

GRAND JURY PROCEEDINGS

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I. Introduction. Although the grand jury has other responsibilities, its primary one is to hear evidence in felony cases and their allied misdemeanors that are submitted by a prosecutor in a bill of indictment and to decide whether or not there is probable cause for the charge—that is, whether to return a “true bill” or “not a true bill.” This section discusses the composition of a grand jury, its proceedings, and related issues that fall under the judge’s supervision.

II. Composition of Grand Jury.

A. Selecting Grand Jurors. There is a three-step process for selecting grand jurors. First, the jury commission for each county, either annually or biannually, constructs a master jury list of potential jurors to be used for grand and trial (petit) juries from lists of registered voters and licensed drivers. G.S. 9-2(a), 9-2(b).

Second, the clerk of superior court or the assistant or deputy clerk prepares a list of names from the master jury list of those to be summoned by the sheriff for jury duty. G.S. 9-5. The duties of the clerk of superior court may be performed by a trial court administrator. G.S. 9-7.1.

Third, from the list of those summoned for jury duty, the clerk under G.S. 15A-622(b) must randomly select the names of eighteen people to serve as grand jurors. All counties use an automated system to ensure a random selection. Once a grand jury is composed, nine grand jurors are replaced—using the same process—at the first session of criminal superior court for the county after each January 1 and July 1. G.S. 15A-622(b).

B. Term of Grand Jurors Selected. Those selected for grand jury service serve twelve-month terms, with nine members rotating off the panel every six months. G.S. 15A-622(b). However, the senior resident superior court judge may fix the term of service at six months rather than twelve months if the judge finds that

grand jury service is placing a disproportionate burden on grand jurors and their employers. *Id.* If that occurs, one-half of the grand jurors are replaced every three months. *Id.*

C. Qualifications of Grand Jurors. The qualifications of grand jurors are the same as for trial jurors and are set out in G.S. 9-3:

- citizen of North Carolina and resident of the county in which the juror serves
- has not served as a juror during the past two years
- at least eighteen years old
- physically and mentally competent
- can understand the English language
- has not been convicted of or pled guilty or no contest to a felony without restoration of citizenship
- has not been adjudged mentally incompetent

In addition, a person who serves a full term of service as a grand juror is exempt from service as a juror or grand juror for six years. G.S. 9-3, 9-7.

G.S. 9-6.1(a) allows any person summoned as a juror who is 72 years old or older to make, without appearing in person, a request to be excused, deferred, or exempted from service by filing a signed statement of the ground for the request with the chief district judge or designated district court judge or trial administrator any time within five business days before the date summoned to appear. G.S. 9-6.1(b) allows any person summoned as a juror who has a disability that could interfere with the person's ability to serve to make, without appearing in person, a request to be excused, deferred, or exempted from service by filing a signed statement of the ground for the request, including a brief explanation of the disability that interferes with service, with the chief district judge or designated district court judge or trial administrator any time within five business days before the date summoned to appear. The court may request medical documentation of the disability. The judge or court administrator has the discretion under G.S. 9-6.1(c) to accept or reject a temporary or permanent exemption requested under G.S. 9-6.1(a) and 9-6.1(b).

III. Appointment of Grand Jury Foreperson; Duties; Removal. After impaneling a new grand jury or the impaneling of nine new jurors, the presiding judge must appoint one of the grand jurors as foreperson and may appoint another to act as foreperson during any absence or disability of the foreperson. G.S. 15A-622(e). Unless removed for cause by a superior court judge, the foreperson serves until a successor is appointed and sworn. G.S. 15A-622(e).

For a comprehensive discussion of the issues concerning the grand jury foreperson (appointment, discrimination in appointment, duties, and removal), see Jessica Smith, [Grand Jury: The Foreperson](#) in this Benchbook, <http://benchbook.sog.unc.edu/criminal/grand-jury-foreperson>.

IV. Oaths of Grand Jury Foreperson, Grand Jurors, and Grand Jury Officer. The oaths to be administered to the grand jury foreperson, grand jurors, and grand juror officer are prescribed in G.S. 11-11. The oaths are set out below.

