

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 33
Second Edition Engrossed 5/10/95
House Committee Substitute Favorable 6/3/96
House Committee Substitute #2 Favorable 6/13/96

Short Title: Felony Plea/Arrestment Changes.

(Public)

Sponsors:

Referred to:

January 26, 1995

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES IN THE CRIMINAL JURISDICTION OF
DISTRICT AND SUPERIOR COURT AND TO MAKE VARIOUS CRIMINAL
LAW PROCEDURAL CHANGES.

The General Assembly of North Carolina enacts:

PART 1. CLASS H AND I FELONY GUILTY PLEAS IN DISTRICT COURT

Section 1. G.S. 7A-272 is amended by adding the following new subsections
to read:

"(c) With the consent of the presiding district court judge, the prosecutor, and the defendant, the district court has jurisdiction to accept a defendant's plea of guilty or no contest to a Class H or I felony if:

(1) The defendant is charged with a felony in an information filed pursuant to G.S. 15A-644.1, the felony is pending in district court, and the defendant has not been indicted for the offense; or

(2) The defendant has been indicted for a criminal offense but the defendant's case is transferred from superior court to district court pursuant to G.S. 15A-1029.1.

1 (d) Provisions in Chapter 15A of the General Statutes apply to a plea authorized
2 under subsection (c) of this section as if the plea had been entered in superior court, so
3 that a district court judge is authorized to act in these matters in the same manner as a
4 superior court judge would be authorized to act if the plea had been entered in superior
5 court, and appeals that are authorized in these matters are to the appellate division."

6 Sec. 2. The catch line for G.S. 7A-272 reads as rewritten:

7 "**§ 7A-272. Jurisdiction of district court; concurrent jurisdiction in guilty or**
8 **no contest pleas for certain felony offenses; appellate and appropriate**
9 **relief procedures applicable.**"

10 Sec. 3. Article 32 of Chapter 15A of the General Statutes is amended by
11 adding a new section to read:

12 "**§ 15A-644.1. Filing of information when plea of guilty or no contest in district**
13 **court to Class H or I felony.**

14 A defendant who pleads guilty or no contest in district court pursuant to G.S. 7A-
15 272(c)(1) shall enter that plea to an information complying with G.S. 15A-644(b), except
16 it shall contain the name of the district court in which it is filed."

17 Sec. 4. Article 18 of Chapter 7A of the General Statutes is amended by adding
18 a new section to read:

19 "**§ 7A-191.1. Recording of proceeding in which defendant pleads guilty or no**
20 **contest to felony in district court.**

21 The trial judge shall require that a true, complete, and accurate record be made of the
22 proceeding in which a defendant pleads guilty or no contest to a Class H or I felony
23 pursuant to G.S. 7A-272."

24 Sec. 5. G.S. 15A-1011(c) reads as rewritten:

25 "(c) Upon entry of a plea of guilty or no contest or after conviction on a plea of not
26 guilty, the defendant may request permission to enter a plea of guilty or no contest as to
27 other crimes with which he is charged in the same or another prosecutorial district as
28 defined in G.S. 7A-60. A defendant may not enter any plea to crimes charged in another
29 prosecutorial district as defined in G.S. 7A-60 unless the district attorney of that district
30 consents in writing to the entry of such plea. The prosecutor or his representative may
31 appear in person or by filing an affidavit as to the nature of the evidence gathered as to
32 these other crimes. Entry of a plea under this subsection constitutes a waiver of venue. A
33 superior court is granted jurisdiction to accept the plea, upon an appropriate indictment or
34 information, even though the case may otherwise be within the exclusive original
35 jurisdiction of the district court. A district court may accept pleas under this section only
36 in cases within the original jurisdiction of the district ~~court~~ court and in cases within the
37 concurrent jurisdiction of the district and superior courts pursuant to G.S. 7A-272(c)."

38 Sec. 6. Chapter 15A of the General Statutes is amended by adding a new
39 Article to read:

40 **"ARTICLE 58A.**
41 **"PROCEDURES RELATING TO FELONY GUILTY PLEAS**
42 **IN DISTRICT COURT.**

1 "§ 15A-1029.1. Transfer of case from superior court to district court to accept
2 guilty and no contest pleas for certain felony offenses.

3 (a) With the consent of both the prosecutor and the defendant, the presiding
4 superior court judge may order a transfer of the defendant's case to the district court for
5 the purpose of allowing the defendant to enter a plea of guilty or no contest to a Class H
6 or I felony.

7 (b) The provisions of Article 58 of this Chapter apply to a case transferred under
8 this section from superior court to district court in the same manner as if the plea were
9 entered in superior court. Appeals that are authorized in these matters are to the appellate
10 division."

11 **PART 2. ARRAIGNMENT ON WRITTEN REQUEST; ENTRY OF NOT**
12 **GUILTY PLEA**

13 Sec. 7. G.S. 15A-941 reads as rewritten:

14 "§ 15A-941. Arraignment before judge; ~~judge only upon written request; use of two-~~
15 way audio and video ~~transmission-~~ transmission; entry of not guilty plea if
16 not arraigned.

