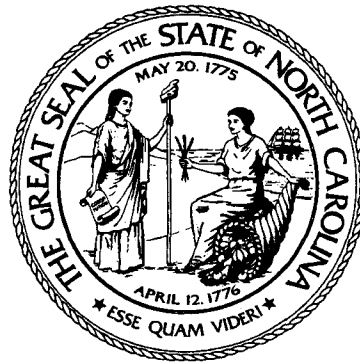


NORTH CAROLINA COURTS COMMISSION



REPORT TO THE
1997 GENERAL ASSEMBLY
OF NORTH CAROLINA

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February 6, 1997

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To the Members of the 1997 General Assembly:

This report, prepared according to G.S. 7A-508, contains the recommendations of the North Carolina Courts Commission to the 1997 General Assembly. The Courts Commission is a permanent commission established by Article 40A of Chapter 7A of the General Statutes to study the structure, organization, jurisdiction, procedures, and personnel of the Judicial Department and of the General Court of Justice. (See Appendix A.) Our goal is to provide a more effective and efficient system of justice while maintaining its fairness. The membership of the Commission represents a cross-section of the judicial and legislative branches of state government, including a Justice of the Supreme Court, a judge of the Court of Appeals, superior court judges, district court judges, district attorneys, attorneys, clerks of court, magistrates, and members of the House of Representatives and the Senate. As the 1996-97 chair of the Commission, I was pleased to lead the discussions of the Commission as it sought a consensus among its membership on the various proposals in this report.

The Commission gave particular attention to the report published by the Commission on the Future of Justice and the Courts in North Carolina ("Futures Commission"). A presentation was made to the Courts Commission on the work of the Futures Commission and its recommendations. The mission of the Futures Commission was to design a judicial system for North Carolina's future. The Courts Commission's Subcommittee on the Structure of the Courts, which was chaired by Mr. Wade Barber, looked at the Futures Commission report in detail and made recommendations to the full Courts Commission which were adopted. A copy is included in the body of this report.

The Commission also studied other topics involving the court system, including: the responsibilities of representing obligees in interstate child support cases; the use of insurance points for infractions; determination of habitual felon status by a jury; whether to allow initial appearances by video; the use of indigency screeners to determine whether a person qualifies for appointed counsel, and technology needs of the court system. The Commission decided to make recommendations in most of these areas to the 1997 General Assembly. In addition, the Commission voted to re-recommend the bills that it recommended to the 1996 Regular Session of the 1995 General Assembly and that were not ratified.

The Courts Commission is pleased to submit this report to the 1997 General Assembly and hopes these recommendations will be of particular benefit as the General Assembly considers reform of the State's court system.

Respectfully submitted,

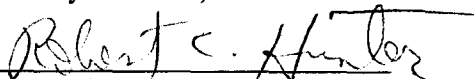

Representative Robert C. Hunter
Chair, North Carolina Courts Commission



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P. Legislative Proposal XIV. A BILL TO BE ENTITLED AN ACT TO RAISE THE FORECLOSURE FILING FEES.

Q. Legislative Proposal XV. A BILL TO BE ENTITLED AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND THE GOVERNOR'S CRIME COMMISSION.

R. Legislative Proposal XVI. A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA COURTS COMMISSION.

S. Legislative Proposal XVII. 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.

**RECOMMENDATIONS OF THE
NORTH CAROLINA COURTS COMMISSION**

RECOMMENDATION 1: The Commission recommends that the 1997 General Assembly enact "A BILL ENTITLED AN ACT TO PROVIDE THAT THE CHILD SUPPORT ENFORCEMENT AGENCY SHALL REPRESENT OBLIGEES IN IV-D UIFSA CASES AND TO APPROPRIATE FUNDS." (Appendix C)

Under the Uniform Interstate Family Support Act (UIFSA), district attorneys have the responsibility of representing obligees in interstate child support cases, unless other arrangements are made. In 43 of the state's counties, district attorneys provide the legal representation to obligees in all UIFSA cases. However, in the other 57 counties, attorneys employed by, or under contract with, local departments of social services, handle the legal duties in UIFSA cases that are IV-D. Representatives from both the Conference of District Attorneys and from the Child Support Enforcement Section of the state Department of Human Resources told the Commission that child support attorneys are able to handle IV-D UIFSA cases more efficiently and effectively than district attorneys, and they agreed that local child support enforcement agencies, rather than district attorneys, should handle these cases.

The Commission finds that the law should be amended to require local child support enforcement agencies, rather than district attorneys, to represent the obligees in IV-D UIFSA cases. The Commission believes that because these proceedings are civil, rather than criminal, in nature, and because local child support enforcement offices have better access than district attorneys to resources that allow them to collect child support payments, the responsibility of legal representation should be on the local child support enforcement agency. The Commission also finds that money must be appropriated for the state share of handling these cases, and that all 100 counties should be reimbursed for their local share.

RECOMMENDATION 2: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ELIMINATE INFRACTIONS FROM CONSIDERATION IN THE SAFE DRIVER INCENTIVE PLAN, TO PROVIDE FOR A GRADUATED INSURANCE POINT AND SURCHARGE SCHEDULE FOR BODILY INJURY CAUSED IN AUTOMOBILE ACCIDENTS, AND TO PROHIBIT INSURANCE POINTS AND SURCHARGES IF BODILY INJURY DOES NOT OCCUR." (Appendix D)

Our criminal justice system bears an ever increasing number of criminal cases each year. As noted in the report of the Commission on the Future of Justice and the Courts in North Carolina, approximately 2 million criminal cases were filed in 1995-96 of which the vast majority were misdemeanors or infractions. These cases place an unrealistic burden on our courts and often cause our justice system to appear inefficient and inaccessible to the State's citizens. To alleviate the burden these cases place on our justice system, the Courts Commission recommends that infractions be eliminated from the Safe Driver Incentive Plan. This change would eliminate insurance points and surcharges for infractions. As noted by more than one Commission member, the elimination of infractions from the Plan could reduce the number of traffic cases in district court by an estimated one-third. The Commission further recommends that the existence and severity of bodily injury in an automobile accident be a factor in the assignment of points and premium surcharges. Current law provides for a graduated insurance point and surcharge schedule for property damage. The creation of such a schedule for bodily injury, and the prohibition of points and surcharges if no bodily injury is present, is consistent with the current law for property damage and would also reduce the number of litigated traffic offenses in our courts.

RECOMMENDATION 3: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO AUTHORIZE A MAGISTRATE OR OTHER AUTHORIZED JUDICIAL OFFICIAL IN A NONCAPITAL CASE TO CONDUCT AN INITIAL APPEARANCE BY A TWO-WAY AUDIO AND VIDEO PROCEEDING." (Appendix E)

In 1993 the General Assembly enacted legislation authorizing a judicial official to conduct a pretrial release proceeding, first appearance, or arraignment by two-way audio and video transmission. This change has not only increased court efficiency, but has also eliminated the often risky transportation of inmates from satellite jail facilities to the courthouse. Current law requires the approval of the Administrative Office of the Courts to implement two-way transmission of these proceedings. Catawba, Guilford, Mecklenburg, and Rockingham Counties currently use two-way transmissions to conduct these proceedings.

At the request of the Administrative Office of the Courts, the Commission recommends extending the use of two-way audio and video proceedings to initial appearances before a magistrate. In districts with a limited number of magistrates or satellite jail facilities, this change would allow for a more efficient use of magistrates' time and again reduce the risky transportation of persons who have been arrested and are in police custody. To ensure that the two-way audio and video transmission is sufficient to protect the rights of the defendant, the legislation requires the Administrative Office of the Courts to approve the procedures and equipment used to conduct the initial appearance before implementation of the two-way system.

RECOMMENDATION 4: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE ISSUE OF WHETHER A DEFENDANT IS A HABITUAL FELON OR A VIOLENT HABITUAL FELON SHALL BE DETERMINED BY THE TRIAL JUDGE." (Appendix F)

Under current law, if a defendant is found guilty of a felony, the jury must make a separate determination as to whether the defendant is an habitual felon. Furthermore, the determination of habitual felon status must proceed as if the issue were a separate principal charge. This creates a cumbersome process for what is essentially a simple determination based upon the defendant's record. As a sentencing issue, and not an element of the crime, the determination of habitual felon status need not be determined by the jury. Rather, a judge may make the determination and can do so in a less time-consuming manner. The Commission recommends legislation authorizing the trial judge in a felony case to determine if the felon is also an habitual felon.

The following recommendations were included in the Commission's report to the 1996 Regular Session of the 1995 General Assembly, but were not ratified. The Commission recommends the following legislation for ratification by the 1997 General Assembly.

RECOMMENDATION 5: The Commission recommends that the 1997 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, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF SUCH A JUDGMENT, AND TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN A CRIMINAL CASE." (Appendix G)

In both of its reports to the 1995 General Assembly, the Courts Commission included legislation that would provide for the enforcement of restitution orders as civil judgments. The Commission again recommends this legislation to the General Assembly. Providing for the enforcement of these orders as civil judgments will create a mechanism for collecting restitution beyond the period of probation, parole or post-release supervision. To ensure that victims have a greater opportunity to collect the damages owed to them, the Commission further recommends that, of the monies paid to the court by a defendant, restitution to the victim be disbursed first, before other costs, fines, and attorneys fees. Also, to streamline execution of these judgments, the Commission recommends that the General Assembly create an exception to the statutory exemptions for execution of restitution orders.

RECOMMENDATION 6: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO DECREASE THE PERIOD OF TIME IN DOMESTIC VIOLENCE CASES THAT A DEFENDANT MAY BE HELD IN CUSTODY WITHOUT A DETERMINATION OF PRETRIAL RELEASE BY A JUDGE." (Appendix H)

During the 1995 Regular Session, the General Assembly passed legislation amending G.S. 15A-534.1 to require a judge, not a magistrate, to determine the conditions of pretrial release and bail in domestic violence cases. If the judge does not act within 48 hours of the defendant's arrest, the magistrate may then make a determination of pretrial release. As noted by Judge Elizabeth Keever, President, Conference of District Court Judges, a district court judge is less aware of the specifics of a case than a magistrate who issued the warrant for arrest. The judge is therefore reluctant to make a determination of pretrial release, particularly over weekends and holidays when he or she cannot consult with other court personnel about the case. Also, in some rural areas of the State, it is often difficult to locate a judge on weekends or holidays. This has resulted in abuse of the statute. The complaining witness often requests a warrant over weekend periods, knowing that this will likely result in the defendant being held in custody for 48 hours. Recognizing that a "cooling-off" period is often necessary in domestic violence case, but also hoping to lessen the chances of abuse of the statute, the Courts Commission recommends that the period during which a defendant may be held without a determination of pretrial release be decreased from 48 hours to 12 hours.

RECOMMENDATION 7: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONTRACT WITH THIRD PARTIES TO PROVIDE REMOTE ELECTRONIC ACCESS TO COURT INFORMATION," (Appendix I), and also recommends that the Administrative Office of the Courts consider, in determining the amount to charge to commercial vendors, what costs may be included in its actual cost of providing a means of accessing court records to the vendors.

The Commission finds that public access to certain court information that is available through computerized court records is cumbersome. For example, to do a statewide criminal record check, a person must go to or contact every county in the state for that county to do a county check. Other information, although available from a central source, is not in a

user-friendly format. The Administrative Office of the Courts would be able to use its computer information system more efficiently if there were fewer public demands on the system. There are commercial vendors who are willing and able to take the information that is in the court information system, add upgrades to put it in a more user-friendly format, and sell it to interested members of the public. Therefore, the Commission recommends that the General Assembly give the Director of the Administrative Office of the Courts the authority to contract with these vendors to provide remote electronic access to court information.

RECOMMENDATION 8: The Commission recommends that the 1997 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 J)

There is a need to increase the amount in controversy for civil actions in district court. It 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 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ALLOW COMMUNITY PENALTIES PROGRAMS TO OBTAIN CRIMINAL RECORD CHECKS OF TARGETED OFFENDERS." (Appendix K)

Local community penalties programs prepare community sentences to be used as an alternative to imprisonment for certain offenders. However, because the community penalties programs do not qualify as criminal justice agencies, the Federal Bureau of Investigation (FBI) does not allow the programs to obtain criminal record checks. The FBI will provide such checks to groups authorized by State statute to receive the information. Mr. Bob Atkinson, Administrator, Community Penalties Program, Administrative Office of the Courts, gave three reasons to grant the local programs access to such information: (1) public safety; (2) integrity of the programs' recommendations; and (3) efficiency. The Commission recommends legislation authorizing local community penalties programs to receive criminal record checks through the Department of Justice.

RECOMMENDATION 10: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A CIVIL TRIAL IN DISTRICT COURT WILL NOT BE REPORTED UNLESS A PARTY REQUESTS REPORTING IN WRITING OR THE COURT ORDERS REPORTING." (Appendix L)

G.S. 7A-198(d) may be interpreted, and has been interpreted, to read that all civil matters in district court must be recorded. With the elimination of district court reporters, this has become an additional burden for courtroom clerks. Therefore, the Commission recommends this legislation to amend G.S. 7A-198(d) to provide that civil matters will not be recorded unless a party requests recording or the trial judge, in the judge's discretion, orders reporting.

RECOMMENDATION 11: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSES' AND CHILDREN'S YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE." (Appendix M)

In his presentation to the Commission, Mr. John Kennedy, Wake County Clerk of Court and Co-Chair, Clerks' Legislative Committee, asked that the Commission authorize clerks of court to approve a year's allowance from an decedent's estate for spouses and children. A year's allowance is an amount (\$10,000 for a spouse, \$2,000 for a child) given from the personal property of the deceased to the deceased's spouse or children for their support. Under current law, an application for year's allowance may only be approved by a magistrate. In the majority of cases, the clerk completes the necessary work on the year's allowance and is the proper person to approve the application. However, as noted by Mr. Kennedy, the option of using a magistrate should remain. Therefore, the Commission recommends that, in addition to the magistrate, a clerk of court be authorized to approve a year's allowance.

RECOMMENDATION 12: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN BOND FORFEITURE CASES." (Appendix N)

Prior to the changes enacted by the General Assembly during the 1995 Regular Session, an order of forfeiture of bail was served first by the sheriff, and, if the sheriff could not complete service, was mailed by the clerk by regular mail. During the 1995 Regular Session, the General Assembly removed the requirement that the sheriff first attempt service of the order and provided that the clerk serve the order by certified mail. As explained to the Commission by the Clerks of Court Association, this requirement of certified mail notice results in increased costs for service and creates additional work for the clerks. Furthermore, notice by certified mail serves little or no purpose since, in most cases, the defendant cannot be located. As noted by the clerks, serving an order by certified mail to a defendant a bondsman cannot find is often a waste of time. The Commission recommends that the requirement to serve the order by certified mail be eliminated and replaced with service by first class mail.

RECOMMENDATION 13: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE FILING AND REGISTRY OF CERTIFIED COPIES OF OUT-OF-STATE CUSTODY DECREES AND FOR THE VALIDATION OF CERTIFIED COPIES OF WILLS RECORDED WITHOUT PROBATE." (Appendix O)

Current law requires that exemplified copies of out-of-state custody decrees be filed in North Carolina in order to be enforced. However, many other states do not exemplify documents. The Commission therefore recommends that G.S. 50A-15 and G.S. 50A-16 be amended to allow filing and registry of certified copies of out-of-state custody decrees.

