REPORT OF THE

COURTS COMMISSION

to the North Carolina General Assembly

1981

MEMBERSHIP OF THE COMMISSION

H. Parks Helms
Chairman

Voting Members Appointed by the Governor

Term Ending June 30, 1981

Charles Becton
David M. Britt
Louise B. Wilson

Term Ending June 30, 1983

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I. T. Valentine, Jr.

Voting Members Appointed by the Lieutenant Governor

Term Ending June 30, 1981

Fielding Clark, II
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Term Ending June 30, 1983

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Voting Members Appointed by the Speaker of the House of Representatives

Term Ending June 30, 1981

William G. Smith
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Term Ending June 30, 1983

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Members Ex Officio (non-voting)

Administrative Officer of the Courts, Bert M. Montague
N. C. State Bar Representative, John W. Campbell
N. C. Bar Association Representative, Robert M. Clay

NORTH CAROLINA COURTS COMMISSION
ADMINISTRATION BUILDING
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H. PARKS HELMS, CHAIRMAN
CHARLOTTE

TO THE MEMBERS OF THE 1981 GENERAL ASSEMBLY

On behalf of the North Carolina Courts Commission, I am pleased to transmit to the General Assembly this report, representing a portion of the Commission's work to date. The Commission has worked diligently in considering numerous proposals to facilitate the administration of justice in our State, and is continuing its deliberations on several important projects which we hope will enhance the credibility of our court system with the people of North Carolina.

I express my personal gratitude to the members of the Commission for their dedicated efforts toward achieving this goal.

Respectfully submitted,

H. Parks Helms

HPH:cj

C O N T E N T S

Appendices

H. Amend G.S. Chapter 9 to Facilitate the Juror Selection Process

I. Require the Judge at a Preliminary Hearing to Advise an Indigent Defendant that if he is Convicted and Placed on Probation he may Become Liable for Costs of Assigned Counsel

J. Provide for Verification of Affidavits of Indigency in Certain Counties

K. Appropriate Money to Provide that Magistrates' Seniority Salary Take Effect on the Anniversary Date of Appointment

L. Require the District Attorney to Represent the State in Involuntary Commitment Hearings held in the County of Origin of the Commitment Proceedings

M. Raise the Salary of Clerks of Court in Counties of Less than 10,000 Population to that of Clerks in the Next Highest Population Group

N. Eliminate Requirement that Clerks of Court Issue Permits Before Certain Building Lots Can Be Sold

O. Require the Sheriff to Furnish a List of Jailed Prisoners to Judges

P. Eliminate Requirement that Clerks of Court Report Election Results to the Secretary of State

Q. Require Area Mental Health Authorities to Collect the Fee Charged Alcohol and Drug Education Traffic Schools

INTRODUCTION

The North Carolina Courts Commission was created by Chapter 1027, Session Laws of 1979 (G.S. 7A-506 et seq.), and assigned the responsibility of making continuing studies of the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and the General Court of Justice and to make recommendations to the General Assembly that would advance the administration of justice. This is the identical mission assigned to the original North Carolina Courts Commission that existed from 1963 to 1975. The original Commission implemented Article IV (Judicial Department) of the Constitution adopted by the people in 1962, by designing the District Court Division of the General Court of Justice, creating a Court of Appeals, revising numerous jurisdictional and procedural statutes, and fine-tuning the new court system with many additional improvements.

The 1979 Commission was created to fill the gap in broad, long-range study and supervision of the court system, the need for which became obvious after the death in 1975 of the original Commission.

In its first year, the new Commission has undertaken a number of studies, some of them at the request of the General Assembly or the Governor, and has an agenda of major projects on which it is continuing to work. This 1981 Report to the General Assembly addresses the issues which have been referred to it, and responds to other issues to which its attention has been drawn in a series of public hearings.

The Commission sees its mission, under G.S. 7A-508, as involving major matters of serious concern to the entire courts system,

or significant elements of it, and is less concerned with modest adjustments that day to day operations may bring to light. These latter problems, while important and necessary, are properly the concern of the Governor's Crime Commission or the Judicial Council, and the Commission will continue to foster and maintain liaison with these groups to avoid overlapping studies or, if necessary on rare occasions, to exchange knowledge and reinforce mutual efforts toward a common goal.

APPELLATE DIVISION PROBLEMS

Perhaps the most urgent problem brought to the Commission's attention in its first year was the rapidly growing caseload in the appellate division. Chief Justice Branch and Chief Judge Morris each appeared before the Commission twice, each time stressing that the volume of appellate business was continuing to increase, that delays in prompt disposition of business were growing, and that the quality of appellate justice would eventually suffer unless some action or combination of actions was taken to maintain caseloads per judge at a level that would allow each matter before each court to continue to receive the full and thoughtful deliberation to which it is entitled. Statistics presented by them in support of their positions are impressive. In fiscal year 1979-80, the Supreme Court rendered 193 opinions and considered 616 petitions. Eleven years earlier, in 1968-69, the first year the Court of Appeals was fully operational, the equivalent Supreme Court numbers were 67 and 102 -- an increase of about 300% in opinions alone, with no increase in the number of justices. In calendar year 1979, the Court of Appeals rendered 1,104 opinions, and considered 532 petitions and 1,183 motions. Assuming a twelve-judge court (no vacancies due to retirement, promotions, etc.), and no extended illnesses, this amounts to 93 opinions (about two per week) per judge, plus 44 petitions per judge annually, in addition to a heavy 22-week hearing schedule. The Chief Judge handles most of the motions.

Each justice and judge has a law clerk (the Chief Justice has two), and the Court of Appeals has seven staff attorneys. The Chief

Justice and Chief Judge feel that their respective courts probably could not efficiently manage larger supporting staffs. The Court of Appeals has had its internal procedures evaluated by independent outside sources and attempted to take advantage of every proposal for increased efficiency. The remaining options are two: increase the number of active justices and judges, or in various ways curtail the right of appeal, now almost unrestricted, to one or both courts. The remainder of this section of the report will deal with various measures to implement these options.

Numbers of Active Appellate Justices and Judges. The Chief Justice does not feel at present that an increase in the number of active justices is desirable, and the Chief Judge has expressed the feeling that an increase in the number of Court of Appeals panels (there are now four) is at best only a temporary solution to the problem, and that substantial increases in personnel on either bench would result in a loss of collegiality, an essential ingredient of the best professional decision-making process. For these reasons, the Commission does not feel that additional judgeships are called for at this time; other measures should be considered first.

Use of Retired and Emergency Justices and Judges. For several months in 1980, one of the justices of the Supreme Court was disabled. At the same time there were four retired justices, but the Court could not seek the temporary services of any one of them because of various provisions of G.S. Chapter 7A which prohibit recall for emergency service of a retired appellate justice or judge beyond age 72 (or a retired trial judge beyond age 70). While the mandatory

retirement ages are considered desirable, the Commission does not feel that temporary emergency service of an able-bodied retired justice or judge should be prohibited. Article IV of the Constitution, Sec. 8, in addition to authorizing the General Assembly to prescribe maximum age limits for service as a justice or judge, authorizes that body to provide for temporary recall of any retired justice or judge to serve on the court from which retired. There being no constitutional impediment to recall of mandatorily retired (for age) justices and judges, for temporary service, the Commission recommends that G.S. Chapter 7A be amended to specifically authorize such service, subject to several precautions. The recall should be voluntary, for not more than six months at a time, and the Chief Justice (or the Chief Judge, for Court of Appeals judges) should certify in advance of recall that he or she finds the recalled judge capable of efficiently and promptly performing the functions of justice or judge of the bench to which recalled. This provision should include retired trial judges as well as appellate judges, as a number of them can be found to render useful temporary service from time to time, and their cumulative service can to some extend reduce the need for creating additional full-time judgeships.

In Chapter 7A there are now a number of provisions for recall of emergency justices and judges. These are justices and judges who have retired prior to reaching the mandatory retirement age, and who have accepted commissions as emergency judges good until they reach the mandatory retirement age. These provisions serve a salutary purpose, and for the time being should not be disturbed. The provisions

recommended above for recall of mandatorily retired justices and judges should be enacted in addition to and entirely apart from the current statutes affecting emergency justices and judges. Eventually it will be desirable to merge and simplify the various statutes concerning recall of emergency and mandatorily retired justices and judges, but that should not be undertaken at this time, as the single objective of obtaining authority at an early date for recall of mandatorily retired justices and judges should not be jeopardized by inclusion in a vastly more complicated proposal.

For many years the compensation of a recalled emergency justice or judge has been limited to $100 per week, plus expenses. This compensation is so low as to in fact discourage acceptance of commissions as emergency justices and judges by those who retire early, and the Commission recommends that it be raised to about $75 per day. An emergency justice or judge, depending on his basic retirement compensation, could work as an emergency justice or judge at this additional rate for 25 weeks or more per year, and the increased per diem compensation should cause additional emergency judges to volunteer to so serve when needed. (We recommend that a retired justice or judge's basic retirement compensation, plus his additional compensation when on recall to emergency service, not be allowed to exceed the compensation of an active justice or judge of the bench to which the retired justice or judge is recalled.)

