LEGISLATIVE RESEARCH COMMISSION

REPORT
TO THE
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UNJUSTIFIED PAPERWORK IN THE ADMINISTRATION OF CRIMINAL PROCEDURE

RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

TO THE MEMBERS OF THE 1977 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits the report of its Committee on Criminal Law and State Property Matters concerning the study of unjustified paperwork resulting from the implementation of the new Criminal Procedure Act.

Respectively submitted,

James C. Green

John T. Henley

Co-chairmen

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INTRODUCTION

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes (G.S.), is a general purpose study group consisting of legislators. A list of the membership of the Legislative Research Commission will be found in Appendix I. Among the Commission's duties is that of making or causing to be made, upon the direction of the Co-Chairmen of the Commission,

> such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner. [G.S. 120-30.17, a copy of which will be found in Appendix II]

In October, 1975, the Speaker of the House of Representatives, Representative James C. Green, and the President Pro Tempore of the Senate, Senator John T. Henley, in their capacities as Co-Chairmen of the Legislative Research Commision, directed the Legislative Research Commission's Committee on Criminal Law and State Property Matters (hereafter referred to as "Committee") to study the increase in paperwork required of court personnel and law enforcement officers by the Administrative Office of the Courts in implementing the new Criminal Procedure Act, Chapter 15A of the General Statutes (Chapter 1286 of the 1973 Session Laws (Second Session, 1974) set the date of effectiveness of the Act as July 1, 1975; however, Chapter 573 of the 1975 Session Laws (First Session, 1975) postponed the date of effectiveness to September 1, 1975). The Speaker's announcement of the formation of this group is attached as Appendix III.

Representative Liston B. Ramsey was appointed Chairman of the Committee on Criminal Law and State Property Matters, and Representative William H. McMillan and Senator Thomas H. Suddarth were appointed Co-Chairmen of the Committee. The other initially-appointed members of the Committee were Representatives Henson P. Barnes, Laurence A. Cobb, Conrad R. Duncan, Jr., and Aaron W. Plyler; Senators Cy N. Bahakel, Melvin R. Daniels, Jr., Donald R. Kincaid and Thomas E. Strickland; and Messrs. Zebulon D. Alley, an attorney and former Senator; and Nathan T. Lassiter, Past President of the North Carolina Magistrates Association.

To the above-mentioned members, the Speaker and the President Pro Tempore appointed 11 additional members to aid the Committee in this study of paperwork. These new appointees consisted of others vitally interested in the effective and efficient functioning of the criminal justice system within this State---members of the General Assembly, sheriffs, clerks of court, a district attorney, defense attorneys, a representative of law enforcement officers, and a magistrate. These additional members were Representatives C. Kitchin Josey and Wade M. Smith; Senator Charles M. Vickery; Sheriffs Raymond W. Goodman and Otis F. Jones; and Messrs. William A. Christian, Tommy Griffin, Hugh A. Lee, Carroll Lowder, Estus B. White and Colonel Thomas F. Brown.

COMMITTEE PROCEEDINGS

Three meetings were held on the subject of the increase in paperwork occasioned by the implementation of the new Criminal Procedure Act. The full Committee held two meetings---on October 31, 1975, and March 26, 1976. The Committee's Subcommittee on Paperwork met once on this matter - January 9, 1976. A list of the witnesses appearing on the paperwork study before the Committee and its Subcommittee is attached as Appendix IV.

October 31, 1975

The Committee on Criminal Law and State Property Matters held its first meeting devoted exclusively to study the paperwork problem on October 31, 1975. Besides the initially-appointed Committee members and the members appointed specifically for the paperwork study, the meeting was attended by representatives of the Institute of Government, the Administrative Office of the Courts, the Criminal Code Commission and the Legislative Services Office.

Prior to this meeting the Chairman, Representative Ramsey, had asked the Committee's membership to inquire of the local officials concerned the problems that these officials had encountered in the implementation of the new Criminal Procedure Act.

Some of the salient points brought out at the October 31st meeting are set forth below.

Mr. Allen A. Bailey, the Chairman of the Criminal Code Commission, explained that the Criminal Procedure Act was the result of five years of work by that Commission. He stated that the membership of the Criminal Code Commission was interested in

the smooth integration of the Criminal Procedure Act into the State's criminal justice system. He volunteered the aid of the Criminal Code Commission in the Legislative Research Commission's Committee on Criminal Law and State Property Matters' efforts to simplify and combine, where possible, the forms required by the Criminal Procedure Act.

Mr. Taylor McMillan, Assistant Counsel of the Administrative Office of the Courts, informed the Committee that, after consulting with interested persons throughout the State, that Office began in December, 1974, to draft the forms required by the new Criminal Procedure Act. He stated that the Administrative Office of the Courts had held statewide training conferences for magistrates and clerks to facilitate the implementation of the new forms. Mr. McMillan stated that everything on the forms and the number of copies of the forms are required by statute. He expressed the willingness of his Office to further the work of this Committee by combining and improving forms where possible and desirable.

Mr. William Christian, the legal counsel for the Sheriff's Department of Cumberland County, indicated that the multiple forms required by the new Chapter 15A of the General Statutes result in a processing bottleneck in the magistrate's office. The completing of the number of multiple forms requires not only the magistrate's time but also that of the law enforcement officer, who must wait for the forms to be filled out. Mr. Christian stated that it was vital to the law enforcement function to get police officers back on patrol as soon as possible. Two members of the Committee, who are also clerks of court, agreed with Mr. Christian that many forms could

possibly be combined or eliminated.

Mr. Estus White, Clerk of the Superior Court of Cabarrus County and President of the North Carolina Clerks of Court Association, stated that clerks contacting him generally felt that the new Chapter 15A together with other recent legislation have imposed a great work load on the clerks of court. Mr. White stated more clerk-of-court personnel is needed to carry out the recently enacted legislative programs, such as the new Chapter 15A and Article 8 of Chapter 110 of the General Statutes, dealing with child support, passed during the 1975 Session of the General Assembly. Representative Ramsey opined that because of the current adverse financial situation the General Assembly would not look with favor on appropriating additional sums for new personnel for the judicial branch.

