NORTH CAROLINA COURTS COMMISSION

REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA

TABLE OF CONTENTS

PROVIDE SPECIALIZED SERVICES ON A FULL-TIME BASIS IN CAPITAL INDIGENT CASES.

K. Legislative Proposal IX. A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS FOR THE PLANNING OF A NEW STATE JUDICIAL CENTER.

L. Legislative Proposal X. A BILL TO BE ENTITLED AN ACT TO CLARIFY THE RECORDKEEPING RESPONSIBILITIES OF CLERKS OF SUPERIOR COURT IN IV-D CHILD SUPPORT CASES.

M. Legislative Proposal XI. A BILL TO BE ENTITLED AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES.

N. Case Management: A Report by the Subcommittee on Structure of the Courts to the North Carolina Courts Commission

North Carolina Courts Commission
State Legislative Building
Raleigh, North Carolina 27601-1096

ROBERT C. HUNTER, CHAIRMAN
MARION, N.C.

1201 LEGISLATIVE BUILDING
JONES STREET
RALEIGH, NORTH CAROLINA 27601-1096
(919) 733-5987
FAX (919) 733-2599

January 31, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The North Carolina Courts Commission submits to you for your consideration its report. This report was prepared according to G.S. 7A-508.

Respectfully submitted,

Representative Robert C. Hunter

Chair
North Carolina Courts Commission

INTRODUCTION

The North Carolina Courts Commission, established by Article 40A of Chapter 7A of the General Statutes, is a permanent commission authorized to study the structure, organization, jurisdiction, procedures, and personnel of the Judicial Department and of the General Court of Justice. (See Appendix A.) The 1994-95 chair of the Commission is Representative Robert C. Hunter.

Over the course of its deliberations, the Commission was pleased to hear from a number of officials and individuals representing various groups and agencies. Governor James B. Hunt, Jr., in his address to the Commission, urged the members not to have a narrow view of their responsibilities, but to take a broad view of potential reforms. Chief Justice James G. Exum, Jr. spoke of the Commission's role in originating ideas for the courts system and serving as a liaison between the judicial system and the legislature.

Among the concerns related to the Commission by the Governor, Chief Justice, attorneys, court administrators, victims, victim advocates, and citizens, the most frequent complaints concerned court delay and inefficiency. Cases are calendared over and over again before being heard by a court. Victims, witnesses, and litigants become frustrated by having to appear each time a case is calendared. Too often, victims of crime also become victims of the delay and inefficiency found in our criminal justice system. Because the credibility of our courts is at stake, these issues must be addressed.

The Commission sought to address these concerns by making recommendations on a wide range of issues including case management, structural and procedural reforms, consideration for the rights of victims of crimes, and increased access to the courts. Representative Hunter also appointed a Subcommittee on the Structure of the Courts, which was chaired by Mr. Wade Barber, to examine the fundamental reforms necessary to restore the courts' credibility. The Subcommittee responded by making two recommendations which the Commission adopted: (1) a speedy trial law for criminal cases; and (2) a request to the Supreme Court to develop a case management plan for our courts system. These and other recommendations can be found in this report. A copy of the Subcommittee's report is attached as Appendix N.

The Commission recognizes that the recommendations of this report are only a first step. Much more work remains to be done. The Courts Commission looks forward to coordinating its work with the Commission for the Future of Justice and the Courts as that Commission designs a judicial system to carry the State into the next century. Working with this and other groups, the Courts Commission will continue to look at the reforms necessary to restore public confidence in our courts.

RECOMMENDATIONS OF THE NORTH CAROLINA COURTS COMMISSION

RECOMMENDATION 1: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ADOPT A SPEEDY TRIAL LAW FOR CRIMINAL CASES IN SUPERIOR COURT" (Appendix C).

The Commission finds that delay and unnecessary appearances are the most common criticisms about North Carolina's current court system. The most effective method for eliminating delay in criminal cases is a speedy trial act. Since the repeal of North Carolina's speedy trial law in 1989, the length of time for disposition of criminal cases has increased. The prior Speedy Trial law, which was repealed by the General Assembly, had numerous exclusions of time including exclusions based on the general congestion in the courts. An expert from the National Center for State Courts, who spoke to a subcommittee of the Commission, indicated that the most effective speedy trial laws are those without numerous exclusions of time. The Commission recommends that a new speedy trial law be enacted requiring trial of criminal cases, except capital cases, within 180 days after arrest.

RECOMMENDATION 2: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO REQUEST THE SUPREME COURT TO ADOPT A PLAN TO ADMINISTER JUSTICE WITHOUT DELAY IN NORTH CAROLINA TRIAL COURTS" (Appendix D).

The Commission finds that there is a need to for better management of cases in the trial courts in order to reduce delay and unnecessary appearances and to increase the efficiency of the courts. Courts, like private business and other government agencies, must deal with increased work load and limited resources by employing up-to-date management techniques. The Supreme Court is best suited to develop a plan for better management of the system. Therefore, the Commission recommends passage of this bill, which would request the Court to develop a plan that deals with reducing delay and unnecessary appearances, places responsibility for moving cases on specific persons, and provides accountability mechanisms.

RECOMMENDATION 3: The Commission recommends that custody mediation and court-ordered arbitration programs be expanded statewide in accordance with the funding schedule requested by the Administrative Office of the Courts in its budget proposal to the Advisory Budget Commission. This schedule should provide sufficient funding to operate both programs in all judicial districts by the year 2000.

Custody mediation, in which contested child custody cases are sent to mediation before trial, was first established in 1983 and now operates in eight judicial districts (11 counties). Attorneys are not present, but the parties are allowed to consult their attorneys before signing a parenting agreement.

Court-ordered arbitration, which began in 1986 and now operates in 15 superior court districts (36 counties), diverts certain civil cases in which the plaintiff seeks money damages of $15,000 or less to non-binding arbitration. Arbitration has shortened the median disposition time of cases assigned to 33 to 45 percent.

Both programs have saved court time, reduced cost to litigants, and increased user satisfaction with the courts. In light of the increased demands on the judicial system

and the need for improved case management, the Commission recommends that the General Assembly expand both programs in accordance with the funding requests of the Administrative Office of the Courts.

RECOMMENDATION 4: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO MAKE VICTIM IMPACT STATEMENTS AND PLEA BARGAINING INFORMATION FOR VICTIMS MANDATORY IN ALL FELONY CASES" (Appendix E).

Under the current G.S. 15A-825, the fair treatment due victims and witnesses is not mandatory, but is accorded "to the extent reasonably possible and subject to available resources." The Commission believes that certain treatment and information should be mandatory. The Commission finds that victims should be entitled to have impact statements in every felony case. Furthermore, victims have a right to be informed of plea bargaining procedures and agreements. The Commission recommends that these items be required of every district attorney in all felony cases.

RECOMMENDATION 5: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ALLOW THE ENFORCEMENT OF AN ORDER FOR RESTITUTION IN A CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT" (Appendix F).

A 1994 report of the North Carolina Sentencing and Policy Advisory Commission entitled Victim Restitution in North Carolina found that of those offenders sentenced during the first quarter of 1990, 59% failed to pay all of their restitution by the third quarter of 1993. In this same time period, 46% of the offenders failed to pay any restitution. In its discussion of this issue, the Commission learned that the majority of surrounding states allow an order of restitution to be enforced in the same manner as a civil judgment. In an effort to provide victims of crime with increased mechanisms for the enforcement of restitution orders, the Commission recommends that orders of restitution be docketed and enforced in the same manner as civil judgments.

RECOMMENDATION 6: The Commission recommends that, whenever possible, the Parole Commission cease the practice of paroling and terminating prisoners who owe restitution and, instead, place these prisoners on supervised or unsupervised parole.

When a prisoner is paroled and terminated, the prisoner no longer owes the restitution ordered by the court. Alternatively, if the prisoner is placed on supervised or unsupervised parole, the restitution order may remain in effect. In November and December of 1993, 1221 prisoners were paroled and terminated by the Parole Commission. Of this number, approximately 7.6% owed restitution. In November and December of the following year, the number of prisoners paroled and terminated dropped to 461 with only 6.1% or 30 prisoners owing restitution. The Commission commends the Department of Correction and the Parole Commission for its efforts in reducing the number of prisoners owing restitution who are paroled and terminated. However, to increase the payment of restitution to victims of crime, the Courts Commission recommends, that, whenever possible, the Parole Commission cease the practice of paroling and terminating prisoners who owe restitution.

RECOMMENDATION 7: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO REMOVE LANGUAGE REQUIRING AN ATTORNEY'S OPINION AND WRITTEN STATEMENT IN

APPEALS BY INDIGENTS OF A JUDGMENT IN A CIVIL ACTION" (Appendix G).

During a public meeting of the Commission in Charlotte, N.C., Mr. William Dean of the Southern Christian Leadership Conference spoke of his problems with the appeal process for indigents in civil cases. Under current law, if an indigent cannot afford to post sufficient security required for an appeal of a civil judgment, he or she must present an affidavit stating, among other things, that the indigent has been advised by a practicing attorney that an error of law exists in the case. The indigent must also present a written statement from the attorney confirming the affidavit. In response to Mr. Dean's concerns, the Commission finds that the statutory language requiring the opinion and written statement of a practicing attorney poses an undue hardship on indigent persons. To increase access to the courts, the Commission recommends that the General Assembly remove these requirements.

RECOMMENDATION 8: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN DISTRICT AND SUPERIOR CIVIL COURTS AND TO MAKE CORRESPONDING CHANGES TO THE RULES OF CIVIL PROCEDURE AND NONBINDING ARBITRATION" (Appendix H).

The Commission finds that there is a need to increase the amount in controversy for civil actions in district court. The amount in controversy for civil action in district court has not been increased since 1982. During that same period of time the General Assembly has increased the amount in controversy in small claims cases three times - from $1,000 to $3,000.

The Commission recommends that district court be the proper division for civil cases of $25,000 or less and concomitantly recommends that the statewide court-ordered nonbinding arbitration program be used in cases where claims do not exceed $25,000.

RECOMMENDATION 9: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ALLOW SERVICE OF PROCESS BY A PRIVATE PROCESS SERVER WHEN A PROPER OFFICER RETURNS SERVICE OF PROCESS UNEXECUTED" (Appendix I).

The Commission originally recommended this legislation to the 1994 Session of the 1993 General Assembly. The Commission finds that it would expedite civil cases and increase user satisfaction with the court system to allow litigants to use private process servers when the sheriff neglects to or is unable to serve process. The federal government and many other states have allowed private process servers without controversy. Also, this State currently allows private process servers for out-of-state service. Given the advantages to both the court system and individual litigants of serving process quickly and efficiently, the Commission recommends that this state allow private service of process for civil cases.

RECOMMENDATION 10: The Commission recommends that the 1995 General Assembly enact "A BILL TO REDUCE THE COST OF PROVIDING INDIGENT REPRESENTATION IN CRIMINAL CASES BY AUTHORIZING THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONTRACT WITH A PARTICULAR ATTORNEY OR ATTORNEYS TO PROVIDE SPECIALIZED

SERVICES ON A FULL-TIME BASIS IN CAPITAL INDIGENT CASES" (Appendix J).

The Commission finds that it is difficult in some areas to find attorneys who are willing to be assigned capital indigent cases. The General Assembly appropriated additional money to the Indigent Defense Fund last year in order to increase the fees to be paid in indigent capital defense cases.

To provide an additional method of attacking the problem, the Commission recommends that this legislature authorize the Administrative office of the Courts to contract with attorneys for the provision of services in indigent capital cases.

RECOMMENDATION 11: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS FOR THE PLANNING OF A NEW STATE JUDICIAL CENTER" (Appendix K).

The Commission originally recommended this legislation to the 1994 Session of the 1993 General Assembly. The Commission finds that the State needs a new judicial facility to house the Supreme Court, the Court of Appeals, and the Administrative Office of the Courts. The present buildings do not have adequate space for the two appellate courts, their employees, and their libraries. Furthermore, the Administrative Office of the Courts is currently scattered among several buildings.