Currently there are five nondisability retirees of the Supreme Court bench. If recall for temporary service of these justices is authorized, this number should be adequate to fill any single tem-

porary vacancy or disability on the seven-justice bench, but this number of nondisabled retirees is unusual, and is not likely to continue. There are currently only two retirees of the Court of Appeals, a number likely to increase over the years. Since the work of the two appellate courts is substantially the same, the Commission feels that it would be desirable if a retired justice or judge from either appellate court could be recalled to serve on either appellate court. This would year in and year out at least double, perhaps triple, the number of retired appellate justices and judges eligible for voluntary recall. Article IV, Sec. 8, however, limits a recalled justice or judge to service on the court from which retired. This seems to be a restriction suitable, perhaps, for the days when there was but one appellate court. Now it serves only to deny the appellate bench a larger pool from which qualified retired justices and judges can be voluntarily recalled for temporary service. The Commission recommends an amendment to Article IV, Sec. 8 of the Constitution that would permit service of a recalled appellate justice or judge on either appellate bench. (A similar provision is unnecessary for the trial benches because of the much larger number of judges available, and because of the dissimilarity in jurisdiction and procedures between district and superior court.)

Caseload Relief for the Supreme Court. G.S. 7A-30 provides that there is an appeal as of right to the Supreme Court from any Court of Appeals decision in which there is a dissent. In the early years of the Court of Appeals there was a small and manageable number of these 2 - 1 opinions, but the number of dissents has been growing along with the numbers of judges and decisions. Volumes 294 through

298 of the North Carolina Reports, (1978-79) contain 47 cases which reached the Supreme Court through this dissent provision, and based on Fall, 1980 statistics, the Court estimates that there will be 85 such appeals in 1980-81. Frequently the dissenting judge files no opinion, requiring the higher court to do the additional research that may be necessary to isolate the issue in dispute. In 1978-79, 55% of these appeals were affirmed.

The Supreme Court takes the position that the dissent itself is enough to alert the Supreme Court to the fact that the decision is controversial, and may contain issues of importance and sensitivity requiring the high court to scrutinize the record with more than ordinary care. This can be done in this same group of cases by examination of petitions for writs of certiorari rather than by appeal as of right, with saving of time and money to the appellant, and a saving of time to the court. The workload savings to the Supreme Court, based on a projection of current figures, would be several opinions per justice per year. The Commission recommends accordingly that G.S. 7A-30 be amended to delete the provision for an appeal as of right in these dissent cases. This will still allow discretionary review of these cases by petitions for writs of certiorari.

Prior to 1977, under G.S. 7A-28 (since repealed), appeals from decisions of the Court of Appeals in post-conviction proceedings were final and not subject to further review by the Supreme Court. This statute had apparently worked well for ten years, and it expedited the petitioner-prisoner's access to the federal courts for collateral attack on his conviction (by exhausting his state remedies) which in

many cases was the petitioner's primary objective in the first place. In 1977, with the enactment of Chapter 15A, the new criminal procedure code, G.S. 15A, Article 89, superseded G.S. 7A-28, and authorized review by the Supreme Court of these post-conviction matters formerly finally disposed of at the Court of Appeals level. This has resulted in a flood of post-conviction petitions reaching the Supreme Court in recent years. A second appellate review of a post-conviction proceeding, coming on top of the usual direct appeal or appeals that follow the trial, is simply an unnecessary step that delays finality and adds to the expense of all parties. A reversion to the procedure as it existed prior to 1977 would deprive no petitioner of his right to present his post-conviction complaint to at least one North Carolina appellate court, before going on, if he chooses, to the federal courts, and it would unburden the Supreme Court of a substantial portion of its petitions docket. The Commission accordingly recommends an amendment to G.S. 15A, Article 89, that would restrict final review of post-conviction-type motions (they are listed in G.S. 15A-1415(b)) to the Court of Appeals.

Caseload Relief for the Court of Appeals. Article IV, Sec. 12 of the State Constitution provides that the Supreme Court reviews appeals from the "courts below". This has been interpreted to prohibit direct review by the Supreme Court of appeals from administrative agencies. Smith v. State, 289 N.C. 303 (1976). Accordingly, under G.S. 7A-29, appeals from certain major administrative agencies, particularly the Utilities Commission, go directly from the agency to the Court of Appeals. (Initial review of decisions of many lesser administrative agencies is had at the Superior Court level.) Since the general ratemaking decisions of the Utilities

Commission are of major importance to a substantial portion of the state's population, G.S. 7A-30 since 1967 (when the Court of Appeals was created) has always provided that decisions by the Court of Appeals in these cases are reviewed as of right by the Supreme Court. These cases are always controversial, and the appellate records are nearly always massive. In addition, whatever the decision of the Court of Appeals, these cases are always appealed to the Supreme Court. Review by the Court of Appeals, therefore, is but a preliminary, non-dispositive step on the way to final review by the highest court. The delay occasioned by this initial review amounts to many months, and is expensive to the State and the petitioners. Since the Supreme Court ultimately must decide these cases anyway, it recommends that the Constitution be amended to provide that the General Assembly may authorize by-passing of the Court of Appeals in these cases. The Commission further recommends that non-ratemaking final decisions of the Utilities Commission be directly reviewable by the Supreme Court by writ. There are a few of these that fall into the same general character as general ratemaking cases, and the Court should have discretionary authority to treat them as such, when so authorized by the legislature. The result will be a quicker and less expensive end to each case, and a substantial relief to the Court of Appeals, since these cases, while few in number, require disproportionate amounts of judicial time.

The proposed constitutional amendment to permit routing of Utilities Commission appeals directly to the Supreme Court, if approved by the voters in 1982, and implemented by the General Assembly in 1983,

will at that time bring modest relief to the Court of Appeals in a very limited category of cases. Meanwhile the general case load will continue to mount. The pressure on the Court requires quicker and more significant relief. Under current law, almost any final decision of a trial court is appealable to the appellate division. "Appellate division" in all but capital and life-imprisonment cases, means initially the Court of Appeals, and the Court has no choice but to accept the appeal, regardless of its merit, or lack of merit, and accord it the same legal consideration as a criminal conviction with a thirty-year sentence or a civil judgment for millions of dollars. In some states, the jurisdiction of the appellate court or courts is discretionary, or largely so. This is true in our sister state, Virginia, for example, where the high court is free to examine petitions for writs of certiorari, and select from among them those that are obviously significant and deserving of the closest attention, and deny review to those that are obviously routine, frivolous, or otherwise lacking in merit. The Commission does not propose such a major change for North Carolina. But it does propose that an attempt be made to isolate those North Carolina appeals that are obviously routine, frivolous, or otherwise lacking in merit and reassign them from an "appeal of right" status to a discretionary appeal (certiorari) status, so that the Court of Appeals in the long run will have additional time to spend on the comparatively more important discretionary appeals in which the petition for review is granted or on appeals in which review is mandatory.

With this latter principle in mind, the Commission, on recommendation of the Chief Justice, and after considerable debate, recom-

mends that the following categories of mandatory review cases be transferred to discretionary review status: 1) a superior court misdemeanor conviction that does not include a sentence to active confinement; 2) a superior court order revoking probation or parole; 3) a civil case involving child support or child custody; 4) a juvenile proceeding (including termination of parental rights); and 5) an order of involuntary commitment of a mentally ill, inebriate, or mentally retarded person. Conforming changes should be made in various sections of General Statutes Chapters 7A, 15A, and 122.

In addition to lifting some of the burden of the Court of Appeals, making review of these categories of cases discretionary will have several other beneficial effects. Review by writ of certiorari will be quicker, as the petition can be prepared more readily and reviewed more speedily, and if review is granted, the period for presentation of the record to the Court need be no longer than that now available for initial direct appeal. Presenting the petition for the writ will be easier for the attorney, and less expensive for the petitioner-client. In the great majority of these discretionary review cases, the main issue will be the adequacy of the trial judge's findings of facts and conclusions of law--matters particularly appropriate for review by petition--where the only question is whether the judge's findings and conclusions are supported by the record. And in some cases in which the petition is not granted, earlier decision of the case (many months earlier, in some instances) will be of special benefit to the parties involved. This is particularly true in child custody,

support, juvenile, and commitment cases where a prompt decision is sometimes of as much value as the decision itself.

See Appendices B through G for bills implementing the above recommendations.

TRIAL COURT ADMINISTRATORS

G.S. 7A-355-356 (Chapter 1072, S.L. 1979) created a trial court administrator for judicial districts 10, 22, and 28, and "such other judicial districts as may be directed by the Administrative Officer of the Courts." This statute provided that the duties of the administrator are to assist the judges in managing the civil docket, improve jury utilization, and perform "such duties as may be assigned by the senior resident superior court judge" or by other judges designated by him. The same act directed the Commission to study the qualifications, duties, compensation, and effectiveness of trial court administrators, and report to the 1981 session of the General Assembly.

The office of trial court administrator was first established in this state in 1977 through a grant of federal funds administered by the Administrative Office. Three districts were set up as pilot districts; these are the same three now codified in G.S. 7A-355. The administrators appointed in these districts assisted in management of civil dockets, and in improving juror utilization, duties that were later made a statutory responsibility. (In two of these districts, one-day-juror-service systems have been introduced to replace the standard one-week-of-juror-service system). Reaction to the success of these administrators on these duties led to the permanent establishment of the office by 1979 legislation, and the Administrative Office and local senior regular superior court judges have now jointly established additional administrator offices in judicial districts 3, 14, 17, 18, and 26. On the state level, Mr. Henry Campen, formerly the original administrator in the 28th judicial

district (Buncombe County), has become the state Administrator of Trial Court Services in the Administrative Office of the Courts.

