from justice and is found in this state, and other states that have adopted the act agree to return persons 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 STATE OF NORTH CAROLINA EXTRADITION MANUAL* (Institute of Government, 1987).

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, 571, 167 S.E.2d 501, 502 (1969) (“The 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.”); *see also State v. Speller*, 345 N.C. 600, 481 S.E.2d 284 (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 Michigan v. Doran, supra*; *see also NORTH CAROLINA EXTRADITION MANUAL, supra*.

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. *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, 481 S.E.2d 284 (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 -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). As a matter of federal law, the demanding state's failure to comply with its provisions requires dismissal of the prosecution. *See Alabama v. Bozeman*, 533 U.S. 146 (2001). For further discussion of detainers, *see supra* § 7.1E (speedy trial and related issues).

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, -272. Generally, misdemeanors may be tried in superior court only upon appeal from district court. *See State v. Wall*, 271 N.C. 675, 157 S.E.2d 363 (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 traffic infraction may be taken in the superior court.

For a further discussion of limits on superior court trials of misdemeanors, *see infra* § 10.7B.

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. If there is a subsequent probation revocation hearing, it will be held in district court. *See* G.S. 15A-1344 (revocation hearing to be held in court that sentenced defendant and imposed probation).

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. However, if the district court revokes probation on a felony plea originally taken in district court, the defendant may have the right to appeal to superior court for a trial de novo. *See* G.S. 15A-1347.

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), -1414(b)(4), -1417(c); *In re Fuller*, 345 N.C. 157, 478 S.E.2d 641 (1996) (trial court entered improper judgment; defendant brought motion for appropriate relief in district court to have conviction set aside and verdict entered of not guilty); *State v. Morgan*, 108 N.C. App. 673, 425 S.E.2d 1 (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).

D. District Court Responsibilities for Felonies before Indictment

Generally. Often defendants are arrested on warrants prior to 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; G.S. 15A-606, -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 pre-trial release. The district court also will hold the probable cause hearing if one is required.

Motions. District court judges may hear motions prior to 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 competency examination or funds for a psychological expert. *See supra* Chapters 2 (competency) and 5 (experts). Or, the defendant may need access to records held by third parties and may want to move for their production and disclosure. *See supra* Chapter 4 (discovery). The district court has jurisdiction to hear such motions. *See State v. Jones*, 133 N.C. App. 448, 516 S.E.2d 405 (1999), *rev'd in part on other grounds*, 353 N.C. 159, 538 S.E.2d 917 (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. *See also State v. Lay*, 56 N.C. App. 796, 290 S.E.2d 405 (1982) (suppression motion granted by district court must be re-litigated in superior court).

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, -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, under specific 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 non-capital offenses (*see supra* Chapter 1 on pretrial release); 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, 393 S.E.2d 847 (1990) (deputy clerk of court has jurisdiction to issue search warrant valid within county of issue); *see also* G.S. 20-28.3(e1) (newly revised statute authorizes clerks to determine whether to release to “innocent owner” vehicle forfeited because driver was driving while impaired with revoked license for impaired driving offense).

10.6. Subject Matter Jurisdiction of Juvenile Court

A. Generally

The juvenile court has exclusive, original jurisdiction over all cases involving individuals who are alleged to be delinquent. *See* G.S. 7B-1601. “Delinquency” is defined as having committed an act, while at least six and not yet sixteen years of age, that would be a crime if committed by an adult. *See* G.S. 7B-1501(7). A person who commits a crime while age sixteen or seventeen is prosecuted as an adult. *See* G.S. 7B-1604(a); *State v. Smith*, 317 N.C. 100, 343 S.E.2d 518 (1986).

Once the juvenile court has obtained jurisdiction, it may retain jurisdiction until the juvenile’s eighteenth birthday—that is, the juvenile court may continue to impose punitive conditions, such as probation or commitment to a youth development center (formerly called “training school”), until the juvenile turns eighteen. In certain situations, the juvenile court may retain jurisdiction for a longer period. Where a juvenile has been adjudicated delinquent for first-degree murder, first-degree rape, or first-degree sex offense, the jurisdiction of the juvenile court, and thus the court’s ability to confine the juvenile, continues until the juvenile’s twenty-first birthday. Where a juvenile has been adjudicated delinquent for other serious felonies (Classes B1 through E), the juvenile court may retain jurisdiction until the juvenile’s nineteenth birthday. *See* G.S. 7B-1602.

