

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 725
SENATE BILL 33

AN ACT TO MAKE VARIOUS CHANGES IN THE CRIMINAL JURISDICTION OF DISTRICT AND SUPERIOR COURT AND TO MAKE VARIOUS CRIMINAL LAW PROCEDURAL CHANGES.

The General Assembly of North Carolina enacts:

PART 1. CLASS H AND I FELONY GUILTY PLEAS IN DISTRICT COURT

Section 1. G.S. 7A-272 is amended by adding the following new subsections to read:

"(c) With the consent of the presiding district court judge, the prosecutor, and the defendant, the district court has jurisdiction to accept a defendant's plea of guilty or no contest to a Class H or I felony if:

- (1) The defendant is charged with a felony in an information filed pursuant to G.S. 15A-644.1, the felony is pending in district court, and the defendant has not been indicted for the offense; or
- (2) The defendant has been indicted for a criminal offense but the defendant's case is transferred from superior court to district court pursuant to G.S. 15A-1029.1.

(d) Provisions in Chapter 15A of the General Statutes apply to a plea authorized under subsection (c) of this section as if the plea had been entered in superior court, so that a district court judge is authorized to act in these matters in the same manner as a superior court judge would be authorized to act if the plea had been entered in superior court, and appeals that are authorized in these matters are to the appellate division."

Sec. 2. The catch line for G.S. 7A-272 reads as rewritten:

"§ 7A-272. Jurisdiction of district court; concurrent jurisdiction in guilty or no contest pleas for certain felony offenses; appellate and appropriate relief procedures applicable."

Sec. 3. Article 32 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-644.1. Filing of information when plea of guilty or no contest in district court to Class H or I felony."

A defendant who pleads guilty or no contest in district court pursuant to G.S. 7A-272(c)(1) shall enter that plea to an information complying with G.S. 15A-644(b), except it shall contain the name of the district court in which it is filed."

Sec. 4. Article 18 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-191.1. Recording of proceeding in which defendant pleads guilty or no contest to felony in district court.

The trial judge shall require that a true, complete, and accurate record be made of the proceeding in which a defendant pleads guilty or no contest to a Class H or I felony pursuant to G.S. 7A-272."

Sec. 5. G.S. 15A-1011(c) reads as rewritten:

"(c) Upon entry of a plea of guilty or no contest or after conviction on a plea of not guilty, the defendant may request permission to enter a plea of guilty or no contest as to other crimes with which he is charged in the same or another prosecutorial district as defined in G.S. 7A-60. A defendant may not enter any plea to crimes charged in another prosecutorial district as defined in G.S. 7A-60 unless the district attorney of that district consents in writing to the entry of such plea. The prosecutor or his representative may appear in person or by filing an affidavit as to the nature of the evidence gathered as to these other crimes. Entry of a plea under this subsection constitutes a waiver of venue. A superior court is granted jurisdiction to accept the plea, upon an appropriate indictment or information, even though the case may otherwise be within the exclusive original jurisdiction of the district court. A district court may accept pleas under this section only in cases within the original jurisdiction of the district ~~court~~ court and in cases within the concurrent jurisdiction of the district and superior courts pursuant to G.S. 7A-272(c)."

Sec. 6. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 58A.

"Procedures Relating to Felony Guilty Pleas in District Court.

"§ 15A-1029.1. Transfer of case from superior court to district court to accept guilty and no contest pleas for certain felony offenses.

(a) With the consent of both the prosecutor and the defendant, the presiding superior court judge may order a transfer of the defendant's case to the district court for the purpose of allowing the defendant to enter a plea of guilty or no contest to a Class H or I felony.

(b) The provisions of Article 58 of this Chapter apply to a case transferred under this section from superior court to district court in the same manner as if the plea were entered in superior court. Appeals that are authorized in these matters are to the appellate division."

PART 2. ARRAIGNMENT ON WRITTEN REQUEST; ENTRY OF NOT GUILTY PLEA

Sec. 7. G.S. 15A-941 reads as rewritten:

"§ 15A-941. Arraignment before judge; judge only upon written request; use of two-way audio and video transmission; transmission; entry of not guilty plea if not arraigned.

