

# Criminal Non-Jury Trials

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## North Carolina Constitution Article I, Section 24

**Right of jury trial in criminal cases.** No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

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## North Carolina Constitution Article I, Section 24

- Limitation codified in NCGS §15A-1201
- North Carolina last state which did not allow waiver of jury trials in criminal cases

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## North Carolina Constitution Article I, Section 24 (amended 2014)

### **Right of jury trial in criminal cases.**

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court, **except** that a person accused of any criminal offense for which the **State is not seeking a sentence of death in superior court may, in writing or on the record in the court and with the consent of the trial judge, waive jury trial, subject to procedures prescribed by the General Assembly.** The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo. (2013-300, s. 1.)

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## **Right to waive jury trial** **Article I, Section 24 (amended 2014)**

- State not seeking sentence of death
- In writing or on the record
- With the consent of the trial judge
- Subject to procedures prescribed by General Assembly

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## **NCGS §15A-1201(a)-(e)**

N.C. General Assembly amended statute to set out procedures for waiving a jury trial

- Effective 12/1/14-arraignments on or after this date
- Effective 10/1/15-waivers on or after this date

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## **NCGS §15A-1201**

effective 12/1/14

Permitted waiver by Defendant if:

- State not seeking sentence of death
- Made knowingly and voluntarily
- In writing or on the record
- With the trial judge's consent

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## **NCGS §15A-1201**

Effective October 1, 2015

- applicable to defendants waiving their right to trial by jury on or after October 1, 2015
- clarification of law and fact to be decided
- procedure for joined defendants
- method of providing notice of intent to waive, and when
- procedure for judicial consent to waiver
- procedure to revoke waiver
- requirements for resolving motions to suppress

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## **Procedures to waive jury trial NCGS 15A-1201**

- Notice of intent to waive
- State schedule hearing on waiver
- Judicial consent to jury waiver

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### **Step 1**

#### **Notice of intent to waive by one of three methods:**

- Stipulation
- File written notice of intent to waive with court
- Give notice on the record in open court

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## **Stipulation**

### **NCGS § 15A-1201(c)(1)**

- may be conditioned on each party's consent to the trial judge
- signed by both the State and the defendant
- served on the counsel for any co-defendants.

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## **Filing a written notice with court**

### **NCGS §15A-1201(c)(2)**

- Serving that notice:
  - on the State
  - on counsel for any co-defendants
- Within the earliest of 10 working days after:
  - (i) arraignment,
  - (ii) service of a calendar setting under G.S. 7A-49.4(b), or
  - (iii) setting of a definite trial date under G.S. 7A-49.4(c).

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## **Waive on the record in open court**

### **NCGS §15A-1201(c)(3)**

By the earlier of :

- (i) the time of arraignment
- (ii) calling of the calendar under G.S. 7A-49.4(b) or G.S. 7A-49.4(c).

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## **Advance notice of waiver**

State v. Rutledge, 267 N.C. App. 91 (2019)

- waiver still proper if:
  - Defendant gives notice on date of trial
  - Consent by State and trial court
  - Defendant invites compliance by failure to request separate arraignment
- even if no proper notice, prejudice required

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## Step 2 State schedule hearing

NCGS §15A-1201(d)(1)

- matter to be heard in open court
- before the trial judge who will actually preside over the trial

Note: No time frame in which State must set matter for hearing

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## Step 3 Judicial consent to jury waiver

NCGS §15A-1201(d)(1)

Trial judge **shall**:

- Address defendant **personally** to determine fully understands decision and appreciates consequences
- Determine State's position
- Consider arguments by State and defendant

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# Knowing and voluntary

- Personally address the defendant
- determine whether the defendant **fully understands** decision to waive the right to trial by jury
- **appreciates the consequences** of the defendant's decision to waive the right to trial by jury.

See Waiver of Jury Trial  
See Form 405

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<b>STATE OF NORTH CAROLINA</b>		File No.
County		Additional File No. (s)
In The General Court Of. Superior Court Division		
<b>STATE VERSUS</b>		<b>WAIVER OF JURY TRIAL</b>
Name Of Defendant		
<b>ACKNOWLEDGMENT OF RIGHTS AND WAIVER</b>		
<p>1. I, the above-named defendant, hereby declare that</p> <p>a. I have provided notice of my intent to waive a jury trial in accordance with G.S. 15A-1201(c) by (choose one) <input type="checkbox"/> stip <input type="checkbox"/> written notice, <input type="checkbox"/> notice on the record in open court,</p> <p>b. I have been fully informed in open court of the charges against me, the nature of and statutory punishment for each c the nature of the proceedings against me,</p> <p>c. I have been advised by the court that I have the right to be tried by a jury of twelve (12) of my peers, that I may partic selection of the members of the jury, and that jury verdicts must be unanimous,</p> <p>d. I have been advised by the court that if I waive a jury trial, the judge alone will decide my guilt or innocence, and the j will determine any aggravating sentencing factors in my case, and</p> <p>e. I fully understand and appreciate the consequences of my decision to waive the right to be tried by a jury.</p> <p>2. Other: _____</p> <p>3. In light of the foregoing, I, the above-named defendant, freely, voluntarily, and knowingly waive the right to trial by jury.</p>		
<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		
Date	Signature Of Person Authorized To Administer Oaths	Signature Of Defendant
<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court
<b>CERTIFICATION BY LAWYER FOR DEFENDANT</b>		
<p>I hereby certify that I have fully explained to the defendant the charges against him or her, the nature of and statutory punish charge, and the nature of the proceedings against him or her; the defendant's right to be tried by a jury of twelve (12) of his c and to participate in the selection of the jury; that jury verdicts must be unanimous; and that if the defendant waives a jury tri alone will decide the defendant's guilt or innocence, and the judge alone will determine any aggravating sentencing factors i</p>		
Date	Name Of Lawyer For Defendant (type or print)	Signature Of Lawyer For Defendant

