

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 577  
Judiciary I Committee Substitute Adopted 4/28/03

Short Title: Adjust Court Jurisdiction.

(Public)

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Sponsors:

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Referred to:

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March 31, 2003

A BILL TO BE ENTITLED

1 AN ACT TO PERMIT THE MORE EFFICIENT USE OF ALL COURT PERSONNEL  
2 RESOURCES THROUGH CONCURRENT AND REVISED JURISDICTION  
3 AND PROCEDURES BY PROVIDING ADDITIONAL AUTHORITY FOR  
4 MAGISTRATES AND CLERKS UPON THE AGREEMENT OF THE CHIEF  
5 DISTRICT COURT JUDGE AND CLERK OF SUPERIOR COURT, BY  
6 AUTHORIZING MAGISTRATES TO DETERMINE INDIGENCY AND  
7 ENTITLEMENT TO COUNSEL IN CASES CALENDARED BEFORE THEM,  
8 BY AUTHORIZING DISTRICT COURT JUDGES TO ACCEPT GUILTY PLEAS  
9 FOR CERTAIN CLASSES OF FELONY, BY PROVIDING FOR CONCURRENT  
10 JURISDICTION FOR DISTRICT AND SUPERIOR COURT JUDGES IN  
11 INFRACTIONS AND MISDEMEANOR CASES, BY RAISING THE  
12 JURISDICTIONAL AMOUNT FOR SMALL CLAIMS, BY AUTHORIZING THE  
13 USE OF EXPEDITED CHILD SUPPORT PROCESS UPON THE AGREEMENT  
14 OF THE CHIEF DISTRICT COURT JUDGE AND CLERK OF SUPERIOR  
15 COURT, AND BY CONFORMING CERTAIN PROCEDURAL  
16 REQUIREMENTS IN ACTIONS FOR ABSOLUTE DIVORCE TO THE  
17 REQUIREMENTS IN OTHER CIVIL CASES, AS RECOMMENDED BY THE  
18 STATE JUDICIAL COUNCIL.  
19

20 The General Assembly of North Carolina enacts:

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

22 "**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

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

- 24 (1) In infraction cases in which the maximum penalty that can be imposed  
25 is not more than fifty dollars (\$50.00), exclusive of costs, or in Class 3  
26 misdemeanors, other than the types of infractions and misdemeanors  
27 specified in subdivision (2) of this ~~section~~, subsection, to accept guilty  
28 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. 15A-1115(a) reads as rewritten:

26 "(a) Appeal of District Court Decision. – A person who denies responsibility and  
27 is found responsible for an infraction in the district court, before a district court judge,  
28 before a magistrate pursuant to G.S. 7A-273(b), or before the clerk of court pursuant to  
29 G.S. 7A-180(10), within 10 days of the hearing, may appeal the decision to the criminal  
30 division of the superior court for a hearing de novo. Upon appeal, the defendant is  
31 entitled to a jury trial unless he consents to have the hearing conducted by the judge.  
32 The State must prove beyond a reasonable doubt that the person charged is responsible  
33 for the infraction unless the person admits responsibility. Unless otherwise provided by  
34 law, the procedures applicable to misdemeanors disposed of in the superior court apply  
35 to those infraction hearings. In the superior court, a prosecutor must represent the State.  
36 Appeal from the judgment in the superior court is as provided for other criminal actions  
37 in superior court, and the Attorney General must represent the State in an appeal of such  
38 actions."

39 **SECTION 5.** G.S. 15A-1431 reads as rewritten:

40 **"§ 15A-1431. Appeals by defendants from magistrate and district court judge;**  
41 **trial de novo.**

42 (a) A defendant convicted before a magistrate pursuant to G.S. 7A-273(a) may  
43 appeal for trial de novo before a district court judge without a jury. A defendant  
44 convicted before a magistrate pursuant to G.S. 7A-273(b), or before a clerk of superior

1 court pursuant to G.S. 7A-180(10), may appeal the decision to the criminal division of  
2 the superior court for a trial de novo.

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

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

14 (d) A defendant convicted by a magistrate pursuant to G.S. 7A-273, by a clerk of  
15 superior court pursuant to G.S. 7A-180(10), or by a district court judge is not barred  
16 from appeal because of compliance with the judgment, but notice of appeal after  
17 compliance must be given by the defendant in person to the ~~magistrate or judge~~ judicial  
18 official who heard the case or, if ~~he~~ that official is not available, notice ~~must~~ shall be  
19 given: given in one of the following ways:

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

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

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

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

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

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

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

1           **SECTION 6.** G.S. 7A-272(c) reads as rewritten:

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

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

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

12           **SECTION 7.** G.S. 15A-1029.1(a) reads as rewritten:

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

18           **SECTION 8.** G.S. 7A-271 reads as rewritten:

19           "**§ 7A-271. Jurisdiction of superior court.**

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

23           (1) Which is a lesser included offense of a felony on which an indictment  
24 has been returned, or a felony information as to which an indictment  
25 has been properly waived; or

26           (2) When the charge is initiated by presentment; or

27           (3) Which may be properly consolidated for trial with a felony under G.S.  
28 15A-926;

29           (4) To which a plea of guilty or nolo contendere is tendered in lieu of a  
30 felony charge; or

31           (5) When a misdemeanor conviction is appealed to the superior court for  
32 trial de novo, to accept a guilty plea to a lesser included or related  
33 charge.

34           (a1) With the consent of the presiding district court judge and the presiding  
35 superior court judge, a superior court judge may exercise the jurisdiction of the district  
36 court to hear and enter judgment in misdemeanors pending in the district court. Appeals  
37 from misdemeanor convictions before a superior court judge exercising the jurisdiction  
38 of the district court shall be to superior court for a trial de novo before a different  
39 superior court judge.