RECOMMENDATION 12: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT RECORDKEEPING RESPONSIBILITIES OF CLERKS OF SUPERIOR COURT IN IV-D CHILD SUPPORT CASES" (Appendix L).

The Commission finds that there is need to clarify the recordkeeping responsibilities of the clerk of superior court with regard to child support cases. The Department of Human Resources is in the process of developing a comprehensive automated child support enforcement system enforcement system for the IV-D Program, which will be implemented statewide in 1995. Child support payments will continue to be made through the clerk of superior court, but payment historics will be maintained by the Department of Human Resources.

This bill will simplify the recordkeeping duties of the clerks, while taking advantage of the new automated child support enforcement system, as well as complying with all federal mandates. It will also avoid an unnecessary duplication of records.

RECOMMENDATION 13: The Commission recommends that the 1995 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES" (Appendix M).

The Commission finds that the rate of reimbursement for out-of-state witnesses who testify in North Carolina cases should be the same as the rate for in-state witnesses.

Before 1971, G.S. 7A-314 made no discussion in mileage reimbursement between in-state and out-of-state witnesses, as all witnesses were reimbursed at the same rate as

State employees Since then the mileage rate has been increased for State employees, and by extension, in-state witnesses. By inadvertence, the out-of-state witness rate has not increased accordingly. The Commission recommends this legislation to return the rate of reimbursement for out-of-state witnesses to a rate equivalent to that paid to in-state witnesses and State employees.

RECOMMENDATION 14: The Commission recommends that the 1995 General Assembly examine the manner of selecting judges in this State. The Commission will continue to look at proposals for judicial selection, and if necessary, will meet during the 1995 Session to recommend specific reforms to the General Assembly.

RECOMMENDATION 15: The Commission recommends that the General Assembly study the Mecklenburg County Drug Court as an example of what can be accomplished with adequate funding and resources. The Commission recommends further that the Administrative Office of the Courts continue its Substance Abuse in the Courts Task Force and implement drug court pilot projects, unless the Task Force determines that such projects are not feasible.

The Commission commends the Mecklenburg County Drug Court for its timely handling and disposition of cases and cites this court as an example of what can be accomplished if adequate resources are given to the courts system. The Commission recommends that the General Assembly examine the issue of providing resources to specific judicial districts to implement local initiatives, such as drug courts.

RECOMMENDATION 16: The Commission recommends that the Administrative Office of the Courts (AOC) develop pilot projects within the existing judicial system to expedite family issues and that the AOC recommend to the General Assembly any legislation which might be necessary to accomplish this result.

RECOMMENDATION 17: The Commission recommends that the 1995 General Assembly study the removal of infractions from the insurance rate point system.

The Commission finds that the current insurance system of automatic points upon a finding of responsibility for an infraction places a significant burden on the court system. Many people contest infractions in court not because they question whether they committed the act but because of the insurance points that will result from a finding of responsibility. The Commission recommends that the General Assembly study the issue to determine if a better method for rate-setting, that would not result in increased court usage, could be found.

COMMISSION PROCEEDINGS

August 26, 1994

After introductory remarks by Representative Robert Hunter, Chair of the Commission, Ms. Joan Brannon, Commission Counsel, reviewed some of the legislation enacted during the 1994 Regular Session, particularly legislation recommended by the Commission. The legislation recommended by the Commission is set forth and explained in North Carolina Courts Commission: Report to the 1993 General Assembly of North Carolina: 1994 Session, which is on file in the Legislative Library. The Commission had recommended that the educational qualifications of magistrates be raised and that their pay plan be modified accordingly. That bill was ratified, with one change by the General Assembly. The General Assembly also raised judicial salaries, as the Commission had recommended. However, the General Assembly did not ratify bills to appropriate planning money for a judicial center or to allow service of process by private process servers.

Representative Hunter explained that the issue of the liabilities of registers of deeds under the Torrens land title registration system had been referred to the Courts Commission for study. Mr. Bill Campbell, Institute of Government, explained the Torrens system to the Commission. Representative Hunter suggested that the liability issue be referred to the Legislative Research Commission's Immunity From Negligence Committee for action.

Mr. Michael Crowell, Executive Director, Commission for the Future of Justice and the Courts in North Carolina ("Futures Commission") described how the Futures Commission was funded and appointed and what its task will be. The Futures Commission will examine how an ideal court and judicial system for North Carolina would work, looking at such things as the structure of the court system, the selection of personnel, whether judges should be elected or appointed, and equal access to the courts by all citizens.

Mr. Tommy Griffin, Administrative Office of the Courts, presented information and figures concerning collection of restitution in Cumberland County. Representative Hunter asked for information from more counties for the next meeting.

Representative Hunter appointed Mr. Wade Barber to chair a subcommittee to study the structure of the court system. He appointed to that subcommittee the following committee members: Justice Willis Whichard, Representative Paul McCrary, Senator Elaine Marshall, Representative Mickey Michaux, Mr. Robert Christy, Mr. Phil Ginn, Senator Jerry Blackmon, and Mr. Robert P. Johnston.

September 16, 1994

The Commission held its meeting and a public hearing in Marion, North Carolina.

Mr. James C. Drennan, Director of the Administrative Office of the Courts, suggested some issues that the Commission could address: who does what in the court system; domestic violence; divorces; proper use of administrative court, criminal court,

and especially district court; child support matters; drug treatment courts; guilty plea jurisdiction; matters of administration; administration of the program to provide indigent defense services; abused and neglected children; access to the courts; court interpreters; courts fees and court costs; court security; cost of court (i.e. expense of litigation); and discovery in civil cases. Mr. Drennan said that there is a committee looking into issues relating to court reporting. Also, the area of alternative dispute resolution continues to evolve. The 1995 General Assembly will address the use of mediated settlement conferences in superior court civil actions.

Mr. David M. Setzer, General Manager of The McDowell News, suggested that the Commission consider allowing actions in small claims court to be held in the county where the claim arose.

Mr. Bill Leavell, attorney in Spruce Pine, suggested putting people more at ease in court by having someone explain at each stage of the proceedings certain things such as what is going on, what the significance of a particular procedure is, and when you can leave for a break or for the day. He also suggested holding night court and possibly Saturday court for the convenience of working people. Finally, he suggested scheduling a specific case for a certain day at a certain time.

Ms. Dorothygail Dunagan Morrison of Greenville, South Carolina, complained about her experiences in North Carolina's judicial system after she received a speeding ticket. She suggested the following: set reasonable speed limits that reflect reality; do not coerce innocent people into plea bargaining or pleading guilty; allow "trial by declaration" for out-of-state motorists; give everyone the right to a jury trial; provide access to the court system in a timely manner for people contesting charges, and give printed material explaining their rights and what is expected to persons representing themselves; have the court, not the prosecutor, schedule cases; and record all proceedings.

Mr. Thomas Taylor of McDowell County suggested that the time before a judge arrives be used for defendants or attorneys to check in with the court clerk, making a calendar call unnecessary. He also suggested the following: plea bargains should be used with discretion; the one-week jury selection system should give way to a one-day/one-trial system; use of night court; district courts should be allowed to accept no contest or guilty pleas for felonies up to and including first degree murder; study installation of video imaging systems; and law libraries should be up-to-date and open to everyone.

Ms. Deondrea Becker from McDowell County complained about her encounters with the court system. She stated that: magistrates should know more about North Carolina law; judges should have more compassion and not presume guilt; poverty should be addressed, because the poor are not treated as well as other persons; better access to State laws is needed; criminals should be able to appeal cases in district court; there is a need for more sentencing alternatives; and each county should have an impartial person to assist citizens who have problems with a court official.

Ms. Frances Ashmore of Brevard complained about the lowered blood alcohol levels for a DWI conviction and the enforcement of DWI laws in her county.

Ms. Nedra Wilson, Western Vice President of the Victims Assistance Network, addressed the issue of victims' rights and called for a Victims' Rights Amendment to the North Carolina Constitution. Representative Hunter stated that victims' assistance

must be strengthened and that legislation to do that was passed several years ago. He talked about the importance of victims' impact statements and victim restitution. He said that he is considering asking the State Auditor to do an audit of the Victims' Assistant Program.

October 21, 1994

Mr. Sam Boyd, Administrator of the Parole Commission, spoke about how many supervised paroles, parole and terminations, and total paroles were issued for each fiscal year from 1990 through 1994. He also talked about fax parole, which allows quick action and the possibility of collecting restitution. He said that enforcement of the conditions of parole is the greatest problem facing the Parole Commission. There are many parole violations for failure to pay restitution. Mr. Boyd responded to Commission members' questions concerning the effects of structured sentencing on parole, payment of restitution and other conditions of parole, and termination of parole.

Mr. James C. Drennan, Director of the Administrative Office of the Courts, spoke on indigent defense reform. He described the indigent defense program and told the Commission that the issues facing that program are: administrative responsibility; appropriations for assigned counsel; contractual authority; the workings of the public defender system; hiring and contracting with attorneys for the guardian ad litem program; and the use of special counsel.

Mr. Wade Barber reported on the work of the subcommittee. The subcommittee's objectives are to examine the scheduling of civil and criminal cases, including the setting of superior court sessions; the setting of local schedules by district court judges; the management and calendaring of cases by either the court, litigants, or prosecutors; and the extent to which schedules have an impact on litigant access.

November 18, 1994

In its meeting of November 18, 1994, the Courts Commission began with a presentation on new court related technology from Mr. Doug Walker, National Center for State Courts. Mr. Walker explained that, in the judicial system, technology is best used to improve case processing. Some examples of technology advances include document imaging, audio and video transmission, computer graphics, simulation and electronic filing. As an example of video related technology, Mr. Walker spoke of "kiosks" which enable parties to conduct court activities away from the courtroom. These activities include the payment of parking fines and the filing of uncontested divorces. Representative Hensley expressed his concern that the use of kiosks diminishes the court and its impact on society, turning the judicial system into a faceless, nameless bureaucracy. Mr. Walker concluded his presentation by noting recent trends in court technology. These trends include technology integration, statewide approaches, virtual courtrooms and courthouses, and electronic public access systems. When considering new technology, Mr. Walker advised the Commission to remember that it is a lifetime investment and that statutes and rules must remain current with technological advances.

Following Mr. Walker's presentation, Mr. James C. Drennan, Director Administrative Office of the Courts (AOC), gave a brief overview of the 1995-97 Expansion Budget Requests for the Judicial Branch. Mr. Drennan listed four requests in

order of priority: (1) increase District Court Division resources for children and family disputes including expansion of custody mediation programs and court ordered arbitration; (2) maintain and improve the court infrastructure; (3) modernize the court system; and (4) improve indigent defense services including the creation of the AOC Division of Defense Services, increased compensation for defense counsel in capital cases, and additional defense fund requirements.

December 9, 1995

The Courts Commission held a public meeting in Charlotte, N.C. on December 9, 1995. The meeting began with over 15 members of the public addressing the Commission. Issues mentioned by the public included: (1) fear that criticism of the legal system would prejudice their court cases; (2) delays in calendaring and disposition of cases; (3) criminal calendaring by district attorneys; (4) equitable distribution reforms; (5) implementation of child custody mediation programs; (6) expansion of guardian ad litem programs; (7) false and misleading advertising by attorneys; (8) indigent appeal reform; (9) greater consideration of local initiatives; (10) treatment of witnesses particularly in light of case continuances; (11) increased support for pro se representation; (12) implementation of videotaping of all proceedings; (13) intimidation of jurors and witnesses; (14) increased accountability of judges and attorneys; (15) decentralization of the court system; (16) merit selection of judges; (17) the process for selection and supervision of magistrates; and (18) the loss of continuity resulting from rotation of judges. A complete record of all speakers and their remarks is contained in the Commission's notebook which is filed in the Legislative Library.

Mr. Parks Helms, former Chairman of the Commission, spoke of his concern for the credibility of the court system. Mr. Helms outlined his concerns as follows: (1) the need for drug courts; (2) merit selection of judges; (3) support for a pretrial release program for criminal defendants particularly in Mecklenburg County; and (4) integration of the state information system with local systems such as Mecklenburg County's.