The age of the juvenile at the time of the offense, rather than at the time of apprehension or trial, is the triggering mechanism for juvenile court jurisdiction. The case of a sixteen-year-old, for example, would be in juvenile court if the offense occurred before the juvenile's sixteenth birthday and in adult court if it occurred on or after his or her sixteenth birthday. If a person commits a delinquent act while at least thirteen and not yet sixteen, but is not apprehended or prosecuted until after his or her eighteenth birthday, the juvenile court may assert jurisdiction for limited purposes only. If the offense would have been a felony if committed by an adult, the juvenile court may assert jurisdiction for the purpose of conducting a probable cause hearing and determining whether to transfer the case to superior court for trial as an adult. If the juvenile court does not find probable cause or decides not to transfer the case, the charge must be dismissed; the juvenile court has no authority to impose a juvenile disposition on an adult. *See* G.S. 7B-1601(c), (d).

B. Transfer of Jurisdiction to Superior Court

Offenses Subject to Transfer. If a juvenile is at least thirteen years of age at the time of the offense, and the juvenile court finds probable cause to believe the juvenile has committed an act that would be a felony if committed by an adult, the juvenile court may transfer jurisdiction over the case to superior court. *See* G.S. 7B-2200. If jurisdiction is transferred, the juvenile will be indicted, tried, and punished as an adult. The juvenile court *must* transfer first-degree murder cases to superior court if the juvenile was at least thirteen at the time of the offense. Transfer of all other felonies is discretionary. *See id.* The juvenile is entitled to notice that the state will seek to transfer his or her case and is entitled to an evidentiary hearing on the issue of transfer. *See* G.S. 7B-2202, -2203; *see also State v. T.D.R.*, 347 N.C. 489, 495 S.E.2d 700 (1998).

The juvenile court is required to consider and make findings as to eight statutorily listed factors before making the transfer decision. Those eight factors include: the age and maturity of the juvenile, the juvenile's prior record, the seriousness of the offense, and whether the juvenile would likely benefit from facilities or programs available to the court as dispositional alternatives. *See* G.S. 7B-2203; *see also In re J.L.W.* 136 N.C. App. 596, 525 S.E.2d 500 (2000) (juvenile court must consider needs and rehabilitative potential of child in making transfer decision).

Related Offenses. If jurisdiction over a charge is transferred to superior court, the superior court obtains jurisdiction to try any joinable charge and "any greater or lesser included offense" of the transferred felony. *See* G.S. 7B-2203(c). This provision appears inconsistent with other provisions in the juvenile code, which condition superior court jurisdiction on the juvenile court's finding of probable cause. *See* G.S. 7B-2202 (juvenile court must find probable cause that offense charged has been committed prior to transferring offense to superior court). If you represent a juvenile whose case is transferred to the superior court, and a prosecutor seeks an indictment for a higher level of offense than the one transferred (robbery rather than larceny, for example, or first-degree sex offense rather than second-degree sex offense), you should challenge the jurisdiction of the superior court to try the elevated level of offense.

Subsequent Offenses. Once the juvenile court has transferred an offense to superior court and the juvenile has been convicted, the superior court has jurisdiction to try the juvenile as an adult for any subsequent offenses. *See* G.S. 7B-1604.

Appeal of Transfer Decisions. The juvenile court's decision to transfer a case to superior court is appealable to the superior court. *See* G.S. 7B-2603. If the superior court upholds the transfer order, the juvenile may appeal the transfer decision to the court of appeals, but only after the juvenile has been convicted in superior court. *See id.* To be sure to preserve the right to eventual appellate review of the transfer decision, defense counsel should timely appeal the district court transfer decision to superior court.

The statute does not address the issue of whether the juvenile waives his or her right to appeal a transfer decision by pleading guilty in superior court. Counsel may want to explicitly condition any plea of guilty in superior court on retaining the right to appeal the transfer order.