The trial court administrators in the three districts first activated have apparently been quite successful in monitoring civil dockets for the senior resident judge (who is usually out of town on rotation) and expediting the trial of civil cases. By "riding herd" on the civil docket, sometimes at night and on week-ends, breakdowns due to various factors have been minimized, and trial judges have been kept busier, with a resultant decrease in civil backlogs. Similar good results have flowed from the administrator's attention to the juror selection process. Extensive use of computerized management in several districts has resulted in savings in the preparation of the master jury list, and several counties have realized further economies in the use of jurors by installation of on-call telephone service for standby jurors, and at least three counties have adopted a one-day, one-trial juror service, whereby a jury, if not used on the day for which summoned, is excused, and his obligation of service is discharged for the two-year period. If called for service on the day summoned, he serves for the duration of one trial. Morale of jurors is said to have improved under this management, and man-hours and money wasted due to summoning of more jurors than needed have decreased.

Other duties performed by trial court administrators in recent months include working with county officials in courthouse renovation and expansion plans; administration of the assigned counsel bar committee and the legal service referral bar committee; and assisting the clerk of superior court, on request, on a variety of projects. The administrator

in the 18th district (Guilford County) has worked closely with the trial judge, the clerk, the DA, the defense attorneys, the sheriff, and other officials in coordinating unique problems in the lengthy multi-defendant trial recently completed there. And all the administrators are now assisting in a current color slides project for orientation of jurors. The pilot audio visuals on this project are already in use in Wake County. These materials should save a lot of judicial time, especially in the one-day juror counties.

Figures presented by Mr. Campen to the Commission in October, 1980, indicate that the trial court administrators now in office have not only been effective in reducing case backlogs, and in streamlining jury management (with documented savings), but in other ways as well. The administrator in Buncombe County has helped the clerk reduce delinquent non-support accounts from 20% to 5%, and the administrator in Charlotte has arranged for the local legal newspaper to print the trial calendars at a savings in clerk's funds. The Wake and Buncombe County Bar Associations, and the North Carolina Bar Association have each gone on record in support of the trial court administration concept.

National standards for trial court administrators (there are now nearly a thousand of them in fifty states and in the federal courts) call for a graduate degree in management and prior court management experience, plus skills in getting along with people, in communicating ideas, and in developing the trust and confidence of the bench and bar. The Administrative Office, in recruiting the trial court administrators now at work in the state, has endeavored to adhere to these standards. Recruiting individuals who meet these standards has been difficult. The

compensation ranges ($16,620 to $23,556 in the smaller districts; $18,612 to $27,132 in the larger districts) are apparently somewhat below the national average; at these schedules, only 15% of the 250 resumes received by the Administrative Office met the qualifications desired.

Although the trial court administrator has only been in operation in the newer districts an average of a year or less, the sucessful experience with the three earlier administrators in the 10th, 22nd, and 28th districts, and the promise shown to date in the newer districts leads the Commission to believe, and it therefore so finds, that these administrators have been effective in both the managerial and the economic sense; that the statutory guidelines under which they are operating are adequate for the immediate future; and that the statute should be adjusted, if ever, only in the light of greater experience.

Based on its studies and findings, the Commission recommends that the high qualifications imposed for applicants for trial court administrator positions be adhered to, and that neither the standards nor the compensation scales be lowered. The Commission also recommends that the number of trial court administrator positions be retained at the present level, at least for the immediate future. It is unlikely that an administrator will ever be needed in the smaller districts, and more observation based on the existing districts (especially multi-county districts) is necessary before further expansion of the system to additional districts is authorized. Additional observations and reports will be made in 1983.

The Commission has two final recommendations. We understand that

the current state administrator of trial court services is paid from temporary federal funds. We feel that this position is abundantly cost-effective, and recommend that it (with necessary secretarial support) be included in the regular state budget.

The final recommendation has to do with two minor technical amendments to G.S. Chapter 9, (Jurors), to bring this chapter fully in line with current practices regarding computerized jury management, and an amendment to G.S. 9-6(b) that would authorize a chief district court judge, in his discretion, to delegate to his trial court administrator, if any, the duty of passing on applications for excuses from jury service. This would be entirely optional with the chief district judge, and in multi-county districts would occasionally save the judge time that might be better spent in the courtroom.

See Appendix H for bill implementing the above recommendation.

OFFICE OF PUBLIC DEFENDER

Chapter 1211, S.L. 1979 (2d Session, 1980) asked the Commission to study the office of public defender generally. Governor Hunt, by letter of April 11, 1980, also asked the Commission to study certain aspects of the public defender system. Specifically, he suggested that the question of the quality of services rendered by the defenders be examined; that consideration be given to whether the system should be extended to additional judicial districts; and whether determinations of indigency could be made in a more equitable and economical manner. The Commission went into these issues with some care, hearing from public defenders, attorneys in private practice, judges, and the Administrative Officer of the Courts. After considerable debate, the Commission reached a consensus on the issues presented.

The evidence tended to show that the public defender represents his clients as well as members of the bar at large represent their privately retained or assigned clients. This is because a defender's office with a large volume of similar cases quickly acquires an expertise in the criminal law generally and in high-volume cases in particular that cannot be acquired by a large number of members of the private bar that that may be assigned or retained to handle a criminal case infrequently. This is true even though the caseload per defender-lawyer may be higher than is desirable, and the defender's office has a modest personnel turnover problem, like the office of the District Attorney, that career incentives so far have not adequately solved. The Commission also found no substance to the charge occasionally heard that public defenders

tend to become too "cozy" with the District Attorney, and "trade off" a lenient plea arrangement in one case for a less advantageous arrangement in another, or vice versa; the desire of both parties to preserve and build their own reputations seems to weigh heavily against this.

Having satisfied itself that the public defender offices in the state (five judicial districts totalling six counties in 1980; the third district with four additional counties was added January 1, 1981) are rendering satisfactory professional service, the Commission turned to a more controversial issue--whether the system should be expanded to additional districts. This issue involved two major concerns--the cost-effectiveness of the present defender offices, and the need for preserving an active criminal bar in each community that can serve criminal defendants with resources to employ their own counsel and accept assignments to represent indigents when the defender has a conflict of interest or a caseload that exceeds his staff's capacity.

The Commission was unable to reach a firm and precise conclusion as to the cost-effectiveness of the public defender as contrasted to the assigned counsel system in use in most districts of the state. Detailed but conflicting figures were presented by the public defenders and by the Administrative Office of the Courts. The defender's figures tend to show that the per-case cost of representing each indigent client is much lower in a defender district than the per-case cost in districts without a defender office. They admit that this figure does not include overhead such as rent and office supplies, but estimate that inclusion of such additional costs would not substantially affect the favorable economics of the defender system. The Administrative Office, on the other

hand, presented figures that tend to indicate that the state-paid expenditures for indigent defense services (public defender plus assigned counsel) in the public defender districts were among the highest of all districts in the state. Since the defender offices process approximately 90% of the indigency caseload in their districts, this would appear to raise some question as to true cost-effectiveness in defender districts as contrasted to assigned counsel districts, and the Commission does not believe that statistical data (with a common base) exists to answer this question precisely. It expresses the hope that such data will be developed for the near future. Meanwhile, the Commission tends to concur in the position of the Administrative Officer of the Courts that the caseload is such in Judicial Districts 10 (Wake County), 14 (Durham County), and 21 (Forsyth County) that establishment of an office of public defender in those districts has only the potential of being cost effective.

This brings us to the second major concern. Will creation of a public defender's office in additional districts "dry up" the pool of competent criminal defense attorneys in those districts so that the administration of criminal justice will be adversely affected? The Commission is not aware of any studies having been made in the defender districts of the impact of the defender's office on the vitality of the private criminal bar. At the same time it is aware of concern by the local bar in both defender and non-defender districts that an insufficient quantity and variety of criminal defense work is available to private criminal attorneys in defender districts to maintain an adequate number of attorneys competent and available for the representation of nonindigent criminal defendants. Since recent figures indicate that the defender offices are doing

about 90% of the indigent criminal defense business, and only a very small percentage of criminal defendants employ their own counsel, there may be substance to this concern. A better mix, the Commission feels, would be defender representation of 75% to 80% of the indigent defendants, rather than 90%. A reduction in the current ratio, from 90% to 80% coverage of indigency cases, can be done administratively, and, according to our understanding of the Administrative Office's latest figures, would cost little, if any, in additional funds for representation of indigents. Maintenance of this ratio would go a long way toward assuring a strong criminal defense bar in defender districts, and would be a desirable ratio to aim for if the defender system were extended to additional districts. Such a mix would also be consistent with a national standard in this area (ABA Standard, Providing Defense Services, Sec. 5.1-2) that calls for "substantial participation" by the private bar as assigned counsel in public defender districts. (Consistent with this standard, the D.C. statute limits defender participation to no more than 60% of eligible cases, for example.)

Several witnesses before the Commission expressed dissatisfaction with the standard for determining indigency, the way the standard was implemented, and the number of undeserving (non-indigent) defendants who took advantage of a fallible system to obtain "free" counsel. The Commission believes that some improvements can be made in this area.