The Commission discussed two pieces of legislation introduced by Mr. James C. Drennan, Director, Administrative Office of the Courts (AOC). The first piece of legislation, entitled Child Support Recordkeeping, clarifies the recordkeeping responsibilities of the clerks of court and local child support enforcement agencies in IV-D cases once the Automated Cash Tracking System is implemented statewide. The Commission voted to recommend the legislation. The second piece of legislation, entitled Witness Travel Expenses, amends the law on reimbursement of travel expenses for out-of-state witnesses to provide reimbursement at the same rate as State employees for in-State travel. The Commission also voted to recommend this legislation.

Mr. Drennan provided for the Commission's recommendation copies of legislation which would allow the AOC to contract with attorneys for the representation of indigents in criminal cases. He also provided information on the creation of a regional specialized Public Defenders Office to represent indigents in criminal cases. Following discussion by the Commission, Chairman Hunter agreed to place the items on the agenda at a later date.

January 12, 1995

After opening remarks, Mr. Wade Barber, Chairman of the Commission's Subcommittee on the Structure of the Courts, began the meeting with a report from the Subcommittee. Mr. Barber noted that the North Carolina Constitution requires that the courts administer justice "without delay." To meet this requirement, the Subcommittee, in its report, recommended the adoption of case management standards and goals. To assure accountability, the Subcommittee also recommended that responsibility for management and scheduling of cases be clearly placed. The Subcommittee endorsed the statewide implementation of mediation and court ordered arbitration programs. The Subcommittee recommended two pieces of legislation: (1) A BILL TO BE ENTITLED AN ACT TO REQUIRE THE SUPREME COURT TO ADOPT A PLAN TO ADMINISTER JUSTICE WITHOUT DELAY IN NORTH CAROLINA TRAIL COURTS; and (2) A BILL TO BE ENTITLED AN ACT TO ADOPT A SPEEDY TRIAL LAW FOR CRIMINAL CASES IN SUPERIOR COURT. After discussion by the Commission, both bills were placed on the agenda for the next meeting of the Commission. (A copy of the entire report of the Subcommittee is attached to this report as Appendix N.)

Mr. Franklin Freeman, Secretary, North Carolina Department of Correction, spoke to the Commission concerning parole issues. Mr. Freeman stated that the least serious prisoners are paroled and terminated to allow more room for those convicted of serious offenses. Mr. freeman explained that if a prisoner is paroled and terminated, the prisoner is no longer on supervision and all conditions of their sentence, including restitution, ceases to exist. Of the 461 prisoners paroled and terminated in November and December of 1994, only 30 owed any restitution. Mr. Freeman stated that the Parole Commission will continue to focus on those who owe restitution before they are paroled and terminated. Representative Hunter asked that the Parole Commission examine ways to place a prisoner on unsupervised parole if restitution is owed, rather than terminating the prisoner's sentence. Representative Hunter also asked that the Commission recommend in its report that the Parole Commission cease the parole and termination of prisoners who owe restitution.

Mr. Freeman also addressed the issue of having an order of restitution docketed as a civil judgment. Mr. Freeman stated that if this is done, the defendant should be afforded a hearing to agree or disagree with the amount of restitution. Mr. Freeman indicated that past court decisions have required such a hearing before docketing a judgment against an indigent for counsel fees. Following discussion by the Commission, Representative Hunter instructed staff to prepare legislation for the next meeting of the Commission which would allow the enforcement restitution orders in the same manner as a civil judgment.

Following Mr. Freeman's presentation, the Commission discussed several items for recommendation in the Commission's report. The Commission voted to recommend statewide implementation of child custody mediation and court ordered arbitration. The Commission decided not to make a recommendation on the expansion of mediated settlement conferences until after the Administrative Office of the Courts (AOC) makes its report to the General Assembly later this year.

After discussion by the Commission, the following items were placed on the agenda for the next meeting of the Commission: (1) the creation of pilot projects moving infractions and Level I misdemeanor pleas from district court to magistrates; (2) the creation of pilot projects by the AOC implementing drug courts; (3) draft legislation requiring the implementation of victims' and witness' rights measures; (4) draft legislation removing the requirement of a lawyer's statement before an indigent may

appeal a civil judgment; (5) draft legislation allowing the AOC to contract for the representation of indigents in capital cases; (6) a recommendation that the General Assembly study the removal of infractions from the insurance point system; (7) draft legislation increasing the jurisdictional amount for district court from $10,000 to $25,000; and (8) a general recommendation on the merit selection of judges.

The Commission voted to recommend draft legislation appropriating funds for the planning of a new State Judicial Center. This legislation was originally recommended by the Commission in its report to the 1994 Session of the 1993 General Assembly. With reference to another piece of legislation recommended in that earlier report, the Commission asked that the report to the 1995 General Assembly reflect the Commission's continued interest in efficient service of process by the sheriffs and in legislation allowing private service of process when the sheriff returns service of process unexecuted.

The Commission also discussed draft legislation which would allow small claim actions to be filed in the county where the plaintiff resides or the claim arose. Under current law, a small claim action is generally filed in the county where the defendant resides. Representative Hunter cited the example brought before the Commission in a public meeting where the defendants failed to appear or asked for a continuance. This lead to frustration on the part of witnesses and plaintiffs. Commission members noted that the small claims process is an expedited one and that, in order to provide a fair system, the plaintiff should file the case where the defendant resides. Following discussion, the Commission decided not to make a recommendation on this issue.

January 19, 1995

In its final meeting prior to the convening of the 1995 General Assembly, The Courts Commission voted to recommend several pieces of legislation which are included in this report. These legislative proposals include: (1) Speedy Trial Act; (2) Case Management/Courts; (3) Victims Rights Changes; (4) Restitution/Civil Judgment; (5) Indigent Appeal Changes; (6) Jurisdictional Amount Increase; (7) Indigent/Capital Cases; (8) Recordkeeping/Child Support; (9) Conform Witness Travel Fees; and (10) Judicial Center Funds. Background information on each bill is contained in the section of this report entitled "Recommendations." Copies of the bills and a summary of each are included in the appendices of this report.

The Commission made general recommendations on the following issues which do not have accompanying legislation: (1) parole and restitution (2) judicial selection (3) family courts; (4) drug courts; and (5) study of the removal of infractions from the insurance point system. Each recommendation is contained in the section of this report entitled "Recommendations."

The 1993 General Assembly directed the Commission to report to the 1995 General Assembly on the expansion of magistrates' jurisdiction to include infractions and Level I misdemeanor pleas, the disposition of infractions, and the use of concurrent jurisdiction between the district and superior courts for the disposition of certain felonies. In light of the Commission's recommendation requesting the Supreme Court to develop a plan for case management, the Commission decided not to make specific recommendations on these jurisdictional issues. The Commission will continue to study these and other matters in its future meetings.

During the Commission's public meeting in Charlotte, N.C., one of the public speakers spoke of a pamphlet published by the State of New Jersey entitled "An Introduction to the New Jersey Courts." The speaker asked that North Carolina consider publishing such materials to assist members of the public in using the court system. In response to this request, Mr. James C. Drennan, Director, Administrative Office of the Courts (AOC) informed the Commission that the Administrative Office of the Courts (AOC) currently publishes a number of publications aimed at introducing the public to the State's court system. Mr. Drennan provided examples of these publications to the Commission. The Commission members congratulated the AOC on the quality of the publications and asked that an effort be made to educate the public on the existence of these materials.

APPENDIX A

G.S. CHAPTER 7A, ARTICLE 40A: NORTH CAROLINA COURTS COMMISSION

§ 7A-506. Creation; members; terms; qualifications; vacancies.

(a) The North Carolina Courts Commission is created. Effective July 1, 1993, it shall consist of 24 members, six to be appointed by the Governor, six to be appointed by the Speaker of the House of Representatives, six to be appointed by the President Pro Tempore of the Senate, and six to be appointed by the Chief Justice of the Supreme Court.

(b) Of the appointees of the Chief Justice of the Supreme Court, one shall be a Justice of the Supreme Court, one shall be a Judge of the Court of Appeals, two shall be judges of superior court, and two shall be district court judges.

(c) Of the six appointees of the Governor, one shall be a district attorney, one shall be a practicing attorney, one shall be a clerk of superior court, at least three shall be members of the General Assembly, and at least one shall not be an attorney.

(d) Of the six appointees of the Speaker of the House, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, and at least one shall not be an attorney.

(e) Of the six appointees of the President Pro Tempore of the Senate, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, and at least one shall be a magistrate.

(f) Of the initial appointments of each appointing authority, three shall be appointed for four-year terms to begin July 1, 1993, and three shall be appointed for two-year terms to begin July 1, 1993. Successors shall be appointed for four-year terms.

(g) A vacancy in membership shall be filled for the remainder of the unexpired term by the appointing authority who made the original appointment. A member whose term expires may be reappointed.

§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.

§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.

§ 7A-509. Chair; meetings; compensation of members.

The Governor, after consultation with the Chief Justice of the Supreme Court, shall appoint a chair from the legislative members of the Commission. The term of the chair is two years, and the chair may be reappointed. The Commission shall meet at such times and places as the chair 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.

§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

NORTH CAROLINA COURTS COMMISSION
MEMBERSHIP
1994 - 1995

Governor's Appointments

Rep. Philip A. "Phil" Baddour, Jr.
208 S. William Street
Goldsboro, NC 27530
(919)735-7275

Hon. Robert H. "Bob" Christy, Jr.
60 Court Plaza
Asheville, NC 28801
(704)255-4746

Hon. Carl Fox
P.O. Box 1118
Chapel Hill, NC 27514
(919)732-9334

Sen. Elaine F. Marshall
P.O. Box 1660
Lillington, NC 27546
(910)893-4000

Rep. Paul R. "Jaybird" McCrary
310 Westover Drive
Lexington, NC 27292
(704)249-9285

W. Douglas "Doug" Parsons
P.O. Box 1400
Clinton, NC 28328
(919)592-7066

Chief Justice's Appointments

Hon. Willis P. Whichard
Associate Justice
Supreme Court
P.O. Box 1841
Raleigh, NC 27602
(919)733-3714

President Pro Tempore's Appointments

Sen. John G. Blackmon
P.O. Box 33664
Charlotte, NC 28233
(704)332-6164

Mr. Bob Burchette
Johnston, Taylor, Allison & Hord
Attorney at Law
101 North McDowell Street, Ste.100
Charlotte, NC 28204

Sen. George B. Daniel
P.O. Box 1210
Graham, NC 27253
(910)226-0683

Mr. Phillip Ginn
P.O. Box 427
Boone, NC 28607

Sen. Wilbur P. Gulley
4803 Montvale Drive
Durham, NC 27707
(919)683-1584

Mr. J. Carl Hayes
P.O. Box 9
Manteo, NC 27954

Speaker's Appointments

Rep. Robert C. Hunter, Chair
P.O. Drawer 1330
Marion, NC 28752
(704)652-2844

Rep. David T. Flaherty, Jr.
P.O. Drawer 1586
Lenoir, NC 28645
(704)754-0961

Hon. James A. Wynn, Jr., Judge
Court of Appeals
P.O. Box 888
Raleigh, NC 27602
(919)733-6185

Hon. Robert P. Johnston
Resident Superior Court Judge
Mecklenburg County Courthouse
700 E. Fourth Street
Charlotte, NC 28202
(704)347-7800

Hon. Richard B. Allsbrook
Senior Resident Superior Court Judge
Halifax County Courthouse
Halifax, NC 27839
(919)583-8121

Hon. William A. Christian
Chief District Court Judge
P.O. Box 2007
Sanford, NC 27330
(919)774-7570

Hon. Patricia A. Timmons-Goodson
District Court Judge
Cumberland County Courthouse
P.O. Box 363
Fayetteville, NC 28302
(919)678-2901

Mr. George T. Griffin
Cumberland County Clerk of Court
P.O. Box 363
Fayetteville, NC 28302

Rep. Robert J. Hensley, Jr.
124 St. Mary's Street
Raleigh, NC 27605
(919)832-9651

Rep. Annie B. Kennedy
3727 Spaulding Drive
Winston-Salem, NC 27105
(910)723-0007

Rep. H. Mickey Michaux, Jr.
P.O. Box 2152
Durham, NC 27702
(919)596-8181

Ex Officio

Administrative Office of the Courts

Mr. James C. Drennan, Director
Justice Building
2 West Morgan Street
Raleigh, NC 27601-1400
(919)733-7107

N.C. State Bar Representative

Ms. Ann Reed
P.O. Box 629
Raleigh, NC 27602
(919)733-3377

N.C. Bar Association Representative

Mr. Wade Barber, Jr.
206 Hillsborough Street
P.O. Box 602
Pittsboro, NC 27312
(919)542-2400

Staff:
Mr. Tim Hovis
Ms. Lynn Marshbanks
Research Division
(919)733-2578

Ms. Joan G. Brannon (919)966-4178
Mr. Thomas H. Thornburg (919)966-4377
Institute of Government
UNC-Chapel Hill
Knapp Building, CB# 3330
Chapel Hill, NC 27599-3330

Clerk:
Ms. Ferebee Stainback
1201 Legislative Building
O: (919)733-5987
H: (919)847-5820

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-004
THIS IS A DRAFT 24-JAN-95 13:25:50

Short Title: Speedy Trial Law. **(Public)**

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADOPT A SPEEDY TRIAL LAW FOR CRIMINAL CASES IN SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding the following new Article to read:

"Article 35A.