Likewise, under G.S. 31-30, only exemplified copies of wills recorded without probate may be validated. The Commission recommends that this statute be amended to allow certified copies to be validated as well.

RECOMMENDATION 14: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO RAISE THE FORECLOSURE FILING FEES." (Appendix P)

The Commission recommends that the foreclosure filing fee be raised from \$25.00 to \$30.00 and that there be a minimum \$10.00 fee for each sale completed.

RECOMMENDATION 15: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND THE GOVERNOR'S CRIME COMMISSION." (Appendix Q)

Membership on the Sentencing and Policy Advisory Commission, the Criminal Justice Advisory Board, and the Governor's Crime Commission includes representatives of various segments of law enforcement and the courts. Through their court responsibilities, the clerks are consistently involved with criminal issues and should be represented on these Commissions. The Courts Commission recommends that the authorizing legislation of these Commissions be amended to provide for membership by a representative of the clerks of court.

RECOMMENDATION 16: The Commission recommends that the 1997 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA COURTS COMMISSION." (Appendix R)

The Commission finds that it would be assist the work of the Commission to have several Commission members who are non-lawyers and who are not officers or employees of the Judicial Department. The Commission also finds that the ex officio members who represent the State Bar and the Bar Association should be made voting members of the Commission.

RECOMMENDATION 17: The Commission recommends that the 1997 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 S)

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 had not increased accordingly. The Commission recommends that the General Assembly enact legislation to return the rate of reimbursement for out-of-state witnesses who testify in North Carolina cases to a rate equivalent to that paid to in-state witnesses and State employees.

REPORT OF THE SUBCOMMITTEE ON THE STRUCTURE OF THE COURTS

1. Evaluation of the report of the Commission for the Future of Justice and the Courts. The Commission on the Future of Justice and the Courts was appointed two years ago by former Chief Justice James Exum to design a court system for North Carolina for the 21st century. His instructions to the group were to recommend the framework for the best court system they could construct without necessarily being wed to the current system. In doing so, the Futures Commission relied on four fundamental guidelines in designing the court system of the future—accountability, independence, flexibility and uniformity. A subcommittee of the Courts Commission met in a two-day session to discuss the report and hear from several members of the Futures Commission—John Medlin, Chairman; Rhoda Billings and Robert Collier, Vice Chairs; Philip Baddour, Chairman of Family Issues Committee; and Michael Crowell, Executive Director. After that session, the full Courts Commission considered the recommendations in the report at two meetings.

The consensus of the Courts Commission is that the court system of the future in North Carolina should reflect the values that have directed the work of the Futures Commission. The Courts Commission expresses its appreciation to the members of the Futures Commission for their careful and thoughtful work, and recommends that the General Assembly give due consideration to the recommendations as the General Assembly takes the steps it finds appropriate to prepare the court system for the future demands that will be placed on it.

Accountability. The issues the Futures Commission is addressing have also been the subject of discussions by the Courts Commission. In its 1995 Report, the Courts Commission recognized that improved service, efficiency and credibility of the court system would be accomplished only with responsibility for management of the system being placed on specific court officials. Consequently, it recommended legislation, which passed, requesting the Chief Justice to develop a case flow management plan that placed responsibility for implementation on designated officials. The Futures Commission follows the same path by devising a system in which accountability for management of the system is placed on the Chief Justice and circuit judges. The plan gives more authority to the Chief Justice for management and, with the State Judicial Council, for developing policy for the court system; develops a system of chief circuit judges, with professional administrators, to manage the flow of cases; and gives the court system the technology it needs to operate an efficient system that is accountable for its operations. The Courts Commission endorses the Futures Commission's goal of increased accountability, and believes that the means chosen to achieve that goal are reasonable ways to achieve it.

Independence. Obviously, a fundamental principle of our form of government is an independent judiciary. Our citizens' faith in the court system is based on the premise that the system is impartial. That value is itself based on a governmental structure that makes the judicial system a separate branch of government. In that system, judges and other court officials can make decisions and carry out their judicial functions free of influence from outside sources. To facilitate the independence that is essential to the proper functioning of this system, the Futures Commission recommends granting to the judicial branch the responsibility for making key decisions about structure, governance, rules and the administration of the budget for the court system. With regard to independence of the judiciary specifically, it recommends an appointive system for judicial selection. In 1971 the original Courts Commission recommended an appointive system of selecting judges and in its 1985 and 1987 reports, the Commission made similar recommendations. There is a consensus among the members of the present Commission that North Carolina should change its method of judicial selection to an appointive system.

Flexibility. The Courts Commission also recommends endorsement of the principle of flexibility within the concept of a uniform court system -- flexibility through granting the judicial branch the authority to change the structure of the districts, merging the trial courts into a single circuit court, and some local district control over

budgetary matters will enhance the efficiency of the system. They are, in the opinion of the Courts Commission, appropriate means to address the goal of having a system flexible enough to meet its needs in the future.

Uniformity. The final value is one that to a degree conflicts with the desire for flexibility. However important flexibility is to the achievement of local management objectives, it cannot override the principle of uniformity—a principal that has made North Carolina's current system a model that other states have followed. As the Futures Commission report states: "Justice should not be a matter of geography. People across the state should have access to basically the same facilities and the courts should approach their business in a uniform way." The Courts Commission shares that belief.

As is true of any study that recommends major changes to an major governmental organization's structure, the Futures Commission's recommendations contain many specific recommendations. Several deserve special mention either because they are consistent with the Courts Commission's previous initiatives or because the Commission felt they merited further study. Their listing does not detract from the appreciation the Courts Commission expresses to the Futures Commission or from the Courts Commission's recommendation that the General Assembly proceed to make changes to enhance the organizational structure of the court system of the future. Rather, they reflect the difficulty of reorganizing something as complex as a statewide court system.

Items which the Courts Commission has previously studied and on which it has made recommendations.

- *Alternative Dispute Resolution programs.* The Futures Commission recommends that North Carolina expand experimentation with, and implementation of, alternative dispute resolution for appropriate cases. This Commission made similar recommendations in its 1995 Report to the General Assembly (by adopting and including as part of its report the report of the Subcommittee on Structure of the Courts) and specifically endorses this recommendation.
- *Family Courts.* In late 1994 the Courts Commission held a series of public hearings to discover what issues the public believed the Commission should address. From the number and nature of the comments, it was clear that citizens were dissatisfied with how family matters were handled by our courts. The Futures Commission recommends the creation of a "family court" in which specially trained judges would handle all cases, issues will be resolved by non-adversarial mechanisms when possible, and services will be offered to assure the best long-term outcome for the family. The Courts Commission wholeheartedly endorses the Futures Commission concept of a "family court."
- *Technology Improvements.* In all its discussions about court improvements in recent years, the Courts Commission has been concerned about the lack of adequate resources and plans to take advantage of technological improvements to handle the repetitive and time consuming matters that courts must deal with. The Futures Commission recommends substantial improvements in the amount of resources that are allocated to technological improvements, as well as in the manner in which those resources are used. The Courts Commission wholeheartedly agrees.

Items on which the Courts Commission recommends further study.

- *Jury system changes.* The Courts Commission has recently focused on making jury service more effective and efficient for jurors. The Futures Commission recommendations include several changes in the extent to which litigants are constitutionally entitled to jury trial. Because the right to trial by jury is so fundamental, the Courts Commission believes that constitutional changes should be studied more carefully before changes are made. Much can be done to make jury service more efficient and gratifying, and the Courts Commission recommends that further attention be given to that aspect of jury service, even as changes to the constitutional entitlement may be considered.

- *Selection of clerks of court.* The question of how clerks of court should be selected is a complex question that raises issues of accountability, undue concentrations of power in any appointing authority, checks and balances, and connection of the courts to the citizens of each county. The Courts Commission believes that fundamental change in the method of selection of clerks should be considered much more carefully by the General Assembly before it recommends changes.
- *Appellate jurisdiction in capital cases.* The Futures Commission recommends that appeals of capital cases be handled initially by the court of appeals instead of the supreme court. This, like many other recommendations, is one in which members of the Courts Commission see both advantages and disadvantages. Whether the perceived benefit, more time for the Supreme Court to hear other matters, is in fact achievable and is worth the cost to the credibility of the system by not having death sentences reviewed by the state's highest court, is a subject on which the Courts Commission finds very difficult to reach consensus. It too needs further study.
- *Number of district (circuit) attorneys.* The Futures Commission recommends that a circuit system with 12-18 circuits be the unit of administration for the courts, replacing the judicial district system now in place. A corollary to that recommendation is that the office of district attorney be replaced by circuit attorneys. That change would mean that the number of elected prosecutors would be reduced by more than half from the current 39. The size of the offices managed would grow substantially, and the electorate served by the circuit attorney would approximate that of a member of congress. The Courts Commission has some concern that the connection to the locality that is essential to the effective functioning of a prosecutor's office might be too attenuated by offices of that size, and recommends that additional study be given to the proper configuration of prosecutor's unit of election.

These are complex recommendations which will take time for the members of the General Assembly to study. The Courts Commission recommends that some body within the General Assembly be given the responsibility to study and deal with the report of the Futures Commission. That group could be a joint select committee, or a separate committee could be appointed for each house. In any event, joint meetings of the bodies considering the report could be very effective and efficient, at least in the early data gathering stages of the General Assembly's consideration of the report.

2. Desirability of eliminating the right to a de novo appeal to superior court for misdemeanors and infractions disposed of in district court. The subcommittee was directed to consider the desirability of eliminating the right to a de novo appeal to the superior court for misdemeanors and infractions. Two rationales support such a change: (1) Misdemeanor and infractions occupy a disproportionate share of the superior court's criminal resources, and (2) allowing defendants charged with these offenses two opportunities to receive a favorable disposition ("two bites of the apple") is not an appropriate allocation of the state's resources. In reviewing the proposal, the subcommittee asked for and received information from the Administrative Office of the Courts about the volume of cases disposed of in both the district and superior court. After analyzing that data and discussing the issue thoroughly, the subcommittee concluded that the existing structure serves to screen large numbers of cases in the district court and very few of those cases actually proceed to a jury trial. The vast majority of those cases that have the opportunity for "two bites" are satisfied with the first bite and thus the state is saved the substantial expense of providing its most expensive form of dispute resolution-jury trials-to all of them. So, despite its first impression of being a time waster, the subcommittee believes that within our current court system the practice saves time without impairing important rights of defendants and accordingly recommends that no change be made now.

The number of cases appealed is instructive. In 1994-95, there were 951,324 misdemeanor cases disposed of in the district court. There were 293,535 infractions disposed of in district court. There were thus 1,244, 859 infractions and misdemeanors disposed of in the district court. There were an additional 603,576 cases in which pleas of guilty

were handled by mail or disposed of in person before a magistrate or clerk. Of the district court misdemeanors, 59,770 were disposed of by trial. Of the district court infractions, 4,768 were disposed of by trial. In district criminal court, then, there were 64,538 trials. That is a trial rate of 3.5%. From the 1.8 million infractions and misdemeanors, 32,919 (32,253 misdemeanors and 666 infractions) were appealed to superior court. Of those, 890 misdemeanors and 31 infractions were disposed of by jury trial. These numbers are important in understanding the dimensions of the various case loads. The appeal rate from district court is 1.75%. Because the superior court's criminal docket is so much smaller, those appeals constitute in absolute numbers around 30% of the case filings in superior court.

Unless the state constitutional right to trial by jury and/or the allocation of criminal jurisdiction among the superior and district courts are substantially modified, elimination of the right to a de novo appeal would require that misdemeanor and infraction jury trials be provided in district court. If rates of not guilty pleas remained constant, under such a system, there would have been 64,538 jury trials in district court in 1994-95. For a comparison, in the entire state, for superior court criminal, superior court civil and district court civil jurisdictions, there were 3,809 jury trials in North Carolina in 1994-95.

It is impossible to predict with certainty how many trials would be required if the right to jury trial existed in district court for those not guilty pleas. But two factors suggest that it would be a substantial percentage of the 64,538 bench trials in district court. First, this would be the defendant's only opportunity to plead not guilty, a factor which is not likely to reduce the number of not guilty pleas. Second, the rate at which trials are requested in district court is not appreciably higher than the jury trial rate in superior court. Given these factors, it is likely that elimination of the right to trial de novo would substantially increase the workload of the district court by requiring the additional work that is required to conduct jury trials instead of bench trials in those cases.

Other issues would also have to be addressed. At present, no verbatim record is maintained in criminal district court. If the state continued its practice of requiring a verbatim record of all final trial proceedings for review by appellate courts, some provision would have to be made to produce a record in district court, either by using live court reporters or electronic recording devices. There is a cost to making the record using either method. Finally, there are many courtrooms in which criminal district court is conducted that do not have jury facilities. The Subcommittee does not have precise estimates of how many current facilities would be inadequate to conduct jury trials, but it is an issue that must be addressed if this proposal is pursued further.

3. Allow district court judges to take certain felony pleas. Ch. 725, S.L. 1995 (Reg. Sess. 1996) implemented this proposal.

4. Desirability of having the appeal of misdemeanor probation revocation hearings go directly to the Court of Appeals instead of a second hearing in superior court. The subcommittee was asked to look at the desirability of having appeals of misdemeanor probation revocation hearings go directly to the Court of Appeals instead of a second hearing in superior court. This is a situation where the superior court is used as a screening device at a time where time for disposing of serious criminal and civil cases is scarce. Likewise, there was some concern that defendants could use the de novo superior court hearing to delay imposition of a sentence. At present, no verbatim record is kept in the district court hearing so the same issue as was raised in the discussion of eliminating de novo appeals of misdemeanors and infractions would apply here.