Research into the definition of indigency, for the purpose of determination of entitlement to counsel, indicated to the Commission that there was no agreement among the various states either by statute or case law as to what constitutes indigency; that the nearest thing to a national

consensus on this issue is the ABA Standard, Providing Defense Services, Sec. 6-6.1, and that this standard is similar to and not necessarily an improvement on the N.C. standard set forth in G.S. 7A-450 ("An indigent is a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation . . ."). The Commission therefore makes no recommendation for change in this statute. But the Commission recommends that three measures be taken to implement the standard in ways that will tend to screen out those persons (estimated by some testimony at 10% or more) who are able to retain a private attorney but nevertheless obtain appointment of counsel as though indigent. The first of these is to improve the quality of information now gathered on the Affidavit of Indigency Form (AOC-L-167), and the Commission understands that the Administrative Office has undertaken to revise and reissue this form. Second, the Commission recommends that trial judges, who frequently now make only the most perfunctory inquiries as to the defendant's resources, be required (by an amendment to G.S. 15A-603(b)) to inform the defendant that if he is provided with counsel at state expense, and is convicted and placed on probation, a condition of probation will probably be that he reimburse the state for the expense of counsel. Defendants whose eligibility is questionable will thus be forcibly reminded, in open court, that, contrary to existing impressions, counsel is indeed not "free". The Commission is aware of the pressing demands on the judge's time, but feels that this warning, which should take no more than a minute, is only fair and proper, and would itself be "cost-effective" in terms of state funds saved. Finally, the Commission recommends that an additional deputy clerk be provided in the larger counties whose sole

function, under the direction of the clerk, would be to investigate borderline or suspicious indigency affidavits, and make report to the court when the investigation reveals facts that seem to indicate that the affiant can afford to employ his own attorney. This measure should be limited to only those dozen or so high volume counties in which it is estimated that the counsel fees saved by the investigator would more than pay for the investigatorial expense. Awareness of such an investigative effort would undoubtedly have a favorable impact on the incidence of fraudulent or perjurious affidavits.

In 1980, the General Assembly extended the public defender system to the 3d judicial district, effective January 1, 1981. This is a four-county district, with six widely separated seats of court. The first five districts are one-county districts (with the exception of Cumberland-Hoke, with about 90% of the trials concentrated in Cumberland). The inclusion of the 3d district is thus experimental in nature, at least as to its cost-effectiveness, as defender offices in that district cannot be concentrated in one place, and much nonproductive travel time may be required by individual defenders. The results of this experiment will be reported on in 1983.

To summarize, the Commission finds that the quality of services rendered by existing public defender offices in North Carolina is entirely adequate. It also finds that the statutory definition of indigency is workable, and not likely to be improved by borrowing language from other states, as there is no consensus among them as to what indigency is, or how it should be determined. The Commission further finds that determinations of indigency could be made in a more equitable and economical

manner, and recommends two steps (a warning by trial judges to indigents that counsel is not "free", and employment of investigators in high-volume counties to check affidavits of indigency) to improve this situation. Finally, the Commission recommends that the defender system not be extended to any additional districts at this time, as existing data as to cost-effectiveness is inconclusive. Pending the availability of a reliable study aimed specifically at determining by the most accurate methodology available the relative costs to the State of the public defender system as opposed to the assigned counsel system, the Commission feels that a recommendation would be premature. The Commission will seek to generate the appropriate data in the coming biennium.*

See Appendices I and J for bills implementing the above recommendations.

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*December, 1980 figures received from the Office of State Budget and Management indicate that the total cost of providing legal services to indigent defendants in the 28 assigned-counsel districts amounted to $5,990,000 for 1980-81, whereas the cost of providing indigent services in the five districts with the defender system for the same period was $1,405,000. While it is true that the five defender districts are all large, urban districts, there are also some large, urban districts in the 28 assigned counsel districts. The Commission uses these figures only to support its conclusion that the cost-effectiveness issue requires further study.

At press-time, the Commission has received and accepted an offer from the State Budget and Management Office to undertake the cost-effectiveness study mentioned above.

DECRIMINALIZATION OF TRAFFIC OFFENSES

Resolution 66 of the 1979 Session of the General Assembly directed the Commission to study "the processing of minor traffic cases through the courts system in this state and to direct its efforts toward formulating alternatives to the present system." In addition to this direction, the Governor, Chief Justice, Bar Association, Association of Black Lawyers and various individuals appearing before the Commission recommended that it study the situation and make recommendations for improvements. Many of those recommendations included a specific suggestion that an administrative agency be given the jurisdiction over minor offenses.

With this broad base of support for a study of the present situation, the Commission first focused on the scope of the problem. Making that determination proved to be no small problem in itself. Perceptions among the members and those testifying about the situation varied widely. Statements from commission members indicated that, in some rural counties, traffic cases are heard in district court efficiently and without undue burdens on the judges, supporting personnel or the public. Superior court in those counties seems to be similarly well-equipped to handle the traffic caseload. In those counties, making changes will almost certainly cost more money, leave existing personnel underemployed and perhaps offer no significant advantage to the public.

The major urban counties present a much different picture. Those courts have large caseloads, with the corresponding problems that such a volume brings. Testimony from judges and others working in those

courts indicates that in district court the cases heard must be rushed to completion to allow the judge to finish the daily docket. Litigants or witnesses must frequently wait for long periods or may have to come back to court numerous times before their cases are heard. Other matters, such as general civil matters, cannot be heard promptly because of the volume of traffic cases. Superior courts in those counties also must give relatively little attention to the traffic cases appealed to that court if they are to comply with speedy trial laws and dispose of the more serious misdemeanors and felonies.

An additional factor is the sheer complexity of tne problem, regardless of the current workload in the county. Traffic cases amount to nearly two-thirds of the total volume in criminal court in North Carolina, and any substantial change in the present system will have a major impact on the workloads of judges, clerks, magistrates and police. The effect on each group of officials must be carefully considered before any proposal should be recommended. In addition, the costs of establishing a new system could be substantial and the impact any major changes would have on existing revenues for the state and on counties must be taken into account. Finally, many of the changes frequently mentioned, such as creating a new category of hearing officers, elimination of trial by jury, etc., may require a constitutional amendment, and that is always a serious matter that requires careful study.

Despite the complexity and multi-faceted aspects of the problem, the Commission, with recommendations from so many officials and groups favoring action in this area, considered several alternative proposals for dealing with the problem.

The alternatives were:

1. Changes in the existing traffic court that don't affect the basic scheme of allowing waivers before trial of minor offenses, or trial without a jury before a district judge and if the party appeals, trial by jury in superior court. Some of the modifications discussed include requiring a form of pretrial arraignment for traffic offenders and requiring special all-traffic sessions for district and superior courts.

2. Changes in the magistrate's jurisdiction that allow that official to hear and dispose of more cases. The Commission discussed the present traffic offense waiver list and whether it should be expanded, and it also discussed whether magistrates should be given any jurisdiction to decide not guilty pleas in certain minor cases.

3. Creation of a special official in the court system whose only job would be to initially hear and dispose of minor traffic cases. The official could be a magistrate, or he could be an entirely new official not presently contemplated by the statutes or constitution.

4. Creation of an administrative agency to initially hear and dispose of minor traffic cases (or assigning this task to an existing agency).

Recommendation

After discussing these alternatives, the Commission returned to its original conclusion that the problem is too complex to be resolved quickly. The Commission believes that the situation deserves its attention, and it intends to continue to study the matter. Before any recommendations can be developed, however, the Commission feels that it must know more

about the extent and nature of the problems rural and urban counties are facing. When that additional information is available, the Commission will consider the matter more fully, and will report on its progress to the 1983 Session.

MAGISTRATE'S COMPENSATION

Magistrate's are compensated according to a table established by statute (G.S. 7A-171.1). The table has six categories, beginning with "Less than 1" prior year's experience, and ending with "9 or more" with categories in between established for each two-year increment. Currently, a magistrate's salary is determined by the number of years of service the magistrate has accumulated at the beginning of the term (January of odd-numbered years). A magistrate's salary cannot then rise to the next category until he begins a new term. For all magistrates this policy works a hardship. For example, a new magistrate appointed at the beginning of a term will be paid the salary for those with less than 1 year's service for two years, even though he has more than one year's experience for the second year of his term. He will then be one year late in being elevated to his next category, as well as for each remaining category, until he reaches the final one. Other state employees receive merit increases on their anniversary dates of service, and the Commission sees no reason why the magistrates should not be treated in the same manner. It would be slightly more difficult for the Administrative Office of the Courts to apply the salary schedule using anniversary dates instead of the date the term begins, but the advantage of treating the magistrates like other employees in this regard outweighs that disadvantage. The Commission thus recommends that the date for determining if a magistrate is eligible to move up to a new salary category be his service anniversary date instead of the date his next term begins. The accompanying legislation does not contain a specific appropriation

because the information needed to determine the amount necessary to pay for the change is not available as this report goes to press. The specific figure (somewhere around $200,000) will be included in the bill when it is introduced.

See Appendix K for bill implementing the above recommendation.

