LEGISLATIVE

RESEARCH COMMISSION

REPORT
TO THE

1977
GENERAL ASSEMBLY OF NORTH CAROLINA

SPEEDY TRIALS

RALEIGH, NORTH CAROLINA

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

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RALEIGH 27611

January 12, 1977

TO THE MEMBERS OF THE 1977 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits the report of its Committee on Speedy Trials.

Respectfully submitted,

James C. Green

John T. Henley

Co-Chairmen

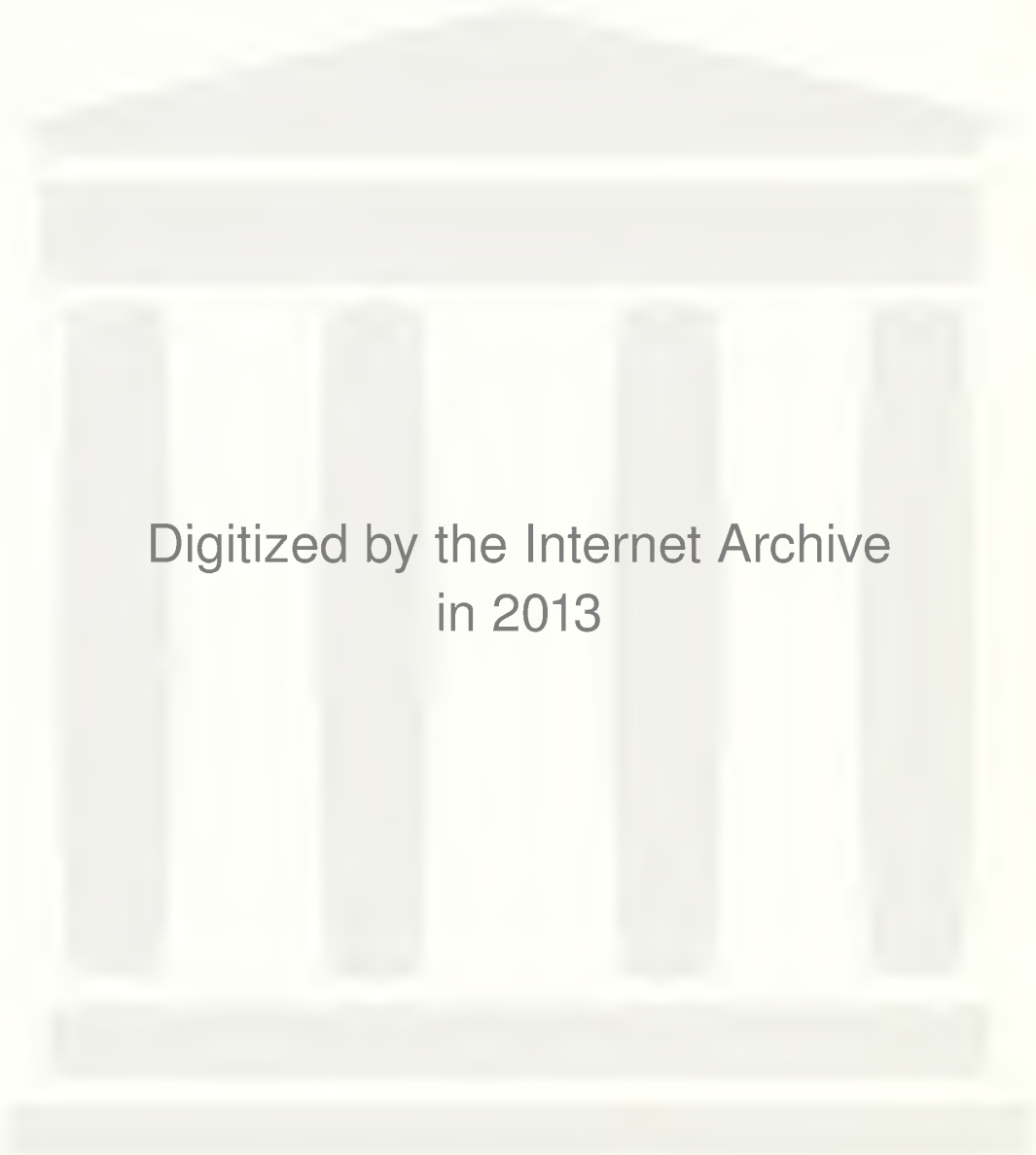

TABLE OF CONTENTS

INTRODUCTION 1

COMMITTEE PROCEEDINGS 2

- United States Constitution and Federal Case Law 3
- Federal Rule of Court and Statute 7
- Other States' Laws 10
- North Carolina Constitution and Statutes 12

FINDINGS AND RECOMMENDATIONS 20

APPENDICES

- Legislative Research Commission Membership A
- Resolution 91 of the 1975 General Assembly (First Session, 1975) B
- List of Witnesses C
- Sixth Amendment to the United States Constitution D
- The Speedy Trial Act of 1974 E
- North Carolina General Statutes relating to Speedy Trials F
- Letter to Senator Luther J. Britt concerning a Data Processing System in the Administrative Office of the Courts G
- Average Time Taken to Process Felony Cases in North Carolina Superior Courts compared to Model Standards H
- Legislative Proposal I
- Commentary to the Legislative Proposal J
- Number of Prosecutors and Superior Court Dispositions by Year in North Carolina K

INTRODUCTION

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the North Carolina General Statutes (G. S.), is a general-purpose legislative study group. A list of the membership of the Legislative Research Commission will be found in Appendix A.

Among the Commission's duties is that of making or causing to be made, upon the direction of the Co-Chairman 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 (1)].

During the 1975 Session the General Assembly directed the Legislative Research Commission to conduct a variety of studies, among which was an examination of the issue of speedy trials. Resolution 91 of the 1975 General Assembly (First Session, 1975), Appendix B, mandated a study of all aspects of developing "a comprehensive proposal to promote speedy trials in North Carolina."

The Commission assigned the study of speedy trials to its Committee on Females in the Department of Corrections and Speedy Trials (hereafter referred to as the "Committee"). Senator Luther J. Britt, Jr. was appointed the Chairman. Representative Lura S. Tally and Senator Lamar Gudger were appointed to co-chair the

Committee. The other members of the Committee were Representatives Richard Lane Brown III[1], Ruth Cook, Ralph M. Prestwood, and Carl J. Stewart, Jr.; and Senators I. C. Crawford and Katherine H. Sebo; and Ms. Judith Kraines.[2]

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1. Resigned and replaced by Representative Ruth Cook

2. Resigned

COMMITTEE PROCEEDINGS

The Committee on Females in the Department of Correction and Speedy Trials devoted portions of five of its meetings to the examination of the issue of speedy trials for criminal defendants in North Carolina. These meetings stretched over a fourteen-month period. A list of the witnesses appearing at the Committee's hearings on speedy trials is attached as Appendix C.

The Committee at its organizational meeting decided to learn how the present statutes affect prompt trials of criminal defendants, to discover the present federal and state case law relating to this matter, to learn what federal and state jurisdictions have done to give speedy trials to criminal defendants.

United States Constitution and Federal Case Law

The Constitution of the United States in the Sixth Amendment (see Appendix D) guarantees to the criminal defendant the right to a speedy and public trial.

The case of Klopfer v. North Carolina, 386 U. S. 213, 18 L.Ed. 2d 1, 87 S. Ct. 988 (1967), first established the principle that the Sixth Amendment's speedy trial guarantee was applicable to the states by the due process clause of the 14th Amendment. The Klopfer decision traced the fundamental quality of the speedy trial guarantee back beyond the Magna Carta to the Assize of Clarendon in 1166.

The landmark case in defining the nature of the speedy trial is Barker v. Wingo, 407 U. S. 514, 33 L.Ed. 2d 101, 92 S. Ct. 2182 (1972). That opinion analyzed the nature of the right to a speedy trial. The Supreme Court opined that the issue of a speedy trial involved two rights -- the accused's and society's.

The accused's right to a speedy trial is based on, among other grounds, the principle that he is innocent until he is proven guilty, and thus it is unfair to have the cloud of guilt hanging over him, his family, his associates and friends during a lengthy period while he is awaiting trial.

The court in Barker also acknowledged society's right to have an accused tried speedily. Among the reasons given on which society bases its interest in this issue is that delay in bringing trials:

1. leads to a large backlog of cases that permits the the defendant to plea bargain more effectively and thus

manipulate the criminal justice system;

2. permits those accused who are out on bond the opportunity to commit other crimes; and
3. may lead to the defendant's advantage as witnesses become unavailable or memories fade.

The court ruled, therefore, that delay does not by itself prejudice the accused's ability to defend himself, unlike other guarantees of the Bill of Rights such as the right to counsel, to confrontation of the accuser, and against self-incrimination.

The court, reluctant to establish a hard and fast rule on this matter, laid down a balancing test. The test consists of the weighing of the following factors:

1. length of delay;
2. reason for delay;
3. defendant's assertion of his right; and
4. prejudice to defendant's case because of the delay.

The rationale in the Barker decision was reiterated and amplified a year later by the same court in Strunk v. United States, 412 U. S. 434, 37 L.Ed, 2d 56, 93 S. Ct. 2260 (1973). The case concerned a 10-month delay between the return of indictment and the arraignment of one charged and later convicted of interstate transportation of a motor vehicle. The defendant had confessed his guilt and had demanded a speedy trial. On the appeal of the defendant's conviction for failure of the district court to dismiss the indictment on speedy trial grounds, the Court of Appeals found that the defendant's right to a speedy

trial had been violated and ordered the lower court to reduce the sentence imposed by approximately the period of delay. The Supreme Court, speaking only to the remedy fashioned by the Court of Appeals, stated that a prolonged delay in trial may subject the accused to an emotional stress resulting from the uncertainties which a prompt trial would remove, and such factors as the prospect of rehabilitation may be adversely affected. Although dismissal of the indictment is an "unsatisfactorily severe remedy," it is the only possible remedy for the violation of a defendant's constitutional right to a speedy trial (412 U. S. 439, 440).

The need to set up some machinery for the guaranteeing of speedy trials was formally recognized by the U. S. Supreme Court in adopting Rule 50(b) of the Federal Rules of Criminal Procedure. This addition to Rule 50 was made in the same year as the Barker v. Wingo decision was handed down. The rule requires each district court to submit to a reviewing panel of the circuit in which the district court is contained a plan for the prompt disposition of criminal cases. The plan includes:

> rules relating to time limits within which procedures prior to trial, the trial itself, and sentencing must take place, means of reporting the status of cases, and such other matters as are necessary or proper to minimize delay and facilitate the prompt handling of such cases.

The Federal Judicial Conference proposed a model rule for the federal district courts to adopt. The model rule would have required trial within approximately 6 months for released defendants. This 180-day period was to be measured from indictment and not from arrest. The report of the Senate Judiciary Committee accompanying Senator Ervin's Speedy Trial Act states that the model rule proposed by the Judicial Conference "is hardly 'speedy trial' in the Committee's view" (p. 16).

The most significant recent development in the issue of speedy trial at the federal level was the passage of the Speedy Trial Act of 1974 (PL 93-619, see Appendix E), sponsored by former Senator Ervin. This Act was approved on January 3, 1975. The Senate report that accompanied this legislation stated that this Act

> would represent Congress' judgment that the Sixth Amendment requirement of speedy trial is to be defined as a trial

within 90 days of arrest for the average non-complex criminal case /p. 17/.