The subcommittee heard from the Division of Probation and Parole regarding the numbers of probation revocation hearings being appealed to superior court and those that then go to the Court of Appeals. Those numbers revealed two things. Overall, few district court probation hearings are appealed to superior court and an even smaller number to the Court of Appeals. Second, the numbers vary widely by judicial district. It appears that a high percentage of appeals from district court revocations (the highest was 50%) occur in only a few judicial districts. In most districts, the percentages and numbers are so small as to not create a problem. Although the number of appeals to superior court is

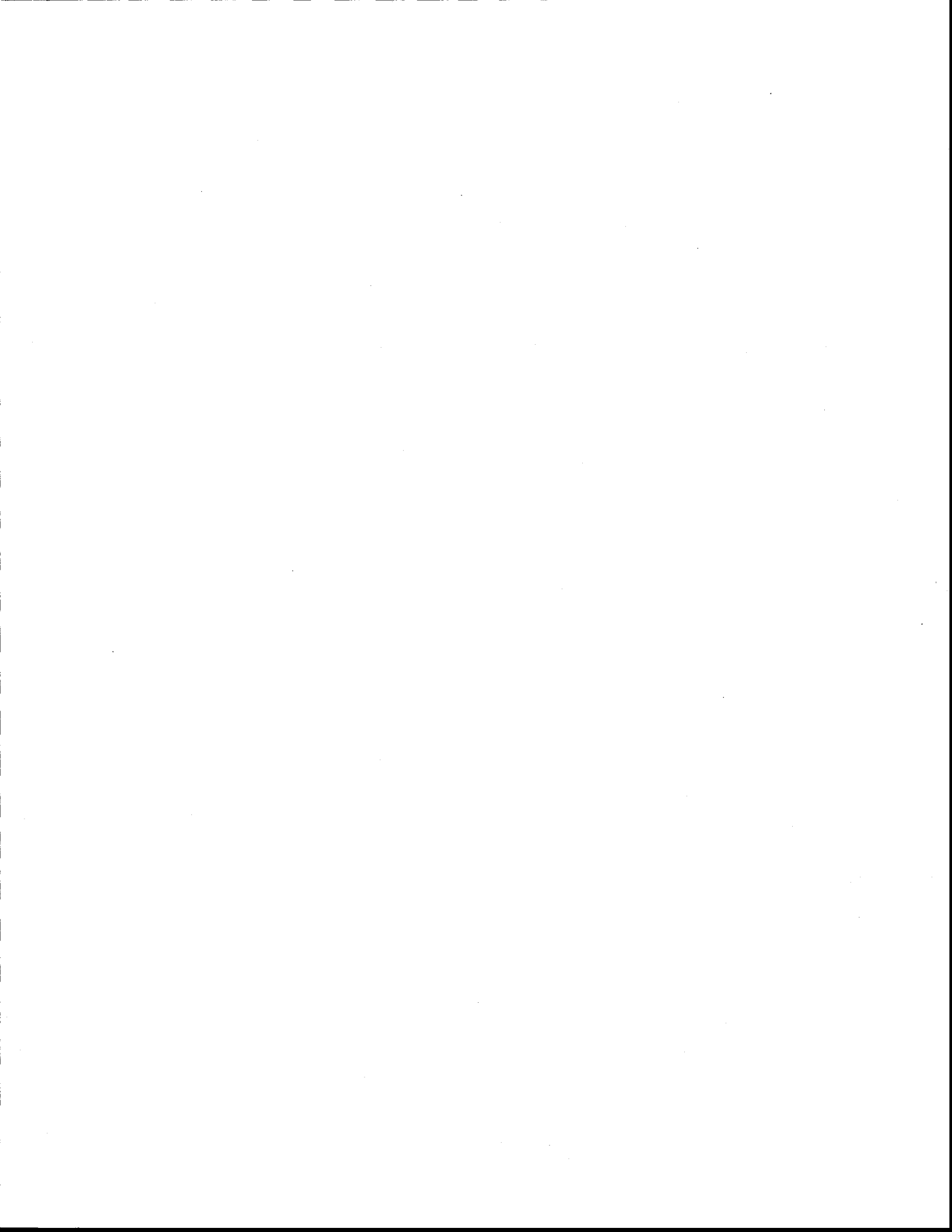
small in light of the total number of cases in that division, direct appeal to the Court of Appeals of a substantial number of those cases would have a negative impact on the Court of Appeals case load. Thus, the current system is acting effectively as a screening device. Because the effect on available superior court time is minuscule in all but a very few counties and a change would have a negative impact on the work of the Court of Appeals, the subcommittee recommends that no change be made in the present law.

5. Allow the chief justice to set procedure for calendaring arraignments. The Judicial Conference recommended that G.S. 15A-943, which specifies the method of calendaring arraignments and rules regarding mixing of arraignments and trials, be replaced with a provision authorizing the Chief Justice to set the procedures for calendaring arraignment sessions for counties in which there are regularly scheduled 20 or more weeks each six months of criminal trial sessions of superior court. Ch. 725, S.L. 1995 (Reg. Sess. 1996) replaced the requirement that all defendants be arraigned with a provision for arraignment only upon written request by the defendant. The subcommittee recommends that no action be taken on the Judicial Conference recommendation at this time until the new law has been in effect long enough to see how many arraignments are requested and what procedure for calendaring would be appropriate.

6. Give judges more control over the selection of jurors and control of jury arguments. The Judicial Conference recommended that (a) G.S. 15A-1214 be amended to give judges a larger role in voir dire, including questioning jurors, excusing them from a case and restricting questioning by attorneys, and (b) G.S. 84-14 be rewritten to allow judges to control the length of and number of arguments to the jury. The subcommittee does not recommend these changes at this time.

Although we agree with the Judicial Conference's goal that jurors should be used as effectively and efficiently as possible and that the time required for a juror's service should be kept to a minimum, we do not know whether these changes will effectuate that result. No information about the reactions of jurors to the length and repetitiveness of questioning and jury arguments is available. Also while attorneys who practice in the courts understand that most judges would exercise control in a positive way, they worry about the occasional abuse of such power.

The subcommittee believes that many aspects of juror utilization should be examined. Some changes, such as alternative methods for selecting a jury in a civil case and managing jurors require education and encouragement to be innovative. How jurors spend their time when called for jury duty and how they are called require attention to management issues; while issues such as voir dire, method of selection of jurors, number of jurors in cases, arguments to the jury would require statutory changes. Because a comprehensive look at the use of juries and jurors would be worthwhile, the subcommittee recommends that the Courts Commission undertake such a study in the future.



PROCEEDINGS

October 18, 1996

After introductory remarks by Representative Robert Hunter, Chair of the Commission, Representative Hunter recognized Mr. Michael Crowell, Executive Director of the Commission for the Future of Justice and the Courts in North Carolina ("Futures Commission"). Mr. Crowell gave a summary of the Futures Commission's draft report and distributed a handout that listed changes that would likely be included in the report.

Mr. Pete Powell, Deputy Director of the Administrative Office of the Courts, presented a budget overview for the Judicial Department. He provided Commission members with a handout that compared the Judicial Department's 1996-97 budget request with the final 1996-97 budget modifications.

Ms. Joan Brannon, Commission Counsel and faculty member at the Institute of Government, University of North Carolina at Chapel Hill, summarized the bills ratified in the 1996 session that were of particular interest to court officials.

Representative Hunter provided each Commission member with a list of the recommendations that the Commission made to the 1996 Regular Session of the 1995 General Assembly. Two recommendations, concerning appeal bond changes and child support liens, were passed during the session. He told the Commission that they would decide later which of the remaining recommendations to re-recommend to the 1997 General Assembly. He explained that most of the recommendations on the list were not controversial but were lost in the process during the closing days of the 1996 Regular Session. Representative Hunter asked the Subcommittee on the Structure of the Courts to consider the proposals of the Futures Commission and to advise the Courts Commission as to how it should proceed.

November 15, 1996

Mr. Jim Mills, Fiscal Analyst in the Fiscal Research Division of the North Carolina General Assembly, gave the Commission an update on the enforcement of child support orders under the Uniform Interstate Family Support Act (UIFSA). He said that at the February 1996 meeting of the Commission, the Conference of District Attorneys raised the issue of whether the district attorneys should handle interstate child support cases or whether alternative organizational and funding arrangements should be identified, which would allow the district attorneys to give more time to other matters. He also gave an overview of information covered in previous meetings of the Courts Commission regarding this matter.

Mr. Dan Pickett, Manager, Client Service, Child Support Enforcement Section, Department of Human Resources, discussed how the state handles incoming UIFSA cases, including representation of obligees in court.

Mr. Colon Willoughby, District Attorney for the 10th Prosecutorial District, Wake County, spoke on behalf of the Conference of District Attorneys. He cited a study conducted several years ago regarding child support enforcement. The study found that it would be a more effective and efficient system to have fewer people involved in collecting child support and that district attorneys were not best suited to be the ones responsible for enforcement of child support, since these proceedings are civil in nature.

Mr. David Flaherty, Commission member, moved that the Commission recommend that district attorneys be removed from the 43 counties in which they are now responsible for child support enforcement cases that are under IV-D, and that the General Assembly appropriate money to take up all state and local shares, including the local shares of the counties that already use child support attorneys rather than district attorneys in IV-D UIFSA cases. The Commission agreed to make that recommendation.

The Honorable Kenneth C. Titus, District Court Judge in Durham County, spoke to the Commission on the issue of counsel for indigents and indigency screeners. He said that the Administrative Office of the Courts does not have statistics to indicate whether the indigency screener program did or did not save money. He believed that the program saved money in Durham County, but that adequate staffing is essential.

The Commission members discussed how to determine whether a person who requests indigency counsel is really in need or if the person is being dishonest about his or her financial status. Mr. Tim Hovis, Commission Counsel, said that there was no constitutional problem in gaining income tax information from the Revenue Department regarding the financial status of people requesting indigency counsel.

Mr. John Taylor, Administrator of the Information Services Division, Administrative Office of the Courts, discussed information technology issues. He said that one of the duties of the Administrative Office of the Courts is to provide and prescribe uniform policies, procedures, and systems to be used for North Carolina's statewide court system. Long-range plans for providing technology assistance for the court system include: methods to record data at the earliest point to be shared and passed along through the court process; easy access to data by agencies that are part of the criminal justice system; and more up-to-date personal computers in various offices of the court system. Short and long-range plans include: maintenance of present technology and use of new technology; replacement of older computer hardware and software; use of the Internet; and converting computer programs to avoid problems when the year turns to 2000. Mr. Taylor distributed copies of a Summary of Programs and Projects administered by the Administrative Office of the Courts.

January 10, 1997

Mr. Wade Barber, chair of the Subcommittee on the Structure of the Courts, reported on the Subcommittee's review of the final report of the Futures Commission. The Subcommittee's report is included in this report. Representative Hunter commended the Futures Commissions and Mr. Mike Crowell for keeping the Commission informed of their meetings and recommendations.

January 24, 1997

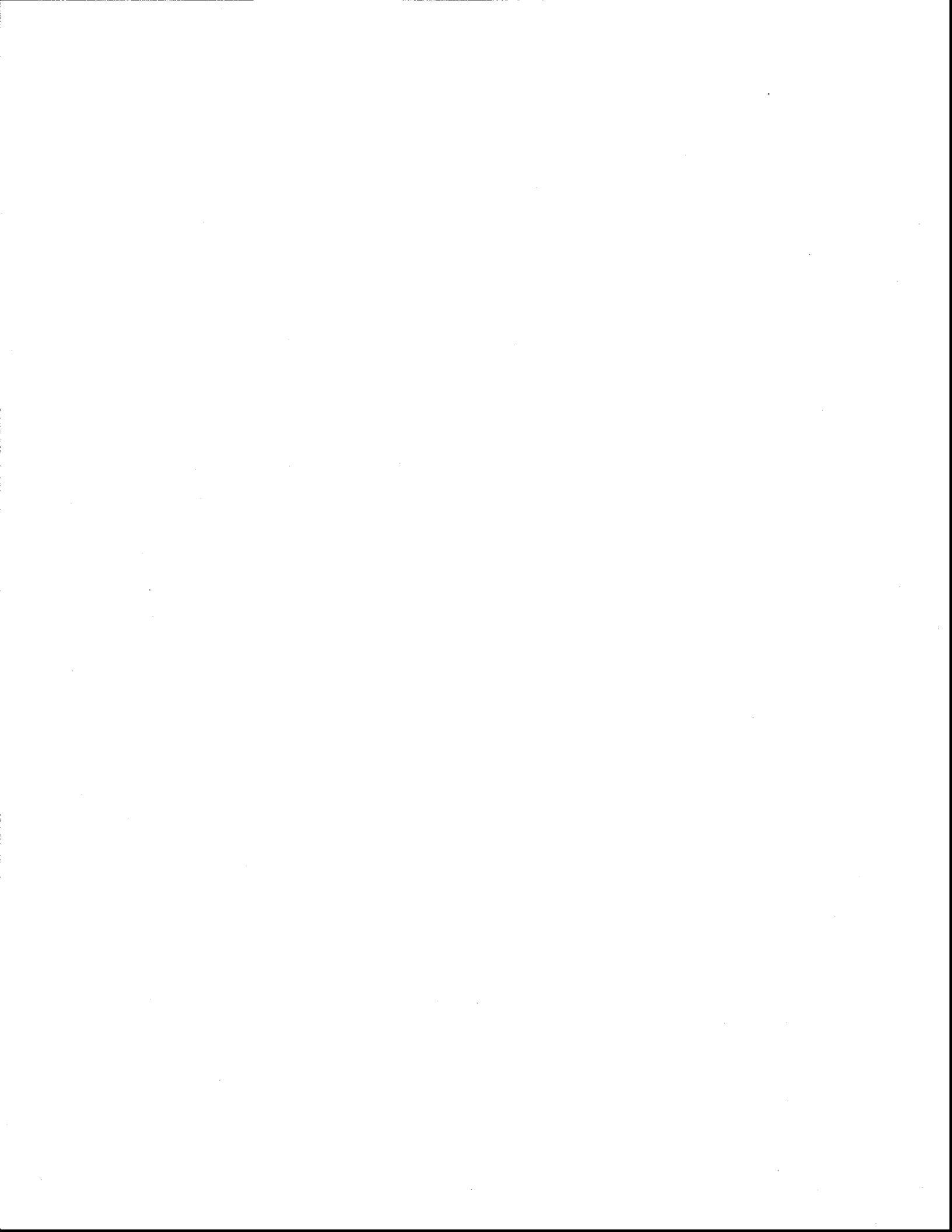
In its final meeting prior to the convening of the 1997 General Assembly, the Courts Commission voted to recommend several pieces of legislation. These legislative proposals include: (1) DA's and UIFSA; (2) No Insurance Points for Infractions; (3) Habitual Felon Determination; and (4) Initial Appearance by Video. These proposals are included in this report. The Commission also agreed to include in this report several proposals which were recommended by the Commission to the 1996 Session of the 1995 General Assembly, but were not ratified. These include: (1) Restitution and Civil Judgment; (2) Domestic Violence Changes; (3) Court Information Remote Access; (4) Jurisdictional Amount Increase; (5) Community Penalties/Record Checks; (6) Waiver of Recording/District Court; (7)

Clerks/Year's Allowance; (8) Eliminate Certified Notice; (9) Certified Copies/Custody & Wills; (10) Foreclosure Filing Fees; (11) Clerks of Court on Commissions; (12) Courts Commission Membership; and (13) Conform Witness Travel Fees.

Mr. Wade Barber, Chair, Subcommittee on the Structure of the Courts, presented to the Commission a final draft of the Subcommittee's report to the Commission. After discussion by the members, the Commission adopted the report as amended.



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.