STATE'S COUNSEL FOR LOCAL INVOLUNTARY COMMITMENT HEARINGS

General Statutes Chapter 122, Article 5A, provides that the initial hearing before a district court judge in an involuntary commitment proceeding for persons allegedly mentally ill (inebriate, mentally retarded) shall be held at one of the state's four regional psychiatric facilities, unless the respondent objects, in which case the hearing is held in the county in which the respondent was taken into custody. However, if a county has a community mental health facility designated by the Division of Mental Health for this purpose, the respondent may initially be held at this facility pending the initial 10-day hearing, held locally. Only a handful of respondents request hearings in their county of residence, and only a few counties have community mental health facilities for temporary custody of local respondents pending the initial hearing.

The State provides an assistant Attorney General at each regional psychiatric facility to represent the State's interest at these hearings, but currently there is no provision in the law for the state's interest to be represented at a local hearing. In those few counties with local facilities the number of hearings is substantial (annually in Mecklenburg County it amounts to over a thousand), and the presiding judge is forced to conduct the proceedings without the benefit of a state's representative to bring out the evidence for commitment or, if he chooses not to depart from the ethically neutral position required of his office, sometimes to rule for the respondent and thereby release a person who may be ill and dangerous to himself or others. At one time,

the law authorized the judge to call upon the local district attorney to represent the state's interest in these local hearings, but that provision was removed in recent years. In the interest of the proper administration of justice, the Commission recommends legislation requiring the district attorney to represent the State at these hearings. In most counties the number of additional cases will be no particular burden to the district attorney; in a very few the number of additional cases may require that the district attorney seek an additional assistant or part-time assistant to present these cases. The Commission recommends support for any such requests.

See Appendix L for bill implementing the above recommendation.

OFFICE OF CLERK OF SUPERIOR COURT

Resolution 76 of the 1979 Session of the General Assembly directed the Commission to study the Office of Clerk of Superior Court and report its findings and recommendations to the 1981 General Assembly. That resolution specifically directed the Commission to study the "method of appointment, compensation of the clerk, and the method of appointment, compensation, and criteria by which allocations of assistant and deputy clerks are determined for each county." In response to this direction, the Commission asked the two Commission members who are clerks to discuss the matters presented in Res. 76 with other clerks at the annual clerks' conference. They did so and reported back to the Commission on the discussion. The Commission then considered their report, and in addition, invited and heard from the president of the association on matters of concern to clerks that are not mentioned in Res. 76. As a result of that input and the Commission's deliberations, the Commission makes the following findings and recommendations concerning the office of clerk of court.

Issues Raised by Res. 76

1. Method of Appointment of Clerks. The Constitution (Art. IV, Sec. 9(3)) establishes the office of clerk of court for each county and requires that clerks be elected every four years. The regular resident Superior Court Judge fills any vacancy in the office until the next regular election. The Commission finds that the present method of selecting clerks is appropriate for the office, and it makes no recommendation for changing the method.

2. Compensation of the Clerk. Clerks of court are paid a salary established by statute. The statute creates several categories, based on population, and the clerk is paid according to the category in which his county's population falls. There are six categories, ranging from "Less than 10,000" to "200.000 and above." The current salary for clerks in the category of smallest counties is $15,024 and in the largest counties the salary is $35,808.

The Commi sion recognizes that clerks in all counties have the same general duties. Clerks in larger counties, however, have larger caseloads and more personnel to manage and the Commission believes the existing method of determining the salary properly takes that fact into account. The Commission also understands that the categories include counties with wide differences in population and that recognizing increases in population only every 10 years may create inequities in salary, but it knows of no better way to set salaries. After the court reform statutes standardized salaries in the 1960s, there was one other factor used in determining a clerk's salary. The Administrative Officer could, in addition to the salary established by statute, give "merit" increases to clerks, if, in his opinion, they were justified. That statute, which allowed an appointed officer in Raleigh to affect salaries of elected officials, was repealed by the legislature in 1975, and the Commission makes no recommendation for reinstating that power at this time.

There is one inequity that the Commission believes should be corrected by the legislature. At present clerks

in the counties with populations under 10,000 earn a salary of $15,024. Magistrates with 9 years of experience earn $14,640. The Commission believes that the present salary for clerks in that category does not reflect the difference in judicial responsibility placed on the holder of that office and on magistrates, and believes that salary category should be raised. Raising the salaries in all categories is not practical since the judicial salaries now represent a carefully maintained balance, and raising salaries of one category of officials necessarily affects other salaries. To remedy the inequity, the Commission recommends that legislation be enacted to eliminate the category of counties with the lowest population, thereby creating a new category of "Less than 20,000" to replace the first two under the existing system, and retaining the present salary for the "10,000 to 19,999" category for that new category. The effect is to raise the salaries of clerks in counties with less than 10,000 population to $19,056. Nine counties are affected by the proposal.

3. Method of appointment of Assistant and Deputy Clerks. Clerks presently hire and fire employees at their pleasure, subject to constitutional and federal statutory limitations on the exercise of that power. Since the assistants and deputies act in the name of the clerk in matters of great importance, the Commission believes the present method of selection of assistants and deputies should be continued.

4. Compensation of Assistant and Deputy Clerks. Salaries for assistant and deputy clerks are set by the Administrative Office of the Courts after consultation with the clerk and consideration of the job's duties, comparable salaries, and the employee's experience. Clerks may ask the Administrative Office to reevaluate a position and reclassify if the working conditions justify the change. The Commission finds that the present system is satisfactory, and therefore makes no recommendations for changing the present system.

5. Allocation of Assistant and Deputy Clerks. G.S. 7A-102 provides that the Administrative Office determines the number of assistants and deputies for an office, after consulting the clerk. In its budget requests to the Advisory Budget Commission and the General Assembly, the Administrative Office makes recommendations for new positions based on its judgment, after consulting with the affected clerk, of the needs in each county. In recent years, an additional method of allocating new positions has arisen. Legislators, either on their own or at the request of a clerk, have begun to introduce special appropriations bills establishing new positions for specific counties. A substantial percentage of new positions are funded in this manner, and it bypasses the method for allocating new positions contemplated by G.S. 7A-102. The Clerks' Association asked the Commission to study this situation, and it suggested that the Administrative Office is in a better position than the legislature

to apportion the limited resources available for new positions. The Commission recognizes and continues to study the problem, but does not have recommendations at this time.

Other Issues Raised by the Clerk's Association

1. Subdivision Controls. G.S. Ch. 39, Art. 5 requires persons selling certain subdivision lots to obtain a permit from the clerk before doing so. The clerk must obtain a bond or other financial security from the developer in a sufficient amount to cover the cost of common improvements to the subdivision such as street paving, lights, etc. In the 40 years since the article was enacted, subdivision regulation has become an accepted function of local governments, and as a result, most clerks have never issued (or been asked to issue) a permit under the article. Clerks are unhappy with the article for two reasons: (1) it imposes on them a duty that is not judicial and (2) it subjects them to potential liability for actions of builders that they had no way of knowing about in advance.

   The Commission concurs in the judgment of the clerks, and it recommends that the article be repealed. To allow counties or cities who have relied on the article time to enact their own subdivision regulation ordinance, the Commission recommends that the effective date of the repeal be July 1, 1982.

2. Jail List of Prisoners. G.S. 7A-109.1 requires the clerk to furnish a list of jailed prisoners to any superior court

judge holding a criminal session in his county on the day the session begins. A similar list must be furnished to district court judges weekly, or at each criminal session, whichever is less frequent. The report must be accurate as of the Friday noon preceding the session of court. The clerks indicated that they simply take information from the sheriff or jailer and transmit it to the judges. The clerks felt that it would reduce their workload slightly and add no work to the sheriff's staff to have the list furnished by the jailer instead of the clerk. The Commission agrees with that argument and recommends enactment of legislation to accomplish that purpose. The proposed legislation also directs the jailer to give a copy of the list to the district attorney (which may help him keep up with the timekeeping requirements of the speedy trial laws), and it allows the jailer to make the list at any time, instead of requiring it to be frozen on Friday noon (many counties can prepare the list on Monday morning, and that is much more useful to the judge).

3. Election Reports to the Secretary of State. G.S. 163-178 requires the clerk to transmit a report of the election results in his county to the Secretary of State's office. The clerk simply takes information sent to him by the County Board of Elections and then retypes it on a different form and sends it to the Secretary of State. The Secretary of State's office currently (and in the recent past) has not used the reports at all, since they get the same information

from other sources more quickly than from the clerks. The reason for the statute (it was enacted in 1933) was apparently to help prevent election fraud by requiring wide dissemination of election results, but since the clerks only take information given to them by others, there is little benefit to be gained by having the clerk send the secondhand information to Raleigh. The Commission finds that no useful purpose is served by the statutory requirement. It recommends that it be repealed.

4. Collection of Fees for DUI Schools. G.S. 20-179.2 directs clerks of court to collect fees from persons assigned by courts to attend Alcohol and Drug Education Traffic Schools as a condition of a suspended sentence or limited driving privilege. The money collected is sent, on a monthly basis, to the area mental authority which, in turn, sends some of it to the Department of Human Resources and retains the rest of it to run the local program. Many clerks have found that keeping the records (and keeping the local schools informed as to who has paid) places a strain on their accounting and bookkeeping operations. This is especially true if the defendant is paying the total fine, costs, and school fee in installments. More basically, many clerks believe the collection of this money is not an appropriate use of the time of Judicial Department employees. Finally, they believe that fears by officials in the mental health system about lower collection rates if they collect the money are unfounded,

since the defendant must pay his fee to successfully complete the course, and, in most cases, successful completion is required to obtain prompt return of one's driver's license. The Commission concurs with the clerks, and recommends that mental health authorities be required to collect the fee.

