

N.C.P.I.—Crim. 100.40
ALTERNATE JUROR(S) SUBSTITUTED—INSTRUCTIONS TO JURY TO BEGIN
DELIBERATIONS ANEW.
GENERAL CRIMINAL VOLUME
REPLACEMENT APRIL 2024
N.C. Gen. Stat. § 15A-1215(a).

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BEGIN DELIBERATIONS ANEW.

NOTE WELL: The North Carolina Court of Appeals in State v. Chambers, 292 N.C. App. 459, 898 S.E.2d 86 (2024), ruled that substituting an alternate juror for one of the original twelve after deliberations have begun violates the Constitution and is reversible error. This holding has been stayed and a petition for discretionary review granted by the Supreme Court of North Carolina. 901 S.E.2d 774 (2024). If you choose to substitute a juror, use the following instruction.

[An alternate juror has] [Alternate jurors have] been substituted for the excused [juror] [jurors].¹ You should not speculate about the reason for the substitution. The law of this State² grants the defendant the right to a unanimous verdict reached only after full participation of the twelve jurors who ultimately return a verdict. That right may only be assured if the jury begins deliberations anew. Therefore, you must restart your deliberations from the beginning. This means you should disregard entirely any deliberations taking place before the alternate [juror was] [jurors were] substituted, and consider freshly the evidence as if the previous deliberations had never occurred.

Although starting over may seem frustrating, please do not let it discourage you. It is important to our system of justice that each juror has a full and fair opportunity to explore his or her views, and respond to the views of others so that you may come to a unanimous verdict. All the previous instructions given to you, including the unanimity requirement for a verdict, remain in effect. You shall now retire for your deliberations in accordance with the instructions previously given.

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NOTE WELL: If the excused juror was the foreperson, the court must instruct the jury to select a new foreperson prior to restarting deliberations.

1. Effective October 1, 2021, for jurors and alternate jurors selected on or after that date, S.L. 2021-94 amended N.C. Gen. Stat. § 15A-1215(a) to permit an alternate juror to replace a regular juror after deliberations have begun.

2. N.C. Const. art. I, § 24.