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SENATE BILL 182
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Short Title: Limit Appeals to Superior Court.

(Public)

Sponsors:

Referred to:

March 6, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE APPEALS FOR INFRACTIONS, TO MODIFY APPEALS TO
3 THE SUPERIOR COURT IN PROBATION REVOCATIONS IN WHICH THE
4 DEFENDANT HAS WAIVED A HEARING, TO AMEND THE LAW PERTAINING TO
5 RESENTENCING UPON THE REVERSAL OF A SENTENCE ON APPELLATE
6 REVIEW, TO MAKE CHANGES REGARDING THE PROCEDURES FOR A MOTION
7 FOR APPROPRIATE RELIEF, AND TO RECLASSIFY CERTAIN MISDEMEANORS
8 AS INFRACTIONS.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. G.S. 15A-1115 reads as rewritten:

11 "~~§ 15A-1115. Review of disposition by superior court.~~ Review of infractions originally
12 disposed of in superior court.

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

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

26 SECTION 2. G.S. 15A-1347 reads as rewritten:

27 "~~§ 15A-1347. Appeal from revocation of probation or imposition of special probation~~
28 ~~upon violation.~~ violation; consequences of waiver of hearing.

29 (a) ~~When~~ Except as provided in subsection (b) of this section, when a district court
30 judge, as a result of a finding of a violation of probation, activates a sentence or imposes
31 special probation, the defendant may appeal to the superior court for a de novo revocation
32 hearing. At the hearing the probationer has all rights and the court has all authority they have in
33 a revocation hearing held before the superior court in the first instance. Appeals from lower



1 courts to the superior courts from judgments revoking probation may be heard in term or out of
2 term, in the county or out of the county by the resident superior court judge of the district or the
3 superior court judge assigned to hold the courts of the district, or a judge of the superior court
4 commissioned to hold court in the district, or a special superior court judge residing in the
5 district. When the defendant appeals to the superior court because a district court has found he
6 violated probation and has activated his sentence or imposed special probation, and the superior
7 court, after a de novo revocation hearing, orders that the defendant continue on probation under
8 the same or modified conditions, the superior court is considered the court that originally
9 imposed probation with regard to future revocation proceedings and other purposes of this
10 Article. When a superior court judge, as a result of a finding of a violation of probation,
11 activates a sentence or imposes special probation, either in the first instance or upon a de novo
12 hearing after appeal from a district court, the defendant may appeal under G.S. 7A-27.

13 (b) If a defendant waives a revocation hearing, the finding of a violation of probation,
14 activation of sentence, or imposition of special probation may not be appealed to the superior
15 court."

16 **SECTION 3.** G.S. 15A-1335 reads as rewritten:

17 **"§ 15A-1335. Resentencing after appellate review.**

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

23 **SECTION 3.1.** G.S. 15A-1420 reads as rewritten:

24 **"§ 15A-1420. Motion for appropriate relief; procedure.**

25 ...

26 ~~(b2) Noncapital Cases.— Assignment of Motion for Review; Initial Review of Motion;~~
27 ~~Time Frame for Hearings and Ruling on Motion.—~~

28 ~~(1) In noncapital cases, the senior resident superior court judge or chief district~~
29 ~~court judge, as appropriate, shall, within 30 days of the filing of the motion,~~
30 ~~assign the motion for initial review to the appropriate judge as provided in~~
31 ~~G.S. 15A-1413.~~

32 ~~(2) The assigned judge, no later than 30 working days after the assignment, shall~~
33 ~~review the motion and issue a written initial review order that concludes the~~
34 ~~initial review of the motion in one of the following manners: (i) by~~
35 ~~dismissing the motion for lack of merit on its face, (ii) by directing the State,~~
36 ~~if necessary, to file an answer within 30 days from the date on which the~~
37 ~~initial review order was issued, or (iii) by dispensing with the requirement~~
38 ~~that the State file an answer and instead order a hearing. Unless the motion is~~
39 ~~dismissed, the initial review order shall also indicate whether the defendant~~
40 ~~shall be allowed to proceed without the payment of costs; indicate whether~~
41 ~~counsel shall be appointed; and calendar a hearing on the motion within the~~
42 ~~appropriate time period as set out in subdivisions (3) and (4) of this~~
43 ~~subsection.~~

44 ~~(3) Unless provided otherwise by this subsection, if the court determines that an~~
45 ~~evidentiary hearing is required, then the hearing must be held within 90 days~~
46 ~~from the date on which the initial review order was issued; if no evidentiary~~
47 ~~hearing is required, then the hearing must be held within 60 days from the~~
48 ~~date on which the initial review order was issued. If, in the initial review~~
49 ~~order, the court orders the State to file an answer and the court determines~~
50 ~~that an evidentiary hearing is required, then the evidentiary hearing must be~~
51 ~~held within 150 days from the date on which the initial review order was~~

1 issued; if the court determines that the hearing is not an evidentiary hearing,
2 then the hearing must be held within 120 days from the date on which the
3 initial review order was issued.

