

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 577

Short Title: Adjust Court Jurisdiction.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE MORE EFFICIENT USE OF ALL COURT PERSONNEL RESOURCES THROUGH CONCURRENT AND REVISED JURISDICTION AND PROCEDURES BY PROVIDING ADDITIONAL AUTHORITY FOR MAGISTRATES AND CLERKS UPON THE AGREEMENT OF THE CHIEF DISTRICT COURT JUDGE AND CLERK OF SUPERIOR COURT, BY AUTHORIZING MAGISTRATES TO DETERMINE INDIGENCY AND ENTITLEMENT TO COUNSEL IN CASES CALENDARER BEFORE THEM, BY AUTHORIZING DISTRICT COURT JUDGES TO ACCEPT GUILTY PLEAS FOR CERTAIN CLASSES OF FELONY, BY PROVIDING FOR CONCURRENT JURISDICTION FOR DISTRICT AND SUPERIOR COURT JUDGES IN INFRACTIONS AND MISDEMEANOR CASES, BY RAISING THE JURISDICTIONAL AMOUNT FOR SMALL CLAIMS, BY AUTHORIZING THE USE OF EXPEDITED CHILD SUPPORT PROCESS UPON THE AGREEMENT OF THE CHIEF DISTRICT COURT JUDGE AND CLERK OF SUPERIOR COURT, AND BY CONFORMING CERTAIN PROCEDURAL REQUIREMENTS IN ACTIONS FOR ABSOLUTE DIVORCE TO THE REQUIREMENTS IN OTHER CIVIL CASES, AS RECOMMENDED BY THE STATE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-273 reads as rewritten:

"§ 7A-273. Powers of magistrates in infractions or criminal actions.

(a) In criminal actions or infractions, any magistrate has power:

- (1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars (\$50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section~~, subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

- 1 (2) In misdemeanor or infraction cases involving alcohol offenses under
2 Chapter 18B of the General Statutes, traffic offenses, hunting, fishing,
3 State park and recreation area rule offenses under Chapter 113 of the
4 General Statutes, boating offenses under Chapter 75A of the General
5 Statutes, and littering offenses under G.S. 14-399(c) and G.S.
6 14-399(c1), to accept written appearances, waivers of trial or hearing
7 and pleas of guilty or admissions of responsibility, in accordance with
8 the schedule of offenses and fines or penalties promulgated by the
9 Conference of Chief District Judges pursuant to G.S. 7A-148, and in
10 such cases, to enter judgment and collect the fines or penalties and
11 costs;
- 12 (2a) In misdemeanor cases involving the violation of a county ordinance
13 authorized by law regulating the use of dune or beach buggies or other
14 power-driven vehicles specified by the governing body of the county
15 on the foreshore, beach strand, or the barrier dune system, to accept
16 written appearances, waivers of trial or hearing, and pleas of guilty or
17 admissions of responsibility, in accordance with the schedule of
18 offenses and fines or penalties promulgated by the Conference of
19 Chief District Court Judges pursuant to G.S. 7A-148, and in such
20 cases, to enter judgment and collect the fines or penalties and costs;
- 21 (3) To issue arrest warrants valid throughout the State;
- 22 (4) To issue search warrants valid throughout the county;
- 23 (5) To grant bail before trial for any noncapital offense;
- 24 (6) Notwithstanding the provisions of subdivision (1) of this ~~section,~~
25 subsection, to hear and enter judgment as the chief district judge shall
26 direct in all worthless check cases brought under G.S. 14-107, when
27 the amount of the check is two thousand dollars (\$2,000) or less.
28 Provided, however, that under this section magistrates may not impose
29 a prison sentence longer than 30 days;
- 30 (7) To conduct an initial appearance as provided in G.S. 15A-511; and
- 31 (8) To accept written appearances, waivers of trial and pleas of guilty in
32 violations of G.S. 14-107 when the amount of the check is two
33 thousand dollars (\$2,000) or less, restitution, including service charges
34 and processing fees allowed by G.S. 14-107, is made, and the warrant
35 does not charge a fourth or subsequent violation of this statute, and in
36 these cases to enter judgments as the chief district judge directs.
- 37 (9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s.
38 118(d).

