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PROPOSED SENATE COMMITTEE SUBSTITUTE H215-CSSA-65 [v.2]

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Short Title: Procedure for Waiver of Jury Trial.

(Public)

Sponsors:

Referred to:

March 12, 2015

A BILL TO BE ENTITLED  
AN ACT TO ESTABLISH PROCEDURE FOR WAIVER OF THE RIGHT TO A JURY  
TRIAL IN CRIMINAL CASES IN SUPERIOR COURT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1201 reads as rewritten:

**"§ 15A-1201. Right to trial by jury; waiver of jury trial; procedure for waiver.**

(a) Right to Jury Trial. - In all criminal cases the defendant has the right to be tried by a jury of 12 whose verdict must be unanimous. In the district court the judge is the finder of fact in criminal cases, but the defendant has the right to appeal for trial de novo in superior court as provided in G.S. 15A-1431. In superior court all criminal trials in which the defendant enters a plea of not guilty must be tried before a jury, unless the defendant waives the right to a jury trial, as provided in subsection (b) of this section.

(b) Waiver of Right to Jury Trial. - A defendant accused of any criminal offense for which the State is not seeking a sentence of death in superior court may, knowingly and voluntarily, in writing or on the record in the court and with the consent of the trial judge, waive the right to trial by jury. When a defendant waives the right to trial by jury under this section, the jury is dispensed with as provided by law, and the whole matter of law and fact, to include all factors referred to in G.S. 20-179 and subsections (a1) and (a3) of G.S. 15A-1340.16, shall be heard and judgment given by the court. If a motion for joinder of co-defendants is allowed, the trial judge shall not consent to waiver of the right to trial by jury unless all joined co-defendants waive their right to trial by jury under this section.

(c) A defendant seeking to waive the right to trial by jury under subsection (b) of this section shall give notice of intent to waive a jury trial by any of the following methods:

- (1) Stipulation signed by both the State and the defendant and served on the counsel for any co-defendants.
- (2) Filing a written notice of intent to waive a jury trial with the court and serving on the State and counsel for any co-defendants within the earliest of (i) 10 working days after arraignment; (ii) 10 working days after service of a calendar setting under G.S. 7A-49.4(b); or (iii) 10 working days after the setting of a definite trial date under G.S. 7A-49.4(c).
- (3) Giving notice of intent to waive a jury trial on the record in open court by the earlier of (i) the time of arraignment or (ii) the calling of the calendar under G.S. 7A-49.4(b) or G.S. 7A-49.4(c).



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(d) Judicial Consent to Jury Waiver. - Upon notice of waiver by the defense pursuant to subsection (c) of this section, the State shall schedule the matter to be heard in open court to determine whether the judge agrees to hear the case without a jury. The decision to grant or deny the defendant's request for a bench trial shall be made by the judge who will actually preside over the trial. Before consenting to a defendant's waiver of the right to a trial by jury, the trial judge shall do all of the following:

- (1) Inquire of the prosecutor whether the State objects to the waiver, and if the State does object, on what grounds the State bases its objection.
- (2) Address the defendant personally and determine whether the defendant fully understands and appreciates the consequences of the defendant's decision to waive the right to trial by jury.
- (3) Consider the arguments presented by both the State and the defendant regarding the defendant's waiver of a jury trial.
- (4) Determine whether the defendant's waiver is tendered in good faith and is not a tactic to procure an otherwise impermissible procedural advantage.

(e) Revocation of Waiver. - Once waiver of a jury trial has been made and consented to by the trial judge pursuant to subsection (d) of this section, the defendant may revoke the waiver one time as of right within ten (10) business days of the defendant's initial notice pursuant to subsection (c) of this section if the defendant does so in open court with the State present, or in writing to both the State and the judge. In all other circumstances, the defendant may only revoke the waiver of trial by jury upon the trial judge finding all of the following:

- (1) The revocation would not cause unreasonable hardship or delay to the State.
- (2) The revocation is tendered in good faith.
- (3) The revocation is not a tactic to procure an otherwise impermissible procedural advantage.

Once a revocation has been granted pursuant to this subsection the decision is final and binding.

(f) Findings of Fact. - In any case where the defendant has waived the right to trial by jury pursuant to this section, if any party so requests before the finding of guilty or not guilty, prior to the announcing of the verdict in open court, the court must make specific findings of fact to support the verdict in a written decision or opinion.

(g) Suppression of Evidence. - In the event that a defendant who has waived the right to trial by jury pursuant to this section makes a motion to suppress evidence under Article 53 of this Chapter, the court shall make written findings of fact and conclusions of law."

**SECTION 2.** G.S. 20-179 is amended by adding a new subsection to read:

"(a3) Procedure When Jury Trial Waived. - If a defendant waives the right to a jury trial under G.S. 15A-1201, the trial judge shall make all findings that are conferred upon the jury under the provisions of this section."

**SECTION 3.** G.S. 15A-1340.16 is amended by adding a new subsection to read:

"(a6) Procedure When Jury Trial Waived. - If a defendant waives the right to a jury trial under G.S. 15A-1201, the trial judge shall make all findings that are conferred upon the jury under the provisions of this section."

**SECTION 4.** This act becomes effective October 1, 2015, and applies to defendants waiving their right to trial by jury on or after that date.