

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 217

Short Title: Criminal Law/Procedure Amendments. (Public)

Sponsors: Representatives Faircloth and Stam (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee B.

March 6, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR PROBATION REVOCATION HEARINGS IN DISTRICT COURT WITH A RIGHT OF DIRECT APPEAL TO THE COURT OF APPEALS, TO ALLOW FOR AN UNRESTRICTED RESENTENCING HEARING UPON THE REVERSAL OF A SENTENCE ON APPELLATE REVIEW, TO AMEND THE PROCEDURE IN DRIVING WHILE IMPAIRED CASES, TO PROVIDE FOR THE TRANSFER OF JUVENILE DEFENDANTS TO SUPERIOR COURT WHEN CHARGED WITH A MAJOR CRIMINAL OFFENSE, AND TO REQUIRE THE COURTS COMMISSION TO STUDY THE COURT JURISDICTION AND JURY TRIAL PROCESS FOR MISDEMEANORS AND OTHER METHODS OF IMPROVING THE EFFICIENCY AND ADMINISTRATION OF THE JUSTICE SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-27 reads as rewritten:

"§ 7A-27. Appeals of right from the courts of the trial divisions.

(a) Appeal lies of right directly to the Supreme Court in all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

(b) From any final judgment of a superior court, other than the one described in subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court-martial under G.S. 127A-62, appeal lies of right to the Court of Appeals.

(c) From any final judgment of a district court in a civil action appeal lies of right directly to the Court of Appeals.

(c1) From any final judgment of a district court that revokes probation or imposes special probation, appeal lies of right directly to the Court of Appeals.

...."

SECTION 2. G.S. 7A-271 reads as rewritten:

"§ 7A-271. Jurisdiction of superior court.

...

~~(e) The superior court has exclusive jurisdiction over all hearings held pursuant to G.S. 15A-1345(e) where the district court had accepted a defendant's plea of guilty or no contest to a felony under the provisions of G.S. 7A-272(c), except that the district court shall have jurisdiction to hear these matters with the consent of the State and the defendant.~~



1 (f) ~~The superior court has exclusive jurisdiction over all hearings to revoke probation~~
2 ~~pursuant to G.S. 15A-1345(e) where the district court is supervising a drug treatment court or~~
3 ~~therapeutic court probation judgment under G.S. 7A-272(e), except that the district court has~~
4 ~~jurisdiction to conduct the revocation proceedings when the chief district court judge and the~~
5 ~~senior resident superior court judge agree that it is in the interest of justice that the proceedings~~
6 ~~be conducted by the district court. If the district court exercises jurisdiction under this~~
7 ~~subsection to revoke probation, appeal of an order revoking probation is to the appellate~~
8 ~~division."~~

9 **SECTION 3.** G.S. 7A-272 reads as rewritten:

10 "**§ 7A-272. Jurisdiction of district court; concurrent jurisdiction in guilty or no contest**
11 **pleas for certain felony offenses; appellate and appropriate relief procedures**
12 **applicable.**

13 (a) Except as provided in this Article, the district court has exclusive, original
14 jurisdiction for the trial of criminal actions, including municipal ordinance violations, below the
15 grade of felony, and the same are hereby declared to be petty misdemeanors.

16 (a1) Except as provided in this Article and in G.S. 15A-1344(b), the district court has
17 exclusive jurisdiction to preside over the supervision of a probation judgment entered into in
18 superior court and to hear and enter judgment in any hearing held pursuant to
19 G.S. 15A-1345(e). When a district court judge, as a result of a finding of a violation of
20 probation, activates a sentence or imposes special probation, the defendant may appeal under
21 G.S. 7A-27.

22 (a2) The superior court shall retain jurisdiction in all cases in which there is a deferred
23 prosecution or conditional discharge agreement, unless the chief district court judge and the
24 senior resident superior court judge agree that jurisdiction shall be with the district court.

25 ...