The most fundamental provision of this Act is contained in 18 U.S.C. §3161 (a). It provides that the federal judge or magistrate, after consulting with the defense and prosecution, shall set at the earliest practical time the trial date so as to assure a speedy trial for a criminal defendant. The time limits are applicable to the trials of all crimes triable in non-military federal courts, except petty offenses punishable by not more than six months' imprisonment, a fine of not more than $500, or both (18 U.S.C. §3156(b)(2)).

The federal Act provides for a gradual implementation of the time limits for trial. The first year, July 1, 1975 through July 1, 1976, was given to convening planning groups on the implementation of the law at the district court level. On September 29, 1975, the interim plans of the district courts went into effect. On July 1, 1976, the first system-wide time limits went into effect. The time periods become smaller and smaller until the fifth year -- beginning on July 1, 1979, when the Act will be fully in effect.

The final time limitations in the Speedy Trial Act of 1974 are:

1. 30 days from arrest or service of criminal process to finding of an indictment or filing of an information: (18 U.S.C. §3161(b));
2. 10 days from filing of information or indictment to arraignment (18 U.S.C. §3161(c)); and
3. 60 days from arraignment on the information or indictment to trial (18 U.S.C. §3161(c)).

The Act includes an extensive list of those periods of time which are to be excluded in computing the time elapsed under the speedy trial limits (18 U.S.C. §3161(h)).

Failure to comply with the time limits of the Act will result in the dismissal of the charges upon the defendant's motion. The court may dismiss the charges with or without prejudice. A dismissal with prejudice is an adjudication on the merits, and a final disposition barring further prosecution on the same or a lesser-included offense. A dismissal without prejudice permits a new prosecution to be begun for the same crime. The Act specifies certain factors which the judge must consider in deciding to dismiss the criminal action with or without prejudice (18 U.S.C. §3162(a)).

Obstructionist tactics by either the prosecutor or defense counsel subjects the individual employing them to specified sanctions in addition to the general punishment powers of the courts for contempt (18 U.S.C. §3162(b)).

A comprehensive report to the Congress by the Director of the Administrative Office of the United States Courts on the operation and administration of the Speedy Trial Act of 1974 will be filed by July 1, 1977 (18 U.S.C. §3155). Significant information on the implementation of that recently enacted law was not available during the Committee's discussion of the speedy trial issue.

Other States' Laws

The Committee also investigated other states' laws for assuring prompt trials for criminal defendants.

The report of the Hearings before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives on the Speedy Trial Act of 1974 sets out rules of court and laws from 41 states, including North Carolina, which regulate the time for bringing of criminal trials.

The Committee on Females in the Department of Correction and Speedy Trials examined the range of other states' responses to the speedy trial issue.

In some states, among them, Arizona and California, time limits for speedy trials are set in days or months; while other states' laws speak of trials to begin within the terms of court subsequent to arrest or service of process (Georgia, for example).

States impose time limits on a variety of stages of the criminal proceeding, among them, from

1. arrest or service of criminal process to indictment or information;
2. indictment or information to trial;
3. arraignment to trial;
4. arrest to trial.

Some states provide different trial time limits for incarcerated defendants as opposed to defendants at liberty on bail or their own recognizance.

New York and California provide different time limits depending on the seriousness of the offense charged. Virginia's

speedy trial provisions speak only to the more serious offenses -- felonies.

The time periods during which the criminal defendant must be brought to trial vary greatly from state to state. In Virginia felony defendants must be brought to trial within 9 calendar months from indictment; while those accused of minor offenses in New York must be tried within 30 days of service of an appearance ticket.

Some states provide that the period for purposes of time limits begins at arrest, service of process, indictment or arraignment, plea of not guilty, or upon demand by the defendant for a speedy trial.

As the time limitations prescribed by the states vary, so do the sanctions for the violation of those provisions. Florida, Colorado and Iowa are among those states requiring dismissal with prejudice barring all future prosecutions on the same or lesser included offenses. California and Utah limit the dismissal with prejudice device to misdemeanor offenses. Washington, on the other hand, specifically states that a dismissal for violation of its speedy trial provisions will not bar re-prosecution for the same offense. Most of the states in the sample leave it up to the judiciary to decide whether or not a dismissal will be with or without prejudice (North Dakota, New Jersey, Nevada, and Arizona).

North Carolina Constitution and Statutes

The Supreme Court of North Carolina in 1911 found the guarantee of a speedy trial in this state's Constitution.

> The right of a person formally accused of crime to a speedy and impartial trial has been a right guaranteed to Englishmen since /the/ Magna Carta and to all peoples basing their jurisprudence on the principles of common law . . . . The principle is embodied in the Sixth Amendment to the Federal Constitution and in some form is contained in this and most of our State constitutions . . . /State v. Webb 155 N. C. 428, 429 (1911); see also State v. Johnson 3 N. C. App. 420 (1969)/.

The most significant recent case in this area is State v. O'Kelly, 285 N. C. 368 (1974). In that case the Supreme Court of this State, citing the factors listed by the United States Supreme Court in the Barker decision, overturned the conviction of a defendant for felonious housebreaking and larceny and ordered that the charges against the accused be dismissed because his rights to a speedy trial were denied him.

The statutory provisions of North Carolina which relate to speedy trials of criminal defendants are found in Chapters 15 and 15A of the General Statutes.

The oldest statutory provision on this matter still in effect is G. S. §15-10, which was passed during the 1868-1869 Session of the General Assembly (see Appendix F for the language of the General Statutes cited herein). That statute basically provides that a defendant accused of a felony and incarcerated shall be released on bail on his motion to be brought to trial unless he is indicted during the term of court next following his incarceration, and also that that prisoner shall be discharged from his imprisonment on his motion to be brought to trial unless he is indicted and tried at the second term of the court. G. S.

15-10 requires only that a defendant in the specified circumstances be discharged from custody and not that the prosecution against him be dismissed (State v. Webb 155 N. C. 426 (1911), and State v. Johnson 275 N. C. 264 (1969)).

Where the court finds that the defendant's constitutional right to speedy trial has been denied him, the Criminal Procedure Act requires the dismissal of the charges, on motion of the defendant (G. S. 15A-954(a)(3)).

The basic statutory provisions relating to speedy trials are found in Article 35 of Chapter 15A of the General Statutes (see Appendix F). Chapter 15A, which went into effect on September 1, 1975, was the result of a 1973 proposal by the Criminal Code Commission, which is undertaking a complete revision of this State's criminal procedure.

The commentary on the Speedy Trial Article which was supplied by the Criminal Code Commission states that the purposes which this Article seeks to serve are:

1. To avoid long delay between being charged with a crime and trial or disposition of the charge; and
2. To avoid a long period of imprisonment between arrest and trial or disposition (Legislative Program and Report to the General Assembly of North Carolina by the Criminal Code Commission, January 31, 1973, p. 221)

G. S. 15A-703 provides that the defendant may petition the court for a speedy-trial order when he has been imprisoned for 30 days while awaiting trial or when he has been awaiting trial, regardless of imprisonment, for more than 60 days. Upon such petition, the judge may order a speedy trial within not less than 30 days.

A judge may order a speedy trial within not less than 30 days on his own motion when he is presiding in the county of venue of the defendant's case and the accused has been incarcerated for 60 days or the accused has been awaiting trial for 90 days (G. S. 15A-702(b)(1) and (3)).

The judge may provide in his order that if the order is not complied with the defendant must be released on his own recognizance or the charges against the defendant must be dismissed with prejudice (G. S. 15A-702(b)).

The consequences to the accused for filing a speedy trial motion are that he accepts venue anywhere in the judicial district and that he may not continue or delay his case except for unanticipated matters arising after the petitioning (G. S. 15A-704).

The period of confinement for purposes of this Article begins when the defendant is first jailed following his arrest unless he escapes, or is to be retried on trial de novo or because of mistrial, appeal or motion for new trial. If one of the latter situations occurs then the period of confinement begins at first confinement following the escape, new trial order, remand or notice of appeal for trial de novo (G. S. 15A-705).

The period of awaiting trial begins normally upon the date that the defendant is served with arrest warrant, magistrate's order, summons, or citation in misdemeanor cases; and in felony cases, upon service of criminal process or indictment.

The Criminal Procedure Act, which became effective in September of 1975, has other provisions which bear upon the issue of speedy trials. For example, once an individual is

arrested, he must be taken before a magistrate "without unnecessary delay" for an initial appearance (G. S. §15A-511 (a)(1)). At the initial appearance the magistrate determines whether or not there is probable cause to believe that a crime has been committed and that the person arrested has committed it. The magistrate may order the person arrested committed to jail or released to await trial if he finds the requisite probable cause.

For a person charged with a felony or with a misdemeanor within the original jurisdiction of the district court, a first appearance before a district court judge must be held within four days of his being taken into custody or at the first regular session of the district court in that county (G. S. §15A-601). The principle purposes of the first appearance before a district court judge are: (1) to assure the defendant's right to counsel; (2) to review the sufficiency of the charge; (3) to review or determine the condition of pretrial release; and (4) to set a date for, or secure a waiver of, the probable-cause hearing. Unless waived by the defendant, the probable cause hearing for one accused of a crime within the jurisdiction of the superior court generally must be held within 15 working days of his first appearance before the district court judge or at the first day of the next session of the district court (G. S. §15A-606).

Under G. S. 7A-49.3 the district attorney has the responsibility of setting criminal cases in the superior court for trial. The net effect of the provisions of Article 35 of Chapter 15A of the General Statutes has been to transfer from

the district attorney some of his authority to determine when certain cases will be heard (Gill, Douglas R., Subchapter 7 and 8 of the Code of Pretrial Procedure 10 Wake Forest L. Rev. 483, 484 (October 1, 1974)).

The Committee learned that during the 1975 Session of the General Assembly six bills were introduced on the subject of speedy trials. These bills were:

(1) House Bill 706, introduced by Representative Hyde (identical to Senate Bill 563, introduced by Senator Bahakel);

(2) House Bill 765, introduced by Representative Stewart (identical to Senate Bill 600, introduced by Senator McNeill Smith);

(3) House Bill 1147, introduced by Representative Barnes; and

(4) Senate Bill 653, introduced by Senator Kincaid.

The Committee reviewed the provisions of each of these proposals.

Mr. J. Oliver Williams reported to the Committee the findings of a report he co-authored entitled Delay in the Superior Courts of North Carolina (hereafter referred to as the "Report on Delay"). That Report is based on a scientific sample of criminal cases filed in the superior courts during the 1971 calendar year and contains the most recent statistics available on the time elapsing between arrest and sentence. Appendix H shows the average time taken to process the felony cases in the sample as compared to the model time suggested by the President's Commission on Crime and the Administration of Justice in 1967.

The table breaks down the processing of felony cases into their components. The survey indicates that 130.3 days elapsed between arrest and sentence for the average felony defendant. The time taken to bring these defendants to trial and try them conformed with the model time of 101 days recommended by the President's Commission in 43.4 percent of the cases; it did not conform in 51.5 percent of the cases.

The Report on Delay's sample suggests that 53 percent of the criminal cases in the superior courts were misdemeanors on appeal from the district courts. At the district court level, 90.4 percent of misdemeanors were tried within the 101-day model time standard suggested by the President's Commission. Of the misdemeanor cases appealed, 49 percent were litigated in the superior court within that model time standard. The average time taken in these cases from appeal from the district court to sentence in the superior court was 115 days.

Mr. Bert Montague, the Director of the Administrative Office of the Courts, informed the Committee of his belief that more information should be obtained about the functioning of the present system of justice before the General Assembly passes speedy trial legislation.