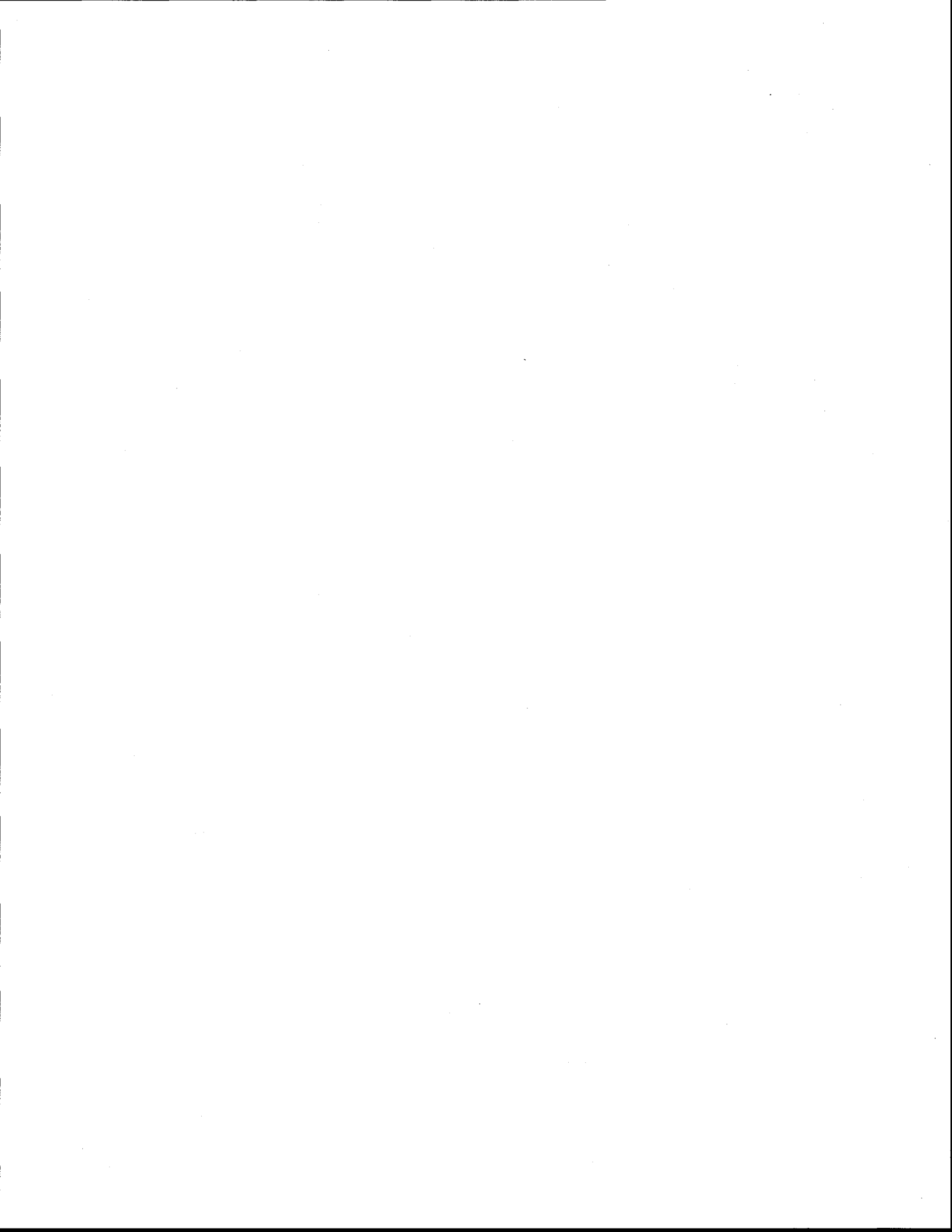
The Governor, after consultation with the Chief Justice of the Supreme Court, shall appoint a chair from the legislative members of the Commission. The term of the chair is two years, and the chair may be reappointed. The Commission shall meet at such times and places as the chair shall designate. The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



MEMBERSHIP

NORTH CAROLINA COURTS COMMISSION

Representative Robert C. Hunter, Chairman

Senator Patrick J. Ballantine

Representative William Culpepper

Representative N. Leo Daughtry

Senator Wilbur Gulley

Representative Robert Hensley, Jr.

Representative Paul R. McCrary

Representative Charles B. Neely, Jr.

Senator Fountain Odom

Senator Anthony E. Rand

Judge Richard B. Allsbrook

Mr. Robert L. Burchette

Judge William A. Christian

Mr. Robert H. Christy, Jr.

Mr. David T. Flaherty, Jr.

Mr. Carl Fox

Mr. Phillip Ginn

Mr. George T. Griffin

Mr. J. Carl Hayes

Judge Robert Johnston

Mr. W. Douglas Parsons

Judge Patricia Timmons-Goodson

Judge Willis P. Whichard

Judge James A. Wynn, Jr.

Mr. Wade Barber, Jr.

Judge Jack Cozort

Ms. Ann Reed



APPENDIX C



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RSZ-003.1, mlm
THIS IS A DRAFT 31-JAN-97 16:18:16

Short Title: IV-D UIFSA Cases/Represent.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE CHILD SUPPORT ENFORCEMENT AGENCY SHALL
3 REPRESENT OBLIGEEES IN IV-D UIFSA CASES AND TO APPROPRIATE
4 FUNDS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 52C-3-308 reads as rewritten:
7 "§ 52C-3-308. Representation of obligee.
8 ~~It shall be the duty of the district attorney to represent the~~
9 ~~obligee in proceedings authorized by this Chapter unless~~
10 ~~alternative arrangements are made by the obligee. In a IV-D case,~~
11 the support enforcement agency shall represent the obligee in
12 proceedings authorized by this Chapter unless the obligee makes
13 alternative arrangements. In a non-IV-D case, the district
14 attorney shall represent the obligee in proceedings authorized by
15 this Chapter unless the obligee makes alternative arrangements.
16 An obligee may employ private counsel to represent the obligee in
17 proceedings authorized by this Chapter."
18 Section 2. There is appropriated from the General Fund
19 to the Department of Human Resources the sum of four hundred
20 twenty thousand dollars (\$420,000) for the 1997-98 fiscal year

1 and the sum of four hundred twenty thousand dollars (\$420,000)
2 for the 1998-99 fiscal year to implement the provisions of this
3 act, to be distributed among both county and state child support
4 agencies.

5 Section 3. This act becomes effective July 1, 1997.

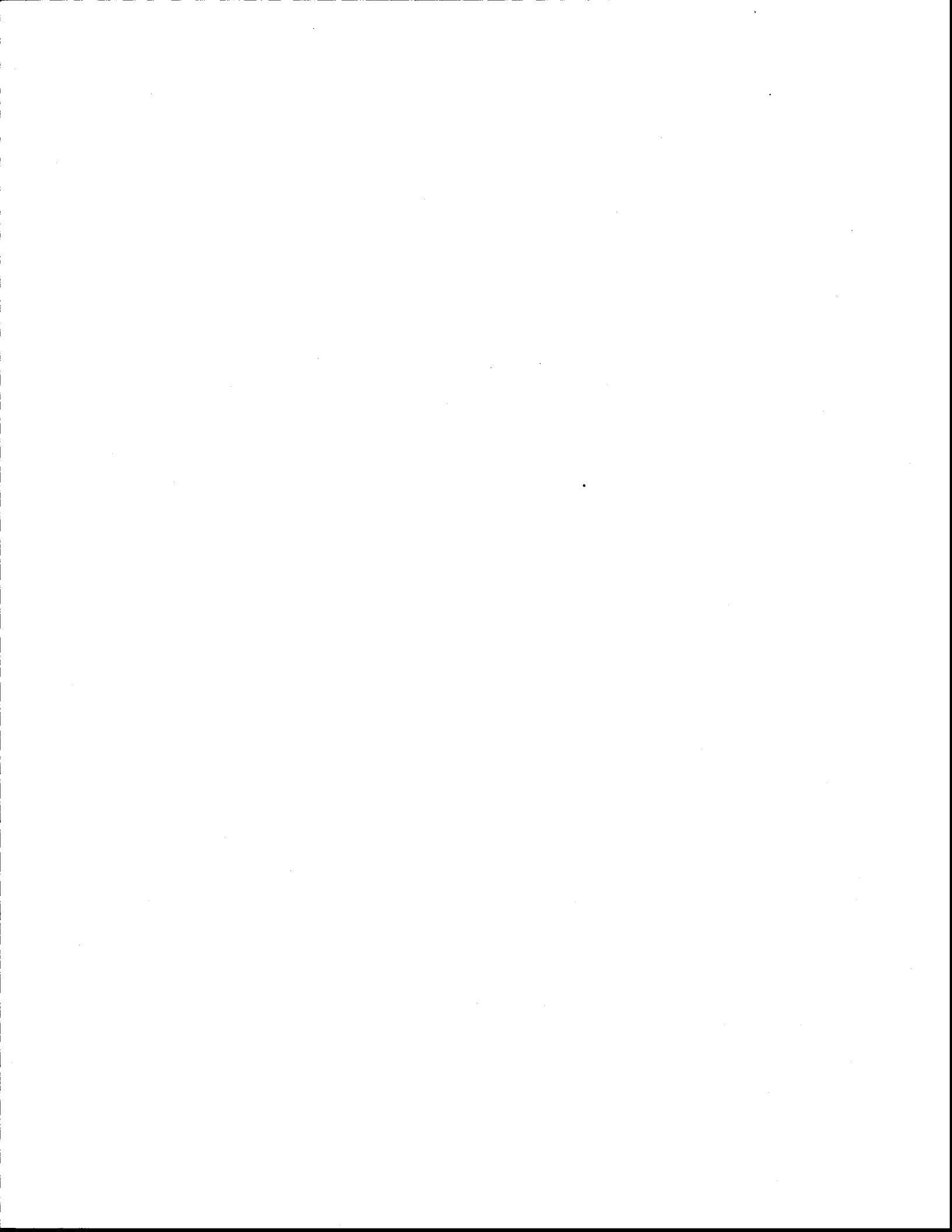
ANALYSIS OF PROPOSED LEGISLATION

This legislation would provide that the local child support enforcement office, rather than the district attorney's office, represent the obligee in a IV-D interstate child support case under the Uniform Interstate Family Support Act (UIFSA). The legislation also appropriates \$420,000 for the 1997-98 fiscal year and \$420,000 for the 1998-99 fiscal year to pay for the state and local shares of providing this representation.

The legislation would be effective on July 1, 1997.



APPENDIX D



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H/S

D

97-RGZ-02(1.24)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: No Ins. Points for Infractions.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE INFRACTIONS FROM CONSIDERATION IN THE SAFE
3 DRIVER INCENTIVE PLAN, TO PROVIDE FOR A GRADUATED INSURANCE
4 POINT AND SURCHARGE SCHEDULE FOR BODILY INJURY CAUSED IN
5 AUTOMOBILE ACCIDENTS, AND TO PROHIBIT INSURANCE POINTS AND
6 SURCHARGES IF BODILY INJURY DOES NOT OCCUR.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 58-36-65(b) reads as rewritten:
9 "(b) The Bureau shall file, subject to review, modification,
10 and promulgation by the Commissioner, a Safe Driver Incentive
11 Plan ('Plan') that adequately and factually distinguishes among
12 various classes of drivers that have safe driving records and
13 various classes of drivers that have a record of at-fault
14 accidents; a record of convictions of ~~major~~ moving traffic
15 violations; ~~a record of convictions of minor moving traffic~~
16 ~~violations~~; or a combination thereof; and that provides for
17 premium differentials among those classes of drivers.
18 Subsequently, the Commissioner may require the Bureau to file
19 modifications of the Plan. If the Bureau does not file the
20 modifications within a reasonable time, the Commissioner may
21 promulgate the modifications. The Commissioner is authorized to
22 structure the Plan to provide for surcharges above and discounts
23 below the rate otherwise charged."
24 Sec. 2. G.S. 58-36-65(i) reads as rewritten:

1 "(i) As used in this section, 'conviction' ~~means a conviction~~
2 ~~as defined in G.S. 20-279.1 and means~~ does not include an
3 infraction as defined in G.S. 14-3.1."

4 Sec. 3. G.S. 58-36-75(a) reads as rewritten:

5 "(a) The subclassification plan promulgated pursuant to G.S.
6 58-36-65(b) may provide for separate surcharges for major,
7 intermediate, and minor accidents. A 'major accident' is an at-
8 fault accident that results in either (i) bodily injury or death
9 or (ii) only property damage of two thousand dollars (\$2,000) or
10 more. An 'intermediate accident' is an at-fault accident that
11 results in only property damage of more than one thousand dollars
12 (\$1,000) but less than two thousand dollars (\$2,000). A 'minor
13 accident' is an at-fault accident that results in only property
14 damage of one thousand dollars (\$1,000) or less. The
15 subclassification plan may also exempt certain minor accidents
16 from the Facility recoupment surcharge. The Bureau shall assign
17 varying Safe Driver Incentive Plan point values and surcharges
18 for bodily injury in at-fault accidents that are commensurate
19 with the severity of the injury. There shall be no points or
20 insurance premium surcharge under the Safe Driver Incentive Plan
21 or increase in insurance premium on account of payment of medical
22 costs associated with obtaining a diagnosis when the diagnosis
23 indicates that an accident did not result in bodily injury."

24 Sec. 4. G.S. 58-36-75(g) reads as rewritten:

25 "(g) As used in this section 'conviction' ~~means a conviction~~
26 ~~as defined in G.S. 20-279.1 and means~~ does not include an
27 infraction as defined in G.S. 14-3.1."

28 Sec. 5. The North Carolina Rate Bureau shall develop an
29 amendment to the subclassification plan consistent with the
30 provisions of this act. The Bureau shall file the amendment with
31 the Commissioner no later than October 1, 1997, and the amendment
32 shall become effective January 1, 1998.

33 Sec. 6. Sections 5 and 6 of this act are effective upon
34 becoming law. The remainder of this act becomes effective
35 January 1, 1998, and applies to accidents occurring on or after
36 January 1, 1998.

37

ANALYSIS OF PROPOSED LEGISLATION

Sections 1, 2, and 4 of the proposed legislation would eliminate infractions from consideration in the Safe Driver Incentive Plan. Section 1 removes from the Safe Driver Incentive Plan the distinction between major and minor traffic violations. (If infractions are removed from the Plan, there is no need to make this distinction.) Section 2 removes infractions from the definition of convictions under the Plan. Section 4 of the bill removes infractions from that part of the Plan addressing surcharges for certain accidents and violations. These changes would effectively remove all insurance points for infractions.

Section 3 of the bill directs the Rate Bureau to assign Plan point values and surcharges for bodily injury in at-fault accidents. The point values must be commensurate with the severity of the injury. If the accident did not result in bodily injury, then no premium surcharges or points may result from the accident for payment of medical costs associated with obtaining a diagnosis.

Section 5 of the bill directs the Bureau to file an amendment to the Plan to implement the provisions of this act on or before October 1, 1996. The amendment shall become effective January 1, 1998.



APPENDIX E



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S/H

D

97-RGZ-01(1.24)
THIS IS A DRAFT 28-JAN-97 10:15:06

Short Title: Initial Appearance by Video.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE A MAGISTRATE OR OTHER AUTHORIZED JUDICIAL
3 OFFICIAL IN A NONCAPITAL CASE TO CONDUCT AN INITIAL APPEARANCE
4 BY A TWO-WAY AUDIO AND VIDEO PROCEEDING.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 15A-511 reads as rewritten:
7 "§15A-511. Initial appearance.
8 (a) Appearance before Magistrate. --
9 (1) A law-enforcement officer making an arrest with or without a
10 warrant must take the arrested person without unnecessary
11 delay before a magistrate as provided in G.S. 15A-501.
12 (2) The magistrate must proceed in accordance with this section,
13 except in those cases in which he has the power to determine
14 the matter pursuant to G.S. 7A-273. In those cases, if the
15 arrest has been without a warrant, the magistrate must prepare
16 a magistrate's order containing a statement of the crime with
17 which the defendant is charged.
18 (3) If the defendant brought before a magistrate is so unruly as
19 to disrupt and impede the proceedings, becomes unconscious, is
20 grossly intoxicated, or is otherwise unable to understand the
21 procedural rights afforded him by the initial appearance, upon
22 order of the magistrate he may be confined or otherwise

1 secured. If this is done, the magistrate's order must provide
2 for an initial appearance within a reasonable time so as to
3 make certain that the defendant has an opportunity to exercise
4 his rights under this Chapter.

