

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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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:

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE APPEALS DE NOVO TO THE SUPERIOR COURT IN  
MISDEMEANOR CASES IN WHICH THE DEFENDANT HAS PLED GUILTY AND  
TO ELIMINATE APPEALS FROM DISTRICT COURT TO SUPERIOR COURT FOR  
INFRACTIONS AND PROBATION REVOCATIONS.

The General Assembly of North Carolina enacts:

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

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

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 Upon expiration of the 10-day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the district or superior court docket.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

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

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

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

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