INDICTMENTS

Joseph L. Hyde, UNC School of Government (February 2026)

Contents

I. Cautionary Note. The most consequential decision about indictments within the last few years is *State v. Singleton*, 386 N.C. 183 (2024). The North Carolina Supreme Court there concluded that the legislature has abrogated the common law rule under which a failure to allege each element of the offense charged was treated as a fatal defect, depriving the trial court of jurisdiction. *Id.* at 209. After *Singleton*, an indictment is jurisdictionally defective only if it wholly fails to allege a crime against the laws or people of this State. *Id.* at 184. Singleton deemed other defects, such as a failure to provide notice or comply with statutory requirements, to be "non-jurisdictional." *Id.* at 210.

Courts are still grappling with the consequences of *Singleton*. Fundamentally, the case alters not so much the variety of pleading defects as the remedy for such a defect once it is found. To that end, this chapter largely reflects the identification of defects under pre-Singleton caselaw. The reader is cautioned that much of the authority cited herein may require reevaluation of the proper remedy in light of the non-jurisdictional nature of most indictment defects after *Singleton*.

II. Sources and Types of Criminal Pleadings.

A. Constitutional Entitlement. The Fifth Amendment to the United States Constitution provides that no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury. U.S. CONST. AMEND. V. Unlike many provisions of the Bill of Rights, however, the Grand Jury Clause of the Fifth Amendment has never been incorporated against the states through the Due Process Clause of the Fourteenth Amendment. *See* State v. Hunt, 357 N.C. 257, 272 (2003). There is therefore no federal constitutional guarantee of grand jury indictment for defendants charged in state court. 1 ANDREW D. LEIPOLD, FEDERAL PRACTICE AND PROCEDURE: CRIMINAL § 122 (5th ed. 2023).

The North Carolina Constitution provides that, except in misdemeanor

cases initiated in the district court division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. N.C. CONST. ART. I, § 22. As used here, the term "indictment" signifies a written accusation of a crime drawn up by the prosecutor and submitted to the grand jury, and by them found and presented on oath or affirmation as a true bill. State v. Thomas, 236 N.C. 454, 457 (1952). The term "presentment" denotes an accusation made by a grand jury of an offense upon their own knowledge or observation, or upon information from others, without any bill of indictment having been submitted by the prosecutor. *Id.* Impeachment initiates the process of disciplining an officeholder for malfeasance in office, and the punishment is limited to removal from office and disqualification from future office. *See* N.C. CONST. ART. IV, § 4.

B. **Statutory Recognition**. By statute, the pleading in felony and misdemeanor cases initiated in the superior court division must be a bill of indictment, unless the defendant waives the right to indictment. G.S. 15A-923(a); *cf.* G.S. 15A-642(c) (requirements for waiver). If the defendant waives indictment, the pleading must be a bill of information. G.S. 15A-923(a). Bills of information are generally subject to the same rules that govern indictments. *See* G.S. 15A-644(b). "A presentment by the grand jury may not serve as the pleading in a criminal case." G.S. 15A-923(a). For a misdemeanor prosecuted in the district court, the pleading of the State may consist of the citation, criminal summons, warrant for arrest, magistrate's order, or a statement of charges. G.S. 15A-922(a).

It bears repeating that a criminal defendant's right to indictment derives primarily from the state constitution—though that right is effectuated and supplemented by various statutes—and that the constitutional right to an indictment pertains to a grand jury's written accusation *of a crime*. Care must be taken to distinguish this right from a separate right to indictment created by statute. *See* G.S. 15A-924(a)(7); 15A-1340.16(a)(4) (nonstatutory aggravating factors must be alleged in indictment). Such purely statutory requirements do not implicate the state constitutional right to indictment. *See* State v. Roache, 358 N.C. 243, 267 (2004).

C. **Related Instruments.** Related instruments include presentments, juvenile petitions, and bills of particulars.

1. **Presentments.** As noted above, presentments are mentioned among the constitutionally permissible modes of prosecution in this state. N.C. Const. art. I, § 19. By statute, however, a presentment may not serve as a pleading. G.S. 15A-923(a). In current practice, the prosecutor may solicit a presentment from the grand jury by submitting a draft presentment followed by an indictment. G.S. 15A-628(a)(4) (grand jury investigation may be initiated upon request of prosecutor); 15A-641 (prosecutor must investigate presentment); *see also* State v. Baker, 263 N.C. App. 221, 228 (2018) (presentment and indictment submitted simultaneously were invalid). The benefit of doing so arises from the fact that, when a charge is initiated by presentment, the superior court has original jurisdiction to try a misdemeanor, allowing the State to bypass proceedings in the district court. G.S. 7A-271(a)(2).