A. Oath of Grand Jury Foreperson.

You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own, you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave anyone unrepresented for fear, favor or affection, reward or hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

G.S. 11-11

B. Oath of Grand Jurors.

The same oath which your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

G.S. 11-11

C. Oath of Grand Jury Officer.

You swear (*or affirm*) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof, so help you, God.

G.S. 11-11

V. Judge's Charge to New Grand Jurors. The charge to new grand jurors set out in NCPI – CRIM. 100.10 should be given (1) at the beginning of the first criminal session after January 1 and July 1, when there will be at least nine new grand jurors, and (2) whenever a replacement grand juror has been drawn as provided in G.S. 15A-622(b). At later court sessions, the presiding judge is not required to give additional instructions to the grand jurors. G.S. 15A-622(f).

VI. Convening the Grand Jury. When and how often a grand jury is convened by the presiding or resident superior court judge is the result of input by superior court judges, the district attorney, and the trial court administrator if there is one in the county.

While in recess, the grand jury may be reconvened by a superior court judge by a prosecutor's application or by the judge on his her own motion. G.S. 15A-622(g).

Two grand juries may exist concurrently in a county. G.S. 15A-622(b). Two concurrent regular grand juries are normally used only in counties with large caseloads. An investigative grand jury may be convened even though there are also two existing regular grand juries. G.S. 15A-622(h).

VII. Grand Jury's Legal Advisor. The grand jury's legal advisor is the presiding or convening judge—not the district attorney. G.S. 15A-624. There is no legal requirement to memorialize issues or questions raised by the grand jury, but a judge who does so should seal the communication as required by G.S. 15A-623(e).

VIII. Discharge of Grand Jury or Grand Juror; Excusal of Grand Juror. A superior court judge may: (1) at any time before new grand jurors are sworn, discharge them, or discharge the grand jury if the judge finds that jurors have not been selected lawfully or the grand jury is illegally constituted; or (2) at any time after a grand juror is drawn, refuse to swear the juror, or discharge the juror after being sworn, if the judge finds that the juror is disqualified from service, incapable of performing duties, or guilty of misconduct in performing duties that impairs the grand jury's proper functioning. G.S. 15A-622(c). See Section XV.B.3 below, "Grand Juror Was Unqualified to Serve When Indictment Was Returned."

The presiding judge may excuse a grand juror from service of the balance of the juror's term, on the judge's own motion or the juror's request for good cause. The foreperson may excuse individual jurors from attending particular grand jury sessions, except the foreperson may not excuse more than two jurors for any one session. G.S. 15A-622(d). The foreperson, unlike the presiding judge, may not excuse a grand juror for the balance of the juror's term.

IX. Secrecy of Grand Jury Proceedings. Grand jury proceedings are secret and, except as expressly provided in Article 31 of G.S. Chapter 15A, grand jury members and all people present during its sessions must keep its secrets and refrain from disclosing anything that transpires during any of its sessions. G.S. 15A-623(e). A judge has no authority to conduct an in camera examination of grand jurors and grand jury witnesses to determine the validity of an indictment. *State v. Griffin*, 136 N.C. App. 531, 553-54 (2000). Nor may the defendant cross-examine a witness about his or her grand jury testimony (excluding testimony before an investigative grand jury). *State v. Phillips*, 297 N.C. 600, 605 (1979); *State v. Blanton*, 227 N.C. 517, 523-24 (1947).

Two secrecy exceptions involve an investigative grand jury. First, the record of examination of witnesses must be made available to the examining prosecutor, who may disclose the record to investigative or law enforcement officers and the witness or his or her attorney, to the extent disclosure is appropriate to the performance of the prosecutor's duties. G.S. 15A-623(h). For example, the prosecutor may alert officers about testimony that may assist them in conducting additional investigations. Second, a superior court judge may disclose investigative grand jury proceedings by issuing a written order if the judge determines disclosure is essential to (1) prosecute an investigative grand jury witness for contempt or perjury, or (2) protect a defendant's constitutional or statutory discovery rights. *Id.*

During the grand jury's deliberations and voting, only the grand jurors may be present in the grand jury room. During its other proceedings, such as hearing a witness testify, an interpreter and a law enforcement officer holding a witness in custody may be present. Any person other than a witness who is permitted in the grand jury room must first take an oath before the grand jury, administered by the foreperson, that he or she will keep its secrets and refrain from disclosing anything that occurs there. G.S. 15A-623(d).