Mr. Montague informed the Committee that the Administrative Office of the Courts has at present only a manual reporting system for data concerning civil and criminal cases (see Appendix G). This system, as presently constituted, reports the number of cases pending at the end of each year. The system cannot report the age of pending cases and consequently cannot report the average length of time to process a particular type of case.

Using funds from the Law Enforcement Assistance Administration (LEAA), the Administrative Office of the Courts as of October 1, 1976, requires the offices of clerks of court to report the filings and dispositions of cases, by case number and by date of filing or date of disposition. Mr. Montague informed the Committee that by April, 1977, the Administrative Office of the Courts will be able to report statistically on the ages of criminal cases pending in the trial courts as of the end of the present calendar year. By early 1978, that Office should be able to report on the average length of the time between filing and disposition of case, based upon a year's data, that is, 1977.

Until the implementation of an electronic data processing system, the Administrative Office of the Courts will not be able to provide the average number of requests for continuances by the prosecution or the defense, the average duration of these continuances per case, the number of petitions for speedy trials requested under G.S. 15A-702, or the number of those petitions granted. The Administrative Office of the Courts is presently developing the plans for a complete electronic data information system for the Judicial Branch; however the implementation of such a system is still some time away.

Mr. Anthony Brannon, District Attorney of the Fourteenth Judicial District, stated that in North Carolina there is no such thing as a denial of the right to speedy trial. He stated that he wished that the superior court judges were given the duty of developing the criminal calendar.

Mr. Brannon said that if speedy trial legislation were to be enacted he would like guidelines to be developed on what cases are to be dismissed. He said he believed this would be necessary because all criminal cases cannot be tried within the suggested 90 day period.

FINDINGS AND RECOMMENDATION

Pursuant to the direction of Resolution 91 of the 1975 General Assembly (First Session, 1975), the Legislative Research Commission's Committee on Females in the Department of Correction and Speedy Trials, after having reviewed the information presented, makes the following findings and recommends the following course of action to the 1977 General Assembly.

FINDING 1. The present delay between the initiation of a prosecution and the disposition of the average criminal case in North Carolina is lengthy.

The most recent statistics available on the speedy trial situation in this State are contained in the 1973 Report on Delay. That report suggests that at the superior court level, an average of more than four months elapse between the arrest and sentence of a convicted felony defendant.

That report also indicates that the average time between appeal and sentence of misdemeanor defendants appealing from the district to the superior court for a trial de novo is nearly four months.

FINDING 2. The people of North Carolina as well as the criminal defendant have a valid interest in and a right to a procedure by which the guilt or innocence of the criminal defendant is determined promptly.

The Committee agrees with the reasoning of the United States Supreme Court in the Barker decision concerning both the defendant's and society's right to a speedy criminal trial.

Unncesssary delay in bringing criminal actions to trial injures the defendant who is incarcerated prior to trial by disrupting his family life, enforcing idleness, and frequently forcing the termination of his employment. That defendant is also hindered in his ability to gather evidence, contact witnesses, and thus prepare his defense. For a defendant who remains free on bail pending trial, unnecessary delay still imposes restraints on his liberty and forces him to live under a cloud of suspicion and anxiety.

Society is disadvantaged by failure to provide speedy trials in that the delay may permit manipulation of the criminal justice system by defendants; may permit the opportunity of those defendants out on bail to escape or to commit other crimes; may lead to the defendant's advantage when finally brought to trial because of the unavailability of witnesses or their faded memories; results in unnecessary costs to society which must maintain the defendant and his dependents during the period the defendant is jailed while awaiting trial; and finally may hinder the rehabilitation of those defendants who will be convicted by engendering in them bad attitudes toward the criminal justice system.

FINDING 3. Although Article 35 of Chapter 15A of the North Carolina General Statutes provides in most cases sufficient

safeguards to protect a criminal defendant's right to a speedy trial, it does not assure the public's right to a speedy adjudication of the accused's guilt or innocence.

Under the present statutes the judge has the discretion to order the prompt trial of a criminal defendant after the elapse of certain periods of time. The judge may make such an order upon motion of the defendant or upon his own initiative.

The present plan imposes neither the duty nor the incentive for the district attorney -- the official who normally sets the dates for the trial of criminal actions in superior court -- to schedule prompt trials.

RECOMMENDATION: Article 35 of Chapter 15A of the North Carolina General Statutes should be rewritten to provide specific periods within which the trial of a criminal defendant must take place.

The Committee recommends that the General Assembly statutorily interpret the speedy trial guarantee found in both the State and federal constitutions. The General Assembly, at the minimum, should require that a criminal defendant be tried within 90 days of arrest in the average uncomplicated criminal case.

The Committee's Legislative Proposal to rewrite the speedy trial article of the Criminal Procedure Act is contained in Appendix I. The Committee modeled the provisions of its proposal closely on those of House Bill 765 introduced by Representative Carl Stewart during the 1975 Session of the General Assembly. House Bill 765 was, in turn, based upon the Speedy Trial Act of 1974.

The Legislative Proposal, the Committee believes, contains adequate safeguards to assure both the criminal defendant and the State a fair and prompt trial. A brief analysis of the proposal is found in Appendix J.

The Committee's Legislative Proposal contains broad guidelines on the granting of continuances (§15A-701(b)(7)). The Committee in proposing these guidelines is mindful of the language that is contained in the resolution authorizing this study which regards the development of appropriate guidelines for the continuing cases. However, the Committee feels that the courts themselves are in the best position to define the exact boundaries for granting continuances.

The Committee realizes that the implementation of its proposal may require the allocation of additional personnel and resources to the Judicial Branch. The Committee is aware of sizeable increases in prosecutorial personnel in the recent past. For example, the number of prosecutors has increased more than 36% from 1971 to 1975, while jury dispositions in the superior court have increased from 3,602 to 3,626 per year for the same period (see Appendix K for statistics on the number of prosecutors, of total dispositions at the superior court level and jury dispositions).

The Committee has been informed by Mr. William R. Pittman of the transition staff that Governor-elect Hunt has submitted a request to the Advisory Budget Commission for an increased annual appropriation to the Judicial Branch of $2,073,000 for

a more efficient court system. The requested appropriation would permit the employment of an additional 14 superior court judges, 24 assistant district attorneys, 14 deputy clerks of court, 14 court reporters, and 28 clerical personnel. The Committee acknowledges that the passage of its proposed legislation may require the employing of additional personnel in the above-mentioned categories as well as other categories, for example, public defenders.

The Committee makes no recommendation for increased appropriations for the implementation of its proposal. The first time limits will not become effective until 1980--three years after the convening of the 1977 General Assembly--while the final time limits will not come into effect until January 1, 1982. The Committee believes that the proposal's period of gradual implementation will allow the Administrative Office of Courts and court personnel time to permit an adequate evaluation of the proposal's impact on the Judicial Branch's then-allotted personnel and resources.

The Committee has based its recommendation to the General Assembly on the information that was available to it during its study. The Committee notes that the Administrative Office of the Courts is soon expected to be able to provide some data on the processing of criminal defendants through the judicial system (See Appendix G). The Committee urges the members of the General Assembly to evaluate its recommendation and legislative proposal in light of the new data when that data becomes available.

A P P E N D I C E S

APPENDIX A

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 1015 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

S. R. 563 RESOLUTION 91

A JOINT RESOLUTION DIRECTING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ISSUE OF SPEEDY TRIALS.

Whereas, the General Assembly is concerned about improving the efficiency of the criminal justice system and in assuring swift and judicious handling of all cases coming before the criminal division of the General Court of Justice; and

Whereas, law enforcement authorities, including the Federal Bureau of Investigation, have for some time recognized that among the most effective deterents to crime are swiftness and certainty in the administration of justice; and

Whereas, the Constitution of the United States guarantees to the accused the right of a speedy and public trial; and

Whereas, there have been various speedy trial proposals introduced in the General Assembly over the past three years; and

Whereas, at least four such proposals have been introduced during the 1975 Session of the General Assembly; and

Whereas, the Crime Study Commission in 1974 recommended the implementation of a speedy trial bill for North Carolina; and

Whereas, the United States Congress and 22 states have now adopted some type of speedy trial legislation; and

Whereas, the Criminal Procedure Act has speedy trial provisions which shall become effective on September 1, 1975; and

Whereas, the effectiveness of those provisions should be evaluated;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. That the Legislative Research Commission is directed to:

(1) Study and develop appropriate guidelines for continuing of cases, especially at district court and superior court levels, and systematic sanctions for those who violate these guidelines.

(2) Recommend a mandatory period or periods in which an accused must be tried, preferably no longer than three months from the date of arrest. This would eliminate the lack of timely trials and provide certainty of immediate punishment.

(3) Study the possibility of developing a system similar to the PIN (Police Information Network) to be installed in each clerk of court office, whereby an up-to-date record of every accused be available, and his past record be a part of all future trials. The commission should include in its study the cost of such a network.

(4) Review the effectiveness of the Speedy Trials Act passed in 1974 by the United States Congress as well as the experience of other states which have adopted similar legislation.

(5) Study the possibility of the release of the accused due to technicality in cases where no miscarriage of justice has occurred.

(6) Monitor the implementation of Article 35 of Chapter 15A in reducing court delay in the processing of criminal cases, and to receive periodic input from the administrative office of the courts relating to this issue.

(7) Work with court personnel throughout the State in determining what additional resources might be needed to effectuate any speedy trial proposal the commission might wish to recommend.

(8) Study, review, and hear testimony on all other matters directly related to the development of a comprehensive proposal to promote speedy trials in North Carolina.

The Legislative Research Commission shall report its findings and recommendations to the next session of the General Assembly.

Sec. 2. This resolution shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 17th day of June, 1975

APPENDIX C

LIST OF WITNESSES

The Honorable Anthony Brannon
District Attorney
Fourteenth Judicial District

Mr. Bert Montague, Director
Administrative Office of the Courts

Mr. J. Oliver Williams
Professor
North Carolina State University

CONSTITUTION OF THE UNITED STATES

AMENDMENT [VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Public Law 93-619
93rd Congress, S. 754
January 3, 1975

An Act

To assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Speedy Trial Act of 1974". Speedy Trial Act of 1974. 18 USC 3161 note.

TITLE I—SPEEDY TRIAL

SEC. 101. Title 18, United States Code, is amended by adding immediately after chapter 207, a new chapter 208, as follows:

"Chapter 208.—SPEEDY TRIAL

"Sec.
"3161. Time limits and exclusions.
"3162. Sanctions.
"3163. Effective dates.
"3164. Interim limits.
"3165. District plans—generally.
"3166. District plans—contents.
"3167. Reports to Congress.
"3168. Planning process.
"3169. Federal Judicial Center.
"3170. Speedy trial data.
"3171. Planning appropriations.
"3172. Definitions.
"3173. Sixth amendment rights.
"3174. Judicial emergency.

"§ 3161. Time limits and exclusions. 18 USC 3161.

"(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial. 88 STAT. 2076

"(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days. 88 STAT. 2077

"(c) The arraignment of a defendant charged in an information or indictment with the commission of an offense shall be held within ten days from the filing date (and making public) of the information or indictment, or from the date a defendant has been ordered held to answer and has appeared before a judicial officer of the court in which such charge is pending whichever date last occurs. Thereafter, where a plea of not guilty is entered, the trial of the defendant shall commence within sixty days from arraignment on the information or indictment at such place, within the district, as fixed by the appropriate judicial officer.

