

Sharpe, Nicholas 7/14/2014  
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§ 7A-49.4. Superior court criminal case docketing, NC ST § 7A-49.4

N.C. Gen. Stat. § 7A-49.4

West's North Carolina General Statutes Annotated  
Chapter 7A. Judicial Department (Refs & Annos)  
Subchapter III. Superior Court Division of the General Court of Justice  
Article 7. Organization

N.C.G.S.A. § 7A-49.4

§ 7A-49.4. Superior court **criminal case docketing**

Currentness

(a) **Criminal Docketing.**--Criminal cases in superior court shall be calendared by the district attorney at administrative settings according to a **criminal case docketing** plan developed by the district attorney for each superior court district in consultation with the superior court judges residing in that district and after opportunity for comment by members of the local bar. Each **criminal case docketing** plan shall, at a minimum, comply with the provisions of this section, but may contain additional provisions not inconsistent with this section.

(b) **Administrative Settings.**--An administrative setting shall be calendared for each felony within 60 days of indictment or service of notice of indictment if required by law, or at the next regularly scheduled session of superior court if later than 60 days from indictment or service if required. At an administrative setting:

- (1) The court shall determine the status of the defendant's representation by counsel;
- (2) After hearing from the parties, the court shall set deadlines for the delivery of discovery, arraignment if necessary, and filing of motions;
- (3) If the district attorney has made a determination regarding a plea arrangement, the district attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea arrangement, and the court may conduct a plea conference if supported by the interest of justice;
- (4) The court may hear pending pretrial motions, set such motions for hearing on a date certain, or defer ruling on motions until the trial of the case; and
- (5) The court may schedule more than one administrative setting if requested by the parties or if it is found to be necessary to promote the fair administration of justice in a timely manner.

Whenever practical, administrative settings shall be held by a superior court judge residing within the district, but may otherwise be held by any superior court judge.

If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final administrative setting, the district attorney shall announce a proposed trial date. The court shall set that date as the tentative trial date unless, after providing the

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parties an opportunity to be heard, the court determines that the interests of justice require the setting of a different date. In that event, the district attorney shall set another tentative trial date during the final administrative setting. The trial shall occur no sooner than 30 days after the final administrative setting, except by agreement of the State and the defendant.

Nothing in this section precludes the disposition of a criminal case by plea, deferred prosecution, or dismissal prior to an administrative setting.

(c) **Definite Trial Date.**--When a case has not otherwise been scheduled for trial within 120 days of indictment or of service of notice of indictment if required by law, then upon motion by the defendant at any time thereafter, the senior resident superior court judge, or a superior court judge designated by the senior resident superior court judge, may hold a hearing for the purpose of establishing a trial date for the defendant.

(d) **Venue for Administrative Settings.**--Venue for administrative settings may be in any county within the district when necessary to comply with the terms of the criminal case docketing plan. The presence of the defendant is only required for administrative settings held in the county where the case originated.

(e) **Setting and Publishing of Trial Calendar.**--No less than 10 working days before cases are calendared for trial, the district attorney shall publish the trial calendar. The trial calendar shall schedule the cases in the order in which the district attorney anticipates they will be called for trial and should not contain cases that the district attorney does not reasonably expect to be called for trial. In counties in which multiple sessions of court are being held, the district attorney may publish a trial calendar for each session of court.

(f) **Order of Trial.**--The district attorney, after calling the calendar and determining cases for pleas and other disposition, shall announce to the court the order in which the district attorney intends to call for trial the cases remaining on the calendar. Deviations from the announced order require approval by the presiding judge if the defendant whose case is called for trial objects; but the defendant may not object if all the cases scheduled to be heard before the defendant's case have been disposed of or delayed with the approval of the presiding judge or by consent of the State and the defendant. A case may be continued from the trial calendar only by consent of the State and the defendant or upon order of the presiding judge or resident superior court judge for good cause shown. The district attorney, after consultation with the parties, shall schedule a new trial date for cases not reached during that session of court.

(g) Nothing in this section shall be construed to deprive any victim of the rights granted under Article 1, Section 37 of the North Carolina Constitution and Article 46 of Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed to affect the authority of the court in the call of cases calendared for trial.

**Credits**

Added by S.L. 1999-428, § 1, eff. Jan. 1, 2000.

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**Editors' Notes**

**LIBRARY REFERENCES**

**Criminal Law** [§ 632\(2\)](#).

**C.J.S. Criminal Law** § 1144.

**RESEARCH REFERENCES**

**Encyclopedias**

Strong's N.C. Index 4th, **Criminal Law** § 123, Notice of Defenses, Expert Witnesses, and Witness Lists.

Strong's N.C. Index 4th, **Criminal Law** § 213, Calendar for **Criminal Trial** Sessions.

Strong's N.C. Index 4th, District Attorneys § 6, Powers and Duties, Generally--Matters Relating to **Trial** Calendars or **Dockets**.

