

UNDERSTANDING AND USING CHARGING DOCUMENTS

Jeff Welty
School of Government
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Outline

- Types of pleadings
- Content of pleadings
- Identifying defects
- Addressing defects

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But First . . . It's Quiz Time!



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Types of Pleadings

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7 Types of Pleadings

- 5 begin prosecution in district court
 - Citation
 - Criminal Summons
 - Arrest Warrant
 - Magistrate's Order
 - Statement of Charges (used to supersede)
- 2 begin prosecution in superior court
 - Indictment
 - Information

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Citation

- **See:** G.S. 15A-302
- **Who:** Officers
- **For:** infractions and misdemeanors
- **Note:** Defendants may object to trial on citation



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Criminal Summons

- **See:** G.S. 15A-303
- **Who:** Any justice, judge, magistrate, or clerk
- **For:** infractions, misdemeanors, and felonies
 - ▣ Limited use for felonies in practice
- **Note:** Requires probable cause supported by oath or affirmation

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Arrest Warrant

- **See:** G.S. 15A-304
- **Who:** Any justice, judge, magistrate, or clerk
- **For:** misdemeanors and felonies
 - ▣ Not infractions
- **Notes:**
 - ▣ Requires probable cause supported by oath or affirmation
 - ▣ Requires finding that the defendant should be taken into custody

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Magistrate's Order

- **See:** G.S. 15A-511(c)
- **Who:** Any justice, judge, magistrate, or clerk
- **For:** misdemeanors and felonies
 - ▣ Not infractions
- **Notes:**
 - ▣ Used when a suspect is arrested without a warrant
 - ▣ Requires probable cause supported by oath or affirmation

NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DAC or MCP, use AOC-CR-602. If supervised probation, use AOC-CR-604.

MAGISTRATE'S ORDER - MISDEMEANOR ONLY			
<small>The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.</small>		<small>Date</small>	<small>Signature Of Magistrate/Deputy/Assistant/CSC</small>
COURT USE ONLY			
<small>District Attorney</small>	<small>Attorney For Defendant At Time Of Trial Or Plea</small>	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained	PRIOR CONVICTIONS: <small>None () 1 () 2 () 3 () 4 () 5 () 6 ()</small>

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Statement of Charges

- **See:** G.S. 15A-922(b)
- **Who:** Prosecutor
- **For:** Misdemeanors (and presumably infractions)
- **Notes:**
 - ▣ Supersedes prior charging instruments, must re-allege any charges you want to keep
 - ▣ Usually used prior to arraignment, limited afterwards
 - ▣ Defendant is entitled to 3 days to prepare if it makes substantial changes
 - ▣ Where should you look for “go by” language?

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Indictment



- **See:** G.S. 15A-641 et seq.
- **Who:** Grand jury
- **For:** Generally, felonies and related misdemeanors
- **Notes:**
 - ▣ Can initiate a prosecution, or continue a prosecution bound over to superior court
 - ▣ Required for felonies unless the defendant waives

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Information

- **See:** G.S. 15A-541 et seq.
- **Who:** Prosecutor
- **For:** Any criminal offense, but usually for felonies and related misdemeanors
- **Notes:**
 - ▣ Requires waiver of indictment
 - ▣ Typically used with plea bargains
 - ▣ Necessary for felony pleas in district court

WAIVER		
I, the undersigned defendant, waive the finding and return of a Bill of Indictment into Court and agree that the case may be tried upon the above information.		
Date	Signature Of Defendant	Signature Of Attorney For Defendant

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Content of Pleadings

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Purposes

- “The purpose of [a criminal pleading] is to put the defendant on notice of the offense with which he is charged and to allow him to prepare a defense to that charge.” State v. Lancaster, 137 N.C. App. 37 (2000).