"Speedy Trial Act.

"§ 15A-705 - Time Limits.

(a) It is the public policy of the State of North Carolina that criminal charges be resolved without undue delay.

(b) Unless the time is extended by an order of a judge as provided in subsection (d) of this section, the trial of the defendant charged with a criminal offense, except a capital offense, shall begin within 180 days of the following:

(1) The date the defendant is arrested for or served with a criminal summons for the criminal offense;

(2) The first regularly scheduled criminal session of superior court, for which a calendar has not been published at the time of notice of appeal, held after the defendant has given

notice of appeal in a misdemeanor case for trial de novo in the superior court;

(3) When a charge is dismissed, other than under G.S. 15A-702 or a finding of no probable cause pursuant to G.S. 15A 612, and the defendant is afterwards charged with the same offense or an offense based on the same act or transactions connected together or constituting parts of a single scheme or plan, then from the date that the defendant was arrested for or served with a criminal summons for the original charge;

(4) The date a mistrial is declared; or

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

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

(1) The time from which the prosecutor enters a dismissal with leave for the nonappearance of the defendant until the prosecutor reinstates the proceedings pursuant to G.S. 15A-932.

(2) The time during which the defendant is being examined to determine whether the defendant is incapable of proceeding.

(3) The time during which the defendant has been found to be incapable of proceeding pursuant to Article 56, G.S. Chapter 15A.

(4) The time during which prosecution is deferred pursuant to G.S. 15A-1341(a1).

(5) The time during which the defendant is being tried on other charges.

(6) The time during which the defendant is being extradited from another state.

(7) The time during which the defendant or an essential witness is absent or unavailable. For purposes of this subsection, a defendant or essential witness shall be considered absent when that person's whereabouts are unknown, and, in addition, that person is attempting to avoid apprehension or prosecution or the whereabouts cannot be determined by due diligence. A defendant or essential witness shall be considered unavailable whenever that person's whereabouts are known but the

person's presence for trial cannot be obtained by due diligence or that person resists appearing at or being returned for trial.

(8) The time during which the defendant or State has undertaken an interlocutory appeal.

(d) Upon motion of the State or the defendant, when exceptional circumstances are shown to exist, a superior court judge assigned to hold court in the district or a resident superior court judge of the district may enter a written order specifying a later date within which the criminal trial shall begin. For felony cases in which the superior court has not yet acquired jurisdiction, a district court judge of the district may enter the order. Additional extension orders may be entered on the same grounds. Exceptional circumstances shall not include general congestion of the court's docket, lack of diligent preparation, failure to obtain available witnesses, or other avoidable or foreseeable delays. Exceptional circumstances are those that as a matter of substantial justice to the accused or the State or both require an order by the court. Such circumstances include:

(1) unexpected illness, unexpected incapacity, or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial;

(2) a showing by the State that the case is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this section;

(3) a showing by the State that specific evidence or testimony is not available despite diligent efforts to secure it, but will become available at a later time."

"**§ 15A-706 Sanctions.**

(a) If a defendant is not brought to trial within the time required by G.S. 15A-701, then upon motion of the defendant the court shall do one of the following:

(1) enter an order dismissing the action with prejudice; or

(2) enter an order dismissing the action without prejudice.

In determining the order to be entered, the court shall consider, among other matters, the seriousness of the offense, the facts and circumstances of the case which led to the failure to begin

the trial within the time allowed, and the impact of reprosecution on the administration of justice.

(b) A dismissal with prejudice shall bar further prosecution of the defendant for the same offense or an offense based upon the same act or transaction, or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan.

(c) A dismissal without prejudice shall not bar further prosecution. However, the case must be refiled and either the trial begun or the case otherwise finally disposed of within 60 days after the dismissal with prejudice or the court, upon motion of the defendant, must enter a dismissal with prejudice. The periods for excluding time under G.S. 15A-705(c) apply to this subsection.

(d) Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or no contest shall constitute a waiver of the right to dismissal under this section.

(e) The sanctions authorized by this section shall not apply to proceedings in the district court division of the General Court of Justice.

"**§ 15AS-709 - Expedited trial.**

Upon motion of the defendant and for good cause shown, a judge may enter an order for an expedited trial of a pending criminal case. In ruling on such a motion, the judge shall consider, among other matters, prejudice to the defendant if an expedited trial is not ordered and the ability of the State, with available resources, to expedite the trial."

Sec. 2. This act becomes effective January 1, 1996 and applies to offenses occurring on or after January 1, 1996.

ANALYSIS OF PROPOSED LEGISLATION

The proposed legislation requires criminal cases, except capital cases, to be disposed of within 180 days after arrest for or service with a criminal summons for the offense. It excludes from counting the time period (1) the time from which the prosecutor takes a dismissal with leave for the nonappearance of the defendant until the prosecutor reinstates the proceedings; (2) the time during which a defendant is being examined to determine capacity to proceed to trial and the time during the defendant is found to be incapable of proceeding; (3) the time during which prosecution is deferred; (4) the time during which defendant is being tried on the other charges; (5) the time during which the defendant is being extradited from another state; (6) the time during which the defendant or an essential witness is absent or unavailable; and (7) the time during which an interlocutory appeal is being taken. A judge may enter a written order specifying a later date for trial upon a showing of exceptional circumstances. If a defendant is not brought to trial within the required time, the court must either dismiss the action with prejudice or without prejudice. If an action is dismissed without prejudice, it must be refiled and either the trial begun or the case otherwise finally disposed of within 60 days after dismissal or a court must dismiss it with prejudice. The legislation also provides a procedure for a defendant to receive an expedited trial.

The bill would be effective January 1, 1996 and apply to offenses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H D

95-rgz-005
THIS IS A DRAFT 24-JAN-95 13:02:51

Short Title: Case Management/Courts. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUEST THE SUPREME COURT TO ADOPT A PLAN TO ADMINISTER JUSTICE WITHOUT DELAY IN NORTH CAROLINA TRIAL COURTS.

The General Assembly of North Carolina enacts:

Section 1. The North Carolina Supreme Court is requested to develop and implement a case flow management plan designed to avoid delay and unnecessary appearances and to increase efficiency in the handling of cases in North Carolina's trial courts. The plan should:

(1) place responsibility for managing the flow of cases on specific persons;

(2) adopt case processing standards and goals;

(3) address the problem of delay;

(4) avoid unnecessary appearances in court by parties, witnesses, and attorneys;

(5) provide mechanisms for keeping continuous control of cases;

(6) have short-set deadlines throughout the process;

(7) include a limited continuance policy;

(8) consider the interests of victims and witnesses;

ANALYSIS OF PROPOSED LEGISLATION

This proposed legislation requests the Supreme Court to implement a case flow management plan designed to avoid delay and unnecessary appearances and to increase court efficiency. The plan should place responsibility for managing the flow of cases on specific persons; adopt case processing standards and goals; address the problem of delay; avoid unnecessary appearances by parties, witnesses, and attorneys; keep continuous control of cases; have short-set deadlines throughout the process, include a limited continuance policy; consider the interest of victims and witnesses; set out accountability mechanisms; and provide for training. The Court is requested to make a report to the General Assembly by January 16, 1996.

The bill would be effective on ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-001
THIS IS A DRAFT 24-JAN-95 14:27:15

Short Title: Victims' Rights Changes. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE VICTIM IMPACT STATEMENTS AND PLEA BARGAINING INFORMATION FOR VICTIMS MANDATORY IN ALL FELONY CASES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-825.1 Victim impact statement; plea bargaining information.

(a) For each victim of a felony crime within a district attorney's jurisdiction, the district attorney shall:

(1) Prepare a victim impact statement for consideration by the court.

(2) Provide information to the victim prior to trial about plea bargaining procedures and inform the victim that the district attorney may recommend a plea bargain to the court.

(3) Make a reasonable effort to notify the victim of the terms of a plea bargain agreement between the State and the defendant before the plea is taken.

This section shall not apply if the victim requests not to receive the treatment and information listed in this section.

(b) Nothing in this section shall be construed to create a cause of action for failure to comply with its requirements."

Sec. 2. G.S. 15A-825 reads as rewritten:

"**§ 15A-825. Treatment due victims and witnesses.**

To the extent reasonably possible and subject to available resources, the employees of law-enforcement agencies, the prosecutorial system, the judicial system, and the correctional system should make a reasonable effort to assure that each victim and witness within their jurisdiction:

(1) Is provided information regarding immediate medical assistance when needed and is not detained for an unreasonable length of time before having such assistance administered.

(2) Is provided information about available protection from harm and threats of harm arising out of cooperation with law-enforcement prosecution efforts, and receives such protection.

(2a) Is provided information that testimony as to one's home address is not relevant in every case, and that the victim or witness may request the district attorney to raise an objection should he/she deem it appropriate to this line of questioning in the case at hand.

(3) Has any stolen or other personal property expeditiously returned by law-enforcement agencies when it is no longer needed as evidence, and its return would not impede an investigation or prosecution of the case. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property whose ownership is disputed, should be photographed and returned to the owner within a reasonable period of time of being recovered by law-enforcement officials.

(4) Is provided appropriate employer intercession services to seek the employer's cooperation with the criminal justice system and minimize the

employee's loss of pay and other benefits resulting from such cooperation whenever possible.

(5) Is provided, whenever practical, a secure waiting area during court proceedings that does not place the victim or witness in close proximity to defendants and families or friends of defendants.

(6) Is informed of the procedures to be followed to apply for and receive any appropriate witness fees or victim compensation.

(6a) Is informed of the right to be present throughout the entire trial of the defendant, subject to the right of the court to sequester witnesses.

(7) Is given the opportunity to be present during the final disposition of the case or is informed of the final disposition of the case, if he has requested to be present or be informed.

(8) Is notified, whenever possible, that a court proceeding to which he has been subpoenaed will not occur as scheduled.

~~(9) Has a victim impact statement prepared for consideration by the court.~~

~~(9a) Prior to trial, is provided information about plea bargaining procedures and is told that the district attorney may recommend a plea bargain to the court.~~

(10) Is informed that civil remedies may be available and that statutes of limitation apply in civil cases.

(11) Upon the victim's written request, is notified before a proceeding is held at which the release of the offender from custody is considered, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(12) Upon the victim's written request, is notified if the offender escapes from custody or is released from custody, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(13) Has family members of a homicide victim offered all the guarantees in this section, except those in subdivision (1).

Nothing in this section shall be construed to create a cause of action for failure to comply with its requirements."