"(d) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on

44-532 O

the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

"(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within sixty days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within sixty days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within sixty days impractical.

"(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective Post, p. 2080. date of this section as set forth in section 3163(a) of this chapter the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

"(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter, the time limit with respect to the period between arraignment and trial imposed by subsection (c) of this section shall be one hundred and eighty days, for the second such twelve-month period such time limit shall be one hundred and twenty days, and for the third such period such time limit with respect to the period between arraignment and trial shall be eighty days.

Delay periods. "(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

88 STAT. 2077
88 STAT. 2078

"(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

"(A) delay resulting from an examination of the defendant, and hearing on, his mental competency, or physical incapacity;

"(B) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United States Code;

"(C) delay resulting from trials with respect to other charges against the defendant;

"(D) delay resulting from interlocutory appeals;

"(E) delay resulting from hearings on pretrial motions;

"(F) delay resulting from proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure; and

"(G) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.

"(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

"(3)(A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

"(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

"(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

"(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, United States Code.

"(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

"(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

"(8)(A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial. 88 STAT. 2078

88 STAT. 2079

"(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

"(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

"(ii) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section.

"(iii) Whether delay after the grand jury proceedings have commenced, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the Government.

"(C) No continuance under paragraph (8)(A) of this subsection shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain

available witnesses on the part of the attorney for the Government.

"(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

"(j)(1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly –

"(A) undertake to obtain the presence of the prisoner for trial; or

"(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

"(2) If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

"(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

"(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

18 USC 3162.

"§ 3162. Sanctions.

"(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

88 STAT. 2079
88 STAT. 2080

"(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

Waiver.

"(b) In any case in which counsel for the defendant or the attorney for the Government (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of this chapter, the court may punish any such counsel or attorney, as follows:

"(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof; 18 USC 3006A.

"(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

"(C) by imposing on any attorney for the Government a fine of not to exceed $250;

"(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

"(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

"(c) The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section. 18 USC app.

"§ 3163. Effective dates. 18 USC 3163.

"(a) The time limitation in section 3161(b) of this chapter—

"(1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

"(2) shall commence to run on such date of expiration to all individuals who are arrested or served with a summons prior to the date of expiration of such twelve-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or indictment has been filed prior to such date of expiration. 88 STAT. 2080

"(b) The time limitation in section 3161(c) of this chapter— 88 STAT. 2081

"(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

"(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

"(c) Section 3162 of this chapter shall become effective after the date of expiration of the fourth twelve-calendar-month period following July 1, 1975.

"§ 3164. Interim limits. 18 USC 3164.

"(a) During an interim period commencing ninety days following July 1, 1975 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b) and section 3161(c) of this chapter become effective, each district shall place into operation an interim plan to assure priority in the trial or other disposition of cases involving— Interim plan.

"(1) detained persons who are being held in detention solely because they are awaiting trial, and

"(2) released persons who are awaiting trial and have been designated by the attorney for the Government as being of high risk.

"(b) During the period such plan is in effect, the trial of any person who falls within subsection (a)(1) or (a)(2) of this section shall commence no later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The trial of any person so detained or designated as being of high risk on or before the first day of the interim period shall commence no later than ninety days following the first day of the interim period.

"(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

18 USC 3165.

"§ 3165. District plans—generally.

Administration of criminal justice, continuing study.

"(a) Each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall prepare plans for the disposition of criminal cases in accordance with this chapter. Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center and the planning group established for that district pursuant to section 3168. The plans shall be prepared in accordance with the schedule set forth in subsection (c) of this section.

"(b) The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district consistent with the time standards of this chapter and the objectives of effective law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law. The process shall seek to avoid underenforcement,

88 STAT. 2081

overenforcement and discriminatory enforcement of the law, prejudice

88 STAT. 2082

to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

Submission to review panel.

"(c) The plans prepared by each district court shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of that district court may designate. If approved by the reviewing panel, the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually on the operation of such plans to the Judicial Conference of the United States.

Annual report to Judicial Conference.

Modifications.

"(d) The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan when directed to do so by the reviewing panel or the Judicial Conference of the United States. Modifications shall be reported to the Administrative Office of the United States Courts.

"(e)(1) Prior to the expiration of the twelve-calendar-month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the second and third twelve-calendar-month periods following the effective date of subsection 3161 (b) and subsection 3161(c).

"(2) Prior to the expiration of the thirty-six calendar month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth and subsequent twelve-calendar month periods following the effective date of subsection 3161 (b) and subsection 3161(c).

"(f) Plans adopted pursuant to this section shall, upon adoption, and recommendations of the district planning group shall, upon completion, become public documents.

"§ 3166. District plans—contents. 18 USC 3166.

"(a) Each plan shall include a description of the time limits, procedural techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States attorney, the Federal public defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives of this chapter.

"(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including:

"(1) the incidence of and reasons for, requests or allowances of extensions of time beyond statutory or district standards;

"(2) the incidence of, and reasons for, periods of delay under section 3161(h) of this title;

"(3) the incidence of, and reasons for, the invocation of sanctions for noncompliance with time standards, or the failure to invoke such sanctions, and the nature of the sanction, if any invoked for noncompliance;

"(4) the new timetable set, or requested to be set, for an extension;

"(5) the effect on criminal justice administration of the prevailing time limits and sanctions, including the effects on the prosecution, the defense, the courts, the correctional process, costs, transfers and appeals; 88 STAT. 2082

"(6) the incidence and length of, reasons for, and remedies for detention prior to trial, and information required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial; 88 STAT. 2083 18 USC app.

"(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classifications; and

"(8) the incidence of, and reasons for each thirty-day extention under section 3161(b) with respect to an indictment in that district.

"(c) Each district plan required by section 3165 shall include information and statistics concerning the administration of criminal justice within the district, including, but not limited to:

"(1) the time span between arrest and indictment, indictment and trial, and conviction and sentencing;

"(2) the number of matters presented to the United States Attorney for prosecution, and the numbers of such matters prosecuted and not prosecuted;

"(3) the number of matters transferred to other districts or to States for prosecution;

"(4) the number of cases disposed of by trial and by plea;

"(5) the rates of nolle prosequi, dismissal, acquittal, conviction, diversion, or other disposition; and

"(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition.

"(d) Each plan shall further specify the rule changes, statutory amendments, and appropriations needed to effectuate further improvements in the administration of justice in the district which cannot be accomplished without such amendments or funds.

Recommendations to the Administrative Office of the United States Courts.

"(e) Each plan shall include recommendations to the Administrative Office of the United States Courts for reporting forms, procedures, and time requirements. The Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, shall prescribe such forms and procedures and time requirements consistent with section 3170 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.

18 USC 3167.

"§ 3167. Reports to Congress.

"(a) The Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit periodic reports to Congress detailing the plans submitted pursuant to section 3165. The reports shall be submitted within three months following the final dates for the submission of plans under section 3165(c) of this title.

Contents.

"(b) Such reports shall include recommendations for legislative changes or additional appropriations to achieve the time limits and objectives of this chapter. The report shall also contain pertinent information such as the state of the criminal docket at the time of the adoption of the plan; the extent of pretrial detention and release; and a description of the time limits, procedural techniques, innovations, systems, and other methods by which the trial or other disposition of criminal cases have been expedited or may be expedited in the districts.

18 USC 3168.

"§ 3168. Planning process.

Planning group.

"(a) Within sixty days after July 1, 1975, each United States district court shall convene a planning group consisting at minimum of the Chief Judge, a United States magistrate, if any designated by the Chief Judge, the United States Attorney, the Clerk of the district court, the Federal Public Defender, if any, a private attorney experienced in the defense of criminal cases in the district, the Chief United States Probation Officer for the district, and a person skilled in criminal justice research who shall act as reporter for the group. The group shall advise the district court with respect to the formulation of all district plans and shall submit its recommendations to the district court for each of the district plans required by section 3165. The group shall be responsible for the initial formulation of all district plans and of the reports required by this chapter and in aid thereof, it shall be entitled to the planning funds specified in section 3171.

88 STAT. 2083
88 STAT. 2084

"(b) The planning group shall address itself to the need for reforms in the criminal justice system, including but not limited to changes in the grand jury system, the finality of criminal judgments, habeas corpus and collateral attacks, pretrial diversion, pretrial detention,

excessive reach of Federal criminal law, simplification and improvement of pretrial and sentencing procedures, and appellate delay.

"(c) Members of the planning group with the exception of the reporter shall receive no additional compensation for their services, but shall be reimbursed for travel, subsistence and other necessary expenses incurred by them in carrying out the duties of the advisory group in accordance with the provisions of title 5, United States Code, chapter 57. The reporter shall be compensated in accordance with section 3109 of title 5, United States Code, and notwithstanding other provisions of law he may be employed for any period of time during which his services are needed. Travel expenses. Compensation.

"§ 3169. Federal Judicial Center. 18 USC 3169.

"The Federal Judicial Center shall advise and consult with the planning groups and the district courts in connection with their duties under this chapter.

"§ 3170. Speedy trial data. 18 USC 3170.

"(a) To facilitate the planning process and the implementation of the time limits and objectives of this chapter, the clerk of each district court shall assemble the information and compile the statistics required by sections 3166 (b) and (c) of this title. The clerk of each district court shall assemble such information and compile such statistics on such forms and under such regulations as the Administrative Office of the United States Courts shall prescribe with the approval of the Judicial Conference and after consultation with the Attorney General.

"(b) The clerk of each district court is authorized to obtain the information required by sections 3166 (b) and (c) from all relevant sources including the United States Attorney, Federal Public Defender, private defense counsel appearing in criminal cases in the district, United States district court judges, and the chief Federal Probation Officer for the district. This subsection shall not be construed to require the release of any confidential or privileged information.

"(c) The information and statistics compiled by the clerk pursuant to this section shall be made available to the district court, the planning group, the circuit council, and the Administrative Office of the United States Courts.

"§ 3171. Planning appropriations. 18 USC 3171.

"(a) There is authorized to be appropriated for the fiscal year ending June 30, 1975, to the Federal judiciary the sum of $2,500,000 to be allocated by the Administrative Office of the United States Courts to Federal judicial districts to carry out the initial phases of planning and implementation of speedy trial plans under this chapter. The funds so appropriated shall remain available until expended. 88 STAT. 2084

"(b) No funds appropriated under this section may be expended in any district except by two-thirds vote of the planning group. Funds to the extent available may be expended for personnel, facilities, and any other purpose permitted by law. 88 STAT. 2085

"§ 3172. Definitions. 18 USC 3172.

"As used in this chapter—

"(1) the terms 'judge' or 'judicial officer' mean, unless otherwise indicated, any United States magistrate, Federal district judge, and

"(2) the term 'offense' means any Federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a petty offense as defined in section 1(3) of this title, or an offense triable by

court-martial, military commission, provost court, or other military tribunal).

18 USC 3173. "§ 3173. Sixth amendment rights.

"No provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution.

USC prec. title 1. 18 USC 3174. Time limits, suspension. "§ 3174. Judicial emergency.

"(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planning group, apply to the judicial council of the circuit for a suspension of such time limits. The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources.

