

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS75112-LL-74 (1/31)

Short Title: Limit Appeals to Superior Court.

(Public)

Sponsors: Senator Brunstetter (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE APPEALS DE NOVO TO THE SUPERIOR COURT IN
3 MISDEMEANOR CASES IN WHICH THE DEFENDANT HAS PLED GUILTY AND
4 TO ELIMINATE APPEALS FROM DISTRICT COURT TO SUPERIOR COURT FOR
5 INFRACTIONS AND PROBATION REVOCATIONS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 7A-290 reads as rewritten:

8 "**§ 7A-290. Appeals from district court in criminal cases; notice; appeal ~~and~~ bond;**
9 **consequences of guilty plea to misdemeanor.**

10 (a) Any defendant convicted in district court before the magistrate may appeal to the
11 district court for trial de novo before the district court judge. ~~Any~~ Except as provided in
12 subsection (b) of this section, a defendant convicted in district court before the judge may
13 appeal to the superior court for trial de novo. Notice of appeal may be given orally in open
14 court, or to the clerk in writing within 10 days of entry of judgment. Upon expiration of the
15 10-day period in which an appeal may be entered, if an appeal has been entered and not
16 withdrawn, the clerk shall transfer the case to the district or superior court docket. The original
17 bail shall stand pending appeal, unless the judge orders bail denied, increased, or reduced.

18 (b) A defendant who pleads guilty or no contest to a misdemeanor in district court
19 pursuant to G.S. 15A-1431.1 waives the right to trial de novo in superior court and may appeal
20 the decision to the Court of Appeals as provided in Article 91 of Chapter 15A of the General
21 Statutes."

22 **SECTION 2.** G.S. 15A-1115 reads as rewritten:

23 "**§ 15A-1115. Review of disposition by ~~superior court~~ Court of Appeals.**

24 (a) Appeal of District Court Decision. – A person who denies responsibility and is
25 found responsible for an infraction in the district court, within 10 days of the hearing, may
26 appeal the decision to the ~~criminal division of the superior court for a hearing de novo. Upon~~
27 ~~appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted~~
28 ~~by the judge. The State must prove beyond a reasonable doubt that the person charged is~~
29 ~~responsible for the infraction unless the person admits responsibility. Unless otherwise~~
30 ~~provided by law, the procedures applicable to misdemeanors disposed of in the superior court~~
31 ~~apply to those infraction hearings. In the superior court, a prosecutor must represent the State.~~
32 ~~Appeal from the judgment in the superior court is as provided for other criminal actions in~~
33 ~~superior court, and the Attorney General must represent the State in an appeal of such~~
34 ~~actions.~~ Court of Appeals as provided in Article 91 of this Chapter.



1 (b) Review of Infractions Originally Disposed of in Superior Court. – If the superior
2 court disposes of an infraction pursuant to its jurisdiction in G.S. 7A-271(d), appeal from that
3 judgment is as provided for criminal actions in the superior court."

4 **SECTION 3.** G.S. 15A-1347 reads as rewritten:

5 "**§ 15A-1347. Appeal from revocation of probation or imposition of special probation**
6 **upon violation.**

7 When a district court judge, as a result of a finding of a violation of probation, activates a
8 sentence or imposes special probation, the defendant may appeal to the superior court for a de
9 novo revocation hearing. At the hearing the probationer has all rights and the court has all
10 authority they have in a revocation hearing held before the superior court in the first instance.
11 Appeals from lower courts to the superior courts from judgments revoking probation may be
12 heard in term or out of term, in the county or out of the county by the resident superior court
13 judge of the district or the superior court judge assigned to hold the courts of the district, or a
14 judge of the superior court commissioned to hold court in the district, or a special superior
15 court judge residing in the district. When the defendant appeals to the superior court because a
16 district court has found he violated probation and has activated his sentence or imposed special
17 probation, and the superior court, after a de novo revocation hearing, orders that the defendant
18 continue on probation under the same or modified conditions, the superior court is considered
19 the court that originally imposed probation with regard to future revocation proceedings and
20 other purposes of this Article. When a superior court judge, as a result of a finding of a
21 violation of probation, activates a sentence or imposes special probation, either in the first
22 instance or upon a de novo hearing after appeal from a district court, the defendant may appeal
23 under G.S. 7A-27. Court of Appeals as provided in Article 91 of this Chapter."

24 **SECTION 4.** G.S. 15A-1431(b) reads as rewritten:

25 "(b) ~~A~~Except as provided in G.S. 15A-1431.1, a defendant convicted in the district court
26 before the judge may appeal to the superior court for trial de novo with a jury as provided by
27 law. Upon the docketing in the superior court of an appeal from a judgment imposed pursuant
28 to a plea arrangement between the State and the defendant, the jurisdiction of the superior court
29 over any misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall
30 be the same as was had by the district court prior to the plea arrangement."

31 **SECTION 5.** Article 90 of Chapter 15A of the General Statutes is amended by
32 adding a new section to read:

33 "**§ 15A-1431.1. Guilty pleas to misdemeanors in district court; appeals.**

34 (a) A defendant who pleads guilty or no contest to a misdemeanor in district court
35 waives the right to trial de novo in superior court and may appeal the decision to the Court of
36 Appeals as provided in Article 91 of this Chapter.

37 (b) The provisions of G.S. 15A-1021, 15A-1022, 15A-1023, 15A-1024, and 15A-1025
38 relating to guilty pleas in superior court shall be applicable to guilty pleas entered in district
39 court to the extent that those provisions apply to misdemeanors. The provisions of
40 G.S. 15A-1026 for making and preserving a record of proceedings shall also apply to guilty
41 pleas to misdemeanors entered in district court."

42 **SECTION 6.** G.S. 15A-1444(a2) reads as rewritten:

43 "(a2) A defendant who has entered a plea of guilty or no contest to a felony or
44 misdemeanor ~~in superior court~~ is entitled to appeal as a matter of right the issue of whether the
45 sentence imposed:

- 46 (1) Results from an incorrect finding of the defendant's prior record level under
47 G.S. 15A-1340.14 or the defendant's prior conviction level under
48 G.S. 15A-1340.21;
- 49 (2) Contains a type of sentence disposition that is not authorized by
50 G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense
51 and prior record or conviction level; or

- 1 (3) Contains a term of imprisonment that is for a duration not authorized by
2 G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense
3 and prior record or conviction level."
4 **SECTION 7.** This act becomes effective December 1, 2013, and applies to acts
5 committed on or after that date.