

## DISTRICT COURT PLEADINGS “TO GO”

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### What are they? **CAMCSI!**

Citation (15A-302(b), 15A-922(c)),  
Arrest Warrant (15A-304(b)),  
Magistrate’s Order (15A-511(c)),  
Criminal Summons (15A-301(b)),  
Statement of Charges (15A-922(a))  
& Information & indictment!

Misdemeanor Pleadings (N.C. Gen. Stat. §15A-921, 922)

### What do I Say:

(Defective Pleading = missing element of correct charge or allege wrong charge, Ex’s: RDO (no duty) or Prost’n should be CAN)

“Objection, Your Honor...I move to dismiss. The pleading in the case is defective. It fails to properly allege the elements of a *(insert offense)*.”

**When to Object (& Why) → Do you have a Fatal Defect or Fatal Variance?... DURING TRIAL**

**FATAL DEFECT** Pleading fails to charge offense properly → Object after witness sworn in

- Generally, any objection of defense that can be addressed pre-trial is addressed then, 15A-952(a)—but don’t!
- Wait until **after arraignment, at least!** Why?...
  - The State **cannot** fix the defect by filing a *misdemeanor statement of charges* where it would **change the nature of the offense** after arraignment (15A-922(e)).
  - \*Also note—*amendments*: State may **amend** pleading, incl. a misd. statement, if doesn’t change nature of offense prior to or after final judgment (15A-922(f)).---
- **Nature of offense** changed when—misd. statement (or amendment) changes to *another charge* or makes a “substantial alteration” of the charge as set out in case law (310 NC 596, *see also* “Specific Offense Reqts”).
- Wait until **after witness sworn?** Not necessary but good practice...
  - \*This is when **jeopardy** attaches. (“In a nonjury trial, jeopardy attaches when the court begins to hear evidence,” 420 US 377. However, a dismissal based on fatal variance or a fatal defect does not create a DJ bar to subsequent prosecution, 156 NCA 671.)
  - IN PRACTICE: DA/PO may not pursue once J. attaches. | TO REVIEW PLEADING: See *back side*: 15A-924(a) & Specific Offenses Reqts
- Statute also says can make defective pleading motion “at any time,” 15A-952(d). |

**NOTE: REVIEW YOUR PLEADING FOR DEFECTS BEFORE TRIAL → → BACK SIDE →**

**FATAL VARIANCE** The proof at trial (evidence presented) is different from what was alleged in pleading → Object at close of State’s evidence & at close of ALL the evidence!!

- “It has long been the law of this state that a defendant must be convicted, if convicted at all, of the particular offense charged in the warrant or bill of indictment.”
- “The question of variance...is based on the assertion, not that there is no *proof* of a crime having been committed, but that there is none which tends to prove that the particular offense charged in the bill has been committed. *In other words, the proof does not fit the allegation, and therefore, leaves the latter without any evidence to sustain it.*”  
State v Faircloth, 297 NC 100 (1979)

**What if the state files a Misdemeanor Statement of Charges BEFORE TRIAL? 15A-922(a),(b)&(d)**

The state can file a **Misdemeanor Statement of Charges** (supersedes all previous pleadings → becomes the pleading!) to add offenses or change the original offense before arraignment under **15A-922(d)** → You are entitled to **a motion to continue of at least “3 working days”** from the time it is filed or D is 1st notified (whichever is later) unless the “judge finds that the statement...makes no material change in the pleadings” **15A-922(b)(2)** \*PRACTICAL NOTE: A 3-day MTC may = a 30 day MTC & be wise, esp. if case turns on a civ. witness not inclined to return or to meet with your client again.

**Are there additional limitations on Amendments?**

**Yes!** State 1) must amend in writing (10 NCA 443) & 2) cannot amend original charge to greater offense (add aggravating factors w/ felonies, e.g. charged with (M) Oper. MV to Elude Arrest & State amended to add aggravating factor to become (F) Oper. MV Elude Arrest – can’t do! Elevating offense = changing its nature! 154 NCA 332)

**“DUE PROCESS IS NOT A TECHNICALITY” THE MOTION GOES BEYOND STATUTES.**

**How do I respond** to arguments that pleading defects are “just a technicality”/minor statutory violations?? **Constitution! Constitution! Constitution! DP, DJ.** → A pleading “must allege lucidly and accurately all the essential elements of the [crime]...charged.” This ensures: 1) identification of offense charged, 2) D on notice of what is alleged so he can prepare for trial, 3) D not put in jeopardy twice for same charge & 4) proper sentencing, 357 N.C. 257, 166 N. C. App. 202

**STATUTORY REQUIREMENTS --&-- CASE LAW FOR SPECIFIC OFFENSES...**

**15A-924(a) IS YOUR FIRST STOP.** It will tell you what all pleadings must contain. 15A-922 controls changes to pleadings by amendment or misdemeanor statement (referenced on *front* side).