Mr. Carroll Lowder, the District Attorney of the Twentieth Judicial District, said that he believed that substantive changes in the law would have to be made to allow the Administrative Office of the Courts to abandon some of these forms.

Representative William H. McMillan said that the main problem seems to be not in the amount of paperwork but in the confusion of the personnel delegated to complete the forms. He suggested periodic conferences of magistrates, judges, police, sheriffs, clerks of court, and others interested in this area to review the forms and the responsibility of those filling them out and to suggest improvements in the process.

The Committee authorized the Chairman, Representative Ramsey, to appoint a Subcommittee on Unjustified Paperwork. Senator Thomas Suddarth and Representative William H. McMillan

were designated Co-Chairmen of the Subcommittee. The Committee's clerks of court, magistrates, district attorney, defense attorneys, and lawyer-legislators were appointed to the Subcommittee. Besides the Co-Chairmen, the members of the Subcommittee were Messrs. Zebulon D. Alley, William Christian, Nathan Lassiter, Carroll Lowder, Estus White; Representatives Henson Barnes, Laurence Cobb, Kitchin Josey and Wade Smith; and Senators Thomas Strickland and Charles Vickery.

The Chairman, Representative Ramsey, in accepting the offer of the Criminal Code Commission to help in this study, asked the Commission to study the criticisms voiced at the October 31, 1975, meeting of the Committee as well as other criticisms being made by concerned officials elsewhere in the State. He asked the Criminal Code Commission to present to the Subcommittee that Commission's suggestions for corrections. The Subcommittee would then, using the expertise of the Criminal Code Commission, review that Commission's proposals and report its conclusions together with any agreed-upon proposed legislation to the full Committee.

January 9, 1976

The Subcommittee on Unjustified Paperwork met on Friday, January 9, 1976. The meeting was co-chaired by Representative William H. McMillan and Senator Thomas H. Suddarth. Ten other members of the Subcommittee were present as well as representatives of the Criminal Code Commission, the Institute of Government, the Attorney General's Office and the Legislative Services Office.

The Chairman of the Criminal Code Commission, upon the request of Representative Liston B. Ramsey, had sent to each

member of the Subcommittee a copy of the Criminal Code Commission's Report on the "Paperwork Problem" under N. C.'s Pretrial Criminal Procedure Act (hereafter referred to as Report on the "Paperwork Problem"). That report contained the Criminal Code Commission's legislative proposals to alleviate some of the burden of paperwork resulting from the new Chapter 15A.

Mr. Douglas R. Gill, a staff member of the Institute of Government and a consultant with the Criminal Code Commission, was recognized first to present to the Subcommittee on Unjustified Paperwork a general introduction to some of the major criticisms which surfaced in the Criminal Code Commission's survey of the implementation of the new Criminal Procedure Act. He pointed out three paperwork problem areas which have been or can be solved administratively.

Mr. Gill said that the number of forms and of copies of forms used at the arrest-commitment-release stage of criminal procedure received the greatest amount of criticism. The Report on the "Paperwork Problem" explained the problem concerning the forms at this stage and of its solution in the following way.

> By far the greatest criticism arose over the forms initially distributed for use with respect to processing persons arrested. If a person was arrested without a warrant for a bailable offense but was not immediately able to meet the conditions of pretrial release, this meant that the magistrate would have to prepare two or three copies each of a magistrate's order, a commitment, and a release order (setting out the conditions of release). And, if shortly afterward, the defendant were released on bond, copies of it would have to be prepared.
>
> In October 1975 the Administrative Office of the Courts, in response to the complaints, issued a revised AOC-L Form 276 which combined the release order, the commitment (including blocks for supplemental orders of commitment), and form provisions to cover release on promise to appear, custody release, and cash and unsecured bonds. (Release upon a surety bond still requires a separate form, but this is apparently not

> troublesome as there is usually some delay in rounding up the surety; execution of the separate surety bond thus does not contribute to the logjam in processing the arrested person.)
>
> With the distribution of revised AOC-L Form 276, the most serious complaints concerning paperwork problems disappeared. The Assistant Counsel of the Administrative Office of the Courts says that the complaints and problems brought to him have drastically slackened in the last few months. [pp. 2-3]

The consultant to the Criminal Code Commission pointed out a second problem to the Subcommittee on Unjustified Paperwork which could be solved administratively if sufficient funds were appropriated by the General Assembly.

Mr. Gill explained that most of the forms issued by the Administrative Office of the Courts are typed and photo-reproduced by that Office itself. There are distinct disadvantages to this method of reproducing forms. Where the information required on a form is voluminous, the typewritten format requires that the back of the form be used. When filling in these forms, the typist must take the forms out of the typewriter, reverse both forms and carbons, and insert all again. This rather simple matter of typewritten forms can and does, in practice, lead to mistakes and resultant delays in processing of the forms.

The Report on the "Paperwork Problem" contends that these delays and errors could be minimized by the use of printed forms, which could place more information on one side of a leaf than typewritten forms, and by use of no-carbon-required (NCR) paper, which obviates shuffling of carbon paper when filling out the forms.

A third problem uncovered by the Criminal Code Commission in its survey of criticism of paperwork concerned the

procedure to be taken after a cited defendant fails to appear. The Criminal Procedure Act represents a substantial change in the procedure surrounding citations. Under former practice the officer who issued a citation instead of arresting a defendant swore out a warrant before the time of the trial. This warrant was held to be served upon the defendant if the defendant failed to appear at the correct time.

The new practice is to permit trial on the citation with the consent of the defendant. The difficulty arises when the defendant does not appear at the ordained time. The Criminal Code Commission analyzed the problem of the non-appearing, cited defendant under the new Chapter 15A as follows.