39 (b) In criminal actions or infractions, a magistrate has the additional authority, if
40 so assigned by the chief district court judge and subject to any limitations imposed by
41 the chief district court judge, to hear, decide, and enter judgment in all infractions and
42 Class 3 misdemeanor cases, regardless of penalty or offense. The additional authority
43 granted in this subsection may be assigned to a magistrate by a chief district court judge

1 only with the consent of the clerk of superior court of the county in which the magistrate
2 is assigned and after consultation with the district attorney."

3 **SECTION 2.** G.S. 7A-452(c) reads as rewritten:

4 "(c) (1) The clerk of superior court is authorized to make a determination of
5 indigency and entitlement to counsel, as authorized by this Article.
6 The word "court," as it is used in this Article and in any rules pursuant
7 to this Article, includes the clerk of superior court.

8 (1a) A magistrate may make a determination of indigency and entitlement
9 to counsel, in connection with any case that is calendared before the
10 magistrate, as authorized by this Article. As used in this Article, the
11 term "court" includes magistrates.

12 (2) A judge of superior or district court having authority to determine
13 entitlement to counsel in a particular case may give directions to the
14 clerk or magistrate with regard to the determination of entitlement to
15 counsel in that case; may, if he finds it appropriate, change or modify
16 the determination made by the ~~clerk~~; clerk or magistrate; and may set
17 aside a finding of waiver of counsel made by the ~~clerk~~. clerk or
18 magistrate."

19 **SECTION 3.** G.S. 7A-180 is amended by adding a new subdivision to read:

20 "(10) Has the power, upon the mutual consent of the chief district court
21 judge and the clerk of superior court and after consultation with the
22 district attorney of the county in which the clerk of superior court
23 serves, to hear, decide, and enter judgment in all infractions and Class
24 3 misdemeanor cases, regardless of penalty or offense."

25 **SECTION 4.** G.S. 7A-181 reads as rewritten:

26 "**§ 7A-181. Functions of assistant and deputy clerks of superior court in district**
27 **court matters.**

28 (a) Assistant and deputy clerks of superior court:

29 (1) Have the same powers and duties with respect to matters in the district
30 court division as they have in the superior court division;

31 (2) Have the same powers as the clerk of superior court with respect to the
32 issuance of warrants and acceptance of written appearances, waivers of
33 trial and pleas of guilty; and

34 (3) Have the same power as the clerk of superior court to fix conditions of
35 release in accordance with Chapter 15A, Article 26, Bail, and the same
36 power as the clerk of superior court to conduct an initial appearance in
37 accordance with Chapter 15A, Article 24, Initial Appearance.

38 (b) An assistant clerk of superior court also has the same power as the clerk of
39 superior court, upon the mutual consent of the chief district court judge and the clerk of
40 superior court and after consultation with the district attorney of the county in which the
41 assistant clerk of superior court serves, to hear, decide, and enter judgment in all
42 infractions and Class 3 misdemeanor cases, regardless of penalty or offense."

43 **SECTION 5.** G.S. 15A-1115(a) reads as rewritten:

1 "(a) Appeal of District Court Decision. – A person who denies responsibility and
2 is found responsible for an infraction in the district court, before a district court judge,
3 before a magistrate pursuant to G.S. 7A-273(b), before the clerk of court pursuant to
4 G.S. 7A-180(10), or before an assistant clerk of superior court pursuant to G.S.
5 7A-181(b), within 10 days of the hearing, may appeal the decision to the criminal
6 division of the superior court for a hearing de novo. Upon appeal, the defendant is
7 entitled to a jury trial unless he consents to have the hearing conducted by the judge.
8 The State must prove beyond a reasonable doubt that the person charged is responsible
9 for the infraction unless the person admits responsibility. Unless otherwise provided by
10 law, the procedures applicable to misdemeanors disposed of in the superior court apply
11 to those infraction hearings. In the superior court, a prosecutor must represent the State.
12 Appeal from the judgment in the superior court is as provided for other criminal actions
13 in superior court, and the Attorney General must represent the State in an appeal of such
14 actions."

