

Changes to Jury Waiver Procedures

Author : Jeff Welty

Categories : [Procedure](#)

Tagged as : [constitutional amendment](#), [jury trial](#), [jury waiver](#), [procedures](#)

Date : November 4, 2015

This session, the General Assembly amended G.S. 15A-1201, which sets out the procedures for waiving a jury trial in superior court. [S.L. 2015-289](#). This post summarizes the changes.

Principal changes. The main changes to the statute are as follows:

- *Sentencing factors included.* The bill clarifies that any waiver of a jury trial includes “all factors referred to in G.S. 20?179 and subsections (a1) and (a3) of G.S. 15A?16,” i.e., aggravating factors. Whether they were included in the scope of a waiver had been unclear under prior law.
- *Unless all codefendants waive, none may waive.* The bill provides that “[i]f a motion for joinder of co?defendants is allowed, there shall be a jury trial unless all defendants waive the right to trial by jury, or the court, in its discretion, severs the case.”
- *Procedures for, and timing of, waiver.* The bill provides that the defendant may waive in three ways:
 - By stipulation signed by both sides.
 - By written notice filed and served “within the earliest of (i) 10 working days after arraignment, (ii) 10 working days after service of a calendar setting under G.S. 7A?4(b), or (iii) 10 working days after the setting of a definite trial date under G.S. 7A?49.4(c).”
 - By “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?4(b) or G.S. 7A?49.4(c).”
- *Procedures for court’s consent.* A judge must have a hearing on whether to accept a defendant’s waiver. The hearing must include a colloquy with the defendant and consideration of the State’s position regarding waiver. Importantly, “[t]he 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.” On the one hand, this makes sense from the court’s perspective (because it prevents one judge from saddling another with an unwanted bench trial) and from the parties’ perspective (because it locks in the trial judge, allowing the State to know whether to support or oppose a bench trial, and allowing the defendant to know who will be conducting any such trial). On the other hand, this seems to allow the State to choose the trial judge by deciding when to calendar the waiver hearing, and it could create logistical problems if the judge in question then rotates out of the jurisdiction.
- *Procedures for revocation of waiver.* The bill allows the defendant to revoke a waiver “one time as of right within 10 business days of the defendant’s initial notice” of waiver, or “upon the trial judge finding the revocation would not cause unreasonable hardship or delay to the State.” But “[o]nce a revocation has been granted pursuant to this subsection, the decision is final and binding.”
- *Procedures for motions to suppress.* When a defendant who has waived his or her right to a jury trial makes a motion to suppress, “the court shall make written findings of fact and conclusions of law,” apparently even if written findings would not otherwise be required.

New form. The AOC has amended AOC-CR-405 to conform to the new law. As I understand it, the new version of the form has not been reviewed by the forms committee and so is not yet final but is available in draft form [here](#).

Effective date. The effective date provision in the bill makes the new procedures applicable to defendants waiving their right to trial by jury on or after October 1, 2015. However, the Governor did not sign the legislation until October 29, 2015. This creates some uncertainty about the effect of the bill for waivers between October 1 and October 29. My best guess is that if the issue were ever raised, a court would find that the bill was not law until October 29 and was not intended to apply retroactively, so it did not apply during that window.

Consequences of new provisions. Several lawyers have suggested to me that the new procedures are so onerous that few if any defendants will waive their right to jury trial going forward. I would be especially interested in comments on that perspective.