> The [Criminal Code] Commission had hoped to eliminate much of the no-show problem by providing for suspension of the driver license after non-appearance by a traffic defendant, but the General Assembly removed this from the Commission's recommended Code. Nevertheless, as a theoretical matter, the new procedure should be better because the officer would only have to swear out warrants in the cases in which the defendants do not appear--a reduction of paperwork! As a practical matter, though, courts give non-appearing defendants all day to show up, and the officer has often left the courthouse before the end of the day if his business there is completed. More importantly, courtroom clerks stay so busy during the day's session that it would create substantial problems without additional staffing for them either (1) to hear the sworn testimony of the officer following the non-appearance so that the clerk could issue a warrant or (2) to accept for filing with the case records a warrant which the officer has obtained from a magistrate or a clerk stationed outside the courtroom.
>
> A complicating factor is the shift in the manner in which the citation is drafted. The Uniform Traffic Ticket featured a combination of citation and warrant form. After issuance of the pink copy as a citation, the officer would take the Traffic Ticket to the magistrate and swear it out as a warrant with no additional paperwork. The new traffic citation form contains a provision allowing its use as a magistrate's order <u>instead</u> of a citation, but does not embody any warrant language (either for conversion to a warrant or for alternative use). This decision was made by the Assistant Counsel of the Administrative Office of the

> Courts after lengthy discussions with staff members of the Criminal Code Commission. There was a legitimate fear that the old practice led to swearing out traffic citations as warrants in batches--in blatant violation of the requirement of Whiteley v. Warden of Wyoming State Penitentiary, 401 U.S. 560 (1971). [The Report on the "Paperwork Problem" pp.5-6]

The Report on the "Paperwork Problem" recommends against amending Chapter 15A. Instead it suggests the following three changes in administrative courses of action which would lighten some of the paperwork burdens for both court personnel and law enforcement officers regarding the cited, non-appearing defendant.

1. Establishment of clear administrative procedures on following-up the non-appearance of the defendants.

If an officer is to leave the vicinity of the court prior to the court's adjournment for the day, a procedure might be set up by which the officer, before leaving, could swear out a warrant for each non-appearing defendant. Unless the defendant appeared later in the day, the warrant would be served. If the defendant appeared later in the day and the case was continued for any reason, the warrant could still be held in reserve. The Criminal Code Commission suggests, that given the requirements of the Whiteley case, this procedure still would involve less paperwork than the old practice of swearing out warrants to all citations.

2. Addition of warrant language to the citation form.

The Report on the "Paperwork Problem" suggests that one approach to solving this problem would be to place language on the citation form to permit that form's use as a warrant. Mr.

Gill said that the Criminal Code Commission does not object to the swearing out of warrants in advance as long as administrative safeguards insured that the Constitutional requirements set out in Whiteley were followed.

3. Use of factual, official reports.

The Criminal Code Commission posed, as another option to alleviate the problems surrounding the non-appearing defendant, that law enforcement officers be required to write a factual report concerning the crime. Another officer could then take the report and apply for a warrant. As the Report on the "Paperwork Problem" explained:

> As warrants may be based on hearsay, the fellow officer could swear that he received the report from official sources (as a method of showing the likelihood of the report's [factual] integrity) and simply inform the issuing magistrate of the facts of the crime, under oath, on the basis of the report. Given the legitimacy of this procedure, it would be possible in a jurisdiction where the law enforcement agency requires reports to work out a procedure with the clerk for getting a warrant sworn out later after a non-appearance by the defendant even if the officer himself is no longer conveniently available to do so. [p. 8]

Upon the request of the Legislative Research Commission's Committee on Criminal Law and State Property Matters, the Criminal Code Commission through its consultants, reviewed twenty-one criticisms directed against Chapter 15A. After considering the merits of each criticism carefully, the Commission in its Report recommended eleven specific legislative proposals for the consideration of the Subcommittee on Unjustified Paperwork. These proposals were presented by Mr. Bailey, the Chairman of the Criminal Code Commission.

After a complete discussion of the amendments proposed by the Criminal Code Commission and other amendments suggested by

members of the Subcommittee, the Subcommittee on Unjustified Paperwork agreed to suggest to the full Committee that eight areas of the present law be amended.

March 26, 1976

The Committee on Criminal Law and State Property Matters met on March 26, 1976, in the State Legislative Building to hear the report of its Subcommittee on Paperwork. Representative William H. McMillan, Co-Chairman of the Subcommittee, presented the legislation proposed. After a discussion of the proposals, the members present of the Committee on Criminal Law and State Property Matters voted unanimously that the Legislative Research Commission recommend the Proposed Legislation of the Subcommittee to the next session of the North Carolina General Assembly. The Proposed Legislation is attached as Appendix V. Analyses of its sections will be found under RECOMMENDATIONS on Page 17.

FINDINGS

During the three meetings that it and its Subcommittee held on the subject of paperwork relating to criminal procedure, the Legislative Research Commission's Committee on Criminal Law and State Property Matters solicited the criticisms on unjustified paperwork of its members, who represent all segments of the criminal justice system, and of other responsible individuals interested in the good functioning of this system. The Committee referred these criticisms to the Criminal Code Commission, which was responsible for the drafting of the original pre-trial criminal procedure bill, and heard that Commission's critique of the complaints.

After having carefully reviewed the information brought forth during its meetings the Committee on Criminal Law and State Property Matters makes the following findings:

1. The major cause of criticisms relating to paperwork resulted from the normal administrative difficulties attendant in implementing any substantial revision of a basic system of law.

The implementation of the new Chapter 15A has not been without difficulty despite the commendable planning efforts of the Criminal Code Commission and the Administrative Office of the Courts. Problems with a new statutory plan are a natural phenomenon.

2. The Administrative Office of the Courts, responsible for the drafting and distribution of forms, has been responsive to complaints about its forms.