See Appendices M through Q for bills implementing the above recommendations.

SELECTION OF MASTER JURY LISTS

Since 1967 G.S. Chapter 9 has required that the master jury list in each county be composed of names taken at random from the county property tax rolls and the local voter registration lists. Other reliable sources of names may also be used, and a few counties have supplemented the above lists with names from local telephone books and lists of high school graduates. There is a growing body of evidence that these sources and procedures, while constitutional, result in under-representation of various cognizable population groups, such as racial minorities, women, and the poor, for example, compared with the actual percentages of these groups in the general population. Preliminary research indicates that the property tax rolls may be biased in favor of men, whites, and the more affluent, and that lists of licensed drivers are more representative of these groups. If this is confirmed by research now being conducted, the Commission expects to recommend to the 1981 session of the General Assembly amendatory legislation that will authorize, or perhaps mandate, use of driver license lists in lieu of tax rolls, as soon as the Commissioner of Motor Vehicles can acquire and make available to each county a list of licensed drivers resident in that county.

PENDING AND FUTURE STUDIES

As this report goes to press, the Commission's studies and recommendations on three major topics are still in progress. They are: (1) composition of the master jury list, (2) "career compensation" for assistant district attorneys, and (3) decriminalization of traffic offenses. The first two topics it expects to make recommendations on before the adjournment of the 1981 session; the last topic is unlikely to be solved this year, and remains on the agenda for action in 1982 or 1983. The Commission also contemplates long range study of a variety of additional topics, some of them recommended at public hearings held by the Commission in 1980.

The Commission will meet as the occasion demands during the 1981 session and resume regular meetings after the 1981 session adjourns. Its precise agenda for the remainder of the year will be determined at that time.

The Commission continues to welcome comments and recommendations from all citizens.

APPENDIX A

Extract from General Statutes, Chapter 7A

Article 40A

North Carolina Courts Commission

G.S. 7A-506. Creation; members; terms; qualifications; vacancies.--The North Carolina Courts Commission is hereby created. It shall consist of 15 voting members, five to be appointed by the Governor, five by the President of the Senate, and five by the Speaker of the House of Representatives. At least three of the appointees of each appointing authority shall be practicing attorneys, at least three appointees of each appointing authority shall be members or former members of the General Assembly, and at least one appointee of each appointing authority shall be a layman. Three of the initial appointees of the Governor shall serve for two years, and two shall serve for four years. Three of the initial appointees of the President and the Speaker shall serve for four years, and two shall serve for two years. All initial terms shall begin July 1, 1979. Subsequent terms are for four years, beginning July 1, 1981, and July 1 of each odd-numbered year thereafter. A vacancy in membership shall be filled by the appointing authority who made the initial appointment. A member whose term expires may be reappointed.

G.S. 7A-507. Ex officio members.--The following additional members shall serve ex officio: The Administrative Officer of the Courts; a representative of the N. C. State Bar appointed by the Council thereof; and a representative of the N. C. Bar Association appointed by the Board of Governors thereof. Ex officio members have no vote.

G.S. 7A-508. Duties.--It shall be the duty of the Commission to make continuing studies of the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and of the General Court of Justice and to make recommendations to the General Assembly for such changes therein as will facilitate the administration of justice.

G.S. 7A-509. Chairman; meetings; compensation of members.--The Governor shall appoint a chairman from the legislative members of of the Commission. The term of the chairman is two years, and he may be reappointed. The Commission shall meet at such times and places as the chairman shall designate. The facilities of the State Legislative Building shall be available to the Commission, subject to approval of the Legislative Services Commission. The members of the Commission shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions generally.

G.S. 7A-510. Supporting services.--The Commission is authorized to contract for such professional and clerical services as are necessary in the proper performance of its duties.

APPENDIX B

A BILL TO BE ENTITLED

AN ACT TO AMEND G.S. CHAPTER 7A TO AUTHORIZE RECALL FOR TEMPORARY SERVICE OF JUSTICES AND JUDGES WHO HAVE REACHED THE MANDATORY RETIREMENT AGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-4.20 is rewritten to read as follows:

"G.S. 7A-4.20. Age limit for service as justice or judge; exception. No justice or judge of the appellate division of the General Court of Justice may continue in office beyond the last day of the month in which he attains his seventy-second birthday, and no judge of the superior court or district court division of the General Court of Justice may continue in office beyond the last day of the month in which he attains his seventieth birthday, but justices and judges so retired may be recalled for periods of temporary service as provided in Subchapters II and III of this chapter."

Sec. 2. A new section is added to G.S. Chapter 7A, Article 6, to read as follows:

"G.S. 7A-39.13. Recall provisions applicable to justices and judges mandatorily retired because of age. Justices and judges retired solely because they have reached the mandatory retirement age may be temporarily recalled to active service under the following circumstances:

(a) The justice or judge must consent to the recall;

(b) The Chief Justice is authorized to recall retired justices, and the Chief Judge is authorized to recall retired judges of the Court of Appeals each to serve on the court from which retired;

(c) The period of recall shall not exceed six months, but it may be renewed for an additional six months if the emergency for which the recall was ordered continues;

(d) Prior to recall, the Chief Justice or the Chief Judge, as the case may be, shall satisfy himself that the justice or judge being recalled is capable of efficiently and promptly performing the duties of the office to which recalled;

(e) Recall is authorized only to replace an active justice or judge who is temporarily incapacitated;

(f) Jurisdiction and authority of a recalled justice or judge is as specified in G.S. 7A-39.7;

(g) The Supreme Court and the Court of Appeals, as the case may be, shall prescribe rules respecting the filing of opinions prepared by a retired justice or judge after his period of temporary service has expired, and respecting any other matter deemed necessary and consistent with this section;

(h) Compensation of recalled retired justices and judges is the same as for recalled emergency justices and judges under G.S. 7A-39.3(b); and

(i) Recall shall be evidenced by a commission signed by the Chief Justice or Chief Judge, as the case may be."

Sec. 3. G.S. 7A-39.3(b) is amended by addition of the following:

"However, no recalled retired or emergency justice or judge shall receive from the State total annual compensation for judicial services in excess of that received by an active justice or judge of the bench to which the justice or judge is recalled."

Sec. 4. A new section is added to G.S. Chapter 7A, Article 8, to read as follows:

"G.S. 7A-57. Recall provisions applicable to judges mandatorily retired because of age. Superior and district court judges retired solely

because they have reached the mandatory retirement age may be recalled to preside over regular or special sessions of the court from which retired under the following circumstances:

(a) The judge must consent to the recall;

(b) The Chief Justice is authorized to order the recall;

(c) Prior to ordering recall, the Chief Justice shall satisfy himself that the recalled judge is capable of efficiently and pomptly discharging the duties of the office to which recalled;

(d) Jurisdiction of a recalled retired superior court judge is as set forth in G.S. 7A-48, and jurisdiction of a recalled retired district court judge is as set forth in G.S. 7A-53.1.

(e) Orders of recall and assignment shall be in writing and entered upon the minutes of the court to which assigned; and

(f) Compensation of recalled retired trial judges is the same as for recalled emergency trial judges under G.S. 7A-52(b)."

Sec. 5. General Statutes Chapter 7A, Article 8, is amended by insertion therein of a new section to read as follows:

"G.S. 7A-53.1. Jurisdiction of emergency district court judges. Emergency district court judges have the same power and authority in all matters whatsoever, in the courts which they are assigned to hold, that regular district court judges holding the same courts would have. An emergency district court judge duly assigned to hold district court in a particular county or district has the same powers in the county or district in open court and in chambers as a resident district court judge or any district court judge regularly assigned to hold district court in that

district, but his jurisdiction in chambers extends only until the session is adjourned or the session expires by operation of law, whichever is later."

Sec. 6. G.S. 7A-52(b) is amended by addition of the following:

"No recalled retired trial judge shall receive from the State total annual compensation for judicial services in excess of that received by an active judge of the bench to which the judge is recalled."

Sec. 7. This act shall become effective on ratification.

APPENDIX C

A BILL TO BE ENTITLED

AN ACT TO AMEND ARTICLE IV OF THE STATE CONSTITUTION TO PERMIT RECALL OF RETIRED SUPREME COURT JUSTICES OR COURT OF APPEALS JUDGES TO SERVE TEMPORARILY ON EITHER APPELLATE COURT.

The General Assembly of North Carolina enacts:

Section 1. Article IV, Section 8 of the Constitution of North Carolina is amended by rewriting the first sentence thereof to read as follows: "The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired."

Sec. 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election to be held in November, 1982. That election shall be conducted under the laws then governing general elections in this State.

Sec. 3. At the general election each qualified voter presenting himself to vote shall be provided a ballot on which shall be printed the following:

[ ] FOR constitutional amendment authorizing General Assembly to provide for temporary recall of retired Supreme Court Justices or Court of Appeals Judges to serve temporarily on either appellate court.