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Statutory Requirements

- G.S. 15A-924 states that pleadings must include
 - Defendant's name
 - Approximate date
 - Separate count for each offense
 - Concise factual statement that supports each element
 - County
 - Statutory citation
- Pleadings generally must be signed and dated by whoever issues them

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Level of Detail

- G.S. 15A-924(a)(5) requires a “plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense . . . with sufficient precision clearly to apprise the defendant . . . of the conduct which is the subject of the accusation.”
- “In general, [a charging document] couched in the language of the statute is sufficient to charge the statutory offense.” State v. Blackmon, 130 N.C. App. 692 (1998).

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Special Rules

- Citations are judged by a “different” and more “relaxed” standard of sufficiency
 - ▣ State v. Jones, 371 N.C. 548 (2018)
- Statutory charging language for DWI: G.S. 20-138.1(c)
- Statutory (“short form”) charging language for murder, rape, sex offense, and more: G.S. 15-144 et seq.
- Requirement to allege nonstatutory aggravating circumstances in felony cases: G.S. 15A-924(a)(7), 15A-1340.16(a)(4)
- And more: habitual felon indictments, other recidivist offenses, felon in possession . . .

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Identifying Defects

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Common Defects

- ❑ Missing elements
- ❑ Incorrect date of offense
- ❑ Incorrect or incomplete name of victim
- ❑ Incorrect drug name
- ❑ Failure to allege “feloniously” when the offense is a felony



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Example 1

- ❑ The defendant was charged with, and convicted of, Class I felony possession of marijuana based on the following indictment:
THE JURORS FOR THE STATE UPON THEIR OATH PRESENT that on or about the 18th day of July, 2001, in Mecklenburg County, [defendant] did unlawfully, willfully and feloniously possess a controlled substance, marijuana, which is included in Schedule VI of the North Carolina Controlled Substances Act.
- ❑ What’s the defect?
- ❑ Failure to allege that the defendant possessed more than 1.5 ounces of marijuana, which is necessary for the offense to be a felony rather than a misdemeanor. *State v. Partridge*, 157 N.C. App. 568 (2003).

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Example 2

- The defendant was charged with, and convicted of, failure a sex offender to notify the Sheriff of a change of address based on the following indictment:

The jurors for the State upon their oath present that on or about [8 June 2010] and in [Gaston County] the defendant named above unlawfully, willfully and feloniously did fail to provide written notice or notify the Gaston County Sheriff's Department within three business days after a change of address as required by the North Carolina General Statute 14–208.9.

- What's the defect?
- Failure to allege that the defendant was a person required to register as a sex offender. State v. Barnett, 223 N.C. App. 65 (2012)

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Example 3

- The defendant was charged with, and convicted of, larceny from a merchant based on the following indictment:

The jurors for the State upon their oath present that on or about the date of offense shown and in Henderson County the defendant named above unlawfully, willfully and feloniously did remove a component of an anti-theft or inventory control device to prevent the activation of the anti-theft or inventory control device. This act was committed in an effort to steal merchandise from Belks of Hendersonville, NC.

- What's the defect?
- “[T]he description ‘merchandise’ is too general to identify the property allegedly taken by Defendant.” Also, the indictment alleges “an effort to steal,” not a completed theft. State v. Justice, 219 N.C. App. 642 (2012).

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Example 4

- The defendant was charged with, and convicted of, armed robbery based on the following indictment:

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above, the defendant named above did unlawfully, willfully and feloniously steal, take and carry away another's personal property, U.S. Money from PNC Financial Services Group, Inc., . . . when a bank employee, Stacy Phillips was present. The defendant committed this act by way of it reasonably appearing to the victim Stacy Phillips that a dangerous weapon was in the defendant's possession, being used and threatened to be used by communicating that he was armed to her in a note with demands and instructions for her to complete, whereby the life of Stacy Phillips was threatened and endangered.

- What's the defect?
- Alleging that it "reasonably appear[ed]" that the defendant possessed a dangerous weapons "is simply not equivalent to an allegation that defendant actually possessed a weapon." State v. Murrell, 370 N.C. 187 (2017).

