

**LEGISLATIVE  
RESEARCH COMMISSION**

---

**CRIMINAL CASE DISPOSITION**



**REPORT TO THE  
1993 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27611



January 15, 1993

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on criminal case disposition. The report was prepared by the Legislative Research Commission's Committee on Criminal Case Disposition at the direction of the Commission pursuant to its authority under G.S. 120-30.17(1).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel T. Blue, Jr.", written over a horizontal line.

Daniel T. Blue, Jr.  
Speaker of the House

A handwritten signature in cursive script, appearing to read "Henson P. Barnes", written over a horizontal line.

Henson P. Barnes  
President Pro Tempore

Cochairmen  
Legislative Research Commission





1991-1992

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of  
the Senate  
Henson P. Barnes, Cochair

Senator Frank W. Ballance, Jr.  
Senator Howard F. Bryan  
Senator J. K. Sherron, Jr.  
Senator Lura Tally  
Senator Russell G. Walker

Speaker of the House of  
Representatives  
Daniel T. Blue, Jr., Cochair

Rep. Marie W. Colton  
Rep. W. Pete Cunningham  
Rep. E. David Redwine  
Rep. Frank E. Rhodes  
Rep. Peggy M. Stamey





## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1991 General Assembly and the cochairs of the Legislative Research Commission, the Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of criminal case disposition was authorized by the Commission pursuant to G.S. 120-30.17(1). The relevant portions of G.S. 120-30.17(1) are included in Appendix A. The Legislative Research Commission grouped this study in its law enforcement area under the direction of Representative E. David Redwine. The Committee was chaired by Senator R. C. Soles, Jr. and Representative H. M. Michaux, Jr. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.



## COMMITTEE PROCEEDINGS

The Legislative Research Commission's Criminal Case Disposition Study Committee met three times. While the Committee considered the broad problem of criminal case disposition, its primary focus was on the calendaring of criminal cases.

At its first meeting, the Committee heard three excellent presentations from the following speakers regarding the current system for the disposition of criminal cases: Franklin Freeman, Director of the Administrative Office of the Courts; Jim Kimel, President of the District Attorneys Conference; and Joe Cheshire, former President of the Criminal Law Section of the North Carolina Academy of Trial Lawyers. The full transcript of that meeting is in Appendix C of this report.

In his presentation, Franklin Freeman informed the Committee that North Carolina is unique in assigning the responsibility for calendaring and docket control of criminal cases to district attorneys. (See G.S. 7A-49.3, G.S. 7A-61, and G.S. 15A-931.) In most states that responsibility is assigned to judges. However, Mr. Freeman pointed out that in most states judges sit only in the district in which they live, while in North Carolina superior court judges rotate through the judicial districts. As a result the methods used and practices employed to dispose of criminal cases is discretionary and unique to each individual district in North Carolina.

Briefly, Mr. Freeman summarized for the Committee statistics indicating an unprecedented growth in criminal case filings in the State. In an eight year period of time (fiscal year 1983-84 to fiscal year 1991-92) felony filings in North Carolina have increased approximately 103%. During that same period

of time misdemeanor filings in both superior and district court have increased 64.5%. It is projected that by June 30, 1995, approximately 100,000 felony cases will be filed annually in the State's courts. That compares with 86,000 filed last fiscal year.

Mr. Freeman indicated that while the disposition of cases has also increased by 91.1%, it has not kept up with the filings. The result is that the age of pending cases has also increased. The American Bar Association standard for disposition of criminal cases is 90% in 120 days, 98% in 180 days, and 100% in one year. The Conference of State Court Administrators (CSCA) standard is 100% in 180 days. Today in North Carolina 34% of the pending case load is over 180 days old. Thus the State does not meet either standard.

Mr. Freeman also pointed out that personnel increases in the State system have not kept pace with the increased criminal case filings. During the eight year period in which felony filings increased by 103%, total State personnel in the system increased by approximately 30%. During that same period of time, costs to the indigent persons attorney fee fund increased by 100%, from 9.5 million dollars spent in 1983-83 to 19 million dollars for 1991-92.

Mr. Freeman pointed out to the Committee that studies of North Carolina's criminal case disposition system have been done in the past and the themes are all the same: witness availability, conflicts between courts, trial status uncertainty, overscheduling, excessive continuances, and lack of resources. Mr. Freeman suggested that these will continue to be issues, but indicated that before modifying the current system for disposition of criminal cases consideration should be given to the following: the distinction between calendaring by a neutral party and calender management; the need, if any, for uniformity over local discretion, the difficulty of charging judges with the

responsibility of administering and managing criminal case dockets if judges continue to rotate, the fact that any significant changes in the current system will result in a need for additional resources.

Jim Kimel, President of the District Attorneys Conference, informed the committee that a rapidly increasing crime rate has overloaded the current system. In addition to the increase in the crime rate, Mr. Kimel indicated that a lack of resources, a lack of prison space, and conflicting court schedules within the State system and particularly between the State and federal systems have all had an impact on case management. He questioned the value of emphasizing statewide uniformity at the expense of local discretion with regard to criminal case management and stated that in his opinion that would eliminate a prosecutor's ability to be responsive to the widely varying conditions and needs of the different districts.

With regard to the calendaring of criminal cases, Mr. Kimel had the following comments. It would be difficult to transfer the responsibility for calendaring criminal cases and managing the criminal case docket to superior court judges as long as they continue to rotate. If a superior court judge is required to assume that responsibility the judge would need the resources to assemble the necessary information from law enforcement officers, victims, witnesses, and defense counsel. Mr. Kimel further commented that if the responsibility were transferred to a trial administrator or neutral third party, that person will still have to account to someone and that would probably be a superior court judge.

