

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1145

Short Title: Probation Stayed/Appeal for Trial de Novo.

(Public)

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Sponsors: Representative Michaux.

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Referred to: Judiciary II.

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April 7, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT PROBATION IS STAYED DURING AN APPEAL  
2 FOR A TRIAL DE NOVO FROM A JUDGMENT ENTERED BY A  
3 MAGISTRATE OR DISTRICT COURT JUDGE.  
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 15A-1431 reads as rewritten:

7 "**§ 15A-1431. Appeals by defendants from magistrate and district court judge;**  
8 **trial de novo.**

9 (a) A defendant convicted before a magistrate may appeal for trial de novo  
10 before a district court judge without a jury.

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

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20 period, if an appeal has been entered and not withdrawn, the clerk must transfer the case  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

22 (d) A defendant convicted by a magistrate or district court judge is not barred  
23 from appeal because of compliance with the judgment, but notice of appeal after  
24 compliance must be given by the defendant in person to the magistrate or judge who  
25 heard the case or, if he is not available, notice must be given:

26 (1) Before a magistrate in the county, in the case of appeals from the  
27 magistrate; or

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

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

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

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

13 (f1) Appeal pursuant to this section stays the execution of all portions of the  
14 judgment, including all of the following:

15 (1) Payment of costs.

16 (2) Payment of a fine.

17 (3) Probation or special probation.

18 (4) Active punishment.

19 Pursuant to subsection (e) of this section, however, the judge may order any  
20 appropriate condition of pretrial release, including confinement in a local confinement  
21 facility, pending the trial de novo in superior court.

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

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

31 **SECTION 2.** This act is effective when it becomes law.