2. **Juvenile Petitions.** In juvenile cases, the State's pleading is called a *petition*. G.S. 7B-1801. Because juvenile proceedings are civil rather than criminal, juvenile petitions are not criminal pleadings. State v. Adams, 345 N.C. 745, 748 (1997). Still, petitions serve essentially the same function as indictments in providing notice to the accused, and juvenile petitions are generally held to the same standards as criminal indictments. *In re*

J.U., 384 N.C. 618, 622 (2023).

3. **Bills of Particulars.** The function of a bill of particulars is to inform the defendant of the nature of the evidence which the State proposes to offer. State v. Cameron, 283 N.C. 191, 194 (1973). It is not part of the indictment, nor is it a substitute for or an amendment thereto. State v. Parker, 119 N.C. App. 328, 336 (1995); *cf.* G.S. 15A-925(e) (bill of particulars may not supply an omission or cure a defect in a criminal pleading). Upon a defendant's motion, the trial court may order the State to file a bill of particulars containing "items of factual information . . . which pertain to the charge." G.S. 15A-925(b). The trial court must order the State to file a bill of particulars if the information requested is necessary to enable the defendant adequately to prepare a defense. G.S. 15A-925(c). Whether to order the State to file a bill of particulars is, however, within the sound discretion of the trial court. State v. Garcia, 358 N.C. 382, 390 (2004).

III. The Common Law and Statutes.

A. English Antecedents. Although the state constitution is the immediate source of a defendant's right to indictment, most of the rules governing criminal pleadings may be found in statutes and caselaw. Determining the priority of these rules is not always easy. Many of the rules advanced by the caselaw have their origin in the common law, that is, the law of England that the colonists were applying in this state at the time of the American Revolution. *See* G.S. 4-1 (common law declared to be in force within this state); State v. Vance, 328 N.C. 613, 617 (1991) ("the common law of England."). Indeed, "[f]or many years, American courts demanded strict adherence to the technical niceties of common law pleading rules." 5 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 19.1(a) (4th ed. 2015).

The technical pleading requirements of the common law could produce anomalous results. It is easy to ridicule decisions like State v. Owen, 5 N.C. (1 Mur.) 452 (1810), which overturned a defendant's murder conviction based on the failure of the indictment to specify the length and depth of the mortal wounds. On the other hand, the requirement for such an allegation was plainly stated in the available authorities, and it does not seem entirely unreasonable to demand a degree of precision from the State in the formal accusation of a defendant who is on trial for his or her life. In any event, the legislature responded to such decisions by eliminating the most egregious technicalities of the common law pertaining to indictments. *See* G.S. 15-153 (bill or warrant not quashed for informality); 15-155 (defects which do not vitiate).

B. Legislative Innovations. Another legislative attempt to alleviate burdensome common law pleading requirements came with the enactment of statutes authorizing "short-form" pleadings, statutes that prescribed simplified charging language. The State was thus relieved of the obligation of alleging each element for specified offenses, as the common law had required. *See* State v. Jerrett, 309 N.C. 239, 259 (1983). Our statutes now recognize short-form pleadings for:

- murder and manslaughter, G.S. 15-144;
- attempted murder, State v. Jones, 359 N.C. 832, 838 (2005);
- rape, G.S. 15-144.1;
- sex offense, G.S. 15-144.2;
- perjury, G.S. 15-145;
- subornation of perjury, G.S. 15-146;

- misdemeanor impaired driving, G.S. 20-138.1(c).

The short-form language has been consistently upheld against constitutional challenge. *See, e.g.*, State v. Hunt, 357 N.C. 257, 274 (2003) (murder); State v. Roberts, 310 N.C. 428, 434 (1984) (rape).

The General Assembly struck yet another blow at common law pleading requirements with the enactment of the Criminal Procedure Act of 1975. *See* State v. Mostafavi, 370 N.C. 681, 686 (2018); State v. Spivey, 368 N.C. 739, 742 (2016). Following adoption of the Act, the North Carolina Supreme Court overruled several well-established precedents that had perpetuated common law pleading requirements. See State v. Oldroyd, 380 N.C. 613, 619 (2022); State v. Worsley, 336 N.C. 268, 280 (1994); State v. Palmer, 293 N.C. 633, 640 (1977). For many years, the Supreme Court read the Act as not inconsistent with the common law rule that an indictment omitting an element of the offense charged failed to confer jurisdiction. E.g., State v. Rankin, 371 N.C. 885, 898 (2018). In State v. Singleton, 386 N.C. 183 (2024), however, the Supreme Court discovered the Act did more. The Act, it said, "removed any vestiges of the archaic, hyper-technical common law requirement that a valid indictment contain a rote recitation of elements." *Id.* at 195. Adopting a more modern definition of jurisdiction, i.e., a court's statutory or constitutional power to adjudicate a case, *Id.* at 197, the Supreme Court also deemed non-jurisdictional most statutory and constitutional indictment defects. *Id.* at 210. After *Singleton*, jurisdictional defects – gone the way of other common law technicalities – would be "rare." *Id.* at 184.