Double Jeopardy. If a juvenile is adjudicated delinquent in juvenile court, the prohibition against double jeopardy precludes the state from proceeding against the juvenile on the same charges in superior court. *See In re J.L.W.* 136 N.C. App. 596, 525 S.E.2d 500 (2000) (juvenile court erred by both adjudicating juvenile delinquent on certain charges and binding juvenile over to superior court on same charges).

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. Felonies

Generally. The superior court has original jurisdiction over all felonies, including the authority to hear motions before indictment. *See State v. Jackson*, 77 N.C. App. 491, 335 S.E.2d 903 (1985) (court notes jurisdiction of superior court prior to 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 prior to indictment. *See supra* § 10.5D. 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, 228 S.E.2d 507 (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* Chapter 8 of this manual on criminal pleadings (forthcoming).

Infamous Misdemeanors. Certain common law misdemeanors may be elevated to Class H felonies if the misdemeanor is “infamous,” committed “in secrecy and [with] malice,” or “committed with intent to deceive or defraud.” *See* G.S. 14-3(b); *see also State v. Glidden*, 317 N.C. 557, 346 S.E.2d 470 (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, 446 S.E.2d 599 (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, 459 S.E.2d 510 (1995).

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—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, 257 S.E.2d 426 (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, 194 S.E.2d 827 (1973) (appeal from district court conviction of 4th DWI offense will support superior court trial for lesser included offense of 1st DWI offense); *State v. Phillips*, 127 N.C. App. 391, 489, S.E.2d 890 (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, 387 S.E.2d 211 (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, 205 S.E.2d 322 (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).

The district court record must demonstrate the existence of a proper conviction. *See State v. Wesson*, 16 N.C. App. 683, 193 S.E.2d 425 (1972) (jurisdiction of superior court demonstrated by record that showed trial and sentence, notwithstanding that portions of the judgment form were left blank).

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.

No Jurisdiction to Try Transactionally Related Offenses. 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. *See State v. Hardy*, 298 N.C. 191, 257 S.E.2d 426 (1979) (upon appeal from conviction for assault on law enforcement officer, superior court does not have jurisdiction to convict defendant of resisting arrest by same officers); *State v. Caldwell*, 21 N.C. App. 723, 205 S.E.2d 322 (1974) (appeal from district court conviction of assault on law enforcement officer does not confer jurisdiction on superior court to try defendant for assault by pointing a gun).

Exceptions. 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, 203 S.E.2d 401 (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).

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) (if defendant is convicted of misdemeanor and appeals for trial de novo in superior court, state’s later indictment of defendant for felony assault arising out of same incident violates due process, regardless of whether prosecutor acted in good or bad faith); *State v. Bisette*, 142 N.C. App. 669, 544 S.E.2d 266 (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, 230 S.E.2d 563 (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.

In addition, 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, 239 S.E.2d 471 (1977). If, however, the defendant pleads guilty in district court without any plea agreement and then appeals, *Blackledge* should continue to bar the state from bringing felony charges.

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, 326 S.E.2d 336 (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).

Misdemeanors Initiated by Presentment. A presentment is a written accusation by the grand jury charging a defendant with 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 must be tried in superior court. *See State v. Petersilie*, 334 N.C. 169, 432 S.E.2d 832 (1993) (misdemeanor charges in superior court must be initiated by presentment); *accord State v. Guffey*, 283 N.C. 94, 194 S.E.2d 827 (1973). For more on presentments, *see* Chapter 9 of this manual on grand jury proceedings.

When a presentment is issued, the superior court obtains jurisdiction over the offense, notwithstanding that the defendant may already have been charged with the same offense in district court. *See State v. Gunter*, 111 N.C. App. 621, 433 S.E.2d 191 (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 charged 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, 384 S.E.2d 5 (1989).

Misdemeanor Guilty Pleas in Superior Court. Under 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. *See State v. Snipes*, 16 N.C. App. 416, 192 S.E.2d 62 (1972) (noting superior court jurisdiction to accept plea of guilty to misdemeanor charge following indictment for felony).

10.8 Jurisdiction of Individual Judges

A. Assignment of Rotating Judges

Superior court judges rotate through districts within their division every six months. *See* G.S. 7A-41, -41.1. District court judges are permanently assigned to a particular district or county. *See* 7A-130 through -135.