**Relevant Notes of Decisions (19)**

[View all 19](#)

Notes of Decisions listed below contain your search terms.

**Validity**

While **criminal** superior court has wide discretion in managing **criminal** cases which are pending before it, vesting of calendaring authority in district attorney does not intrude upon this authority, and does not violate due process clause of United States Constitution, or law of the land, open courts, or **criminal jury trial** clauses of state constitution because ultimate authority over managing **trial** calendar is retained in the court. *Simeon v. Hardin*, 1994, 339 N.C. 358, 451 S.E.2d 858. Constitutional Law [§ 2314](#); Constitutional Law [§ 4522](#); **Criminal Law** [§ 632\(2\)](#); Jury [§ 31.3\(1\)](#)

Allegations of abuse of the calendaring authority brought against district attorneys were sufficient to state cause of action that statutes granting authority to district attorney were being applied in unconstitutional manner, where complaint alleged that district attorney delayed calendaring **criminal** defendant's case for **trial** for the tactical purpose of keeping defendant in jail, delaying **trial** at which he was likely to be acquitted, and pressuring him into entering guilty plea; that district attorney repeatedly calendared another defendant's **trial** causing him to incur unnecessary witness-related expenses; that statute which allows district attorney to announce order of cases for **trial** on first day of **criminal** session gives defendants less than one day's notice of order in which cases will be called; and that district attorney places large number of cases on printed **trial** calendar knowing not all cases will be called, in order to surprise defense counsel. *Simeon v. Hardin*, 1994, 339 N.C. 358, 451 S.E.2d 858. **Criminal Law** [§ 632\(2\)](#); District And Prosecuting Attorneys [§ 10](#)

Nothing in statutes vesting district attorneys with calendaring authority authorizes district attorney to choose a particular judge to preside over particular **criminal** case, and thus Court of Appeals would not assume that district attorney utilizes calendaring authority in this manner, on appeal of **trial** court's dismissal of civil action challenging district attorney's authority to set **criminal trial** calendar. *Simeon v. Hardin*, 1994, 339 N.C. 358, 451 S.E.2d 858. Appeal And Error [§ 907\(1\)](#); **Criminal Law** [§ 632\(2\)](#); **Criminal Law** [§ 1144.9](#)

**In general**

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A case is “docketed” within the meaning of statute governing the calendaring of **criminal trials** in superior court when initial entry of the case is made in a docket book in the office of the clerk of court. *State v. Messer*, 2001, 145 N.C.App. 43, 550 S.E.2d 802, stay allowed 354 N.C. 72, 552 S.E.2d 637, affirmed 354 N.C. 567, 556 S.E.2d 293, temporary stay dissolved 354 N.C. 578, 559 S.E.2d 548, writ dismissed 354 N.C. 578, 559 S.E.2d 548. **Criminal Law** ¶ 632(2)

Defendant was not required to appear in court within the meaning of the statute governing felonious failure to appear, where the placement of defendant's case on the superior court calendar violated statute governing the calendaring of **criminal cases**. *State v. Messer*, 2001, 145 N.C.App. 43, 550 S.E.2d 802, stay allowed 354 N.C. 72, 552 S.E.2d 637, affirmed 354 N.C. 567, 556 S.E.2d 293, temporary stay dissolved 354 N.C. 578, 559 S.E.2d 548, writ dismissed 354 N.C. 578, 559 S.E.2d 548. **Bail** ¶ 97(1)

The ultimate authority over managing the **trial** calendar is retained in the court, even though the district attorney has statutory authority to calendar cases for **trial**. *State v. Monk*, 1999, 132 N.C.App. 248, 511 S.E.2d 332, appeal dismissed, review denied 350 N.C. 845, 539 S.E.2d 1. **Criminal Law** ¶ 632(2)

Adding attempted murder charge to **trial** calendar after court calendar had been printed was not abuse of **trial** court's discretion. *State v. Monk*, 1999, 132 N.C.App. 248, 511 S.E.2d 332, appeal dismissed, review denied 350 N.C. 845, 539 S.E.2d 1. **Criminal Law** ¶ 632(2)

**Due process**

Capital murder defendant's right to due process was not impaired by lack of notice, if any, that arraignment was to be held on certain date; defendant was fully aware of charge against him, he entered plea of not guilty at arraignment, and **trial** court eliminated any possibility of prejudice by allowing defendant additional time to file his remaining pretrial motions. *State v. Locklear*, 1998, 349 N.C. 118, 505 S.E.2d 277, certiorari denied 119 S.Ct. 1475, 526 U.S. 1075, 143 L.Ed.2d 559. **Constitutional Law** ¶ 4584; **Criminal Law** ¶ 264

