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PROPOSED SENATE COMMITTEE SUBSTITUTE H215-PCS30410-SA-86

Short Title: Procedure for Waiver of Jury Trial.

(Public)

Sponsors:

Referred to:

March 12, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH PROCEDURE FOR WAIVER OF THE RIGHT TO A JURY
3 TRIAL IN CRIMINAL CASES IN SUPERIOR COURT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 15A-1201 reads as rewritten:

6 "**§ 15A-1201. Right to trial by jury; waiver of jury ~~trial~~; procedure for waiver.**

7 (a) Right to Jury Trial. – In all criminal cases the defendant has the right to be tried by a
8 jury of 12 whose verdict must be unanimous. In the district court the judge is the finder of fact
9 in criminal cases, but the defendant has the right to appeal for trial de novo in superior court as
10 provided in G.S. 15A-1431. In superior court all criminal trials in which the defendant enters a
11 plea of not guilty must be tried before a jury, unless the defendant waives the right to a jury
12 trial, as provided in subsection (b) of this section.

13 (b) Waiver of Right to Jury Trial. – A defendant accused of any criminal offense for
14 which the State is not seeking a sentence of death in superior court may, knowingly and
15 voluntarily, in writing or on the record in the court and with the consent of the trial judge,
16 waive the right to trial by jury. When a defendant waives the right to trial by jury under this
17 section, the jury is dispensed with as provided by law, and the whole matter of law and ~~fact~~
18 fact, to include all factors referred to in G.S. 20-179 and subsections (a1) and (a3) of
19 G.S. 15A-1340.16, shall be heard and judgment given by the court. If a motion for joinder of
20 co-defendants is allowed, there shall be a jury trial unless all defendants waive the right to trial
21 by jury or the court, in its discretion, severs the case.

22 (c) A defendant seeking to waive the right to trial by jury under subsection (b) of this
23 section shall give notice of intent to waive a jury trial by any of the following methods:

24 (1) Stipulation, which may be conditioned on each party's consent to the trial
25 judge, signed by both the State and the defendant and served on the counsel
26 for any co-defendants.

27 (2) Filing a written notice of intent to waive a jury trial with the court and
28 serving on the State and counsel for any co-defendants within the earliest of
29 (i) 10 working days after arraignment; (ii) 10 working days after service of a
30 calendar setting under G.S. 7A-49.4(b); or (iii) 10 working days after the
31 setting of a definite trial date under G.S. 7A-49.4(c).



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1 (3) Giving notice of intent to waive a jury trial on the record in open court by
2 the earlier of (i) the time of arraignment or (ii) the calling of the calendar
3 under G.S. 7A-49.4(b) or G.S. 7A-49.4(c).

4 (d) Judicial Consent to Jury Waiver. – Upon notice of waiver by the defense pursuant to
5 subsection (c) of this section, the State shall schedule the matter to be heard in open court to
6 determine whether the judge agrees to hear the case without a jury. The decision to grant or
7 deny the defendant's request for a bench trial shall be made by the judge who will actually
8 preside over the trial. Before consenting to a defendant's waiver of the right to a trial by jury,
9 the trial judge shall do all of the following:

10 (1) Address the defendant personally and determine whether the defendant fully
11 understands and appreciates the consequences of the defendant's decision to
12 waive the right to trial by jury.

13 (2) Determine whether the State objects to the waiver and, if so, why. Consider
14 the arguments presented by both the State and the defendant regarding the
15 defendant's waiver of a jury trial.

16 (e) Revocation of Waiver. – Once waiver of a jury trial has been made and consented to
17 by the trial judge pursuant to subsection (d) of this section, the defendant may revoke the
18 waiver one time as of right within 10 business days of the defendant's initial notice pursuant to
19 subsection (c) of this section if the defendant does so in open court with the State present, or in
20 writing to both the State and the judge. In all other circumstances, the defendant may only
21 revoke the waiver of trial by jury upon the trial judge finding all of the following:

22 (1) The revocation would not cause unreasonable hardship or delay to the State.

23 (2) The revocation is tendered in good faith.

24 Once a revocation has been granted pursuant to this subsection, the decision is final and
25 binding.

26 (f) Findings of Fact. – In any case where the defendant has waived the right to trial by
27 jury pursuant to this section, if any party so requests before the finding of guilty or not guilty,
28 prior to the announcing of the verdict in open court, the court must make specific findings of
29 fact to support the verdict in a written decision or opinion.

30 (g) Suppression of Evidence. – In the event that a defendant who has waived the right to
31 trial by jury pursuant to this section makes a motion to suppress evidence under Article 53 of
32 this Chapter, the court shall make written findings of fact and conclusions of law."

33 **SECTION 2.** G.S. 20-179 is amended by adding a new subsection to read:

34 "(a3) Procedure When Jury Trial Waived. – If a defendant waives the right to a jury trial
35 under G.S. 15A-1201, the trial judge shall make all findings that are conferred upon the jury
36 under the provisions of this section."

37 **SECTION 3.** G.S. 15A-1340.16 is amended by adding a new subsection to read:

38 "(a6) Procedure When Jury Trial Waived. – If a defendant waives the right to a jury trial
39 under G.S. 15A-1201, the trial judge shall make all findings that are conferred upon the jury
40 under the provisions of this section."

41 **SECTION 4.** This act becomes effective October 1, 2015, and applies to
42 defendants waiving their right to trial by jury on or after that date.