

Article 50.

Voluntary Dismissal.

§ 15A-931. Voluntary dismissal of criminal charges by the State.

(a) Except as provided in G.S. 20-138.4, the prosecutor may dismiss any charges stated in a criminal pleading including those deferred for prosecution by entering an oral dismissal in open court before or during the trial, or by filing a written dismissal with the clerk at any time. The clerk must record the dismissal entered by the prosecutor and note in the case file whether a jury has been impaneled or evidence has been introduced.

(a1) Unless the defendant or the defendant's attorney has been notified otherwise by the prosecutor, a written dismissal of the charges against the defendant filed by the prosecutor shall be served in the same manner prescribed for motions under G.S. 15A-951. In addition, the written dismissal shall also be served on the chief officer of the custodial facility when the record reflects that the defendant is in custody.

(b) No statute of limitations is tolled by charges which have been dismissed pursuant to this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1983, c. 435, s. 5; 1991, c. 109, s. 1; 1997-228, s. 1.)

§ 15A-932. Dismissal with leave when defendant fails to appear and cannot be readily found or pursuant to a deferred prosecution agreement.

(a) The prosecutor may enter a dismissal with leave for nonappearance when a defendant:

- (1) Cannot be readily found to be served with an order for arrest after the grand jury had indicted him; or
- (2) Fails to appear at a criminal proceeding at which his attendance is required, and the prosecutor believes the defendant cannot be readily found.

(a1) The prosecutor may enter a dismissal with leave pursuant to a deferred prosecution agreement entered into in accordance with the provisions of Article 82 of this Chapter.

(b) Dismissal with leave for nonappearance or pursuant to a deferred prosecution agreement results in removal of the case from the docket of the court, but all process outstanding retains its validity, and all necessary actions to apprehend the defendant, investigate the case, or otherwise further its prosecution may be taken, including the issuance of nontestimonial identification orders, search warrants, new process, initiation of extradition proceedings, and the like.

(c) The prosecutor may enter the dismissal with leave for nonappearance or pursuant to a deferred prosecution agreement orally in open court or by filing the dismissal in writing with the clerk. If the dismissal for nonappearance or pursuant to a deferred prosecution agreement is entered orally, the clerk must note the nature of the dismissal in the case records.

(d) Upon apprehension of the defendant, or in the discretion of the prosecutor when he believes apprehension is imminent, the prosecutor may reinstitute the proceedings by filing written notice with the clerk.

(d1) If the proceeding was dismissed pursuant to subdivision (2) of subsection (a) of this section and charged only offenses for which written appearance, waiver of trial or hearing, and plea of guilty or admission of responsibility are permitted pursuant to G.S. 7A-148(a), and the defendant later tenders to the court that waiver and payment in full of all applicable fines, costs, and fees, the clerk shall accept said waiver and payment without need for a written reinstatement from the prosecutor. Upon disposition of the case pursuant to this subsection, the clerk shall

recall any outstanding criminal process in the case pursuant to G.S. 15A-301(g)(2)b.

(e) If the defendant fails to comply with the terms of a deferred prosecution agreement, the prosecutor may reinstitute the proceedings by filing written notice with the clerk. (1977, c. 777, s. 1; 1985, c. 250; 1994, Ex. Sess., c. 2, s. 1; 2011-145, s. 31.23B; 2011-192, s. 7(o); 2011-391, s. 63(a); 2011-411, s. 1.)

§§ 15A-933 through 15A-940. Reserved for future codification purposes.