C. Statutory Requirements. By statute (G.S. 15A-924), a criminal pleading must contain:

1. the defendant's name or other form of identification,
2. a separate count for each offense charged,
3. the county in which each offense was committed,
4. the date on which each offense was committed,
5. a statement of facts supporting each element of the offense,
6. a citation to the applicable law alleged to have been violated, and
7. any nonstatutory aggravating sentencing factors.

1. The Defendant's Name. The complete omission of the defendant's name renders a pleading fatally defective. State v. Simpson, 302 N.C. 613, 616 (1981); State v. Finch, 218 N.C. 511, 512 (1940). This does not mean that the defendant must be identified by name in each count. G.S. 15A-924(a)(1) ("unless required for clarity"); *cf.* State v. Johnson, 77 N.C. App. 583, 584 (1985) (name in caption was sufficient). Further, under the doctrine of idem sonans, a slight misspelling in the defendant's name is not a fatal defect. State v. Higgs, 270 N.C. 111, 113 (1967); State v. Vincent, 222 N.C. 543, 544 (1943). Many spelling errors can be corrected by amendment of the pleading (see below).

2. A Separate Count for Each Offense Charged. "Generally speaking, a bill of indictment which charges two offenses in the same count is bad for duplicity." State v. Dale, 218 N.C. 625 (1940). This rule is subject to exceptions, however. Acts constituting a single and continuous transaction may be charged together as a single offense; and where a single offense may be committed in different ways, it may be charged in a single count if the ways are not repugnant and are component parts of a single transaction. State v. O'Keefe, 263 N.C. 53, 56 (1964). Significantly,

duplicity has not been treated as a jurisdictional defect: an objection based on duplicity is waived if not made in apt time, i.e., before plea, and is cured by verdict. State v. Green, 266 N.C. 785, 789 (1966); State v. Beal, 199 N.C. 278, 294 (1930). And given timely objection, the prosecutor may elect to proceed with only one of the charges or may amend the pleading to separate the charges into separate counts. State v. Williamson, 250 N.C. 204, 209 (1959); *cf.* State v. Stephens, 188 N.C. App. 286, 293 (2008) (allowing amendment); *see also* G.S. 15A-924(b) (defendant may by motion require the State to elect a single offense).

3. **The County in Which Each Offense Was Committed.** At common law, it was essential to name the county in which the offense was committed so that it might appear that the offense was within the jurisdiction of the court. State v. Flowers, 318 N.C. 208, 213 (1986). In North Carolina, venue likewise remains in the county where the crime was committed. By statute, however, allegations of venue in a criminal pleading become conclusive absent timely objection. G.S. 15A-135. Further, the place for returning an indictment is a matter of venue and not jurisdiction. G.S. 15A-631. Accordingly, variances between the county alleged and the evidence at trial have been treated as immaterial. See State v. Spencer, 187 N.C. App. 605, 611 (2007); State v. Brown, 85 N.C. App. 583, 588 (1987). And the prosecutor may amend a criminal pleading to reflect the proper county. State v. Hyder, 100 N.C. App. 270, 273 (1990).

4. **The Date on Which Each Offense Was Committed.** Except where time is of the essence of the offense, the date of offense set out in a pleading is immaterial and need not be proved, and a variance is not fatal, "the day being deemed merely a matter of form." State v. Wise, 66 N.C. 120, 123 (1872); *accord* State v. Francis, 157 N.C. 612 (1911). Section 15A-924(a)(4) did not change the law in this regard. The statute requires an allegation that the offense was committed on, or on or about, a designated date or during a designated period of time, but error as to a date or its omission is not grounds for dismissal of the charges or reversal of a conviction if time was not of the essence. G.S. 15A-924(a)(4); *cf.* G.S. 15-155. In cases involving sexual offenses against children, courts are particularly lenient with regard to the date of offense alleged. State v. Everett, 328 N.C. 72, 75 (1991). Hence, the date alleged may generally be corrected by amendment. *See, e.g.*, State v. Price, 310 N.C. 596, 600 (1984). Variance as to time becomes material when it deprives a defendant of the opportunity to prepare a defense. When a defendant relies on the date alleged to prepare his or her defense and the State's evidence substantially varies to the defendant's prejudice, a motion to dismiss will be granted. State v. Stewart, 353 N.C. 516, 519 (2001).

