

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 940

Short Title: Eliminate Trial de Novo From Dist. Ct.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE AUTOMATIC TRIAL DE NOVO JURY TRIAL IN SUPERIOR COURT ON THE APPEAL OF CERTAIN MISDEMEANORS TRIED IN DISTRICT COURT, TO PROVIDE FOR A REFERENDUM TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE THAT THE GENERAL ASSEMBLY MAY ENACT LAWS THAT PROVIDE THAT A PERSON CHARGED WITH A MISDEMEANOR OFFENSE MAY BE TRIED AND CONVICTED WITHOUT A JURY AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 24 of Article I of the North Carolina Constitution reads as rewritten:

"Sec. 24. Right of jury trial in criminal cases.

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for ~~misdemeanors, with the right of appeal for trial de novo.~~misdemeanors."

SECTION 2. G.S. 7A-271(b) reads as rewritten:

"(b) Appeals by the State or the defendant from the district court are to the superior ~~court.~~court except as provided by G.S. 7A-290. The jurisdiction of the superior court over misdemeanors appealed from the district court to the superior court for trial de novo is the same as the district court had in the first instance, and when that conviction resulted from a plea arrangement between the defendant and the State pursuant to which misdemeanor charges were dismissed, reduced, or modified, to try those charges in the form and to the extent that they subsisted in the district court immediately prior to entry of the defendant and the State of the plea arrangement."

SECTION 3. G.S. 7A-290 reads as rewritten:

"§ 7A-290. Appeals from district court in criminal cases; notice; appeal bond.

1 (a) Any defendant convicted in district court before the magistrate may appeal to
2 the district court for trial de novo before the district court judge. Any defendant
3 convicted in district court of a Class 1 or Class A1 misdemeanor before the judge may
4 appeal to the superior court for trial de novo. Notice of appeal may be given orally in
5 open court, or to the clerk in writing within 10 days of entry of judgment. Upon
6 expiration of the 10-day period in which an appeal may be entered, if an appeal has
7 been entered and not withdrawn, the clerk shall transfer the case to the district or
8 superior court docket. The original bail shall stand pending appeal, unless the judge
9 orders bail denied, increased, or reduced.

10 (b) Any defendant convicted in a district court of a Class 2 misdemeanor, a Class
11 3 misdemeanor, or a first offense of driving while impaired under G.S. 138.1 may
12 appeal to the Court of Appeals as provided in Article 91 of Chapter 15A of the General
13 Statutes."

14 **SECTION 4.** G.S. 15A-115(a) reads as rewritten:

15 "(a) Appeal of District Court Decision. – A person who denies responsibility and
16 is found responsible for an infraction in the district court, within 10 days of the hearing,
17 may appeal the decision to the Court of Appeals as provided in Article 91 of Chapter
18 15A of the General Statutes. ~~criminal division of the superior court for a hearing de~~
19 ~~novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the~~
20 ~~hearing conducted by the judge. The State must prove beyond a reasonable doubt that~~
21 ~~the person charged is responsible for the infraction unless the person admits~~
22 ~~responsibility. Unless otherwise provided by law, the procedures applicable to~~
23 ~~misdemeanors disposed of in the superior court apply to those infraction hearings. In the~~
24 ~~superior court, a prosecutor must represent the State. Appeal from the judgment in the~~
25 ~~superior court is as provided for other criminal actions in superior court, and the~~
26 ~~Attorney General must represent the State in an appeal of such actions."~~

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

28 "**§ 15A-1201. Right to trial by jury.**

29 ~~In all criminal cases the defendant~~Except as provided in G.S. 7A-290, a defendant
30 charged with a criminal offense has the right to be tried by a jury of 12 whose verdict
31 must be unanimous. In the district court the judge is the finder of fact in criminal cases,
32 ~~but the cases.~~ The defendant has the right to appeal for trial de novo in superior court for
33 certain misdemeanors as provided in G.S. 15A-1431. In superior court all criminal trials
34 in which the defendant enters a plea of not guilty must be tried before a jury."

35 **SECTION 6.** G.S. 15A-1401 reads as rewritten:

36 "**§ 15A-1401. Post-trial motions and appeal.**

37 Relief from errors committed in criminal trials and proceedings and other post-trial
38 relief may be sought by:

39 (1) Motion for appropriate relief, as provided in Article 89.

40 (2) Appeal and trial de novo in certain misdemeanor cases, as provided in
41 Article 90.

42 (3) Appeal, as provided in Article 91."

43 **SECTION 7.** The catch line for G.S. 15A-1431 reads as rewritten:

1 **"§ 15A-1431. Appeals by defendants from magistrate and district court judge;**
2 **trial de ~~no~~ovo for certain misdemeanors; right of appeal to Court of**
3 **Appeals for certain other misdemeanors."**

4 **SECTION 8.** G.S. 15A-1431(b) reads as rewritten:

5 "(b) A defendant convicted of a Class 1 or Class A1 misdemeanor in the district
6 court before the judge may appeal to the superior court for trial de novo with a jury as
7 provided by law. Upon the docketing in the superior court of an appeal from a judgment
8 imposed pursuant to a plea arrangement between the State and the defendant, the
9 jurisdiction of the superior court over any misdemeanor dismissed, reduced, or modified
10 pursuant to that plea arrangement shall be the same as was had by the district court prior
11 to the plea arrangement."

12 **SECTION 9.** G.S. 15A-1431 is amended by adding a new subsection to
13 read:

14 "(i) A defendant convicted of a Class 3 misdemeanor, a Class 2 misdemeanor, or
15 a first offense of driving while impaired under G.S. 20-138.1 shall appeal directly to the
16 Court of Appeals as provided by Article 91 of Chapter 15A of the General Statutes."

17 **SECTION 10.** The amendment set out in Section 1 of this act shall be
18 submitted to the qualified voters of the State at the general election in November 2002,
19 which election shall be conducted under the laws then governing elections in the State.
20 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the
21 General Statutes. The question to be used in the voting systems and ballots shall be:

22 "[] FOR [] AGAINST

23 Constitutional amendment providing that there is no right to a jury trial in a
24 misdemeanor case."

25 **SECTION 11.** If a majority of the votes cast on the question are in favor of
26 the amendment set out in Section 1 of this act, the State Board of Elections shall certify
27 the amendments to the Secretary of State. The constitutional amendment in Section 1 of
28 this act becomes effective December 1, 2002. The Secretary of State shall enroll the
29 amendments so certified among the permanent records of that office.

30 **SECTION 12.** Sections 2 through 9 of this act become effective only if the
31 constitutional amendment proposed by Section 1 of this act is approved as provided by
32 Sections 10 and 11 of this act; and if so approved, Sections 2 through 9 of this act
33 become effective December 1, 2002.

34 **SECTION 13.** This act is effective when it becomes law.