**STATUTORY REQ'TS (all pleadings)**

The pleading is facially defective; it fails to charge offense properly. 15A-924(a)

“(a) A criminal pleading must contain:

- (1) Name or other identification of D  
→ name totally unknown, fatally defective, 302 NC 613 → name in caption, not body ok, 77 NCA 583 → ok to amend & doctrine of *idem sonans*, 123 NCA 361
- (2) Separate count for each offense charged
- (3) County where offense took place  
→ establishes venue, not fatal if not material
- (4) Date or time period when offense took place → grounds to dismiss if time is “of the essence,” e.g. SOL or alibi, 307 NC 645 and the error misled D to his prejudice, 162 NCA 715  
→ amendments-if time not of essence, amendment does not change nature of offense!
- (5) Plain & concise factual statement supporting every element of offense charged! (What are charge’s elements?) – says must be “with sufficient precision clearly to apprise the D or Ds of the conduct” which is subject of accusation
- (6) Reference to the statute or ordinance D allegedly violated  
→ not grounds for dismissal, (not fatal-body of pleading properly alleges crime & amend ok, 362 NC 169) → *but see* ordinances: 160A-79, 153A-50, 283 NC 705, 33 NCA 195.

Warrant failing to charge any offense: The trial court must dismiss the charge against a D if the criminal pleading fails to charge offense, *State v. Madry*, 140 NCA 600 (2000) (warrant insufficient b/c “it did not adequately apprise D of the specific offense with which he was being charged”).

General rule – pleading for statutory offense is sufficient if charges offense in words of statute. (161 NCA 686) Exceptn: the words of statute do not unambiguously set out all elements (238 NC 325, also 15A-924(a)(5)), e.g. PDP (162 NCA 268, What is the “PDP?” Officer must describe!), Prostitution charged under subsection (7) (see 244 NC 57).

**SPECIFIC OFFENSE REQ'TS:**

**Larceny & Embezzlement**—Grounds for dismissal if pleading fails to id person w/ property interest or legal entity capable of owning property, e.g. must say “Walmart, Inc.” → ask: what is the legal name of the entity in my case? = element! → “takes personal property belonging to another” Remember—larceny can occur if taken from someone in lawful poss’n of item at time (e.g. bailee) or *in loco parentis* (137 NCA 553). Generally, can’t amend! (162 NCA 350) (149 NCA 588) Fatal variance if—person named not owner in evidence (282 NC 249) **Exception: Shoplifting b/c offense always commitd against a store (18 NCA 652)**

**FTRRP**—2 statutes: **14-167 & 14-168.4** (contract w/ purchase option). Charge correct statute? Can’t amend

**RDO**—must id PO by name, duty & how D R/D/O’d in factual allegations (262 NC 472, 263 NC 694). (Rem-onstrating w/ PO ok, 278 NC 243, 118 NCA 676)

**Disorderly Conduct**—do factual allegations support a DC? D’s conduct “fighting words” or gesture “intended & plainly likely to provoke violent retaliation & thereby cause a breach of the peace?” (14-288.4, 282 NC 157) “MFs ought to be arrested.”

**PDP**—Pleading must describe PDP item in allegation to “sufficiently apprise D,” error to allow amend (267 NC 755, common household item could be PDP)

**Prostitution or CAN?**—14-203 defines prostitution as act of *sexual intercourse* & nothing else. Sexual intercourse is, “The actual contact of the sexual organs of a man and a woman, & an actual penetration into the body of the latter.” If legislature wishes include w/in 14-204 other sexual acts (cunnilingus, fellatio, masturbation, sodomy) it should do so w/ specificity since 14-204 is a criminal statute. 307 N.C. 692.

Remember! Solicitation to commit I (F) is a Cl. 2 (M), 14-2.6 & Cl. 2 doesn’t count toward (F) sentencing record level, but Cl. 1 does. 15A-1340.14(b)(5).

**Assault or Assault by Show of Violence**—assault by show of violence must allege more than assault: (1) a show of violence by D; (2) “accompanied by reasonable apprehension of immediate bodily harm or injury on the part of the person assailed”; (3) causing the vic “to engage in a course of conduct which she would not otherwise have followed.” 146 NCA 745

**B&E**—must id bdlg. w/ particularity, 267 NC 755

**Shopl/Poss Marij/Worth Check**—must allege facts showing subseq crime to subject D to higher penalty, 237 NC 427, 21 NCA 70