5. **A Statement of Facts Supporting Each Element of the Offense.** The elements requirement is "clearly the most critical," and no pleading defect has resulted in more dismissals than failure to allege all the elements of the offense charged. 5 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 19.3(b). Before *State v. Singleton*, 386 N.C. 183 (2024), absent a short form pleading, a criminal pleading that omitted an element was generally deemed fatally defective. *See e.g.*, State v. Murrell, 370 N.C. 187, 193 (2017); State v. Ellis, 368 N.C. 342, 344 (2015). Consistent with "traditional ideas," G.S. 15A-924(e) continues to require factual (but not evidentiary) allegations to support each element. G.S. 15A-924 (official

commentary). Thus, an indictment must allege lucidly and accurately all the essential elements of the offense charged. State v. Lofton, 372 N.C. 216, 221 (2019). An indictment couched in the language of the statute is generally sufficient to charge a statutory offense. State v. Mostafavi, 370 N.C. 681, 685 (2018). When, however, the words of the statute do not set forth all the elements, such elements must be alleged in the criminal pleading. State v. Rankin, 371 N.C. 885, 887 (2018). Still, the State is required to allege only the ultimate facts constituting each element of the crime; evidentiary matters need not be alleged. State v. Coker, 312 N.C. 432, 437 (1984); State v. Palmer, 293 N.C. 633, 638 (1977). There is conflicting authority on whether elements may be supplied by inference or implication, but the recent trend seems to be toward inferring elements from the facts alleged where possible. *Compare* State v. Lancaster, 385 N.C. 459, 469 (2023) (elements "clearly inferable"); *with* State v. Edwards, 190 N.C. 322, 324 (1925) (no element should be left to inference or implication). In any event, elements cannot be supplied by reference to extrinsic evidence. State v. White, 372 N.C. 248, 254 (2019).

6. **A Citation to the Applicable Law Alleged to Have Been Violated.** By statute, a criminal pleading must contain, for each count, a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged to have been violated. G.S. 15A-924(a)(6). But error in the citation or its omission is not grounds for dismissal of charges or reversal of a conviction. *Id.*; *see also* State v. Barnes, 333 N.C. 666, 677 (1993). On the other hand, citation to the proper statute will not cure a failure to allege each element of the offense charged. State v. McBane, 276 N.C. 60, 65 (1969); State v. Billinger, 213 N.C. App. 249, 257 (2011).
7. **Any Nonstatutory Aggravating Sentencing Factors.** Added in 2005, subdivision (a)(7) of G.S. 15A-924 requires the State to allege any nonstatutory aggravating sentencing factors it intends to use. Section 15A-1340.16(d) prescribes aggravating factors that may be considered at sentencing in a felony case. The last item in that subsection is a residual or catchall provision encompassing "[a]ny other aggravating factor reasonably related to the purposes of sentencing." G.S. 15A-1340.16(d)(20). While the other factors need not be included in any indictment or other charging instrument, an aggravating factor alleged under subdivision (d)(20) must be included in any indictment or other charging instrument. G.S. 15A-1340.16(a4). Noncompliance with this provision results in the State being unable to use the aggravating factor at sentencing, and, if the aggravating factor is used, the defendant is entitled to resentencing. *See* State v. Ortiz, 238 N.C. App. 508, 514 (2014).

Other statutes contain additional requirements for particular pleadings. *See* G.S. 15A-302 through -305 (misdemeanor pleadings); 15A-644 (indictment and information).

IV. Additional Drafting Requirements.

A. Formal Requirements.

1. **Extensive Detail Is Unnecessary.** Federal indictments can reach hundreds of pages and contain detailed accounts of the offense(s) charged. By contrast, North Carolina pleadings are usually brief and do not contain much detail about the way the crime charged was committed. As the North Carolina Supreme Court has said, "a very detailed account

is not necessary for legally sufficient indictments[.]" State v. Rambert, 341 N.C. 173, 176 (1995). Indeed, it may be counterproductive to provide extensive detail, as some appellate decisions have held that the State is bound to prove even those allegations that need not have been included in the first place. *See, e.g.*, State v. Silas, 360 N.C. 377, 383 (2006) (felony underlying burglary); State v. Williams, 303 N.C. 507, 510 (1981) (sexual act for sexual offense).

2. **Plead in the Conjunctive.** "The use of the conjunctive form to express alternative theories of conviction is proper." State v. Birdsong, 325 N.C. 418, 422 (1989). Since charging disjunctively or alternatively may render the allegations uncertain, the proper way to connect the various allegations in a pleading is with the word "and," not with the word "or." *Id.*; *see also* State v. Lofton, 372 N.C. 216, 222 (2019). This is true even when the statute defining the offense uses the word "or." State v. Swaney, 277 N.C. 602, 612 (1971). However, the rule against disjunctive pleading is not absolute. State v. Rozier, 69 N.C. App. 38, 45 (1984). In any event, the use of the conjunctive does not require the State to prove the alternative matters alleged. State v. Lofton, 372 N.C. 216, 222 (2019); State v. Montgomery, 331 N.C. 559, 569 (1992). Although the use of "and/or" has been criticized, its use is not per se fatal to an indictment. State v. Haddock, 191 N.C. App. 474, 476 (2008).