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 by the Administrative Office of the Courts to hold court there. *See Vance Construction Company v. Duane White Land Corp.*, 127 N.C. App. 493, 490 S.E.2d 588 (1997) (trial judge lacked jurisdiction because he had not been assigned to hold court in district where hearing was required to be held; consent of parties to hold hearing in district where judge was then presiding did not confer jurisdiction on court). Our appellate courts generally have been lenient regarding mere clerical errors concerning the assignment of judges to a particular district or session of court. *See State v. Eley*, 326 N.C. 759, 392 S.E.2d 394 (1990) (special superior court judge had jurisdiction to preside over trial despite failure of administrative assistant to properly file documents with court).

B. Issuing Rulings Out of County, Out of District, Out of Session

Ordinarily, 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 underlying hearing was held. *See infra* § 10.8E for definition of session of court. Thus, once a visiting judge rotates out of a district, he or she ordinarily loses jurisdiction over the matters in that district. With two exceptions discussed below, an order that is entered out of county, district, and session is void *ab initio*—that is, void from its inception. *See State v. Boone*, 310 N.C. 284, 311 S.E.2d 552 (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); *State v. Humphrey*, 186 N.C. 533, 120 S.E. 85 (1923) (stating rule); *see also State v. Sams*, 317 N.C. 230, 345 S.E.2d 179 (1986) (order entered without jurisdiction is “a nullity, and may be attacked either directly or collaterally, or may simply be ignored”).

In addition to the exceptions discussed below, specific statutes may modify the limits on individual judges' jurisdiction. *See, e.g., infra* § 10.8E (judge who presided at trial may hear 10-day MAR although he or she is no longer in district); § 10.8F (discussing authority of judges to hear state habeas corpus petitions).

C. Exceptions to Limits on Out-of-District and Out-of-Session Jurisdiction

Ex Parte Show Cause Orders. Ex parte show cause orders constitute an exception to the above rule. These may be entered out of county, district, and session. *See In re License of Delk*, 336 N.C. 543, 444 S.E.2d 198 (1994) (upholding authority of court to enter show cause order out of county, as no right of defendant is affected by entry of *ex parte* order out of county).

Orders Entered Following In-Session Hearing. A second exception covers situations where written orders are entered some time after a hearing has taken place. In criminal cases, our appellate courts have held that the trial court may enter its written order out of district and session, provided that the court, in the district and during the session when the hearing was held, either made an oral ruling in open court or filed its ruling with the clerk of court. *See State v. Smith*, 320 N.C. 404, 358 S.E.2d 329 (1987) (court upholds trial court's entry of written order six months after denying defendant's suppression motion in open court); *State v. Horner*, 310 N.C. 274, 311 S.E.2d 281 (1984) (where trial court rules on suppression motion at time of hearing, written findings may be made at later date); *see also Andrews v. Peters*, 89 N.C. App. 315, 365 S.E.2d 709 (1988) (judge who rotated out of district had jurisdiction to comply with court of appeals mandate to make additional findings in order).

In a line of civil cases, our appellate courts have interpreted Rule 6(c) of the Rules of Civil Procedure to permit a court to enter an order out of district and session as long as the hearing to which the order relates was held in session. *See Capital Outdoor Advertising, Inc. v. City of Raleigh*, 337 N.C. 150, 158-159, 446 S.E.2d 289, 294 (1994); *accord Minton v. Lowe's Food Stores, Inc.* 121 N.C. App. 675, 468 S.E.2d 513 (1996). It is unclear whether our courts will apply this rule in criminal matters.

Effect of Consent to Irregular Order. There is conflicting authority regarding whether parties may consent to an order issued out of county, district, and session. In some cases, our courts have held that the consent of the parties is irrelevant because consent cannot confer jurisdiction on the court. *See State v. Boone*, 310 N.C. 284, 311 S.E.2d 552 (1984) (defendant's failure to object to order entered out of district and session does not constitute waiver; court notes that the court's signing of order presents jurisdictional question that may be raised at any time); *see also Vance Construction Company v. Duane White Land Corporation*, 127 N.C. App. 493, 490 S.E.2d 588 (1997) (jurisdiction cannot be conferred on court by consent, waiver, or estoppel; thus, order void where entered by trial court not assigned to hold court in district in which hearing was held); *State v. Earley*, 24 N.C. App. 387, 210 S.E.2d 541 (1975) (consent cannot confer jurisdiction).