15 **SECTION 6.** G.S. 15A-1431 reads as rewritten:

16 "**§ 15A-1431. Appeals by defendants from magistrate and district court judge;**
17 **trial de novo.**

18 (a) A defendant convicted before a magistrate pursuant to G.S. 7A-273(a) may
19 appeal for trial de novo before a district court judge without a jury. A defendant
20 convicted before a magistrate pursuant to G.S. 7A-273(b), before a clerk of superior
21 court pursuant to G.S. 7A-180(10), or before an assistant clerk of superior court
22 pursuant to G.S. 7A-181(b) may appeal the decision to the criminal division of the
23 superior court for a trial de novo.

24 (b) A defendant convicted in the district court before the judge may appeal to the
25 superior court for trial de novo with a jury as provided by law. Upon the docketing in
26 the superior court of an appeal from a judgment imposed pursuant to a plea arrangement
27 between the State and the defendant, the jurisdiction of the superior court over any
28 misdemeanor dismissed, reduced, or modified pursuant to that plea arrangement shall be
29 the same as was had by the district court prior to the plea arrangement.

30 (c) Within 10 days of entry of judgment, notice of appeal may be given orally in
31 open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant
32 may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day
33 period, if an appeal has been entered and not withdrawn, the clerk must transfer the case
34 to the appropriate court.

35 (d) A defendant convicted by a magistrate pursuant to G.S. 7A-273, by a clerk of
36 superior court pursuant to G.S. 7A-180(10), by an assistant clerk of superior court
37 pursuant to G.S. 7A-181(b), or by a district court judge is not barred from appeal
38 because of compliance with the judgment, but notice of appeal after compliance must be
39 given by the defendant in person to the ~~magistrate or judge~~ judicial official who heard
40 the case or, if ~~he~~ that official is not available, notice ~~must~~ shall be ~~given;~~ given in one of
41 the following ways:

42 (1) Before a magistrate in the county, in the case of appeals from the
43 ~~magistrate; or~~ magistrate.

1 (1a) Before an assistant clerk of court, in the case of appeals from the clerk
2 or assistant clerk of superior court.

3 (2) During an open session of district court in the district court district as
4 defined in G.S. 7A-133, in the case of appeals from district court.

5 The ~~magistrate~~ magistrate, clerk, assistant clerk, or district court judge ~~must~~ shall
6 review the case and fix conditions of pretrial release as appropriate. If a defendant has
7 paid a fine or costs and then appeals, the amount paid must be remitted to the defendant,
8 but the judge, ~~clerk~~ clerk, assistant clerk, or magistrate to whom notice of appeal is
9 given may order the remission delayed pending the determination of the appeal.

10 (e) Any order of pretrial release remains in effect pending appeal by the
11 defendant unless the judge modifies the order.

12 (f) Appeal pursuant to this section stays the execution of portions of the
13 judgment relating to fine and costs. Appeal stays portions of the judgment relating to
14 confinement when the defendant has complied with conditions of pretrial release. If the
15 defendant cannot comply with conditions of pretrial release, the judge may order
16 confinement in a local confinement facility pending the trial de novo in superior court.

17 (g) The defendant may withdraw his appeal at any time prior to calendaring of
18 the case for trial de novo. The case is then automatically remanded to the court from
19 which the appeal was taken, for execution of the judgment.

20 (h) The defendant may withdraw his appeal after the calendaring of the case for
21 trial de novo only by consent of the court, and with the attachment of costs of that court,
22 unless the costs or any part of the costs are remitted by the court. The case may then be
23 remanded by order of the court to the court from which the appeal was taken for
24 execution of the judgment with any additional court costs that attached and that have not
25 been remitted."