[ ] AGAINST constitutional amendment authorizing General Assembly to provide for temporary recall of retired Supreme Court Justices or Court of Appeals Judges to serve temporarily on either appellate court.

Sec. 4. If a majority of the votes cast are in favor of the amendment set out in Section 1 of this Act, the amendment shall be certified by the State Board of Elections to the Secretary of State, who shall enroll

the amendment among the permanent records of his office, and the amendment shall become effective January 1, 1983.

Sec. 5. This act is effective on ratification.

APPENDIX D

A BILL TO BE ENTITLED

AN ACT TO AMEND G.S. 7A-30 TO DELETE THE RIGHT OF APPEAL TO THE SUPREME COURT FROM DECISIONS OF THE COURT OF APPEALS IN WHICH THERE IS A DISSENT

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-30 is amended to delete subdivision (2) therefrom, and to renumber subdivision (3) as subdivision (2).

Sec. 2. This act shall become effective on October 1, 1981, and shall apply to any Court of Appeals decision in which there is a dissenting opinion filed on or after that date.

APPENDIX E

A BILL TO BE ENTITLED

AN ACT TO AMEND G.S. CHAPTERS 7A and 15A TO LIMIT REVIEW OF DECISIONS OF THE COURT OF APPEALS ON CERTAIN MOTIONS FOR APPROPRIATE RELIEF.

The General Assembly of North Carolina enacts:

Section 1. G.S. Chapter 7A, Article 5, is amended by insertion therein of the following new section:

"G.S. 7A-28. Decisions of the Court of Appeals on certain motions for appropriate relief final. Decisions of the Court of Appeals upon review of motions for appropriate relief listed in G.S. 15A-1415(b) are final and not subject to further review in the Supreme Court by appeal, motion, certification, writ, or otherwise."

Sec. 2. G.S. 7A-31(a) is amended by rewriting the first two sentences thereof to read as follows: "In any cause in which appeal is taken to the Court of Appeals, except a cause appealed from the North Carolina Utilities Commission, the North Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-290, or the Commissioner of Insurance pursuant to G.S. 58-9.4, or a motion for appropriate relief embracing subject matter covered by G.S. 7A-28, the Supreme Court may, in its discretion, on motion of any party to the cause or on its own motion, certify the cause for review by the Supreme Court, either before or after it has been determined by the Court of Appeals." In addition, the sixth sentence of G.S. 7A-31(a) is revised to read as follows: "Except in motions within the purview of G.S. 7A-28, the State may move for certification for review of any criminal cause, but only after determination of the cause by the Court of Appeals.".

Sec. 3. G.S. 15A-1422 is amended by the addition of a new subsection, to read as follows:

"(f). Decisions of the Court of Appeals on motions for appropriate relief that embrace matter set forth in G.S. 15A-1415(b) are final and not subject to further review by appeal, certification, writ, motion, or otherwise."

Sec. 4. This act shall become effective October 1, 1981, and shall apply to all decisions of the Court of Appeals on G.S. 15A-1415(b) motions made on or after that date.

APPENDIX F

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO AUTHORIZE THE GENERAL ASSEMBLY TO PROVIDE FOR A DIRECT APPEAL FROM THE NORTH CAROLINA UTILITIES COMMISSION TO THE SUPREME COURT

The General Assembly of North Carolina enacts:

Section 1. Article IV, Section 12(1) of the Constitution of North Carolina is amended by the addition of the following sentence at the end thereof: "The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission."

Sec. 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election to be held in November, 1982. That election shall be conducted under the laws then governing general elections in this State.

Sec. 3 At the general election each qualified voter presenting himself to vote shall be provided a ballot on which shall be printed the following:

"/_/ FOR constitutional amendment giving the Supreme Court authority to review, when authorized by the General Assembly, direct appeals from the N.C. Utilities Commission."

"/_/ AGAINST constitutional amendment giving the Supreme Court authority to review, when authorized by the General Assembly, direct appeals from the N.C. Utilities Commission."

Sec. 4. If a majority of the votes cast are in favor of the amendment set out in Section 1 of this act, the amendment shall be certified by the State Board of Elections to the Secretary of State, who shall enroll the amendment among the permanent records of his office, and the amendment shall become effective January 1, 1983.

Sec. 5. This act is effective on ratification.

APPENDIX G

A BILL TO BE ENTITLED
AN ACT TO AMEND VARIOUS SECTIONS OF THE GENERAL STATUTES TO ELIMINATE THE RIGHT OF APPEAL TO THE COURT OF APPEALS IN CERTAIN CATEGORIES OF CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-27 is amended by rewriting subsections (b) and (c) to read as follows:

"(b) From any final judgment of a superior court, including any final judgment entered upon review of a decision of any administrative agency, appeal lies of right to the Court of Appeals except:

(1) in a case described in subsection (a) of this section;

(2) from a conviction based on a plea of guilty or no contest;

(3) from a misdemeanor conviction that does not include a sentence to active confinement; and

(4) from an order revoking probation or parole.

(c) From any final judgment of a district court in a civil action appeal lies of right directly to the Court of Appeals, except:

(1) in a case involving child custody or child support under G.S. Chapters 49, 50, 50A, 50B, 52A, and 110;

(2) in a juvenile proceeding listed in G.S. 7A-523; or

(3) an order of involuntary commitment of a mentally ill, inebriate, or mentally retarded person under G.S. Chapter 122, Article 5A."

Sec. 2. G.S. 7A-666 is rewritten to read as follows:

"G.S. 7A-666. Appellate review. A final order of the court in a juvenile matter under this article is not appealable, but review may be sought by petition for a writ of certiorari to the Court of Appeals.

Under this section a final order is one that

(1) finds an absence of jurisdiction;

(2) determines the action and prevents a reviewable judgment;

(3) orders disposition of a juvenile after an adjudication that he is delinquent, undisciplined, abused, neglected, or dependent; or

(4) modifies custodial rights."

Sec. 3 G.S. 7A-667 is rewritten to read as follows:

"G.S. 7A-667. Proper parties to petition. A petition for a writ of certiorari may be sought by the juvenile; his parent, guardian, or custodian; the State; or the county agency. The State's petition for a writ in delinquency or undisciplined cases is limited to an order finding a State statute to be unconstitutional, or an order that terminates prosecution of a juvenile petition by upholding the defense of double jeopardy, or that holds that a cause of action is not stated under a law, or that grants a motion to suppress."

Sec. 4. G.S. 7A-668 is rewritten to read as follows:

"G.S. 7A-668. Disposition pending action on petition for review. Pending action on the petition for a writ of certiorari, or a decision on a petition that is granted, the juvenile shall be released unless the judge orders otherwise. For compelling reasons which must be placed in writing, the judge may temporarily order such custody or placement of the juvenile as he finds to be in the best interest of the juvenile or the State."

Sec. 5. G.S. 7A-669 is rewritten to read as follows:

"G.S. 7A-669. Disposition after appellate review. Upon affirmation

of the order of adjudication or disposition by the Court of Appeals, the judge may modify his original order of adjudication or disposition to reflect any change in circumstances during the period the review was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within ten days why the order should be vacated or altered."

Sec. 6. G.S. 7A-725 is rewritten to read as follows:

"Sec. 7A-725. Appellate review. Any petitioner, parent, or guardian who is a party to a proceeding under this Article may seek review of any order of disposition by petition to the Court of Appeals for a writ of certiorari. Pending disposition of such petition, or decision of the Court of Appeals if the writ is granted, the judge may enter such temporary order affecting the custody or placement of the petitioner as he finds to be in the best interest of the petitioner or the State."

Sec. 7. G.S. 15A-1347 is amended in the last sentence by deleting "may appeal under G.S. 7A-27" and inserting in lieu thereof "may seek review by petition for writ of certiorari".

Sec. 8. G.S. 15A-1444(a) is rewritten to read as follows:

"A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered, except that a defendant convicted of a misdemeanor in superior court for which no active confinement or confinement as a condition of special probation is imposed is not entitled to appeal as a matter of right, but may seek review by petition for a writ of certiorari."

Sec. 9. G.S. 15A-1444(e) is amended by rewriting the first sentence thereof to read as follows: "Except as provided in G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, or when he has been convicted of a misdemeanor but not sentenced thereon to a term of active confinement or confinement as a condition of special probation, but he may petition the appellate division for review by writ of certiorari."

Sec. 10. G.S. 122-58.9 is rewritten to read as follows:

"G.S. 122-58.9. Review of district court judgment. Judgment of the district court is final. Review is by petition for writ of certiorari to the Court of Appeals. Pending action on the petition, or decision by the Court of Appeals if the petition is granted, the district court retains limited jurisdiction for the purpose of hearing any review, rehearing, or supplemental hearing allowed or required under this article."

Sec. 11. G.S. 122-58.12 is amended in line 13 by deleting "appeal to" and inserting in lieu thereof "seek review by".

Sec. 12. This act shall become effective October 1, 1981, and shall apply to judgments and orders entered on and after that date.

APPENDIX H

A BILL TO BE ENTITLED

AN ACT TO AMEND G.S. CHAPTER 9 TO FACILITATE THE JUROR SELECTION PROCESS

The General Assembly of North Carolina enacts:

Section 1. G.S. 9-2 is amended by adding the following sentence at the end of the first paragraph thereof: "In counties in which a different panel of jurors is summoned for each day of the week, there is no limit to the number of names that may be placed on the juror list."