5 (a1) A proceeding for initial appearance in a noncapital case under
6 this section may be conducted by an audio and video transmission
7 between the magistrate or other authorized judicial official and the
8 defendant in which the parties can see and hear each other. If the
9 defendant has counsel, the defendant shall be allowed to communicate
10 fully and confidentially with his attorney during the proceeding.

11 (a2) Prior to the use of audio and video transmission pursuant to
12 subsection (a1) of this section, the procedures and type of equipment
13 for audio and video transmission shall be submitted to the
14 Administrative Office of the Courts by the senior regular resident
15 superior court judge and the chief district court judge for a judicial
16 district or set of districts and approved by the Administrative Office
17 of the Courts.

18 (b) Statement by the Magistrate. -- The magistrate must inform the
19 defendant of:

- 20 (1) The charges against him;
21 (2) His right to communicate with counsel and friends; and
22 (3) The general circumstances under which he may secure release
23 under the provisions of Article 26, Bail.

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

- 26 (1) The magistrate must determine whether there is probable cause
27 to believe that a crime has been committed and that the person
28 arrested committed it, and in the manner provided by G.S.
29 15A-304(d).
30 (2) If the magistrate determines that there is no probable cause
31 the person must be released.
32 (3) If the magistrate determines that there is probable cause, he
33 must issue a magistrate's order:
34 a. Containing a statement of the crime of which the person is
35 accused in the same manner as is provided in G.S. 15A-
36 304(c) for a warrant for arrest, and
37 b. Containing a finding that the defendant has been arrested
38 without a warrant and that there is probable cause for his
39 detention.

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

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

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

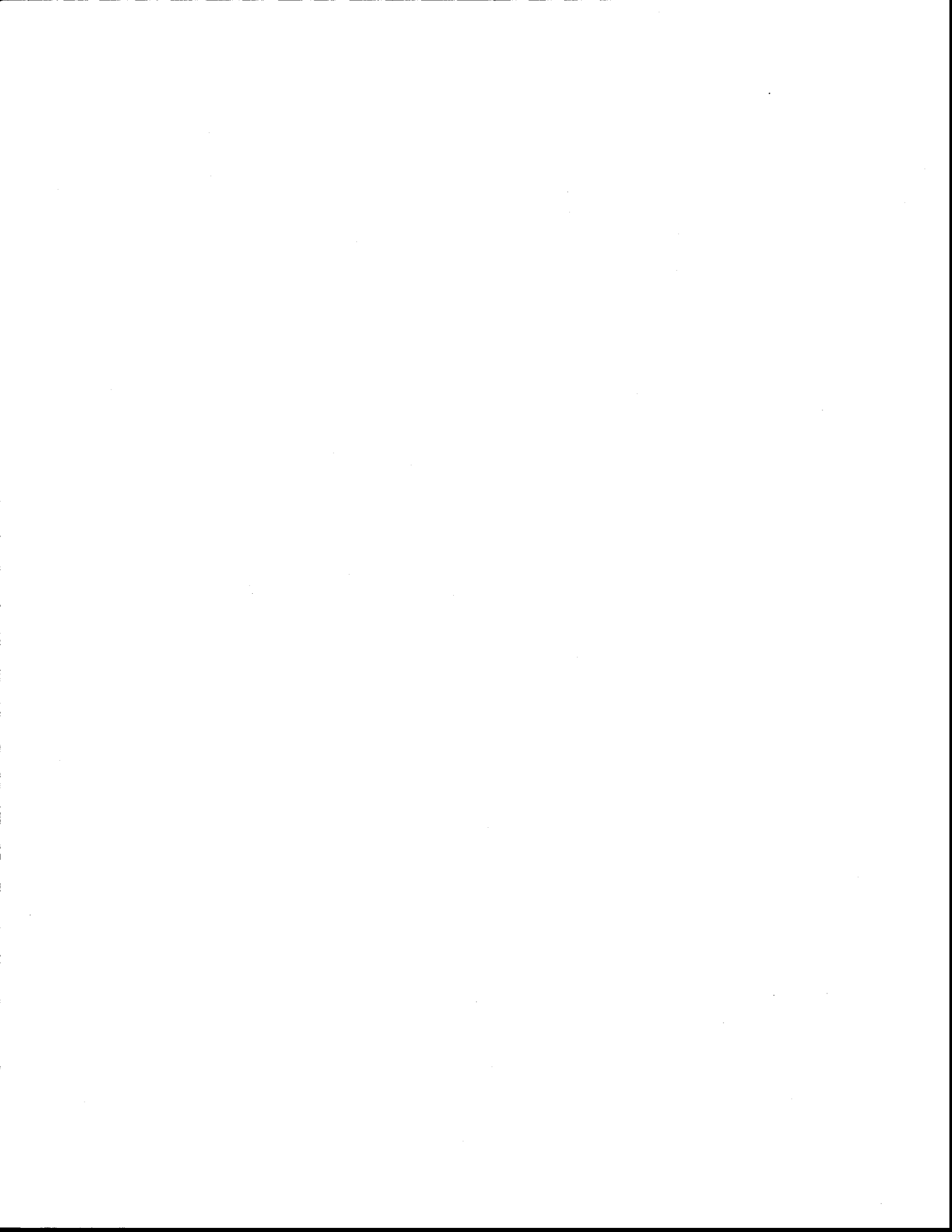
13 (f) Powers Not Limited to Magistrate. -- Any judge, justice, or
14 clerk of the General Court of Justice may also conduct an initial
15 appearance as provided in this section."

16 Section 2. This act is effective when it becomes law.

ANALYSIS OF PROPOSED LEGISLATION

During the 1993 Session, the General Assembly authorized judicial officials to conduct pretrial releases proceedings, first appearances, and arraignments by two-way audio and video proceedings. This legislation would extend the use of video proceedings to initial appearances before a magistrate. During the initial appearance, the magistrate informs the defendant of the charges against him or her, his or her right to counsel and either provide bail or commit the defendant. The use of video proceedings for initial appearances must be approved by the Administrative Office of the Courts before its implementation.

APPENDIX F



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H/S

D

97-RGZ-03(1.24)

THIS IS A DRAFT 5-FEB-97 09:39:20

Short Title: Habit. Felon Determination.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE ISSUE OF WHETHER A DEFENDANT IS A
3 HABITUAL FELON OR A VIOLENT HABITUAL FELON SHALL BE DETERMINED
4 BY THE TRIAL JUDGE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 14-7.3 reads as rewritten:
7 "§14-7.3. Charge of habitual felon.
8 An indictment which charges a person who is an habitual felon
9 within the meaning of G.S. 14-7.1 with the commission of any
10 felony under the laws of the State of North Carolina must, in
11 order to sustain a conviction of habitual felon, also charge that
12 said person is an habitual felon. The indictment charging the
13 defendant as an habitual felon shall be separate from the
14 indictment charging him with the principal felony. An indictment
15 which charges a person with being an habitual felon must set
16 forth the date that prior felony offenses were committed, the
17 name of the state or other sovereign against whom said felony
18 offenses were committed, the dates that pleas of guilty were
19 entered to or convictions returned in said felony offenses, and
20 the identity of the court wherein said pleas or convictions took

1 place. No defendant charged with being an habitual felon in a
2 bill of indictment shall be required to ~~go to trial on defend~~
3 said charge within 20 days of the finding of a true bill by the
4 grand jury; provided, the defendant may waive this 20-day
5 period."

6 Section 2. G.S. 14-7.5 reads as rewritten:

7 "**§14-7.5. Verdict and judgment.**

8 When an indictment charges an habitual felon with a felony as
9 above provided and an indictment also charges that said person is
10 an habitual felon as provided herein, the defendant shall be
11 tried for the principal felony as provided by law. The indictment
12 that the person is an habitual felon shall not be revealed to the
13 jury ~~unless the jury shall find that the defendant is guilty of~~
14 ~~the principal felony or other felony with which he is charged. at~~
15 any time. If the jury finds the defendant guilty of a felony, the
16 bill of indictment charging the defendant as an habitual felon
17 ~~may be presented to the same jury. Except that the same jury may~~
18 ~~be used, the proceedings shall be as if the issue of habitual~~
19 ~~felon were a principal charge. shall be tried before the trial~~
20 judge without a jury. If the jury trial judge finds by a
21 preponderance of the evidence that the defendant is an habitual
22 felon, the trial judge shall enter judgment according to the
23 provisions of this Article. If the jury trial judge finds that
24 the defendant is not an habitual felon, the trial judge shall
25 pronounce judgment on the principal felony or felonies as
26 provided by law."

27 Section 3. G.S. 14-7.9 reads as rewritten:

28 "**§ 14-7.9. Charge of violent habitual felon.**

29 An indictment that charges a person who is a violent habitual
30 felon within the meaning of G.S. 14-7.7 with the commission of
31 any violent felony must, in order to sustain a conviction of
32 violent habitual felon, also charge that the person is a violent
33 habitual felon. The indictment charging the defendant as a
34 violent habitual felon shall be separate from the indictment
35 charging the defendant with the principal violent felony. An
36 indictment that charges a person with being a violent habitual
37 felon must set forth the date that prior violent felonies were
38 committed, the name of the state or other sovereign against whom
39 the violent felonies were committed, the dates of convictions of
40 the violent felonies, and the identity of the court in which the

1 convictions took place. A defendant charged with being a violent
2 habitual felon in a bill of indictment shall not be required ~~to~~
3 ~~go to trial on~~ defend that charge within 20 days after the
4 finding of a true bill by the grand jury unless the defendant
5 waives this 20-day period."

6 Section 4. G.S. 14-7.11 reads as rewritten:

7 "§ 14-7.11. Verdict and judgment.

8 When an indictment charges a violent habitual felon with a
9 violent felony as provided in this Article and an indictment also
10 charges that the person is a violent habitual felon as provided
11 in this Article, the defendant shall be tried for the principal
12 violent felony as provided by law. The indictment that the
13 person is a violent habitual felon shall not be revealed to the
14 jury ~~unless the jury finds that the defendant is guilty of the~~
15 ~~principal violent felony or another violent felony with which the~~
16 ~~defendant is charged.~~ at any time. If the jury finds the
17 defendant guilty of a violent felony, the bill of indictment
18 charging the defendant as a violent habitual felon ~~may be~~
19 ~~presented to the same jury. Except that the same jury may be~~
20 ~~used, the proceedings shall be as if the issue of violent~~
21 ~~habitual felon were a principal charge.~~ shall be tried before
22 the trial judge without a jury. If the jury trial judge finds by
23 a preponderance of the evidence that the defendant is a violent
24 habitual felon, the trial judge shall enter judgment according to
25 the provisions of this Article. If the jury trial judge finds
26 that the defendant is not a violent habitual felon, the trial
27 judge shall pronounce judgment on the principal violent felony or
28 felonies as provided by law."

29 Section 5. This act is effective December 1, 1997, and
30 applies to sentencing for offenses committed on or after that
31 date.

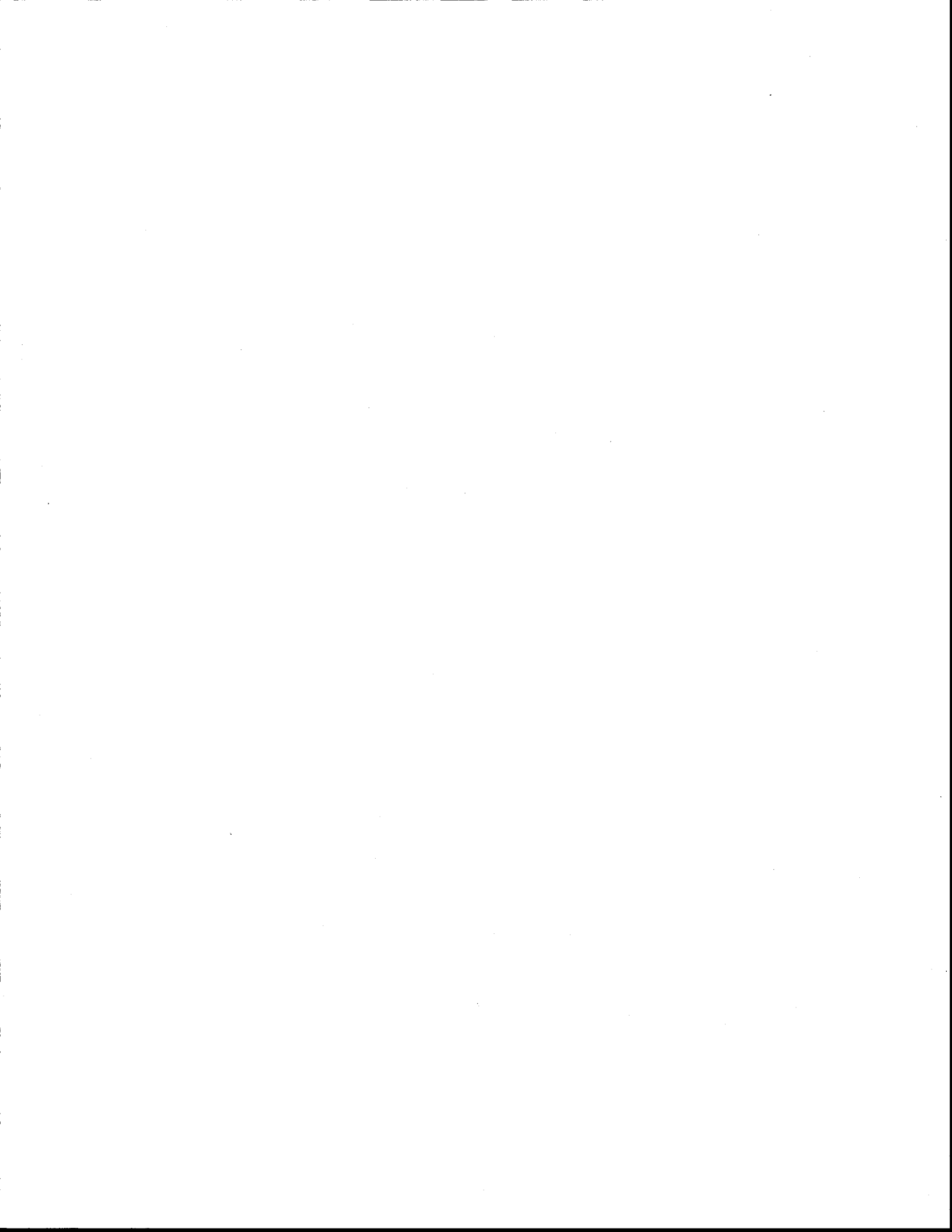
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ANALYSIS OF PROPOSED LEGISLATION

Under current law, a defendant charged with a felony may also be charged with being an habitual felon or a violent habitual felon depending on the defendant's prior felony record. However, if a charge of habitual or violent habitual felon is made, it is treated as a separate proceeding which ultimately must be determined separately by the jury.

The propose legislation amends Chapter 14 of the General Statutes to provide that the charge of habitual felon or violent habitual felon is tried before the trial judge without a jury.