"(b) If the judicial council of the circuit shall find that no remedy for such congestion is reasonably available, such council may apply to the Judicial Conference of the United States for a suspension of time limits set forth in section 3161(c). The Judicial Conference, if it finds that such calendar congestion cannot be reasonably alleviated, may grant a suspension of the time limits in section 3161(c) for a period of time not to exceed one year for the trial of cases for which indictments are filed during such period. During such period of suspension, the time limits from arrest to indictment, set forth in section 3161(b), shall not be reduced, nor shall the sanctions set forth in section 3162 be suspended; but such time limits from arrangement to trial shall not be increased to exceed one hundred and eighty days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

Reports to Congress. "(c) Any suspension of time limits granted by the Judicial Conference shall be reported to the Congress within ten days of approval by the Director of the Administrative Office of the United States Courts, together with a copy of the application for such suspension, a written report setting forth detailed reasons for granting such approval and a proposal for increasing the resources of such district. In the event an additional period of suspension of time limits is necessary, the Director of the Administrative Office of the United States Courts shall so indicate in his report to the Congress, which report shall contain such application for such additional period of suspension together with any other pertinent information. The Judicial Conference shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress. Such consent may be requested by the Judicial Conference by reporting to the Congress the facts supporting the need for a suspension within such six-month period. Should the Congress fail to act on any application for a suspension of time limits within six months, the Judicial Conference may grant such a suspension for an additional period not to exceed one year."

88 STAT. 2085
88 STAT. 2086

SEC. 102. The tables of chapters for title 18 of the United States Code and for part II of title 18 of the United States Code are each amended by inserting immediately after the item relating to chapter 207 the following new item:

"208. Speedy trial ..... 3161".

TITLE II—PRETRIAL SERVICES AGENCIES

SEC. 201. Chapter 207 of title 18, United States Code, is amended by striking out section 3152 and inserting in lieu thereof the following new sections:

"§ 3152. Establishment of pretrial services agencies. 18 USC 3152.

"The Director of the Administrative Office of the United States Courts shall establish, on a demonstration basis, in each of ten representative judicial districts (other than the District of Columbia), a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this chapter. The districts in which such agencies are to be established shall be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this chapter, and the availability of community resources to implement the conditions of release which may be imposed under this chapter.

"§ 3153. Organization of pretrial services agencies. 18 USC 3153.

"(a) The powers of five pretrial services agencies shall be vested in the Division of Probation of the Administrative Office of the United States Courts. Such Division shall establish general policy for such agencies.

"(b)(1) The powers of each of the remaining five pretrial services agencies shall be vested in a Board of Trustees which shall consist of seven members. The Board of Trustees shall establish general policy for the agency. Board of Trustees.

"(2) Members of the Board of Trustees shall be appointed by the chief judge of the United States district court for the district in which such agency is established as follows: Membership.

"(A) one member, who shall be a United States district court judge;

"(B) one member, who shall be the United States attorney;

"(C) two members, who shall be members of the local bar active in the defense of criminal cases, and one of whom shall be a Federal public defender, if any;

"(D) one member, who shall be the chief probation officer; and

"(E) two members who shall be representatives of community organizations.

"(c) The term of office of a member of the Board of Trustees appointed pursuant to clauses (C) (other than a public defender) and (E) of subsection (b)(2) shall be three years. A vacancy in the Board shall be filled in the same manner as the original appointment. Any member appointed pursuant to clause (C) (other than a public defender) or (E) of subsection (b)(2) to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Term. Vacancy. 88 STAT. 2086 88 STAT. 2087

"(d)(1) In each of the five demonstration districts in which pretrial service agencies are established pursuant to subsection (a) of this section, the pretrial service officer shall be a Federal probation officer of the district designated for this purpose by the Chief of the Division of Probation and shall be compensated at a rate not in excess of the rate prescribed for GS-16 by section 5332 of title 5, United States Code.

"(2) In each of the five remaining demonstration districts in which pretrial service agencies are established pursuant to subsection (b)(1) of this section, after reviewing the recommendations of the judges of the district court to be served by the agency, each such Board of Trustees shall appoint a chief pretrial service officer, who shall be compensated at a rate to be established by the chief judge of the court, but not in excess of the rate prescribed for GS-15 by section 5332 of title 5, United States Code.

"(3) The designated probation officer or the chief pretrial service officer, subject to the general policy established by the Division of Probation or the Board of Trustees, respectively, shall be responsible for the direction and supervision of the agency and may appoint and fix the compensation of such other personnel as may be necessary to staff such agency, and may appoint such experts and consultants as may be necessary, pursuant to section 3109 of title 5, United States Code. The compensation of such personnel so appointed shall be comparable to levels of compensation established under chapter 53 of title 5, United States Code.

18 USC 3154.

"§ 3154. Functions and powers of pretrial services agencies.

"Each pretrial services agency shall perform such of the following functions as the district court to be served may specify:

"(1) Collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person, but such information as may be contained in the agency's files or presented in its report or which shall be divulged during the course of any hearing shall be used only for the purpose of a bail determination and shall otherwise be confidential. In their respective districts, the Division of Probation or the Board of Trustees shall issue regulations establishing policy on the release of agency files. Such regulations shall create an exception to the confidentiality requirement so that such information shall be available to members of the agency's staff and to qualified persons for purposes of research related to the administration of criminal justice. Such regulations may create an exception to the confidentiality requirement so that access to agency files will be permitted by agencies under contract pursuant to paragraph (4) of this section; to probation officers for the purpose of compiling a presentence report and in certain limited cases to law enforcement agencies for law enforcement purposes. In no case shall such information be admissible on the issue of guilt in any judicial proceeding, and in their respective districts, the Division of Probation or the Board of Trustees may permit such information to be used on the issue of guilt for a crime committed in the course of obtaining pretrial release.

Regulations.

"(2) Review and modify the reports and recommendations specified in paragraph (1) for persons seeking release pursuant to section 3146(c) or section 3147.

18 USC 3146, 3147.

"(3) Supervise persons released into its custody under this chapter.

88 STAT. 2087

88 STAT. 2088

"(4) With the cooperation of the Administrative Office of the United States Courts, and with the approval of the Attorney General, operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services.

"(5) Inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions.

"(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

"(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

"(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrail detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial. 18 USC app.

"(9) Perform such other functions as the court may, from time to time, assign.

"§ 3155. Report to Congress. 18 USC 3155.

"(a) The Director of the Administrative Office of the United States Courts shall annually report to Congress on the accomplishments of the pretrial services agencies, with particular attention to (1) their effectiveness in reducing crime committed by persons released under this chapter; (2) their effectiveness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The Director shall include in his fourth annual report recommendations for any necessary modification of this chapter or expansion to other districts. Such report shall also compare the accomplishments of the pretrial services agencies operated by the Division of Probation with those operated by Boards of Trustees and with monetary bail or any other program generally used in State and Federal courts to guarantee presence at trial. Annual report.

"(b) On or before the expiration of the forty-eighth-month period following July 1, 1975, the Director of the Administrative Office of the United States Courts shall file a comprehensive report with the Congress concerning the administration and operation of the amendments made by the Speedy Trial Act of 1974, including his views and recommendations with respect thereto. Comprehensive report.

"§ 3156. Definitions. 18 USC 3156.

"(a) As used in sections 3146–3150 of this chapter—

"(1) The term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court of the District of Columbia; and

"(2) The term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress.

"(b) As used in sections 3152–3155 of this chapter—

"(1) the term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and 18 USC 3041. 88 STAT. 2088 88 STAT. 2089

"(2) the term 'offense' means any Federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a petty offense as defined in section 1(3) of this title, or an offense triable by court-martial, military commission, provost court, or other military tribunal)."

SEC. 202. The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

"3152. Establishment of Pretrial Services Agencies.
"3153. Organization of Pretrial Services Agencies.
"3154. Functions and Powers of Pretrial Services Agencies.
"3155. Report to Congress.
"3156. Definitions."

Appropriation.

SEC. 203. For the purpose of carrying out the provisions of this title and the amendments made by this title there is hereby authorized to be appropriated for the fiscal year ending June 30, 1975, to remain available until expended, the sum of $10,000,000.

SEC. 204. Section 604 of title 28, United States Code, is amended by striking out paragraphs (9) through (12) of subsection (a) and inserting in lieu thereof:

"(9) Establish pretrial services agencies pursuant to section 3152 of title 18, United States Code;

Ante, p. 2086.

"(10) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, and supplies needed for the maintenance and operation of the courts, the Federal Judicial Center, the offices of the United States magistrates and commissioners, and the offices of pretrial services agencies;

"(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the pretrial service agencies, and their clerical and administrative personnel;

"(12) Provide accommodations for the courts, the Federal Judicial Center, the pretrial services agencies and their clerical and administrative personnel;

"(13) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.".

Approved January 3, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1508 accompanying H.R. 17409 (Comm. on the Judiciary).
SENATE REPORT No. 93-1021 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 120 (1974):
July 23, considered and passed Senate.
Dec. 19, 20, considered and passed House, amended, in lieu of H.R. 17409.
Dec. 20, Senate concurred in House amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 2:
Jan. 4, 1975, Presidential statement.

APPENDIX F

North Carolina General Statutes

Ch. 7A. Judicial Department

§ 7A-49.3. Calendar for criminal trial sessions.—(a) At least one week before the beginning of any session of the superior court for the trial of criminal cases, the solicitor shall file with the clerk of superior court a calendar of the cases he intends to call for trial at that session. The calendar shall fix a day for the trial of each case listed thereon. The solicitor may place on the calendar for the first day of the session all cases which will require consideration by the grand jury without obligation to call such cases for trial on that day. No case on the calendar may be called for trial before the day fixed by the calendar except by consent or by order of the court. Any case docketed after the calendar has been filed with the clerk may be placed on the calendar at the discretion of the solicitor.

(b) All witnesses shall be subpoenaed to appear on the date listed for the trial of the case in which they are witnesses. Witnesses shall not be entitled to prove their attendance for any day or days prior to the day on which the case in which they are witnesses is set for trial, unless otherwise ordered by the presiding judge.

(c) Nothing in this section shall be construed to affect the authority of the court in the call of cases for trial.

CH. 15. CRIMINAL PROCEDURE

§ 15-10. Speedy trial or discharge on commitment for felony. — When any person who has been committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer in open court to be brought to his trial, shall not be indicted some time in the next term of the superior or criminal court ensuing such commitment, the judge of the court, upon notice in open court on the last day of the term, shall set at liberty such prisoner upon bail, unless it appear upon oath that the witnesses for the State could not be produced at the same term; and if such prisoner, upon his prayer as aforesaid, shall not be indicted and tried at the second term of the court, he shall be discharged from his imprisonment: Provided, the judge presiding may, in his discretion, refuse to discharge such person if the time between the first and second terms of the court be less than four months.

CH. 15A. CRIMINAL PROCEDURE ACT

Article 24.

Initial Appearance.

§ 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.

(b) Statement by the Magistrate. — The magistrate must inform the defendant of:

(1) The charges against him;

(2) His right to communicate with counsel and friends; and

(3) The general circumstances under which he may secure release under the provisions of Article 26, Bail.

(c) Procedure When Arrest Is without Warrant; Magistrate's Order. — If the person has been arrested, for a crime, without a warrant:

(1) The magistrate must determine whether there is probable cause to believe that a crime has been committed and that the person arrested committed it, and in the manner provided by G.S. 15A-304(d).

(2) If the magistrate determines that there is no probable cause the person must be released.

(3) If the magistrate determines that there is probable cause, he must issue a magistrate's order:

a. Containing a statement of the crime of which the person is accused in the same manner as is provided in G.S. 15A-304(c) for a warrant for arrest, and

b. Containing a finding that the defendant has been arrested without a warrant and that there is probable cause for his detention.