26 **SECTION 7.** G.S. 7A-272(c) reads as rewritten:

27 "(c) With the consent of the presiding district court judge, the prosecutor, and the
28 defendant, the district court has jurisdiction to accept a defendant's plea of guilty or no
29 contest to a Class ~~H or I~~ felony D, E, F, G, H, or I felony, regardless of the seriousness
30 of the original charge, if:

31 (1) The defendant is charged with a felony in an information filed
32 pursuant to G.S. 15A-644.1, the felony is pending in district court, and
33 the defendant has not been indicted for the offense; or

34 (2) The defendant has been indicted for a criminal offense but the
35 defendant's case is transferred from superior court to district court
36 pursuant to G.S. 15A-1029.1."

37 **SECTION 8.** G.S. 15A-1029.1(a) reads as rewritten:

38 "(a) With the consent of both the prosecutor and the defendant, the presiding
39 superior court judge may order a transfer of the defendant's case to the district court for
40 the purpose of allowing the defendant to enter a plea of guilty or no contest to a Class ~~H~~
41 ~~or I~~ felony. D, E, F, G, H, or I felony, regardless of the seriousness of the original
42 charge."

43 **SECTION 9.** G.S. 7A-271 reads as rewritten:

44 "**§ 7A-271. Jurisdiction of superior court.**

1 (a) The superior court has exclusive, original jurisdiction over all criminal
2 actions not assigned to the district court division by this Article, except that the superior
3 court has jurisdiction to try a misdemeanor:

- 4 (1) Which is a lesser included offense of a felony on which an indictment
5 has been returned, or a felony information as to which an indictment
6 has been properly waived; or
7 (2) When the charge is initiated by presentment; or
8 (3) Which may be properly consolidated for trial with a felony under G.S.
9 15A-926;
10 (4) To which a plea of guilty or nolo contendere is tendered in lieu of a
11 felony charge; or
12 (5) When a misdemeanor conviction is appealed to the superior court for
13 trial de novo, to accept a guilty plea to a lesser included or related
14 charge.

15 (a1) With the consent of the presiding district court judge and the presiding
16 superior court judge, a superior court judge may exercise the jurisdiction of the district
17 court to hear and enter judgment in misdemeanors pending in the district court. Appeals
18 from misdemeanor convictions before a superior court judge exercising the jurisdiction
19 of the district court shall be to superior court for a trial de novo before a different
20 superior court judge.

21 ~~(b) Appeals~~ Except as otherwise provided by law, appeals by the State or the
22 defendant from the district court are to the superior court. The jurisdiction of the
23 superior court over misdemeanors appealed from the district court to the superior court
24 for trial de novo is the same as the district court had in the first instance, and when that
25 conviction resulted from a plea arrangement between the defendant and the State
26 pursuant to which misdemeanor charges were dismissed, reduced, or modified, to try
27 those charges in the form and to the extent that they subsisted in the district court
28 immediately prior to entry of the defendant and the State of the plea arrangement.

29 (c) When a district court is established in a district, any superior court judge
30 presiding over a criminal session of court shall order transferred to the district court any
31 pending misdemeanor which does not fall within the provisions of subsection (a), and
32 which is not pending in the superior court on appeal from a lower court.

33 (d) The criminal jurisdiction of the superior court includes the jurisdiction to
34 dispose of infractions only in the following circumstances:

- 35 (1) If the infraction is a lesser-included violation of a criminal action
36 properly before the court, the court must submit the infraction for the
37 jury's consideration in factually appropriate cases.
38 (2) If the infraction is a lesser-included violation of a criminal action
39 properly before the court, or if it is a related charge, the court may
40 accept admissions of responsibility for the infraction. A proper
41 pleading for the criminal action is sufficient to support a finding of
42 responsibility for the lesser-included infraction.

43 (e) With the consent of the presiding district court judge and the presiding
44 superior court judge, a superior court judge may exercise the jurisdiction of the district

1 court to hear and enter judgment in infractions pending in the district court. Appeals
2 from infraction convictions before a superior court judge exercising the jurisdiction of
3 the district court shall be to superior court for a trial de novo before a different superior
4 court judge."

