

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 310

Short Title: Amend Time for Notice of Appeal.

(Public)

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Sponsors: Senator Miller.

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Referred to: Judiciary II.

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March 10, 1999

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN  
2 CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION  
3 AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT  
4 SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN  
5 DAYS AFTER THE DATE OF THE HEARING.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 7A-289.34 reads as rewritten:

9 **"§ 7A-289.34. Appeals; modification of order after affirmation.**

10 Any child, parent, guardian, custodian or agency who is a party to a proceeding under  
11 this Article may appeal from an adjudication or any order of disposition to the Court of  
12 Appeals, provided that notice of appeal is given in open court at the time of the hearing or  
13 in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an  
14 appeal, the court may enter such temporary order affecting the custody or placement of  
15 the child as the court finds to be in the best interest of the child or the best interest of the  
16 State. Upon the affirmation of the order of adjudication or disposition of the district court  
17 in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such  
18 an appeal, the district court shall have authority to modify or alter its original order of  
19 adjudication or disposition as the court finds to be in the best interest of the child to  
20 reflect any adjustment made by the child or change in circumstances during the period of

1 time the case on appeal was pending, provided that if such modifying order be entered ex  
2 parte, the court shall give notice to interested parties to show cause, if any there be,  
3 within 10 days thereafter, as to why said modifying order should be vacated or altered."

4 Section 2. Effective July 1, 1999, G.S. 7B-1112, as enacted by S.L. 1998-202  
5 and renumbered by the Codifier of Statutes as G.S. 7B-1113, reads as rewritten:

6 **"§ 7B-1112. Appeals; modification of order after affirmation.**

7 Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding  
8 under this Article may appeal from an adjudication or any order of disposition to the  
9 Court of Appeals, provided that notice of appeal is given in open court at the time of the  
10 hearing or in writing within 10 days after ~~the hearing.~~entry of the order. Pending  
11 disposition of an appeal, the court may enter a temporary order affecting the custody or  
12 placement of the juvenile as the court finds to be in the best interests of the juvenile or  
13 the best interests of the State. Upon the affirmation of the order of adjudication or  
14 disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme  
15 Court in the event of an appeal, the court shall have authority to modify or alter its  
16 original order of adjudication or disposition as the court finds to be in the best interests of  
17 the juvenile to reflect any adjustment made by the juvenile or change in circumstances  
18 during the period of time the case on appeal was pending, provided that if the modifying  
19 order be entered ex parte, the court shall give notice to interested parties to show cause, if  
20 any there be, within 10 days thereafter, as to why the modifying order should be vacated  
21 or altered."

22 Section 3. Effective July 1, 1999, G.S. 7B-2603, as enacted by S.L. 1998-202,  
23 reads as rewritten:

24 **"§ 7B-2603. Right to appeal transfer decision.**

25 (a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the  
26 district court in a juvenile matter to the superior court may be appealed to the superior  
27 court for a hearing on the record. Notice of the appeal must be given in open court or in  
28 writing within 10 days after ~~the transfer hearing in the district court.~~entry of the order of  
29 transfer in district court. A juvenile who fails to appeal the transfer order to the superior  
30 court waives the right to raise the issue of transfer before the Court of Appeals until final  
31 disposition of the matter in superior court. The clerk of superior court shall provide the  
32 district attorney with a copy of any written notice of appeal filed by the attorney for the  
33 juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an  
34 appeal has been entered and not withdrawn, the clerk shall transfer the case to the  
35 superior court docket. The superior court shall, within a reasonable time, review the  
36 record of the transfer hearing for abuse of discretion by the juvenile court in the issue of  
37 transfer. The superior court shall not review the findings as to probable cause for the  
38 underlying offense.

39 (b) Once an order of transfer has been entered by the district court, the juvenile has  
40 the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-  
41 534. The release order shall specify the person or persons to whom the juvenile may be  
42 released. Pending release, the court shall order that the juvenile be detained in a  
43 detention facility while awaiting trial. The court may order the juvenile to be held in a

1 holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is  
2 required in court for pretrial hearings or trial, if the court finds that it would be  
3 inconvenient to return the juvenile to the detention facility.

4 (c) If an appeal of the transfer order is taken, the superior court shall enter an order  
5 either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the  
6 transfer order. If the superior court remands the case to juvenile court for adjudication  
7 and the juvenile has been granted pretrial release provided in G.S. 15A-533 and G.S. 15A-  
8 534, the obligor shall be released from the juvenile's bond upon the district court's review  
9 of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S.  
10 7B-1903.

11 (d) The superior court order shall be an interlocutory order, and the issue of  
12 transfer may be appealed to the Court of Appeals only after the juvenile has been  
13 convicted in superior court."

14 Section 4. G.S. 7A-725 reads as rewritten:

15 "**§ 7A-725. Appeals.**

16 Any petitioner, parent, or guardian who is a party to a proceeding under this Article  
17 may appeal from any order of disposition to the Court of Appeals provided that notice of  
18 appeal is given in open court at the time of the hearing or in writing within 10 days after  
19 ~~the hearing—entry of the order.~~ Pending disposition of an appeal, the judge may enter a  
20 temporary order affecting the custody or placement of the petitioner as he finds to be in  
21 the best interest of the petitioner or the State."

22 Section 5. Effective July 1, 1999, G.S. 7B-3508, as enacted by S.L. 1998-202,  
23 reads as rewritten:

24 "**§ 7B-3508. Appeals.**

25 Any petitioner, parent, guardian, or custodian who is a party to a proceeding under  
26 this Article may appeal from any order of disposition to the Court of Appeals provided  
27 that notice of appeal is given in open court at the time of the hearing or in writing within  
28 10 days after ~~the hearing—entry of the order.~~ Pending disposition of an appeal, the court  
29 may enter a temporary order affecting the custody or placement of the petitioner as the  
30 court finds to be in the best interests of the petitioner or the State."

31 Section 6. Sections 1 and 4 of this act become effective when this act becomes  
32 law, and apply to actions filed on or after that date. Sections 1 and 4 of this act expire  
33 July 1, 1999. Sections 2, 3, and 5 of this act become effective July 1, 1999, and apply to  
34 actions filed on or after that date. The remainder of this act is effective when this act  
35 becomes law.