(4) Following the issuance of the magistrate's order, the magistrate must proceed in accordance with subsection (e) and must file the order with any supporting affidavits and records in the office of the clerk.

(d) Procedure When Arrest Is Pursuant to Warrant. — If the arrest is made pursuant to a warrant, the magistrate must proceed in accordance with subsection (e).

(e) Commitment or Bail. — If the person arrested is not released pursuant to subsection (c), the magistrate must release him in accordance with Article 26 of this Chapter, Bail, or commit him to an appropriate detention facility pursuant to G.S. 15A-521 pending further proceedings in the case.

(f) Powers Not Limited to Magistrate. — Any judge, justice, or clerk of the General Court of Justice may also conduct an initial appearance as provided in this section.

Article 29.

First Appearance before District Court Judge.

§ 15A-601. 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. — (a) Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a crime in the original jurisdiction of the superior court must be brought before a district court judge in the judicial district in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

(b) When a district court judge conducts an initial appearance as provided in G.S. 15A-511, he may consolidate those proceedings and the proceedings under this Article.

(c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within 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. 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) 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.

§ 15A-606. Demand or waiver of probable-cause hearing. — (a) The judge must schedule a probable-cause hearing unless the defendant waives in writing his right to such hearing. A defendant represented by counsel, or who desires to be represented by counsel, may not before the date of the scheduled hearing waive his right to a probable-cause hearing without the written consent of the defendant and his counsel.

(b) Evidence of a demand or waiver of a probable-cause hearing may not be admitted at trial.

(c) If the defendant waives a probable-cause hearing, the district court judge must bind the defendant over to the superior court for further proceedings in accordance with this Chapter.

(d) If the defendant does not waive a probable-cause hearing, the district court judge must schedule a hearing not later than 15 working days following the initial appearance before the district court judge; if no session of the district court is scheduled in the county within 15 working days, the hearing must be scheduled for the first day of the next session. The hearing may not be scheduled sooner than five working days following such initial appearance without the consent of the defendant and the solicitor.

(e) If an unrepresented defendant is not indigent and has indicated his desire to be represented by counsel, the district court judge must inform him that he has a choice of appearing without counsel at the probable-cause hearing or of securing the attendance of counsel to represent him at the hearing. The judge must further inform him that the judge presiding at the hearing will not continue the hearing because of the absence of counsel except for extraordinary cause.

(f) Upon a showing of good cause, a scheduled probable-cause hearing may be continued by the district court upon timely motion of the defendant or the State. Except for extraordinary cause, a motion is not timely unless made at least 48 hours prior to the time set for the probable-cause hearing.

(g) If after the first appearance before a district court judge a defendant with consent of counsel desires to waive his right to a probable-cause hearing, he may do so in writing filed with the court signed by defendant and his counsel. Upon waiver the defendant must be bound over to the superior court.

SUBCHAPTER VII. SPEEDY TRIALS; ATTENDANCE OF WITNESSES.

ARTICLE 35.

Speedy Trial.

§ 15A-701. Policy of appropriate promptness. — It is the policy of this State to minimize undue delay and to further the prompt disposition of criminal cases. The powers granted by this Article should be used to pursue this policy.

§ 15A-702. Speedy trial for defendants. — (a) A superior court judge presiding over a mixed or criminal session may order prompt trial as provided in subsection (b) for a defendant charged with an offense within the original jurisdiction of the superior court or a misdemeanor docketed in superior court for trial de novo. A district court judge may order prompt trial as provided in subsection (b) for any person charged with a misdemeanor pending in district court.

(b) A judge authorized by subsection (a) to order a defendant's prompt trial may order the defendant's case brought to trial or disposed of within a period not less than 30 days, determined by the judge, when:

(1) The venue of the defendant's case lies in the county in which the judge is presiding and the defendant has been confined awaiting trial of that case for a period greater than 60 days; or

(2) The defendant has been confined awaiting trial for a period greater than 30 days and files with the judge a petition requesting prompt trial, as authorized by G.S. 15A-703; or

(3) The venue of the defendant's case lies in the county in which the judge is presiding and the defendant has been awaiting trial for a period greater than 90 days; or

(4) The defendant has been awaiting trial for a period greater than 60 days and files a petition with the judge requesting prompt trial, as authorized by G.S. 15A-703.

The judge's order may provide that, if the case is not brought to trial or disposed of within the period specified by his order, the defendant must be released upon his own recognizance or the charges against the defendant must be dismissed with prejudice.

(c) The period of a defendant's awaiting trial or of confinement awaiting trial commences to run upon a date determined according to the provisions of G.S. 15A-705 and excludes those periods specified in G.S. 15A-706.

§ 15A-703. Petition for speedy trial. — (a) A defendant may file a petition for prompt trial of his case when:

(1) He has been confined awaiting trial of that case for a period more than 30 days; or

(2) He has been awaiting trial for a period greater than 60 days.

(b) The defendant must file the petition for prompt trial with a judge authorized by G.S. 15A-702(a) to order prompt trial of his case and presiding in the county in which venue of his case lies, or, in the event that no such judge is presiding in that county, in the judicial district embracing the county in which venue lies.

§ 15A-704. Consequences to defendant of petition for speedy trial. — A defendant who files a petition for prompt trial, as authorized by G.S. 15A-703, accepts venue anywhere within the judicial district and may not continue or delay his case except on the basis of matters which arise after he files the petition and which he or his counsel could not have reasonably anticipated. The defendant may withdraw the petition for prompt trial only on order of the court, for good cause shown or with consent of the State.

§ 15A-705. When period of awaiting trial or confinement begins. — (a) A defendant commences his period of confinement awaiting trial on the latest of the following:

(1) The date he is first confined awaiting trial on that charge; or

(2) The date he is reconfined after his escape from confinement awaiting trial on that charge; or

(3) The date of his confinement awaiting trial on that charge following a mistrial, order for a new trial, remand for a new trial upon that charge, or notice of appeal for trial de novo.

(b) A defendant commences his period of awaiting trial on a charge on the latest of the following:

(1) In misdemeanor cases, the date that the criminal pleading is served upon the defendant, and in felony cases, the later of the service of criminal process or the return of a bill of indictment; or

(2) The date of a mistrial, order for a new trial, remand for a new trial upon that charge, or notice of appeal for trial de novo.

(c) The charge for which a person is awaiting trial includes the charge upon which he is to be tried and any other charge with which it may be joined under the provisions of G.S. 15A-926.

§ 15A-706. Excluded periods. — (a) The period of awaiting trial or confinement awaiting trial does not include periods of delay resulting from other proceedings concerning the defendant, from the absence or unavailability of the defendant, or from the defendant's incapacity to proceed.

(b) The period of confinement awaiting trial does not include periods during which the defendant is released under Article 26 of this Chapter, Bail.

ARTICLE 52.

Motions Practice.

§ 15A-954. Motion to dismiss — grounds applicable to all criminal pleadings; dismissal of proceedings upon death of defendant. — (a) The court on motion of the defendant must dismiss the charges stated in a criminal pleading if it determines that:

(1) The statute alleged to have been violated is unconstitutional on its face or as applied to the defendant.

(2) The statute of limitations has run.

(3) The defendant has been denied a speedy trial as required by the Constitution of the United States and the Constitution of North Carolina.

(4) The defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.

(5) The defendant has previously been placed in jeopardy of the same offense.

(6) The defendant has previously been charged with the same offense in another North Carolina court of competent jurisdiction, and the criminal pleading charging the offense is still pending and valid.

(7) An issue of fact or law essential to a successful prosecution has been previously adjudicated in favor of the defendant in a prior action between the parties.

(8) The court has no jurisdiction of the offense charged.

(9) The defendant has been granted immunity by law from prosecution.

(10) The pleading fails to charge an offense as provided in G.S. 15A-924(e).

(b) Upon suggestion to the court that the defendant has died, the court upon determining that the defendant is dead must dismiss the charges.

(c) A motion to dismiss for the reasons set out in subsection (a) may be made at any time.

ADMINISTRATIVE OFFICE OF THE COURTS
JUSTICE BUILDING
RALEIGH, NORTH CAROLINA 27602

BERT M. MONTAGUE
DIRECTOR

FRANKLIN E. FREEMAN, JR.
ASSISTANT DIRECTOR

December 27, 1976

Honorable Luther J. Britt, Jr.
Chairman, Committee on Speedy Trials
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Senator Britt:

Your Committee Counsel, Mr. Terrence D. Sullivan, has corresponded with C. R. Puryear, Systems Manager of the Administrative Office of the Courts, regarding the work of your Committee pursuant to Resolution 91 of the 1975 General Assembly. It seems appropriate for me to take this opportunity to report directly to you concerning (a) the case data reporting system we have heretofore been able to administer through this office, (b) some recent changes in our reporting system which were implemented this past October 1st (with LEAA funding), and (c) the planning now underway for the design and, hopefully, eventual implementation of a full-fledged EDP information system for the Judicial Department.

(a) The Judicial Department's manual case data system

First, it is important to keep in mind that we have had since the creation of the Administrative Office of the Courts only a manual case data reporting system. You are of course familiar with the annual report which I submit to the Chief Justice and the members of the General Assembly. The most recent annual report is for calendar year 1975, copy of which is enclosed for your convenient reference. This report provides extensive data, by county and by judicial district, on the numbers (quantity) of cases (criminal and civil) which are filed in the trial courts, the numbers disposed of during the year, and the numbers left pending at the end of the calendar year. We have not had the assistance of computer equipment for our information needs. All of the data in our annual reports has been manually compiled in the offices of the clerks of superior court, transmitted by mail to this office, and then manually tabulated and compiled in this office in the form of our annual report.

We have long recognized the severe limitations of this manual case data reporting system. For example, it has not told us the age of pending cases. Therefore, we have not been able to report statistically whether, and

to what extent, we really had a case backlog. All that we have been able to report has been the quantity (number) of cases pending at the end of the year. Neither have we been able to report the average length of time required to handle particular categories of cases, from filing to trial or from filing to disposition. And we have not been able to report how many cases of a particular type or involving a particular criminal offense have been filed, disposed of, or are still pending. The basic reason for the limitations of a manual case data reporting system is clearly revealed in the latest annual report (1975). During that year, a total of 1,374,118 cases (civil and criminal) were filed in the superior and district courts of North Carolina. In addition, more than 50,000 estates and special proceedings were filed with the clerks of the superior court, and several thousand juvenile case petitions were filed in the district courts. It is simply not physically possible to handle this volume of cases on a manual reporting basis and achieve a satisfactory case information system.

(b) Recent revision in the manual system of data reporting

Utilizing some LEAA funds, we have been able to implement as of October 1, 1976, some improvement in our present system of manual reporting of case data. The offices of the clerks of court now report to us the filings and dispositions of cases, by case number and by date of filing or date of disposition. This information is transmitted to us by mail and the individual case data is then keyed to magnetic disc. We will then purchase computer processing service from the State Department of Administration, and will be able to obtain periodic reports on the number as well as identity of pending cases, the ages of pending cases, and eventually enough data will be accumulated to permit us to produce reports giving average times that particular types of cases are pending, from filing to disposition. In effect, we will be able to maintain on computer tape a perpetual inventory of court cases. We anticipate having by April, 1977, computer-processed reports which will give us the ages of criminal and civil cases pending in the trial courts as of the end of the present calendar year. Thus, for the first time ever, we will be able to report statistically whether, and to what extent, we have a real case backlog as measured by generally acceptable time frames within which cases filed in court should be disposed of.