5 **SECTION 10.** G.S. 7A-210 reads as rewritten:

6 **"§ 7A-210. Small claim action defined.**

7 For purposes of this Article a small claim action is a civil action wherein:

- 8 (1) The amount in controversy, computed in accordance with G.S.
9 7A-243, does not exceed ~~four thousand dollars (\$4,000);~~ five thousand
10 dollars (\$5,000); and
- 11 (2) The only principal relief prayed is monetary, or the recovery of
12 specific personal property, or summary ejectment, or any combination
13 of the foregoing in properly joined claims; and
- 14 (3) The plaintiff has requested assignment to a magistrate in the manner
15 provided in this Article.

16 The seeking of the ancillary remedy of claim and delivery or an order from the clerk
17 of superior court for the relinquishment of property subject to a lien pursuant to G.S.
18 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this
19 Article from so qualifying."

20 **SECTION 11.** G.S. 50-34 is amended by adding a new subsection to read:

21 "(a1) Districts May Elect Expedited Process. – A chief district court judge in a
22 district court district that is not required by G.S. 50-33(b) to implement the expedited
23 process may elect to implement the expedited child support process provided for in this
24 Article in any or all counties within a district court district. A chief district court judge
25 may implement the expedited child support process only with the consent of the clerk of
26 superior court of any county in which the process is implemented. Notwithstanding
27 subsection (b) of this section, when a district court district elects to implement the
28 expedited child support process, the chief district court judge and the clerk of superior
29 court in an affected county shall determine by agreement whether the child support
30 hearing officer or officers for that county shall be one or more clerks or assistant clerks
31 or one or more magistrates. If it is decided that the hearing officer or officers for a
32 county shall be magistrates, the chief district court judge shall designate the person or
33 persons to serve as a hearing officer. If it is decided that the hearing officer or officers
34 for a county shall be the clerk or assistant clerks, the clerk of superior court in the
35 county shall designate the person or persons to serve as hearing officer. The chief
36 district court judge, the clerk of superior court, and the Administrative Officer of the
37 Courts shall ensure the qualification of the persons designated as child support hearing
38 officers."

39 **SECTION 12.** G.S. 50-10 is repealed.

40 **SECTION 13.** G.S. 1A-1, Rule 55(b)(1), reads as rewritten:

41 "(b) Judgment. – Judgment by default may be entered as follows:

42 (1) By the Clerk. –

- 43 a. When the plaintiff's claim against a defendant is for a sum
44 certain or for a sum which can by computation be made certain,

1 the clerk upon request of the plaintiff and upon affidavit of the
2 amount due shall enter judgment for that amount and costs
3 against the defendant, if the defendant has been defaulted for
4 failure to appear and if the defendant is not an infant or
5 incompetent person. A verified pleading may be used in lieu of
6 an affidavit when the pleading contains information sufficient
7 to determine or compute the sum certain.

8 In all cases wherein, pursuant to this rule, the clerk enters
9 judgment by default upon a claim for debt which is secured by
10 any pledge, mortgage, deed of trust or other contractual security
11 in respect of which foreclosure may be had, or upon a claim to
12 enforce a lien for unpaid taxes or assessments under G.S.
13 105-414, the clerk may likewise make all further orders
14 required to consummate foreclosure in accordance with the
15 procedure provided in Article 29A of Chapter 1 of the General
16 Statutes, entitled "Judicial Sales".

17 b. The clerk of superior court, upon request of the plaintiff, may
18 enter judgment in cases in which the plaintiff's only claim
19 against the defendant is for absolute divorce, or absolute
20 divorce and the resumption of a former name, and the defendant
21 has been defaulted for failure to appear, or the defendant has
22 answered admitting the allegations of the complaint and joining
23 in the request for an absolute divorce, or the defendant has filed
24 a waiver of the right to answer and joined in the request for an
25 absolute divorce, and the defendant is not an infant or
26 incompetent person."

27 **SECTION 14.** This act becomes effective October 1, 2003, and applies to
28 cases pending on or filed on or after that date.