APPENDIX G



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H/S

D

97-RGZ-008(1.24)

THIS IS A DRAFT 5-FEB-97 10:32:03

Short Title: Restitution/Civil Judgment.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE ENFORCEMENT OF AN ORDER FOR RESTITUTION IN A
3 CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT, TO CREATE
4 AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF SUCH
5 A JUDGMENT, AND TO CHANGE THE ORDER OF PRIORITY FOR
6 DISBURSEMENT OF FUNDS IN A CRIMINAL CASE.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 15A-1343(d) reads as rewritten:
9 "(d) Restitution as a Condition of Probation. -- As a
10 condition of probation, a defendant may be required to make
11 restitution or reparation to an aggrieved party or parties who
12 shall be named by the court for the damage or loss caused by the
13 defendant arising out of the offense or offenses committed by the
14 defendant. When restitution or reparation is a condition
15 imposed, the court shall hold a hearing to determine the amount
16 of restitution or reparation due the aggrieved party or parties.
17 The court shall take into consideration the resources of the
18 defendant, including all real and personal property owned by the
19 defendant and the income derived from such property, his ability
20 to earn, his obligation to support dependents, and such other

1 matters as shall pertain to his ability to make restitution or
2 reparation, but the court is not required to make findings of
3 fact or conclusions of law on these matters when the sentence is
4 imposed. The amount must be limited to that supported by the
5 record, and the court may order partial restitution or reparation
6 when it appears that the damage or loss caused by the offense or
7 offenses is greater than that which the defendant is able to pay.
8 An order providing for restitution or reparation, as a condition
9 of supervised or unsupervised probation, except an order
10 resulting from a worthless check, may be enforced in the same
11 manner as a civil judgment as provided in this subsection. Upon a
12 finding that restitution in a sum certain remains due and
13 payable, and that the defendant's probation should be terminated
14 or revoked, the judge presiding at the probation termination or
15 revocation hearing shall order that a judgment be docketed
16 pursuant to G.S. 1-233 et seq. in the county of the original
17 conviction as of the date of notification to the clerk in that
18 county. The clerk shall add to the amount of the judgment to be
19 docketed amounts equal to the standard fees for docketing,
20 copying, certification, and mailing, as appropriate, and shall
21 collect any other fees or charges incurred as in the enforcement
22 of other civil judgments. The clerk shall notify the victim by
23 first class mail at the victim's last known address of the
24 docketing of the judgment and provide the victim with a certified
25 copy of the order directing entry of the civil judgment. A civil
26 judgment under this section shall be reduced by any payments made
27 by the defendant pursuant to the criminal case, including
28 payments made pursuant to work release privileges. An order
29 providing for restitution or reparation shall in no way abridge
30 the right of any aggrieved party to bring a civil action against
31 the defendant for money damages arising out of the offense or
32 offenses committed by the defendant, but any amount paid by the
33 defendant under the terms of an order or judgment as provided
34 herein shall be credited against any judgment rendered against
35 the defendant in such civil action. As used herein,
36 'restitution' shall mean (i) compensation for damage or loss as
37 could ordinarily be recovered by an aggrieved party in a civil
38 action, and (ii) reimbursement to the State for the total amount
39 of a judgment authorized by G.S. 7A-455(b). As used herein,
40 'reparation' shall include but not be limited to the performing

1 of community services, volunteer work, or doing such other acts
2 or things as shall aid the defendant in his rehabilitation. As
3 used herein 'aggrieved party' includes individuals, firms,
4 corporations, associations, other organizations, and government
5 agencies, whether federal, State or local, including the Crime
6 Victims Compensation Fund established by G.S. 15B-23. Provided,
7 that no government agency shall benefit by way of restitution
8 except for particular damage or loss to it over and above its
9 normal operating costs and except that the State may receive
10 restitution for the total amount of a judgment authorized by G.S.
11 7A-455(b). A government agency may benefit by way of reparation
12 even though the agency was not a party to the crime provided that
13 when reparation is ordered, community service work shall be
14 rendered only after approval has been granted by the owner or
15 person in charge of the property or premises where the work will
16 be done. Provided further, that no third party shall benefit by
17 way of restitution or reparation as a result of the liability of
18 that third party to pay indemnity to an aggrieved party for the
19 damage or loss caused by the defendant, but the liability of a
20 third party to pay indemnity to an aggrieved party or any payment
21 of indemnity actually made by a third party to an aggrieved party
22 does not prohibit or limit in any way the power of the court to
23 require the defendant to make complete and full restitution or
24 reparation to the aggrieved party for the total amount of the
25 damage or loss caused by the defendant. Restitution or
26 reparation measures are ancillary remedies to promote
27 rehabilitation of criminal offenders, to provide for compensation
28 to victims of crime, and to reimburse the Crime Victims
29 Compensation Fund established by G.S. 15B-23, and shall not be
30 construed to be a fine or other punishment as provided for in the
31 Constitution and laws of this State."

32 Section 2. G.S. 148-57.1 is amended by adding a new
33 subsection (b1) to read:

34 "(b1) If the Post-Release Supervision and Parole Commission
35 imposes restitution as a condition of parole or post-release
36 supervision, the Commission shall notify the sentencing court of
37 the restitution including the amount of restitution. The
38 sentencing court shall order the clerk of court in the county of
39 conviction to docket a civil judgment pursuant to G.S. 1-233 et
40 seq. in the amount of restitution. The clerk shall add to the

1 amount of the judgment to be docketed amounts equal to the
2 standard fees for docketing, copying, certification, and mailing,
3 as appropriate, and shall collect any other fees or charges
4 incurred as in the enforcement of other civil judgments. The
5 clerk shall notify the victim by first class mail at the victim's
6 last known address of the docketing of the judgment and provide
7 the victim with a certified copy of the order directing entry of
8 the civil judgment. An order providing for a civil judgment under
9 this subsection shall in no way abridge the right of any
10 aggrieved party to bring a civil action against the defendant for
11 money damages arising out of the offense or offenses committed by
12 the defendant, but any amount paid by the defendant under the
13 terms of a civil judgment as provided herein shall be credited
14 against any judgment rendered against the defendant in such civil
15 action."

16 Section 3. G.S. 1C-1601(e) reads as rewritten:

17 (e) Exceptions. -- The exemptions provided in this Article are
18 inapplicable to claims

- 19 (1) Of the United States or its agencies as provided by
20 federal law;
- 21 (2) Of the State or its subdivisions for taxes,
22 appearance bonds or fiduciary bonds;
- 23 (3) Of lien by a laborer for work done and performed
24 for the person claiming the exemption, but only as
25 to the specific property affected;
- 26 (4) Of lien by a mechanic for work done on the
27 premises, but only as to the specific property
28 affected;
- 29 (5) For payment of obligations contracted for the
30 purchase of the specific real property affected;
- 31 (6) Repealed by Session Laws 1981 (Regular Session,
32 1982), c. 1224, s. 6, effective September 1, 1982;
- 33 (7) For contractual security interests in the specific
34 property affected; provided, that the exemptions
35 shall apply to the debtor's household goods
36 notwithstanding any contract for a nonpossessory,
37 nonpurchase money security interest in any such
38 goods;
- 39 (8) For statutory liens, on the specific property
40 affected, other than judicial liens;

- 1 (9) For child support, alimony or distributive award
2 order pursuant to Chapter 50 of the General
3 ~~Statutes.~~ Statutes;
4 (10) For criminal restitution orders docketed as civil
5 judgments pursuant to G.S. 15A-1343(d).

6 Section 4. G.S. 7A-304(d) reads as rewritten:

7 (d) In any criminal case in which the liability for costs,
8 fines, restitution, or any other lawful charge has been finally
9 determined, the clerk of superior court shall, unless otherwise
10 ordered by the presiding judge, disburse such funds when paid in
11 accordance with the following priorities:

- 12 (1) Sums in restitution prorated among the persons
13 entitled thereto;
14 ~~(1)~~(2) Costs due the county;
15 ~~(2)~~(3) Costs due the city;
16 ~~(3)~~(4) Fines to the county school fund;
17 ~~(4)~~ ~~Sums in restitution prorated among the persons~~
18 ~~entitled thereto;~~
19 (5) Costs due the State;
20 (6) Attorney's fees.

21 Sums in restitution received by the clerk of superior court
22 shall be disbursed when:

- 23 (1) Complete restitution has been received; or
24 (2) When, in the opinion of the clerk, additional
25 payments in restitution will not be collected;
26 or
27 (3) Upon the request of the person or persons
28 entitled thereto; and
29 (4) In any event, at least once each calendar
30 year.

31 Section 5. This act becomes effective December 1, 1997,
32 and applies to offenses committed on or after that date.

ANALYSIS OF PROPOSED LEGISLATION

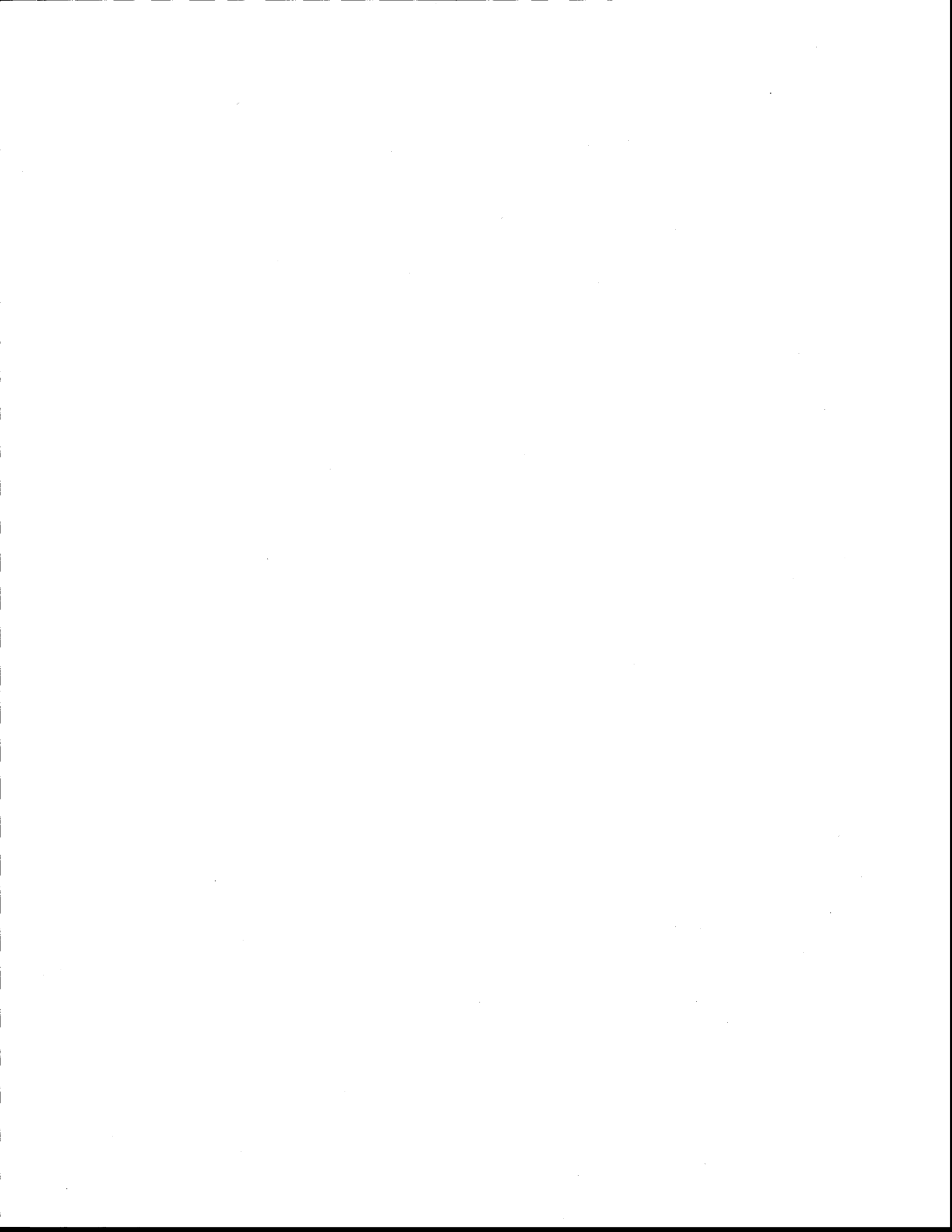
G.S. 15A-1343(d) provides the process by which a court may order restitution to a victim as a condition of a defendant's probation. G.S. 148-57.1 allows a judge to make a recommendation of restitution as a condition of parole or post release supervision. If the judge makes a recommendation of restitution, the Post-Release Supervision and Parole Commission has the authority to make restitution a condition of parole or post-release supervision.

For probationary sentences, section 1 of the proposed legislation amends G.S. 15A-1343(d) to require a judge, upon termination or revocation of probation, to order the docketing of a civil judgment against the defendant in the amount of restitution owed. For active sentences, section 2 amends G.S. 148-57.1 to require the Post-Release Supervision and Parole Commission to notify the sentencing court of a restitution order. The sentencing court then orders the clerk to docket a civil judgment in the amount of the order of restitution issued by the Commission. Under both sections, the clerk may add to the judgment amounts equal to standard fees or charges incurred in the enforcement of judgments.

Section 3 of the proposed legislation would provide an exception to the exemptions from execution for these civil judgments.

Section 4 provides that of the funds paid into the court by a defendant, restitution to the victim will be disbursed first, before other costs and fines. Current law provides that restitution is disbursed fourth, after costs due the county, costs due the city, and fines to the county school fund.