40           (b) ~~Appeals~~ Except as otherwise provided by law, appeals by the State or the  
41 defendant from the district court are to the superior court. The jurisdiction of the  
42 superior court over misdemeanors appealed from the district court to the superior court  
43 for trial de novo is the same as the district court had in the first instance, and when that  
44 conviction resulted from a plea arrangement between the defendant and the State

1 pursuant to which misdemeanor charges were dismissed, reduced, or modified, to try  
2 those charges in the form and to the extent that they subsisted in the district court  
3 immediately prior to entry of the defendant and the State of the plea arrangement.

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

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

10 (1) If the infraction is a lesser-included violation of a criminal action  
11 properly before the court, the court must submit the infraction for the  
12 jury's consideration in factually appropriate cases.

13 (2) If the infraction is a lesser-included violation of a criminal action  
14 properly before the court, or if it is a related charge, the court may  
15 accept admissions of responsibility for the infraction. A proper  
16 pleading for the criminal action is sufficient to support a finding of  
17 responsibility for the lesser-included infraction.

18 (e) With the consent of the presiding district court judge and the presiding  
19 superior court judge, a superior court judge may exercise the jurisdiction of the district  
20 court to hear and enter judgment in infractions pending in the district court. Appeals  
21 from infraction convictions before a superior court judge exercising the jurisdiction of  
22 the district court shall be to superior court for a trial de novo before a different superior  
23 court judge."

24 **SECTION 9.** G.S. 7A-210 reads as rewritten:

25 "**§ 7A-210. Small claim action defined.**

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

27 (1) The amount in controversy, computed in accordance with G.S.  
28 7A-243, does not exceed ~~four thousand dollars (\$4,000);~~ five thousand  
29 dollars (\$5,000); and

30 (2) The only principal relief prayed is monetary, or the recovery of  
31 specific personal property, or summary ejectment, or any combination  
32 of the foregoing in properly joined claims; and

33 (3) The plaintiff has requested assignment to a magistrate in the manner  
34 provided in this Article.

35 The seeking of the ancillary remedy of claim and delivery or an order from the clerk  
36 of superior court for the relinquishment of property subject to a lien pursuant to G.S.  
37 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this  
38 Article from so qualifying."

39 **SECTION 10.** G.S. 50-34 is amended by adding a new subsection to read:

40 "(a1) Districts May Elect Expedited Process. – A chief district court judge in a  
41 district court district that is not required by G.S. 50-33(b) to implement the expedited  
42 process may elect to implement the expedited child support process provided for in this  
43 Article in any or all counties within a district court district. A chief district court judge  
44 may implement the expedited child support process only with the consent of the clerk of

1 superior court of any county in which the process is implemented. Notwithstanding  
2 subsection (b) of this section, when a district court district elects to implement the  
3 expedited child support process, the chief district court judge and the clerk of superior  
4 court in an affected county shall determine by agreement whether the child support  
5 hearing officer or officers for that county shall be one or more clerks or assistant clerks  
6 or one or more magistrates. If it is decided that the hearing officer or officers for a  
7 county shall be magistrates, the chief district court judge shall designate the person or  
8 persons to serve as a hearing officer. If it is decided that the hearing officer or officers  
9 for a county shall be the clerk or assistant clerks, the clerk of superior court in the  
10 county shall designate the person or persons to serve as hearing officer. The chief  
11 district court judge, the clerk of superior court, and the Administrative Officer of the  
12 Courts shall ensure the qualification of the persons designated as child support hearing  
13 officers."

14 **SECTION 11.** G.S. 50-10 is repealed.

15 **SECTION 12.** G.S. 1A-1, Rule 55(b)(1), reads as rewritten:

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

17 (1) By the Clerk. –

18 a. When the plaintiff's claim against a defendant is for a sum  
19 certain or for a sum which can by computation be made certain,  
20 the clerk upon request of the plaintiff and upon affidavit of the  
21 amount due shall enter judgment for that amount and costs  
22 against the defendant, if the defendant has been defaulted for  
23 failure to appear and if the defendant is not an infant or  
24 incompetent person. A verified pleading may be used in lieu of  
25 an affidavit when the pleading contains information sufficient  
26 to determine or compute the sum certain.

27 In all cases wherein, pursuant to this rule, the clerk enters  
28 judgment by default upon a claim for debt which is secured by  
29 any pledge, mortgage, deed of trust or other contractual security  
30 in respect of which foreclosure may be had, or upon a claim to  
31 enforce a lien for unpaid taxes or assessments under G.S.  
32 105-414, the clerk may likewise make all further orders  
33 required to consummate foreclosure in accordance with the  
34 procedure provided in Article 29A of Chapter 1 of the General  
35 Statutes, entitled "Judicial Sales".

36 b. The clerk of superior court, upon request of the plaintiff, may  
37 enter judgment in cases in which the plaintiff's only claim  
38 against the defendant is for absolute divorce, or absolute  
39 divorce and the resumption of a former name, and the defendant  
40 has been defaulted for failure to appear, or the defendant has  
41 answered admitting the allegations of the complaint and joining  
42 in the request for an absolute divorce, or the defendant has filed  
43 a waiver of the right to answer and joined in the request for an

1                                    absolute divorce, and the defendant is not an infant or  
2                                    incompetent person."

3                    **SECTION 13.** This act becomes effective October 1, 2003, and applies to  
4 cases pending or filed on or after that date.