Sec. 3. This act becomes effective December 1, 1995.

ANALYSIS OF PROPOSED LEGISLATION

The proposed legislation creates a new G.S. 15A-825.1 which would require a district attorney to: (1) prepare a victim impact statement; (2) provide information to the victim prior to trail about plea bargaining procedures and inform the victim that the distract attorney may recommend a plea bargain; and (3) make a reasonable effort to notify the victim of the terms of a plea bargain agreement before the plea is taken. These requirements apply only to victims of felonies and do not apply if the victim requests not to receive the treatment and information listed in the proposed statute. The bill also provides that nothing in the proposed new section may be construed to create a cause of action for a district attorney's failure to comply.

Section 2 of the bill amends the existing **G.S. 15A-825, Treatment due victims and witnesses,** to remove sections (9) and (9a). These sections contain language similar to the language proposed in Section 1 of the bill. Unlike the proposed new statute contained in Section 1, however, the existing G.S. 15A-825 is not mandatory.

The proposed legislation would become effective December 1, 1995.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-008
THIS IS A DRAFT 24-JAN-95 14:57:29

Short Title: Restitution/Civil Judgment. **(Public)**

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ENFORCEMENT OF AN ORDER FOR RESTITUTION IN A CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1343(d) reads as rewritten:

"(d) Restitution as a Condition of Probation. -- As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall hold a hearing to determine the amount of restitution or reparation due the aggrieved party or parties. The court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation, but the court is not required to make findings of fact or conclusions of law on these matters when the sentence is imposed. The amount

must be limited to that supported by the record, and the court may order partial restitution or reparation when it appears that the damage or loss caused by the offense or offenses is greater than that which the defendant is able to pay. An order providing for restitution or reparation may be enforced in the same manner as a civil judgment. The order shall be docketed and indexed in the same manner as a civil judgment pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the defendant is not ordered, as a condition of probation, to pay restitution or (ii) the date upon which the defendant's probation is terminated or revoked if the defendant is so ordered. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, "restitution" shall mean (i) compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action, and (ii) reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-455(b). As used herein, "reparation" shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein "aggrieved party" includes individuals, firms, corporations, associations, other organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. Provided, that no government agency shall benefit by way of restitution except for particular damage or loss to it over and above its normal operating costs and except that the State may receive restitution for the total amount of a judgment authorized by G.S. 7A-455(b). A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done. Provided further, that no third party shall benefit by way of restitution

or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant, but the liability of a third party to pay indemnity to an aggrieved party or any payment of indemnity actually made by a third party to an aggrieved party does not prohibit or limit in any way the power of the court to require the defendant to make complete and full restitution or reparation to the aggrieved party for the total amount of the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders, to provide for compensation to victims of crime, and to reimburse the Crime Victims Compensation Fund established by G.S. 15B-23, and shall not be construed to be a fine or other punishment as provided for in the Constitution and laws of this State."

Sec. 2. This act becomes effective December 1, 1995 and applies to offenses committed on or after that date.

ANALYSIS OF PROPOSED LEGISLATION

G.S. 15A-1343(d) provides the process by which a court may order restitution to a victim in a criminal case. The proposed legislation would amend this section to provide that the order for restitution may be enforced in the same manner as a civil judgment. The bill requires the order to be docketed in the same manner as a civil judgment pursuant to G.S. 1-233 et seq. The order is docketed when the conviction becomes final, if the defendant is not ordered to pay restitution as a condition of probation. If the defendant is ordered to pay restitution as a condition of probation, the order is docketed upon the termination or revocation of probation. The bill does require the court to hold a hearing to determine the amount of restitution.

The proposed legislation would become effective December 1, 1995 and applies to offenses committed on or after that date.

APPENDIX G

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-006
THIS IS A DRAFT 24-JAN-95 17:58:54

Short Title: Indigent Appeal Changes. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REMOVE LANGUAGE REQUIRING AN ATTORNEY'S OPINION AND WRITTEN STATEMENT IN APPEALS BY INDIGENTS OF A JUDGMENT IN A CIVIL ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-288 reads as rewritten:

"**1-288. Appeals by indigents; clerk's fees.**

When any party to a civil action tried and determined in the superior or district court at the time of trial or special proceeding desires an appeal from the judgment rendered in the action to the Appellate Division, and is unable, by reason of poverty, to make the deposit or to give the security required by law for the appeal, it shall be the duty of the judge or clerk of said court to make an order allowing the party to appeal from the judgment to the Appellate Division as in other cases of appeal, without giving security therefor. The party desiring to appeal from the judgment or order in a civil action or special proceeding shall, within 30 days after the entry of the judgment or order, make affidavit that he or she is unable by reason of poverty to give the security required by ~~law, and that he or she~~

~~is advised by a practicing attorney that there is error in a matter of law in the decision of the court in the action. The affidavit must be accompanied by a written statement from a practicing attorney of the court that the attorney has examined the affiant's case, and is of opinion that the decision of the court, in the action, is contrary to law.~~ law. Nothing contained in this section deprives the clerk of the superior court of the right to demand the fees for the certificate and seal as now allowed by law in such cases. Provided, that where the judge or the clerk has made an order allowing the appellant to appeal as an indigent and the appeal has been filed in the Appellate Division, and an error or omission has been made in the affidavit or certificate of counsel, and the error is called to the attention of the court before the hearing of the argument of the case, the court shall permit an amended affidavit or certificate to be filed correcting the error or omission.

Sec. 2. This act becomes effective October 1, 1995 and applies to all appeals by indigents from a judgment or order entered on or after that date.

ANALYSIS OF PROPOSED LEGISLATION

Under current law, a party to a civil action who, because of poverty, is unable to provide the deposit or security required to appeal the judgment, must: (1) state in his or her affidavit of indigency that he or she is advised by a practicing attorney that there is error as a matter of law in the decision; and (2) submit a written statement from a practicing attorney that the attorney believes the decision to be contrary to law. The proposed legislation would delete both of these requirements.

The bill would become effective October 1, 1995 and applies to appeals by indigents from a judgment or order entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-003
THIS IS A DRAFT 18-JAN-95 11:34:43

Short Title: Jurisdictional Am't. Increase. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN DISTRICT AND SUPERIOR CIVIL COURTS AND TO MAKE CORRESPONDING CHANGES TO THE RULES OF CIVIL PROCEDURE AND NONBINDING ARBITRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-243 reads as rewritten:

"**§7A-243. Proper division for trial of civil actions generally determined by amount in controversy.**

Except as otherwise provided in this Article, the district court division is the proper division for the trial of all civil actions in which the amount in controversy is ~~ten thousand dollars ($10,000)~~ twenty-five thousand dollars ($25,000) or less; and the superior court division is the proper division for the trial of all civil actions in which the amount in controversy exceeds ~~ten thousand dollars ($10,000).~~ twenty-five thousand dollars ($25,000).

For purposes of determining the amount in controversy, the following rules apply whether the relief prayed is monetary or nonmonetary, or both, and with respect to claims asserted by

complaint, counterclaim, cross-complaint or third-party complaint:

(1) The amount in controversy is computed without regard to interest and costs.

(2) Where monetary relief is prayed, the amount prayed for is in controversy unless the pleading in question shows to a legal certainty that the amount claimed cannot be recovered under the applicable measure of damages. The value of any property seized in attachment, claim and delivery, or other ancillary proceeding, is not in controversy and is not considered in determining the amount in controversy.

(3) Where no monetary relief is sought, but the relief sought would establish, enforce, or avoid an obligation, right or title, the value of the obligation, right, or title is in controversy. Where the owner or legal possessor of property seeks recovery of property on which a lien is asserted pursuant to G.S. 44A-4(a) the amount in controversy is that portion of the asserted lien which is disputed. The judge may require by rule or order that parties make a good faith estimate of the value of any nonmonetary relief sought.

(4) a. Except as provided in subparagraph c of this subdivision, where a single party asserts two or more properly joined claims, the claims are aggregated in computing the amount in controversy.

b. Except as provided in subparagraph c, where there are two or more parties properly joined in an action and their interests are aligned, their claims are aggregated in computing the amount in controversy.

c. No claims are aggregated which are mutually exclusive and in the alternative, or which are successive, in the sense that satisfaction of one claim will bar recovery upon the other.

d. Where there are two or more claims not subject to aggregation the highest claim is the amount in controversy.

(5) Where the value of the relief to a claimant differs from the cost thereof to an opposing party, the higher amount is used in determining the amount in controversy."

Sec. 2. G.S. 1A-1, Rule 8(a) reads as rewritten:

"(a) Claims for relief. -- A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim shall contain

(1) A short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief, and

(2) A demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. In all negligence actions, and in all claims for punitive damages in any civil action, wherein the matter in controversy exceeds the sum or value of ~~ten thousand dollars ($10,000),~~ twenty-five thousand dollars ($25,000), the pleading shall not state the demand for monetary relief, but shall state that the relief demanded is for damages incurred or to be incurred in excess of ~~ten thousand dollars ($10,000).~~ twenty-five thousand dollars ($25,000). However, at any time after service of the claim for relief, any party may request of the claimant a written statement of the monetary relief sought, and the claimant shall, within 30 days after such service, provide such statement, which shall not be filed with the clerk until the action has been called for trial or entry of default entered. Such statement may be amended in the manner and at times as provided by Rule 15."

Sec. 3. G.S. 7A-37.1 reads as rewritten:

" 7A-37.1. Statewide court-ordered, nonbinding arbitration in certain civil actions.

(a) The General Assembly finds that court-ordered, nonbinding arbitration may be a more economical, efficient and satisfactory procedure to resolve certain civil actions than by traditional civil litigation and therefore authorizes court-ordered nonbinding arbitration as an alternative civil procedure, subject to these provisions.

(b) The Supreme Court of North Carolina may adopt rules governing this procedure and may supervise its implementation and operation through the Administrative Office of the Courts. These rules shall ensure that no party is deprived of the right to jury

trial and that any party dissatisfied with an arbitration award may have trial de novo.

(c) This procedure may be employed in civil actions where claims do not exceed ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000).

(d) This procedure may be implemented in a judicial district, in selected counties within a district, or in any court within a district, if the Director of the Administrative Office of the Courts, and the cognizant Senior Resident Superior Court Judge or the Chief District Court Judge of any court selected for this procedure, determine that use of this procedure may assist in the administration of justice toward achieving objectives stated in subsection (a) of this section in a judicial district, county, or court. The Director of the Administrative Office of the Courts, acting upon the recommendation of the cognizant Senior Resident Superior Court Judge or Chief District Court Judge of any court selected for this procedure, may terminate this procedure in any judicial district, county, or court upon a determination that its use has not accomplished objectives stated in subsection (a) of this section.

(e) Arbitrators in this procedure shall have the same immunity as judges from civil liability for their official conduct."

Sec. 4. This act becomes effective October 1, 1995, and applies to claims filed on or after that date.

ANALYSIS OF PROPOSED LEGISLATION

This proposed legislation increases the amount in controversy for civil cases heard in district court from $10,000 to $25,000. It also amends G.S. 1A-1, Rule 8(a), which provides for a nonspecific demand for relief in negligence actions and in any claim for punitive damages, to increase from $10,000 to $25,000 the amount above which a specific demand cannot be made. The legislation also authorizes increases the amount in controversy from $15,000 to $25,000 for civil cases that may be subject to court-ordered arbitration.

The legislation is effective October 1, 1995, and applies to claims filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-013
THIS IS A DRAFT 25-JAN-95 09:44:30

Short Title: Service of Process **(Public)**

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW SERVICE OF PROCESS BY A PRIVATE PROCESS SERVER WHEN A PROPER OFFICER RETURNS SERVICE OF PROCESS UNEXECUTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(h), reads as rewritten:

"(h) Summons -- When proper officer not available. -- If at anytime there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if a proper officer returns such process unexecuted, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing court, upon the facts being verified before him by written affidavit of the plaintiff or his agent or attorney, shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county. In an action in which a proper officer returns the process unexecuted, the plaintiff or his agent or attorney shall

submit to the clerk the name of some suitable person to execute service of process; that person shall be compensated, if at all, by the plaintiff or his agent or attorney, shall not be a party to the action and shall not be less than 21 years of age."

