

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

S

1

SENATE BILL 819

Short Title: Certain Prob. Viol. to Ct. of Appeals.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

April 3, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO CLARIFY THAT A PERSON WHO PLEADS GUILTY OR NO
3 CONTEST TO A CLASS H OR I FELONY IN DISTRICT COURT AND
4 RECEIVES A PROBATIONARY SENTENCE WILL HAVE ANY RESULTING
5 PROBATION VIOLATION HEARING HELD IN DISTRICT COURT, AND
6 THAT AN APPEAL FROM A SUBSEQUENT PROBATION REVOCATION
7 WILL BE HEARD IN THE COURT OF APPEALS.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 7A-271(b) reads as rewritten:

10 "(b) Appeals by the State or the defendant from the district court are to the
11 superior ~~court~~ court, except as provided in G.S. 7A-272(d) and G.S. 15A-1029.1. The
12 jurisdiction of the superior court over misdemeanors appealed from the district court to
13 the superior court for trial de novo is the same as the district court had in the first
14 instance, and when that conviction resulted from a plea arrangement between the
15 defendant and the State pursuant to which misdemeanor charges were dismissed,
16 reduced, or modified, to try those charges in the form and to the extent that they
17 subsisted in the district court immediately prior to entry of the defendant and the State
18 of the plea arrangement."

19 **SECTION 2.** G.S. 7A-272(d) reads as rewritten:

20 "(d) Provisions in Chapter 15A of the General Statutes apply to a plea authorized
21 under subsection (c) of this section as if the plea had been entered in superior court, so
22 that a district court judge is authorized to act in these matters in the same manner as a
23 superior court judge would be authorized to act if the plea had been entered in superior
24 ~~court, and~~ court. Any subsequent probation violation hearings held as a result of a plea
25 entered under subsection (c) of this section shall be held in district court. appeals
26 Appeals that are authorized in these ~~matters~~ matters, or in subsequent probation
27 revocations resulting from judgments entered in cases as authorized under subsection
28 (c) of this section are to the appellate division."

1 **SECTION 3.** G.S. 15A-1029.1(b) reads as rewritten:

2 "(b) The provisions of Article 58 of this Chapter apply to a case transferred under
3 this section from superior court to district court in the same manner as if the plea were
4 entered in superior court. Appeals that are authorized in these matters ~~are to the~~
5 ~~appellate division.~~ shall be heard in accordance with G.S. 7A-272(d)."

6 **SECTION 4.** G.S. 15A-1347 reads as rewritten:

7 "**§ 15A-1347. Appeal from revocation of probation or imposition of special**
8 **probation upon violation.**

9 When a district court judge, as a result of a finding of a violation of probation,
10 activates a sentence or imposes special probation, the defendant may appeal to the
11 superior court for a de novo revocation ~~hearing.~~ hearing, except as provided in G.S. 7A-
12 272(d) and G.S. 15A-1029.1(b). At the hearing the probationer has all rights and the
13 court has all authority they have in a revocation hearing held before the superior court in
14 the first instance. Appeals from lower courts to the superior courts from judgments
15 revoking probation may be heard in term or out of term, in the county or out of the
16 county by the resident superior court judge of the district or the superior court judge
17 assigned to hold the courts of the district, or a judge of the superior court commissioned
18 to hold court in the district, or a special superior court judge residing in the district.
19 When the defendant appeals to the superior court because a district court has found he
20 violated probation and has activated his sentence or imposed special probation, and the
21 superior court, after a de novo revocation hearing, orders that the defendant continue on
22 probation under the same or modified conditions, the superior court is considered the
23 court that originally imposed probation with regard to future revocation proceedings and
24 other purposes of this Article. When a superior court judge, as a result of a finding of a
25 violation of probation, activates a sentence or imposes special probation, either in the
26 first instance or upon a de novo hearing after appeal from a district court, the defendant
27 may appeal under G.S. 7A-27."

28 **SECTION 5.** This act is effective when it becomes law.