Responding to criticisms and suggestions received by this Committee, the Administrative Office of the Courts has sought to lighten the burden of paperwork, where it is possible. As was reported by the Criminal Code Commission, the revised AOC-L Form 276 combining arrest, commitment and release forms has significantly eliminated paperwork problems at the arrest through pre-trial release stages of criminal procedure.

Representatives of the Administrative Office of the Courts and the Criminal Code Commission have expressed their willingness to work toward solutions of problems pointed out in future criticisms of Chapter 15A.

3. Although many of the problems concerning the implementation of the Criminal Procedure Act can be solved administratively, the Committee on Criminal Law and State Property Matters has found eight areas of the new law in need of amendment.

These amendments are contained in Appendix V of this report, entitled Proposed Legislation. Each section of the Proposed Legislation is analyzed in the RECOMMENDATIONS below.

The proposed changes have been designed to reduce the paperwork and some of the areas of confusion in the present Chapter 15A. The Chairman of the Criminal Code Commission has stated that the amendments "improve upon Chapter 15A, and ... do absolutely no violence to the basic intent" (see Appendix VI).

RECOMMENDATIONS

The statutory amendments proposed by the Subcommittee on Unjustified Paperwork and endorsed by its parent, the Committee on Criminal Law and State Property Matters, are contained in the Proposed Legislation, found in Appendix V of this report. An analysis of each section of the Proposed Legislation follows. Much of the language of these analyses is taken from the Report on the "Paperwork Problem". At the end of each analysis, preceded by two asterisks "**", is the text of the present provision of the General Statutes with an explanation describing how the relevant section of the Proposed Legislation would modify that provision of the General Statutes.

Section 1 -- Venue at the arrest-process-bail stage of the case

The following analysis of Section 1 of the Proposed Legislation is taken from the Criminal Code Commission's Report on the "Paperwork Problem".

> In drafting Chapter 15A, the [Criminal Code] Commission only debated the venue questions that arise in connection with the probable cause hearing, discovery, motions in the superior court, and trial. It ignored what procedure should apply at the arrest-process-bail stage if the defendant happens to be in a different county from the county in which the crime was committed. In this, the [Criminal Code] Commission left the same gap as had been left in Chapter 15 when the venue provisions at this early stage were rendered obsolete because they were tied to the territorial jurisdiction of justices of the peace. (Chapter 7A did not fully cover the matter; it merely states the territory in which process may be executed, e.g., arrest warrants have statewide validity.
>
> Therefore, venue in the early stages of criminal cases has been covered by tradition and custom rather than clearly applicable statutes. The new Code, however, has language in G.S. 15A-131 which, if taken literally, could sharply disrupt former practice. It states that "venue" of pretrial and trial proceedings in misdemeanor cases lies in the county where the crime was committed; "venue" of pretrial proceedings of felonies is the judicial district where the crime was committed.

> of necessity, the Administrative Office of the Courts has had to ignore this literal language of G.S. 15A-13 in implementing its forms . . .
>
> The [Criminal Code] Commission discussed the venue problems when the defendant is arrested in a far distant county from the place where the crime was committed. Questions arise as to applicability of time limits, where the defendant has a right to be admitted to bail, etc. Also, a question arises whether a magistrate or clerk of one county can issue process for an offense that occurred in another county; no statute covers the point, through arguably the constitutional amendment creating a General Court of Justice and making magistrates and clerks State officials would allow it to be done at least as to process that may be executed anywhere in the State. The [Criminal Code] Commission finally determined that the problems here were too complex to be resolved in the context of paperwork amendments. [pp. 10-11]

The Committee recommends that the General Assembly amend G.S. 15A-13 to clarify that the venue provisions of that section do not affect the arrest-process-bail stage of the case. This allows the prior practice to continue without any question as to its validity. Mr. Taylor McMillan, representing the Administrative Office of the Courts, reported to the Subcommittee that that Office strongly endorses this proposed change.

**The present text of G.S. 15A-13 is below.

> § 15A-13. Venue generally.--(a) Venue for pretrial proceedings in district court of cases within the original jurisdiction of the district court lies in the county where the charged offense occurred.
>
> (b) Except for the probable cause hearing, venue for pretrial proceedings in cases within the original jurisdiction of the superior court lies in the judicial district embracing the county where venue for trial proceedings lies.
>
> (c) Venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court lies in the county where the charged offense occurred.
>
> (d) Venue for misdemeanors appealed for trial de novo in superior court lies in the county where the misdemeanor was first tried.
>
> (e) An offense occurs in a county if any act or omission constituting part of the offense occurs within the territorial limits of the county.

(f) For the purposes of this Article, pretrial proceedings include all proceedings prior to arraignment. (1973, c. 1286, s. 1.)

Section 1 of the proposed legislation would amend G.S. 15A-13(f) to read as follows:

(f) For the purposes of this Article, pretrial proceedings are proceedings occurring after the initial appearance before the magistrate and prior to arraignment.

Section 2 -- Problems of entry and withdrawal of attorney

The Criminal Code Commission proposed an article on the entry and withdrawal of attorneys in criminal proceedings in order to allow a record determination as to the lawyer representing the defendant. That Commission built its discovery, motions-practice, and motion-to-suppress articles on the assumption that notices and motions could easily be sent to or served on the attorney of record.

The General Assembly, in enacting the Criminal Procedure Act, amended the article on entry and withdrawal of attorneys to allow withdrawal by the attorney after each separate court stage of the proceeding, e.g. at the district court, superior court or appellate court level (G.S. 15A-143). The Criminal Code Commission's proposed Section 15A-14(3) would have allowed an attorney to limit his appearance in a criminal proceeding only by filing written notice of the extent of his limitation. The General Assembly amended that proposed section so that the present G.S. 15A-14(3) besides allowing written notice of limitation, also permits the attorney to limit the extent of his representation of a criminal defendant orally and in open court at the time of his initial appearance.

This amendment, allowing oral notice of limitation of representation, has resulted in greatly complicating matters of discovery and motions practice, as neither the court nor the prosecutor can be certain from the record that the lawyer who at one time represented the defendant is still representing him.