In another line of cases, all involving civil matters, our Supreme Court has held that the parties can consent to the entry of an order issued outside the county or district where the matter is pending as long as the consent is “in a writing signed by the parties or their counsel,” or “the judge recites the fact of consent in the order or judgment he directs to be entered.” *Capital Outdoor Advertising*, 337 N.C. at 155, 446 S.E.2d at 292 (quoting *Godwin v. Monds*, 101 N.C. 354, 7 S.E. 793 (1888)). Again, it is unclear to what extent this rule applies in criminal matters.

D. In Chambers Jurisdiction

Generally. Jurisdiction in chambers refers to the court’s authority to hear or rule on matters outside of the courtroom or out of session, usually in the judge’s private office or home. *See House of Style Furniture Corp. v. Scronce*, 33 N.C. App. 365, 235 S.E.2d 258 (1977) (definition of “in-chambers” jurisdiction). In-chambers jurisdiction should be used sparingly. In-chambers proceedings generally are not recorded, and the defendant typically is not present. It is usually best not to allow decisions to be made that may affect your client’s legal interests, without their participation and without any reviewable record. If you object to a matter being heard in chambers, you may invoke your client’s constitutional right to presence as well as N.C. Const. Art. I, §18, which provides that “all courts shall be open.” *See State v. Callahan*, 102 N.C. App. 344, 401 S.E.2d 793 (1991) (noting defendant’s and public’s right under Article I, §18 to public trials); *In re Nowell*, 293 N.C. 235, 237 S.E.2d 246 (1977) (same).

One situation in which in-chambers jurisdiction should be invoked by the defendant, however, is to make *ex parte* requests in a non-capital case for funds for the appointment of an expert (in a capital case, counsel should apply to the Director of the Office of Indigent Defense Services).

Superior Court. Superior court judges have jurisdiction to hear matters and enter orders in chambers if the following conditions are met:

- The judge is either a resident judge of the district or a rotating judge exercising jurisdiction during the session for which he or she has been assigned to hold court in that district. *See 7A-47, -47.1; Baker v. Varser*, 239 N.C. 180, 79 S.E.2d 757 (1954) (superior court judge does not have jurisdiction to hear petition for mandamus in chambers in district in which he has not been assigned to hold court); *In re Brooks*, 93 N.C. App. 86, 376 S.E.2d 250 (1989) (nonresident superior court judge has same powers in chambers as resident judge until session for which he was appointed has adjourned).
- The parties consent to be heard in chambers, unless the court is issuing an order that may be issued *ex parte*. *See In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962) (consent of all parties conferred jurisdiction on the court to hearing in chambers); *State v. Ballard*, 333 N.C. 515, 428 S.E.2d 178 (1993) (defendant entitled to proceed *ex parte* for funds for expert).
- The hearing is a matter not requiring a jury or for which the right to a jury has been waived. *See G.S. 7A-47, -47.1.*

Note that a resident superior court judge has in-chambers jurisdiction whenever present in his or her home district. A special superior court judge likewise has in-chambers jurisdiction whenever present in his or her district of residence. However, a regular superior court judge assigned on a rotating basis to hold court in a district outside of his or her home district has in-chambers jurisdiction in that district only during the session to which he or she has been assigned. *See* G.S. 7A-47, -47.1.

District Court. The jurisdiction of district court judges to hear motions in chambers is governed by G.S. 7A-191 and -192. Under G.S. 7A-191, all trials on the merits must be held in open court, but “all other proceedings” may be held in chambers with the consent of “all parties affected thereby.” District courts also have the authority to hear matters in chambers if the defendant has the right to proceed *ex parte*, such as with requests for funds for experts, discussed above.