Mr. Kimel did suggest for the Committee's consideration a number of options for improving the current system of criminal case management. Some of those suggestions follow:

- (1) Require an automatic review of any defendant's case if the defendant remains in jail pending trial for a certain period of time.
- (2) Provide some notice, as statute requires, as to how the State will proceed with criminal cases, particularly jury trials.
- (4) Allow the introduction of lab reports for drug cases being tried in superior court without requiring the chemist to testify. Provide that the defendant can subpoena the lab expert only if the court is convinced that there is a substantial reason to call the expert.
- (5) Abolish jury trials in infraction cases. Alternatively, abolish appeals from district court to superior court for infractions.
- (6) Abolish appeals to superior court of all misdemeanors in which the maximum sentence is 6 months or less, then readjust the punishment as needed for the great bulk of misdemeanors.
- (7) Abolish jury trials or abolish appeals in misdemeanor cases in which an active sentence is not imposed.
- (8) Abolish appeals from district court to superior court for probation revocations.
- (9) Allow district court judges to hear guilty pleas for Class H,I, and J felonies.
- (10) Allow waiver of jury trial in all but capital offenses. (Virginia does this, but requires that both the state and defendant agree to a bench trial.)

Joe Cheshire, who is a past president of the Criminal Law Section of the North Carolina Academy of Trial Lawyers, focused almost exclusively on the calendaring issue in his remarks to the Committee. Mr. Cheshire pointed out that the current system is adversarial, yet the system allows one adversary, the district attorney, to choose the time and forum for the disposition of a criminal case. This puts the other adversary, the defendant, at a disadvantage and makes the defendant vulnerable to various tactics and calender abuses. Mr. Cheshire emphasized that a defendant is presumed innocent until proven guilty and should be treated that way. He further emphasized that a defendant is a citizen of North Carolina, unless convicted of a felony, and is entitled to the same respect and rights owed any citizen of this State.

Mr. Cheshire outlined for the Committee numerous ways that the current system can be manipulated to the advantage of the State and against a defendant or the defendant's attorney and alluded to some of his own experiences as a defense attorney to illustrate how the current system is abused by some district attorneys and works against a defendant and a defense attorney. He stated that under the current system the district attorney can use control of the calender to coerce a plea, punish a lawyer, or punish a defendant the district attorney knows cannot be convicted. In his presentation, Mr. Cheshire pointed out that because the district attorney controls the calender, a district attorney can calender cases the district attorney knows will not be called with the result that the defense lawyer has to prepare for the case and bill the defendant for case preparation time and court room waiting time. A district attorney can schedule cases at times that the district attorney knows are inconvenient to the defense attorney or at times that the district attorney knows the defense attorney cannot be ready for trial. A district attorney can

also calender a case repeatedly without actually calling the case, forcing the defendant to sit for weeks in court without disposing of the case. In that situation a defendant may miss work for an extended period of time and may even lose his job. Because the district attorney controls the calender, a district attorney can also deny a defendant or defense attorney access to the court by refusing to calender motions and other types of hearings such as bond hearings.

Mr. Cheshire urged the Committee to give serious consideration to some modification of the current system and suggested the following options for consideration by the Committee:

- (1) Consider using the federal system as a model.
- (2) Limit the rotation of superior court judges or let them rotate in a smaller geographical area.
- (3) Reduce the case load of superior court judges.
- (4) Employ law clerks for superior court judges. The clerks can assist with calendaring and with research.
- (5) Set time limits. Do this for motions, filing police reports, discovery, etc.
- (6) Schedule plea days. Set aside specific days to discuss feasibility of working out a plea. If the plea is not accepted by a certain time, then try the case.

At the second meeting of the Committee, David Daniel, Clerk of the United States District Court for the Eastern District of North Carolina spoke briefly on the federal system of criminal case management and responded to questions from committee members. In the federal system the clerk of court has the responsibility for setting the criminal calendar under the direction of the judge.



The Committee then considered the information presented to it at its first meeting, the information provided by Mr. Daniel and some additional information that the members themselves provided to the Committee. Mr. Thurman Hampton informed the committee that he had obtained information from the states of Virginia and Georgia, both states which vest the calendaring authority in superior court judges, and made the following comparison with North Carolina. In 1990 in the Commonwealth of Virginia 97,266 cases were filed and 96,099 were disposed of in some manner. That same year in North Carolina, 108,784 criminal cases were filed in the Superior courts of which 99,858 cases were disposed. North Carolina had more cases filed and disposed of more cases than Virginia, yet Virginia had far greater resources: 131 circuit court judges and more than 400 prosecutors, while North Carolina had only 86 superior court judges and about 304 prosecutors. In the state of Georgia for that same year 92,063 criminal cases were filed in superior courts of which 86,725 were disposed. Thus North Carolina also surpassed the state of Georgia in handling its caseload, again with fewer resources. There were 148 superior court judges in Georgia.

In its discussion, the Committee questioned how well the federal system of criminal case management would work at the State level. It was pointed out that the State's criminal caseload is far greater than that of the federal government and that the State also lacks the resources enjoyed at the federal level. Some members however, stated that there are some features of the federal system that possibly could be incorporated into the State's system even if a State system could not be completely modeled after the federal one.

The Committee discussed the fact that there are two main ways of disposing of criminal cases: guilty pleas and trials. Members agreed that guilty pleas

are an integral part of the State's system and that the large numbers of guilty pleas entered keep the system from being overwhelmed. Concern was expressed that while it is beneficial to move the system faster, due consideration must be given to how to handle guilty pleas fairly as well as efficiently so that pleas are not coerced.

The Committee focused much of its attention on the allocation and use of resources with regard to criminal case management. Members agreed that additional resources are needed to improve the criminal case management system but that the necessary increase in resources would vary with the modification, if any, of the system. Members also agreed that the needs are not limited to increased numbers of judges and district attorneys and the personnel required to assist those officials. There is also a need for additional court room personnel and a need for additional physical space. Members also considered what the best use of additional resources would be if they could be obtained. As one option the Committee discussed the possibility of operating the courts 52 weeks a year in each district if the additional resources were made available.

Another issue that the Committee debated is how to make better use of arraignment. In the federal system arraignment is the point at which the determination is made as to whether a plea will be entered in a case or the case will be set for trial. Suggestions from Committee members for making better use of arraignment included using arraignment as a time to schedule cases, particularly problem cases such as those involving an out of state witness.

The final issue identified by the Committee for consideration was how to ensure both fairness and efficiency in the criminal case management system. Several members of the Committee reemphasized that in an adversarial system

it is unfair for one party to control the criminal case calender. These members indicated that because of the State's advantage in this regard there are times when defense attorneys are not given an appropriate amount of advance notice that a case is going to be set for trial, that defense attorneys are not consulted about their availability with regard to motion and trial dates, and that at times defendants are denied access to the courts because a district attorney refuses to calender a defendant's motion. They indicated that in their opinion to have the criminal case docket managed by a neutral party would increase efficiency because a neutral party would be more likely to consult with both adversarial parties. They pointed out again that North Carolina is the only state in the union that vests the authority to calender criminal cases in the district attorney's office.

Other members of the Committee disagreed with this approach. They pointed out that abuses within the system are not limited to the district attorneys office and that many defense lawyers also manipulate the system to their client's advantage. They suggested that the problems complained about most often with regard to the current system of criminal case management are limited to a few jurisdictions and should be dealt with at the local level rather than at the State level. They also pointed out that there are certain difficulties in modifying the system without eliminating the rotation of judges.

Members of the Committee agreed that North Carolina is one of the few states that still continues to have rotation of judges and acknowledged that there are both advantages and disadvantages to this practice. The practice was begun at a time when the State was basically a rural one and judges needed to travel from one jurisdiction to another to hold court. Advocates of the system maintain that rotation of judges helps to ensure impartiality in court decisions.

However, members agreed that there are some drawbacks to the rotation of judges. For example, if a judge finishes hearing a case in one jurisdiction earlier than expected, but is scheduled to hold court in another jurisdiction the following week it may not be possible to begin trying another case in the first jurisdiction because there is insufficient time for the trial before the judge has to rotate to the next assigned jurisdiction. The members also agreed that the practice of rotating judges is expensive.

Members agreed that the issues raised by those addressing the Committee and in the discussions were both important and complex. While the Committee accomplished much of the work assigned to it by the Legislative Research Commission, particularly by defining specific issues for consideration, additional and more detailed study is needed of the issues and possibly some fiscal analysis to determine which modifications, if any, are needed and feasible. The Committee concluded that an independent study commission should be established to continue the work and make recommendations to the General Assembly.

At its third meeting the Committee reviewed and adopted this final report.

## **FINDINGS AND RECOMMENDATIONS**

The Legislative Research Commission's Study Committee on Criminal Case Disposition has given careful study to the State's current system for the disposition of criminal cases. The Committee has heard excellent testimony from speakers who have provided members with essential background and practical information regarding the operation of the current criminal case management system. The speakers also presented to the Committee the perspective from which both district attorneys and defense attorneys view the current system of criminal case management and any changes that may be made to that system. At the request of the Committee the speakers also suggested some options for improvements to the current system.

The Committee has thoughtfully considered the information and suggestions presented to it by the speakers and by the members themselves. The Committee has identified a number of issues that deserve additional study and those are reflected in the proceedings section of this report.

### **FINDINGS**

The Committee finds that the issues raised in its study of criminal case disposition in this State are both important and complex. Many of the recommendations made to the Committee have merit but there was insufficient time to consider them fully and analyze any possible constitutional, practical, and fiscal issues that may be raised by the recommendations. The Committee finds that the State's current system for the disposition of criminal cases should

continue to be studied and that an independent commission should be established to conduct the study.

### **RECOMMENDATION**

The Committee recommends the following legislation to the 1993 General Assembly.

LEGISLATIVE PROPOSAL

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1993

POP DRAFT  
FOR REVIEW ONLY

S/H

D

93-LH-012

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Criminal Case Disposition Study. (Public)

Sponsors: Senator Soles/Representative Michaux.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE CRIMINAL CASE DISPOSITION STUDY  
3 COMMISSION.  
4 Whereas, there has been a steady increase in the number  
5 and complexity of criminal cases in North Carolina; and  
6 Whereas, the increase has resulted in delays and docket  
7 backlogs that have delayed the disposition of criminal cases; and  
8 Whereas, disparities have arisen between judicial  
9 districts in the amount of time required to dispose of criminal  
10 cases; and  
11 Whereas, it is projected that the number of criminal  
12 cases filed in North Carolina will continue to increase; and  
13 Whereas, the State's current system of criminal case  
14 management is overloaded and may need additional resources; and  
15 Whereas, there should be careful consideration and  
16 detailed study to determine the best use of the State's resources  
17 with regard to criminal case management and whether improvements  
18 can be made to the system to ensure the equitable and efficient  
19 disposition of criminal cases; Now, therefore,  
20 The General Assembly of North Carolina enacts:

1           Section 1.     The Criminal Case Disposition Study  
2 Commission is created.   The Commission shall study the following  
3 issues:

- 4           (1) Possible improvements in the calendaring and  
5           efficient disposing of criminal cases, with the  
6           goal of obtaining the swift and equitable  
7           disposition of criminal charges in conformity with  
8           the dictates of law and the need for accurate  
9           preparation.
- 10          (2) The existence of and reasons for significant  
11          backlogs on the criminal docket of the State.
- 12          (3) Proposals to address inefficiencies in the  
13          disposition of criminal cases, both short and long  
14          term, which would provide for a uniform and  
15          consistent system for the disposition of criminal  
16          cases in all judicial districts of the State.
- 17          (4) Any other related issues.

18          Sec. 2.   The Commission shall consist of 26 members to  
19 be appointed as follows:

- 20          (1) The President Pro Tempore of the Senate shall  
21          appoint 12 members, one of whom shall be designated  
22          as cochair.   Of those 12 members, five shall be  
23          members of the Senate, one shall be a superior  
24          court judge, one shall be a district court judge,  
25          one shall be a clerk of court, two shall be  
26          district attorneys, and two shall be members of the  
27          criminal defense bar.
- 28          (2) The Speaker of the House of Representatives shall  
29          appoint 12 members, one of whom shall be designated  
30          cochair.   Of those 12 members, nine shall be  
31          members of the House of Representatives, one shall  
32          be a superior court judge, one shall be a clerk of  
33          court, and one shall be a public defender.
- 34          (3) The Chief Justice of the Supreme Court of North  
35          Carolina or his designee, and the Director of the  
36          Administrative Office of the Courts.

37          Members appointed to the Commission shall serve until the  
38 Commission makes its final report.   Vacancies on the Commission  
39 shall be filled in the same manner as the original appointments  
40 were made.

41          Sec. 3.   The Commission shall meet upon the call of the  
42 cochairs.

43          Sec. 4.   Upon request of the Commission or its staff,  
44 all State departments and agencies shall furnish to the



1 Commission or its staff any information in their possession or  
2 available to them.

3           Sec. 5. The Commission may submit an interim report of  
4 its findings and recommendations on or before the first day of  
5 the 1994 Regular Session of the 1993 General Assembly. The  
6 Commission shall submit the final report of its findings and  
7 recommendations to the General Assembly on or before January 15,  
8 1995. All reports shall be submitted by filing the report with  
9 the Speaker of the House of Representatives and the President Pro  
10 Tempore of the Senate. The Commission shall terminate upon  
11 filing its final report.

12           Sec. 6. The Commission may contract for clerical or  
13 professional staff or for any other services it may require in  
14 the course of its ongoing study as provided in G.S. 120-32.02.  
15 At the request of the Commission, the Legislative Services  
16 Commission may supply members of the staff of the Legislative  
17 Services Office and clerical assistance to the Commission as the  
18 Legislative Services Commission deems appropriate. The  
19 Commission may, with the approval of the Legislative Services  
20 Commission, meet in the State Legislative Building or the  
21 Legislative Office Building.

22           Sec. 7. Members of the Commission shall be paid per  
23 diem, subsistence, and travel allowances as follows:

- 24           (1) Commission members who are also members of the  
25           General Assembly, at the rate established in G.S.  
26           120-3.1;
- 27           (2) Commission members who are officials or employees  
28           of the State or local government agencies, at the  
29           rate established in G.S. 138-6;
- 30           (3) All other Commission members, at the rate  
31           established in G.S. 138-5.

32           Sec. 8. There is appropriated from the General Fund to  
33 the General Assembly the sum of twenty thousand dollars (\$20,000)  
34 for the 1992-93 fiscal year and the sum of twenty thousand  
35 dollars (\$20,000) for the 1993-94 fiscal year for the work of the  
36 Criminal Case Disposition Study Commission.

37           Sec. 9. This act becomes effective July 1, 1993.



**EXPLANATION OF LEGISLATIVE PROPOSAL:  
A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE  
CRIMINAL CASE DISPOSITION STUDY COMMISSION.**

The legislative proposal creates an independent study commission to study the State's current system for the disposition of criminal cases. The Commission will consist of 26 members: 12 appointed by the President Pro Tempore of the Senate, 12 appointed by the Speaker of the House of Representatives, the Chief Justice of the Supreme Court of North Carolina or his designee, and the Director of the Administrative Office of the Courts. The membership must include two superior court judges, one district court judge, two district attorneys, two defense attorneys, one attorney who is a public defender, and two clerks of court. The remaining members appointed to serve on the committee must be legislators. Members are to serve on the Commission until the Commission makes its final report. The President Pro Tempore of the Senate and the Speaker of the House of Representatives are to designate the cochairs of the Commission and the cochairs are to call the meetings.

The proposed legislation authorizes the Commission to make an interim report to the General Assembly and requires the Commission to make a final report to the General Assembly by January 15, 1995. The Commission terminates upon filing its final report.

The legislative proposal also provides that staff assistance must be provided to the Commission and provides that per diem, subsistence, and travel allowances must be paid to Commission members as provided by statute. It

further requires State agencies to provide to the Commission any information requested by the Commission or its staff.

The sum of \$40,000 is appropriated to the General Assembly for the 1993-95 biennium, \$20,000 for each fiscal year, for the Commission's work.

The effective date of the proposed legislation is July 1, 1993.

## APPENDIX A

### **§120-30.17. Powers and duties.**

The Legislative Research Commission has the following powers and duties:

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



## APPENDIX B

### CRIMINAL CASE DISPOSITION STUDY MEMBERSHIP - 1992

**LRC Member:** Rep. E. David Redwine  
P.O. Box 238  
Shallotte, NC 28459  
919-579-2169 (H)  
919-754-4326 (O)

#### President Pro Tempore's Appointments

Sen. R. C. Soles, Jr., Cochair  
P.O. Box 6  
Tabor City, NC 28463  
919-653-2015

Mr. Eddie Barnes  
Attorney at Law  
P.O. Box 1775  
Nags Head, NC 27959

Mr. R. Gene Braswell  
Barnes, Braswell, Haithcock & Warren  
P.O. Drawer 7  
Goldsboro, NC 27533-0007

Judge Coy E. Brewer, Jr.  
3520 Preswick Drive  
Fayetteville, NC 28303

Mr. Thurman B. Hampton  
Rockingham County District Attorney  
P.O. Box 35  
Wentworth, NC 27375

Judge Patricia S. Hunt  
106 E. Margaret Lane  
Hillsborough, NC 27278

Mr. Ralph S. Knott  
Franklin County Courthouse  
102 South Main Street  
Louisburg, NC 27549

Sen. T. L. "Fountain" Odom  
1100 South Tryon Street  
Charlotte, NC 28203  
704-372-4800

Mr. H. W. Zimmerman  
Davidson County District Attorney  
P.O. Box 1141  
Lexington, NC 27292

#### Speaker's Appointments

Rep. Henry M. Michaux, Jr., Cochair  
P.O. Box 2152  
Durham, NC 27702  
919-596-8181

Rep. Milton F. Fitch, Jr.  
615 E. Nash Street  
Wilson, NC 27893  
919-291-6500

Rep. David T. Flaherty, Jr.  
228 Pennton Avenue, SW  
Lenoir, NC 28645  
704-758-0507

Hon. Shirley L. Fulton  
700 E. Fourth Street  
Charlotte, NC 28202

Rep. Robert J. Hensley, Jr.  
124 St. Mary's Street  
Raleigh, NC 27605  
919-832-9650

Rep. Bertha M. Holt  
P.O. Box 1111  
Burlington, NC 27215  
919-227-7333

Rep. Jack Hunt  
Lattimore  
North Carolina 28089  
704-434-6853

Rep. Robert C. Hunter  
P.O. Drawer 1330  
Marion, NC 28752  
704-652-4397

Rep. Mary L. Jarrell  
1010 Wickliff Avenue  
High Point, NC 27262  
919-884-1276

Mr. Paul McCrary  
310 Westover Drive  
Lexington, NC 27292

Ms. Mary Ann Tally  
117 Dick Street  
Fayetteville, NC 28301

**Staff:**

Ms. Emily Johnson  
919-733-6660

Mr. Steven Rose  
919-733-2578

**Clerk:**

Ms. Bonnie McNeill  
919-733-9892



**MINUTES**

**CRIMINAL CASE DISPOSITION STUDY**

**NOVEMBER 20, 1992**

The Criminal Case Disposition Study met Friday, November 20, 1992 in Room 1027 at 10:00 a.m. The meeting was called to order by Senator R. C. Soles, Jr., Cochair at 10:05 a.m. Members present were Representative Michaux, Cochair, Representative David Redwine, LRC Member; and Representatives Hensley, Holt, Jack Hunt, R. Hunter, Jarrell; Mr. Gene Braswell, Judge Coy Brewer, Mr. Thurman Hampton, Mr. Ralph Knott, Mr. H. W. Zimmerman, Mr. Paul McCrary, and Ms. Mary Ann Tally.

Senator Soles introduced Mr. Franklin Freeman, Director, Administrative Office of the Courts to give background information regarding the disposition of criminal cases:

**Comments by Franklin Freeman:**

Mr. Freeman stated he would start by talking about the status of the dockets in North Carolina beginning with some historical trends. Beginning in 1983-84, the courts of NC commenced to see an unprecedented growth in case filings in the state and we went in '83-84 from 1.6 million filings annually (criminal and civil) to 2.6 million this last fiscal year. Particularly in the criminal, it's about a 55% growth, but in the criminal area, between 1983-84 and the last fiscal year, felony filings have increased in North Carolina courts 103%. From 42,000, 160 felony filings in 1983-84 to 85,748 as of June 30, 1992. Misdemeanors have increased right at 60%, misdemeanor filings in the superior court, and criminal misdemeanor filings in the district court are up 64.5% during that eight year period. We have not lagged in disposition, but we have not kept up with the plow. Dispositions of felonies have increased 91.1%, case load have grown 103.4%, dispositions have increased 91% in the felony level. The same is true of misdemeanors, 57.9% increased in filings, a 56.4% increase in dispositions. Non-motor vehicle criminal filings or dispositions up 64%, filings 64.5%.

In the superior court particularly, the trend has been for filings to outstrip dispositions. The result have been the age of pending cases has increased slowly and the number of cases pending at the end of each year has increased slowly. The ABA standards for dispositions of cases is 90% in 120-days criminal cased, 98% in 180-days and 100% in a year. The Conference of State Court of Administrators (CSCA) standard is 100% in 180-days. Both of these are from arrest to disposition. In NC, since 1988, we find that 8% of the cases

in 1988 was over a year old pending criminal dockets. Today, as of 6/30/92, 13% of all pending cases are over a year old. Using the 180-day standard, in 1988 (6/30/88), 22% of all pending cases were over 180 days. Today we find 34% of the pending case load was over 180 days of age (13,252 cases). The comparison to either the ABA standard or the CSCA standards show that we are not in the standard.

What is the projection for future growth in N. C. in case filings. We predict that by June 30, 1995 right at 100,000 felonies will be filed annually in the courts of North Carolina. That compares with 86,000 filed this last fiscal year ending June 30th.

The immediate concerns from a case load standpoint or the felony filings grew 16% this last fiscal year. Serious crimes, such as murder, rape, armed robbery have increased dramatically during this period of time. Murder has increased 94% since 1984-85, this last year murder filings in the courts increased 17.6%. Robbery has increased 165% since 1984-85, up 28% this last year, burglary has increased 143% since 1984-85, up 171%, drug filings which drive a lot of the growth have risen 299% since 1984-85. Drug filings now make up 30% of the total superior court docket. This last fiscal year, drug filings increased 22.7% in the courts across the state.

**Contributing Factors:** Increased number of law enforcement officers, we've had a 25-30% increase in the State since 1983-84. More arrest are being made, better trained. Increase of population in the State, we are now the tenth largest state in the country. The organization of the State, more than 50% of the state is now urban. The increased emphasis on drugs and the interdiction of drugs. The economic and societal changes. Prison overcrowding and then early release.

As felony filings increase 103%, personnel in the system increased 26% overall, from 3,559 to 4,486. At the same time, the number of prosecutors rose from 248 to 304, a 22.6% increase. The number of prosecutors has risen 30.6% as of today from 1983-84. With the total of 140, two people the General Assembly funded this fiscal year, the total number of personnel in the system now approach nearly 30% increase since 1983-84. There has been 100% increase in the indigent persons attorney fee fund since 1983-84. 9.5 million dollars was spent 1983-84 on court appointed counselor. This last fiscal year we spent 19 million dollars on court appointed counsel.

Criminal case management practices: Studies by the National Center for State Courts regarding case delay have found that structural factors such as size workload, case composition, trial dates, charging systems and practices and calendaring systems are not primarily determinant of criminal case processing time. What the study show is the existence of sound case management systems and procedures to monitor and control cases in filing dispositions consistent application of continuance and trial setting policies and a strong management or work ethic was found to be more consistent predictors of how cases flow through the system whether criminal or civil. Characteristics of effective criminal case management: the examples of characteristics found in courts are among them, high in standards for both events and the like of the case as well as overall disposition time. Some people in case management call a significant event. There is is time within a certain time certain events have to occur.

Guidelines for filing police reports are important to effective criminal case management, firm trial dates, consistently enforced continuance policy by the judges, case monitoring and selective trial calendaring, early and effective screening, all of these are characteristics of effective criminal case management.

North Carolina roles and responsibilities: The statutory provisions for criminal case calendaring and docket control vest this authority with the DA, and there are three specific statues 7A-49.3 Calendar for Criminal trial sessions, 7A-61, Duties of the DA and 15A-931 Voluntary dismissal of criminal charges by the State. All of these speak to the DA's authority over the criminal calendaring. North Carolina rotates it's superior court judges more than any state in the union. Most states judges sit only in the district they live in. In this state the DA is the only constant in the district. Judges change with rotation and the Defense Attorneys effectively change with each case leaving the DA as the only party to criminal actions knowledgeable about each criminal case specifically and about the criminal docket generally. An efficient management will almost always move off of that which is dependably constant. In NC, the management of dockets, the methods used and practices employed is discretionary and therefore unique to each individual district. The practical result of such discretion is that some manage better than others. Across the state we find differences, like national studies we find that attention and commitment to managing the docket and local legal practice, the local culture inflicts criminal case disposition weights considerably. Some of the most effective districts are those with the heaviest dockets for prosecutor.

What are among the issues that you will be called upon to grapple with. First of all they have not changed a lot since 1730, but there are four studies at least dealing with criminal case management in North Carolina, delay in the superior courts of North Carolina assessment of its causes, 1973. This was an in-house study that was done in the AOC in 1973. A bar association report of 1978, interestingly it says Administration of Justice Study Committee on case docketing and calendaring and rotation of NC superior court judges. Of the district attorneys association in 1984, calendaring criminal cases in North Carolinian's superior courts. The themes in these reports are remarkably consistent in the issues and the problems perceived. The same themes of witness availability conflicts between courts. Conflicts means that a lawyer may have some cases in this court, some in adjoining counties, maybe some in a third county. Trials status uncertainty, over-scheduling, excessive continuances, and lack of resources are all repeated in each of the reports.

I think it's important for this committee to distinguish between the issue of calendaring by a neutral and calendar management. Calendaring by a neutral is a policy question addressing related but separate issues, calendaring by a neutral will not end and of itself produce efficient calendar management. What is important are management principles; and these can be applied independent of the neutral question which has been demonstrated by prosecutors individually and collectively. Development and initiatives among the prosecutors include the formation of the conference of district attorneys, the development of advisory manual and model personnel computer system by the conference. A 1988-89 delay reduction project that the AOC worked with, a criminal case manager pilot project that was started in the Spring where we have employed for a two-year period a criminal case manager, a professional case manager is going into the 27A district under the authority of the district attorney and under his supervision to manage the criminal case docket to see how that works.

Should the system continue to accommodate local discretion or is increased procedural uniformity needed, that's an issue that you would want to grapple with. Requiring all prosecutors to adopt reforms implemented successfully elsewhere will result in a demolition of local discretion. Some may not be applicable or desirable for all districts and all reform is dependent on commitment and skills to be applied to the implementation and maintenance of the reform practices.

Another issue, the public, witnesses, parties and court officials should be able to have expectations for timely disposition of criminal actions. Establishing consistent

expectations and in turn increasing accountability might be addressed. Lax continuance policies and practices are adding to crowded dockets and interject considerable uncertainty in the courts dockets for given sessions. This is a practice, if you have a district where there are lax continuance policies, it ripples across the system. It affects not only the parties involved but also affects the next calendar, the clerk, because those cases have to be recalendared. Should this be addressed by locals or uniform rules, policies or statues and who should enforce it. Another issues, a system for day to day management of criminal cases must have an individual who can and will be held responsible and accountable. Responsibility cannot be defused in areas such as this which require considerable attention and coordination. Finally, any significant change in roles and responsibilities will result in a need to have additional administrative resources. Rotation of superior court judges presents unique management obstacles in North Carolina not present in other state and changes in roles and responsibilities cannot be absorbed by a senior residence judge within the existing resources.

In summary, Yes, North Carolina's courts are under pressure and that pressure will continue to grow for the foreseeable future. Improvement will be dependent on both increase resources and the effective management of those resources. Yes, North Carolina manages dockets differently than most other jurisdictions, because of rotation. Issues surrounding concerns over criminal dockets are essentially the same as twenty years ago. Criminal case management does not necessarily require calendaring by a neutral. The issue of a neutral setting of a calendar is a separate policy question. Reforms can and have been initiated through prosecutors. Any changes in roles and responsibilities relate to criminal case management would require additional resources because of limitations imposed by judicial rotation. A 1973 study done by Professor Oliver Williams, NC State University and Professor Richard Richardson of the Law School, University of North Carolina, Chapel Hill said this: "delay is a serious problem in North Carolina's courts, particularly, in the superior court division, the extent of delay in bringing cases to trial is sufficiently great in magnitude both with the individual courts and across court jurisdiction in the state to merit consideration of practices and procedures to deal with the delay problem. Delay as a problem has two perspectives to the standpoint of the defendant seeking a speedy trial and the concern for the overall efficiency of court operation."

Mr. Ralph Knott stated that you have to take into consideration another fact of the uncertainty in court. A district attorney can plan to start a case on Monday and

estimate that it will take two days try it and it can take two weeks to try the case. So the best of plans can be laid away by the way our court system operates.

Judge Brewer asked what portion of the money expended for the indigent attorney fee fund is expended for what is described as waiting time and would, in your opinion, increase efficiency in the management of cases detentionally reduce that amount of waiting time and result in a meaningful savings.

Freeman stated a couple of years ago, the chief justice appointed a committee to look at the question of fees. A check was done on about 10-15,000 orders and out of those, approximately 1/3 of the time we paid for was waiting time.

Hampton asked did you compare the number of superior courts judges we have assigned to North Carolina to the number of judges in other states.

Freeman stated not with relation to this particular presentation, but over the years, we've done some case load comparisons and North Carolina's judges have among the top five case loads in the country.

Braswell stated that in reference to the civil docket vs. the criminal docket, do you have a number as to how many actual defendants are represented in those 100,000 cases.

Freeman stated we know that the average, roughly, in superior court; misdemeanor and felony is about 2 cases per defendant statewide.

Comments made by Mr. Jim Kimel, President, District Attorneys Conference

We found that the main reason for the increase in pending criminal cases in North Carolina have been the explosion in the crime rate over the past 10 years and the result of the increase in the filing of criminal cases. In 1980 the average NC prosecutor handled 3,031 cases per year and in that case load was 206 felonies. Ten years later, in 1989-90, the average prosecutor handled 4,738 cases including 329 felonies. In this past year, in my district, Guilford County, the average prosecutor handled 6,119 cases including 353 felonies per prosecutor. And the reason the cases per prosecutor is significant is in the studies we've done and have looked at over the years, the number of cases per prosecutor has been identified in those studies of case delay as the one variable that always directly effect the time it takes to dispose the cases.

One of the things that are important in case management is screening. The lack of resources to deal with the increase in cases goes through the entire criminal justice system. There is a need for more superior district court judges, clerks of court, court reporters and indigent defense counsel. Local law enforcement are adding more police officers, as a response to dealing with street crime they had. The retrial of capitol cases because of the McCoy decision has created a more of a drain on our resources. We also have difficulty of getting police reports and information from law enforcement agencies, particularly in rural multi county district. Juvenile crime is more violent than it use to be. New laws that are on the books that are passed by the Legislature also effect the number of cases in superior court.

We also have a lack of prison space and the failure of convicted defendants to serve a realistic course of their sentence and that puts the criminals back on the street to repeat their crimes. North Carolina is the only state that vest the calendar authority in the district attorney. Louisiana was the only other state, and that recently has just moved to a different system of case assignment. In other states, judges have the authority to calendar, but in practice the district attorney still set the cases. In Virginia, the judges have authority to calendar, but the district attorney usually set the cases because the judges have told them that it's necessary because the judges have no way of telling how long a particular case will take. The chief problem in calendaring in Virginia is that the judges block off too many days when they won't be available to hold court. In Georgia, many judges still delegate that due to the district attorney. In Tennessee, judges have always had the calendaring authority but most defer to the district attorney.

A basic concern of the district attorney in the charge that this commission had was that the commission's charge seeks a uniform system exposing of criminal cases throughout the state. I think that everybody knows that inherently in North Carolina's 37 prosecutorial districts, our elected system ensures that prosecutors will be responsive to a widely varying condition and needs of our different districts just as the legislators are.

The biggest complaint I hear from district attorneys about the calendaring process and from the defense counsel is when are you going to hear my case. Another great difficulty in calendaring is ensuring that everybody is going to be at the same place at the same time. I do think as required by statue there should be some announced order as the statute requires. Some notice that this is how we're going to proceed in our cases at least in the jury cases. The district attorney's

office also works closely with police officers and sheriffs to hold down the cost locally of overtime pay for officers that testify in court. In my district courts, I let the officers set court dates so that they can get paid for being in court on time, they're going to be working anyway. Another possible refinement to the calendaring system could be court involvement with jail cases, this commission might want to look into if the defendant remains in jail pending trial for a certain number of days or months, his case could be automatically reviewed. There have been some talk about vesting the calendaring and authority with the superior court judges. Based on the judges I've talked to that's responsibility that they are not crazy about having. Calendaring by the superior court judges would effectively end rotation in the state of North Carolina. A superior court would have to assemble all of the information from the law enforcement officers, defense counsel, victims, witnesses, length of trial, he or somebody on his behalf would have to assemble all the this information that's already with the district attorney who uses it to set his calendars. Judges don't have as much authority to resolve cases in criminal courts as they do in civil courts.

But making any decision on calendaring, you have to realize when you get into these decisions that to set realistic calendaring, all judges aren't the same, all district attorneys aren't the same, all law enforcement officers aren't the same. If there is going to be truly consistent calendaring throughout the state, you almost are going to have all judges make the same rulings, give the same sentences and rule the same and move cases on the exactly the same pace.

When you replace discretion whether the judge or some other judicial official you elevate efficiency over effectiveness and efficiency over justice. The responsibility and the accountability for the calendar and the calendar moving, the greatest check on the district attorney's calendaring authority is at the ballot box.

We feel that this study commission has a broad charge and obligation to examine the entire court system. Such a comprehensive study has not been undertaken since the late 1960's.

Proposal that might speed up the disposition of criminal cases without sacrificing individual rights are perhaps the huge jump in the influx of drug cases, one way to speed up those cases would be to allow the introduction of laboratory reports in drug cases in superior court without the chemist being present. District attorneys could set the case for trial without regard to the availability of the lab experts. This



commission could consider abolishing jury trials in fraction cases. You could abolish appeals to the superior court of all misdemeanors in which the maximum penalty is six months or less or you could just abolish jury trials in such cases or allow no appeal from this many convictions when active sentence isn't imposed in district court. The commission should look at permitting district court judges to hear guilty pleas in class H, I, and J felony cases, that would cut down superior court dockets at least 25%. You could consider abolishing appeals of misdemeanor probation revocation cases from the district court to superior court. You could permit the defendant to waive a jury trial in everything, except capitol cases.

If the commission wants to set a timeframe in which most cases could be disposed of, then you could more accurately predict what resources we need to meet our goals.

Michaux asked what the rational reasoning for rotation is.

Judge Brewer stated that it has been the long standing that rotation proctor impartiality and reduces the chance of the development of splits and influences on judges. It is designed to preserve the impartiality of judges.

Comments made by Joseph B. Cheshire V, Cheshire, Parker, Hughes and Manning

The number one complaint of criminal defense lawyers, is the calendaring system and the abuse of the calendaring system by the district attorneys in the state of North Carolina.

I will go over some the reasons very clear, cogent, real and honest why this system is abused. It is an interesting thing to note why the superior court judges don't want the calendaring and the district attorneys do. The superior court judges don't want the calendaring, because it's an awful lot of work and responsibility. The district attorneys want this awesome amount of responsibility and work. Why. For the same reasons Carolina would like to pick all of the referees in the game this weekend with Duke. For the same reason that Carolina would love to able to schedule the Duke basketball game whenever they want, so they could schedule it right out Cherokee Parks gets an injury one day. The reason is because in an advisories situation if one side has the ability to pick the forum in which it's going to be heard, the time, that side is in most instances going to get the bid, the contract and win the game, win the case.