**Cases docketed after filing**

Placement of defendant's case on the calendar violated the statute governing the calendaring of **criminal trials** in the superior court, where the case was placed on an addendum calendar that was filed with the court three days prior to the hearing date and no evidence indicated that defendant's case was **docketed** prior to the filing of the addendum calendar. *State v. Messer*, 2001, 145 N.C.App. 43, 550 S.E.2d 802, stay allowed 354 N.C. 72, 552 S.E.2d 637, affirmed 354 N.C. 567, 556 S.E.2d 293, temporary stay dissolved 354 N.C. 578, 559 S.E.2d 548, writ dismissed 354 N.C. 578, 559 S.E.2d 548. **Criminal Law** ¶ 632(2)

Although defendant's case was on sentencing calendar and not **trial** calendar, adding defendant's case to **trial** calendar of day subsequent to **trial** court's grant of defendant's motion to withdraw his no contest plea to lesser included offense did not violate statute governing **trial** calendars where district attorney did not know when calendar was made up that defendant's case would be returned to **trial** docket as result of his change of plea and statute expressly provided that case **docketed** after calendar is filed can be called for **trial** at district attorney's discretion. *State v. Edwards*, 1984, 319 S.E.2d 613, 70 N.C.App. 317, review allowed 322 S.E.2d 562, 312 N.C. 489, reversed 337 S.E.2d 508, 315 N.C. 304. **Criminal Law** ¶ 577.1

**Continuances**

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While decision to grant or deny continuance is normally within discretion of trial judge, such discretion can be abused, and in unusual case denial of continuance may be so arbitrary and so fundamentally unfair as to invoke constitutional principles. *Shirley v. State of N. C.*, 1975, 528 F.2d 819. **Criminal Law** ¶ 586

Denial by state trial court judge of defendant's motion for continuance violated fundamental fairness standard implicit in due process clause of Fourteenth Amendment and mandated issuance of federal writ of habeas corpus where, when continuance was denied, state had already delayed trial by some 16 months, during which period defendant was unable under local procedure to subpoena witnesses, and where continuance was required in order for defendant to obtain testimony of witness indispensable to his defense. *Shirley v. State of N. C.*, 1975, 528 F.2d 819. **Constitutional Law** ¶ 4611; **Criminal Law** ¶ 595(4); **Criminal Law** ¶ 598(10); **Habeas Corpus** ¶ 479

Denial of defendant's motion for continuance was not error and was not prejudicial where warrant for defendant's arrest was issued on July 23, 1978, on November 14, 1978 counsel was appointed to represent defendant, the case was calendared in district court for probable cause hearing on December 5, 1978, at which time the State announced that it would not proceed with the hearing, and State further announced at that time that it was the State's intention to seek a bill of indictment on December 11, 1978 and case was set for trial during the December 18 criminal session and case was heard on December 19. *State v. Miller*, 1979, 256 S.E.2d 512, 42 N.C.App. 342. **Criminal Law** ¶ 586; **Criminal Law** ¶ 1151

**Consolidation of proceedings**

Trial court's decision to consolidate charges is discretionary and is limited to determination of whether defendant can receive fair hearing on each charge, and whether consolidation hinders or deprives defendant of his ability to present his defense. *State v. Thompson*, 1998, 129 N.C.App. 13, 497 S.E.2d 126. **Criminal Law** ¶ 619

Trial court could join for trial defendant's calendared charges for kidnapping and robbery with a dangerous weapon with noncalendared charges for armed robbery and robbery from person, as all the charges were transactionally related, arising from defendant's actions in robbing store, and defendant failed to establish prejudice. *State v. Thompson*, 1998, 129 N.C.App. 13, 497 S.E.2d 126. **Criminal Law** ¶ 620(1)

Mere assertion that consolidation of calendared charges with noncalendared charges required altered trial strategy was not sufficient to prove prejudicial error. *State v. Thompson*, 1998, 129 N.C.App. 13, 497 S.E.2d 126. **Criminal Law** ¶ 1166(6)

Requirement that motion for joinder of charges be made prior to arraignment applies only to motions made by defendant. *State v. Thompson*, 1998, 129 N.C.App. 13, 497 S.E.2d 126. **Criminal Law** ¶ 620(1)

Harmless error standard did not apply to sentence imposed on crime that state did not prove, despite state's argument that failure to dismiss charge was not prejudicial because sentence which defendant received for all consolidated armed robbery convictions could have been imposed for any single armed robbery. *State v. Thompson*, 1998, 129 N.C.App. 13, 497 S.E.2d 126. **Criminal Law** ¶ 1177.3(1)

**Waiver**

By waiting until second day of trial to move for continuance, defendant waived his objection to tardy publication of trial calendar. *State v. Moore*, 1983, 308 S.E.2d 723, 65 N.C.App. 56. **Criminal Law** ¶ 632(2)

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The statutes and Constitution are current through Chapters 1-3, 5-17 of the 2014 Regular Session of the General Assembly.

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