17 (a) Arraignment consists of bringing a defendant in open court or as provided
18 in subsection (b) of this section before a judge having jurisdiction to try the offense,
19 advising him of the charges pending against him, and directing him to plead. The
20 prosecutor must read the charges or fairly summarize them to the defendant. If the
21 defendant fails to plead, the court must record that fact, and the defendant must be tried
22 as if he had pleaded not guilty.

23 (b) An arraignment in a noncapital case may be conducted by an audio and
24 video transmission between the judge and the defendant in which the parties can see and
25 hear each other. If the defendant has counsel, the defendant shall be allowed to
26 communicate fully and confidentially with his attorney during the proceeding.

27 (c) Prior to the use of audio and video transmission pursuant to subsection (b) of
28 this section, the procedures and type of equipment for audio and video transmission shall
29 be submitted to the Administrative Office of the Courts by the senior regular resident
30 superior court judge for the judicial district or set of districts and approved by the
31 Administrative Office of the Courts.

32 (d) A defendant will be arraigned in accordance with this section only if the
33 defendant files a written request with the clerk of superior court for an arraignment not
34 later than 21 days after service of the bill of indictment. If a bill of indictment is not
35 required to be served pursuant to G.S. 15A-630, then the written request for arraignment
36 must be filed not later than 21 days from the date of the return of the indictment as a true
37 bill. Upon the return of the indictment as a true bill, the court must immediately cause
38 notice of the 21-day time limit within which the defendant may request an arraignment to
39 be mailed or otherwise given to the defendant and to the defendant's counsel of record, if
40 any. If the defendant does not file a written request for arraignment, then the court shall
41 enter a not guilty plea on behalf of the defendant.

42 (e) Nothing in this section shall prevent the district attorney from calendaring
43 cases for administrative purposes."

1 Sec. 8. G.S. 15A-942 reads as rewritten:

2 **"§ 15A-942. Right to counsel.**

3 If the defendant appears at the arraignment without counsel, the court must inform the
4 defendant of his right to counsel, must accord the defendant opportunity to exercise that
5 right, and must take any action necessary to effectuate the right. If the defendant does not
6 file a written request for arraignment, the court, in addition to entering a plea of not guilty
7 on behalf of the defendant, shall also verify that the defendant is aware of the right to
8 counsel, that the defendant has been given the opportunity to exercise that right, and must
9 take any action necessary to effectuate that right on behalf of the defendant."

10 Sec. 9. G.S. 15A-952(c) reads as rewritten:

11 "(c) Unless otherwise provided, the motions listed in subsection (b) must be made
12 at or before the time of arraignment if a written request is filed for arraignment and if
13 arraignment is held prior to the session of court for which the trial is calendared. If
14 arraignment is to be held at the session for which trial is calendared, the motions must be
15 filed on or before five o'clock P.M. on the Wednesday prior to the session when trial of
16 the case begins.

17 If a written request for arraignment is not filed, then any motion listed in subsection
18 (b) of this section must be filed not later than 21 days from the date of the return of
19 the bill of indictment as a true bill."

20 Sec. 10. G.S. 15A-1221(a) reads as rewritten:

21 "(a) The order of a jury trial, in general, is as follows:

22 ~~(1) The defendant must be arraigned and must have his plea recorded, out~~
23 ~~of the presence of the prospective jurors, unless he has waived~~
24 ~~arraignment under G.S. 15A-945.~~

25 (1a) Unless the defendant has filed a written request for an arraignment, the
26 court must enter a not guilty plea on behalf of the defendant in
27 accordance with G.S. 15A-941. If a defendant does file a written
28 request for an arraignment, then the defendant must be arraigned and
29 must have his or her plea recorded out of the presence of the prospective
30 jurors in accordance with G.S. 15A-941.

31 (2) The judge must inform the prospective jurors of the case in accordance
32 with G.S. 15A-1213.

33 (3) The jury must be sworn, selected and impaneled in accordance with
34 Article 72, Selecting and Impaneling the Jury.

35 (4) Each party must be given the opportunity to make a brief opening
36 statement, but the defendant may reserve his opening statement.

37 (5) The State must offer evidence.

38 (6) The defendant may offer evidence and, if he has reserved his opening
39 statement, may precede his evidence with that statement.

40 (7) The State and the defendant may then offer successive rebuttals as
41 provided in G.S. 15A-1226.

42 (8) At the conclusion of the evidence, the parties may make arguments to
43 the jury in accordance with the provisions of G.S. 15A-1230.

- 1 (9) The judge must deliver a charge to the jury in accordance with the
2 provisions of G.S. 15A-1231 and 15A-1232.
3 (10) The jury must retire to deliberate, and alternate jurors who have not
4 been seated must be excused as provided in G.S. 15A-1215."

5 **PART 3. EFFECTIVE DATE**

6 Sec. 11. This act becomes effective December 1, 1996, and applies to offenses
7 committed on or after that date.