(a) Arraignment consists of bringing a defendant in open court or as provided in subsection (b) of this section before a judge having jurisdiction to try the offense, advising him of the charges pending against him, and directing him to plead. The

prosecutor must read the charges or fairly summarize them to the defendant. If the defendant fails to plead, the court must record that fact, and the defendant must be tried as if he had pleaded not guilty.

(b) An arraignment in a noncapital case may be conducted by an audio and video transmission between the judge and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.

(c) Prior to the use of audio and video transmission pursuant to subsection (b) of this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge for the judicial district or set of districts and approved by the Administrative Office of the Courts.

(d) A defendant will be arraigned in accordance with this section only if the defendant files a written request with the clerk of superior court for an arraignment not later than 21 days after service of the bill of indictment. If a bill of indictment is not required to be served pursuant to G.S. 15A-630, then the written request for arraignment must be filed not later than 21 days from the date of the return of the indictment as a true bill. Upon the return of the indictment as a true bill, the court must immediately cause notice of the 21-day time limit within which the defendant may request an arraignment to be mailed or otherwise given to the defendant and to the defendant's counsel of record, if any. If the defendant does not file a written request for arraignment, then the court shall enter a not guilty plea on behalf of the defendant.

(e) Nothing in this section shall prevent the district attorney from calendaring cases for administrative purposes."

Sec. 8. G.S. 15A-942 reads as rewritten:

"§ 15A-942. Right to counsel.

If the defendant appears at the arraignment without counsel, the court must inform the defendant of his right to counsel, must accord the defendant opportunity to exercise that right, and must take any action necessary to effectuate the right. If the defendant does not file a written request for arraignment, the court, in addition to entering a plea of not guilty on behalf of the defendant, shall also verify that the defendant is aware of the right to counsel, that the defendant has been given the opportunity to exercise that right, and must take any action necessary to effectuate that right on behalf of the defendant."

Sec. 9. G.S. 15A-952(c) reads as rewritten:

"(c) Unless otherwise provided, the motions listed in subsection (b) must be made at or before the time of arraignment if a written request is filed for arraignment and if arraignment is held prior to the session of court for which the trial is calendared. If arraignment is to be held at the session for which trial is calendared, the motions must be filed on or before five o'clock P.M. on the Wednesday prior to the session when trial of the case begins.

If a written request for arraignment is not filed, then any motion listed in subsection (b) of this section must be filed not later than 21 days from the date of the return of the bill of indictment as a true bill."

Sec. 10. G.S. 15A-1221(a) reads as rewritten:

- "(a) The order of a jury trial, in general, is as follows:
- (1) ~~The defendant must be arraigned and must have his plea recorded, out of the presence of the prospective jurors, unless he has waived arraignment under G.S. 15A-945.~~
 - (1a) Unless the defendant has filed a written request for an arraignment, the court must enter a not guilty plea on behalf of the defendant in accordance with G.S. 15A-941. If a defendant does file a written request for an arraignment, then the defendant must be arraigned and must have his or her plea recorded out of the presence of the prospective jurors in accordance with G.S. 15A-941.
 - (2) The judge must inform the prospective jurors of the case in accordance with G.S. 15A-1213.
 - (3) The jury must be sworn, selected and impaneled in accordance with Article 72, Selecting and Impaneling the Jury.
 - (4) Each party must be given the opportunity to make a brief opening statement, but the defendant may reserve his opening statement.
 - (5) The State must offer evidence.
 - (6) The defendant may offer evidence and, if he has reserved his opening statement, may precede his evidence with that statement.
 - (7) The State and the defendant may then offer successive rebuttals as provided in G.S. 15A-1226.
 - (8) At the conclusion of the evidence, the parties may make arguments to the jury in accordance with the provisions of G.S. 15A-1230.
 - (9) The judge must deliver a charge to the jury in accordance with the provisions of G.S. 15A-1231 and 15A-1232.
 - (10) The jury must retire to deliberate, and alternate jurors who have not been seated must be excused as provided in G.S. 15A-1215."

PART 3. EFFECTIVE DATE

Sec. 11. This act becomes effective December 1, 1996, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives