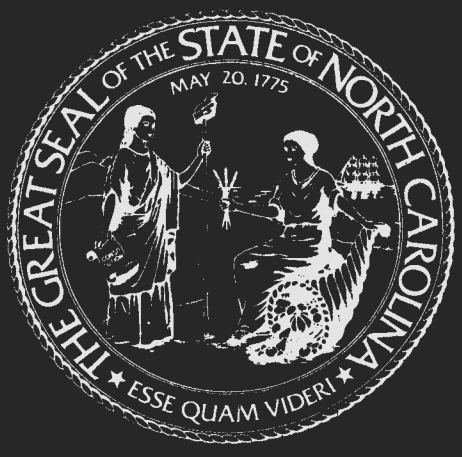
REPORT OF THE

COURTS COMMISSION

to the North Carolina General Assembly

1983



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Term Ending June 30, 1983

Term Ending June 30, 1985

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NORTH CAROLINA COURTS COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611

H. PARKS HELMS, CHAIRMAN
CHARLOTTE

TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY:

The North Carolina Courts Commission is pleased to submit its report covering activities of the last year together with recommendations for fourteen (14) pieces of legislation.

A highlight of the Commission's activities since our last report has been a series of public hearings at which citizens and court officials were given the opportunity to comment on the structure, organization, jurisdiction, procedures and personnel of the Judicial Department. We believe that the recommended legislation addresses some of the concerns which were expressed during these hearings, as well as some modifications in our State law which we think will enhance the public's perspective of our courts.

The increased demands being placed upon the Judicial Branch of government are having a dramatic impact on the ability of our courts and of court officials to continue to deliver the quality of justice that people of North Carolina expect. The Commission expresses its concern about the image that our courts have with the average citizen and this Session of the General Assembly is encouraged to do all that it can to bring about improvements and a better understanding of the role of our courts in a free society.

As Chairman of the Commission, I express my sincere appreciation and gratitute to those members who have dedicated much time and energy to improving the administration of justice in our State.

Respectfully submitted,

H. Parks Helms, Chairman

HPH:cj

February, 1983

I. INTRODUCTION

The North Carolina Courts Commission was established in 1979 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" that will improve the administration and enhance the credibility of the court system. G.S. 7A-506. A previous courts commission with the identical duty was established in 1963 and was responsible for the major legislation necessary to implement the uniform court system as required by a 1962 constitutional amendment. That commission was terminated in 1975 and in the intervening years the need for a continuing study commission became apparent.

The current Commission has made two previous reports to the General Assembly. In 1981, the Commission recommended major changes to the constitutional provisions and statutes governing the appellate division to deal with that division's ever-increasing workload. In addition the report included recommendations dealing with the indigent defense program, the office of the trial court administrator, the procedures used to prepare master jury lists, and the office of the clerk of superior court. Most of those bills were ratified in the 1981 session and have contributed to improvements in the administration of the offices or programs affected. For two of the topics included in the 1981 report, the appellate division's jurisdiction and manpower needs and the indigent defense program, the Commission has further recommendations; the recommendations dealing with the appellate division will be discussed in detail later in this report, and the recommendations for dealing with the indigent defense program will be discussed in a separate report to be submitted to the 1983 session.

The Commission reported to the 1982 session of the General Assembly as well. That report featured bills to raise from $5,000 to $10,000 the "jurisdiction" of the district court in civil matters and to streamline the procedure mandated by a 1981 act establishing new exemptions for those found responsible for civil judgments. Both those bills were ratified, and appear to be achieving the desired effect.

Since 1979, the Commission has heard consistently from most of the professional groups actively involved in the court system. The Commission is grateful for the help all those groups have provided, and it recognizes that the final recommendations in this report would not be possible without that assistance. In 1982, however, the Commission, at the request of Governor Hunt, decided to broaden the scope of its inquiry to include members of the public and public officials who would not normally be able to come to Raleigh to appear before the Commission. To accomplish that goal, the Commission, in the spring and summer of 1982, held three hearings away from Raleigh (in Charlotte, Goldsboro, and Asheville) for the sole purpose of hearing from persons in those and surrounding communities. The turnouts were impressive and the Commission found the results to more than justify the expenditures of time and money.

In general, the Commission found that large segments of the public believe that the court system is not responsive to the citizens for whom it is created to serve. It found that many citizens have lost confidence in the system's ability to provide justice effectively. It found that many citizens who must spend time in court as litigants, witnesses, or jurors do not believe their time is used efficiently. Simply stated, they believe the system is operated for the benefit of the professionals who run it and not for the public. That concern was expressed most often in two areas.

First, many citizens directly connected with a particular case frequently become exasperated at the number of different hearings or scheduled trial dates necessary before the case is disposed of. To make that situation worse, they frequently are not informed of the reason for the slow pace of the litigation, nor are they always informed of when they should (or just as important, when they should not) be in court. In particular, the Commission found great dissatisfaction with the way many district attorneys calendar criminal cases for trial; frequently those court calendars bear little resemblance to the schedule actually followed, causing disruptions to the other duties of lawyers, litigants and witnesses. The second area of concern was the jury selection system. Many potential jurors do not understand why they are asked personal, hypothetical, or repetitive questions in the jury selection process. They generally believe that jury selection procedures could be much simpler and faster and would still result in impartial juries; some of them say the goal of the lawyer in the selection process seems to be the selection of a jury that is actively leaning to his side of the case instead of one that is simply impartial.

The Commission also heard from public officials at each of the hearings. Those officials made many constructive suggestions for improvements that are included in this report. One theme they consistently expressed was the lack of resources available for use by those working in the court system. Technology in areas such as microfilming, word processing, and accounting available to business for decades has not yet been made available to clerks of court, district attorneys, and other court officials because of the lack of funding. In addition, district attorneys say that they need technical assistance in court management if they are to manage their caseloads and court calendars efficiently.

Despite these and other problems, the perception of those working in the court system is that the system generally works fairly, and, given the limitations placed on it, efficiently. They recognize, however, that large segments of the public have an unfavorable perception of the system, and most seemed eager to do something constructive to change it.

The Commission's conclusion, based on the testimony presented in the hearings and the collective experience of its members, is that this perception of the courts' inefficiency and insensitivity to the public and the resulting lack of confidence in the system is one of the most significant problems facing the North Carolina court system. The Commission believes that the perception is not entirely accurate for several reasons. First, the court system's adversary nature usually means that one party to a lawsuit is disappointed with the result; that disappointment frequently leads the party to find fault with the system. Second, the Commission believes it is improper to judge the court system solely on its alleged inefficiency; the courts' principal purpose is to resolve cases in a just way, and while it should perform that function efficiently, efficiency alone is not (and should not be) the goal of the system. Finally, the Commission recognizes that in a system as complex as the court system, breakdowns and delays are inevitable. While those delays substantially inconvenience those affected, the Commission believes the delays occur in spite of the best efforts of court officials who are competent and dedicated to their work, and the Commission believes those officials should not be expected to meet unrealistic standards for performance.

This public perception exists, however, and that is a fact that the Courts Commission, the General Assembly, and the court system must face as

they set out to improve the efficiency of the courts and the quality of justice they deliver. The Commission believes it is unrealistic to think that the courts will receive the financial and other support they must have to perform the job they have been asked to do without widespread public support.

While the Commission believes the courts in this state deserve that support, it is apparent that there are areas in which the statutes regulating the operation of the courts can be changed to provide for more efficiency while either improving or not adversely affecting the quality of justice. The remainder of this report is devoted to discussion of the Commission's specific recommendations for changing those statutes. Some of the recommendations are not as dramatic as the proposals of the original Courts Commission--it is a compliment to that body that much of its labor in setting forth the organization of the court system needs no correction today, ten or more years later. The Commission believes, however, that the cumulative effect of its recommendations will substantially contribute to the court system's efficiency, and thereby to its ability to attract increased support from the public. With that increased support, increased resources and improved performance are likely. Without it, maintaining the present levels of service and support will be difficult.

II. IMPLEMENTATION OF CONSTITUTIONAL AMENDMENTS AFFECTING APPELLATE DIVISION

Devising ways to deal with the increasing workload of the Appellate Division was the first study undertaken by the Commission after its re-creation in 1979. Two of the proposals recommended by the Commission (and approved by the legislature) in 1981 to deal with the problem required amendments to the State Constitution. Since neither proposal contained the

amendments to the statutes necessary for implementation, the Commission continued its study of the issue by considering the best way to implement each amendment.

A. Appeal of Utilities Commission Orders. One amendment authorized the General Assembly to allow direct review by the Supreme Court of final orders of the Utilities Commission. Except for the special treatment of the Utilities Commission orders allowed by this amendment, no final order of an administrative body can be reviewed by the Supreme Court unless it has been heard by a court below. To comply with that constitutional requirement, current statutes provide that all orders of the Utilities Commission must be initially reviewed by the Court of Appeals, and decisions in general rate cases may then be appealed as of right to the Supreme Court.

It was clear to the Commission that the public and the legislature expected the amendment, as implemented, to allow some cases now required to be heard by the Court of Appeals to be reviewed directly by the Supreme Court. The amendment is broadly worded and gives the General Assembly wide latitude in dealing with this issue. At one extreme, the legislation could require the Supreme Court to review initially all final orders as a matter of right. At the other extreme, the legislation could provide that no final orders are directly reviewable by the Supreme Court as a matter of right, but it could empower that court to bypass the Court of Appeals in its discretion. Between those extremes, many combinations are possible.

The Commission chose neither of the extremes. After consultation with the Supreme Court, a judge from the Court of Appeals, attorneys representing utility companies, the public staff of the Utilities Commission, and the Utilities Commission itself, the Commission recommends that appeals of all

general rate cases be directly to the Supreme Court as a matter of right and additionally recommends that that Court have the power to bypass the Court of Appeals in its discretion in all other cases involving appeals from the Utilities Commission.

This recommendation preserves the right of litigants to obtain a review by the Supreme Court in general rate cases, and, in those cases, it eliminates what is usually a duplicative review by the Court of Appeals. The Commission initially attempted to find a means of categorizing the rate cases to eliminate direct appeals to the Supreme Court as of right in the cases that do not have the widespread public interest of an electric or phone company rate increase. The Commission attempted that categorization in part because it did not want to burden the Supreme Court with cases that should appropriately be resolved at the Court of Appeals. Defining that category of cases, however, proved to be very difficult. In addition, after reviewing the records of orders appealed from the Utilities Commission, the Commission concluded that the number of such small general rate cases appealed to any court is so small that no categorization is necessary. If the recommended legislation is enacted, the Commission plans to continue to monitor the situation; if the number of appeals of relatively minor cases becomes a burden on the Supreme Court, the Commission will recommend further legislation to correct the problem. Until then the Court of Appeals should experience some relief since it will no longer have to review the small number of these extremely complex and time-consuming cases, and litigants and the public should benefit from a more expeditious conclusion of the litigation. Finally, the recommendation would allow the Supreme Court to review, in its discretion, any other major case (such as a fuel charge adjustment case) without first requiring the Court of Appeals to review the case.

See Appendix B for legislation implementing this recommendation.

B. Recall of Retired Appellate Judges. The other constitutional amendment deals with one facet of a significant problem that has plagued the appellate courts in recent years--how to deal with manpower shortages when vacancies are not filled promptly or sitting judges or justices are ill. The amendment allows the General Assembly to authorize retired Court of Appeals Judges or Supreme Court Justices to be recalled to temporary service on either the Supreme Court or the Court of Appeals. Before this amendment was approved, the constitution limited such service to the court from which the judge or justice retired.

In considering what it should recommend as implementing legislation, the Commission consulted the Supreme Court to find out the views of its members. The Court unanimously took the position that retired Supreme Court Justices should be eligible to serve on either court, but that retired Court of Appeals Judges should not be eligible for temporary service on the Supreme Court. The Commission agreed, and the legislation it recommends is consistent with that position. The Commission believes it is appropriate that service on the Supreme Court, even on a temporary basis, be limited to those persons who have previously been appointed or elected to that Court. That will still make retired justices available to assist the Court of Appeals temporarily, and the Commission believes it is wise to evaluate this use of the power granted by the amendment before taking the more controversial step of allowing retired court of appeals judges to serve on the Supreme Court. If that step becomes necessary, future sessions of the General Assembly can deal with the problem.

In the 1981 session the General Assembly enacted legislation recommended by the Commission authorizing recall to temporary service of any judge retired because he reached the mandatory retirement age. That legislation, plus this

recommendation should over time contribute significantly to the expansion of the pool of retired judges available for recall to the appellate courts, especially to the Court of Appeals.

The Commission's recommendation addresses an additional problem not currently dealt with in the statutes. While those statutes are quite broad as to which retired judges can be recalled, the only reason for which a judge can be recalled is to serve in place of a temporarily incapacitated judge or justice. Experience in recent years suggests that that characterization may be too narrow. For example, on the Court of Appeals the time between retirement of a judge and the naming of his successor has been as long as six months. During those periods the Court has to operate with only eleven members, thereby adding to each member's workload and correspondingly reducing the effectiveness of the Court as a whole. There are other potential problems as well. For example, with the normal age and maturity of appellate judges, it is likely that some of them will have close family members who suffer serious and prolonged illnesses that will require the judge to be away from his duties for an inordinate amount of time. In that and in other circumstances, it frequently would be better for the judge and for the court if a retired judge were recalled to serve temporarily in his place. In neither of these situations do the statutes currently authorize relief for a judge, or more importantly, for the Court he serves. Accordingly, the Commission recommends that legislation be enacted to deal with this issue.

Specifically, the Commission recommends that, where a vacancy exists on the Supreme Court, the Chief Justice be allowed to recall a retired justice until the vacancy is filled. If a vacancy exists on the Court of Appeals, the Chief Justice would be authorized to recall a retired Court of Appeals judge

or a retired justice to serve on that court until the vacancy is filled. The Commission believes a Chief Justice would exercise this power sparingly, and if he does, the Governor can always appoint a successor and the recalled judge or justice would be relieved of his duties by the appointed successor. In addition, the Commission recommends that the Chief Justice be authorized, with the concurrence of a majority of the Supreme Court, to recall a retired justice to serve on either appellate court or to recall a retired Court of Appeals Judge to serve on that court when "necessary to expedite the work of the court." This standard is intentionally not very precise. The Commission discussed several possible circumstances in which such a recall order might be issued, but concluded that any attempt to codify those instances might have the same restrictive effect as the current statutes. The Commission believes the power would be exercised sparingly by the Court; the requirement of approval by a majority of the Court should serve as an adequate safeguard against abuse.

See Appendix C for legislation implementing this recommendation.

III. MATTERS AFFECTING TRIALS OF CIVIL ACTIONS

A. Attorney's Fees in Nonjusticiable Cases. In looking at ways to make the courts operate more efficiently, the Commission considered the problem of court time being taken up with frivolous litigation. The Commission discussed methods of discouraging the use of court time in entirely frivolous actions or with the frivolous defense of actions. Also, the Commission felt that it is unfair for litigants to have to spend a great deal of time and money defending themselves in frivolous suits. Likewise, it is equally unfair for persons to have to spend a great deal of time and money in litigation when the other party's defense is totally frivolous. The Commission concluded that the best

way to discourage frivolous suits and defenses is to allow attorney's fees to the winning party in a frivolous lawsuit or defense of a frivolous lawsuit. The Commission then looked at attorney's fees statutes from other states to see if one met its objective of discouraging nonjusticiable actions or defenses without chilling legitimate suits or defenses based on unusual theories of law. In the opinion of the Commission, Florida has such a statute. That statute allows an award of attorney's fees where the court finds a complete absence of a justiciable issue of either law or fact. Cases interpreting the Florida statute hold that to recover attorney's fees the action or defense must be so clearly devoid of merit both on the facts and law as to be completely untenable--there must be an absolute lack of issue; a frivolous action, devoid of even arguable substance. Merely losing, whether on the pleadings, or summary judgment, is not enough to award fees to the winning party. The plaintiff is never entitled to attorney's fees under the statute when a default judgment is entered. The Commission recommendation for North Carolina is based on that Florida provision since that statute and its case law interpretations fit the objective the Commission wishes to achieve of discouraging totally frivolous actions or defenses but not chilling other suits or defenses.

See Appendix D for legislation implementing this recommendation.

B. Service of Process in Summary Ejectment Cases and Other Small Claims Cases. For over 100 years North Carolina, like many other states, has allowed the sheriff to serve the defendant in summary ejectment cases by posting the process on a conspicuous part of the premises from which the landlord is attempting to evict the tenant. G.S. 42-29 allows this service by posting only after the sheriff has made a due and diligent search for the defendant

and has been unable to locate him in the county. In May, 1982, the United States Supreme Court in the case of Greene v. Lindsey limited the use of posting as a method of service of process in summary ejectment cases. In that case, the Court held that to post process when there is a likelihood that the process will be removed before the defendant returns is unconstitutional because the method of service is not reasonably calculated under all the circumstances to apprise the defendant of the litigation and give him an opportunity to respond. Because of this decision, the sheriff, before posting summary ejectment process, must decide whether the process is likely to be removed before the defendant returns. The Commission concluded that it is not efficient to require that kind of decision in every case; it is simpler for all involved if the sheriff could follow one procedure in all cases that would pass constitutional muster. Accordingly, the Commission recommends that whenever the sheriff is unable to locate the defendant in a summary ejectment case and serves the process by posting copies on the premises that he also be required to mail a copy of the process by first-class mail to the defendant at his last known address. This method of service was approved by the Supreme Court in its decision.

Additionally, the Commission noted that service of process by certified mail is rarely used in small claims cases. Service by mail is generally encouraged because it is the least expensive method of service and does not use valuable time of the sheriff in serving the process. The statutory provision for serving process by certified mail in small claims cases differs in two respects from the statutory provivions for service of process in other civil cases. G.S. 7A-217(2) authorizes the plaintiff to request that the defendant in a small claims case be served by mail by written endorsement upon

the complaint. The clerk then must mail the process to the defendant by certified mail, return receipt requested. Service is complete upon return to the clerk of the receipt signed by the defendant. Under the general rule for other civil cases, the plaintiff himself, and not the clerk, mails the process by certified mail. No request for mail service is made in writing on the complaint. Since attorneys are rarely involved in small claims cases, when G.S. Chapter 7A was originally enacted it was probably thought that having the clerk actually mail the certified letter would assist the citizen in serving the process. However, in practice certified mail is rarely used because citizens using the small claims courts are not aware of the alternative of certified mail service, and clerks do not encourage its use because they do not have time to handle all the extra mailings.

The second difference in small claims service of process is its special requirement for receipt of mail service. In 1981 the General Assembly changed the general rule of service of process to provide that if certified mail is used, the defendant himself need not be the one to sign the postal receipt to have proper service. Rather, anyone who signs to receive the letter is presumed to be an agent of the addressee authorized to receive process or a person of suitable age and discretion residing in the defendant's dwelling. In contrast, in small claims cases the defendant himself must sign the receipt; achieving proper service under the general rule is obviously easier. The Commission determined that certified mail service would be used a great deal more in small claims cases if the procedure were the same in those cases as it is for other civil cases and it found no reason why the two procedures should differ. Therefore, the Commission recommends that G.S. 7A-217(2) be amended to conform to the general certified mail service of process provision of G.S. 1A-1, Rule 4.

See Appendix E for legislation implementing these recommendations.

C. Filing Depositions and Other Discovery Papers With the Clerk. In examining the court costs charged in this State, the Commission discovered that one of the serious problems of clerks of superior court is the amount of file space occupied with depositions and other discovery papers that are never used in court. The Commission considered assessing additional per page costs for the filing of depositions and similar filings but ruled that out as unfair to the litigant who needed the discovery papers to litigate his case properly. The Commission recommends that the problem be solved by using the procedure used by many federal district courts. Under that procedure, discovery papers are filed with the clerk only if a court orders that they be filed or at the time they are needed in the proceeding. For example, a deposition needed for the judge to rule on a summary judgment motion would not be filed until the motion for summary judgment was filed. Likewise, interrogatories used in a trial would be filed at the time of the trial, not at the time taken. This recommendation would alleviate overcrowding of files but would continue the filing of any discovery papers actually used. The proposal would not make any changes in the current procedure of filing requests for and answers to admissions, nor would it change the current law requiring that every paper relating to discovery required to be served on a party also be served upon each of the parties. Thus, the parties in the litigation will continue to be notified about discovery taking place in the ligitation.

See Appendix F for legislation implementing this recommendation.

IV. MATTERS AFFECTING CRIMINAL TRIALS

A. Decriminalization of Minor Traffic Offenses. In its review of the criminal courts, the suggestion heard most often by the Commission was that it improve the way minor traffic cases are handled. In response to those suggestions and to a 1979 resolution directing it to do so, the Commission has considered several options for dealing with the issue in the last three years. Its recommendation is to classify such minor offenses as non-criminal infractions and retain them in the court system with simplified hearing and appeal procedures.

To understand how the recommendation would affect the courts, it is useful to review some current statistics. Now, all motor vehicle offenses are crimes. In 1981-82, there were 677,247 motor vehicle offenses charged. This figure includes serious and minor traffic offenses. Of those charged a significant number (384,294) waived their right to appear in court and paid a prescribed fine and costs by mail or before a clerk or magistrate. Of the remaining cases, some were dismissed before trial. The remaining cases were disposed of by the court, and included in that group are serious traffic offenses such as driving under the influence, reckless driving, racing, etc. The remaining group of cases are the minor offenses that are occupying the court's time. That figure cannot be precisely determined from available data, but an educated guess is that it is at least 100,000 cases. One additional fact of interest here is that the 1979-80 number of offenses charged was 777,264, or almost exactly 100,000 more cases than in 1981-82.

The Commission found some significant implications in those numbers. First, while the number of total cases is quite large, the number disposed of summarily is also quite large. The Commission saw no reason to do anything to change that method of handling those cases. Second, the number of cases

requiring court time is a relatively small number for the existing district court system to handle. With over 140 district court judges and existing clerks of court and district attorneys' offices available statewide, the Commission concluded that creating a new agency to hear traffic cases would be very expensive and duplicate services and facilities present in the court system. This judgment is reinforced by the recent reductions in caseloads. With these findings in mind, the Commission concluded that the court system provided the most cost-effective way to dispose of these cases and still provide an opportunity for a fair hearing.

That basic decision, however, does not offer any improvement in a couple of troublesome aspects of the present system. A traffic charge is still a crime, and that categorization has several negative features. It gives every person convicted of a minor motor vehicle offense a criminal record. By inappropriately classifying such minor offenses as crimes, it tends to dilute the effect of that classification. It allows minor traffic offenders the full range of procedural protections available for serious crimes, when the issues presented are much simpler and the stakes much lower; the result is sometimes a very expensive jury trial for a very minor offense or frequently a plea reduction or dismissal by the prosecutor to avoid that expensive trial.

In addition to the problems caused by this arguably inappropriate use of the criminal sanction, the Commission also found that the workload caused by minor traffic cases was unevenly distributed across the state. The Commission found that courts in large metropolitan areas had significantly larger caseloads than in the courts in more rural areas. The result of this variation is that most judicial districts have enough judges available to give adequate attention to each defendant in traffic court and still meet the demands of juvenile, domestic relations, civil, and criminal court. In the

more populous areas, individual defendants in traffic court and litigants in other courts suffer because of the very large caseloads in traffic court. Many of the changes recently enacted or being recommended in other areas, such as in domestic relations or drunken driving laws, will only make that problem worse.

The Commission believes its recommendation addresses these problems. It recommends that all minor moving violations and parking violations be classified as infractions, which are defined as non-criminal violations of law not punishable by imprisonment. The sole punishment is a monetary penalty, which is distributed to the school boards in the same manner as a criminal fine. Categorizing these offenses as infractions means that persons who violate minor traffic laws are not "criminals"; it also means they have no right to a jury trial in superior court. The Commission believes this is an acceptable trade-off, because it believes the procedure it recommends for the district court hearing provides for a fair hearing for any motorist wishing to contest a charge. It retains the requirement that the state prove the defendant is responsible for the infraction beyond a reasonable doubt. In addition the recommendation provides for review of the district court action, but instead of a direct appeal, the person found responsible for the infraction in district court may petition the superior court for review of the action. This petition is an independent civil action, and the petitioner has the burden of proving he is not responsible for the infraction.

To encourage the motorist charged to appear or to pay the monetary penalties imposed by the court, the Commission recommends that a person's driver's license be revoked if he fails to appear or fails to pay the penalty. Revocation is a drastic sanction but the motorist determines whether he is to lose his license by his actions. To reduce the possibility that improper

revocation orders will be issued, the procedures recommended by the Commission require that the revocation not be effective for 30 days after the defendant is notified. The Commission believes this grace period will allow anyone erroneously named in a revocation order an opportunity to correct the error, and will encourage those not erroneously named to satisfy the charge or pay the appropriate penalty. If the revocation becomes effective, it remains effective until the person pays the penalty or appears to answer the charge. This revocation procedure is similar to a procedure currently applicable to a North Carolina resident who fails to appear to answer an out-of-state traffic charge.

Using the revocation to enforce the sanction or to encourage prompt court appearances has another advantage--it will reduce the clerk's and sheriff's workloads, since the court will simply have to notify the Division of Motor Vehicles of the violation. Now the courts usually enter an order for arrest, the sheriff has to try to find the defendant, and if he does, the defendant must be arrested and appear before a magistrate to secure his release pending trial. That procedure is very costly, and the Commission believes that notice from the Division of a pending license revocation will be at least as effective, and probably more effective, in securing attendance in court and collecting penalties.

The recommendation provides that these infraction hearings will generally be conducted by district court judges, with the superior court hearing them only if the infraction is related to a criminal charge properly before that court. Leaving the responsibility with the district judges, however, does not offer any relief to the overburdened urban traffic courts. The Commission discussed several alternatives to offer that relief and it concluded that allowing magistrates to conduct such hearings under rigorously controlled

circumstances is the best answer. The Commission is aware of the characteristics of the present magistrate system, especially the low compensation and irregular working hours that sometimes make it difficult to attract and retain highly competent persons for the job. In spite of those problems, the Commission believes there are excellent magistrates in almost every community and it believes that use of those magistrates can in appropriate circumstances assist the district court in hearing infractions.

Specifically, the Commission recommends that magistrates be authorized to hear infractions only in the following circumstances:

1. Before any magistrate can do so, the chief judge, the clerk of court, and the Director of the Administrative Office must agree that use of magistrates will aid in the administration of justice in the county. The Commission believes that the agreement from all three, with the different perspective each brings to the issue, is essential.
2. The chief judge must designate which magistrates may conduct infraction hearings.
3. The magistrate must complete a special training course before he conducts any hearings.
4. The magistrate, while he conducts any infraction hearings, must not have any responsibility in criminal cases. This restriction addresses the problem raised by some Commission members who believe that having magistrates who deal with police in an essentially non-adversary relationship in a warrant-issuer's role should not also act as judge in cases the officer initiates. It also insures as a practical matter that only large counties can use this provision, since the magistrate can then handle only infractions or small claims matters, and most counties cannot specialize to that degree.

5. The hearing must be conducted in a courtroom. This restriction insures that the setting in which the hearing is held is at least as dignified as the setting for district court, which is important to those who fear a return to the kinds of settings formerly used by justices of peace in disposing of traffic cases.
6. Any decision of the magistrate may be appealed for a new hearing in the district court. The Commission believes that this appeal will not be used often, but its presence serves as a safeguard against abuse.

With these safeguards, the Commission believes that magistrates conducting such hearings can alleviate the problems some urban courts are facing. The Commission expects this authority to be used sparingly and wisely, and if the districts using magistrates find it to be beneficial, perhaps others will take advantage of the authority. Just as importantly, if unexpected problems arise, the Commission is prepared to respond to those problems in the future, and the requirement of prior approval by the Director is a check that can prevent expansion to other counties if necessary.

One of the most important aspects of the proposal is the determination of which offenses are infractions. Traffic offenses which now require a mandatory court appearance, with a couple of exceptions, remain as misdemeanors. The offenses for which appearances can now be waived are all classified as infractions. In addition, the Commission recommends that parking violations formerly prosecuted in the criminal courts be classified as infractions. The Commission does not recommend that any non-traffic cases be classified as infractions, but if the procedure does not create unexpected problems the Commission believes other kinds of offenses may be appropriately classified as infractions in the future.

In summary, establishing these offenses as infractions will mean that citizens who commit minor traffic offenses will no longer have a criminal record for that offense. It also means that the court system will not have to treat them like criminals with all the special procedures that designation requires, and the license revocation for ignoring the court will create considerable savings for the clerks, sheriffs, and the court. The Commission realizes the change it recommends is substantial, but it believes this change will improve the court's ability to respond to more serious offenses without depriving any motorists of a fair hearing.

See Appendix G for legislation implementing this recommendation.

B. Administration of District Attorneys' Offices and Treatment of Witnesses and Victims. Restoration of public confidence in the court system must begin with the criminal courts, since that is the most visible segment of the system. Any measures to improve the criminal courts must recognize the central role of the administration of the District Attorney's Office in that system. Another critical factor in that restoration is the manner in which victims of and witnesses to crime are treated in the courts.

To improve the administration of district attorneys' offices, the Commission recommends that a Conference of District Attorneys and the position of Administrator for Prosecution Services be established by statute.

Now independently elected district attorneys are responsible for representing the State's interests in criminal cases in North Carolina (there are 35 of them). This structure is almost universally followed in the United States, as states have concluded that it is important to maintain a politically independent, locally elected official in this critical position of responsibility. The Commission recognizes the value of that independence, but

it also recognizes that not all the effects of this structure are beneficial. In its hearings it heard evidence that some District Attorneys' offices are poorly managed. This recommendation is designed to offer a mechanism to improve the administration of those, as well as the offices that do not present problems now.

This idea of a Conference of District Attorneys is not new. Every major group studying the structure of prosecution offices since 1933 has made a similar recommendation, and the current Standard for Prosecution Services of the American Bar Association contains such a recommendation. Similar conferences exist in most states. All these groups and states recognize that District Attorneys have common administrative problems and needs, that they need organizational assistance and a forum to encourage uniformity and to make it easier to share new ideas and discuss common problems.

Under the current structure, District Attorneys are housed, for administrative purposes, in the Administrative Office of the Courts. Personnel and purchasing and similar support services are provided by that Office, but there is no one person in the Office, other than the Director, who is responsible for their administrative needs. That arrangement is consistent with the independence that office requires, especially from the judicial branch the Administrative Office also serves, but it makes coordination of prosecution services difficult. Every day some prosecutor "reinvents the wheel" because he does not know how to contact the proper person in some other office for assistance.

A Conference of District Attorneys would help solve those problems. The Conference would consist of all elected District Attorneys. It would meet annually, and each member would have a statutory duty to attend. The Conference would have as one of its responsibilities the production of manuals

to assist its members in their administrative tasks, including the critical areas of case management and calendaring. It should provide a mechanism to address new problems, and should promote the sharing of new ideas for old problems. It can promote uniformity and can put peer pressure on a district attorney who causes problems for the entire conference (as well as the court system) by the way he administers his office in a particular area (e.g., calendaring of cases for trial).

The Conference cannot do these things without a competent and trusted administrator who knows about the problems of management of a criminal justice system and who is trusted by the District Attorneys. The current administrative support provided by the Administrative Office and the continuing education support provided by the Institute of Government cannot meet that need. To fill that need, the Commission recommends that the position of Administrator for Trial Court Services be created in the Administrative Office. The Administrator would be hired for a two-year term by the Director of the Administrative Office from nominations submitted by the Conference, and would serve as the Executive Secretary of the Conference. He would serve at the pleasure of the Director. He would also serve as Executive Secretary to the Conference.

The Administrator would insure that the Conference's work is carried on continuously, and he would be available to individual District Attorneys for consultation. In addition, he would advise the Director and others about the administrative needs of the District Attorneys and would be available to the Director for other related duties.

The Commission believes this recommendation can make a long-term needed improvement in the criminal courts without altering the basic allocation of responsibilities in the courts or reassigning administrative responsibilities

to other agencies. It also believes it can reduce the need for new personnel by making it possible for district attorneys to use existing personnel more effectively and efficiently.

Improving services to witnesses and victims appearing in court is another way to help restore public confidence in the court system. To do that, the Commission joins the Administrative Office, the Crime Commission, and the Governor's Task Force on Drunken Driving in calling for statewide expansion of the witness-victim-assistance coordinator program. These positions are currently funded in 10 judicial districts, and they provide valuable services to witnesses, especially victims, who must appear in criminal court. They advise witnesses when they should (or should not) appear, tell them what to expect, tell them how to file for any reimbursement for which they are eligible, and generally interpret the sometimes strange procedures and customs of the court system to those people who are involuntarily present in court. They also aid the prosecutors by advising them of the availability of witnesses. This service to the witness is invaluable in helping restore confidence in the courts, and district attorneys do not have the professional staff to do this kind of work. If they did, it would be wasteful to use an attorney for that kind of job when less expensive personnel can do the job better.

The Commission has one additional recommendation that affects the qualifications of both the district attorney and the Attorney General. In each case, these elected officials represent the State in court. In neither case is the elected official required by the Constitution to be an attorney. Judges must now be attorneys, and the Commission sees no reason why the party arguing the state's case before the judge should not also be constitutionally required to be an attorney. Accordingly, the Commission recommends a consti-

tutional amendment to require that district attorneys and the Attorney General be attorneys licensed to practice in North Carolina.

See Appendices H and I for legislation implementing these recommendations.

C. Selection of Juries. The law related to the selecton of juries for trials, particularly criminal trials, has been a major subject of discussion by the Commission since its recreation in 1979. In its 1981 report, the Commission recommended major changes in the procedures used to select names for master jury lists, and those changes are now being implemented.

That recommendation, however, did not deal with the major issue in this area--the procedure used in court to determine which 12 jurors will sit on a particular case. The Commission at its first meetings heard from many public officials who urged it to recommend changes to expedite trials by modifying the selection process. At its public hearings, the Commission heard from citizens making similar comments. The most frequently suggested change concerns a single sentence in G.S. 15A-1214: "The prosecutor or defense is not foreclosed from asking a question merely because the court has previously asked the same or similar question." Many judges (and district attorneys) argue that the practice of asking repetitive questions serves no useful purpose in determining a person's fitness for jury service, which is, in their opinion, the only issue to be addressed in jury selection proceedings. Accordingly they suggest that deletion of the sentence would speed up trials, without adversely affecting the quality of justice. The effect of the change would be to allow judges to prohibit attorneys from questioning potential jurors about matters already dealt with in the judge's questions of that juror. It would not prohibit the attorneys from questioning potential jurors on other relevant matters.

This proposal has, however, raised strong opposition from many practicing lawyers, and groups representing practicing lawyers, such as the Academy of Trial Lawyers. They make several arguments in defense of the present statutes. First, they argue that present case law gives the trial judge the authority to deal with those who abuse the system.* Second, they argue that questioning of jurors does more than determine if the juror is legally qualified for juror service. It allows the attorney to establish rapport with the juror so that the juror will be likely to keep an open mind on the issues at trial. In the opinion of many trial lawyers this is essential because of the implicit factors working to the prosecution's advantage. It also allows the defense lawyer to exercise in a more intelligent way the peremptory challenges authorized for his client. More generally, they argue that trial by jury is among the most important rights any citizen has, and unless the procedures used to exercise that right insure fairness to the defendant, the quality of the justice the system delivers is adversely affected. They believed that deleting that sentence would, in a symbolic way, indicate to judges that they should be more active in jury selection. If that happens, the dynamics of the courtroom make it very hard for the defense lawyer to be as involved.

After discussing the issue at length many times, the Commission makes no recommendation for change in the selection process. While it is a critical part of a trial by jury, the Commission believes that, for now, the case law

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*They cite State v. Phillips, 300 N.C. 678 at 682, as authority for that proposition. In that case, the defendant argued that the trial judge violated his rights by requiring him to ask general questions of the jury panel as a whole. In rejecting that argument, the court stated that "G.S. 15A-1214(c) does not preempt the exercise of all discretion by the trial judge during the selection process . . . . The trial judge has broad discretion to see that a competent, fair, and impartial jury is impaneled . . . . [i]t is the duty of the judge to expedite the trial in every appropriate way . . . . Finally, questions should be asked collectively of the entire panel when appropriate."

provides authority for judges to exercise some control over the process, and it believes it is appropriate to let the law in this area evolve on a case-by-case basis.

In spite of that decision, it is clear to the Commission that lawyers and judges have a responsibility to see that the abuses under the present statute are substantially curtailed. If they are not, the increasingly negative perceptions of the public will lead to change in the procedures, regardless of what the Commission, court officials, or practicing attorneys want. The following statement, presented by a citizen at the Commission's hearing in Goldsboro, illustrates the feeling of many citizens.

> I believe that the average citizen summonsed to the Court House for a reason such as the ones previously given [jury duty, or as a witness] leaves the Court House with definite impressions in their mind. I believe the principal impression is that the Courts waste an inordinate amount of time. This waste of time is resented because of the personal inconvenience to the individual and the realization that the operations of the Court cost money and that there is, therefore, an inexcusable waste of taxpayer's funds.
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> . . .
>
> I believe that it is absolutely essential that a kinsman or a close friend or a person having a business relation or a person having a preconceived position or any other association that might preclude their being completely open-minded in the litigation on which he or she is to decide should be excluded from jury service on that matter. I do not understand why an impartial Court Official--preferably the Judge--cannot have a well documented and researched series of questions to ask persons selected as possible jurors in a given case. The questions could certainly be directed to the group as a whole, but clearly requiring individual responses if there is a conflict. After the Court is satisfied that this group of peers is as neutral as is practical, I believe that both the defendant and the plaintiff should have a right to challenge a certain limited and specified number because they may have unusual information that could not possibly be covered by a predetermined and standard list of questions, but after this protection is provided that should be the limit of it.
>
> . . .

> I believe there was nothing more intended in a "trial by jury of ones peers" than fairness. It was not intended that the lawyers should be in a position of being guaranteed the more favorable jury possible for the purpose of the particular trial which is to be held.

The Commission does recommend a minor amendment to deal with a situation that occurs infrequently but costs a significant amount of money and time when it does. When a case has had a great deal of public attention jurors may be drawn from a county other than the county in which the case is being tried. That procedure is authorized by G.S. 9-12 and is used to avoid change of venue which can be very expensive and also take the trial of the case out of the community in which it occurs. Use of out-of-county jurors, however, means that jurors from a region not as affected by the publicity may be used and the trial may still be held in the county in which it occurred. When the case, however, requires large numbers of potential jurors and the selection process lasts several days or weeks, the cost of transportation and the inconvenience to those potential jurors is considerable. To avoid that, some judges have conducted jury selection procedures in the county in which the jurors reside, and when the jury is selected, returned the proceeding to the original county and transported those selected to the trial. The cost of transportation is reduced, and the inconvenience to all the jurors not selected is reduced. The Commission's recommendation would allow the presiding judge to utilize such a procedure by sanctioning the procedure in the statutes. The Commission does not intend to cast doubt on the validity of those trials; instead it hopes a statutory provision will encourage its use in appropriate cases.

See Appendix J for legislation implementing this recommendation.

D. Conditions of Probation. Most criminal defendants convicted of crimes are placed on probation. That probation is usually conditioned on the

defendant doing (or not doing) certain things. To assist judges in determining which conditions to impose, G.S. 15A-1343 lists conditions of probation, and it also specifies that any other condition reasonably related to the defendant's rehabilitation may be imposed. Beyond that listing, there are no standard or usual conditions of probation, although many judges in imposing sentence simply refer to the "usual" or "standard" conditions. At the request of Superior Court Judge Charles Winberry, the Commission examined the issue of whether the legislature should spell out in the statutes what it believes the "standard" conditions of probation should be. After discussing the matter and hearing testimony from the Division of Adult Probation and Parole, the Commission recommends that legislation be enacted to list "standard" conditions of probation.

Each standard condition would be imposed unless the court specifically chose not to impose it. For those placed on unsupervised probation, no standard condition dealing with supervision by a probation officer would be applicable. The conditions recommended by the Commission as standard include requirements that the probationer remain employed or enrolled in school, that he support his dependents, that he not carry firearms, that he pay any fine or restitution ordered by the court, that he pay a $10 monthly supervision fee, that he not change address without notifying his probation officer, and other similar kinds of conditions. Conditions of probation not applicable to all kinds of criminals (e.g., attend DUI school) are classified in the Commission's recommendation as "special" conditions of probation and they will not be applicable unless specifically imposed by the court.

The Commission believes this recommendation would have several beneficial effects. It would promote uniformity among those placed on probation while retaining the court's power to tailor the judgment to the individual. For the majority of cases, it should save some time in imposing sentence, and it should help the probation officers who have not always been certain which conditions were applicable to a particular defendant. Finally, if the monthly supervision fee is strictly enforced, it could raise several million dollars in new revenues for the General Fund.

See Appendix K for legislation implementing this recommendation.

E. Bail. G.S. 15A-534 provides that a judicial official who requires a defendant in custody pending trial to post a secured bond before he can be released on bail may not place any other conditions on that release. This provision, included in the criminal procedure revision enacted in 1974, was intended to discourage use of secured bonds except where absolutely necessary. It may have achieved that purpose, but it has also forced judges and magistrates to make difficult choices when they believe secured bonds and restrictions on travel or association (e.g., such as no contact with the victim) are appropriate. The Governor's Crime Commission has recommended a bill making some revisions in the bail statutes, including an amendment that would allow judicial officials to impose conditions on a defendant's associations or freedom of movement even if he is released on a secured bond. The Commission recommends that this portion of the bill recommended by the Governor's Crime Commission be enacted. The remainder of the proposed bill would allow judges to deny pretrial release in certain types of cases; the Commission takes no position on that portion of the bill, but, in any event, it recommends enactment of a provision allowing restricted conditions to be used when secured bonds are used.

V. OTHER MATTERS AFFECTING THE ADMINISTRATION OF THE COURTS

A. Costs of Court and Pay of Jurors. At the request of numerous court officials, the Commission undertook a complete review of court costs in North Carolina. In looking at the present costs, the Commission discovered that many of the statutory costs and fees were the original fees set when the General Court of Justice was established in 1965. That fact alone convinced the Commission that some revision to account for the effects of inflation is appropriate. Before discussing specific increases on court fees, the Commission looked at court costs in other states and found that North Carolina was generally in the middle group with regard to court costs--neither among the groups with lowest nor highest costs. The Commission then determined the factors to be considered in setting costs. First, the court costs' schedule should be simple to administer and thus the Commission continued the present system of as few different cost items as practical. Second, the impact of increasing costs on the judicial system's caseload is another factor. Obviously, it would be counterproductive to increase costs so substantially that citizens charged with minor traffic offenses would demand a court hearing simply to avoid paying the costs; that decision would result in the use of significant amounts of court time when a waiver of trial, which would have been used if the costs were perceived as reasonable, would use no more than five minutes of one deputy clerk's or magistrate's time. Finally, the Commission also feels strongly that court costs should be keyed to the cost of performing the service for which they are assessed and should be returned to the state. Courts should not raise funds for other projects no matter how worthy the project.

Some people have argued that costs and fees should be increased to make the court system totally self-supporting. If the current fees were all

increased proportionately, current fees would have to be increased 367% to make the court system self-supporting, which would mean that district court criminal costs, for example, would have to rise from its present amount of $31 to $82. If the self-supported system also charged those who use the courts the full cost of their use of the system, the current method of collecting costs would have to be revised. Every fee except district court criminal fees would run to several hundred dollars per case in such a system and district court criminal fees would probably have to be reduced. To illustrate that point, consider that in 1981-82 the district court division disposed of 1,088,331 criminal cases. Of that total 442,213 or 40.6% were disposed of by waiver, which means that $8,402,047 (43.2% of the General Court of Justice Fee receipts) was returned to the State Treasury by those who use the least amount of the court system's time and many never appeared in court at all.

The Commission strongly opposes the concept of a self-supported court system. It agrees that individuals who use the courts must bear partial responsibility for providing the funds for the system's operation. However, the judicial system is a fundamental part of government and part of the responsibility for its operation, like other governmental operations, must rest with the citizens at large.

In looking at the amounts appropriated from the General Assembly and the amounts recouped by the State Treasury from court costs, the percentage of appropriations recouped has fluctuated some over the years since the unified court system was put into effect. In fiscal year 1966-67, the first year of operation under the unified court system, $529,973 was paid into the State Treasury from court costs and fees. The appropriation from the General Assembly to the Judicial Department for that year was $2,341,736, thus the judicial system from costs and fees returned to the State 22.6% of the funds

appropriated for its operation. In fiscal year 1971-72, the first year that all 100 counties were included in the unified court system, $8,922,427 was paid into the State Treasury from court costs and fees and the appropriation from the General Assembly was $28,647,500. In that year, the judicial system returned to the State 31.1% of the funds appropriated for its operation. For fiscal year 1981-82, the appropriations from the General Assembly to the Judicial Department was $89,631,765 and the amount returned to the State Treasury by costs and fees was $19,443,594 or 21.7% of the amount appropriated. Additionally the courts returned another $1,085,097 to the State Treasury from appellate court fees, sales of appellate reports and payments on indigent representation. The courts also returned to the public schools of the state the sum of $20,256,234 from fines and bond forfeitures imposed by the court. Since that $20 million would have to be appropriated to the schools if it were not raised through fines and forfeitures, in actuality the judicial system returned $40,784,925 to the State Treasury in fiscal year 1981-82, or 45.5% of the funds appropriated. Additionally, the courts returned $5,935,315 to North Carolina counties and cities for the provision of courthouses from the facilities fee.

In making its recommendations, the Commission chose not to increase each fee a certain percentage. Instead each cost was evaluated individually and the recommended increase was based on the nature of the task to be performed and the length of time and involvement of the court in carrying out the task.

In looking at the costs and fees article, the Commission also considered the current fee paid to jurors. The current fee of $8 per day for a petit juror was set in 1969. In 1979 the General Assembly added a provision that grand juror's receive $12 per day and petit jurors who serve more than five days receive $30 per day. The Commission recognizes that jury service is a

public duty and does not believe that the State should try to compensate jurors at an amount comparable to a day's wages. However, the State should at least compensate jurors for out of pocket expenses such as transportation, parking, and meal expenses. Therefore, the Commission recommends that the daily fee for both petit and grand jurors be increased to $15.

Based on 1981-82 figures, the recommendations of the Commission would result in increased revenues to the State Treasury of $10,377,687 in fiscal year 1983-84. The recommendation to increase juror's pay would offset this increase by $2,105,400. The net increase would be $8,272,287.

See Appendices L and M for legislation implementing these recommendations.

B. Magistrates Salary Credit for Court Experience. The Commission received several complaints from officials who have the responsibility for nominating and appointing magistrates that well-qualified people are being lost because the salary plan does not allow any credit for job-related experience. The current salary statute provides that persons with a two-year Associate in Applied Science degree in criminal justice or a paralegal training begin at the salary level of a magistrate with 3 years experience and persons with a four-year college degree in any field begin at the level of a magistrate with 5 years experience. However, a person who has many years experience as a law enforcement officer or court official in North Carolina, for whom the knowledge gained in that former job would directly transfer to the new job of magistrate, cannot be given any any salary credit for his experience. Good people are unwilling to apply for magistrates' positions because of the inability to begin them at a competitive salary. The Commission believes that ten years experience as a law enforcement officer in

North Carolina or as an employee of the clerk of superior court's office in North Carolina should be treated as the equivalent of a four-year college degree. Certainly, the experience such a person would bring to the job is equivalent to a four-year degree in a subject unrelated to the law. Therefore the Commission recommends that persons with 10 years law enforcement or court experience within the previous twelve years be hired at the level of a magistrate with 5 years of service.

See Appendix N for legislation implementing this recommendation.

C. Equipment and Personnel Needs and Allocation. When the Administrative Office of the Courts was established in 1965, one of the principal statutory duties assigned to it was the responsibility of determining when and where additional equipment and support personnel are needed in the court system. Upon making that determination, it was to seek funds from the General Assembly and, upon receipt of those funds, it was to allocate them as appropriate to meet the most pressing needs of the system. For a decade that method of allocation proved to be satisfactory. In 1976, the General Assembly, for several reasons, specified in its appropriations bills where new positions were to be created. After that action, court officials quickly realized that the route to obtain new personnel was through the legislature and not through the budget development and personnel allocation procedures specified in the General Statutes. This political process forced court officials into a difficult choice--if they pursued their requests for new personnel through the statutorily established procedures, they were likely to be unsuccessful because the available funds were allocated by the legislature. If they placed their requests with their senators and representatives, they stood a much better chance of obtaining new personnel,

but in doing so, they undermined the personnel allocation procedure most of them supported in principle.

For various reasons, the most recent appropriation for new court personnel (in 1982) did not specify where new positions or equipment should be placed. The responsibility for determining where the money would be used was left with the Administrative Office of the Courts. The Commission believes that this approach to funding new personnel or equipment is consistent with existing statutes, is likely to result in a more efficient use of new personnel or equipment in times of reduced funding for all government funding, and restores to the Chief Justice (through the Administrative Office of the Courts) the authority he should have as the head of the judicial branch of government.

The Commission makes no recommendation for statutory change in this area. The existing statutes are entirely adequate; the Commission recognizes that self restraint on the part of court officials is necessary if the current practice is to continue and the Commission encourages those officials to utilize the existing channels within the Administrative Office to seek new personnel or equipment.

In its public hearings and its subsequent deliberations, the Commission repeatedly found that antiquated equipment in use in the court system prevents the system from doing the job the public expects it to do. The Commission realizes that economic conditions will not permit large increases in appropriations for the court system this year, but the need for those appropriations is still significant. The most pressing needs are for equipment, especially in the clerks' offices. Those offices need typewriters, microfilm equipment, accounting equipment, electronic cash registers, modern

filing systems, and most important, access to computers. The important service provided by clerks of court to the public will not be as efficient as it should be until that equipment is provided.

In addition to the needs of the clerks' offices, the other offices in the court system also need equipment. District attorneys' offices and public defenders operate without the kinds of word processing and other equipment that almost all middle-sized law firms consider essential.

The other offices funded from the Judicial Department budget--judges' offices, magistrates' offices, the appellate courts, juvenile probation offices--all have similar needs.

The Commission believes that money invested in this kind of equipment will reduce the need for new personnel, and will in the long run save money for the state. As soon as money is available for meeting current unmet needs of state government, the Commission recommends that this issue be addressed by the General Assembly.

IV. CONTINUING STUDIES

The Commission is continuing to study the problems encountered by the court system in administering the indigent legal defense program. That program provides funds for public defenders' offices and the payment of the fees of private attorneys representing indigents legally entitled to such representation. The program is necessary to provide legal representation required by the United States Constitution, but it is the fastest growing part of the Judicial Department's budget. It has never been fully funded, but in the past budget transfers or appropriations from the Contingency and Emergency Fund have kept it operating. Neither of those sources is available this year,

and by the time this report is distributed, it is quite possible that no private attorneys will be paid for their services in defense of indigents for the rest of this fiscal year.

As this report goes to press, the Commission is still considering some recommendations to improve the administration of this program in the future. Those recommendations will be presented in a separate report in time for action by the 1983 session.

The Commission has one recommendation for consideration now, however. The factors listed in G.S. 7A-458 for a judge to consider in determining the proper fee to be awarded a private attorney are the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in such cases. The Commission recommends that the statute also require judges to consider the amount of funds available to the state for payment of fees. That amendment would require all judges to consider the funds available; most judges already do, but judges who strictly follow the statute award much larger fees than most of their colleagues. The Commission believes that recommendation would tend to promote more uniformity among judges and treat all lawyers more equitably.

See Appendix O for legislation implementing this recommendation.

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.

Effective July 1, 1981, the membership of the Commission is increased to 23 voting members. The Governor shall appoint two additional voting members, one of whom shall be a district attorney, and one of whom shall be a member of the General Assembly. The President of the Senate shall appoint three additional voting members, one of whom shall be a regular superior court judge, and two of whom shall be members of the General Assembly. The Speaker of the House shall appoint three additional voting members, one of whom shall be a district court judge, and two of whom shall be members of the General Assembly. The legislators shall each serve a term of four years, or until they cease to be members of the General Assembly, whichever is earlier. The district attorney and trial judges shall serve an initial term of two years, or until they cease to occupy their respective offices, whichever is earlier. Their successors appointed on July 1, 1983, and quadrennially thereafter, shall serve for terms of four years, or until they cease to occupy their respective offices, whichever is later. A vacancy in an additional voting membership shall be filled for the unexpired term by the appointing authority who made the original appointment. An additional voting 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 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 IMPLEMENT THE CONSTITUTIONAL AMENDMENT REGARDING APPEAL OF UTILITIES COMMISSION ORDERS

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-29 is amended by adding after the words "Utilities Commission" the words "not governed by subsection (b)", and is further amended by designating the current section, as amended, as subsection (a) and adding a new subsection (b) to read as follows:

"(b) From any final order or decision of the Utilities Commission in a general rate case, appeal as of right lies directly to the Supreme Court."

Sec. 2. G.S. 7A-30 is rewritten to read as follows:

"Except as provided in § 7A-28, an appeal lies of right to the Supreme Court from any decision of the Court of Appeals rendered in a case

(1) Which directly involves a substantial question arising under the Constitution of the United States or of this State, or

(2) In which there is a dissent.

Sec. 3. G.S. 7A-31(a) is amended by deleting from the first sentence of that subsection the words and punctuation "the North Carolina Utilities Commission,".

Sec. 4. The first sentence of G.S. 62-90(d) is rewritten to read as follows:

"The appeal shall lie to the Appellate Division of the General Court of Justice as provided in G.S. 7A-29."

Sec. 5. Subsection (g) of G.S. 62-90 is repealed.

Sec. 6. G.S. 62-91 is amended by deleting the last sentence of that subsection.

Sec. 7. G.S. 62-92 is amended by deleting the words "Court of Appeals" and inserting in their place the words "Appellate Division of the General Court of Justice".

Sec. 8. The second sentence of G.S. 62-95 is amended by deleting the words "Court of Appeals" and inserting in their place the words "appellate court with jurisdiction over the case on appeal".

Sec. 9. G.S. 62-96 is rewritten to read and provide as follows: "Appeals of final orders of the Utilities Commission to the Supreme Court are governed by Article 5 of General Statutes Chapter 7A. In all appeals filed in the Court of Appeals, any party may file a motion for discretionary review in the Supreme Court pursuant to G.S. 7A-31. If the Commission is the appealing party, it is not required to give any undertaking or make any deposit to assure payment of the cost of the appeal, and the court may advance the cause on its docket."

Sec. 10. This act shall become effective on July 1, 1983 and applies to final orders of the Utilities Commission entered on or after that date.

APPENDIX C

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A CONSTITUTIONAL AMENDMENT APPROVED BY THE VOTERS BY PROVIDING FOR TEMPORARY SERVICE BY RETIRED STATE SUPREME COURT JUSTICES ON EITHER THE SUPREME COURT OR THE COURT OF APPEALS, AND TO AUTHORIZE THE CHIEF JUSTICE TO RECALL RETIRED JUDGES OR JUSTICES IF NECESSARY TO EXPEDITE THE WORK OF THE APPELLATE COURTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-39.1(b) is amended by putting a period after the word "service" and deleting the remainder of the subsection.

Sec. 2. G.S. 7A-39.3(a) is rewritten to read as follows:

"(a) Justices of the Supreme Court and judges of the Court of Appeals who have not reached the mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the provisions of G.S. 7A-39.2, or under the Uniform Judicial Retirement Act after having completed 15 years of creditable service, may apply as provided in G.S. 7A-39.6 to become emergency justices or judges and upon being commissioned as an emergency justice or emergency judge shall be subject to temporary recall to active service as provided in G.S. 7A-39.5."

Sec. 3. G.S. 7A-39.5(b) is amended by adding a new sentence between the first and second sentences of that section to read as follows:

"If the Chief Judge does not recall an emergency judge to serve in the place of the temporarily incapacitated judge, the Chief Justice may recall an emergency justice who, in his opinion, is competent to perform

the duties of a judge of the court of appeals, to serve temporarily in the place of the judge in whose behalf he is recalled."

Sec. 4. G.S. 7A-39.9(a) is rewritten to read as follows:

"(a) Decisions of the Chief Justice and the Chief Judge regarding recall of emergency justices and emergency judges, when not in conflict with the provisions of this article, are final."

Sec. 5. G.S. 7A-39.9(c) is amended on line 5 by inserting after the word "judge" the words "or justice".

Sec. 6. G.S. 7A-39.13(2) is rewritten to read as follows:

"(2) The Chief Justice is authorized to recall retired justices to serve on the Supreme Court or on the Court of Appeals, and the Chief Judge is authorized to recall retired judges of the Court of Appeals to serve on that Court."

Sec. 7. Chapter 7A of the General Statutes is amended by adding a new section, G.S. 7A-39.14, to read as follows:

§ 7A-39.14. Recall by Chief Justice of retired or emergency justices or judges for temporary vacancy or to otherwise expedite court business.

"(a) In addition to the authority granted to the Chief Justice under G.S. 7A-39.5 to recall emergency justices and under 7A-39.13 to recall retired justices, the Chief Justice may recall retired or emergency justices or retired or emergency judges of the Court of Appeals in the following circumstances:

(1) If a vacancy exists on the Supreme Court, he may recall a retired or emergency justice to serve on that court until the vacancy is filled in accordance with law.

(2) If a vacancy exists on the Court of Appeals, he may recall a retired or emergency justice or judge of the Court of Appeals to serve on that court until the vacancy is filled in accordance with law.

(3) With the concurrence of a majority of the Supreme Court, he may recall an emergency or retired justice to serve on the Supreme Court when necessary to expedite the work of the Court.

(4) With the concurrence of a majority of the Supreme Court, he may recall an emergency or retired justice or judge of the Court of Appeals to serve on the Court of Appeals when necessary to expedite the work of that court.

(b) No judge or justice may be recalled unless he consents to the recall. Orders of recall issued pursuant to this section must be in writing and entered on the minutes of the Court.

(c) Judges or justices recalled pursuant to this section:

(1) have the same authority and jurisdiction granted to emergency justices and judges under G.S. 7A-39.7;

(2) are subject to rules adopted pursuant to G.S. 7A-39.8 regarding filing of opinions and other matters; and

(3) are compensated as are other retired or emergency justices or judges recalled for service pursuant to G.S. 7A-39.5 or 7A-39.13."

Sec. 8. This act is effective on ratification.

APPENDIX E

A BILL TO BE ENTITLED

AN ACT TO AMEND SERVICE OF PROCESS IN SUMMARY EJECTMENT AND SMALL CLAIMS CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-29 is amended by adding on line 7 between the words "claimed" and "and" the following punctuation and words: ", mail a copy of the summons and complaint to defendant at his last known address,".

Sec. 2. G.S. 7A-217(2) is rewritten to read as follows:

"When the defendant is not under any legal disability, he may be served by registered or certified mail as provided in G.S. 1A-1, Rule 4(j)(1)c. Proof of service is as provided in G.S. 1A-1, Rule 4(j2)."

Sec. 3. This act shall become effective July 1, 1983, and shall apply to process served on or after that date.

APPENDIX F

A BILL TO BE ENTITLED

AN ACT TO HAVE DISCOVERY PAPERS FILED WITH CLERK ONLY WHEN USED IN PROCEEDING

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5(d) is amended by rewriting the second sentence as follows: "All other papers required to be served upon a party shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered."

Sec. 2. G.S. 1A-1, Rule 30(f)(1) is amended by rewriting the second sentence as follows: "He shall then place the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall personally deliver it or mail it by first class mail to the party taking the deposition or his attorney who shall preserve it as the court's copy."

Sec. 3. This act is effective on October 1, 1983, and applies to depositions taken on or after that date, to interrogatories, requests for documents and answers and responses thereto made on or after that date.

APPENDIX G

A BILL TO BE ENTITLED

AN ACT TO CLASSIFY MINOR TRAFFIC OFFENSES AS INFRACTIONS AND TO PROVIDE A PROCEDURE FOR THE DISPOSITION OF SUCH INFRACTIONS BY THE COURTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. Chapter 14 is amended by adding a new section, G.S. 14-3.1, to read as follows:

§ 14-3.1.--Infraction defined; sanctions.

--(a) An infraction is a non-criminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a monetary penalty of not more than $100. The clear proceeds of penalties for infractions are payable to the county in which the penalty is imposed for the use of the public schools.

(b) The procedure for disposition of infractions is as provided in Article 66 of General Statutes Chapter 15A.

Sec. 2. G.S. 14-4 is amended by designating the present section as subsection (a) and amending the redesignated subsection (a) by inserting at the beginning of that subsection the phrase "Except as provided in subsection (b), "; that section is further amended by adding a new subsection (b) to read as follows:

"(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than $50."

Sec. 3. G.S. Chapter 15A is amended by adding a new Article 66 to read as follows:

Article 66

Procedure for Hearing and Disposition of Infractions

§ 15A-1111. General Procedure for Disposition of Infractions.

The procedure for the disposition of an infraction, as defined in G.S. 14-3.1, is as provided in this article. If a question of procedure is not governed by this article, the procedures applicable to the conduct of pretrial and trial proceedings for misdemeanors in district court are applicable unless the procedure is clearly inapplicable to the hearing of an infraction.

§ 15A-1112. Venue.

Venue for the conduct of infractions hearing lies in any county where any act or omission constituting part of the alleged infraction occurred.

§ 15A-1113. Prehearing Procedure.

(a) Process.--A law enforcement officer may issue a citation for an infraction in accordance with the provisions of G.S. 15A-302. A judicial official may issue a summons for an infraction in accordance with the provisions of G.S. 15A-303.

(b) Detention of person charged.--A law enforcement officer who has probable cause to believe a person has committed an infraction may detain the person for a reasonable period in order to issue and serve him a citation.

(c) Bail bond may be required.--A person charged with an infraction may not be required to post an appearance bond if:

(1) he is licensed to drive by a state that subscribes to the nonresident violator compact as defined in Article 1B of G.S. Chapter 20 and the infraction charged is subject to the provisions of that compact, or;

(2) he is a resident of North Carolina.

Any other person charged with an infraction may be required to post a bond to secure his appearance and a charging officer may require such a person charged to accompany him to a judicial official's office to allow the official to

determine if a bond is necessary to secure the person's court appearance, and if so, what kind of bond is to be used. The provisions of Article 26 of this Chapter relating to issuance and forfeiture of bail bonds are applicable to bonds required pursuant to this subsection.

(d) Territorial jurisdiction.--A law enforcement officer's territorial jurisdiction to charge a person with an infraction is the same as his jurisdiction to arrest specified in G.S. 15A-402.

(e) Use of same pleading for two offenses.--A person may be charged with a criminal offense and an infraction in the same pleading.

§ 15A-1114. Hearing Procedure For Infractions.

(a) Jurisdiction.--Jurisdiction for the adjudication and disposition of infractions is as specified in G.S. 7A-258 and 7A-271(d).

(b) Magistrates may hear infractions.--The chief district judge may, by written order, assign infraction cases to magistrates qualified under G.S. 7A-273.1 to conduct infraction hearings. A magistrate conducting such a hearing must follow the procedures of this article and of law in conducting the hearing and he has the same power to impose sanctions as a district court judge. The Director of the Administrative Office of the Courts, after consulting with the Conference of Chief District Court Judges, may promulgate guidelines for the conduct of such hearings by magistrates.

(c) No trial by jury.--In adjudicatory hearings for infractions, no party has a right to a trial by jury.

(d) Infractions heard in civil or criminal session.--A district court judge may conduct proceedings relating to traffic infractions in a civil or criminal session of court, unless the infraction is joined with a criminal offense arising out of the same transaction or occurrence. In such a case,

the criminal offense and the infraction must be heard at a session in which criminal matters may be heard.

(e) Pleas.--A person charged with an infraction may admit or deny responsibility for the infraction. The plea must be made by the person charged in open court, unless he submits a written waiver of appearance which is approved by the presiding judge, or, if authorized by G.S. 7A-146, he waives his right to a hearing and admits responsibility for the infraction in writing and pays the specified penalty and costs.

(f) Duty of District Attorney.--The district attorney is responsible for insuring that infractions are calendared and prosecuted efficiently.

(g) Burden of Proof.--The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility.

(h) Recording not necessary.--The State does not have to record the proceedings at infraction hearings. With the approval of the court, a party may, at his expense, record any proceeding.

§ 15A-1514. Appeal to District Court; Review of Disposition by Superior Court.

(a) Appeal from a magistrate.--A decision of a magistrate authorized to conduct infraction hearings may be appealed to the district court for a hearing de novo, in the same manner as provided for appeal of criminal matters heard by a magistrate.

(b) Review of District Court.--A person who denies responsibility and is found responsible for an infraction in the district court may, within 10 days of the hearing, file a petition in the civil division of the superior court in the county in which the hearing was conducted requesting the superior court to review the finding of the district court. A prosecutor must represent the

State in these actions. At the hearing the burden of proof is on the petitioner to prove by the greater weight of the evidence that he was not responsible for the infraction. If, based on the evidence presented, the court finds that the petitioner has failed to meet that burden of proving that he was not responsible for the infraction, it must remand the action to the district court for compliance with the judgment of that court. If the court finds that the petitioner has proved that he was not responsible for the infraction, it must vacate the judgment of the district court and dismiss the action. The court must notify the Division of Motor Vehicles of its judgment if the alleged infraction is a motor vehicle offense. In such hearings neither party has a right to trial by jury.

(c) Review of infractions originally disposed in superior court.--If the superior court disposes of an infraction pursuant to its jurisdicton in G.S. 7A-271(d), appeal from that judgment is as provided for criminal actions in the superior court.

§ 15A-1115. Enforcement of Sanctions.

(a) Use of Contempt or Fine Collection Procedures; Notification of DMV.--If the person does not comply with a sanction ordered by the court, the court may proceed in accordance with G.S. Chapter 5A. If the person fails to pay a penalty, the court may proceed in accordance with Article 84 of this Chapter. If the infraction is a motor vehicle infraction and the person does not pay the applicable penalty and costs within 30 days of the date specified in the court's judgment, the court must notify the Division of Motor Vehicles of the failure to comply.

(b) Proceedings heard by judge only.--Proceedings conducted under authority of this section must be conducted by a judge.

§ 15A-1116. Court To Report Failures To Appear.

(a) Reporting requirements.--The court must report to the Division of Motor Vehicles the name of any person charged with a motor vehicle infraction who fails to appear for a scheduled hearing, unless within 10 days after the date of the scheduled hearing, the person either appears in court to answer the charge or admits responsibility pursuant to the procedure authorized in G.S. 7A-146.

(b) No order for arrest.--If a person served with a citation for an infraction fails to appear to answer the charge, the court may issue a summons to secure the person's appearance, but an order for arrest may not be used in such cases.

§ 15A-1117. Costs.

Costs assessed for an infraction are as specified in G.S. 7A-304.

Sec. 4. G.S. 15A-302 is amended by rewriting subsection (a) to read:

"(a) Definition.--A citation is a directive, issued by a law enforcement officer, that a person appear in court and answer a misdemeanor or infraction charge or charges." That section is further amended by adding in subsection (b) after the word "misdemeanor" the words "or infraction". That section is further amended in subsection (e) by inserting between the words "crime" and "is" in the first sentence the words "or infraction". That section is further amended in subsection (f) by inserting at the beginning of that subsection the words and punctuation "If the offense is a misdemeanor, a" and deleting the word "A".

Sec. 5. G.S. 15A-303 is amended by adding the words "or infraction" after the word "crime" in the first sentence of subsection (a). That section is further amended in subsection (b) by adding after the word "crime" in the caption and in each of the two sentences the words "or infraction". That

section is further amended by adding at the beginning of subsection (e)(1), the words and punctuation "If the offense charged is a criminal offense, a" and by deleting the word "A". That section is further amended by adding at the beginning of subsection (e)(2), the words and punctuation "If the offense charged is a criminal offense, an" and by deleting the word "An".

Sec. 6. G.S. 15A-1361 is rewritten to read as follows:

§ 15A-1361. Authorized Fines and Infractions.

--A person who has been convicted of a criminal offense may be ordered to pay a fine as provided by law. A person who has been found responsible for an infraction may be ordered to pay a penalty as provided by law. Unless the context clearly requires otherwise, references in this article to fines also include penalties.

Sec. 7. G.S. 7A-61 is amended by inserting in the first sentence between the words "actions" and "requiring" the words "and infractions".

Sec. 8. G.S. 7A-146(8) is rewritten to read as follows:

(8) Promulgating the schedule of traffic offenses adopted pursuant to G.S. 7A-148(a) for which magistrates and clerks of court may accept written appearances, waivers of hearing or trial, and pleas of guilty or admissions of responsibility and establishing a schedule of fines or penalties therefor;".

Sec. 9. G.S. 7A-148(a) is amended by deleting the words "waivers of trial and pleas of guilty and establish a schedule offenses therefor," and inserting in their place the words "waivers of trial or hearing and pleas of guilty or admissions of responsibility, and establish a schedule of penalties or fines therefor,".

Sec. 10. G.S. 7A-177 is amended by designating the present section as subsection (a) and adding a new subsection (b) to read as follows:

"(b) Before a magistrate may conduct infraction hearings he must satisfactorily complete a course of instruction in the conduct of such hearings established by the Administrative Office of the Courts. The Administrative Office of the Courts may contract with qualified educational organizations to conduct the course of instruction and must reimburse the magistrates attending for travel and subsistence incurred in taking such training.

Sec. 11. G.S. 7A-180(4) is rewritten to read as follows:

(4) Has the power to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility to certain traffic offenses in accordance with a schedule of offenses promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fine or penalty and costs;".

Sec. 12. G.S. 7A-191 is amended by rewriting the first sentence to read as follows:

"All trials on the merits and all hearings on infractions conducted pursuant to Article 66 of Chapter 15A shall be conducted in open court and so far as convenient in a regular courtroom."

Sec. 13. G.S. 7A-196 is amended to add a new subsection (c) to read as follows:

(c) In adjudicatory hearings for infractions, there shall be no right to trial by jury.

Sec. 14. G.S. 7A-198(e) is amended by deleting the period at the of the subsection and inserting in its place the following:

"or in hearings to adjudicate and dispose of infractions."

Sec. 15. Article 20 of Chapter 7A of the General Statutes is amended by adding a new section, G.S. 7A-253 to read as follows:

"§ 7A-253. Infractions.

Except as provided in G.S. 7A-271(d), original, exclusive jurisdiction for the adjudication and disposition of infractions lies in the district court division."

Sec. 16. G.S. 7A-271 is amended by adding a new subsection (d) to read as follows:

"(d) The criminal jurisdiction of the superior court includes the jurisdiction to dispose of infractions only in the following circumstances:

(1) If the infraction is a lesser included violation of a criminal action properly before the court, the court must submit the infraction for the jury's consideration in factually appropriate cases.

(2) If the infraction is a lesser included offense of a criminal action properly before the court, or if it is a related charge, the court may accept admissions of responsibility for the infraction.

A proper pleading for the criminal action is sufficient to support a finding of responsibility for the lesser included or related infraction.

Sec. 17. G.S. 7A-273 is amended by inserting after the word "actions" in the first line the words "or infractions"; that section is further amended by rewriting subdivision (2) to read as follows:

(2) "In misdemeanor or infraction cases involving traffic offenses, to accept written appearances, waivers of trial or hearing and

pleas of guilty or admissions of responsibility, in accordance with a schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalty and costs;";

that section is further amended by adding between the word "in" and the word "criminal" in the caption the words "infractions or".

Sec. 18. G.S. Chapter 7A is amended by adding a new section G.S. 7A-273.1 to read as follows:

"§ 7A-273.1. Powers of magistrates in infraction hearings.

A magistrate may conduct infraction hearings if:

(1) The chief district court judge, with the concurrence of the clerk of superior court and the Director of the Administrative Office of the Courts, makes a written finding that the use of magistrates in such cases would assist in the efficient administration of justice in the county in which the magistrate is appointed;

(2) The magistrate has satisfactorily completed the training course prescribed by G.S. 7A-177(b);

(3) The magistrate, during the period for which he is authorized to conduct infraction hearings, is not assigned responsibility in any criminal matters, and

(4) The hearing is conducted in a courtroom.

The finding required by subsection (1) must be signed by the chief judge, the clerk, and the Director and must be filed with the clerk."

Sec. 19. G.S. 7A-304 is amended by adding a new subsection (e) to read as follows:

"(e) The costs assessed pursuant to this section for criminal actions disposed of in the district court are also applicable to infractions disposed of in the district court. If an infraction is disposed of in the superior court pursuant to G.S. 7A-271(d), costs applicable to the original charge are applicable to the infraction."

Sec. 20. G.S. 20-24(c) is amended by rewriting the first sentence to read as follows:

"For the purpose of this article, the term conviction shall mean a final conviction of a criminal offense or a determination that a person is responsible for an infraction."

Sec. 21. Article 2 of G.S. Chapter 20 is amended by adding a new section, G.S. 20-24.1, to read as follows:

"§ 20-24.1. Revocation for failure to appear or comply with sanctions in infractions.

(a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle infraction and he:

(1) failed to appear, after being notified to do so, for a hearing to determine if he was responsible for the infraction; or

(2) failed to pay a penalty as ordered by the court after a determination that the person was responsible for the infraction.

Revocation orders entered under the authority of this section are effective on the thirtieth day after the order is mailed.

(b) A license revoked under this section remains revoked until the Division receives notice from the court that the person whose license has been revoked:

(1) has appeared to answer the charge; or

(2) is not the person charged with the infraction; or

(3) has paid the penalty ordered by the court; or

(4) did not willfully fail to pay the penalty.

Upon receipt of such notice, the Division must restore the person's license if he is otherwise eligible to be licensed and he has paid the restoration fee required by G.S. 20-7. In addition, if the person whose license is revoked is not a resident of this state, the Division may notify the driver licensing agency in the person's state of residence of the actions taken to revoke the person's license in this state.

(c) If the Division receives the notice described in subsection (b) before the effective date of the revocation order, the revocation must be rescinded and the person does not have to pay a restoration fee."

Sec. 22. G.S. 20-176 is rewritten to read as follows:

"§ 20-176. Penalty for misdemeanor or infraction.

(a) A person who violates a provision of Part 9, 10, 10A, or 11 of this Article is responsible for an infraction unless the violation is specifically declared by law to be a misdemeanor or felony. For the remaining parts of this Article, it is a misdemeanor to violate a provision of any of those parts unless the violation is specifically declared by law to be an infraction or a felony.

(b) Unless a specific penalty is otherwise provided by law, a person found responsible for an infraction contained in this Article may be ordered to pay a penalty of not more than $100.

(c) Unless a specific penalty is otherwise provided by law, a person convicted of a misdemeanor contained in this Article may be imprisoned for not more than 60 days or fined not more than $100, or both such fine and imprisonment. A punishment is specific for purposes of this subsection if it contains a quantitative limit on the term of imprisonment or the amount of fine a judge can impose.

(d) For purposes of determining whether a violation of an offense contained in this Chapter constitutes negligence per se, criminal offenses and infractions shall be treated identically."

Sec. 23. G.S. 20-79(a) is amended by adding between the figure ($1,000) and the period in the subsection the words "and may be imprisoned for not more than sixty days or both such fine and imprisonment".

Sec. 24. G.S. 20-108 is amended by inserting between the words "or" and "imprisonment" the words "up to six months".

Sec. 25. G.S. 20-183.8 is amended by rewriting subsection (e) of that section to read as follows:

"(e) Violation of any provision of this Article is an infraction, and a person found responsible for an infraction contained in this Article may be ordered to pay a penalty of not more than $50, except that the unauthorized reproduction of an inspection sticker shall be punishable as a forgery under G.S. 14-119."; that section is further amended by deleting the last sentence of subsection (d).

Sec. 26. G.S. 20-37.6 is amended by deleting from subsection (f)(1) the words "The penalty for a violation of G.S. 20-37.6(e)(1), and (2) and (3) shall be ten dollars ($10.00)" and inserting in their place the words "A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction punishable by a

penalty of ten dollars ($10.00)"; that section is further mended by deleting from subsection (f)(2) the words "The penalty for violation of G.S. 20-37.6(e)(4) shall be fifty dollars ($50.00)" and by inserting in their place the words "A violation of G.S. 20-37.6(e)(4) is an infraction punishable by a penalty of fifty dollars ($50.00)".

Sec. 27. G.S. 20-146(e) is amended by deleting the last sentence of that subsection.

Sec. 28. G.S. 20-135(d) is repealed.

Sec. 29. G.S. 20-137 is amended by deleting the second paragraph of that section.

Sec. 30. G.S. 20-137.1(b) is amended by deleting the word "fine" and inserting in its place the word "penalty".

Sec. 31. G.S. 20-140(d) is rewritten to read as follows:

"(d) Reckless driving as defined in subsection (a) and (b) is a misdemeanor, punishable by imprisonment not to exceed six months or a fine not to exceed $500, or both a fine and imprisonment."

Sec. 32. G.S. 20-140(e) is amended by deleting the words "Any person convicted of violating subsection (c) of this section shall be punished", and inserting in their place the following: "Reckless driving as defined in subsection (c) is a misdemeanor punishable".

Sec. 33. G.S. 20-141 is amended by adding a new subsection (j1) to read as follows:

(j1) It is a misdemeanor punishable as provided in G.S. 20-176 for a person to drive a vehicle on a highway at a speed of more than 75 miles per hour, regardless of the speed limit established by law for the highway where the offense occurred.

Sec. 34. G.S. 20-141(j) is amended by inserting after the word "laws" the words "is guilty of a misdemeanor and".

Sec. 35. G.S. 20-138(a) is amended by adding between the words "and" and "punishable" the words "is a misdemeanor".

Sec. 36. G.S. 138(b) is amended by adding between the word "unlawful" and the word "for" the words "and is a misdemeanor".

Sec. 37. G.S. 20-139(a) is amended by deleting the words "unlawful and" and inserting in their place the words "a misdemeanor".

Sec. 38. G.S. 20-139(b) is amended by deleting the words "unlawful and" and inserting in their place the words "a misdemeanor".

Sec. 39. G.S. 20-157(a) is amended by adding a new sentence at the end of the subsection to read as follows:

"Violation of this section is a misdemeanor punishable as provided by G.S. 20-176."

Sec. 40. G.S. 20-162.1 is amended in the second paragraph by deleting the word "convicted" and inserting in its place the words "found responsible for an infraction".

Sec. 41. G.S. 20-166.1 is amended by adding a new subsection (h) to read as follows:

"(h) A violation of this section is a misdemeanor punishable as provided in G.S. 20-176."

Sec. 42. G.S. 153A-123(b) is rewritten to read as follows:

"(b) Unless the Board of Commissioners has provided otherwise, violation of a county ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum infraction penalty, fine or term of imprisonment to be imposed for a violation is some amount of money or number of days less than the maximums imposed by G.S. 14-4."

Sec. 43. G.S. 160A-175(b) is rewritten to read as follows:

"(b) Unless the Council shall otherwise provide, violation of a city ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum infraction penalty, fine, or term of imprisonment to be imposed for a violation is some amount of money or number of days less than the maximums imposed by G.S. 14-4."

Sec. 44. G.S. 116-44.4(g) is rewritten to read as follows:

"(g) Violation of an ordinance adopted under any portion of this part is an infraction as defined in G.S. 14-3.1 and is punishable by a penalty of not more than $50.00. An ordinance may provide that certain prohibited acts shall not be infractions and in such cases the provisions of subsection (h) may be used to enforce the ordinance."

Sec. 45. This act shall become effective on January 1, 1984 and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act shall be governed by the law in effect at the time of the offense.

APPENDIX H

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A CONFERENCE OF DISTRICT ATTORNEYS AND TO PROVIDE FOR AN AN EXECUTIVE SECRETARY OF THE CONFERENCE WHO ALSO SERVES AS THE ADMINISTRATOR FOR PROSECUTION SERVICES OF THE ADMINISTRATIVE OFFICE OF THE COURTS.

The General Assembly of North Carolina enacts:

Section 1. Subchapter VII of Chapter 7A of the General Statute is amended by reserving §§ 7A-409 and 7A-410 for future codification purposes at the end of Article 31 and by adding a new article to read as follows:

"Article 32.

Conference of District Attorneys.

§ 7A-411. Establishment and purpose.--There is hereby created the Conference of District Attorneys of North Carolina, of which every district attorney in North Carolina is a member. The purpose of the Conference is to assist in improving the administration of justice in North Carolina by coordinating the prosecution efforts of the various district attorneys by assisting them in the administration of their offices, and by exercising the powers and performing the duties provided for in this Article.

§ 7A-412. Annual meetings; organization; election of officers.--

(a) Annual Meetings.--The Conference must meet annually in June at a time and place selected by the President of the Conference.

(b) Election of Officers.--Officers of the Conference are a President, a President-elect, a Vice-President, and other officers from among its membership that the Conference may designate in its bylaws. The Executive

Secretary is not an officer or member of the Conference. Officers are elected for one-year terms at the annual June conference, and take office on July 1 immediately following their election.

(c) Executive Committee.--The Executive Committee of the Conference consists of the President, the President-elect, the Vice-President, and four other members of the Conference. One of these four members must be the immediate past president if there is one and if he continues to be a member.

(d) Organization and Functioning; Bylaws.--The bylaws may provide for the organization and functioning of the Conference, including the powers and duties of its officers and committees. The bylaws must state the number of members required to constitute a quorum at any meeting of the Conference or the Executive Committee. The bylaws must set out the procedure for amending the bylaws.

(e) Calling Meetings; Duty to Attend.--The President or the Executive Committee may call a meeting of the Conference upon ten days' notice to the members, except upon written waiver of notice signed by at least three-fourths of the members. It is the official duty of each member to attend the meetings of the Conference and the Executive Committee of which he is given notice.

§ 7A-413. Powers and duties of Conference--The powers and duties of the conference are:

(1) Cooperate with and assist other public and private agencies and organizations to promote the effective administration of criminal justice.

(2) Assist prosecutors in the effective prosecution and trial of criminal offenses by developing proseuction manuals.

(3) Develop administrative manuals to assist prosecutors in the organization and administration of their offices, personnel policies, case management, calendaring, case tracking, filing, and office procedures.

(4) Consult with the Administrative Office of the Courts and the Institute of Government concerning education and training programs for prosecutors and staff.

(5) Supervise the Executive Secretary in accordance with the provisions of this Article.

(6) Consult with and advise the Administrative Office of the Courts in implementation of the purposes of this Article.

§ 7A-414. Administrator for Prosecution Services is Executive Secretary.--The Administrator for Prosecution Services of the Administrative Office of the Courts is the Executive Secretary of the Conference. His selection, term, and removal is governed by G.S. 7A-347.

§ 7A-415. Duties of Executive Secretary.--In addition to the duties provided in G.S. 7A-345.1, the duties of the Executive Secretary are:

(1) To be knowledgeable about the organization and administration of prosecutors' offices and make himself available for consultation with prosecutors on such matters, to provide other technical assistance, and to assist them in procurring resources.

(2) To make arrangements for staff and other resources to assist the Conference in carrying out its responsibilities.

(3) To advise the Director of the Administrative Office of the Courts and other interested officials and agencies of the resource needs of prosecutors in carrying out their duties.

(4) To perform additional functions in furtherance of the purposes of this Article that may be assigned by the Conference."

Sec. 2. G.S. 7A-342 is rewritten to read as follows:

"§ 7A-342. Appointment and compensation of assistant director and other employees.--(a) Assistant Director for the Courts.--The Assistant Director for the Courts shall be appointed by the Chief Justice to serve at his pleasure.

(b) Administrator for Prosecution Services.--The Administrator for Prosecution Services shall be appointed for a term of two years by the Director of the Administrative Office of the Courts from nominations submitted by the Executive Committee of the Conference of District Attorneys. The Assistant Director for Prosecution serves at the pleasure of the Director, who may remove him after consultation with the Executive Committee.

(c) Compensation and Expenses of Assistant Directors and Administrator for Prosecutor Services.--The Assistant Director and the Administrator for Prosecution Services shall receive the annual salary provided in the Budget Appropriations Act, payable monthly, and reimbursement for travel and subsistence at the same rate as State employees generally.

(d) Other Assistants and Employees.--The Director may appoint other assistants and employees necessary to enable him to perform the duties of his office."

Sec. 3. G.S. Chapter 7A is amended by adding a new G.S. 7A-345.1 to read as follows:

"§ 7A-345.1. Duties of Administrator for Prosecution Services.--The Administrator for Prosecution Services has the following duties:

(1) Serving as Executive Secretary of the Conference of District Attorneys and performing the duties arising from that position; and

(2) Performing additional duties that may be assigned by the Director of the Administrative Office of the Courts.

Sec. 4. This act shall become effective June 1, 1983. The organizational meeting of the Conference of District Attorneys shall be convened by the Director of Administrative Office of the Courts as soon after June 1, 1983 as feasible. Officers elected at that organizational meeting shall serve until their successors take office on July 1, 1984.

APPENDIX I

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO REQUIRE THAT DISTRICT ATTORNEYS AND THE ATTORNEY GENERAL BE LICENSED TO PRACTICE LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Article III of the North Carolina Constitution is amended by adding a new paragraph (7) to read as follows:

"(7) Special Qualifications for Attorney General. Only persons duly authorized to practice law in the courts of this state shall be eligible for appointment or election as Attorney General."

Sec. 2. Section 18 of Article IV of the North Carolina Constitution is amended by adding between the first and the second sentences of paragraph (1) of that section a new sentence to read as follows:

"Only persons duly authorized to practice law in the courts of this state shall be eligible for election or appointment as a District Attorney."

Sec. 3. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the state at the general election to be held in November 1984. That election shall be held and conducted under the laws then governing general elections in this state.

Sec. 4. At the general election, each qalified voter presenting himself to vote shall be provided a ballot on which shall be printed the following:

" /_/ FOR constitutional amendment requiring Attorney General and District Attorneys to be duly authorized to practice law prior to election or appointment.

/ / AGAINST constitutional amendment requiring Attorney General and District Attorneys to be duly authorized to practice law prior to election or appointment."

Sec. 5. If a majority of the votes cast are in favor of the amendments set out in Sections 1 and 2 of this act, then the amendments shall be certified by the State Board of Elections to the Secretary of State, who shall enroll the amendments among the permanent records of this office, and the amendments shall become effective on January 1, 1985.

Sec. 6. This act is effective on ratification.

APPENDIX J

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE JURY SELECTION PROCEEDINGS TO BE CONDUCTED IN THE COUNTY OF RESIDENCE OF THE JURORS

The General Assembly of North Carolina Enacts:

Section 1. G.S. 9-12(a) is amended by deleting the second sentence of that subsection and inserting in its place the following sentences:

"These jurors shall be selected in the manner provided for selection of supplemental jurors selected from the jury list, but the presiding judge may, in his discretion, order that the jury selection proceedings be conducted in the jurors' county of residence. These jurors shall serve in the manner provided for service of supplemental jurors selected from the jury list."

Sec. 2. This act shall become effective on July 1, 1983 and is applicable to trials begun on or after that date.

APPENDIX K

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH UNIFORM REGULAR AND SPECIAL CONDITIONS OF PROBATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1343(b) is rewritten to read as follows:

Regular Conditions.--As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful.

(5) Support his dependents and meet other family responsibilities.

(6) Possess no firearm, destructive device or other dangerous weapon without the written permission of the court.

(7) Pay $10.00 per month for probation supervision to the Clerk of Superior Court. The Clerk of Superior Court must transmit this money to the

State of North Carolina to be deposited in the general fund. No person placed on supervised probation may be required to pay more than one supervision fee per month.

(8) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment.

(9) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(10) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(11) Reimburse the State of North Carolina for the costs of appointed counsel or public defender to represent him in the case(s) for which he was placed on probation.

(12) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(13) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special

probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (4), (7), (9) and (13).

Sec. 2. G.S. 15A-1343 is amended by adding a new subsection (b1) to read as follows:

"(b1) Special Conditions--In addition to the regular conditions of probation specified in subsection (b), the Court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on probation.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351 (a) or G.S. 15A-1344 (e).

(4) Surrender his driver's license to the Clerk of Superior Court, and not operate a motor vehicle for a period specified by the Court.

(5) Compensate the Department of Natural Resources and Community Development or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estaurine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Natural Resources and Community Development or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the Court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Satisfy any other conditions reasonably related to his rehabilitation."

Sec. 3. G.S. 15A-1343(d) is amended by deleting the fourth sentence of that subsection.

Sec. 4. Subsections (e) and (f) of G.S. 15A-1343 are repealed.

Sec. 5. G.S. 15A-1343 is amended by adding a new subsection (g) to read as follows:

"(g) Probation officer may determine payment schedules.--If a person placed on supervised probation is required as a condition of that probation to pay any monies to the clerk of superior court, the court may

delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the monies are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action."

Sec. 6. Subsection (g) of G.S. 15A-1342 is rewritten as follows:

"(g) Invalid Conditions; Timing of Objection.--The regular conditions of probation imposed pursuant to G.S. 15A-1343(b) are in every circumstance valid conditions of probation. A court may not revoke probation for violation of an invalid condition imposed pursuant to G.S. 15A-1343(b1). The failure of a defendant to object to a condition of probation imposed pursuant to G.S. 15A-1343(b1) at the time such a condition is imposed does not constitute a waiver of the right to object at a later time to the condition."

Sec. 7. This act shall become effective on January 1, 1984, and shall apply to persons placed on probation on or after that date.

APPENDIX L

A BILL TO BE ENTITLED

AN ACT TO RAISE COSTS AND FEES IN THE GENERAL COURTS OF JUSTICE.

The General Assembly of North Carolina enacts:

Section 1. Article 28 of General Statutes Chapter 7A is amended by adding a new section G.S. 7A-320 as follows: "§ 7A-320. Costs are exclusive. The costs set forth in this article are complete and exclusive, and in lieu of any other costs and fees."

Sec. 2. G.S. 7A-304(a)(4) is amended by substituting the words and figures "twenty-three dollars ($23.00)" for the words and figures "nineteen dollars ($19.00)" and is further amended by substituting the words and figures "thirty dollars ($30.00)" for the words and figures "twenty-eight dollars ($28.00)".

Sec. 3. G.S. 7A-304(c) is amended by rewriting the first sentence as follows: "Witness fees, expenses for blood tests and comparisons incurred by G.S. 8-50.1(a), jail fees and cost of necessary trial transcripts shall be assessed as provided by law in addition to other costs set out in this section."

Sec. 4. G.S. 7A-305(a)(2) is amended by rewriting the first sentence as follows: "For support of the General Court of Justice, the sum of thirty-seven dollars ($37.00)" in the superior court, and the sum of twenty-two dollars ($22.00) in the district court."

Sec. 5. G.S. 7A-305 is amended by adding a new subsection (b1) as follows: "When a defendant files an answer in an action filed as a small claim which requires the entire case to be withdrawn from a magistrate and transferred to the district court, the difference between the General Court of Justice fee and facilities fee applicable to the district court and the General Court of Justice fee and facilities fee applicable to cases heard by a magistrate shall be assessed. The defendant is responsible for paying the fee."

Sec. 6. G.S. 7A-305(d) is amended by deleting the words "The uniform costs set forth in this section are complete and exclusive, and in lieu of any and all other costs, fees, and commissions, except that the" and inserting in their place the word "The".

Sec. 7. G.S. 7A-306(a)(2) is amended by deleting the words and figures "thirteen dollars ($13.00)" and inserting in their place the words and figures "twenty-two dollars ($22.00)", and by rewriting the second sentence as follows: "In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of fifty cents (50¢) per one hundred dollars of value, or major fraction thereof."

Sec. 8. G.S. 7A-306(b) is amended by substituting the words and figures "twenty-two dollars ($22.00)" for the words and figures "thirteen dollars ($13.00)".

Sec. 9. G.S. 7A-306(c) is amended by deleting the words "The uniform costs set forth in this section are complete and exclusive, and in lieu of any and all other costs, fees, and commissions, except that the" and inserting in their place the word "The".

Sec. 10. G.S. 7A-307(a) as it appears in the 1981 Replacement Volume 1B of the General Statutes is amended by adding on line two between the comma and the word "the" "and in collections of personal property by affidavit,".

Sec. 11. G.S. 7A-307(a)(2) is amended by rewriting the first sentence as follows: "For support of the General Court of Justice, the sum of twenty-two dollars ($22.00), plus an additional fifty cents (50¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate."

Sec. 12. G.S. 7A-307(a)(2) is amended by deleting the sixth sentence.

Sec. 13. G.S. 7A-307(a)(2) is amended by substituting the words and figures "five dollars ($5.00)" for the words and figures "one dollar ($1.00)".

Sec. 14. G.S. 7A-307(a) is amended by adding a new subdivision (3) as follows: "(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided

in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twelve dollars ($12.00)."

Sec. 15. G.S. 7A-307(b) is amended by substituting the words and figure "twenty-two dollars ($22.00)" for the words and figures "eight dollars ($8.00)" and by substituting the words and figures "twenty-five dollars ($25.00)" for the words and figures "ten dollars ($10.00)".

Sec. 16. G.S. 7A-307(c) is amended by deleting the words "The uniform costs set forth in this section are complete and exclusive, and in lieu of any and all other costs, fees, and commissions, except that the" and inserting in their place the word "The".

Sec. 17. G.S. 7A-307 is amended by adding a new subsection (b1) as follows:

"(b1) The clerk shall assess the following miscellaneous fees:

(1)	Filing a will with no probate, per page or fraction thereof	$2.00
(2)	Issuing letters testamentary, per letter over 5 letters issued	1.00
(3)	Inventory of safe deposits of a decedent, per box, per day	.15.00
(4)	Taking a deposition	5.00
(5)	Copies of wills, per page or fraction thereof .	1.00

Sec. 18. G.S. 7A-308 is rewritten as follows:

"§ 7A-308. Miscellaneous fees and commissions. (a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage $25.00

An additional sum of fifty cents (50¢) per 100 dollars ($100.00), or major fraction thereof, of the final sale price shall be collected.

(2) Proceeding supplemental to execution 20.00

(3) Confession of judgment 15.00

(4) Taking a deposition 5.00

(5) Execution 15.00

(6) Notice of resumption of maiden name 5.00

(7) Taking an acknowledgment or administering an oath, or both, with or without seal, each certificate (except that oaths of office shall be administered to public officials without charge) 1.00

(8) Bond, taking justification or approving 5.00

(9) Certificate, under seal 2.00

(10) Exemplification of records 5.00

(11) Recording or docketing (including indexing) any document, per page or fraction thereof 4.00

(12) Preparation of copies, per page or fraction thereof 1.00

(13) Preparation of transcript of judgment 5.00

(14) Substitution of trustee in deed of trust . . . 5.00

(15) Execution of passport application ... the amount allowed by Federal Law.

(16) On all funds placed with the clerk by virtue or color of his office, to be administered, invested, or administered in part and invested in part, a commission of five percent (5%), with a minimum fee of fifteen dollars ($15.00). For purposes of assessing a commission, receipts are cumulative for the life of an account.

(17) Criminal record search except if search is requested by an agency of the state or any of its political subdivisions or by an agency of the United States or by a defendant in a criminal action 5.00

(b) The fees and commissions set forth in this section are not chargeable when the service is performed as a part of the regular disposition of any action or special proceeding or the administration of an estate. When a transaction involves more than one of the services set forth in this section, only the greater service fee shall be charged."

Sec. 19. G.S. 7A-309 is rewritten as follows:

"§ 7A-309. Magistrate's special fees. The following special fees shall be collected by the magistrate and remitted to the clerk of superior court for the use of the State in support of the General Court of Justice:

(1)	Performing marriage ceremony	$10.00
(2)	Hearing petition for year's allowance to surviving spouse or child, issuing notices to commissioners, allotting the same, and making return	4.00
(3)	Taking a deposition	5.00
(4)	Proof of execution or acknowledgment of any instrument	1.00
(5)	Performing any other statutory function not incident to a civil or criminal action	1.00"

Sec. 20. G.S. 7A-314 is amended by adding a new subsection (f) to read as follows:

"(f) In a criminal case when a person who does not speak or understand the English language is an indigent defendant, a witness for an indigent defendant, or a witness for the State and the court appoints a language interpreter to assist that defendant or witness in the case, the reasonable fee for the interpreter's services, as set by the court, are payable from funds appropriated to the Administrative Office of the Courts."

Sec. 21. G.S. 28A-25-1(b) is amended by deleting the statutory reference "G.S. 7A-308(a)(11)" and by inserting in its place "G.S. 7A-307".

Sec. 22. This act shall apply to all actions initiated on or after July 1, 1983.

APPENDIX M

A BILL TO BE ENTITLED

AN ACT TO RAISE FEES PAID TO JURORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-312 is amended by substituting the words and figures "fifteen dollars ($15.00)" for the words and figures "eight dollars ($8.00)" and further amended by substituting the words and figures "fifteen dollars ($15.00)" for the words and figures "twelve dollars ($12.00)."

Sec. 2. G.S. 7A-312 is further amended by rewriting the fifth sentence as follows: "A juror in a special proceeding shall receive four dollars ($4.00) for each proceeding, except that if a special proceeding lasts more than one-half day, the special jurors shall receive eight dollars ($8.00) per day."

Sec. 3. G.S. 7A-306(c)(6) is rewritten as follows: "Fees for special jury, if any, at four dollars ($4.00) per special juror for each proceeding, except that if a special proceeding lasts more than one-half day each juror shall receive eight dollars ($8.00) per day."

Sec. 4. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of $2,105,400 for each year of the 1983-85 biennium to fund these increased fees.

Sec. 5. This act is effective on July 1, 1983.

APPENDIX N

A BILL TO BE ENTITLED

AN ACT TO GIVE SALARY CREDIT TO BEGINNING MAGISTRATES WITH LAW ENFORCEMENT OR JUDICIAL DEPARTMENT EXPERIENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-171.1 is amended by adding a new subsection (4) as follows:

"(4) Notwithstanding any other provision of this section, a beginning full-time magistrate with at least ten years' experience within the twelve-year period immediately preceding the initial appointment as magistrate, as a sheriff or deputy sheriff, city or county police officer or highway patrolman in the State of North Carolina or with at least ten years' experience within the twelve-year period immediately preceding the initial appointment as magistrate, as clerk of superior court or an assistant or deputy clerk of court in the State of North Carolina may be initially employed at the annual salary provided in the table above for a magistrate with "5 or more but less than 7" years of service. Seniority increments for a magistrate with law enforcement or judicial system experience described herein accrue thereafter at two-year intervals, as provided in the table. A beginning magistrate who meets the criteria for increased beginning salary under both subdivisions (3) and (4) may not combine those entry levels but may begin at the higher of the two levels.

Sec. 2. This act shall become effective July 1, 1983 and applies to persons initially appointed on or after that date.

APPENDIX O

A BILL TO BE ENTITLED

AN ACT REQUIRING JUDGES TO CONSIDER THE FUNDS AVAILABLE TO THE STATE IN DETERMINING THE FEES TO BE PAID AN ATTORNEY REPRESENTING AN INDIGENT CRIMINAL DEFENDANT OR OTHER PARTY ENTITLED TO SUCH REPRESENTATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-458 is amended by rewriting the first and second sentences of that section to read as follows:

"In districts which do not have a public defender, and subject to the availability of funds, the court shall fix the fee to which an attorney who represents an indigent person is entitled. In fixing the fee the court shall take into account the factors normally considered in setting attorneys fees, such as the nature of the case, the time, effort and responsibility involved, and the fee usually charged in similar cases, as well as the funds available to the State for payment of such fees."

Sec. 2. This act shall become effective July 1, 1983.