3. **Alleging Multiple Offenses in a Single Pleading.** While an indictment must contain a separate count for each offense charged, a single pleading may charge multiple offenses. Two or more offenses may be joined in one pleading when the offenses are based on the same act or transaction or on a series of acts or transactions connected or constituting parts of a single scheme or plan. G.S. 15A-926(a). In determining whether offenses have the requisite transactional connection, courts consider several factors: (1) the nature of the offenses charged, (2) any commonality of facts, (3) the lapse of time between the offenses, and (4) the unique circumstances of each case. State v. Herring, 74 N.C. App. 269, 273 (1985), aff'd per curiam, 316 N.C. 188 (1986); *accord* State v. Perry, 142 N.C. App. 177, 181 (2001).

   There is no constitutional or statutory limit to the number of charges a single pleading may contain. However, there is an administrative limit of two charges per citation, and there are technical limits in various computer systems that limit to three the number of charges that may be contained in a single warrant, summons, or magistrate's order. Additional pleadings may be used when it is appropriate to charge a defendant with more crimes than will fit on a single pleading. *See* Jeff Welty, *How Many Charges Can One Charging Document Contain?*, N.C. CRIM. L.: UNC SCH. OF GOV'T BLOG (Apr. 15, 2015).

B. Offense-Specific Requirements.

1. **For Statutory Offenses, Track the Language of the Statute.** North Carolina recognizes both common law crimes and crimes created by statute. *See* G.S. 4-1; 14-58. For statutory offenses, an indictment couched in the language of the statute is generally sufficient. State v. Mostafavi, 370 N.C. 681, 685 (2018); State v. Spivey, 368 N.C. 739, 742 (2016); State v. Williams, 368 N.C. 620, 626 (2016). Tracking the

language of the statute does not, however, relieve the State of the burden of alleging each element of the offense. State v. Rankin, 371 N.C. 885, 887 (2018); State v. Greer, 238 N.C. 325, 328 (1953).

2. **For Short-Form Eligible Offenses, Use the Form.** As noted above, for several offenses the legislature has provided simplified charging language. *See e.g.*, G.S. 15-144 (murder and manslaughter); 15-144.1 (rape). Most of these statutes appear in G.S. Chapter 15, the precursor to the more recent Chapter 15A (Criminal Procedure). *Cf.* G.S. 20-138.1(c) (impaired driving). Slight deviation from the prescribed language may not be fatal so long as substantially equivalent words are used. State v. Tart, 372 N.C. 73, 77 (2019).

3. **For Felonies, Include the Word "Feloniously".** The North Carolina Supreme Court has held that an indictment for a felony that fails to include the word "feloniously" is fatally defective. State v. Fowler, 266 N.C. 528, 530 (1966); State v. Price, 265 N.C. 703 (1965); State v. Whaley, 262 N.C. 536, 537 (1964). *But see* State v. Blakney, 156 N.C. App. 671, 673 (2003) (declaring that the word "feloniously" is not required if the indictment references the specific statute making the crime a felony). Use of the word "feloniously" in a pleading charging a misdemeanor will be treated as surplusage. State v. Mayes, 31 N.C. App. 694, 697 (1976).

4. **For Larceny, It Is Necessary to Identify the Victim.** An indictment for certain property crimes must allege an interest in the property by a natural person or a legal entity capable of owning property. These include:

    - larceny, State v. Campbell, 368 N.C. 83, 86 (2015);
    - embezzlement, State v. Linney, 138 N.C. App. 169, 173 (2000);
    - injury to personal property, State v. Ellis, 368 N.C. 342, 345 (2015);
    - conversion by bailee, State v. Falana, 254 N.C. App. 329, 333 (2017).

    By contrast, it is not necessary to allege an interest in the property for other crimes. These include:

    - armed robbery, State v. Thompson, 359 N.C. 77, 107 (2004);
    - injury to real property, State v. Spivey, 368 N.C. 739, 744 (2016);
    - breaking and entering, State v. Norman, 149 N.C. App. 588, 592 (2002).