A grand juror or other person permitted to attend grand jury sessions who without authorization discloses, other than to his or her attorney, matters occurring before the grand jury may be found in contempt of court, G.S. 15A-623(g), or to have committed the common law offense of obstruction of justice. See *generally* JESSICA SMITH, NORTH CAROLINA CRIMES 557 (7th ed. 2012) (discussing elements of obstruction of justice).

Although there is no record of regular grand jury deliberations, the clerk of court keeps minutes recording indictments and presentments, which must be returned by the grand jury foreperson to the presiding superior court judge in open court. G.S. 15A-

628(c), 15A-628(d). The clerk's minutes are a public record and available from the clerk's office.

X. Grand Jury's Legal Duties and Related Matters.

A. Taking Testimony of Witnesses. The court clerk must call only people whose names are listed on the bill of indictment, but not all those listed must be called to testify. *State v. McLain*, 64 N.C. App. 571, 572-73 (1983) (interpreting G.S. 15A-626(b)). Frequently, the only witness called will be the investigating law enforcement officer.

If the grand jury wants to hear the testimony of a person not named on a bill, it must through its foreperson request a prosecutor to add that person's name to the bill. G.S. 15A-626(b). The prosecutor has the discretion whether or not to call the witness. *Id.* Only witnesses who have been notified or formally subpoenaed by the judge or prosecutor may appear before the grand jury. G.S. 15A-626.

Any person not called as a witness who desires to testify before a grand jury concerning a criminal matter within its jurisdiction must apply to the district attorney or to a superior court judge. G.S. 15A-626(d). The district attorney or judge in his or her discretion may call the witness to appear before the grand jury. *Id.*

For information about how to deal with a grand jury witness who asserts the Fifth Amendment privilege before the grand jury, see Robert Farb, [Fifth Amendment Privilege and Grant of Immunity](#) in this Benchbook, <http://benchbook.sog.unc.edu/criminal/5th-amend-privilege-immunity>.

B. Voting on Bill of Indictment. If at least twelve grand jurors find probable cause, they must return the bill as a "true bill." They do so by checking the box on the bill of indictment next to the language, "A TRUE BILL." The return of a true bill formally confers jurisdiction on the superior court to try the case.

If at least twelve grand jurors do not concur in a finding of probable cause, they must return the bill as "not a true bill." They do so by checking the box on the bill of indictment next to the language, "NOT A TRUE BILL." If so, the grand jury may return the bill of indictment with a request that the prosecutor resubmit another bill for a lesser included or related offense. G.S. 15A-628(a)(2). Although this rarely occurs, the grand jury presumably may do so by making its request in writing on the bill of indictment and returning it to the presiding superior court judge who then would forward the request to a prosecutor.

If a bill is submitted to the grand jurors and no witnesses appear, the grand jurors may return the bill with an indication that they have not been able to act because of the unavailability of witnesses. G.S. 15A-628(a)(3). The grand jury presumably may do so by writing this reason on the bill of indictment and returning it to the presiding superior court judge who then would forward the grand jury's action to a prosecutor.

If there are not at least twelve grand jurors voting to return a bill of indictment as a true bill or not a true bill, they may return the bill to the court indicating that fact. The grand jury presumably may do so by writing this reason on the bill of indictment and returning it to the presiding superior court judge who then would forward the grand jury's action to a prosecutor.