A special problem arises under the present G.S. 15A-630, which requires preparation of a notice of indictment to be served upon any defendant who is not still represented by counsel when the indictment is handed down. Uncertainty whether the defendant is still represented requires either that extensive checking be done by clerks or that notices be prepared routinely for all non-indigent defendants (presumably appointed counsel or the public defender would not withdraw). The problems of G.S. 15A-630 are treated further under Section 7 of the Proposed Legislation.

In order that the accused's attorney can be easily identified at each stage of the criminal proceeding, the Committee recommends that language in G.S. 15A-141(3) which relates to oral notice by an attorney limiting the extent of his representation of the accused, be deleted.

**The text of G.S. 15A-141 is below.

> §15A-141. When entry of attorney in criminal proceeding occurs.--An Attorney enters a criminal proceeding when he:
>
> (1) Files a written notice of entry with the clerk indicating an intent to represent a defendant in a specified criminal proceeding; or
>
> (2) Appears in a criminal proceeding without limiting the extent of his representation; or
>
> (3) Appears in a criminal proceeding for a limited purpose and indicates the extent of his representation by filing written notice thereof with the clerk, or entering oral notice thereof in open court at the time of his initial appearance; or
>
> (4) Accepts assignment to represent an indigent defendant under the terms of Article 36 of Chapter 7A of the General Statutes; or

(5) Files a written waiver of arraignment, except that representation in this instance may not be limited pursuant to subdivision (3). (1973, c. 1286, s. 1.)

Section 2 of the Proposed Legislation would amend G.S. 15A-141(3) by deleting the bracketed material as follows:

(3) Appears in the criminal proceeding for a limited purpose and indicates the extent of his representation by filing written notice thereof with the clerk [, or entering oral notice thereof in open court at the time of his initial appearance]; or

Section 3 -- Provisions on keeping duplicates of criminal process

A number of complaints centered on the Criminal Procedure Act's requirement that the clerk keep a copy of process issued in the trial division of the General Court of Justice. Although some clerks liked the new provisions, others favored a process-issued register to be maintained in the same manner as the old warrants-issued register. They pointed out that most process consists of boilerplate, and there is no special virtue in keeping a duplicate. Those favoring the new law apparently thought making and keeping a copy while the process was outstanding was easier than filling out a register--though the register would be less bulky.

The Committee was of the opinion that there was not enough experience on this matter, since the date -- September 1, 1975, -- that the Criminal Procedure Act became effective, to recommend that this requirement be abolished. The Committee, instead, decided that this question can be better handled administratively after the judicial system has had more experience in the matter. A representative of the Administrative Office of the Courts informed the Subcommittee that that Office

already has the authority to make rules and regulations on the making and retaining of forms. Therefore, the Committee recommends that G.S. §15A-301(a)(1) be amended so that a copy of each criminal process outstanding is not required to be filed in the office of the clerk, but that a record of that process must be maintained in the office of the clerk. This more general language will allow the clerks the option of keeping a duplicate of criminal process outstanding, or of returning to the old practice of keeping a process-issued register, until enough administrative experience has been accumulated for the Administrative Office of the Courts to formulate a rule on this matter.

The Criminal Code Commission's Report on the "Paperwork Problem" states:

> This section emphasizes that the duplicate copy of process need not be kept in a case file and need not be kept when the original is returned, unless the original is re-issued. [p. 12]

**The present G.S. §15A-301(a)(1) is below.

> § 15A-301. Criminal process generally.--(a) Formal requirements.
>
> (1) A copy of each criminal process issued in the trial division of the General Court of Justice must be filed in the office of the clerk.

Section 3 of the Proposed Legislation would rewrite G.S. §15A-301(a)(1) to read as follows:

> § 15A-301. Criminal process generally.--(a) Formal Requirements.
>
> (1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the clerk.

Section 4 -- Authorizing summons to be issued for a date certain in felony cases

The Official Commentary to G.S. §5A-303, Criminal summons, states in part:

> The criminal summons can appropriately be used in any case in which it appears that it is not necessary to arrest the defendant and take him into custody to ensure his appearance in court. This should be true in many misdemeanors and in a number of felonies.

Subsection (d) of G.S. §5A-303 states that a criminal summons is to order the defendant to appear at a designated time and date in a particular court to answer the charges. This provision is undermined in felony cases and in the rare misdemeanors in the exclusive jurisdiction of the superior court by G.S. §5A-601(c). This latter section requires the first appearance before a district court judge to be at the first session of court after the summons is executed. As the official issuing the summons is unable to foretell when the summons will be executed, it is impossible to set the date for the first appearance in advance.

Section 4 of the Proposed Legislation would seek to eliminate this problem by exempting cases initiated by summons from the standard time requirements (Subsection (c)), but would preserve the policy of prompt first appearance by requiring the date certain to be within a month unless there is good cause for a longer period (Subsection (b)). Subsection (a) of Section 4 would permit the clerk to reset the date and reissue the summons by endorsement in the event that the summons is returned because of nonservice before the scheduled date.

Section 4 (d) of the Proposed Legislation speaks to a problem mentioned by members of the Committee concerning the third sentence of G.S. §5A-601(c). That sentence provides that, in addition to the base period during which a first appearance

must take place under that section, the judge, with the consent of the defendant and district attorney, may continue the first appearance for not more than seven days, or until the next session of the district court. The recommendation of the Committee, embodied in Section 4(d) of the Proposed Legislation, would give the district court judge, upon defendant's motion, the option of granting a continuance for the first appearance for a period greater than that now provided. The second sentence in the proposed G.S. §5A-60(d) is the last sentence of the present G.S. §5A-60(c), which Section 4(c) of the Proposed Legislation would repeal.

**Subsection (a)

The present text of G.S. §5A-30(d)(4) is below.

§ 5A-30. Criminal process generally.--

. . .