G.S. 7A-192 provides further that 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. *See Stroupe v. Stroupe*, 301 N.C. 656, 273 S.E.2d 434 (1981) (judgment of district court void where chief district court judge had not authorized him to hear motions or enter interlocutory orders in chambers); *Austin v. Austin*, 12 N.C. App. 286, 183 S.E.2d 420 (1971) (trial court’s order entered in chambers vacated where record did not show that the chief district court judge had granted him the authority to hear motions or enter interlocutory orders in chambers). Some chief district court judges have granted blanket authority to district court judges in their district to hear matters in chambers. Other chiefs 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 do so.

E. Sessions of Court

Definition. A session of court is “the time during which it actually sits for the transaction of judicial business.” BLACK’S LAW DICTIONARY 1230 (6th ed. 1990). In superior court, sessions are generally a week long, while in district court a session is usually one day. *See Capital Outdoor Advertising, Inc. v. City of Raleigh*, 337 N.C. 150, 446 S.E.2d 289 (1994) (“session of court” in superior court refers to typical one-week period for holding of court; “term of court” refers to typical six-month assignment of superior court judge to particular district or districts); *Routh v. Weaver*, 67 N.C. App. 426, 313 S.E.2d 793 (1984) (district court sessions generally last one day). The expiration of a “session” is marked by the expiration of the time set for the session or by the announcement in court that court is adjourned *sine die* (without assigning a day for a further hearing).

Extension of Session to Complete Trial. If a felony trial is not finished by the Friday afternoon that a session of court ends, the superior court judge presiding over the trial may extend that session of court as needed. *See* G.S. 15-167 for the procedural details of such an extension. There is no specific statute authorizing the district court to extend a

session in criminal cases to complete a trial, and the authority of the district court to do so is unclear. *Cf.* G.S. 7B-2406 (allowing juvenile court to continue adjudicatory hearing in delinquency case to receive additional evidence); *State v. Coats*, 17 N.C. App. 407, 194 S.E.2d 366 (1973) (after witness had testified in district court trial, judge continued trial for two weeks; continued trial constituted retrial in violation of double jeopardy).

Authority to Modify Sentence During and After Session. The court has authority to modify judgments during the original session of court. *See State v. Sammartino*, 120 N.C. App. 597, 463 S.E.2d 307 (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 upon a motion for appropriate relief, the trial judge has the discretion to modify a 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, 425 S.E.2d 1 (1993) (applying G.S. 15A-1414); *see also* G.S. 15A-1413(a) (judge who presided at trial may hear MAR 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 of reasons defendant could obtain relief). After the period for filing a 10-day MAR has expired, the 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, 523 S.E.2d 417 (2000) (interpreting G.S. 15A-1415, and -1417); *State v. Jarman*, 140 N.C. App. 198, 535 S.E.2d 875 (2000) (court had authority out of term to correct clerical error in judgment).

Prayer for Judgment Continued. When the court continues prayer for judgment, it has not imposed judgment against the defendant and retains jurisdiction to impose judgment and sentence at a later date. *See State v. Pledger*, 257 N.C. 634, 127 S.E.2d 337 (1962) (if judgment is continued without imposition of conditions, court retains jurisdiction to sentence defendant at later date). However, if conditions “amounting to punishment” are imposed, the PJC is treated as final judgment of the court and thus cannot be modified except as discussed above. *See State v. Brown*, 110 N.C. App. 658, 430 S.E.2d 433 (1993) (conditions other than payment of costs and requirement to abide by the law constitute “punishment”; court could not impose different sentence at later date).

Civil and Criminal Sessions. A session of court may be designated criminal, civil, or mixed. *See* G.S. 7A-49.2. Criminal matters may not be heard during civil sessions, (although a judge still has in-chambers jurisdiction over matters that may be heard in chambers). *See In re Renfrow*, 247 N.C. 55, 100 S.E.2d 315 (1957) (noting limits on hearing criminal matters at civil sessions); *Whedbee v. Powell*, 41 N.C. App. 250, 254 S.E.2d 645 (1979) (same).

F. 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 state writ of habeas corpus. *See* N.C. CONST. Art. I, § 21; G.S. 17-1. One situation where habeas petitions have been used is when the petitioner alleges that the court lacked jurisdiction to impose judgment. An

application for a writ of habeas corpus may be made to *any* appellate or superior court judge in the state, in *any* district, at *any* time court is in session. *See* G.S. 17-6. 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, 126 S.E.2d 581, 585 (1962).