C. Issuing Presentment. Upon request by a prosecutor or presiding judge, or on its own initiative, a grand jury may investigate any offense. This typically occurs

when a prosecutor submits a draft presentment to the grand jury with a witness listed on the draft who the grand jury may call as a witness. If twelve or more grand jurors find probable cause to accuse a person of an offense as a result of its investigation, it may issue a presentment. G.S. 15A-628(a)(4). A presentment is not a criminal pleading and does not institute a criminal proceeding. G.S. 15A-923(a). A presentment is an accusation of crime made by the grand jury instructing the district attorney to investigate the case and submit a bill of indictment when appropriate. G.S. 15A-641(c). The superior court under G.S. 7A-271(a)(2) has original jurisdiction to try a misdemeanor when the charge is initiated by presentment and a bill of indictment is thereafter returned. *State v. Birdsong*, 325 N.C. 418, 420-21 (1989) (presentment and then indictment charging misdemeanor willful failure to discharge official duties); *State v. Gunter*, 111 N.C. App. 621, 624-25 (1993) (presentment and then indictment charging misdemeanor DWI); *State v. Cole*, 294 N.C. 304, 307-09 (1978) (presentment and then indictment charging misdemeanor wildlife offense).

For additional information about presentments, see Robert L. Farb, *Indicting for a Misdemeanor in Superior Court After a Grand Jury Presentment*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (October 16, 2013), <http://nccriminallaw.sog.unc.edu/?p=4494>.

- D. Venue for Issuing Indictment or Presentment.** The grand jury under G.S. 15A-631 has venue to issue an indictment or presentment in any case when the county in which it is sitting has venue for trial under the laws concerning trial venue—G.S. 15A-131 through -136. *State v. Flowers*, 318 N.C. 208, 213 n.1 (1986) (court noted that enactment of G.S. 15A-631 changed common law rule that grand jury had jurisdiction to indict only for crimes committed in its county); *State v. Carter*, 96 N.C. App. 611, 613-14 (1989) (Wake County grand jury had authority to indict for drug offense because county had venue to try offense).
- E. Grand Jury's Report on Bills of Indictments and Presentments.** The grand jury foreperson must report bills of indictment submitted by a prosecutor, whether found to be true bills or not, to the presiding judge in open court. Presentments must also be returned in the same manner.
- F. Inspecting Jail and Other County Offices or Agencies.** A grand jury must inspect the jail and may inspect other county offices or agencies and report the results of its inspections to the court. G.S. 15A-628(a)(5). It appears sufficient that the grand jury satisfies its mandate to inspect the jail to do so once during the typical twelve-month term, although the grand jury could inspect the jail more frequently if it wished. For a jail inspection checklist that could assist grand jurors in how to conduct an inspection, see JAMES C. DRENNAN, *STATE OF NORTH CAROLINA HANDBOOK FOR GRAND JURORS 19-22* (North Carolina Administrative Office of the Courts, 1998). The handbook is published by the Administrative Office of the Courts. Inspection topics in the handbook's checklist include facility employees, inmates, cells, wash and toilet facilities, the kitchen, food storage areas, dining area, safety issues, recreation facilities, and outdoor grounds. The discretionary authority to inspect other county offices or agencies is rarely or never exercised by grand juries in the 100 counties.
- XI. Judge's Sealing of Indictment until Defendant Is Arrested.** The presiding judge may order that a bill of indictment be sealed and kept secret until the defendant is arrested or

appears in court. G.S. 15A-623(f). This is often done when it appears that a defendant would avoid arrest if he or she knew of the indictment. The clerk must seal the indictment, and no one (including a witness) may disclose the finding of the indictment or the proceeding leading to the finding, except when necessary to issue and execute an order for arrest. *Id.*

- XII. Notice to Defendant and Order for Arrest After Indictment Is Returned.** After an indictment is returned as a true bill, an unrepresented defendant under G.S. 15A-630 is entitled to notice, which is accomplished by the court clerk's sending AOC-CR-215 (Notice of Return of Bill of Indictment) to the defendant with a copy of the indictment. AOC-CR-215 informs the defendant of the time limitations to request discovery from the State and the requirement to file a written request for arraignment if the defendant wants an arraignment. A judge who has directed that the indictment be sealed under G.S. 15A-623(f) may defer giving the notice under G.S. 15A-630 for a reasonable time.