4 (4) ~~If the court determines pursuant to subdivision (2) of this subsection that~~
5 ~~counsel shall be appointed, the time periods provided in subdivision (3) of~~
6 ~~this subsection shall be calculated from the date of the appointment of~~
7 ~~counsel rather than the date of the initial review order and shall be extended~~
8 ~~for an additional 60 days.~~

9 (5) ~~The court shall provide notice of the date of the hearing to both the State and~~
10 ~~the defendant, or the defendant's counsel if defendant is represented by~~
11 ~~counsel, no less than five working days prior to the date of any hearing. The~~
12 ~~court, except for good cause shown as provided in subdivision (6) of this~~
13 ~~subsection, must rule on a motion within 60 days from the date that the~~
14 ~~hearing concludes.~~

15 (6) ~~Notwithstanding any other provision of this subsection, the court may, upon~~
16 ~~request of a party to the motion, grant an extension of time to comply with~~
17 ~~any deadline under this subsection, not to exceed 30 days. No subsequent~~
18 ~~request by the party to extend this deadline shall be granted unless the court~~
19 ~~enters a written order containing detailed findings of fact of extraordinary~~
20 ~~circumstances. Notwithstanding any other provision of this subsection, the~~
21 ~~senior resident superior court judge or chief district court judge, as~~
22 ~~appropriate, may, upon request of a judge assigned to review a motion for~~
23 ~~appropriate relief, grant to the assigned judge an extension of time to comply~~
24 ~~with any deadline under this subsection, not to exceed 30 days. No~~
25 ~~subsequent request by the assigned judge to extend this deadline shall be~~
26 ~~granted unless the senior resident superior court judge or the chief district~~
27 ~~court judge, as appropriate, enters a written order containing detailed~~
28 ~~findings of fact of extraordinary circumstances. The failure of the court to~~
29 ~~comply with the deadlines under this subsection is grounds for any party to~~
30 ~~petition the senior resident superior court judge or the chief district court~~
31 ~~judge, as appropriate, to reassign the motion of appropriate relief to a~~
32 ~~different judge empowered to act upon a motion for appropriate relief. The~~
33 ~~failure of the court to comply with the deadlines under this subsection also~~
34 ~~entitles any party to the motion for appropriate relief to seek a writ of~~
35 ~~mandamus to obtain compliance with the deadline.~~

36 (7) ~~Notwithstanding any other provision of this subsection, failure to meet a~~
37 ~~deadline under this subsection is not a ground for the summary granting of a~~
38 ~~motion for appropriate relief or other summary relief, including without~~
39 ~~limitation, ordering the release of the prisoner.~~

40 (b3) ~~Capital Cases.— Review and Calendaring of Motion.— In capital cases, the judge~~
41 ~~shall review the motion and enter an order directing the State to file its answer within 60 days~~
42 ~~of the date of the order. If a hearing is necessary, the judge shall calendar the case for hearing~~
43 ~~without unnecessary delay.~~

44"

45 **SECTION 4.** G.S. 20-35 reads as rewritten:

46 **"§ 20-35. Penalties for violating Article; defense to driving without a license.**

47 (a) Penalty. – A—Except as otherwise provided in subsection (a1) of this section, a
48 violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different
49 punishment for the violation. If a statute in this Article sets a different punishment for a
50 violation of the Article, the different punishment applies.

51 (a1) A person who does any of the following is responsible for an infraction:

- 1 (1) Fails to carry a valid license while driving a motor vehicle, in violation of
2 G.S. 20-7(a).
3 (2) Operates a motor vehicle with an expired license, in violation of
4 G.S. 20-7(f).
5 (3) Fails to notify the Division of an address change for a drivers license within
6 60 days after the change occurs, in violation of G.S. 20-7.1.

7 (b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 4.

8 (c) Defenses. – A person may not be ~~convicted~~found responsible for failing to carry
9 a regular drivers license if, when tried for that offense, the person produces in court a regular
10 drivers license issued to the person that was valid when the person was charged with the
11 offense. A person may not be ~~convicted~~found responsible for driving a motor vehicle
12 ~~without a regular~~with an expired drivers license if, when tried for that offense, the person
13 shows all the following:

14 (1) That, at the time of the offense, the person had an expired license.

15 (2) The person renewed the expired license within 30 days after it expired and
16 now has a drivers license.

17 (3) The person could not have been charged with driving without a license if the
18 person had the renewed license when charged with the offense."

19 **SECTION 5.** G.S. 20-176 reads as rewritten:

20 "(a) Violation of a provision of Part 9, 10, 10A, or 11 of this Article is an infraction
21 unless the violation is specifically declared by law to be a misdemeanor or felony. ~~Violation~~
22 Except as otherwise provided in subsection (a1) of this section, violation of the remaining Parts
23 of this Article is a misdemeanor unless the violation is specifically declared by law to be an
24 infraction or a felony.

25 (a1) A person who does any of the following is responsible for an infraction:

26 (1) Fails to carry the registration card in the vehicle, in violation of
27 G.S. 20-57(c).

28 (2) Fails to sign the vehicle registration card, in violation of G.S. 20-57(c).

29 (3) Fails to notify the Division of an address change for a vehicle registration
30 card within 60 days after the change occurs, in violation of G.S. 20-67.

31 "

32 **SECTION 6.** G.S. 113-135(a) reads as rewritten:

33 "(a) Any person who violates any provision of this Subchapter or any rule adopted by
34 the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate,
35 pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that fishing
36 without a license in violation of G.S. 113-174.1(a) or G.S. 113-270.1B(a) is punishable as an
37 infraction and punishment for violation of the rules of the Wildlife Resources Commission is
38 limited as set forth in G.S. 113-135.1. Unless a different level of punishment is elsewhere set
39 out, anyone convicted of a misdemeanor under this section is punishable as follows:

40 (1) For a first conviction, as a Class 3 misdemeanor.

41 (2) For a second or subsequent conviction within three years, as a Class 2
42 misdemeanor."

43 **SECTION 7.** This act becomes effective December 1, 2013, and applies to
44 offenses committed on or after that date, probation violations occurring on or after that date,
45 motions filed on or after that date, and resentencing hearings held on or after that date.