

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40080-MSz-15 (01/10)

Short Title: Motions for Appropriate Relief. (Public)

Sponsors: Representatives Destin Hall, Rogers, Duane Hall, and John (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE USE OF MOTIONS FOR
APPROPRIATE RELIEF, AS RECOMMENDED BY THE NORTH CAROLINA COURTS
COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1413(d) reads as rewritten:

"(d) All motions for appropriate relief filed in superior court shall, when filed, be referred to the senior resident superior court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, including disclosure of expert witness information described in G.S. 15A-903(a)(2) and G.S. 15A-905(c)(2) for expert witnesses reasonably expected to be called at a hearing on the motion, or other appropriate actions.

All motions for appropriate relief filed in district court shall, when filed, be referred to the chief district court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions."

SECTION 2. G.S. 15A-1420(b1) reads as rewritten:

"§ 15A-1420. Motion for appropriate relief; procedure.

...

(b1) Filing Motion With Clerk. –

(1) The proceeding shall be commenced by filing with the clerk of superior court of the district wherein the defendant was indicted a motion, with service on the district attorney in noncapital cases, and service on both the district attorney and Attorney General in capital cases.

(2) The clerk, upon receipt of the motion, shall place the motion on the criminal docket. When a motion is placed on the criminal docket, the clerk shall promptly bring the motion, or a copy of the motion, to the attention of the senior resident superior court judge or chief district court judge, as appropriate, for assignment to the appropriate judge pursuant to G.S. 15A-1413.

(3) The judge assigned to the motion shall conduct an initial review of the motion. If the judge determines that all of the claims alleged in the motion are frivolous, the judge shall deny the motion. If the motion presents sufficient information to warrant a hearing or the interests of justice so require, the judge shall appoint counsel for an indigent defendant who is not represented by counsel. Counsel so appointed shall review the motion filed by the petitioner and either adopt the motion or file an amended motion. After post-conviction counsel files an initial



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1 or amended motion, or a determination is made that the petitioner is proceeding
2 without counsel, the judge may direct the State to file an answer. Should the
3 State contend that as a matter of law the defendant is not entitled to the relief
4 sought, the State may request leave to file a limited answer so alleging."

5 **SECTION 3.** G.S. 7A-451(a) reads as rewritten:

6 **"§ 7A-451. Scope of entitlement.**

7 (a) An indigent person is entitled to services of counsel in the following actions and
8 proceedings:

- 9 (1) Any case in which imprisonment, or a fine of five hundred dollars (\$500.00), or
10 more, is likely to be ~~adjudged;~~adjudged.
- 11 (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the
12 General ~~Statutes;~~Statutes.
- 13 (3) A motion for appropriate relief under Chapter 15A of the General Statutes if
14 appointment of counsel is authorized by Chapter 15A of the General Statutes
15 and the defendant has been convicted of a felony, has been fined five hundred
16 dollars (\$500.00) or more, or has been sentenced to a term of
17 ~~imprisonment;~~imprisonment.
- 18 (4) A hearing for revocation of ~~probation;~~probation.
- 19 (5) A hearing in which extradition to another state is ~~sought;~~sought.
- 20 (6) A proceeding for an inpatient involuntary commitment to a facility under Part 7
21 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for
22 commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.
- 23 (7) In any case of execution against the person under Chapter 1, Article 28 of the
24 General Statutes, and in any civil arrest and bail proceeding under Chapter 1,
25 Article 34, of the General ~~Statutes;~~Statutes.
- 26 (8) In the case of a juvenile, a hearing as a result of which commitment to an
27 institution or transfer to the superior court for trial on a felony charge is
28 ~~possible;~~possible.
- 29 (9) A hearing for revocation of parole at which the right to counsel is provided in
30 accordance with the provisions of Chapter 148, Article 4, of the General
31 ~~Statutes;~~Statutes.
- 32 (10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and
33 applicable to all petitions for sterilization pending and orders authorizing
34 sterilization that have not been executed as of April 17, 2003.
- 35 (11) A proceeding for the provision of protective services according to Chapter
36 108A, Article 6 of the General ~~Statutes;~~Statutes.
- 37 (12) In the case of a juvenile alleged to be abused, neglected, or dependent under
38 Subchapter I of Chapter 7B of the General ~~Statutes;~~Statutes.
- 39 (13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A,
40 of the General ~~Statutes;~~Statutes.
- 41 (14) A proceeding to terminate parental rights where a guardian ad litem is
42 appointed pursuant to ~~G.S. 7B-1101;~~G.S. 7B-1101.
- 43 (15) An action brought pursuant to Article 11 of Chapter 7B of the General Statutes
44 to terminate an indigent person's parental rights.
- 45 (16) A proceeding involving consent for an abortion on an unemancipated minor
46 pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes.
47 G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.
- 48 (17) A proceeding involving limitation on freedom of movement or access pursuant
49 to G.S. 130A-475 or G.S. 130A-145.
- 50 (18) A proceeding involving placement into satellite monitoring under Part 5 of
51 Article 27A of Chapter 14 of the General Statutes."

1 **SECTION 4.** This act becomes effective December 1, 2017, and applies to motions
2 for appropriate relief filed on or after that date.