G.S. 15A-941(d) provides that if a bill of indictment is not required to be served under G.S. 15A-630 because the defendant has counsel, then a written request for arraignment must be filed not later than 21 days from the date of the return of the indictment. On the return of the indictment as a true bill, the court must immediately cause notice of the 21-day time limit to be mailed or otherwise given to the defendant and to the defendant's counsel of record, if any. The clerk's normal procedure is to send AOC-CR-215, described above, and a copy of the indictment to the defendant and defense counsel. Thus, a represented defendant and his or her counsel are notified of the indictment and the time limitations for requesting discovery and an arraignment.

If an indictment is returned for the same charge as an earlier arrest in the case and the defendant has been released from custody on pretrial release conditions, an order for arrest should not be issued. If a charge is initiated by indictment or an indictment charges additional offenses, the court may issue an order for arrest and require new pretrial release conditions. See G.S. 15A-305(b)(1) (order for arrest may be issued when grand jury has returned indictment against the defendant who is not in custody and has not been released from custody on pretrial release). For information regarding whether to issue an order for arrest when an habitual felon indictment is returned, see JEFFREY B. WELTY, [North Carolina's Habitual Felon, Violent Habitual Felon, and Habitual Breaking and Entering Laws](#) 19, ADMIN. JUST. BULL. No. 2013/07 (UNC School of Government, 2013), <http://sogpubs.unc.edu/electronicversions/pdfs/aojb1307.pdf>.

- XIII. Procedure When Grand Jury Returns Bill of Indictment As Not a True Bill.** If the grand jury returns a bill of indictment as not a true bill, the presiding judge must determine if the defendant is in custody or subject to pretrial release conditions. G.S. 15A-629(a). With an exception discussed below, the judge must immediately order the defendant released from custody or from pretrial release conditions for that charge. *Id.* If the grand jury returns a bill of indictment as not a true bill but requests a prosecutor to submit a bill of indictment for a lesser included or related offense, the judge may defer any action for a reasonable period, not to extend past the end of that superior court session, to allow the institution of a new charge. G.S. 15A-629(b).

- XIV. Investigative Grand Jury for Drug Trafficking, Human Trafficking, and Related Offenses.** A district attorney, the district attorney's designated assistant, or a special prosecutor requested under G.S. 114-11.6, with the approval of a committee of at least three members of the North Carolina Conference of District Attorneys and with consent of the Attorney General, may request by affidavit and petition the formation of an

investigative grand jury for one or more of the following offenses as set out in G.S. 15A-622(h), 15A-622(i):

- Drug-trafficking, G.S. 90-95(h) and (i)
- Continuing criminal enterprise, G.S. 90-95.1
- Human trafficking, G.S. 14-43.11
- Involuntary servitude, G.S. 14-43.12
- Sexual servitude, G.S. 14-43.13

The contents of the petition and affidavit may not be disclosed. Upon receiving the petition, the Chief Justice of the North Carolina Supreme Court must appoint a panel to determine whether the grand jury should be convened as an investigative grand jury. An investigative grand jury may be convened from an existing regular grand jury or grand juries authorized under G.S. 15A-622(b) or as an additional grand jury to the existing grand jury or juries. Investigative grand jurors must serve for twelve months, and if an additional grand jury is convened, eighteen new members must be selected.

Any grand juror who serves a full term with an investigative grand jury may not be required to serve again as a grand juror for a period of six years. G.S. 15A-622(j).

A judge's charge to a newly formed investigative grand jury is set out in N.C.P.I. – CRIM. 100.12. A judge's charge to an existing investigative grand jury when new grand jurors have been sworn in is set out in N.C.P.I. – CRIM. 100.11.

Unlike regular grand jury proceedings, a prosecutor is present in the grand jury room to examine witnesses, may grant immunity to witnesses to require them to testify, a transcript is made of the proceedings, and the prosecutor may make selective disclosures of the proceedings to law enforcement officers as needed. G.S. 15A-622, 15A-623. Grand jury testimony may be used at trial when it is relevant and otherwise admissible. *State v. Minter*, 111 N.C. App. 40, 49 (1993) (grand jury testimony properly used to impeach witness).