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<b>FINDINGS OF FACT AND CONCLUSIO</b>		
<p>Following a hearing on this matter, I, the undersigned judge, who will preside over th State objects to the waiver, and, if so, why, and after considering the arguments pres the defendant's waiver of a jury trial, find the following: (check all that apply)</p> <p>1. The above-named defendant is charged with a criminal offense for which the S</p> <p>2. The defendant has provided notice of his or her intent to waive a jury trial in ac <input type="checkbox"/> stipulation. <input type="checkbox"/> written notice. <input type="checkbox"/> notice on the record in open court.</p> <p>3. The defendant has been fully informed in open court of the charges against hir each charge, and the nature of the proceedings against him or her.</p> <p>4. The defendant has been advised of his or her right to be tried by a jury of twelv participate in the selection of the members of the jury, and that jury verdicts mu</p> <p>5. The defendant has been advised that if he or she waives a jury trial, the judge the judge alone will determine any aggravating sentencing factors in the case.</p> <p>6. The defendant fully understands and appreciates the consequences of his or f requested such a waiver, as indicated in the ACKNOWLEDGMENT OF RIGHT</p> <p><input type="checkbox"/> 7. Other: _____</p> <p>In light of the foregoing findings of fact, the undersigned judge concludes that the de <input type="checkbox"/> is <input type="checkbox"/> is not appropriate.</p>		
<b>ORDER</b>		
<p>In light of the foregoing findings of fact and conclusions of law, the undersigned judg</p> <p><input type="checkbox"/> 1. The court consents to the defendant's waiver of the right to trial by jury, and th accordance with that waiver, and as otherwise required by law.</p> <p><input type="checkbox"/> 2. The court does <u>not</u> consent to the defendant's waiver of the right to trial by jury proceed as required by law.</p>		
Date	Name Of Judge (type or print)	Signature
<p><b>NOTE:</b> "Once waiver of a jury trial has been made and consented to by the trial judge pursuar</p>		

## Personally address defendant

State v. Hamer, 377 N.C. 502 (2021)

- failed to personally address defendant, but no prejudice
- overwhelming evidence of guilt

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## State v. Rollinson 383 N.C. 528 (2022)

Not abuse of discretion to accept waiver when

- Defense counsel responded instead of defendant who wished to waive
- Defendant signed jury trial waiver form under oath

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**Fully understands and appreciates  
consequences**

No set script or colloquy

BUT...

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## **No set script or colloquy**

- State v. French, 280 NC. App. 300 (2021)(unpublished)
- State v. Portillo-Tobias, 284, N.C. App. 771 (2022)(unpublished)

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BUT...

- State v. Cranford, 279 N.C. App. 512 (2021)(unpublished)
- State v. Rager, 294 N.C. App. 482 (2024)

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**State v. Swink**  
**252 N.C. App. 218 (2016)**

- sufficient colloquy
- in writing and in open court
- signed waiver form which stated rights given

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## **Determine State's position**

Determine whether the State objects to the waiver and, if so, why.

Note: State's consent not required

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## **Consider arguments by State and defendant**

Consider the arguments presented by both the State and the defendant regarding the defendant's waiver of a jury trial.

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## Decision on Waiver

The decision to grant or deny the defendant's request for a bench trial shall be made by the judge who will actually preside over the trial.

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## Scope of Waiver of Jury Trial NCGS §15A-1201(b)

- Whole matter of law and fact heard by trial judge
- Determination of sentencing factors heard by trial judge
- Judgment given by court

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## Judgment

NCGS 15A-1201(b)

Judgment given by trial judge

- should announce findings made beyond a reasonable doubt
- statute does not require FOF or COL

*State v. Cheeks, 267 N.C. App. 579 (2019)*

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## Revocation of Waiver NCGS §15A-1201(e)

- within 10 business days of initial notice.
- at other times, in discretion of trial judge, if no unreasonable hardship or delay to the State.
- once revocation granted, decision is final and binding.

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## 10-day revocation of waiver

State v. Rutledge, 267 N.C. App. 91 (2019)

- 10 days, if waiver in advance of trial
- No cooling off period-cause unnecessary delays

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## Co-defendants

NCGS §15A-1201(b)

If joinder of co-defendants:

***shall be*** a jury trial **UNLESS**

all defendants waive the right to trial by jury

**OR**

the court, in its discretion, severs the case.

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## Motions to Suppress

### NCGS §15A-1201(f)

The court **shall** make written findings of fact and conclusions of law.

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## State v. Jones

### 248 N.C. App. 418 (2016)

Motion in Limine:

Same judge could hear and preside over trial because:

- Defendant chose to waive jury trial and proceed with a bench trial
- Trial court is presumed to disregard inadmissible evidence

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## Additional Considerations

- Habitual felon
- Status of waiver on remand for retrial or mistrial
- Logistics for out-of-county trial judges
- Judge's denial of waiver of jury trial