Sec. 2. This act becomes effective October 1, 1995, and applies to actions that are filed or have not reached final judgment on or after that date.

ANALYSIS OF PROPOSED LEGISLATION

BACKGROUND: Rule 4(a) of the North Carolina Rules of Civil Procedure provides that only the sheriff of the county where service is to be made or some other person duly authorized by law to serve a summons may execute process in this State. Rule 4(h) provides that if there is no sheriff or other proper officer capable of serving process, or if a proper officer refuses or neglects to serve process or is a party to the action, the clerk of the issuing court shall appoint some suitable person to serve such process. Unless appointed by the clerk under the provisions of Rule 4(h), existing North carolina law does not allow a private individual to serve process within the geographic boundaries of this State.

Rule 4(a) does provide that **outside of this State** anyone who is not a party and is not less than 21 years of age, or anyone duly authorized to serve a summons by law of the place where service is to be made may serve process. Thus, private service of process is allowed in a North Carolina action for a party outside of the State.

SUMMARY: The proposed legislation would amend Rule 4(h) to provide that if the sheriff or other proper officer returns process unexecuted and the plaintiff by written affidavit verifies this fact, the clerk shall appoint a suitable person to accept such process for service. The bill does clarify that, in the case of an unexecuted service of process under this subsection, the plaintiff must submit the to the clerk the name of the person to serve process and the plaintiff must compensate the person, if any compensation is to be made. (For other appointments by the clerk under this subsection, it is the clerk's responsibility, and not the plaintiff's, to find a person to serve process.)

The proposed legislation would become effective October 1, 1995 and would apply to actions that are filed or have not reached final judgment on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-rgz-007
THIS IS A DRAFT 18-JAN-95 11:15:20

Short Title: Indigent/Capital Cases. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE COST OF PROVIDING INDIGENT REPRESENTATION IN CRIMINAL CASES BY AUTHORIZING THE ADMINISTRATIVE OFFICER OF THE COURTS TO CONTRACT WITH A PARTICULAR ATTORNEY OR ATTORNEYS TO PROVIDE SPECIALIZED SERVICES ON A FULL-TIME BASIS IN CAPITAL INDIGENT CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-344 reads as rewritten:

"7A-344. Special duties of Director concerning representation of indigent persons.

"In addition to the duties prescribed in G.S. 7A-343, the Director shall also:

"(1) Supervise and coordinate the operation of the laws and regulations concerning the assignment of legal counsel for indigent persons under Subchapter IX of this chapter to the end that all indigent persons are adequately represented;

"(2) Advise and cooperate with the offices of the public defenders as needed to achieve maximum

effectiveness in the discharge of the defender's responsibilities;

"(3) Collect data on the operation of the assigned counsel and the public defender systems, and make such recommendations to the General Assembly for improvement in the operation of these systems as appear to him to be appropriate; and

"(4) Accept and utilize federal or private funds, as available, to improve defense services for the indigent, including juveniles alleged to be delinquent or undisciplined. To facilitate processing of juvenile cases and capital indigent cases, and civil cases in which a party is entitled to counsel, the administrative officer is further authorized, in any district or set of districts as defined in G.S. 7A-41.1(a), with the approval of the chief district court judge for cases in the district court division and the approval of the senior resident superior court judge for cases in the superior court division, to engage the services of a particular attorney or attorneys to provide specialized representation on a full-time or part-time basis."

Sec. 2. This act is effective upon ratification.

ANALYSIS OF PROPOSED LEGISLATION

The proposed legislation amends G.S. 7A-344(4) to authorize the Director of the Administrative Office of the Courts to contract with attorneys to provide representation to indigent defendants in capital cases.

The bill would be effective on ratification.

APPENDIX K

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-012
THIS IS A DRAFT 24-JAN-95 15:03:32

Short Title: Judicial Center Funds. **(Public)**

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS FOR THE PLANNING OF A NEW STATE JUDICIAL CENTER.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the General Fund to the Judicial Department the sum of two million dollars ($2,000,000) for the 1995-96 fiscal year for initial planning for a new judicial facility to accommodate the Supreme Court, the Court of Appeals, and the Administrative Office of the Courts.

Sec. 2. This act is effective upon ratification.

ANALYSIS OF PROPOSED LEGISLATION

The proposed legislation appropriates from the General Fund to the Judicial Department the sum of two million dollars ($2,000,000) for the 1995-96 fiscal year to begin planning a new judicial facility to house the Supreme Court, the Court of Appeals, and the Administrative Office of the Courts.

The bill would become effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-011
THIS IS A DRAFT 25-JAN-95 10:22:02

Short Title: Recordkeeping/Child Support. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT AN ACT TO CLARIFY THE RECORDKEEPING RESPONSIBILITIES OF CLERKS OF SUPERIOR COURT IN IV-D CHILD SUPPORT CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-13.9 reads as rewritten:

"§ 50-13.9. Procedure to insure payment of child support.

(a) Upon its own motion or upon motion of either party, the court may order at any time that support payments be made to the clerk of court for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(b) After entry of such an order by the court, ~~the clerk of court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.~~

~~In IV-D cases, when required by federal or state law or regulations or by court order,~~ the clerk of superior court shall transmit child support payments that are made to the clerk in IV-D cases to the Department of Human Resources for appropriate

distribution. In all other cases, ~~whether IV-D or non-IV-D,~~ the clerk shall transmit the payments to the custodial parent or other party entitled to receive them, unless a court order requires otherwise.

(b1) In a IV-D case:

(i) The designated child support enforcement agency shall have the sole responsibility and authority for monitoring the obligors compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.

(ii) The clerk of court shall maintain all official records in the case.

(iii) The designated child support enforcement agency shall maintain any other records needed to monitor the obligors compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received.

(b2) In a non-IV-D case:

(i) The clerk of court shall have the sole responsibility and authority for monitoring the obligors compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.

(ii) The clerk of court shall maintain all official records in the case.

(iii) The clerk of court shall maintain any other records needed to monitor the obligors compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received.

(c) ~~The~~ In a non-IV-D case, the parties affected by the order shall inform the clerk of court of any change of address or of other condition that may affect the administration of the order. In a IV-D case, the parties affected by the order shall inform the designated child support enforcement agency of any change of

address or other condition that may affect the administration of the order. The court may provide in the order that a party failing to inform the court or, as appropriate, the designated child support enforcement agency, of a change of address within a reasonable period of time may be held in civil contempt.

(d) In a non-IV-D case, when an obligor fails to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of said amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, or other appropriate means. Failure to receive the delinquency notice shall not be a defense in any subsequent proceeding. Sending the notice of delinquency shall be in the discretion of the clerk if the clerk has, during the previous 12 months, sent a notice or notices of delinquency to the obligor for nonpayment, or if income withholding has been implemented against the obligor or the obligor has been previously found in contempt for nonpayment under the same child support order.

If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency notice for any of the reasons provided herein, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a district court judge. The enforcement order shall order the obligor to appear and show cause why he should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income. The enforcement order shall state:

(1) That the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;

(2) That the obligor is delinquent and the amount of overdue support;
(3) That the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;
(4) That income withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;
(5) That failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;
(6) That if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.

The enforcement order may be signed by the clerk or a district court judge, and shall be served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. The clerk shall also notify the party to whom support is owed of the pending hearing. The clerk may withdraw the order to the supporting party upon receipt of the delinquent payment. On motion of the person to whom support is owed, with the approval of the district court judge, if he finds it is in the best interest of the child, no enforcement order shall be issued.

When the matter comes before the court, the court shall proceed as in the case of a motion for income withholding under G.S. 110-136.5. If income withholding is not an available or adequate remedy, the court may proceed with contempt, imposition of a lien, or other available, appropriate enforcement remedies.

This subsection shall apply only to non-IV-D cases, except that the clerk shall issue an enforcement order in a IV-D case when requested to do so by an IV-D obligee.

(e) The clerk of court shall maintain and make available to the district court judge a list of attorneys who are willing to undertake representation, pursuant to this section, of persons to whom child support is owed. No attorney shall be placed on such list without his permission.

(f) At least seven days prior to an enforcement hearing as set forth in subsection (d), the clerk must notify the district court judge of all cases to be heard for enforcement at the next term, and the judge shall appoint an attorney from the list described in subsection (e) to represent each party to whom support payments are owed if the judge deems it to be in the best interest of the child for whom support is being paid, unless:

(1) The attorney of record for the party to whom support payments are owed has notified the clerk of court that he will appear for said party; or

(2) The party to whom support payments are owed requests the judge not to appoint an attorney; or

(3) An attorney for the enforcement of child support obligations pursuant to Title IV, Part D, of the Social Security Act as amended is available.

The judge may order payment of reasonable attorney's fees as provided in G.S. 50-13.6.

(g) Nothing in this section shall preclude the independent initiation by a party of proceedings for civil contempt or for income withholding."

Sec. 2. This act becomes effective July 1, 1996.

ANALYSIS OF PROPOSED LEGISLATION

The legislation amends G.S. 50-13.9 to provide that in a IV-D cases, the designated child support enforcement agency, not the clerk of court, has the responsibility for monitoring the obligor's compliance with child support orders, for initiating any enforcement procedures, and for maintaining records needed to monitor compliance, including payment records. The legislation also clarifies that the clerk of court transmits child support payments made to the clerk to the Department of Human Resources in IV-D cases and to the custodial parent or other party entitled to receive them in other cases and that, in IV-D cases, the parties affected by the child support order inform the child support enforcement agency of any change of address or other condition that might affect the administration of the order.

The legislation becomes effective July 1, 1996.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-010
THIS IS A DRAFT 25-JAN-95 10:20:17

Short Title: Conform Witness Travel Fees. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-314(c) reads as rewritten:

"(c) A witness who resides in a state other than North Carolina and who appears for the purpose of testifying in a criminal action and proves his attendance may be compensated at the rate ~~of ten cents (10¢) a mile~~ currently authorized for State employees for one round-trip from his place of residence to the place of appearance, and five dollars ($5.00) for each day that he is required to travel and attend as a witness, upon order of the court based upon a finding that the person was a necessary witness. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees."

Sec. 2. G.S. 15A-813 reads as rewritten:

"§15A-813. Witness from another state summoned to testify in this State.

If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court, stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this State he shall be ~~tendered the sum of ten cents (10¢) a mile~~ compensated at the rate currently authorized for State employees for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars ($5.00) for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State exployees when traveling in the State. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State."

Sec. 3. This act is effective upon ratification, and applies to all out-of-state witness travel expenses incurred on or after that date.

ANALYSIS OF PROPOSED LEGISLATION

The legislation amends G.S. 7A-314(c) to provide that out-of-state witnesses may be compensated for travel at the rate authorized for State employees. It also amends G.S. 15A-813 to make the same change and to provide that an out-of-state witness who is required to appear more than one day is entitled to reimbursement for actual expenditures incurred for lodging and meals, not to exceed the rate authorized for State employees.

The legislation is effective on ratification and applies to out-of-state witnesses travel expenses incurred on or after that date.

APPENDIX N

(This subcommittee report was presented to the North Carolina Courts Commission and adopted by the Commission at its January 12 and 19, 1995 meetings. The bills recommended by the Commission in its report to the General Assembly are modified from the drafts recommended by the Subcommittee.)

Case Management

A Report by the Subcommittee on Structure of the Courts to
The North Carolina Courts Commission

January 1995

Contents

Recommendations of
The Subcommittee to the Courts Commission

I. North Carolina must provide its people courts where *"justice shall be administered without ... delay."*

The Constitution of North Carolina, Article I, Sec. 18

A. North Carolina should adopt standards and goals for better managing of cases and court proceedings.

B. The Supreme Court should adopt a plan to implement those goals throughout the trial courts.

C. To assure accountability, responsibility for management of cases and scheduling in the various trial courts should be clearly placed.