26 (e) ~~With the consent of the chief district court judge and the senior resident superior~~
27 ~~court judge, the district court has jurisdiction to preside over the supervision of a probation~~
28 ~~judgment entered in superior court in which the defendant is required to participate in a drug~~
29 ~~treatment court program pursuant to G.S. 15A-1343(b1)(2b) or a therapeutic court as defined in~~
30 ~~subsection (f) of this section, or is participating in the drug treatment court pursuant to a~~
31 ~~deferred prosecution agreement under G.S. 15A-1341(a2). The district court may modify or~~
32 ~~extend the probation judgment, but jurisdiction to revoke probation supervised under this~~
33 ~~subsection is as provided in G.S. 7A-271(f).~~

34 (f) As used in subsection (e) of this section, the term "therapeutic court" refers to a
35 court, other than drug treatment court established pursuant to Article 62 of Chapter 7A of the
36 General Statutes, in which a criminal defendant, either as a condition of probation or pursuant
37 to a deferred prosecution agreement under G.S. 15A-1341, is ordered to participate in specified
38 activities designed to address underlying problems of substance abuse and mental illness that
39 contribute to the person's criminal activity. The ordered activities shall, at a minimum, require
40 the person to participate in treatment and attend regular court sessions of the therapeutic court
41 over an extended period of time. The senior resident superior court judge and the chief district
42 court judge shall agree in writing that the therapeutic court is being established and shall file
43 the written agreement with the Administrative Office of the Courts before jurisdiction
44 established by subsection (e) of this section may be exercised by the district court."

45 **SECTION 4.** G.S. 15A-1335 is repealed.

46 **SECTION 5.** G.S. 15A-1347 is repealed.

47 **SECTION 6.** G.S. 20-16.3(d) reads as rewritten:

48 "(d) Use of Screening Test Results or Refusal by Officer. – ~~The fact that a driver showed~~
49 ~~a positive or negative numeric result on an alcohol screening test but not the actual alcohol~~
50 ~~concentration result, or a driver's refusal to submit may be used by a law enforcement officer, is~~

1 admissible in a court, or may also be used by an administrative agency in determining if there
2 are reasonable grounds or probable cause for believing:

- 3 (1) That the driver has committed an implied consent offense under
4 G.S. 20-16.2; and
5 (2) That the driver had consumed alcohol and that the driver had in his or her
6 body previously consumed alcohol, but not to prove a particular alcohol
7 concentration. Negative or low results on the alcohol screening test may be
8 used in factually appropriate cases by the officer, a court, or an
9 administrative agency in determining whether a person's alleged impairment
10 is caused by an impairing substance other than alcohol."

11 **SECTION 7.** G.S. 7B-2200 reads as rewritten:

12 "**§ 7B-2200. Transfer of jurisdiction of juvenile to superior court.**

13 After notice, hearing, and a finding of probable cause the court may, upon motion of the
14 prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a
15 juvenile to superior court if the juvenile was 13 years of age or older at the time the juvenile
16 allegedly committed an offense that would be a felony if committed by an adult. If the alleged
17 felony constitutes a Class A felony and the court finds probable cause, the court shall transfer
18 the case to the superior court for trial as in the case of adults. Upon motion of the prosecutor, if
19 the alleged felony constitutes a Class B1 through Class E felony, and the court finds probable
20 cause, the court shall transfer the case to the superior court for trial as in the case of adults."

21 **SECTION 8.** The North Carolina Courts Commission, in consultation with the
22 Administrative Office of the Courts, the North Carolina Sentencing and Policy Advisory
23 Commission, the Conference of District Attorneys, the North Carolina Office of Indigent
24 Defense Services, the School of Government at the University of North Carolina at Chapel Hill,
25 and other organizations and agencies it deems appropriate, shall study whether the State should
26 modify its rules of criminal and appellate procedure, and the State Constitution if necessary, to
27 include a provision for a six-person jury for misdemeanors in district court with review by the
28 appellate division; to grant magistrates jurisdiction to hear all infractions with appellate review
29 by a district court judge; to redesignate low-level misdemeanors as infractions with a
30 recommendation as to which misdemeanors should be so classified; and whether any other
31 measures should be enacted that ensure that a defendant's constitutional rights are protected
32 while increasing the efficiency and reducing the costs in the administration of the State's courts
33 and criminal justice system. The Commission shall report its findings and recommendations to
34 the General Assembly no later than April 1, 2014.

35 **SECTION 9.** Sections 1, 2, 3, and 5 of this act become effective October 1, 2013,
36 and apply to probation revocation hearings held on or after that date, except that this act shall
37 not be effective for revocation hearings that are pending on appeal to the N.C. Court of Appeals
38 on that date, which shall be heard in superior court if returned for rehearing. Section 4 of this
39 act is effective for resentencing hearings held on or after December 1, 2013. Section 6 of this
40 act is effective for hearings held on or after December 1, 2013, and for administrative
41 determinations made on or after December 1, 2013. Section 7 of this act is effective for transfer
42 hearings held on or after December 1, 2013. Section 8 of this act becomes effective October 1,
43 2013. The remainder of this act is effective when this act becomes law.