    A person named in the indictment may be either the person having a general interest in the property, i.e., the actual owner, or a person with a special interest in the property, i.e., the person who had possession and control of the property at the time it was stolen. State v. Redmond, 281 N.C. App. 283, 287 (2022); *see also* State v. Linney, 138 N.C. App. 169, 173 (2000). When alleging ownership in an entity, the indictment must specify that the owner is a corporation or otherwise capable of owning property, and the words "corporation," "incorporated," "limited," or "company," or their abbreviated forms, sufficiently identify a corporation. State v. Campbell, 368 N.C. 83, 86 (2015). Or the pleading may specifically identify the victim as "an entity capable of owning property."

State v. Brawley, 256 N.C. App. 78, 84 (2017) (Arrowood, J. dissenting), *rev'd for reasons in dissent*, 370 N.C. 626 (2018). For entities authorized by statute to own property, such as a church or a university, it is sufficient to name the entity or otherwise identify the entity as such. State v. Ellis, 368 N.C. 342, 345 (2015); State v. Campbell, 368 N.C. 83, 87 (2015).

Several other crimes have particular naming rules. For sex crimes, the statutory requirement to name the victim is not satisfied by using generic terms (such as, "the victim" or "the child"). State v. Corey, 373 N.C. 225, 233 (2019); State v. White, 372 N.C. 248, 252 (2019); State v. Shuler, 263 N.C. App. 366, 369 (2018); *cf*. *In re* M.S., 199 N.C. App. 260, 266 (2009). But identifying the victim by initials may be sufficient. *See* State v. Perkins, 286 N.C. App. 495, 503 (2022); State v. Sechrest, 277 N.C. App. 372, 377 (2021); State v. McKoy, 196 N.C. App. 650, 658 (2009). For drug offenses involving a transaction, it is generally necessary to identify the buyer, if known. State v. Bennett, 280 N.C. 167, 169 (1971); State v. Martindale, 15 N.C. App. 216, 218 (1972). But identifying the buyer, whose name was known, as a "confidential informant" was inadequate. State v. Calvino, 179 N.C. App. 219, 222 (2006).

5. Special Rules for Citations. A citation is sufficient when it (1) identifies the crime charged, (2) contains the name and address of the person cited, (3) identifies the issuing officer, and (4) directs the person cited to appear in court at a certain date and time. State v. Jones, 371 N.C. 548, 555 (2018); *cf.* G.S. 15A-302(c). Whatever identifying the crime means, it is not necessary to allege each element of the offense. *See* State v. Jones, 371 N.C 548, 555 (2018); State v. Allen, 247 N.C. App. 179, 183 (2016).

C. Alleging Prior Convictions. Pleadings that contain allegations of prior convictions are subject to additional restrictions. In determining which rules apply, prior convictions used as an element of the offense charged should be distinguished from those used for purposes of sentencing. Though our statutes allow indictment for habitual felon status, habitual felon status is not a crime; it is a sentencing enhancement. State v. Patton, 342 N.C. 633, 635 (1996); State v. Roper, 328 N.C. 337, 363 (1991); State v. Allen, 292 N.C. 431, 435 (1977). In alleging a prior conviction, it is generally sufficient to state that the defendant was at a certain time and place convicted of the prior offense, without otherwise fully alleging all the elements. G.S. 15A-924(d).

1. As an Element of the Offense. For some crimes, it is necessary to prove prior convictions as an element of the offense. *See e.g.*, G.S. 14-72(b)(6) (habitual larceny); 14-33.2 (habitual misdemeanor assault); 14-415.1 (possession of firearm by a felon); 20-138.5 (habitual impaired driving); 90-95(e) (certain drug offenses). When a prior conviction raises an offense of a lower grade to one of higher grade, an indictment or information for the higher offense must allege the prior conviction in a separate indictment or information or as a separate count in the principal indictment. G.S. 15A-928; *cf.* 15A-924(c). If the name of the offense refers to the prior conviction, the name may not be used in the indictment or information but should be altered to avoid reference to the prior conviction. G.S. 15A-928(a). When a misdemeanor with such an element is tried de novo in superior court, the State must replace the pleading with a statement of charges that complies with these provisions. *Id.* at (d); *cf.*

G.S. 15A-922(h). But even before *State v. Singleton*, 386 N.C. 183 (2024), failure to comply with statutory separate-count provisions is not a jurisdictional defect. State v. Newborn, 384 N.C. 656, 661 (2023); State v. Brice, 370 N.C. 244, 253 (2017).

2. **As an Aggravating Sentencing Factor.** Even when a prior conviction is not an element of the offense charged, prior conviction(s) may justify a longer sentence. For the most part, prior convictions are factored into a determination of the defendant's prior record level or prior conviction level. G.S. 15A-1340.14 (felony sentencing); 15A-1340.21 (misdemeanor sentencing). Under a few statutes, relevant prior convictions also constitute aggravating factors at sentencing with prescribed pleading requirements. *See* G.S. 15A-1340.16B(d) (Class B1 felony, victim under 13, and prior conviction of Class B1 felony); 20-179(a1)(1) (DWI appeal to superior court, defendant entitled to notice of aggravating factors).