I should like to emphasize that what I have described above is still a manual reporting system. All of the data coming to us from the 100 counties must be put on paper and mailed to us. This means, among other things, that we are still severely limited as to the amount of detail we can ask the clerk personnel to record and send to us, and which we in turn can get keyed to magnetic tape for computer processing. For example, we do not, under our revised manual reporting system, obtain the identity of defendants or the identity of the specific criminal offense or type of case. Our revised manual reporting system

is not, by any means, an EDP information system for the courts of North Carolina. It does hold promise of being a substantial improvement over what we have heretofore been able to report.

(c) Plans for a full-fledged EDP system for the courts

Again utilizing LEAA funds, the nucleus of a systems staff has been set up in the Administrative Office of the Courts, to assist in developing and implementing a full-fledged EDP information system for the Judicial Department. The systems section is now working with a consulting firm which has been made available to us under a State contract using LEAA funding. This consulting firm, following intensive, detailed study of the information needs of the Judicial Department, is to design a proposed EDP system and develop a proposed implementation schedule. This work will be done in accordance with the Master Plan for Criminal Justice Information System, which was recently adopted by the Governor's Commission on Law and Order. Consultants are also working with other North Carolina criminal justice agencies, e.g., the Department of Correction, the Police Information Network (PIN), the State Bureau of Investigation, the Department of Motor Vehicles, and local law enforcement representatives.

We are very anxious to have the results of this consultant firm design effort; and we hope very much to be able to proceed with implementation of a full-fledged EDP system for the courts. We further hope that some significant LEAA funding will be available for the initial implementation and operation of such a system. In time, state appropriations will obviously be required to maintain such a system. When we have reports from the design consultant firm, perhaps by May of next year, we will be in a position to provide cost estimates of an EDP system for the courts and information as to how much funding we can reasonably count on from Federal sources and how much will be required from the State. We will also be able to be specific regarding a feasible implementation schedule.

The Committee Counsel requested the following information from us, if available, on both felony and misdemeanor cases and on both a county and statewide basis:

1. the average length of time which elapses between arrest and the beginning of the trial or, if that information is unavailable, the disposition of the case;

2. the average number of requests for continuance by the defendant and the average duration of those continuances per case;

3. the average number of requests for continuance by the prosecution and the average duration of those continuances per case;

4. the number of petitions for speedy trial requested under G.S. 15A-702; and the number of those petitions granted.

With respect to item one on the previous page, it is not possible for us now to report the average length of time which elapses between filing and trial or final disposition. Under the revised manual reporting system already described, we should be able to report early in 1978 on the average length of time between filing and disposition of cases, based upon a year's data, that is, 1977.

With respect to items two and three above, we will be able to report the number of trial dates scheduled in criminal cases, and we should have a sufficient data base to have such a report by the middle of 1977. However, we will not be able to differentiate between requests for continuances on behalf of the defendant and those on behalf of the prosecution. Such refinement of statistics will have to await the implementation of a full-fledged EDP system for North Carolina courts.

With respect to item four above, this is an example of detail which is not feasible to include as a regular feature under a manual reporting system. It is something that could be accommodated under a full-fledged EDP system.

The request for specific data on behalf of your Committee is but one example of the literally hundreds of instances that we confront each year where specific, reliable statistical detail is very much needed. Yet, it is impossible for us to meet such needs with a manual reporting system. I believe that it is clear beyond any doubt that only provision of an EDP system in the Judicial Department will enable the Administrative Office of the Courts to meet such data needs.

I note that paragraph 3 of Section 1 of Joine Resolution 91 asks for consideration of a system similar to the PIN, to be installed in clerk of court offices, so that an up-to-date record of every accused would be available as a part of all future trials. I would observe that the installation of terminals in the offices of the clerks of court would with the present state of the criminal justice information system be a complete waste of money and effort, because there is now no capability for regularly and expeditiously obtaining criminal case data from the courts. There is now little criminal history data available to the Police Information Network, and this situation will not change until the Judicial Department is provided with data entry and data processing equipment that can tie in with a network system.

I hope that these comments will be of assistance to your Committee, and if I can provide further information or be of assistance in any way, please let me know.

Sincerely,

Bert M. Montague

BMM/dd

cc: Terrence D. Sullivan
Committee Counsel

Table IV-3

AVERAGE TIME TAKEN TO PROCESS FELONY CASES
IN N. C. SUPERIOR COURTS, COMPARED TO
MODEL STANDARDS

		%	Cases
ARREST TO BAIL	7.9 Days in N. C.; Model Time: Within Hours		
	No Bail	38.0	260
	1-7 Days	29.9	273
	8-30 Days	14.9	120
	Over 30 Days	7.3	50
ARREST TO HEARING	25.9 Days in N. C.; Model Time: 7 Days		
	1-7 Days	25.1	216
	8-30 Days	45.9	377
	Over One Month	29.0	238
HEARING TO INDICTMENT	40.8 Days in N. C.; Model Time: 7 Days		
	1-7 Days	29.9	246
	1-30 Days	23.9	197
	31-60 Days	24.8	204
	Over 2 Months	21.4	176
FORMAL CHARGE TO SENTENCE	63.6 Days in N. C.; Model Time: 80 Days		
ARREST TO SENTENCE	130.3 Days in N. C.; Model Time: 101 Days		
	1-101 Days	43.4	458
	Over 101 Days	51.5	488

APPENDIX I

LEGISLATIVE PROPOSAL

A BILL TO BE ENTITLED

AN ACT TO INSURE THE SPEEDY TRIAL OF PERSONS CHARGED WITH CRIMINAL OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. Article 35 of Chapter 15A of the General Statutes is rewritten to read as follows:

"Article 35.

Speedy Trial.

"§§15A-701. Time limits and exclusions.--(a) The trial of the defendant charged with a criminal offense shall begin within the time limits specified below:

(1) Within 90 days from the date the defendant is arrested, served with criminal process, waives an indictment or is notified pursuant to G.S. 15A-630 that an indictment has been filed with the Superior Court against him, whichever occurs first;

(2) Within 90 days of the giving of notice of appeal in a misdemeanor case for a trial de novo in the Superior Court;

(3) When a charge is dismissed, other than under G.S. 15A-703, and the defendant is afterwards charged with the same offense or an offense based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan, then

within 90 days from the date that the defendant was arrested, served with criminal process, waived an indictment, or was notified pursuant to G.S. 15A-630 that an indictment has been filed with the superior court against him, whichever occurs first, for the original charge;

(4) When the defendant is to be tried again following a declaration by the trial judge of a mistrial, then within 60 days of that declaration; or

(5) Within 60 days from the date the action occasioning the new trial becomes final when the defendant is to be tried again following an appeal or collateral attack.

(a1) Notwithstanding the provisions of G.S. 15A-701(a) the trial of a defendant charged with a criminal offense who is arrested, served with criminal process, waives an indictment or is notified pursuant to G.S. 15A-630 that an indictment has been filed against him, on or after January 1, 1980 and before January 1, 1982, shall begin within the time limits specified below:

(1) Within 120 days from the date the defendant is arrested, served with criminal process, waives an indictment, or is notified pursuant to G.S. 15A-630 that an indictment has been filed against him,

whichever occurs first;

(2) Within 120 days of the giving of notice of appeal in a misdemeanor case for a trial de novo in the Superior Court;

(3) When a charge is dismissed, other than under G.S. 15A-703, and the defendant is afterwards charged with the same offense or an offense based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan, then within 120 days from the date that the defendant was arrested, served with criminal process, waived an indictment, or was notified pursuant to G.S. 15A-630 that an indictment has been filed with the superior court against him, whichever occurs first, for the original charge;

(4) When the defendant is to be tried again following a declaration by the trial judge of a mistrial, then within 120 days of that declaration; or

(5) Within 120 days from the date the action occasioning the new trial becomes final when the defendant is to be tried again following an appeal or collateral attack.

(b) The following periods shall be excluded in computing the time within which the trial of a criminal offense must begin:

(1) Any period of delay resulting from other proceedings concerning the defendant including, but not limited to, delays resulting from

a. A mental or physical examination of the defendant, or a hearing on his mental or physical incapacity;

b. Trials with respect to other charges against the defendant;

c. Interlocutory appeals; or

d. Hearings on pretrial motions.

(2) Any period of delay during which the prosecution is deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness for the defendant or the State. For the purpose of this subdivision, a defendant or an essential witness shall be considered

a. absent when his whereabouts are unknown and he is attempting to avoid apprehension or prosecution or when his whereabouts cannot be determined by due diligence, and

b. unavailable when his whereabouts are known but his presence for testifying at the trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incapacitated or physically unable to stand trial.

(5) When a charge is dismissed by the prosecutor under the authority of G.S. 15A-931 and afterwards a new indictment or information is filed against the same defendant or the same defendant is arrested or served with criminal process for the same offense, or an offense based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan, any period of delay from the date the initial charge was dismissed to the date the time limits for trial under this section would have commenced to run as to the subsequent charge.

(6) A period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(7) Any period of delay resulting from a continuance granted by any judge if the judge granting the continuance finds, in his discretion, that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial and sets forth in writing in the record of the case the reasons for so finding.

The factors, among others, which a judge shall consider in determing whether to grant a continuance are as follows:

a. Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;

b. Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the time limits established by this section; and

c. Whether delay after the grand jury proceedings have begun, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the State.

(8) Any period of delay occasioned by the venue of the defendant's case being within a county where due to limited number of court sessions scheduled for the county, the time limitations of this section cannot reasonably be met.

(9) A period of delay resulting from the defendant's being in the custody of a penal or other

institution of a jurisdiction other than the jurisdiction in which the criminal offense is to be tried.

(c) If trial does not begin within the time limitations specified in this section because the defendant entered a plea of guilty or no contest which was subsequently withdrawn to any or all charges, the applicable period of time limits as specified in this section shall begin to run on the day the order permitting withdrawal of the plea of guilty or no contest becomes final.

§15A-702. Counties with limited court sessions.--(a) If the venue of the defendant's case lies within a county where, due to the limited number of court sessions scheduled for the county, the applicable time limit specified by G.S. 15A-701 has not been met, the defendant may file a motion for prompt trial with (1) a superior court judge presiding over a mixed or criminal session within the same judicial district where the defendant is charged with an offense within the original jurisdiction of the superior court or with a misdemeanor docketed in the superior court for trial de novo; or (2) a district court judge presiding in the county in which the venue of the case lies, or in the event that there is no district court judge presiding in that county, in the judicial district embracing the county in which the venue lies where the defendant is charged with a misdemeanor pending in district court.

(b) The judge with whom the petition for prompt trial is filed may order the defendant's case be brought to trial within not less than 30 days.

(c) A defendant who files a petition for prompt trial under this section accepts venue anywhere within the judicial district and may not continue or delay his case except on the basis of matters which arise after he files the petition and which he or his counsel could not have reasonably anticipated. The defendant may withdraw the petition for prompt trial only on order of the court, for good cause shown or with the consent of the prosecutor.

§ 15A-703. Sanctions.--If a defendant is not brought to trial within the time limits required by G.S. 15A-701 or within the time prescribed by the judge in his order for prompt trial under G.S. 15A-702(b), the charge shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting that motion but the State shall have the burden of going forward with evidence in connection with excluding periods from computation of time in determining whether or not the time limitations under this Article have been complied with. In determining whether to order the charge's dismissal with or without prejudice, the court shall consider, among other matters, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; the impact of a reprosecution on the administration of this Article and on the administration of justice. Failure of the defendant

to move for dismissal prior to trial or entry of the plea of guilty or no contest shall constitute a waiver of the right to dismissal under this section. A dismissal with prejudice shall bar further prosecution of the defendant for the same offense or an offense based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan, a dismissal without prejudice shall not bar further prosecution.