APPENDIX H



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RGZ-009(1.24)
THIS IS A DRAFT 29-JAN-97 16:34:45

Short Title: Domestic Violence/Pretrial Release. (Public)

Sponsors:

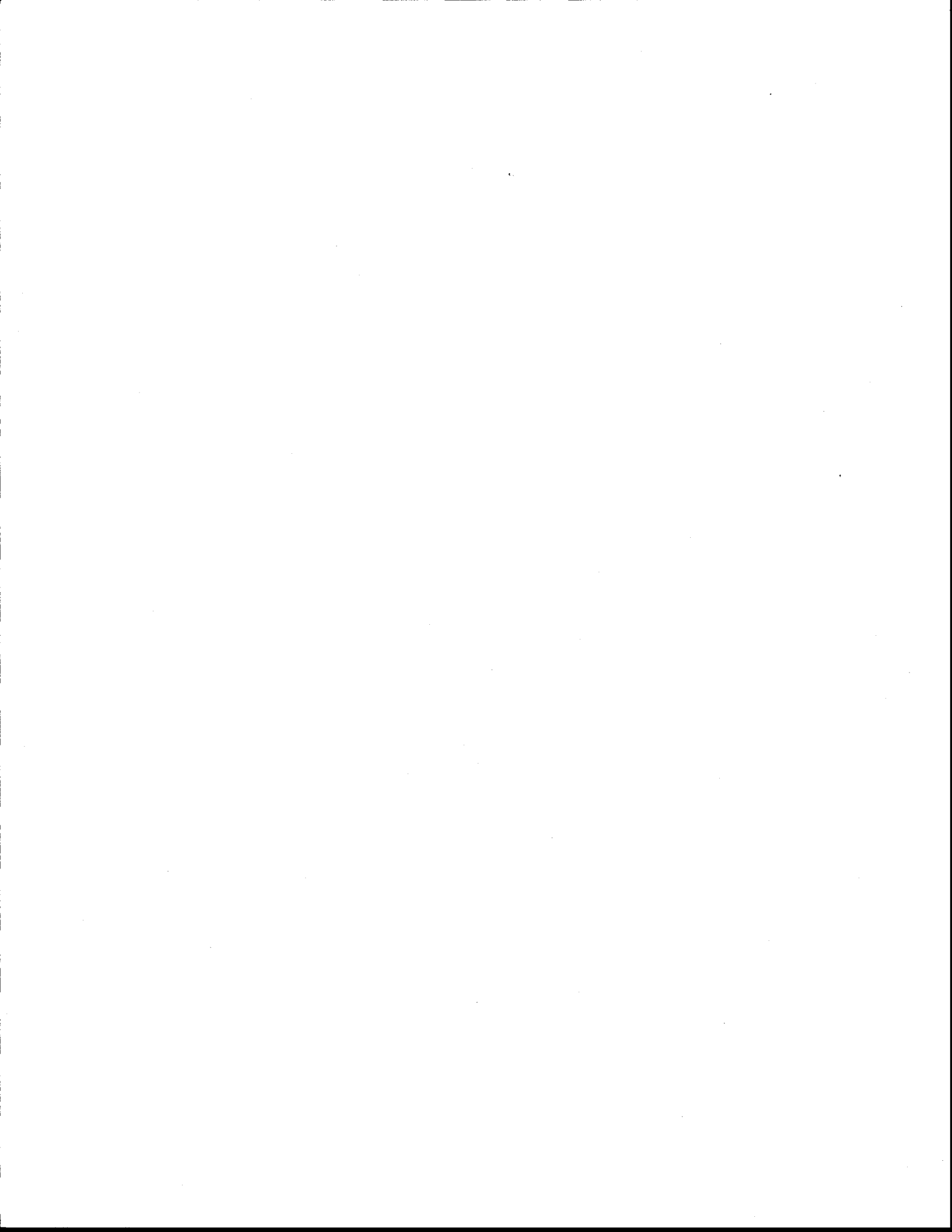
Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO DECREASE THE PERIOD OF TIME IN DOMESTIC VIOLENCE CASES
3 THAT A DEFENDANT MAY BE HELD IN CUSTODY WITHOUT A DETERMINATION
4 OF PRETRIAL RELEASE BY A JUDGE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 15A-534.1(b) reads as rewritten:
7 "(b) A defendant may be retained in custody not more than 48
8 12 hours from the time of arrest without a determination being
9 made under this section by a judge. If a judge has not acted
10 pursuant to this section within 48 12 hours of arrest, the
11 magistrate shall act under the provisions of this section."
12 Sec. 2. This act becomes effective July 1, 1997.

ANALYSIS OF PROPOSED LEGISLATION

Under G.S. 15A-534.1, a determination of pretrial release and bail in domestic violence cases may only be made by a judge during the first 48 hours following arrest. If the judge has not acted within 48 hours of the defendant's arrest, the magistrate may then make a determination of pretrial release. The proposed legislation amends G.S. 15A-534.1(b) to decrease this period from 48 hours to 12 hours.

APPENDIX I



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RSZ-004, mlm

THIS IS A DRAFT 31-JAN-97 16:17:49

Short Title: Court Information Remote Access

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF
3 THE COURTS TO CONTRACT WITH THIRD PARTIES TO PROVIDE REMOTE
4 ELECTRONIC ACCESS TO COURT INFORMATION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 7A-109 reads as rewritten:
7 "**§7A-109. Record-keeping procedures.**
8 (a) Each clerk shall maintain such records, files, dockets and
9 indexes as are prescribed by rules of the Director of the
10 Administrative Office of the Courts. Except as prohibited by law,
11 these records shall be open to the inspection of the public during
12 regular office hours, and shall include civil actions, special
13 proceedings, estates, criminal actions, juvenile actions, minutes of
14 the court, judgments, liens, lis pendens, and all other records
15 required by law to be maintained. The rules prescribed by the Director
16 shall be designed to accomplish the following purposes:
17 (1) To provide an accurate record of every determinative legal
18 action, proceeding, or event which may affect the person or
19 property of any individual, firm, corporation, or association;
20 (2) To provide a record during the pendency of a case that allows
21 for the efficient handling of the matter by the court from its

- 1 initiation to conclusion and also affords information as to
2 the progress of the case;
- 3 (3) To provide security against the loss or destruction of
4 original documents during their useful life and a permanent
5 record for historical uses;
- 6 (4) To provide a system of indexing that will afford adequate
7 access to all records maintained by the clerk;
- 8 (5) To provide, to the extent possible, for the maintenance of
9 records affecting the same action or proceeding in one rather
10 than several units; and
- 11 (6) To provide a reservoir of information useful to those
12 interested in measuring the effectiveness of the laws and the
13 efficiency of the courts in administering them.
- 14 (b) The rules shall provide for indexing according to the minimum
15 criteria set out below:
- 16 (1) Civil actions -- the names of all parties;
- 17 (2) Special proceedings -- the names of all parties;
- 18 (3) Administration of estates -- the name of the estate and in the
19 case of testacy the name of each devisee;
- 20 (4) Criminal actions -- the names of all defendants;
- 21 (5) Juvenile actions -- the names of all juveniles;
- 22 (6) Judgments, liens, lis pendens, etc. -- the names of all
23 parties against whom a lien has been created by the docketing
24 of a judgment, notice of lien, transcript, certificate, or
25 similar document and the names of all parties in those cases
26 in which a notice of lis pendens has been filed with the clerk
27 and abstracted on the judgment docket.
- 28 (c) The rules shall require that all documents received for
29 docketing shall be immediately indexed either on a permanent or
30 temporary index. The rules may prescribe any technological process
31 deemed appropriate for the economical and efficient indexing, storage
32 and retrieval of information.
- 33 (d) In order to facilitate public access to court records, except
34 where public access is prohibited by law, the Director may enter into
35 one or more non-exclusive contracts under reasonable cost recovery
36 terms with third parties to provide remote electronic access to the
37 records by the public."
- 38 Section 2. If any contracts entered into under G.S. 7A-
39 109(d) are in effect during any calendar year, the Director of the
40 Administrative Office of the Courts shall submit to the Joint

1 Legislative Commission on Governmental Operations not later than
2 February 1 of the following year a report on all those contracts.
3 Section 3. This act is effective upon ratification.

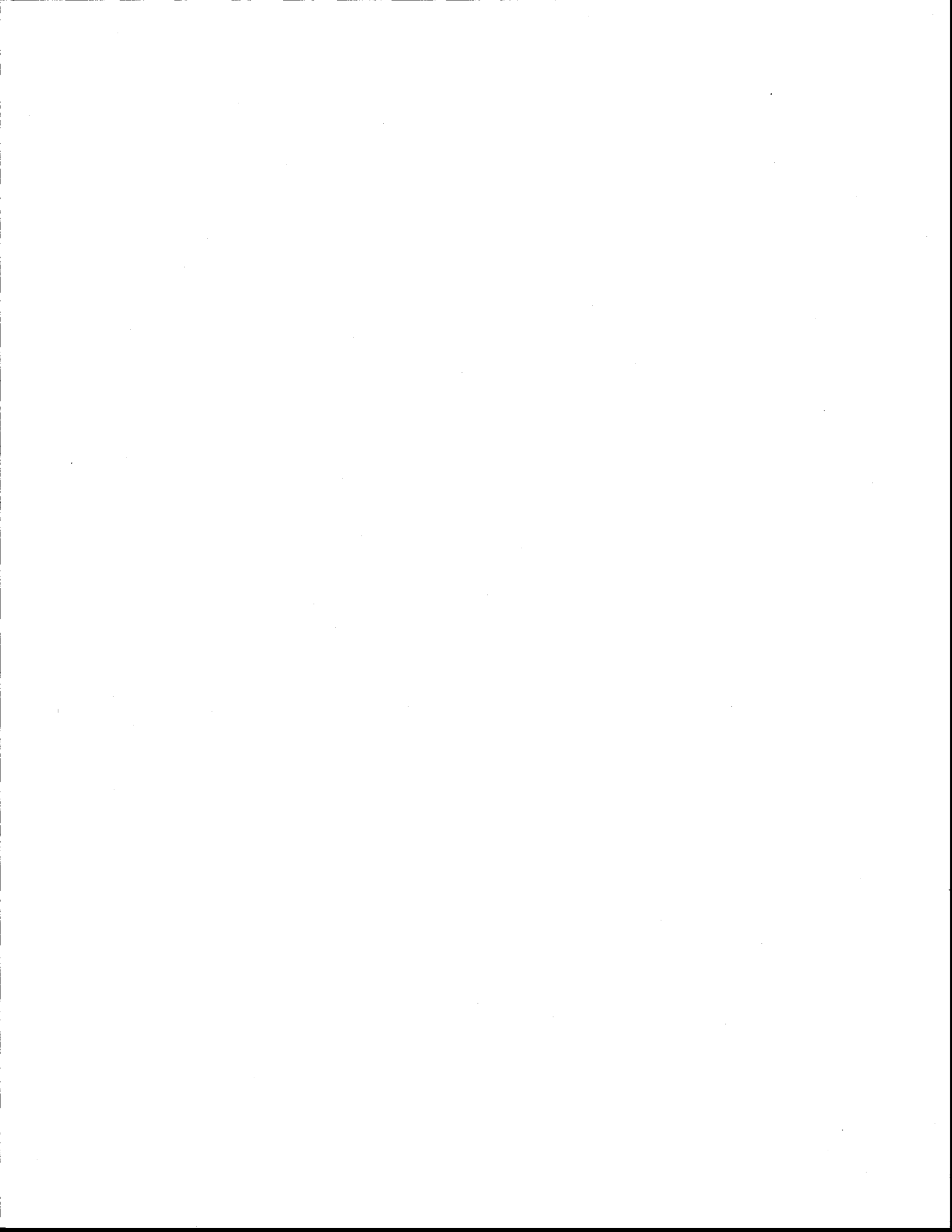
ANALYSIS OF PROPOSED LEGISLATION

This legislation would authorize the Director of the Administrative Office of the Courts to contract with third parties to provide remote electronic access by the public to court records, except where public access is prohibited by law. The contracts would include reasonable cost recovery terms.

The Director of the Administrative Office of the Courts would report yearly to the Joint Legislative Commission on Governmental Operations on all contracts.

The legislation would be effective when it becomes law.

APPENDIX J



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RSZ-005, mlm
THIS IS A DRAFT 31-JAN-97 16:17:15

Short Title: Jurisdictional Amount Increase (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN
3 DISTRICT AND SUPERIOR CIVIL COURTS AND TO MAKE CORRESPONDING
4 CHANGES TO THE RULES OF CIVIL PROCEDURE AND NONBINDING
5 ARBITRATION.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 7A-243 reads as rewritten:
8 "§ 7A-243. Proper division for trial of civil actions generally
9 determined by amount in controversy.
10 Except as otherwise provided in this Article, the district
11 court division is the proper division for the trial of all civil
12 actions in which the amount in controversy is ~~ten thousand~~
13 ~~dollars (\$10,000)~~ twenty-five thousand dollars (\$25,000) or less;
14 and the superior court division is the proper division for the
15 trial of all civil actions in which the amount in controversy
16 exceeds ~~ten thousand dollars (\$10,000)~~ twenty-five thousand
17 dollars (\$25,000).
18 For purposes of determining the amount in controversy, the
19 following rules apply whether the relief prayed is monetary or
20 nonmonetary, or both, and with respect to claims asserted by

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

- 3 (1) The amount in controversy is computed without
4 regard to interest and costs.
- 5 (2) Where monetary relief is prayed, the amount prayed
6 for is in controversy unless the pleading in
7 question shows to a legal certainty that the amount
8 claimed cannot be recovered under the applicable
9 measure of damages. The value of any property
10 seized in attachment, claim and delivery, or other
11 ancillary proceeding, is not in controversy and is
12 not considered in determining the amount in
13 controversy.
- 14 (3) Where no monetary relief is sought, but the relief
15 sought would establish, enforce, or avoid an
16 obligation, right or title, the value of the
17 obligation, right, or title is in controversy.
18 Where the owner or legal possessor of property
19 seeks recovery of property on which a lien is
20 asserted pursuant to G.S. 44A-4(a) the amount in
21 controversy is that portion of the asserted lien
22 which is disputed. The judge may require by rule or
23 order that parties make a good faith estimate of
24 the value of any nonmonetary relief sought.
- 25 (4) a. Except as provided in subparagraph c of this
26 subdivision, where a single party asserts two
27 or more properly joined claims, the claims are
28 aggregated in computing the amount in
29 controversy.
- 30 b. Except as provided in subparagraph c, where
31 there are two or more parties properly joined
32 in an action and their interests are aligned,
33 their claims are aggregated in computing the
34 amount in controversy.
- 35 c. No claims are aggregated ~~which~~ that are
36 mutually exclusive and in the alternative, or
37 ~~which~~ that are successive, in the sense that
38 satisfaction of one claim will bar recovery
39 upon the other.

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

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

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

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

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

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

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

1 "§ 7A-37.1. Statewide court-ordered, nonbinding arbitration in
2 certain civil actions.

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

9 (b) The Supreme Court of North Carolina may adopt rules
10 governing this procedure and may supervise its implementation and
11 operation through the Administrative Office of the Courts. These
12 rules shall ensure that no party is deprived of the right to jury
13 trial and that any party dissatisfied with an arbitration award
14 may have trial de novo.

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

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

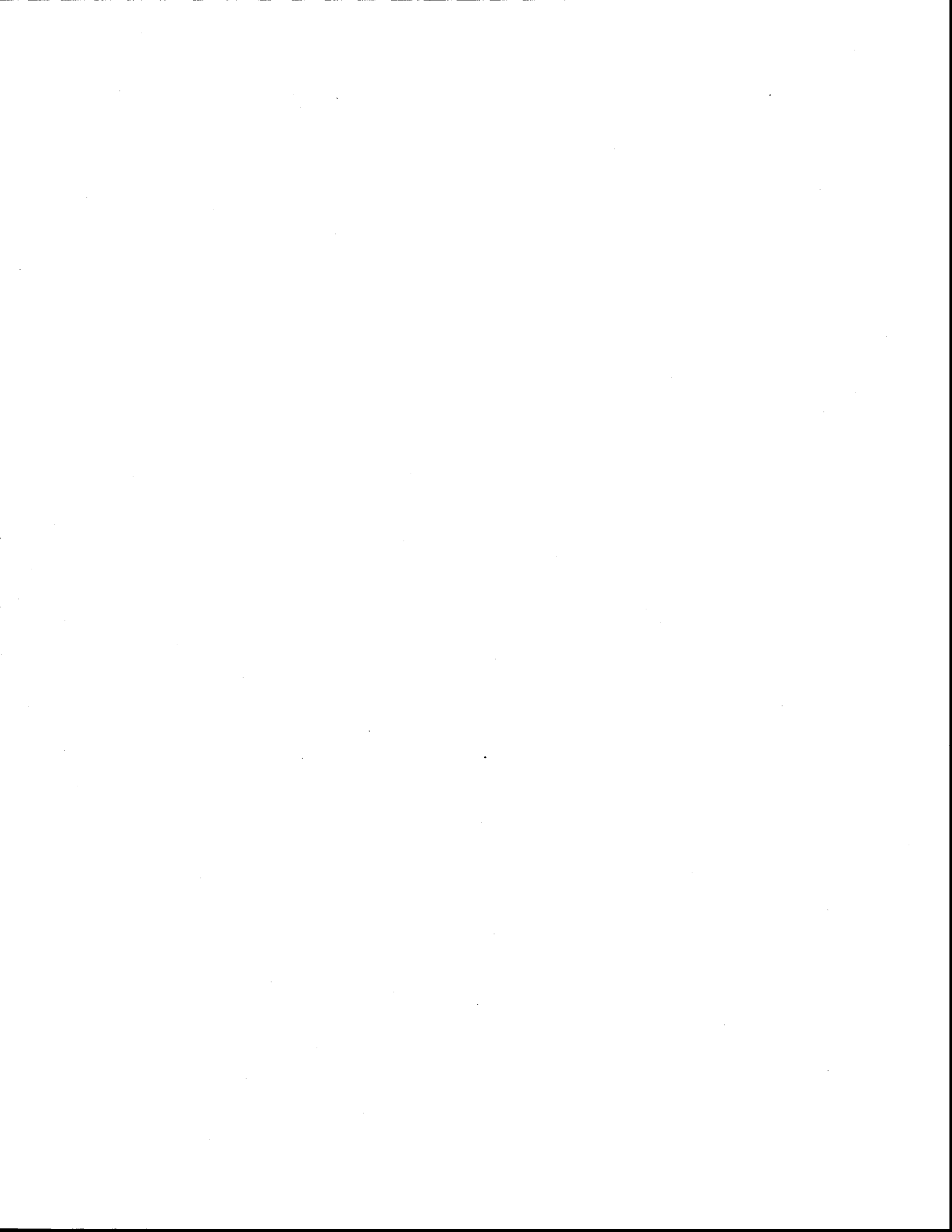
33 (e) Arbitrators in this procedure shall have the same immunity
34 as judges from civil liability for their official conduct."