I do not think that it is a total distinct question about whether or not you have calendaring by neutral party and calendaring management. I don't think those things are separate and apart. Because I think the calendaring by a non-neutral party creates mismanagement and calendaring by a neutral party would create better management.

**Complaints about the calendaring system:** district attorneys would put criminal cases on the calendar when the DA has no intention of trying the case and knows that he/she have no intention of trying the case. District attorneys, particularly in rural districts, require all defendants and their counsel to show up on Monday morning and never call their case. The calendar is used to punish lawyers that they don't like by making them sit there and punishing defendants they can't convict. The system is being abused in order to coheres pleas from the defendants. A lot of district attorneys won't set your motion, if you have a motion for bond, they have the calendar and they want your client to stay in jail they got a judge is who particularly good on bonds; they just won't call it. The calendar is used as a weapon and that's not fair.

The rotation of judges, I would submit to you that the criminal defense attorneys would support limitation of rotation of judges. It is important that we have access for the voters of this state and that our judges have accountability to people that know them about what they do.

It is not fair to take a young man or woman who wants to serve the state of North Carolina and tell them they have to go from Warrenton to Bolivia, North Carolina and live for six months.

If they sat closer or had their rotation areas limited, they could control the calendaring and the administration of justice. Whether or not you let the senior resident judge not rotate and let he/she control the calendar or whether you have all of the judges rotate in a much smaller area.

It would limit district attorneys abilities to get judges in from different parts of the state who would do exactly they want them to do. Superior court judges in this state are not given the resources to even do their jobs appropriately.

I have one helpful suggestion that I think would help superior court judges, administration of justice, fair administration of justice and the administration of the calendaring system. Superior court judges need law clerks graduate lawyers, who can work for them, research law, help them set calendars like they have in federal court.

There should be the existence of sound management, policies and control. I would support a reduction of the superior court judges case load. Along with the reduction of rotation, more assistance to superior court judges (qualified legal help). You should look at the limitation of district court appeals to superior court.

I don't see a whole lot of reason why a superior court judge ought to sit up and retry for an entire week a bunch of DWI cases. You can have a six person jury in district court if you want to to hear jury trials on contested issues and let it stop there. There are ways to limit infraction appeals and that kind of things that would free up superior court judges to have time to do more work and do the work that is needed.

The clerk of the county is standard, in federal court, the clerk does the calendaring in conjunction with the court. The clerk calls the criminal defense attorneys and the prosecutors and seeks guidance as to the length of the case and when the defense attorney and the prosecutor are both available, so it works.

There should be time limits for motions in superior court it's different than district court. You can discuss the possibility of having plea days. District attorneys should have days set aside in which they send a notice out to the defense lawyer saying we're going to discuss pleas on this day, follow-up on this day and if you haven't accepted or rejected by that day, we're going to go to trial on the original indictment.

Give our superior court judges the ability to do their job, let's make them accountable for the job they do, let's make the adversarial system work by having fairness on both sides.

Politics as much as humanly possible should be taken out of this system and people should have the courage to do what's right. We as criminal defense lawyers do not ask you to let us do what our adversaries now do and that is run the system. We want neutral people to run the system. We want and need discipline in the administration of justice, but it needs to be fairly handed out. The superior court judges need to have the courage to do the right thing. We want discipline, we want fairness, and if we really have it ladies and gentlemen, and if the ones of you that are honest and know how the system work and would come together with a compromise you don't like; we can save money for the people of North Carolina. We can have a better administration of justice, more freedom and eventually we could have less crime and more pride in the justice system.

Knott asked who in your mind do you think it should be when you mentioned the neutral management.

Cheshire stated I believe that what ought to happen is there ought to be law clerks that work for the judges that work with the clerk of court that work with the defense lawyers and the prosecutors to set calendars within the guidelines of strict accommodation and strict settings of what happens to cases.

Judge Brewer stated if you're talking about law clerks playing a role in this. Assuming that you're interested in a neutral, why would the best neutral not be a trial court administrator, similar to the civil side, who is trained in case management working under the supervision of the senior judge who would deal with the criminal side as the trial court administrators deal with on the civil side.

Cheshire stated that would be find, and if you did that you could have the prosecutor, you can have a group of indigent lawyers that help that court administrator. I still think the law clerks are needed and I think the law clerks could assist the court in being a conduit also to the court administrator.

Representative Jack Hunt asked Cheshire to touch on calendaring of the federal courts.

Cheshire stated that the clerk of court has a responsibility for setting the calendar under the direction of the judge. The clerk of court will normally contact you if you're if the prosecutor or defense attorney; find out the status of the case and determine the availability of these particular people and then set the case on a particular day and generally there is a first case, second case, third case, etc. situation for trial.

Michaux stated that it is not necessarily that we adopt the federal system as such but we could adopt probably some of the parameters that they operate. They leave room for continuance, but at that first appearance you get everything set out and you follow the guidelines. One of things they had was open discovery. What is the purpose of arraignment.

Judge Brewer stated that one of the concerns is that in criminal cases in particular, there is a tendency to wait till the case is actually being called for trial before the hard choices are made on both sides.

Hampton stated much of what we do is useless, arraignment in some jurisdictions mean something. In the state of Virginia when the defendant is arraigned he's given discovery at that

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time, at that time a motion date is set. There is no requirement that the defendant or his counsel announce to the prosecutor at any time that this case is for plea or for trial. But somewhere between arraignment and that motions date, normally there is some discussion and that decision is made.

Judge Brewer stated that there is considerable abuse on both sides. One of the purposes of this committee is to structure a system that addresses abuse on both sides. I think it is considerable on both sides.

Michaux made the motion to let the co-chairs set a proposed budget and be brought back to the committee in the bounds of \$15,000. So moved by Representative Bertha Holt. Motion carried.

The meeting adjourned at 12:45 p.m.

H. M. Michaux, Jr., Co-chairman

R. C. Soles, Jr., Co-chairman

Bonnie McNeil, Committee Clerk

Emily Johnson, Staff Counsel

/blm