

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 182

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

S182-ARV-63 [v.1]

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Comm. Sub. [YES]
Amends Title [NO]
Fourth Edition

Date _____, 2013

Representative Stam

1 moves to amend the bill on page 1, line 6, by inserting after the comma the following: "TO
2 MAKE CHANGES REGARDING THE PROCEDURES FOR A MOTION FOR
3 APPROPRIATE RELIEF,";

4
5 And on page 2, lines 35 and 36, by inserting between those lines the following:

6 "SECTION 3.1. G.S. 15A-1420 reads as rewritten:

7 **'§ 15A-1420. Motion for appropriate relief; procedure.**

8 ...

9 ~~(b2) — Noncapital Cases. — Assignment of Motion for Review; Initial Review of Motion;
10 Time Frame for Hearings and Ruling on Motion. —~~

11 ~~(1) — In noncapital cases, the senior resident superior court judge or chief district
12 court judge, as appropriate, shall, within 30 days of the filing of the motion,
13 assign the motion for initial review to the appropriate judge as provided in
14 G.S. 15A-1413.~~

15 ~~(2) — The assigned judge, no later than 30 working days after the assignment, shall
16 review the motion and issue a written initial review order that concludes the
17 initial review of the motion in one of the following manners: (i) by
18 dismissing the motion for lack of merit on its face, (ii) by directing the State,
19 if necessary, to file an answer within 30 days from the date on which the
20 initial review order was issued, or (iii) by dispensing with the requirement
21 that the State file an answer and instead order a hearing. Unless the motion is
22 dismissed, the initial review order shall also indicate whether the defendant
23 shall be allowed to proceed without the payment of costs; indicate whether
24 counsel shall be appointed; and calendar a hearing on the motion within the
25 appropriate time period as set out in subdivisions (3) and (4) of this
26 subsection.~~

27 ~~(3) — Unless provided otherwise by this subsection, if the court determines that an
28 evidentiary hearing is required, then the hearing must be held within 90 days
29 from the date on which the initial review order was issued; if no evidentiary
30 hearing is required, then the hearing must be held within 60 days from the
31 date on which the initial review order was issued. If, in the initial review
32 order, the court orders the State to file an answer and the court determines~~



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1 that an evidentiary hearing is required, then the evidentiary hearing must be
2 held within 150 days from the date on which the initial review order was
3 issued; if the court determines that the hearing is not an evidentiary hearing,
4 then the hearing must be held within 120 days from the date on which the
5 initial review order was issued.

6 ~~(4) If the court determines pursuant to subdivision (2) of this subsection that~~
7 ~~counsel shall be appointed, the time periods provided in subdivision (3) of~~
8 ~~this subsection shall be calculated from the date of the appointment of~~
9 ~~counsel rather than the date of the initial review order and shall be extended~~
10 ~~for an additional 60 days.~~

11 ~~(5) The court shall provide notice of the date of the hearing to both the State and~~
12 ~~the defendant, or the defendant's counsel if defendant is represented by~~
13 ~~counsel, no less than five working days prior to the date of any hearing. The~~
14 ~~court, except for good cause shown as provided in subdivision (6) of this~~
15 ~~subsection, must rule on a motion within 60 days from the date that the~~
16 ~~hearing concludes.~~

17 ~~(6) Notwithstanding any other provision of this subsection, the court may, upon~~
18 ~~request of a party to the motion, grant an extension of time to comply with~~
19 ~~any deadline under this subsection, not to exceed 30 days. No subsequent~~
20 ~~request by the party to extend this deadline shall be granted unless the court~~
21 ~~enters a written order containing detailed findings of fact of extraordinary~~
22 ~~circumstances. Notwithstanding any other provision of this subsection, the~~
23 ~~senior resident superior court judge or chief district court judge, as~~
24 ~~appropriate, may, upon request of a judge assigned to review a motion for~~
25 ~~appropriate relief, grant to the assigned judge an extension of time to comply~~
26 ~~with any deadline under this subsection, not to exceed 30 days. No~~
27 ~~subsequent request by the assigned judge to extend this deadline shall be~~
28 ~~granted unless the senior resident superior court judge or the chief district~~
29 ~~court judge, as appropriate, enters a written order containing detailed~~
30 ~~findings of fact of extraordinary circumstances. The failure of the court to~~
31 ~~comply with the deadlines under this subsection is grounds for any party to~~
32 ~~petition the senior resident superior court judge or the chief district court~~
33 ~~judge, as appropriate, to reassign the motion of appropriate relief to a~~
34 ~~different judge empowered to act upon a motion for appropriate relief. The~~
35 ~~failure of the court to comply with the deadlines under this subsection also~~
36 ~~entitles any party to the motion for appropriate relief to seek a writ of~~
37 ~~mandamus to obtain compliance with the deadline.~~

38 ~~(7) Notwithstanding any other provision of this subsection, failure to meet a~~
39 ~~deadline under this subsection is not a ground for the summary granting of a~~
40 ~~motion for appropriate relief or other summary relief, including without~~
41 ~~limitation, ordering the release of the prisoner.~~

42 ~~(b3) Capital Cases. Review and Calendaring of Motion. In capital cases, the judge~~
43 ~~shall review the motion and enter an order directing the State to file its answer within 60 days~~

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- 1 ~~of the date of the order. If a hearing is necessary, the judge shall calendar the case for hearing~~
- 2 ~~without unnecessary delay.~~
- 3 ...';
- 4 And on page 3, line 35 by adding after the comma at the end of that line the following:
- 5 "motions filed on or after that date,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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and vote information, is available in the
House Principal Clerk's Office**