II. The Legislature should implement child custody mediation and court-annexed arbitration statewide as proposed by the Administrative Office of the Courts.

III. Whenever possible, changes in court structure should be implemented first by pilot projects.

Introduction

Justice delayed is justice denied

Justice is delayed in the North Carolina trial courts. The courts take more than 159 days from filing to dispose of the typical felony case and over 357 days to dispose of contested civil cases.

The people are fed up with the court delays and unnecessary appearances. Almost all of the 30 people who appeared before the Commission expressed dismay about the inefficient handling of cases. Governor Hunt, Chief Justice Exum, Attorney General Easley, Director of the Administrative Office of the Courts Drennan, police officers, victim advocates, attorneys, court administrators, victims, witnesses, and citizens who had cases in court all expressed concerns about court inefficiency. Among the comments:

> "Delay is the biggest problem in the court system."
>
> "Victims suffer from case postponements."
>
> "We must make traditional courts work better."
>
> "The judicial system is not user friendly."
>
> "The court system is very inefficient. People complain they go to court and sit there all day only to be told at the end of the day to come back the next month. It is not unusual to come back the next month and the same thing happens again. This is a tremendous waste of time."
>
> "People get prepared for their case and nothing happens; finally they get flat wore out."

The Courts Commission agrees that those comments present an accurate reflection of today's courts. Delay is a way of life. One judge says "go along, get along." In many cases criminal defendants, civil litigants, and attorneys are not interested in moving cases quickly. But justice is served by a timely resolution of cases, irrespective of individual wishes to delay trials. Victims and witnesses are frustrated by having to appear each time

a case is calendared. Victim's assistance coordinators, whose job it is to assist victims and witnesses in coming to court, testified to the difficulties repeated court appearances cause. Not only do the victims and witnesses get frustrated, but repeated appearances limit the number of victims and witnesses whom the coordinators can assist.

The time has come for the courts to reduce delay and to make efficiency a high priority of the judicial system.

The people like alternative forums for resolving disputes

Custody mediation and court-ordered arbitration are proven and effective alternate dispute resolution forums. For child custody, the traditional adversarial forum is inappropriate. For less complex civil litigation, alternative forums provide a quicker and less expensive method of resolving disputes. Both of these programs have high user satisfaction, reduce delay, save litigation costs, free court time, and provide an appropriate forum. North Carolina has been a leader in developing alternative dispute resolution programs. Properly, those programs were begun as pilot projects operating in only a few districts. The time has come to expand the proven programs statewide.

Mission of the Courts

The North Carolina Administrative Office of the Courts has adopted the following Mission Statement:

> **The courts are to protect and preserve the rights and liberties of all the people, as guaranteed by the Constitutions and laws of the United States and North Carolina, by providing a fair, independent and accessible forum for the just, timely, and economical resolution of their legal rights.**

The Commission agrees with this Mission Statement.

Objectives of the Commission

The Commission adopted four objectives to enable the court system to meet its mission. The courts must:

1. Schedule both civil and criminal court operations to improve service and efficiency.
2. Provide the most appropriate forum for hearing disputes.
3. Make the court system more accessible.
4. Improve the credibility of the courts.

To accomplish these objectives, North Carolina must have standards and goals for the administration of justice without delay and must adopt a plan to manage cases and court resources. Traditionally, delay and case management have not been primary concerns--and courts are bound by traditions.

To accomplish these objectives, judges, lawyers, and all other court officials must change. They must realize that delay denies justice, repeated case settings are inefficient and burdensome. They must agree that an efficient court system is a top priority and must be willing to commit to providing a just court system rather than focusing on individual convenience. Change will be difficult. Because the credibility of the courts is at stake, change must be undertaken.

The Legislature and the Supreme Court, along with the Administrative Office of the Courts, must share responsibility in seeing that these objectives are met.

These objectives can be accomplished best by a comprehensive approach--not piecemeal. The following recommendations provide that approach.

Standards and Goals

Public Expectations

The public expects court cases to be resolved in a timely fashion and expects the efficient management of the system. People want scheduled events to actually happen when scheduled. They want to avoid unnecessary calendaring of cases, unnecessary appearances by parties and witnesses, unnecessary preparation when a case is not actually going to be tried, and unnecessary expenses. The court's mission statement also recognizes the timely and economical resolution of disputes as a basic value of the system. Although judges and attorneys would probably agree with those principals in the abstract, the legal culture allows more to be gained by putting off a case than by trying it. That same culture seems to invest in every attorney the entitlement to a continuance of any case the first time he or she asks for it.

The Courts lose credibility when cases are unnecessarily scheduled and delayed.

The First Step

The first step in eliminating unnecessary delay and unnecessary appearances is to adopt Goals and Standards. Courts that have successfully addressed unnecessary delay first set goals and time standards for disposing of cases.

Time Standards

The American Bar Association has adopted case-processing time standards that call for a certain percentage of cases to be disposed of by specified time limits. North Carolina is not even close to meeting those standards. The table below compares the ABA standards for civil cases with superior court civil cases and the standards for felony cases with North Carolina disposition rates. The people of North Carolina would be better served if the ABA case processing standards or something close to them were

adopted, with the expectation that courts would meet these goals and with some accountability for those responsible for meeting the goals and standards.

Comparison of North Carolina Dispositions to ABA Case Processing Standards

Superior Ct. Civil Cases	ABA Standards	North Carolina 1993-94
365 days after filing	90%	59%
545 days after filing	98	76
730 days after filing	100	87
Criminal Felony Cases		
120 days from filing	50%	38
180 days from filing	75	58
548 days from filing	100	94

Recommendation: Speedy Trial in Criminal Cases

The most effective method for eliminating delay in criminal cases is a speedy trial act. An expert from the National Center for State Courts, who spoke to the subcommittee, indicated that the most effective speedy trial laws are those without numerous exclusions of time. From October 1, 1978 until October 1, 1989 North Carolina had a speedy trial law. Although that particular law was repealed because it resulted in numerous settings of cases so that time under the law would be extended, the data indicate that average length of disposition of criminal cases was affected by the speedy trial law. Cases were disposed of more quickly while the speedy trial law was in effect, and the length of disposition has increased since its repeal.

Comparison of Length of Disposition During and After Speedy Trial Law
Felony Cases

Days from filing to disposition	85/86	87/88	88-89	90/91	92/92	93/94
120	50%	45%	45%	39%	40%	38%
180	73	66	67	60	55	58
365	94	93	93	88	85	86
548	98	97	98	96	95	94

The courts now are disposing of cases at about the same rate they are filed. Some say it takes too long to dispose of cases because the court has limited resources. Others say that the lengthy delay and repeated scheduling of cases consume those scarce resources. Regardless, criminal cases must be managed so that justice is administered in a timely fashion. In 1989 a committee established by the Chief Justice to study the Speedy Trial Act made several suggested changes in the then applicable speedy trial law. A new speedy trial law is set out in Appendix A. The proposed law follows the 1989 Committee's recommendations in having limited exclusions of time and in setting a 180-day period for trial. The proposal would not take effect until July 1, 1996, to give the Supreme Court the time to adopt the case flow management plan recommended later in this report. The recommended law would reduce the time for disposition of criminal cases over a three year period to finally require cases to be disposed of within 180 days after arrest. The proposal would apply to offenses occurring after the bill's effective date. To clean up existing backlogs the Chief Justice may consider special terms of court in districts as needed or other mechanisms.

Recommendation: Court Adopt Standards

Speedy Trial in Civil Cases

For civil cases, including family cases, the Supreme Court should determine what time standards are appropriate, subject to review by the Legislature. The Commission recommends that the Court be directed to review the ABA time standards for civil cases, adopt those standards or recommend different standards that should be implemented in North Carolina; and develop a plan for meeting those standards.

Limited Court Appearances

Victims, witnesses, officers, parties, and others should not have to make unnecessary or repeated court appearances. No one should unnecessarily prepare for trial

and those scheduled for trial should be heard. The Court should set standards to limit court appearances and for hearing cases scheduled for trial.

Quality Case Management

Court Officials Must Be Effective Managers

Case processing standards alone do not produce an effective and efficient court system. A system in which cases are handled in a timely and economical fashion requires the careful use of management techniques. Implementing a quality case flow management system affects not only the efficiency of the courts, but also the public's confidence in the court system and the fairness with which persons using the court are treated. In the past two years the General Assembly has created more than 340 new positions in the Judicial Department, including 10 new superior court judges, 13 district court judges (although all have not been pre-cleared by the Department of Justice), 11 assistant district attorneys, 4 assistant public defenders and 100 deputy clerks to handle increased caseloads. Although the Legislature has been responsive to the needs of the courts, the personnel increase has not kept pace with the increase in case filings. Compared to the 54% increase in total filings in the superior court and a 48% increase in total district court filings from fiscal 1984-85 to fiscal year 1993-94, the number of superior court judges increased by 28%; the number of district court judges increased by 23%; and the number of assistant district attorneys increased by 33%. With today's limited available revenues and increased needs in government generally, the Judicial Department cannot expect the Legislature to match caseload increases with equal personnel increases.

Courts, like private business and other government agencies, must deal with increased work load and limited resources by employing up-to-date management techniques.

Traditional case management systems have treated all cases as if they will be tried; followed a doctrine that the oldest cases should be processed first; relied on counsel to determine when events and disposition should occur; subjected all cases to the same procedures and timing; used the calendar call as the principal mechanism by which the

court obtains information on case status; placed more cases on the trial and hearing calendars than could possibly be handled; and granted continuances to counsel without scrutiny.

Those traditional systems have produced an equally long litany of consequences:

(1) little management of cases before a trial date;

(2) cases remain in the system longer than needed for fair disposition;

(3) unnecessary events are scheduled in many cases;

(4) attorneys have little incentive to pursue early settlement or to be ready for trial at the time the case is calendared;

(5) parties, attorneys, and witnesses make numerous unproductive trips to court;

(6) judicial time often is not utilized effectively; and

(7) public dissatisfaction increases and public confidence declines.

Currently, valuable court time is consumed by multiple settings of cases on the trial calendar. Each time a case is set for trial, but not tried, the clerk must pull the file, the sheriff must serve subpoenas for witnesses, the judge takes time in the courtroom calling the case and putting it off, and--perhaps most importantly--witnesses, defendants, and attorneys are coming to court waiting for the cases to be heard. The results: wasted resources, dissatisfaction with and lack of confidence in the court system. No one takes seriously the calendaring of a case because experience indicates it is not a serious matter.

Characteristics of Case flow Management System

North Carolina courts must adopt a case flow management system in order to provide equal treatment for all litigants; to timely dispose of cases consistent with the circumstances of each individual case; to enhance the quality of the litigation process; and to increase public confidence in the court as an institution. The characteristics of successful case flow management systems include:

1. placing responsibility for managing the flow of cases on a specific person who is committed to managing the case flow;

2. adopting case processing standards and goals for the system;
3. addressing the problem of delay;
4. taking early control of cases and keeping it;
5. moving cases expeditiously by having short-set-event deadlines throughout the process so that the system is not geared exclusively to trial;
6. developing a limited continuance policy;
7. providing victim and witness assistance in criminal cases;
8. setting out accountability mechanisms; and
9. training of those responsible for managing the case flow.

A case flow management system must be implemented in North Carolina that includes the nine characteristics listed. The Supreme Court should adopt the American Bar Association case processing standards or some similar standards for North Carolina; place responsibility on those officials who will be responsible for case management; and develop a plan for a case flow management system that addresses all of the listed characteristics. In developing the part of the plan dealing with training, the Supreme Court should assess the need for a program similar to the Justice Executive Program offered by the Institute of Government and School of Business at the University of North Carolina at Chapel Hill in the 1980's.

The General Assembly is ultimately responsible for providing an effective and efficient court system to its citizens. Therefore, the Supreme Court should report back to the General Assembly regarding the development and implementation of the case flow management plan. Draft legislation to implement this proposal is included as Appendix B of this report.

