

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 688
SENATE BILL 730

AN ACT TO REPEAL THE SPEEDY TRIAL ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 35 of Chapter 15A of the General Statutes is repealed.

Sec. 2. G.S. 15A-133 reads as rewritten:

"§ 15A-133. Waiver of venue; motion for change of venue; indictment may be returned in other county.

(a) ~~Except for a waiver of venue made as required in Article 35 of this Chapter, Speedy Trial, a~~ A waiver of venue must be in writing and signed by the defendant and the prosecutor indicating the consent of all parties to the waiver. The waiver must specify what stages of the proceedings are affected by the waiver, and the county to which venue is changed. If the venue is to be laid in a county in another prosecutorial district, the consent in writing of the prosecutor in that district must be filed with the clerks of both counties.

(b) ~~If a waiver of venue is made by the defendant as provided in Article 35 of this Chapter, Speedy Trial, the prosecutor in his discretion may elect the county in the prosecutorial district as defined in G.S. 7A-60 in which to proceed. He may also elect not to proceed in another county, but the State is subject to the sanctions provided in Article 35.~~

(c) Motions for change of venue by the defendant are made under G.S. 15A-957. If venue is laid in a county in another prosecutorial district by order of the judge ruling on the motion, no consent of any prosecutor is required.

(d) If venue is changed to a county in another prosecutorial district, whether upon waiver of venue or by order of a judge, the prosecutor of the prosecutorial district where the case originated must prosecute the case unless the prosecutor of the district to which venue has been changed consents to conduct the prosecution.

(e) If venue is changed, whether upon waiver of venue or by order of a judge, the grand jury in the county to which venue has been transferred has the power to return an indictment in the case. If an indictment has already been returned before the change of venue, no new indictment is necessary and prosecution may be had in the new county under the original indictment."

Sec. 3. G.S. 15A-711(d) reads as rewritten:

"(d) Detainer.

(1) When a criminal defendant is imprisoned in this State pursuant to prior criminal proceedings, the clerk upon request of the prosecutor, must transmit to the custodian of the institution in which he is imprisoned, a

copy of the charges filed against the defendant and a detainer directing that the prisoner be held to answer to the charges made against him. The detainer must contain a notice of the prisoner's right to proceed pursuant to G.S. 15A-711(c). ~~15A-711(e) and his right to a speedy trial pursuant to Article 35 of this Chapter, Speedy Trial.~~

- (2) Upon receipt of the charges and the detainer, the custodian must immediately inform the prisoner of its receipt and furnish him copies of the charges and the detainer, must explain to him his right to proceed pursuant to G.S. 15A-711(c). ~~15A-711(e) and his right to a speedy trial under Article 35 of this Chapter, Speedy Trial.~~
- (3) The custodian must notify the clerk who transmitted the detainer of the defendant's impending release at least 30 days prior to the date of release. The notice must be given immediately if the detainer is received less than 30 days prior to the date of release. The clerk must direct the sheriff to take custody of the defendant and produce him for trial. The custodian must release the defendant to the custody of the sheriff, but may not hold the defendant in confinement beyond the date on which he is eligible for release.
- (4) A detainer may be withdrawn upon request of the prosecutor, and the clerk must notify the custodian, who must notify the defendant."

Sec. 4. G.S. 15A-1381 reads as rewritten:

"§ 15A-1381. Disposition defined.

As used in this Article, the term 'disposition' means any action which results in termination or indeterminate suspension of the prosecution of a criminal charge. A disposition may be any one of the following actions:

- (1) A finding of no probable cause pursuant to G.S. 15A-511(c)(2);
- (2) An order of dismissal pursuant to G.S. 15A-604;
- (3) A finding of no probable cause pursuant to G.S. ~~15A-612(3)~~ 15A-612(a)(3);
- (4) A return of not a true bill pursuant to G.S. 15A-629;
- ~~(5) Dismissal of a charge pursuant to G.S. 15A-703;~~
- (6) Dismissal pursuant to G.S. 15A-931 or 15A-932;
- (7) Dismissal pursuant to G.S. 15A-954, 15A-955 or 15A-959;
- (8) Finding of a defendant's incapacity to proceed pursuant to G.S. 15A-1002 or dismissal of charges pursuant to G.S. 15A-1008;
- (9) Entry of a plea of guilty or no contest pursuant to G.S. 15A-1011, without regard to the sentence imposed upon the plea, and even though prayer for judgment on the plea be continued;
- (10) Dismissal pursuant to G.S. 15A-1227;
- (11) Return of verdict pursuant to G.S. 15A-1237, without regard to the sentence imposed upon such verdict and even though prayer for judgment on such verdict be continued."

Sec. 5. G.S. 15A-952 is amended by adding the following new subsection at the end to read:

"(g) In superior or district court, the judge shall consider at least the following factors in determining whether to grant a continuance:

- (1) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;
- (2) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation; and
- (3) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child.
- (4) Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General Assembly."

Sec. 6. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 27th day of July, 1989.