

## Article 14.

### Nontestimonial Identification.

#### **§ 15A-271. Authority to issue order.**

A nontestimonial identification order authorized by this Article may be issued by any judge upon request of a prosecutor. As used in this Article, "nontestimonial identification" means identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or similar identification procedures requiring the presence of a suspect. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

#### **§ 15A-272. Time of application; additional investigative procedures not precluded.**

A request for a nontestimonial identification order may be made prior to the arrest of a suspect or after arrest and prior to trial. Nothing in this Article shall preclude such additional investigative procedures as are otherwise permitted by law. (1973, c. 1286, s. 1.)

#### **§ 15A-273. Basis for order.**

An order may issue only on an affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

- (1) That there is probable cause to believe that a felony offense, or a Class A1 or Class 1 misdemeanor offense has been committed;
- (2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense; and
- (3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense. (1973, c. 1286, s. 1; 1997-80, s. 14.)

#### **§ 15A-274. Issuance of order.**

Upon a showing that the grounds specified in G.S. 15A-273 exist, the judge may issue an order requiring the person named or described with reasonable certainty in the affidavit to appear at a designated time and place and to submit to designated nontestimonial identification procedures. Unless the nature of the evidence sought makes it likely that delay will adversely affect its probative value, or when it appears likely that the person named in the order may destroy, alter, or modify the evidence sought or may not appear, the order must be served at least 72 hours before the time designated for the nontestimonial identification procedure. (1973, c. 1286, s. 1; 1977, c. 832, s. 1.)

#### **§ 15A-275. Modification of order.**

At the request of a person ordered to appear, the judge may modify the order with respect to time and place of appearance whenever it appears reasonable under the circumstances to do so. (1973, c. 1286, s. 1.)

#### **§ 15A-276. Failure to appear.**

Any person who fails without adequate excuse to obey an order to appear served upon him pursuant to this Article may be held in contempt of the court which issued the order. (1973, c. 1286, s. 1.)

**§ 15A-277. Service of order.**

An order to appear pursuant to this Article may be served by a law-enforcement officer. The order must be served upon the person named or described in the affidavit by delivery of a copy to him personally. The order must be served at least 72 hours in advance of the time of compliance, unless the judge issuing the order has determined, in accordance with G.S. 15A-274, that delay will adversely affect the probative value of the evidence sought or when it appears likely that the person named in the order may destroy, alter, or modify the evidence sought, or may not appear. (1973, c. 1286, s. 1; 1977, c. 832, s. 2.)

**§ 15A-278. Contents of order.**

An order to appear must be signed by the judge and must state:

- (1) That the presence of the person named or described in the affidavit is required for the purpose of permitting nontestimonial identification procedures in order to aid in the investigation of the offense specified therein;
- (2) The time and place of the required appearance;
- (3) The nontestimonial identification procedures to be conducted, the methods to be used, and the approximate length of time such procedures will require;
- (4) The grounds to suspect that the person named or described in the affidavit committed the offense specified therein;
- (5) That the person is entitled to be represented by counsel at the procedure, and to the appointment of counsel if he cannot afford to retain one;
- (6) That the person will not be subjected to any interrogation or asked to make any statement during the period of his appearance except that required for voice identification;
- (7) That the person may request the judge to make a reasonable modification of the order with respect to time and place of appearance, including a request to have any nontestimonial identification procedure other than a lineup conducted at his place of residence; and
- (8) That the person, if he fails to appear, may be held in contempt of court. (1973, c. 1286, s. 1.)

**§ 15A-279. Implementation of order.**

(a) Nontestimonial identification procedures may be conducted by any law-enforcement officer or other person designated by the judge issuing the order. The extraction of any bodily fluid must be conducted by a qualified member of the health professions and the judge may require medical supervision for any other test ordered pursuant to this Article when he considers such supervision necessary.

(b) In conducting authorized identification procedures, no unreasonable or unnecessary force may be used.

(c) No person who appears under an order of appearance issued under this Article may be detained longer than is reasonably necessary to conduct the specified nontestimonial identification procedures, and in no event for longer than six hours, unless he is arrested for an offense.

(d) Any such person is entitled to have counsel present and must be advised prior to being subjected to any nontestimonial identification procedures of his right to have counsel present during any nontestimonial identification procedure and to the appointment of counsel if he cannot afford to retain counsel. Appointment of counsel shall be in accordance with rules adopted by the

Office of Indigent Defense Services. No statement made during nontestimonial identification procedures by the subject of the procedures shall be admissible in any criminal proceeding against him, unless his counsel was present at the time the statement was made.

(e) Any person who resists compliance with the authorized nontestimonial identification procedures may be held in contempt of the court which issued the order pursuant to the provisions of G.S. 5A-12(a) and G.S. 5A-21(b).

(f) A nontestimonial identification order may not be issued against a person previously subject to a nontestimonial identification order unless it is based on different evidence which was not reasonably available when the previous order was issued.

(g) Resisting compliance with a nontestimonial identification order is not itself grounds for finding probable cause to arrest the suspect, but it may be considered with other evidence in making the determination whether probable cause exists. (1973, c. 1286, s. 1; 1977, c. 711, s. 20; 2000-144, s. 28.)

#### **§ 15A-280. Return.**

Within 90 days after the nontestimonial identification procedure, a return must be made to the judge who issued the order or to a judge designated in the order setting forth an inventory of the products of the nontestimonial identification procedures obtained from the person named in the affidavit. If, at the time of the return, probable cause does not exist to believe that the person has committed the offense named in the affidavit or any other offense, the person named in the affidavit is entitled to move that the authorized judge issue an order directing that the products and reports of the nontestimonial identification procedures, and all copies thereof, be destroyed. The motion must, except for good cause shown, be granted. (1973, c. 1286, s. 1.)

#### **§ 15A-281. Nontestimonial identification order at request of defendant.**

A person arrested for or charged with a felony offense, or a Class A1 or Class 1 misdemeanor offense may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge to whom the request was directed must order the State to conduct the identification procedures. (1973, c. 1286, s. 1; 1997-80, s. 15.)

#### **§ 15A-282. Copy of results to person involved.**

A person who has been the subject of nontestimonial identification procedures or his attorney must be provided with a copy of any reports of test results as soon as the reports are available. (1973, c. 1286, s. 1.)

#### **§§ 15A-283 through 15A-284.49 Reserved for future codification purposes.**