XV. Motion to Dismiss Indictment Based on Alleged Defects in Grand Jury Proceedings.

A. When Motion to Dismiss Must Be Made. G.S. 15A-955 provides that an indictment may be dismissed on the defendant's motion if the court determines that "(1) [t]here is ground for a challenge to the array; (2) [t]he requisite number of qualified grand jurors did not concur in finding the indictment; or (3) all the witnesses before the grand jury on the bill of indictment were incompetent to testify."

A motion to dismiss an indictment must be made at or before arraignment. G.S. 15A-952(b)(4), 15A-952(c). A defendant is entitled to an arraignment only if the defendant files a timely written request for arraignment with the clerk of court. If the arraignment is waived by failing to make a request, certain pretrial motions, including challenges to grand jury proceedings, must be filed within 21 days of the return of the indictment. G.S. 15A-941(d); G.S. 15A-952(c).

B. Legal Challenges to Indictment Based on Alleged Defects in Grand Jury Proceedings.

1. Equal Protection and Fair Cross-Section Challenges to Grand Jury Composition. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and article I, sections 19

and 26, of the North Carolina Constitution protect against jury selection procedures that intentionally exclude members of an identifiable class, such as race, from jury service. *Castenada v. Partida*, 430 U.S. 482, 493-95 (1977); *State v. Hardy*, 293 N.C. 105, 113-14 (1977).

If an indictment is returned by a grand jury that was unlawfully constituted because members of a suspect class were intentionally excluded, the indictment must be dismissed. *State v. Hardy*, 293 N.C. 105, 113 (1977); *State v. Ray*, 274 N.C. 556, 562 (1968). The particular defendant alleging discrimination in the jury selection process need not belong to the class that is the subject of alleged discrimination—that is, a white defendant has standing to challenge the exclusion of blacks from jury service. See *Campbell v. Louisiana*, 523 U.S. 392, 397-98 (1998).

The defendant has the burden of proving intentional discrimination. *State v. Ray*, 274 N.C. 556, 563 (1968). The defendant must first establish a prima facie case of discrimination against a particular group by showing that the jury selection procedure resulted in substantial under representation of that group. The burden then shifts to the State to rebut the prima facie case by showing a race-neutral reason for the discrepancy. *Castenada v. Partida*, 430 U.S. 482, 494-95 (1977).

With respect to the selection of trial juries, the Sixth Amendment requires that the jury be drawn from a “representative cross-section” of the community. See *Duren v. Missouri*, 439 U.S. 357, 358-60 (1979); *Taylor v. Louisiana*, 419 U.S. 522, 528-30 (1975). The primary difference between fair cross-section and equal protection issues is that to prove a fair cross-section violation, the defendant is not required to prove intentional discrimination by the State. Instead, the defendant need only show the exclusion of the alleged class was “systematic” or an inevitable result of the selection procedure that excluded the class from the process. However, the United States Supreme Court has not decided the question whether the Sixth Amendment “fair cross-section” right applies to the selection of grand juries in state court. See *Campbell v. Louisiana*, 523 U.S. 392, 403 (1998) (declining to reach issue).

Changes in statutory and other procedures make both equal protection and fair cross-section challenges less likely to be made and to be successful now than in the past.

2. **Discrimination in Appointment of Grand Jury Foreperson.** For a comprehensive discussion of this issue, see Jessica Smith, [Grand Jury: The Foreperson](#) in this Benchbook, <http://benchbook.sog.unc.edu/criminal/grand-jury-foreperson>.
3. **Grand Juror Was Unqualified to Serve When Indictment Was Returned.** When a grand juror who is unqualified to serve under the qualifications set out in G.S. 9-3 served when an indictment was returned, the indictment must be dismissed if a defendant makes a timely motion (see Section XV.A. above). See *State v. Durham Fertilizer Co.*, 111 N.C. 658 (1892) (three grand jurors failed to pay taxes that made them unqualified; no error in dismissing indictment); *State v. Griffice*, 74 N.C. 316, 321 (1878) (similar ruling with grand jurors who did not pay taxes and one grand juror who was under 21 years old); *State v. Perry*, 122 N.C. 1018 (1898) (although grand juror was not 21 years old when chosen for service, but was 21 years old when indictment was returned, no error in serving as grand juror).