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Not Every Defect is Fatal

- G.S. 15-153: lack of "informality or refinement" is not a fatal defect
- G.S. 15-155: "stating the time imperfectly" is not a fatal defect.
- G.S. 15A-924(a)(4): error as to, or omission of, date and time is not a fatal defect - unless time is "of the essence"
- G.S. 15A-924(a)(6): failure to cite the statute at issue correctly is not a fatal defect
- What about omission of an element?
 - State v. Rankin, 371 N.C. 885 (2017) (reaffirming prior law that a charging document "INP<>D<E>I Q<E> R C@I IOUH DN<IT'@N@IO<G @GH @IONJACC@>MH @DJ F=@<C<NB@?" and that the remedy is dismissal)
 - In re J.U., 384 N.C. 618 (2023) (citing the dissent in Rankin and stating that "the common law rule that defective indictments rob a court of jurisdiction is an obsolete rule that detrimentally impacts the administration of justice in our State")

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Addressing Defects

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Pleading Defects: Options

- Do nothing
- Amend
- Supersede
- Dismiss and re-charge



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Do Nothing

- OK for very minor defects
 - ▣ Misspelled names
 - ▣ Date or time mistakes
- May correct minor defects even though not required

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Amend

- G.S. 15A-922(f): May amend at any time, even after final judgment
- Procedure not specified but at least date and memorialize the authority for the amendment

COUNT I

THE JURORS FOR THE STATE upon their oath present that the defendant named above and in the County named above unlawfully, willfully and feloniously and on or about May 1, 2013 did knowingly possess and have within his custody & control and with the intent to manufacture, sell and deliver a controlled substance, to wit: ~~Methylmethamphetamine~~, which is included in Schedule I of the North Carolina Controlled Substances Act. 4- Methylethcathinone

*Amendment Allowed
Per 12-19-13 order of Judge Bragg.*

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Amendments Can Be Confusing

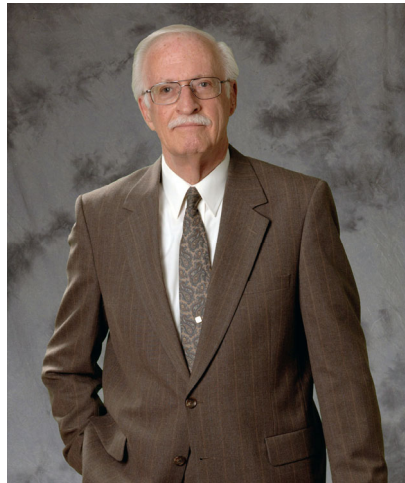
An amendment can't "change the nature of the offense charged." G.S. 15A-922(f). A similar standard applies to indictments. But what does it mean?

NOT ALLOWED	ALLOWED
Changing drug paraphernalia allegation from "a can designed as a smoking device" to "a brown paper container," <u>State v. Moore</u> , 162 N.C. App. 268 (2004).	Changing armed robbery allegation from knife to firearm, <u>State v. Joyce</u> , 104 N.C. App. 558 (1991).
Changing the intended felony in felony B/E from murder to AWDWIKISI, <u>State v. Silas</u> , 360 N.C. 377 (2006).	Changing the underlying violation in misdemeanor death by vehicle, <u>State v. Clements</u> , 51 N.C. App. 113 (1981).

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Amendments: A General Approach

- Amendments may not charge a "factually different offense" or a "legally separate offense"
 - Wayne R. LaFave et al., 5 Criminal Procedure § 19.5(b)
- Factually different
 - Different event – time/place/parties
 - Different "theory of the case"
- Legally different
 - Different crime, different elements



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Supersede

- ❑ Misdemeanors: use a statement of charges
- ❑ Felonies: obtain a new indictment

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Exercise!



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Dismiss and Re-Charge

- No double jeopardy problem if
 - ▣ Pretrial, or
 - ▣ Pleading fatally defective
- Use citation, summons, or warrant, not statement of charges
- Be aware of the two-year misdemeanor statute of limitations in G.S. 15-1

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Questions?



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Let's Review the Quiz



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