Transferring Jurisdiction of Courts

The General Assembly directed the Courts Commission to make recommendation regarding the passage of S 118, providing for magistrates to try infractions and to accept pleas of guilty or no contest and enter judgments according to plea agreements between

the State and defendant in all Level I prior conviction level misdemeanors, and S 119, allowing district court judges to accept pleas of guilty to Class H and I felonies. Both of these bills were recommended as a way of freeing up time for the trial of serious felony cases in superior court. The proposals recommended in this report provide a more comprehensive approach to freeing up time for the trial of cases than the two bills. Members have raised questions as to whether the district court has the resources to handle felony pleas. Also many have questions as to whether magistrates should act as judges in hearing infractions. Finally, in some districts, the prosecutors are handling plea reductions of infractions outside of court. Consequently, the Commission does not recommend the passage of these two bills.

Statewide Implementation of Proven Programs

North Carolina is a leader among states in developing alternative dispute resolution programs. The General Assembly and Administrative Office of the Courts have been prudent in setting up ADR programs as pilot projects in a few districts. The Administrative Office of the Courts has been charged with evaluating the programs and reporting back to the General Assembly regarding the effectiveness of the pilot before the state undertakes to expand the pilot programs statewide. Two programs--Custody Mediation and Court-ordered Arbitration--have now been evaluated and proven effective.

Custody Mediation

Custody mediation focuses on parenting skills, whereas the traditional adversarial system focuses on attacking the other parent. Custody mediation, in which contested child custody and visitation issues raised in a domestic case are sent to mediation before trial, was first established in 1983 and now operates in eight judicial districts (11 counties). The mediation process provides a structured, confidential, nonadversarial setting that encourages the cooperative resolution of custody and visitation disputes and minimizes the stress and anxiety to which the parties are subjected. Mediators are required to hold a graduate degree in a human relations field and to have experience in child development and family dynamics so that the issues are resolved with the children's best interests as the central focus. The parties themselves come to an agreement about custody and visitation. Custody mediation focuses on the needs of the children and parenting skills. Attorneys are not present, but parties consult their attorneys before a parenting agreement is signed. The non-adversarial forum where parents voluntarily reach agreement is better for children than the traditional trial. Mediation saves court time, results in reduced costs to litigants, has a high user satisfaction than trial.

Custody mediation should be expanded statewide on the funding schedule requested by the Administrative Office of the Courts in its budget proposal to the Advisory Budget Commission so that the program will be operating in all judicial districts by the year 2000.

Court-ordered Arbitration

The arbitration program has shortened the median disposition time of cases assigned to it by 33 to 45 percent. Court-ordered arbitration, begun in 1986 and now operating in 15 superior court districts (36 counties), diverts civil cases in which the plaintiff seeks money damages of $15,000 or less to nonbinding arbitration. Specifically excluded are certain property disputes, family law matters, estates, special proceedings, and class actions. Court-ordered arbitration hearings are conducted within 60 days after assignment before an arbitrator, who is a local attorney. Arbitration hearings generally are limited to one hour, and the arbitrator is paid a $75 fee by the state for each hearing. The arbitrator enters a written award, and if one of the parties does not request a trial within thirty days, the arbitrator's award becomes the judgment.

Court-ordered arbitration has been successful by every measure. Only about 25% of those litigants using court-ordered arbitration request a trial after arbitration, so 75% of the cases arbitrated are finally disposed of by the hearing. Court time previously devoted to general civil cases in district court has been freed up and reassigned to the ever-increasing demands of criminal, domestic, and juvenile courts. Attorneys reported that arbitration results in a decrease in client time devoted to litigation with corresponding reduction in attorney fees charged. Arbitration has reduced the amount of time from filing to disposition of general civil cases by as much as nine months. Finally, litigants say they like it better than traditional trials.

Court-ordered arbitration would not work for all civil cases. It is especially suited to cases in which the legal issues are not extremely complicated, since cases are set for one

hour and attorneys who volunteer to handle arbitration cases at $75 per case would not be willing to handle cases that take a longer time to hear.

Court-ordered arbitration should be expanded statewide on the funding schedule requested by the Administrative Office of the Courts in its budget proposal to the Advisory Budget Commission so that the program will be operating in all judicial districts by the year 2000.

Mediated Settlement Conferences

Mediated settlement conferences encourage parties to agree on a solution to their dispute. Mediated Settlement Conferences for Superior Court Cases were begun in 1991 and are currently available in 12 superior court districts. The senior resident superior court judge may order parties in any civil action to attend a pretrial mediated conference. Generally, certified mediators are attorneys who have at least five years experience as a judge, practicing attorney, law professor or mediator; have completed a training course; and observed two civil trial mediations. Parties and their attorneys are required to be present at these mediations. The mediator acts as a neutral facilitator of the settlement discussions. The parties split the cost of paying the mediators.

The Mediated Settlement Conferences Program is still being evaluated. The Administrative Office of the Courts will present a report to the General Assembly by the spring of 1995 regarding the program's effectiveness. The Commission has heard very positive testimony about that program but would wait until the final report of the AOC to make any final recommendation regarding changes or expansion.

Future programs

The wisdom of the Legislature's and AOC's use of pilot programs to test out ideas for improving the court system has been proven. The Legislature should begin other new proposals for structural change in the courts, such as drug courts and family courts, as

pilot projects. That procedure allows the Administrative Office of the Courts to examine ideas in practice and to determine whether they meet their goals and enhance the delivery of justice before committing to statewide implementation.

Commission Proceedings

The North Carolina Courts Commission, established by Article 40A of Chapter 7A of the General Statutes, is a permanent commission authorized to study the structure, organization, jurisdiction, procedures, and personnel of the Judicial Department and of the General Court of Justice.

The Chairman of the Courts Commission. Rep. Robert Hunter, appointed a subcommittee charged with the tasks of looking at the structure of the courts and making recommendations for change and of making recommendations to the full Commission regarding the three legislative matters specifically referred to the Courts Commission by the General Assembly. The subcommittee met five times--September 16; September 27; October 20; November 10; December 8. It began its work by defining goals and objectives for the judicial system, working from the mission statement of the North Carolina Courts. The four objectives set by the subcommittee were scheduling both civil and criminal court operations to improve service and efficiency; providing the most appropriate forum for hearing disputes; making the court system more accessible; and improving the credibility of the courts.

The Subcommittee heard from representative of the Administrative Office of the Courts and from a courts management specialist at the National Center for State Courts.

A BILL TO BE ENTITLED AN ACT TO ADOPT A SPEEDY TRIAL LAW FOR CRIMINAL CASES IN SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1: Article 35 of Chapter 15A of the General Statutes is amended by adding a new G.S. 15A-701 through -703 to read:

"*§ 15A-701--Time Limits.*

(a) It is the public policy of the State of North Carolina that criminal charges be resolved without undue delay.

(b) Unless the time is extended by an order of a superior court judge as provided in subsection (d) of this section, the trial of the defendant charged with a criminal offense, except a capital offense, shall begin within 180 days of the following:

(1) The date the defendant is arrested for or served with a criminal summons for the criminal offense;

(2) The first regularly scheduled criminal session of superior court, for which a calendar has not been published at the time of notice of appeal, held after the defendant has given notice of appeal in a misdemeanor case for trial de novo in the superior court;

(3) When a charge is dismissed, other than under G.S. 15A-702 or a finding of no probable cause pursuant to G.S. 15A-612, and the defendant is afterwards charged with the same offense or an offense based on the same act or transactions connected together or constituting parts of a single scheme or plan, then from the date that the defendant was arrested for or served with a criminal summons for the original charge;

(4) The date a mistrial is declared; or

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

(c) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section, the time limit with respect to the trial of a criminal case shall be 300 days, for the second such twelve-month-period the time limit shall be 240 days.

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

(1) The time from which the prosecutor enters a dismissal with leave for the nonappearance of the defendant until the prosecutor reinstates the proceedings pursuant to G.S. 15A-932.

(2) The time during which the defendant is being examined to determine whether the defendant is incapable of proceeding.

(3) The time during which the defendant has been found to be incapable of proceeding pursuant to Article 56, G.S. Chapter 15A.

(4) The time during which prosecution is deferred pursuant to G.S. 15A-1341(a1).

(5) The time during which the defendant is being tried on other charges.
(6) The time during which the defendant is being extradited from another state.
(7) The time during which the defendant or an essential witness is absent or unavailable. For purposes of this subsection, a defendant or essential witness shall be considered absent when that person's whereabouts are unknown, and, in addition, that person is attempting to avoid apprehension or prosecution or the whereabouts cannot be determined by due diligence. A defendant or essential witness shall be considered unavailable whenever that person's whereabouts are known but the person's presence for trial cannot be obtained by due diligence or that person resists appearing at or being returned for trial.
(8) The time during which the defendant or state has undertaken an interlocutory appeal.

(e) Upon motion of the State or the defendant, when exceptional circumstances are shown to exist, a superior court judge assigned to hold court in the district or a resident superior court judge of the district may enter a written order specifying a later date within which the criminal trial shall begin. Additional extension orders may be entered on the same grounds. Exceptional circumstances shall not include general congestion of the court's docket, lack of diligent preparation, failure to obtain available witnesses, or other avoidable or foreseeable delays. Exceptional circumstances are those that as a matter of substantial justice to the accused or the State or both require an order by the court. Such circumstances include:

(1) unexpected illness, unexpected incapacity, or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial;
(2) a showing by the State that the case is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this section;
(3) a showing by the State that specific evidence or testimony is not available despite diligent efforts to secure it, but will become available at a later time."

"*§ 15A-702--Sanctions.*

(a) If a defendant is not brought to trial within the time required by G.S. 15A-701, then upon motion of the defendant the court shall:

(1) enter an order dismissing the action with prejudice; or
(2) enter an order dismissing the action without prejudice.

In determining the order to be entered, the court shall consider, among other matters, the seriousness of the offense, the facts and circumstances of the case which led to the failure to begin the trial within the time allowed, and the impact of reprosecution on the administration of justice.

(b) A dismissal with prejudice shall bar further prosecution of the defendant for the same offense or an offense based upon the same act or transaction, or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan. A dismissal without prejudice shall not bar further prosecution.

(c) Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or no contest shall constitute a waiver of the right to dismissal under this section.

(d) The sanctions authorized by this section shall not apply to proceedings in the district court division of the General Court of Justice.

"§ 15A-703--Expedited trial.

Upon motion of the defendant and for good cause shown, a judge may enter an order for an expedited trial of a pending criminal case. In ruling on such a motion, the judge shall consider, among other matters, prejudice to the defendant if an expedited trial is not ordered and the ability of the State, with available resources, to expedite the trial."

Section 2: This act is effective July 1, 1996 and applies to offenses occurring on or after July 1, 1996.

A BILL TO BE ENTITLED AN ACT TO REQUEST THE SUPREME COURT TO ADOPT A PLAN TO ADMINISTER JUSTICE WITHOUT DELAY IN NORTH CAROLINA TRIAL COURTS.

The General Assembly of North Carolina enacts:

Section 1: The North Carolina Supreme Court is requested to develop and implement a case flow management plan designed to avoid delay and unnecessary appearances and to increase efficiency in the handling of cases in North Carolina's trial courts. The plan should:

(1) place responsibility for managing the flow of cases on specific persons;
(2) adopt case processing standards and goals;
(3) address the problem of delay;
(4) avoid unnecessary appearances in court by parties, witnesses, and attorneys;
(5) provide mechanisms for keeping continuous control of cases;
(6) have short-set deadlines throughout the process;
(7) include a limited continuance policy;
(8) consider the interests of victims and witnesses;
(9) set out accountability mechanisms; and
(10) provide for training of those persons responsible for managing the case flow.

The Supreme Court is directed to make a report to the 1995 General Assembly, Regular Session 1996, by January 15, 1996. The report shall include the recommended standards and goals; a report of the plan to implement those standards and goals, a timetable for implementation; persons responsible for managing the flow of cases and how they will be held accountable; how the plan is going to be evaluated; what training is necessary; and recommended legislation to facilitate implementation.

Sec. 2: This act is effective on ratification.