3. **As "Elements" of Habitual Felon Status.** As noted above, being an habitual felon is not a crime. "[T]he status of habitual felon merely enhances the punishment of another crime." State v. Roper, 328 N.C. 337, 363 (1991). By statute, any person who has been previously convicted of three felony offenses may be charged as a status offender. G.S. 14-7.1. An habitual felon indictment must be separate from the indictment charging the principal felony. G.S. 14-7.3. An habitual felon indictment must include:

(1) the date the prior felonies were committed,
(2) the name of the state or sovereign against which the felonies were committed,
(3) the dates the felony convictions were returned, and
(4) the identity of the court where the convictions took place.

G.S. 14-7.3. Notwithstanding, an habitual felon indictment is sufficient if it provides a defendant with notice of the prior felony convictions. State v. Briggs, 137 N.C. App. 125, 131 (2000); State v. Williams, 99 N.C. App. 333, 335 (1990); *cf.* State v. Marshburn, 173 N.C. App. 749, 753 (2005). Hence, deviations from the requirements of G.S. 14-7.3 are not fatal so long as the defendant received adequate notice. *See* State v. Griffin, 213 N.C. App. 625, 629 (2011) (misidentifying prior conviction); State v. Taylor, 203 N.C. App. 448, 455 (2010) (incorrect date); State v. Sinclair, 191 N.C. App. 485, 495 (2008) (failed to name state or sovereign); *see also* JEFFREY B. WELTY, NORTH CAROLINA'S HABITUAL FELON, VIOLENT HABITUAL FELON, AND HABITUAL BREAKING AND ENTERING LAWS, ADMIN. OF JUST. BULL. NO. 2013/07 (UNC School of Government, Aug. 2013).

V. Fixing Pleading Problems.

A. Amendment. In general, errors that may safely be ignored may also be corrected by amendment, whereas defects that render a pleading fatally defective cannot be remedied by amending the pleading. *Compare* State v. Brinson, 337 N.C. 764, 767 (1994) (amendment was permissible to specify items were "deadly weapons" when original indictment was sufficient to identify items as deadly weapons); *with* State v. Madry, 140 N.C. App. 600, 603 (2000) (defective warrant could not be cured by amendment). Obviously, this makes amendment a procedure of only limited utility.

By statute, a bill of indictment may not be amended. G.S. 15A-923(e).

This has been construed to mean that a bill of indictment may not be amended in a manner that substantially alters the charged offense. State v. Farrar, 361 N.C. 675, 677 (2007). Undoubtedly, a fatally defective indictment cannot be cured by amendment. State v. Maloney, 253 N.C. App. 563, 570 (2017).

In considering whether an amendment otherwise constitutes a substantial alteration, courts consider the purposes served by indictments, including enabling a defendant to prepare for trial. State v. Silas, 360 N.C. 377, 380 (2006). Where time is not of the essence and the defendant has not been prejudiced, an amendment relating to the date of offense charged is permissible. State v. Price, 310 N.C. 596, 600 (1984); State v. Avent, 222 N.C. App. 147, 151 (2012); State v. Riffe, 191 N.C. App. 86, 94 (2008); State v. Coltrane, 188 N.C. App. 498, 501 (2008). Amendment has also been approved in the following scenarios:

- State v. Lawson, 285 N.C. App. 404, 411 (2022) (animal cruelty indictment properly amended to strike name of horse);
- State v. Stith, 246 N.C. App. 714, 717 (2016) (drug possession indictment amended to strike "Schedule II"), aff'd per curiam, 369 N.C. 516 (2017);
- State v. Tucker, 227 N.C. App. 627, 632 (2013) (embezzlement indictment amended to add "or agent");
- State v. McCallum, 187 N.C. App. 628, 636 (2007) (robbery indictment amended to remove value of property);
- State v. Brady, 147 N.C. App. 755, 759 (2001) (indictment for obtaining controlled substance by fraud amended to change drug);
- State v. Parker, 146 N.C. App. 715, 719 (2001) (indictment for obtaining property by false pretenses amended to change items pawned).