(d) Return.--

. . .

(4) The clerk to which return is made may redeliver the process to a law-enforcement officer for further attempts at service.

. . .

Section 4(a) of the Proposed Legislation would add a new sentence to G.S. §5A-30(d)(4) to read as follows:

> If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance.

**Subsection (b)

The present text of G.S. §5A-303(d) is below.

§ 5A-303. Criminal summons.--

. . .

(d) Order to Appear. The summons must order the person named to appear in a designated court at a designated time and date and answer to the charges made against him and advise him that he may be held in contempt of court for failure to appear.

. . .

Section 4(b) of the Proposed Legislation would add the following sentence to G.S. §5A-303(d).

Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the issuance or reissuance of the criminal summons.

**Subsection (c)

The present text of G.S. §5A-60§(c) is below.

§ §5A-60§. First appearance before a district court judge; right in felony and other cases in original jurisdiction of superior court; consolidation of first appearance before magistrate and before district court judge.--

. . .

(c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held with 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the defendant is not taken into custody, or is released pursuant to Article 26 of this Chapter, Bail, within 96 hours after being taken into custody, first appearance must be held at the next session of district court held in the county. With the consent of the defendant and the solicitor, it may be continued for not more than seven additional days, or until the next session of district court, whichever period is greater. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding. (§1973, c. §286, s. §.)

Section 4(c) of the Proposed Legislation would delete the last two sentences of G.S. §5A-60§(c) and would insert in their place the following sentence.

This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. §5A-303(d).

**Subsection (d)

Section 4(d) of the Legislative Proposal would add a new subsection to G.S. 15A-601 to read as follows:

> (d) Upon motion of the defendant, the first appearance before a district court judge may be continued to a time certain. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding.

Section 5 -- Handling the unruly, disruptive, or impaired defendant brought before the magistrate

Section 5 of the Proposed Legislation attempts to deal with the complaints that the paperwork and duties of magistrates and law enforcement officers are delayed when intoxicated or disruptive defendants are brought without "unnecessary delay" before the magistrate for the initial appearance, as required by G.S. 15A-511(a)(1) and G.S. 15A-501(2).

Section 5 would add a new subdivision to G.S. 15A-511(a) to allow the magistrate to order the confinement of a defendant who is brought before him and who is disruptive, unconscious, grossly intoxicated or otherwise incapable of understanding his rights. The confinement order must require that the defendant be brought again before a magistrate "within a reasonable time" for a new initial appearance.

**The present G.S. 15A-511(a) is below.

> § 15A-511. Initial appearance.--(a) Appearance before magistrate.
> (1) A law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate as provided in G.S. 15A-501.
> (2) The magistrate must proceed in accordance with this section, except in those cases in which he has the power to determine the matter pursuant to G.S. 7A-273. In those cases, if the arrest has been without a warrant, the magistrate must prepare a

magistrate's order containing a statement of the crime with which the defendant is charged.

Section 5 of the Proposed Legislation would add a new subdivision to read as follows:

(3) If the defendant brought before a magistrate is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, upon order of the magistrate he may be confined or otherwise secured. If this is done, the magistrate's order must provide for an initial appearance within a reasonable time so as to make certain that the defendant has an opportunity to exercise his rights under this Chapter.

Section 6 -- Deleting the clerk's copy of the commitment

The following analysis of Section 6 of the Proposed Legislation is taken from the Criminal Code Commission's Report on the "Paperwork Problem":

> As part of its concern for "lost" prisoners, the [Criminal Code] Commission's proposed Code required the clerk to keep a copy of commitments in his office. The theory was that the clerk would keep them in a manner that they would be accessible for updating as changes occurred in a prisoner's commitment status (either in a separate file or in case files kept separately or distinctively flagged for defendants in jail). The [Criminal Code] Commission's hope was that the clerk's file of commitments would serve as a backup to and a check against the jail list submitted to him.
>
> The [Criminal Code] Commission's investigations, however, indicate that in fact the commitments in the clerks' offices are not currently updated as supplemental commitments are issued in a case, and there is little reason to retain the provision for a clerk's copy. [pp. 14-15]

**The present text of G.S. 15A-521(c)(4) is below.

§ 15A-521. Commitment to detention facility pending trial.

(c) Copies and Use of Order, Receipt of Prisoner.--

(4) When a judicial official issues an order of commitment, or an order supplemental to an order of commitment, a copy must be filed in the office of the clerk. The clerk must keep the copy separately available until the original order or supplemental order is returned to him, at which time both may be placed in the case file. Upon a change of venue the copies must be transmitted with the other papers in the case.

Section 6 of the Proposed Legislation would delete G.S. §15A-52§(c)(4).

Section 7 -- Notice to defendant of true bill of indictment

The following analysis of Section 7 of the Proposed Legislation is taken from the Criminal Code Commission's Report on the "Paperwork Problem":

> Section [7] of the draft bill is primarily related to the problems discussed in Section [2] above. The Commission originally believed that G.S. §15A-630 would be little used; the notice requirement was intended to warn the uncounseled defendant of the time limits on discovery rights following indictment. As indicated in Section [2], though, this provision became, upon later amendment, a much more widely applicable section than was anticipated.
>
> In the light of the problems involving G.S. §15A-630, the Commission took the opportunity to reexamine it. It decidedly to simplify the matter of determining who is to be given notice, and strikes a middle position between no notice and notice to every defendant by providing notice only to defendants without counsel of record. It also substitutes mail notice for personal service, which should simplify use of the notice.
>
> Based upon a suggestion of a district attorney, the proposed amendment clarifies that the notice may be deferred if the sealed indictment procedure is utilized. [p.§5]

**The present text of G.S. §15A-630 is below.

> § §15A-630. Service of notice upon defendant required when grand jury returns true bill of indictment.--(a) Except as provided in subsection (b), upon the return of a bill of indictment as a true bill the presiding judge must immediately cause notice of the indictment to be served upon the defendant. The notice must inform the defendant of the time limitations upon his right to discovery under Article 48 of this Chapter, Discovery in the Superior Court, and a copy of the indictment must be attached to the notice.
>
> (b) The provisions of subsection (a) do not apply if:
>
> (1) The defendant was afforded or waived a probable-cause hearing authorized under Article 30 of this Chapter, Probable-Cause Hearing, on the charge in the indictment;
>
> (2) The defendant was represented by counsel of record, under Article 4 of this Chapter, Entry and Withdrawal of Attorney in Criminal Case, at the time the

probable-cause hearing was held or waived; and

(3) The defendant is still represented by counsel of record at the time the indictment is returned. (1973, c. 1286, s. 1.)

