

CRIMINAL PLEADINGS IN DISTRICT COURT

WHAT IS IT: The “charging instrument” or document the State uses to charge D with a crime.

EXAMPLES:

- **Citation**-Issued by officer who must have probable cause that D committed a misdemeanor or infraction. 15A-302(b). D can object to being tried on a citation, 15A-922(c), but State can then file statement of charges. If magistrate signs, it becomes a magistrate’s order.
- **Magistrate’s Order**-Issued by magistrate when a person has been arrested without a warrant and magistrate finds probable cause. 15A-511(c).
- **Criminal Summons**-Issued by a judicial official on finding of probable cause. Directs D to appear in court; D is not taken into custody. 15A-303.
- **Arrest Warrant**-Issued by judicial official on finding of probable cause. Directs officers to arrest D. 15A-304(b).
- **Statement of Charges**-Prepared by prosecutor to charge a misdemeanor. Supersedes all previous pleadings. 15A-922(a).
 - Before arraignment, prosecutor may file to amend charge or add new charges. 15A-922(d). D entitled to continuance unless no material change. 15A-922(b)(2).
 - After arraignment, prosecutor may file only if does not change nature of offense. 15A-922(e). D entitled to continuance unless no material change. 15A-922(b)(2).

BASIC REQUIREMENTS FOR CONTENTS: 15A-924(a).

- Name or other identification of D;
- Separate count for each offense charged;
 - Move to require State to elect where there is duplicity. 15A-924(b).
- County where offense took place;
- Date or time period when offense took place.
 - Grounds to dismiss where time is of the essence, ie, D has alibi. 307 NC 645.
- Plain and concise factual statement supporting *every* element of offense charged;
- Reference to the statute or ordinance that D allegedly violated.
 - Error or omission is not grounds for dismissal. 15A-924(a)(6).
 - *But see* “Specific Offenses” below regarding ordinance violations.

[Note: 15A-924(a)(7) applies to felonies only. State does not have to allege in pleading the aggravating factors it intends to use in DWI sentencing.]

*Court MUST dismiss for failure to meet requirements, unless amendment allowed. 15A-924(e).

PROBLEMS WITH PLEADING:

- **Facially Defective**-Fails to charge offense properly.
 - Fair Notice-Vague language violates due process right to be informed of accusation D must defend against.
 - Jurisdiction-Certain defects deprive court of jurisdiction to hear matter.
 - Failure to include element. 291 NC 586
 - Failure to name victim. 338 NC 315.
 - Jeopardy Protections-Would not enable D to raise double jeopardy bar to subsequent prosecution for same offense. 312 NC 432.
- **Fatal Variance**-State’s proof at trial is different from what is alleged in pleading. 297 NC 100.
- *Remedy is dismissal. 15A-952.

WHEN TO MOVE TO DISMISS:

- For facial defect: typically, pre-trial. 15A-952(a).
 - Wait until arraignment. Then, State can NOT correct by filing a statement of charges where it would change the nature of the offense. 15A-922(e).
 - Motion concerning jurisdiction or failure of pleading to charge offense can be made at any time. 15A-952(d). But best practice is to make motion right after arraignment.
- For fatal variance: at close of State's evidence and at close of all evidence.

SPECIFIC OFFENSES:

- **Larceny**
 - Pleading must correctly name owner of stolen property. 289 NC 578; 671 SE 2d 357.
 - Fatal variance if person named in pleading is not owner. 282 NC 249.
 - But sufficient if person named was in lawful possession. 35 NCA 64; 673 SE 2d 718.
 - Grounds for dismissal if pleading fails to identify legal entity capable of owning property. 162 NCA 350 (pleading fatally defective where it named "Faith Temple Church of God" instead of "Faith Temple Church-High Point, Inc.")
- **Break and Enter**-Must identify building with reasonable particularity. 267 NC 755.
- **Carry Concealed Weapon**-Description of weapon in indictment was "surplusage." 665 S.E.2d 136, *aff'd*, 363 N.C. 251.
- **Possess Drug Paraphernalia**-Must describe item alleged to be paraphernalia. 162 NCA 268 (error to allow amendment from "can" to "brown paper container").
- **Resist, Delay, Obstruct**-Must identify officer by name, indicate duty being discharged and how D resisted/delayed/obstructed. 262 NC 472.
- **Assaults**-Must identify victim correctly; error to allow amendment to change.
 - Fatal variance where pleading alleged victim was "Gabriel Henandez Gervacio" and evidence revealed name was "Gabriel Gonzalez." 349 NC 382.
- **Shoplifting/Possess Marijuana/Worthless Check**-Pleading must allege facts showing the offense is a subsequent crime in order to subject the accused to the higher penalty. 237 NC 427; 21 NCA 70.
- **Ordinance Violations**-Per 15A-924(a)(6), failure to cite ordinance is not grounds for dismissal. But see 160A-79 (requirements for pleading city ordinance); 153A-50 (same for county ordinances); 283 NC 705 (dismissal where State failed to plead and prove ordinance where no section number or caption); 33 NCA 195 (dismissal where State failed to allege caption or contents).

AMENDMENT:

- State can NOT amend if it changes the nature of the offense. 15A-922(f).
 - But State can prepare statement of charges prior to arraignment. 15A-922(d).
 - State can NOT amend to convict of a greater offense than the one originally charged or to add aggravating factors. 154 NCA 332.
- State must amend in writing. 10 NCA 443.

PRACTICE TIPS:

- ✓ Examine pleadings closely for defects on face such as missing elements, failure to identify D or victim, or vague language that D can not defend against.
- ✓ Compare allegations in pleading to State's proof at trial to make sure they match up.
- ✓ If the State tries to amend, object (after arraignment) where the nature of the offense would be changed.