§15A-704. No bar to claim of denial of speedy trial.--. No provision of this Article shall be interpreted as a bar to any claim of denial of a speedy trial as required by the Sixth Amendment to the Constitution of the United States.

Sec. 2. This act shall apply to any person who is arrested, served with criminal process, waives an indictment, or is notified pursuant to G.S. 15A-630 that an indictment has been filed with the superior court against him, on or after January 1, 1980.

Sec. 3. Subsection (a1) of G.S. 15A-701 is repealed.

Sec. 4. This act shall become effective on January 1, 1980; except for Section 3 of this act which shall become effective on January 1, 1983.

APPENDIX J

OUTLINE OF THE LEGISLATIVE PROPOSAL ON SPEEDY TRIALS

Introduction

The Committee recommends that the General Assembly rewrite Article 35 of Chapter 15A of the General Statutes dealing with the speedy trial of criminal defendants. The proposal would require trial of any criminal defendant within certain specified time limits while providing appropriate safeguards to insure that the valid needs of the State are not infringed and the rights of the defendant are protected in a criminal prosecution. The proposed Article 35 would further restrict but would leave intact with the district attorney his authority to set the time for trial of criminal cases (G.S. §7A-49.3).

Because the proposed changes will constitute a significant departure from past procedures, the legislative proposal contains features which, the Committee believes, will ease the implementation of the new plan and the load of those who will function under it. It is proposed that the bill not come into effect until January 1, 1980 (sections 2 and 4 of the proposed bill) so as to provide sufficient time for defense attorneys, prosecutors, judicial officials and administrators to become fully aware of the new requirements and to make adequate preparation for them. Also the Committee's proposal contains a two-step plan of gradual implementation of the final time limits once the act becomes effective on January 1, 1980. The first step contains the interim time limits (§15A-701(a1)) for the two-year period following January 1, 1980. During the interim period

the permanent time limits for criminal trials contained in subdivision (a) of §15A-701 are extended up to an additional 60 days in specific stages of prosecution. Such an interim period will prevent the possibly great stress of an immediate implementation of the permanent time limits while permitting an evaluation by appropriate authorities of any unforseen problems attending the implementation of the bill. The interim time limits would be automatically repealed when no longer needed (sections 3 and 4 of the bill).

A brief section-by-section analysis of the bill follows.

Section 1. Rewrites Article 35 of Chapter 15A of the General Statutes regarding speedy trials.

§15A-701, Time limits and exclusions.

Subsection (a) sets forth the permanent time limits in which the Committee feels that all criminal trials should be commenced. These permanent time limits will become effective on January 1, 1982. (See pages 1 and 2 of this Outline.) Subdivision (1) sets forth the Committee's basic recommendation that speedy trial be defined in North Carolina as trial within 90 days of arrest for the average uncomplicated criminal case. Subsection (a) also recognizes the special circumstances surrounding an appeal from a misdemeanor conviction in a district court to the superior court for a trial de novo (subdivision (2)), retrial of a charge following its dismissal (subdivision (3)), the retrial of a charge following a mistrial (subdivision (4)), and retrial following a successful appeal or collateral attack (subdivision (5)).

Subsection (a1) establishes a two-year period during which time

limits for a criminal trial would be imposed but these limits would not be as narrow as the permanent ones found in subsection (a). A discussion of the dates of effectiveness of these subsections will be found at pages 1 and 2 of this outline Subsection (b) lists those periods which are to be excluded in figuring the time elasped under the time limits contained in subsections (a) and (a1). The time exclusions have been drawn so as to protect both the rights of the state and of the defendant in a criminal prosecution.

Subdivision (1) excludes delays resulting from other proceedings concerning the defendant. Several types of proceedings are listed. The opening clause clearly states, however, that the specified exclusions are not exhaustive of the types of other proceedings. These other proceedings would include parole or probation revocation hearings and extradition proceedings, among others.

Subdivision (2) removes from the time computation certain periods when the prosecution of the defendant is deferred.

Subdivision (3) excludes periods during which the defendant or an essential witness is absent or unavailable. Of this exclusion, the Committee on the Administration of the Criminal Law of the Judicial Conference in its Guidelines to the Administration of the Speedy Trial Act of 1974, August 8, 1975, (hereafter referred to as "Guidelines") made the following comments:

> The absence of a defendant may occur at any stage of the timetable following arrest or service of summons. If he jumps bail or otherwise fails to appear at his preliminary hearing, arraignment, or at his

> trial, it may be necessary to judicially determine how long he has been absent in order to determine the total period subject to this exclusion. The court may also have to determine whether on the facts presented he is attempting to avoid prosecution or apprehension, whether his whereabouts cannot be determined by due diligence, or whether he is resisting appearing at or being returned for trial.
>
> A similar judicial inquiry would be necessary with respect to a witness who would also have to be found 'essential' to warrant continuance on this basis /p. 15/

Subdivision (4) speaks to those periods when the defendant is unable to stand trial because of his incapacity.

Subdivision (5) when read with §15A-701 (a)(3) or §15A-701 (a1)(3), whichever is appropriate, will exclude from computation under the time limits those time periods from when the prosecutor voluntarily dismisses a charge until the prosecution is initiated again on that charge.

Subdivision (6) excludes any period of time during which the time for trial has not run for a co-defendant in the situation where there has been joinder of two or more defendants for trial.

Subdivision (7) excepts from the time limits those periods resulting from a continuance granted by the judge on his own motion or on the motion of either the prosecution or the defense.

The Committee on the Administration of the Criminal Law of the Judicial Conference made the following observations regarding the factors specified for consideration under the Speedy Trial Act of 1974 from which this proposed bill's language is drawn:

> It should be noted that the court is not restricted to the factors set forth under /subdivisions a., b., and c./ in its determination as to whether the ends of justice served by the granting of such continuance

outweigh the best interests of the defendant and the public to a speedy trial.

The first factor to be considered by a court under [15A-701(b)(7)a.] above is whether a failure to grant a continuance 'would be likely to . . . result in a miscarriage of justice.' The exact perimeters of this language will have to develop through decisional law as the Senate Report (S. Rept. 93-1021) states (p. 27):

> 'The judge must balance the right of the defendant and the interest of the public in speedy trial against the 'ends of justice' and set forth in the record his reasons for granting the continuance.'

The unusual or complex nature of the case is also a factor to be considered in excusing delay [15A-701 (b)(7)b.] At least two kinds of cases are suggested by this exclusion provision. First, there are cases which engender such intense media coverage as to endanger a fair trial by an impartial jury in the community. In that situation, a continuance may be a constitutional imperative, and has been specified as an appropriate remedy to avoid the effects of prejudice in the community. [Citations omitted.]

The other instance involves the 'complex' case. Complexity in criminal cases results inter alia from complex issues, multiple parties or extensive documentary evidence.

After an indictment is filed, the court can determine from the nature of the case whether it is 'unusual or complex' within the meaning of [15A-701(b)(7)c.].

Finally, it should be noted that cases may be held in abeyance awaiting a decision of the court of appeals or Supreme Court which would be dispositive of the case. Section [15A-701(b)(7)] would be applicable ['Guidelines' pp. 18-21].

Subdivision (8) provides an escape value by exempting from the time in which trial is to begin those periods resulting from the venue of the case being in a county of so limited sessions of court that the time limit provisions of this Article cannot be reasonably met. This subdivision speaks to the problem of

speedy trials of criminal defendants in relatively unpopulated areas. A procedure is set out in §15A-702, infra, to permit the speedy trial of criminal defendants in those areas. Subdivision (9) specifically excepts periods in which the defendant is in the custody of another jurisdiction. Articles 36, 38 and 39 of Chapter 15A sets forth the procedures for obtaining the defendant for trial in this situation. Subsection (c) provides that, where the defendant enters a plea of guilty or no contest which he later withdraws, time which would have otherwise run under the provisions of this section shall begin to run when the order permitting the withdrawal of that plea is entered.

§15A-702, Counties with limited court sessions. Subsection (a) permits the petition for a prompt trial of a defendant whose case lies in a county where limited court sessions have resulted in the failure to bring the defendant's case to trial within the time period specified in G.S. 15A-701. Subsection (b) permits the appropriate judge to order a prompt trial within not less than 30 days of receiving the petition. Subsection (c) sets forth the effects to the defendant of his petition for a prompt trial. The Official Commentary to the present G.S. 15A-704 from which this language is taken makes the following observation:

> Since trial within the period required as a result of a defendant's petition would not be possible in the original venue of the case if the appropriate judge is not sitting in the county during that period this [sub] section establishes venue throughout the judicial district upon filing the petition [1975 Replacement to Volume 1C, General Statutes of North Carolina, p. 209]

§15A-703, Sanctions.

Failure to bring the defendant to trial within the period specified by the act shall result in the dismissal of the charge upon motion of the defendant. The judge in determining whether the charges are to be dismissed with or without prejudice must examine the factors specified in this section.

§15A-704, No bar to claim of denial of speedy trial.

The trial of a criminal defendant within the time periods specified by this proposed act would not bar a constitutional claim of denial of speedy trial.

Sections 2, 3, and 4 of the proposed act contain the effective dates of this proposal's provisions. These sections have already been discussed on pages 1 and 2.

APPENDIX K

NUMBER OF PROSECUTORS AND SUPERIOR COURT CRIMINAL DISPOSITIONS BY YEAR IN NORTH CAROLINA[1]

Year	No. of Prosecutors[2]	Superior Court Criminal Dispos.	
		By Jury	Total
7/1/56-6/30/57		4,032	29,101
1957-58		3,571	27,287
1958-59		3,945	29,555
1959-60		3,804	27,765
1960-61		3,429	29,514
1961-62		3,589	29,907
1962-63		3,367	28,729
1963-64		3,394	33,338
1964-65		3,535	32,833
1965-66		3,564	30,941
1967	40	3,567	31,830
1968	82	3,488	37,031
1969	92	3,452	33,456
1970	97	3,224	32,724
1971	126	3,602	37,150
1972	130	4,212	42,524
1973	144	4,221	44,636

1974	146	3,524	44,700
1975	172	3,626	52,551

[1] Information obtained from the Administrative Office of the Courts.

[2] Explanation of figures by the Administrative Office of the Courts:

Furnishing the number of prosecutors for each year from 1956 through 1975 is impossible because prior to court reform, no one knew how many there were. The superior court solicitors were on the State payroll and therefore we can tell you how many solicitors there were, but there is no record of the number of assistants employed by local governments or of prosecutors for the numerous lower courts. From 1956 through 1960, there were 21 solicitorial districts and therefore 21 solicitors. In the early '60's, three additional solicitorial districts were created and from that point through 1966 there were 24 solicitors and an unknown number of assistants and local court prosecutors. Beginning in 1967, the Administrative Office of the Courts became responsible for the budget for the solicitors and district court prosecutors. The table - - - - - - - - - - will give the total number of prosecutors on the State payroll each year from 1967 through 1975. Please note that prior to calendar year 1971, our figures will not present an accurate total of the number of prosecutors in the State of North Carolina because up until that time, there were still a number of local districts which had their own courts and their own prosecutors. However, beginning with 1971, the figures will reveal the total number of prosecutors at work in North Carolina.