Generally, the fact that a grand juror who participated in returning a bill of indictment against the defendant was related to the victim of the charged crime does not disqualify that person from serving as a grand juror. *State v. Oxendine*, 303 N.C. 235, 245 (1981). Nor is a bill of indictment subject to dismissal when a grand juror later testifies at trial for the prosecution. *Id.* "Ordinarily, any interest in a particular prosecution other than a direct pecuniary interest will not disqualify a grand juror" or support a dismissal of an indictment in which the grand juror participated. *Id.*

4. **Grand Jury Drawn in Violation of Statutory Procedures.** The statutory regulation of the manner of making the master jury list from which grand jurors or trial jurors are drawn is directory, not mandatory. And in the absence of proof of corrupt intent, systematic discrimination in compiling the list, or irregularities that affect the actions of the jurors actually drawn and summoned, this kind of a statutory violation is not fatal to the return of an indictment. *State v. Vaughn*, 296 N.C. 167, 175 (1978); *State v. Yoes*, 271 N.C. 616, 633-34 (1967); *State v. Durham Fertilizer Co.*, 111 N.C. 658 (1892). Thus, there are different remedies for this kind of statutory violation versus individual grand jurors who are unqualified to serve (see Section XV.B.3. above).
5. **Failure to Call All Witnesses Listed on Indictment.** An indictment is not defective because only one of two witnesses listed on indictment was called to testify. *State v. McLain*, 64 N.C. App. 571, 572-73 (1983).
6. **Prosecutor's Failure to Sign Indictment.** A prosecutor's failure to sign an indictment does not invalidate the indictment. G.S. 15A-644(a)(4); *State v. Mason*, 279 N.C. 435, 440 (1971).
7. **Grand Jury Foreperson's Alleged Errors.** An indictment is not defective if the foreman fails to mark the names of witnesses who testified before the grand jury. G.S. 15A-623(c); *State v. Dukes*, 305 N.C. 387, 388-89 (1982).

A grand jury foreperson's failure to attest the concurrence of at least 12 grand jurors in returning a true bill in compliance with G.S. 15A-644(a)(5) does not invalidate the indictment if the foreperson signs the indictment attesting that a true bill was returned. *State v. House*, 295 N.C. 189, 200-01 (1978).

A grand jury report signed by the foreperson in which a bill of indictment against the defendant was listed as having been returned a true bill renders the foreperson's inadvertent failure to sign the bill as not invalidating the indictment. *State v. Spinks*, 24 N.C. App. 548, 549-50 (1975).

An indictment returned by grand jury is not defective even though the foreperson fails to mark the box indicating a true bill or not a true bill when the court's minutes showed that all bills of indictment were returned as true bills. *State v. Midyette*, 45 N.C. App. 87, 89-90 (1980).

8. **Reconvening Grand Jury.** Assuming without deciding that a district attorney's application under G.S. 15A-622(g) to reconvene a grand jury must be in writing, the court in *State v. Parker*, 119 N.C. App. 328, 337 (1995), ruled that a district attorney's oral application to reconvene a grand jury was a technical violation that did not make an otherwise valid indictment defective.

- XVI. Publication on Fatal Defect, Fatal Variance, and Amending Indictment.** For a comprehensive review of the legal issues concerning fatal defect, fatal variance, and amending an indictment, see Jessica Smith, [*The Criminal Indictment: Fatal Defect, Fatal Variance, and Amendment*](#), ADMIN. JUST. BULL. No. 2008/03 (UNC School of Government, 2008), http://www.sog.unc.edu/sites/www.sog.unc.edu/files/aojb0803_000.pdf.