

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 310

House Committee Substitute Favorable 3/31/99

House Committee Substitute #2 Favorable 6/28/99

Short Title: Amend Time for Notice of Appeal.

(Public)

Sponsors:

Referred to:

March 10, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-1112, as enacted by S.L. 1998-202 and renumbered by the Codifier of Statutes as G.S. 7B-1113, reads as rewritten:

"§ 7B-1112. Appeals; modification of order after affirmation.

Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after the hearing-entry of the order. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State.

1 Upon the affirmation of the order of adjudication or disposition of the court in a juvenile
2 case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the
3 court shall have authority to modify or alter its original order of adjudication or
4 disposition as the court finds to be in the best interests of the juvenile to reflect any
5 adjustment made by the juvenile or change in circumstances during the period of time the
6 case on appeal was pending, provided that if the modifying order be entered ex parte, the
7 court shall give notice to interested parties to show cause, if any there be, within 10 days
8 thereafter, as to why the modifying order should be vacated or altered."

9 Section 2. G.S. 7B-2603, as enacted by S.L. 1998-202, reads as rewritten:

10 **"§ 7B-2603. Right to appeal transfer decision.**

11 (a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the
12 district court in a juvenile matter to the superior court may be appealed to the superior
13 court for a hearing on the record. Notice of the appeal must be given in open court or in
14 writing within 10 days after ~~the transfer hearing in the district court.~~ entry of the order of
15 transfer in district court. Entry of an order shall be treated in the same manner as entry of
16 a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. A
17 juvenile who fails to appeal the transfer order to the superior court waives the right to
18 raise the issue of transfer before the Court of Appeals until final disposition of the matter
19 in superior court. The clerk of superior court shall provide the district attorney with a
20 copy of any written notice of appeal filed by the attorney for the juvenile. Upon
21 expiration of the 10 day period in which an appeal may be entered, if an appeal has been
22 entered and not withdrawn, the clerk shall transfer the case to the superior court docket.
23 The superior court shall, within a reasonable time, review the record of the transfer
24 hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior
25 court shall not review the findings as to probable cause for the underlying offense.

26 (b) Once an order of transfer has been entered by the district court, the juvenile has
27 the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-
28 534. The release order shall specify the person or persons to whom the juvenile may be
29 released. Pending release, the court shall order that the juvenile be detained in a
30 detention facility while awaiting trial. The court may order the juvenile to be held in a
31 holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is
32 required in court for pretrial hearings or trial, if the court finds that it would be
33 inconvenient to return the juvenile to the detention facility.

34 (c) If an appeal of the transfer order is taken, the superior court shall enter an order
35 either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the
36 transfer order. If the superior court remands the case to juvenile court for adjudication
37 and the juvenile has been granted pretrial release provided in G.S. 15A-533 and G.S. 15A-
38 534, the obligor shall be released from the juvenile's bond upon the district court's review
39 of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S.
40 7B-1903.

41 (d) The superior court order shall be an interlocutory order, and the issue of
42 transfer may be appealed to the Court of Appeals only after the juvenile has been
43 convicted in superior court."

1 Section 3. G.S. 7B-3508, as enacted by S.L. 1998-202, reads as rewritten:

2 **"§ 7B-3508. Appeals.**

3 Any petitioner, parent, guardian, or custodian who is a party to a proceeding under
4 this Article may appeal from any order of disposition to the Court of Appeals provided
5 that notice of appeal is given in open court at the time of the hearing or in writing within
6 10 days after ~~the hearing~~ entry of the order. Entry of an order shall be treated in the same
7 manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of
8 Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order
9 affecting the custody or placement of the petitioner as the court finds to be in the best
10 interests of the petitioner or the State."

11 Section 4. This act is effective October 1, 1999, and applies to actions filed on
12 or after that date.