Sec. 2. G.S. 9-6(b) is amended by adding the following sentence at the end thereof: "In districts that have a trial court administrator, the chief district judge may assign the duty of passing on applications for excuses from jury service to the administrator."

Sec. 3. G.S. 9-2.1 is amended by inserting in the first sentence, after "having" and before "electronic" the words "access to".

Sec. 4. This act shall become effective October 1, 1981.

APPENDIX I

A BILL TO BE ENTITLED

AN ACT TO AMEND G.S. 15A-603 TO REQUIRE THE JUDGE AT A PRELIMINARY HEARING TO ADVISE AN INDIGENT DEFENDANT THAT IF HE IS CONVICTED AND PLACED ON PROBATION HE MAY BECOME LIABLE FOR COSTS OF ASSIGNED COUNSEL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-603(b) is amended by adding the following at the end thereof: "The judge shall also advise the defendant that if he is convicted and placed on probation, payment of the expense of counsel assigned to represent him may be made a condition of probation."

Sec. 2. This act shall become effective October 1, 1981.

APPENDIX J

A BILL TO BE ENTITLED
AN ACT TO AMEND G.S. CHAPTER 7A, ARTICLE 36, TO PROVIDE FOR VERIFICATION OF AFFIDAVITS OF INDIGENCY IN CERTAIN COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. Chapter 7A, Article 36, is amended by insertion therein of the following new section:

"G.S. 7A-456.1. Verification of affidavits of indigency in certain counties. (a) An additional deputy clerk of superior court is authorized in each of the counties listed in subsection (b) of this section. It shall be the principal duty of the additional deputy clerk, under the direction of the Clerk of Superior Court, to verify to the maximum feasible extent the information supplied on affidavits of indigency, with the objective of assuring that only defendants who are actually indigent are furnished counsel at State expense.

(b) This section shall apply to the following counties: Alamance, Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Mecklenburg, New Hanover, Onslow, Pitt, Robeson, and Wake."

Sec. 2. There is hereby appropriated from the general fund to the Administrative Office of the Courts for fiscal year 1981-82 the sum of one hundred and fifty-six thousand, four hundred and sixty-eight dollars ($156,468) and for fiscal year 1982-83 the sum of one hundred and forty-nine thousand and seventy-one dollars ($149,071) to implement the provisions of Section 1 of this act.

Sec. 3. This act shall become effective July 1, 1981.

APPENDIX K

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE MONEY TO PROVIDE THAT THE MAGISTRATES' SENIORITY SALARY STEPS TAKE EFFECT ON THE ANNIVERSARY DATE OF APPOINTMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-171.1 is amended by rewriting the portion of subsection (1) preceeding the Table of Salaries to read as follows:

"(1) A full-time magistrate, so designated by the Administrative Officer of the Courts, shall be paid the annual salary indicated in the table below according to the number of years he has served as a magistrate. The salary steps shall take effect on the anniversary of the date the magistrate was originally appointed."

Sec. 2. There is hereby appropriated $_____ for fiscal 1981-82 and $_____ for fiscal 1982-83 from the General Fund to the Administrative Office of the Courts to implement the provisions of Section One of this act.

Sec. 3. This act shall become effective on July 1, 1981, and shall apply to magistrates reaching their anniversary date of service on or after that date.

APPENDIX L

A BILL TO BE ENTITLED

AN ACT TO AMEND G.S. 122-58.7 TO REQUIRE THE DISTRICT ATTORNEY TO PROVIDE COUNSEL FOR THE STATE FOR INVOLUNTARY COMMITMENT HEARINGS HELD IN THE COUNTY OF ORIGIN OF THE COMMITMENT PROCEEDINGS

The General Assembly of North Carolina enacts:

Section 1. G.S. 122-58.7(b) is amended by adding the following at the end thereof: "If the commitment hearing is held in the county of origin of the commitment proceedings, other than a county in which a regional psychiatric facility is located, the district attorney shall provide counsel to represent the State at the hearing."

Sec. 2. This act shall become effective on July 1, 1981.

APPENDIX M

A BILL TO BE ENTITLED

AN ACT TO AMEND G.S. 7A-101 TO RAISE THE SALARY OF THE CLERK OF COURT IN A COUNTY OF LESS THAN 10,000 POPULATION TO THAT OF A CLERK IN THE NEXT HIGHEST POPULATION GROUP.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-101 is amended by deleting the first classification in the salary chart, and rewriting the second classification to read as follows: "Less than 19,999 .....$19,056".

Sec. 2. There is appropriated $49,230 for fiscal 1981-82 and $49,280 for fiscal 1982-83 from the General Fund to the Administrative Office of the Courts to fund the increases in salary and accompanying fringe benefits required by Section One of this act.

Sec. 3. This act shall become effective July 1, 1981.

APPENDIX N

A BILL TO BE ENTITLED

AN ACT TO REPEAL ARTICLE 5 OF GENERAL STATUTES CHAPTER 39 WHICH REQUIRES PERSONS WISHING TO SELL CERTAIN TYPES OF BUILDING LOTS TO FIRST OBTAIN A PERMIT TO DO SO FROM THE CLERK OF SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of General Statutes Chapter 39, which consists of G.S. 39-28 through G.S. 39-32 inclusive, is repealed.

Sec. 2. This act shall become effective on July 1, 1982.

APPENDIX O

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SHERIFF TO FURNISH A LIST OF JAILED PRISONERS TO JUDGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-229 is rewritten to read as follows:

"§ 153A-229. Jailers report of jailed defendants.--(a) The person having administrative control of a local confinement facility must furnish to each judge presiding over a criminal court, the district attorney, and to the clerk of superior court a report listing the name, reason for confinement, period of confinement, and when appropriate, charge or charges, amount of bail and conditions of release, and next scheduled court appearance of each person confined in the local confinement facility at the time the report is prepared.

(b) The person having administrative control of a local confinement facility must file the report with superior court judges presiding over mixed or criminal sessions at the beginning of each session. He must file the report with district court judges at each criminal session or weekly, whichever is less frequent. He must file the report with the clerk and the district attorney weekly."

Sec. 2. G.S. 7A-109.1 is repealed.

Sec. 3. This act shall become effective on October 1, 1981.

APPENDIX P

A BILL TO BE ENTITLED

AN ACT TO REPEAL G.S. 163-178, WHICH REQUIRES CLERKS OF COURT TO REPORT ELECTION RESULTS TO THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-178 is repealed.

Sec. 2. This act shall become effective July 1, 1981.

APPENDIX Q

A BILL TO BE ENTITLED

AN ACT TO REQUIRE AREA MENTAL HEALTH AUTHORITIES TO COLLECT THE FEE CHARGED FOR ATTENDING AN ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-179.2(a)(1) is rewritten to read as follows:

"(1) A fee of one hundred dollars shall be paid by all persons enrolling in an Alcohol and Drug Education Traffic School program established pursuant to this section. That fee must be paid to an official designated for that purpose and at a time and place specified by the Area Mental Health, Mental Retardation and Substance Abuse Authority providing the course of instruction in which the person is enrolled. The fee must be paid in full within two weeks of the date the person is convicted and before he attends any classes, unless the court, upon a showing of reasonable hardship, allows the person additional time to pay the fee or allows him to begin the course of instruction without paying the fee. If the person enrolling in the school demonstrates to the satisfaction of the court that ordered him to enroll in the school that he is unable to pay and his inability to pay is not willful, the court may excuse him from paying the fee."

Sec. 2. G.S. 20-179(a)(3) is rewritten to read as follows:

"(3) Fees collected under this section and retained by Area Mental Health, Mental Retardation, and Substance Abuse Authorities shall be placed in a non-reverting fund. That fund must be used, as necessary, for the operation, evaluation and administration of Alcohol and Drug Education Traffic School programs; excess funds may only be used to fund other drug or alcohol programs. Area authorities shall remit five per cent (5%) of each fee collected to the Department of Human Resources on a monthly basis. Fees received

by the Department as required by this section may only be used in supporting, evaluating, and administering Alcohol and Drug Education Traffic Schools, and any excess funds will revert to the General Fund."

Sec. 3. G.S. 20-179.2(a)(4) is amended by deleting the words "from the clerks of court" and inserting in lieu thereof the words "under the authority of this section".

Sec. 4. G.S. 20-179(b)(1), as it appears in the 1980 Interim Supplement to the General Statutes, is amended on line 6 by deleting the figure "75" and inserting in lieu thereof the figure "90".

Sec. 5. G.S. 20-179(b)(2), as it appears in the 1980 Interim Supplement to the General Statutes, is amended by deleting the figure "75" from the first "Condition(s) of Restriction" and inserting in lieu thereof the figure "90".

Sec. 6. G.S. 20-179(b)(5), as it appears in the 1980 Interim Supplement to the General Statutes, is amended on line 19 by deleting the figure "75" and inserting in lieu thereof the figure "90".

Sec. 7. G.S. 20-140(e) is amended on line 8 by deleting the words and figure "within 75 days" and inserting in lieu thereof the words and figure "established pursuant to G.S. 20-179.2 within 90 days".

Sec. 8. This act shall become effective October 1, 1981, and shall apply to persons assigned to Alcohol and Drug Education Traffic Schools on and after that date.