Section 7 of the Proposed Legislation would rewrite G.S. 15A-630 to read as follows:

§ 15A-630. Notice to defendant of true bill of indictment.--Upon the return of a bill of indictment as a true bill the presiding judge must immediately cause notice of the indictment to be mailed or otherwise given to the defendant unless he is then represented by counsel of record. The notice must inform the defendant of the time limitations upon his right to discovery under Article 48 of this Chapter, Discovery in the Superior Court, and a copy of the indictment must be attached to the notice. If the judge directs that the indictment be sealed as provided in G.S. 15A-623(f), he may defer the giving of notice under this section for a reasonable length of time.

Section 8 -- Preserving, but not transcribing, the verbatim record of guilty plea proceedings

Concerning Section 8 of the Proposed Legislation the Report on the "Paperwork Problem" says the following:

> Because of the stringent requirements of Boykin v. Alabama, 395 U.S. 238 (1969), the [Criminal Code] Commission inserted in the Code a requirement that a verbatim record of guilty plea proceedings in superior court be made and transcribed. The issue was debated, and a majority of the members of the [Criminal Code] Commission believed that the requirement had merit; the transcribed verbatim records of plea proceedings would be a powerful deterrent to later frivolous postconviction attacks upon the plea proceedings, and would therefore justify their cost.
>
> After enactment of the Code, the [Criminal Code] Commission received comments from a number of superior court judges indicating that the provision would be far more onerous than members of the Commission realized. Most of the suggestions were that we return to former practice and utilize a written transcript of plea--thus deleting the requirement of verbatim recording of the proceedings.
>
> The [Criminal Code] Commission further debated the issue and determined to stick with its original logic. The Commission noted that American Bar Association Project on Standards for Criminal Justice, Standards Relating to Pleas of Guilty § 1.7 (1968) requires a

verbatim record. The ABA Standard, however, merely requires that the record be "preserved"; it does not specify that it be transcribed. The Commission, therefore, decided to recommend a change to the language of the ABA Standard. It believes that this change will substantially lighten the impact of the recordation requirement.

One point was emphasized: to "preserve" a record which no one, including the stenographer who recorded the proceedings, can transcribe at a later time when "cold" would be a futility. The Commission strongly recommends that the Administrative Office of the Courts take steps to insure the transcribability of the record when later needed. One member of the Commission suggested that the AOC might require court reporters to certify that their records can accurately be transcribed at a substantially later time before they are filed away. [pp. 16-18]

**The present text of G.S. 15A-1026 is below.

§ 15A-1026. Record of proceedings.--A verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest and of any preliminary consideration of a plea arrangement by the judge pursuant to G.S. 15A-1021(c) must be made and transcribed. This record must include the judge's advice to the defendant, and his inquiries of the defendant, defense counsel, and the solicitor, and any responses. If the plea arrangement has been reduced to writing, it must be made a part of the record; otherwise the judge must require that the terms of the arrangement be stated for the record and that the assent of the defendant, his counsel, and the solicitor be recorded. (1973, c. 1286, s. 1.)

Section 8 of the Proposed Legislation would amend the first sentence of G.S. 15A-1026 by deleting the word "transcribed" and inserting in its place the word "preserved".

Section 9 -- Date of effectiveness clause

The Committee suggests that, in view of the urgency of the problems encountered, the amendments become effective upon ratification.

*****[STAFF NOTE: Sections 1 through 8 of the Proposed Legislation were incorporated into Chapter 983 of the 1975 Session Laws (Second Session, 1976) as Sections 134 through 144.

These provisions are to become effective on July 1, 1976.]

APPENDICES

APPENDIX I

LEGISLATIVE RESEARCH COMMISSION MEMBERS

1975-76

Name	Business Address	Phone
Speaker James C. Green Co-Chairman	Box 185 Clarkton, N.C. 28433	(919) 647-4191
Sen. John T. Henley Co-Chairman	200 S. Main Street Hope Mills, N.C. 28348	(919) 424-0261
Sen. Bob L. Barker	P.O. Box 30069 Raleigh, N.C.	(919) 782-1314
Sen. Luther J. Britt, Jr.	P.O. Box 105 Lumberton, N.C. 28358	(919) 739-2331
Sen. Cecil James Hill	The Legal Bldg. Brevard, N.C. 28712	(704) 884-4113
Sen. William D. Mills	P.O. Box 385 Swansboro, N.C. 28584	(919) 326-8743
Rep. Glenn A. Morris	P.O. Box 1111 Marion, N.C. 28752	(704) 652-2453
Rep. Liston B. Ramsey	Marshall, N.C. 28753	(704) 649-3961
Rep. Hector E. Ray	310 Green Street Fayetteville, N.C. 28303	(919) 483-8188
Rep. J. Guy Revelle, Sr.	Route 1, Box 123 Conway, N.C. 27820	(919) 587-4257
Rep. Thomas B. Sawyer	Suite 527-528 Northwestern Bldg. Greensboro, N.C. 27401	(919) 275-4150
Sen. Willis P. Whichard	P.O. Box 3843 Durham, N. C. 27702	(919) 682-5654

APPENDIX II

FOR IMMEDIATE RELEASE OCTOBER 13, 1975

FROM THE OFFICE OF JAMES C. GREEN, SPEAKER N. C. HOUSE OF REPRESENTATIVES

A number of complaints have been logged concerning the tremendous increase in the "paper work" required of the Magistrates, Law Enforcement Officers and Clerks of Court by the Administrative Office of the Courts in connection with the implementation of the new Criminal Code Revision which became effective September 1 of this year.

