

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 310  
House Committee Substitute Favorable 3/31/99

Short Title: Amend Time for Notice of Appeal.

(Public)

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Sponsors:

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Referred to:

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March 10, 1999

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN  
2 CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION  
3 AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT  
4 SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN  
5 DAYS AFTER THE DATE OF THE HEARING, AND TO PROVIDE THAT THE  
6 TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF  
7 ANNEXATION ORDINANCES SHALL BE NINETY DAYS FROM THE ENTRY  
8 OF THE ORDER.  
9

10 The General Assembly of North Carolina enacts:

11 Section 1. G.S. 7A-289.34 reads as rewritten:

12 **"§ 7A-289.34. Appeals; modification of order after affirmation.**

13 Any child, parent, guardian, custodian or agency who is a party to a proceeding under  
14 this Article may appeal from an adjudication or any order of disposition to the Court of  
15 Appeals, provided that notice of appeal is given in open court at the time of the hearing or  
16 in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an  
17 appeal, the court may enter such temporary order affecting the custody or placement of  
18 the child as the court finds to be in the best interest of the child or the best interest of the  
19 State. Upon the affirmation of the order of adjudication or disposition of the district court

1 in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such  
2 an appeal, the district court shall have authority to modify or alter its original order of  
3 adjudication or disposition as the court finds to be in the best interest of the child to  
4 reflect any adjustment made by the child or change in circumstances during the period of  
5 time the case on appeal was pending, provided that if such modifying order be entered ex  
6 parte, the court shall give notice to interested parties to show cause, if any there be,  
7 within 10 days thereafter, as to why said modifying order should be vacated or altered."

8 Section 2. Effective July 1, 1999, G.S. 7B-1112, as enacted by S.L. 1998-202  
9 and renumbered by the Codifier of Statutes as G.S. 7B-1113, reads as rewritten:

10 **"§ 7B-1112. Appeals; modification of order after affirmation.**

11 Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding  
12 under this Article may appeal from an adjudication or any order of disposition to the  
13 Court of Appeals, provided that notice of appeal is given in open court at the time of the  
14 hearing or in writing within 10 days after ~~the hearing.~~entry of the order. Pending  
15 disposition of an appeal, the court may enter a temporary order affecting the custody or  
16 placement of the juvenile as the court finds to be in the best interests of the juvenile or  
17 the best interests of the State. Upon the affirmation of the order of adjudication or  
18 disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme  
19 Court in the event of an appeal, the court shall have authority to modify or alter its  
20 original order of adjudication or disposition as the court finds to be in the best interests of  
21 the juvenile to reflect any adjustment made by the juvenile or change in circumstances  
22 during the period of time the case on appeal was pending, provided that if the modifying  
23 order be entered ex parte, the court shall give notice to interested parties to show cause, if  
24 any there be, within 10 days thereafter, as to why the modifying order should be vacated  
25 or altered."

26 Section 3. Effective July 1, 1999, G.S. 7B-2603, as enacted by S.L. 1998-202,  
27 reads as rewritten:

28 **"§ 7B-2603. Right to appeal transfer decision.**

29 (a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the  
30 district court in a juvenile matter to the superior court may be appealed to the superior  
31 court for a hearing on the record. Notice of the appeal must be given in open court or in  
32 writing within 10 days after ~~the transfer hearing in the district court.~~entry of the order of  
33 transfer in district court. A juvenile who fails to appeal the transfer order to the superior  
34 court waives the right to raise the issue of transfer before the Court of Appeals until final  
35 disposition of the matter in superior court. The clerk of superior court shall provide the  
36 district attorney with a copy of any written notice of appeal filed by the attorney for the  
37 juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an  
38 appeal has been entered and not withdrawn, the clerk shall transfer the case to the  
39 superior court docket. The superior court shall, within a reasonable time, review the  
40 record of the transfer hearing for abuse of discretion by the juvenile court in the issue of  
41 transfer. The superior court shall not review the findings as to probable cause for the  
42 underlying offense.

1 (b) Once an order of transfer has been entered by the district court, the juvenile has  
2 the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-  
3 534. The release order shall specify the person or persons to whom the juvenile may be  
4 released. Pending release, the court shall order that the juvenile be detained in a  
5 detention facility while awaiting trial. The court may order the juvenile to be held in a  
6 holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is  
7 required in court for pretrial hearings or trial, if the court finds that it would be  
8 inconvenient to return the juvenile to the detention facility.