By contrast, an amendment that alters allegations relied on by the defendant in preparing a defense is prohibited. State v. Silas, 360 N.C. 377, 383 (2006); State v. Frazier, 251 N.C. App. 840, 842 (2017); State v. Morris, 185 N.C. App. 481, 484 (2007). Similarly, an amendment that results in a misdemeanor being elevated to a felony is a substantial alteration. State v. Winslow, 169 N.C. App. 137 (Hunter, J. dissenting in part), *rev'd based on dissent*, 360 N.C. 161, 623 S.E.2d 11 (2005); State v. Moses, 154 N.C. App. 332, 338 (2002). Whether changing a victim's name substantially alters the charge seems to depend on how drastically the name is changed. *See* State v. Abraham, 338 N.C. 315, 340 (1994) (impermissible to amend Carlose Antoine Latter to Joice Hardin); State v. McNair, 146 N.C. App. 674, 678 (2001) (no error in allowing amendment from Donald Cook to Ronald Cook); State v. Hewson, 182 N.C. App. 196, 212 (2007) (Gail Hewson Tice to Gail Tice Hewson); State v. Holliman, 155 N.C. App. 120, 126 (2002) (Tamika to Tanika).

Misdemeanor pleadings may be amended at any time "when the amendment does not change the nature of the offense." G.S. 15A-922(f). The substantial-alteration standard for indictments and the changed-nature standard for misdemeanor pleadings have been treated as essentially identical. State v. Reavis, 287 N.C. App. 322, 328 n.2 (2022). It should be noted, however, that a warrant may be amended to correct allegations pertaining to the ownership of property. G.S. 15-24.1. This would seem to permit amendment of the victim's name in a larceny case to specify an entity capable of owning property, whereas

such amendment may not be permissible for indictments. *Compare* State v. Capps, 374 N.C. 621, 627 (2020) (no error in allowing amendment to victim's name in warrant); *with* State v. Cathey, 162 N.C. App. 350, 354 (2004) (larceny indictment could not be amended to add "Incorporated"), *overruled in part on other grounds by* State v. Campbell, 368 N.C. 83 (2015). As with indictments, misdemeanor charging documents may not be amended so as to charge the defendant with committing an entirely different offense. State v. Bryant, 267 N.C. App. 575, 578 (2019); State v. Carlton, 232 N.C. App. 62, 66 (2014).

Assuming amendment is permissible, the amendment should be made in writing. G.S. 15A-951. The usual practice is for the prosecutor to move to amend, for the court to rule on the motion, and for someone to mark the amendment on the court's copy of the pleading and to initial it. As for timing, North Carolina courts have permitted amendments to indictments as late as during trial. State v. Snyder, 343 N.C. 61, 64 (1996); State v. Kamtsiklis, 94 N.C. App. 250, 255 (1989). By statute, misdemeanor pleadings may be amended at any time. G.S. 15A-922(f).

B. Superseding Indictments. Even fatal defects in an indictment or information can be remedied by obtaining a superseding indictment or information that correctly charges the offense. *See* State v. Camacho, 329 N.C. 589, 596 (1991); State v. Bailey, 145 N.C. App. 13, 21 (2001). It has long been the law in this state that prior indictment constitutes no legal impediment to putting the defendant on trial upon a later and more perfect bill. State v. Carson, 320 N.C. 328, 333 (1987). By statute, if, before trial or plea, another indictment or information is filed in the same court charging the defendant with an offense charged or attempted to be charged in the first instrument, the first is superseded by the second "with respect to the offense;" but the first instrument is not superseded with respect to any count not charged in the second. G.S. 15A-646.

In the district court, misdemeanor pleadings may be superseded by a statement of charges. By statute, when a statement of charges is filed, it supersedes all previous pleadings and constitutes the pleading of the State. G.S. 15A-922(a). A statement of charges filed prior to arraignment in district court may charge the same offenses as a prior misdemeanor pleading or charge additional or different offenses. G.S. 15A-922(d). Unless the statement of charges makes no material change in the pleadings, a defendant, upon motion, is entitled to a continuance of three days after a statement of charges is filed or the defendant is first notified. G.S. 15A-922(b).

C. Dismissing and Recharging. When it is not practical or possible to amend or supersede an existing pleading, the prosecutor may choose to dismiss and recharge the defendant. G.S. 15A-931. There is no double jeopardy problem with this procedure so long as the State dismisses the pleading before jeopardy attaches. Even if trial has begun, there is no double jeopardy problem if the original pleading was fatally defective. State v. Brunson, 327 N.C. 244, 247 (1990). (It remains uncertain how State v. Singleton, 386 N.C. 183 (2024), rejecting indictment as the basis for jurisdiction, would affect the application of this rule.) Later misdemeanor charges may, however, be barred by the statute of limitations. G.S. 15-1; *cf.* G.S. 15A-931(b).

The new charge may be initiated in any way that is permissible for the offense in question. For a misdemeanor, an officer could issue a new citation or a judicial official could issue a new summons or warrant. G.S. 15A-922(a). New

felony charges could be initiated by a new summons or warrant but would eventually require a new indictment or a waiver of indictment and information. G.S. 15A-923(a); *cf.* State v. Fields, 374 N.C. 629, 636 (2020).