Whether this increase in "paper work" is absolutely required under the new law or whether this paper work is caused primarily by the Administrative Office of the Courts System, I am not certain. I am certain, however, that something must be done to eliminate the unnecessary administrative work load that is apparently now connected with this new Criminal Code.

To accomplish this, I have requested Representative Liston Ramsey, Chairman of the committee studying the office and positions of Magistrates, to immediately convene his committee and address itself to this problem. I am appointing additional members including representatives of the Clerks of Court, Magistrates, and Law Enforcement Officers to this committee and am requesting Senator Henley, President Pro Tempore of the Senate, to do the same.

I am also requesting that the Criminal Code Commission, which recommended this legislation, investigate this situation promptly and recommend such changes as may be necessary to prevent discretionary or mandatory sections that allow or require bureaucratic job creating paper work resulting in undue burden on law enforcement officers.

New appointees by Speaker Green are: Sheriff Raymond W. Goodman; Representative C. Kitchin Josey; Representative Wade Smith; Mr. Carroll Lowder, District Attorney, Monroe, North Carolina; Attorney Hugh A. Lee, Rockingham, North Carolina, and Mr. Estus B. White, President, North Carolina Association of Clerks of Court, Cabarrus County, Concord, North Carolina.

LEGISLATIVE RESEARCH COMMISSION'S POWERS AND DUTIES

§ 120-30.17. Powers and duties. — The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8. (1965, c. 1045, s. 8; 1969, c. 1184, s. 8.)

APPENDIX IV

LIST OF PERSONS APPEARING FOR THE PAPERWORK STUDY

Mr. Allen A. Bailey, Chairman
Criminal Code Commission

Mr. Douglas R. Gill
Assistant Director
Institute of Government

Mr. C. E. Hinsdale
Assistant Director
Institute of Government

Mr. Taylor McMillan
Assistant Counsel
Administrative Office of the Courts

Mr. Bert Montague, Director
Administrative Office of the Courts

Mr. Larry Pollard, Secretary
Criminal Code Commission

PROPOSED LEGISLATION

A BILL TO BE ENTITLED

AN ACT TO REMOVE UNJUSTIFIED PAPERWORK IN THE ADMINISTRATION OF CRIMINAL PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-13(f) is amended to read as follows:

"(f) For the purposes of this Article, pretrial proceedings are proceedings occurring after the initial appearance before the magistrate and prior to arraignment."

Sec. 2. G.S. 15A-14(3) is amended by deleting the following words:

", or entering oral notice thereof in open court at the time of his initial appearance".

Sec. 3. G.S. 15A-301(a)(1) is amended to read as follows:

"(1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the clerk."

Sec. 4. (a) G.S. 15A-301(d)(4) is amended by adding at the end thereof the following sentence:

"If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance."

(b) G.S. 15A-303(d) is amended by adding at the end thereof the following sentence:

"Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month

following the issuance or reissuance of the criminal summons."

(c) G.S. 15A-601(c) is amended by deleting the last two sentences and substituting in lieu thereof the following sentence:

"This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d)."

(d) G.S. 15A-601 is amended by adding a new subsection (d) to read as follows:

"(d) Upon motion of the defendant, the first appearance before a district court judge may be continued to a time certain. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding."

Sec. 5. G.S. 15A-501(a) is amended by adding a new subdivision (3) to read as follows:

"(3) If the defendant brought before a magistrate is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, upon order of the magistrate he may be confined or otherwise secured. If this is done, the magistrate's order must provide for an initial appearance within a reasonable time so as to make certain that the defendant has an opportunity to exercise his rights under this Chapter."

Sec. 6. G.S. 15A-521(c) is amended by deleting subdivision (4).

Sec. 7. G.S. 15A-630 is rewritten to read as follows:

"§ 15A-630. Notice to defendant of true bill of indictment.--

Upon the return of a bill of indictment as a true bill the presiding judge must immediately cause notice of the indictment to be mailed or otherwise given to the defendant unless he is then represented by counsel of record. The notice must inform the defendant of the time limitations upon his right to discovery under Article 48 of this Chapter, Discovery in the Superior Court, and a copy of the indictment must be attached to the notice. If the judge directs that the indictment be sealed as provided in G.S. §5A-623(f), he may defer the giving of notice under this section for a reasonable length of time."

Sec. 8. G.S. §5A-1026 is amended by deleting at the end of the first sentence the word "transcribed" and inserting in lieu of it the word "preserved".

Sec. 9. This act shall become effective upon its ratification.

BAILEY, BRACKETT & BRACKETT
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February 23, 1976

Mr. Terrence D. Sullivan
Committee Counsel
Committee on Criminal Law
and State Property Matters
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Mr. Sullivan:

In accordance with your request I have gone over the memorandum and the proposed legislation dealing with the paperwork connected with Chapter 15A of the criminal code. I have no suggestions to make which I think would improve upon what you have already done. As far as I can tell, you have followed the instructions of the sub-committee in every respect, and the proposed legislation carries out what I concluded to be the intent of the sub-committee.

I might add for the benefit of any of those who would be interested that I concur in the action taken by the sub-committee. I believe that the proposed changes improve upon Chapter 15A, and they do absolutely no violence to the basic intent. I am sure that as we work through the new concepts in Chapter 15A other improvements will be proposed. As I told the sub-committee, the Criminal Code Commission feels a keen sense of responsibility to continue to monitor the workings of Chapter 15A and to make proposed changes when we conclude they will be of benefit to the administration of justice. We will do this as we continue with our work.

Very truly yours,

Allen A. Bailey, Chairman
Criminal Code Commission

AAB:dsu