

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 217
Committee Substitute Favorable 4/18/13

Short Title: Criminal Law/Procedure Amendments.

(Public)

Sponsors:

Referred to:

March 6, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A RIGHT OF DIRECT APPEAL TO THE COURT OF APPEALS
3 FOR PROBATION REVOCATIONS IN DISTRICT COURT, TO AMEND THE LAW
4 PERTAINING TO RESENTENCING UPON THE REVERSAL OF A SENTENCE ON
5 APPELLATE REVIEW, TO PROVIDE FOR THE TRANSFER OF JUVENILE
6 DEFENDANTS AGE 15 OR OLDER TO SUPERIOR COURT WHEN CHARGED WITH
7 A MAJOR CRIMINAL OFFENSE, AND TO REQUIRE THE COURTS COMMISSION
8 TO STUDY THE COURT JURISDICTION AND JURY TRIAL PROCESS FOR
9 MISDEMEANORS AND OTHER METHODS OF IMPROVING THE EFFICIENCY
10 AND ADMINISTRATION OF THE JUSTICE SYSTEM.

11 The General Assembly of North Carolina enacts:

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

13 "**§ 7A-27. Appeals of right from the courts of the trial divisions.**

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

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

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

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

26"

27 **SECTION 2.** G.S. 15A-1335 reads as rewritten:

28 "**§ 15A-1335. Resentencing after appellate review.**

29 When a conviction or sentence imposed in superior court has been set aside on direct
30 review or collateral attack, the court may not impose a new sentence for the same offense, or
31 for a different offense based on the same conduct, which is more severe than the prior sentence
32 less the portion of the prior sentence previously served. This section shall not apply when a
33 defendant, on direct review or collateral attack, succeeds in having a plea of guilty vacated."

34 **SECTION 3.** G.S. 15A-1347 is repealed.

35 **SECTION 4.** G.S. 7B-2200 reads as rewritten:

36 "**§ 7B-2200. Transfer of jurisdiction of juvenile to superior court.**



1 After notice, hearing, and a finding of probable cause the court may, upon motion of the
2 prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a
3 juvenile to superior court if the juvenile was 13 years of age or older at the time the juvenile
4 allegedly committed an offense that would be a felony if committed by an adult. If the alleged
5 felony constitutes a Class A felony and the court finds probable cause, the court shall transfer
6 the case to the superior court for trial as in the case of adults. If the alleged felony constitutes a
7 Class B1 through Class B2 felony and the juvenile was 15 years of age or older at the time the
8 juvenile allegedly committed the offense and the court finds probable cause, upon motion
9 personally signed by the elected or appointed district attorney for the prosecutorial district, the
10 court shall transfer the case to the superior court for trial as in the case of adults."

11 **SECTION 5.** The North Carolina Courts Commission, in consultation with the
12 Administrative Office of the Courts, the North Carolina Sentencing and Policy Advisory
13 Commission, the Conference of District Attorneys, the North Carolina Office of Indigent
14 Defense Services, the School of Government at the University of North Carolina at Chapel Hill,
15 and other organizations and agencies it deems appropriate, shall study whether the State should
16 modify its rules of criminal and appellate procedure, and the State Constitution if necessary, to
17 include a provision for a six-person jury for misdemeanors in district court with review by the
18 appellate division; to grant magistrates jurisdiction to hear all infractions with appellate review
19 by a district court judge; to redesignate low-level misdemeanors as infractions with a
20 recommendation as to which misdemeanors should be so classified; and whether any other
21 measures should be enacted that ensure that a defendant's constitutional rights are protected
22 while increasing the efficiency and reducing the costs in the administration of the State's courts
23 and criminal justice system. The Commission shall report its findings and recommendations to
24 the General Assembly no later than April 1, 2014.

25 **SECTION 6.** Subcommittee B of the House Committee on Judiciary is authorized
26 to study the issue of the transfer of juveniles to superior court for trial as adults, and to
27 determine the frequency with which district attorneys' requests for transfer of juveniles alleged
28 to have committed felonies other than Class B1 or Class B2 felonies are denied and the grounds
29 upon which such denials are based. The committee is authorized to meet upon the call of the
30 cochairs during the 2013 interim and to recommend legislation for consideration in the 2014
31 Regular Session.

32 **SECTION 7.** Sections 1 and 3 of this act become effective October 1, 2013, and
33 apply to probation revocation hearings held on or after that date, except that this act shall not be
34 effective for revocation hearings that are pending on appeal to the N.C. Court of Appeals on
35 that date, which shall be heard in superior court if returned for rehearing. Section 2 of this act
36 becomes effective December 1, 2013, and applies to resentencing hearings held on or after that
37 date. Section 4 of this act becomes effective December 1, 2013, and applies to offenses
38 committed on or after that date. The remainder of this act is effective when this act becomes
39 law.