9 (c) If an appeal of the transfer order is taken, the superior court shall enter an order  
10 either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the  
11 transfer order. If the superior court remands the case to juvenile court for adjudication  
12 and the juvenile has been granted pretrial release provided in G.S. 15A-533 and G.S. 15A-  
13 534, the obligor shall be released from the juvenile's bond upon the district court's review  
14 of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S.  
15 7B-1903.

16 (d) The superior court order shall be an interlocutory order, and the issue of  
17 transfer may be appealed to the Court of Appeals only after the juvenile has been  
18 convicted in superior court."

19 Section 4. G.S. 7A-725 reads as rewritten:

20 "**§ 7A-725. Appeals.**

21 Any petitioner, parent, or guardian who is a party to a proceeding under this Article  
22 may appeal from any order of disposition to the Court of Appeals provided that notice of  
23 appeal is given in open court at the time of the hearing or in writing within 10 days after  
24 ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the judge may enter a  
25 temporary order affecting the custody or placement of the petitioner as he finds to be in  
26 the best interest of the petitioner or the State."

27 Section 5. Effective July 1, 1999, G.S. 7B-3508, as enacted by S.L. 1998-202,  
28 reads as rewritten:

29 "**§ 7B-3508. Appeals.**

30 Any petitioner, parent, guardian, or custodian who is a party to a proceeding under  
31 this Article may appeal from any order of disposition to the Court of Appeals provided  
32 that notice of appeal is given in open court at the time of the hearing or in writing within  
33 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court  
34 may enter a temporary order affecting the custody or placement of the petitioner as the  
35 court finds to be in the best interests of the petitioner or the State."

36 Section 6. G.S. 160A-50(g) reads as rewritten:

37 "(g) The court may affirm the action of the governing board without change, or it  
38 may

39 (1) Remand the ordinance to the municipal governing board for further  
40 proceedings if procedural irregularities are found to have materially  
41 prejudiced the substantive rights of any of the petitioners.

42 (2) Remand the ordinance to the municipal governing board for amendment  
43 of the boundaries to conform to the provisions of G.S. 160A-48 if it

1 finds that the provisions of G.S. 160A-48 have not been met; provided,  
2 that the court cannot remand the ordinance to the municipal governing  
3 board with directions to add area to the municipality which was not  
4 included in the notice of public hearing and not provided for in plans for  
5 service.

6 (3) Remand the report to the municipal governing board for amendment of  
7 the plans for providing services to the end that the provisions of G.S.  
8 160A-47 are satisfied.

9 (4) Declare the ordinance null and void, if the court finds that the ordinance  
10 cannot be corrected by remand as provided in subdivisions (1), (2), or  
11 (3) of this subsection.

12 If any municipality shall fail to take action in accordance with the court's instructions  
13 upon remand within ~~three months~~ 90 days from receipt of such following entry of the order  
14 embodying the court's instructions, the annexation proceeding shall be deemed null and  
15 void."

16 Section 7. G.S. 160A-38(g) reads as rewritten:

17 "(g) The court may affirm the action of the governing board without change, or it  
18 may

19 (1) Remand the ordinance to the municipal governing board for further  
20 proceedings if procedural irregularities are found to have materially  
21 prejudiced the substantive rights of any of the petitioners.

22 (2) Remand the ordinance to the municipal governing board for amendment  
23 of the boundaries to conform to the provisions of G.S. 160A-36 if it  
24 finds that the provisions of G.S. 160A-36 have not been met; provided,  
25 that the court cannot remand the ordinance to the municipal governing  
26 board with directions to add area to the municipality which was not  
27 included in the notice of public hearing and not provided for in plans for  
28 service.

29 (3) Remand the report to the municipal governing board for amendment of  
30 the plans for providing services to the end that the provisions of G.S.  
31 160A-35 are satisfied.

32 (4) Declare the ordinance null and void, if the court finds that the ordinance  
33 cannot be corrected by remand as provided in subdivisions (1), (2), or  
34 (3) of this subsection.

35 If any municipality shall fail to take action in accordance with the court's instructions  
36 upon remand within ~~three months~~ 90 days from receipt of such following entry of the order  
37 embodying the court's instructions, the annexation proceeding shall be deemed null and  
38 void."

39 Section 8. Sections 1 and 4 of this act become effective when this act becomes  
40 law and apply to actions filed on or after that date. Sections 1 and 4 of this act expire  
41 July 1, 1999. Sections 2, 3, and 5 of this act become effective July 1, 1999, and

- 1 apply to actions filed on or after that date. Sections 6 and 7 of this act become effective
- 2 October 1, 1999, and apply to ordinances remanded on or after that date. The remainder
- 3 of this act is effective when this act becomes law.