35 Section 4. This act becomes effective October 1, 1997,
36 and applies to claims filed on or after that date.

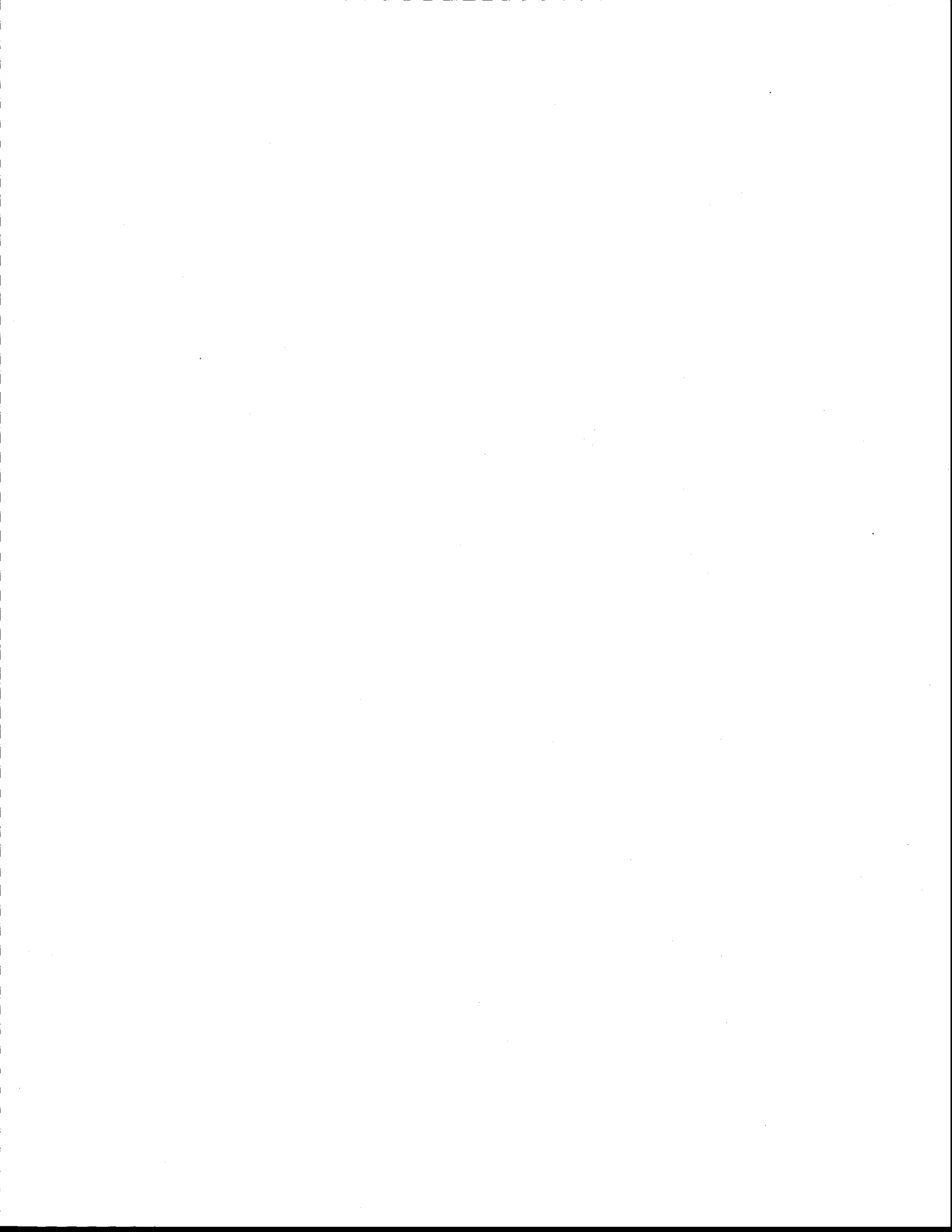
ANALYSIS OF PROPOSED LEGISLATION

This legislation would increase the amount in controversy for civil cases heard in district court from \$10,000 to \$25,000. It would also amend 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 would also authorize increases in the amount in controversy from \$15,000 to \$25,000 for civil cases that may be subject to court-ordered arbitration.

The legislation would be effective on October 1, 1997, and would apply to claims filed on or after that date.



APPENDIX K



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RGZ-006(1.24)
THIS IS A DRAFT 29-JAN-97 16:35:10

Short Title: Community Penalties/Record Checks. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW COMMUNITY PENALTIES PROGRAMS TO OBTAIN CRIMINAL
3 RECORD CHECKS OF TARGETED OFFENDERS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 7A of the General Statutes is amended
6 by adding the following new section to read:
7 "§ 7A-778. Criminal record checks of targeted offenders.
8 (a) The Department of Justice may provide to the director of a
9 local community penalties program established pursuant to G.S.
10 7A-772(b) a criminal record check of a targeted offender. The
11 fingerprints of the individual shall be forwarded to the State
12 Bureau of Investigation for a search of the State criminal
13 history record file and the State Bureau of Investigation shall
14 forward a set of fingerprints to the Federal Bureau of
15 Investigation for a national criminal history record check. The
16 community penalties program may use the information in preparing
17 a community penalties plan for the offender and may present the
18 information to the court for sentencing purposes, but the
19 information itself shall not be made a part of any public court
20 record.

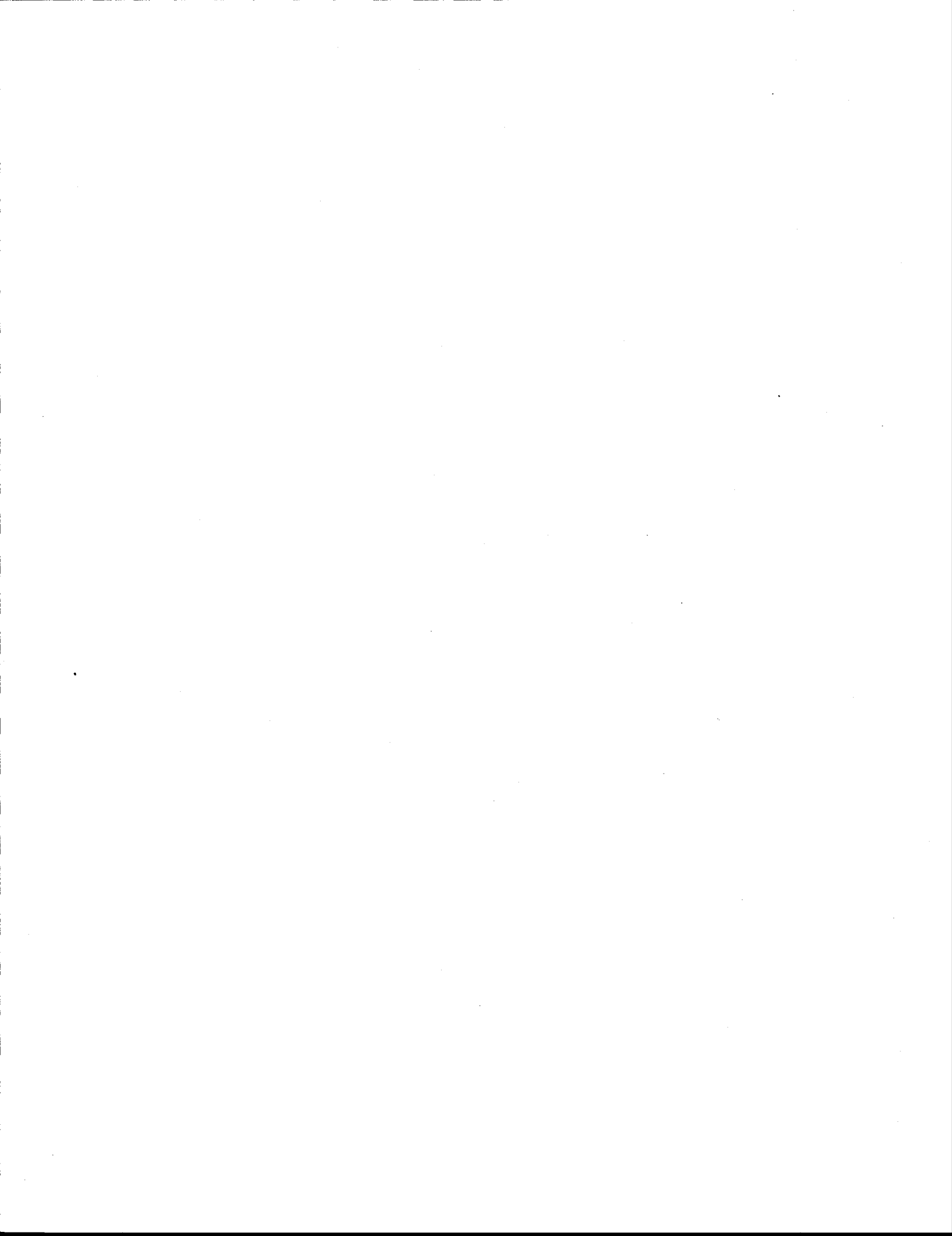
1 (b) The Department of Justice shall charge a reasonable fee for
2 conducting a criminal record check under this section. The fee
3 shall not exceed the actual cost of locating, editing,
4 researching, and retrieving the information. The fee shall be
5 paid by the offender as a condition of probation if the
6 offender's community penalties plan is approved by the court."

7 Sec. 2. This act is effective December 1, 1997.

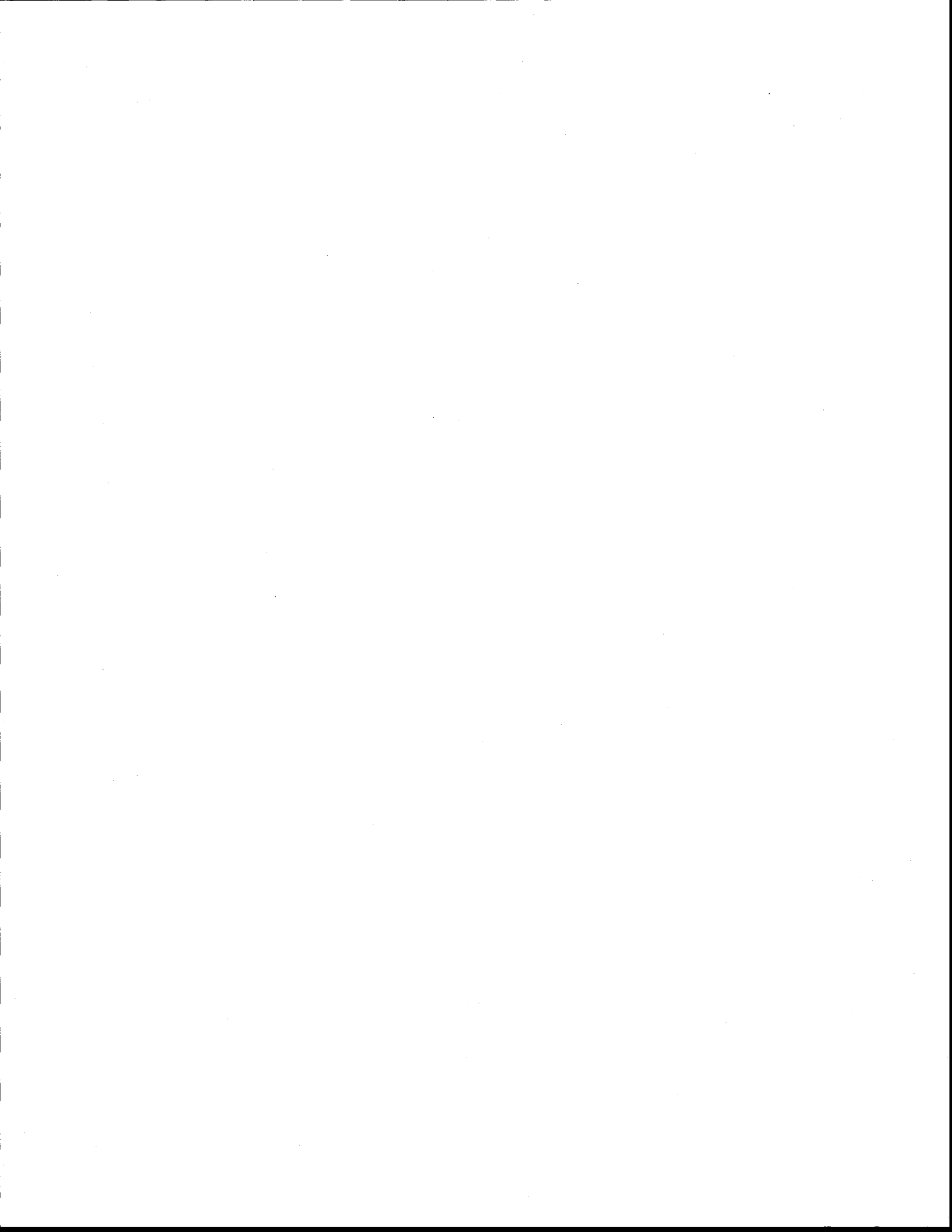
ANALYSIS OF PROPOSED LEGISLATION

Local community penalties programs prepare community penalty plans to be used by a judge as an alternative to incarceration. However, the local programs do not have access to Federal Bureau of Investigation (FBI) record checks to determine prior records of defendants. Under federal law, only law enforcement agencies or groups authorized by State statute may have access to such record checks.

The proposed legislation would add a new G.S. 7A-778 to authorize directors of local community penalties programs to receive criminal record checks. The Department of Justice, through the FBI, would provide the checks. The bill authorizes the Department to charge a reasonable fee for conducting the check.



APPENDIX L



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RSZ-006, mlm
THIS IS A DRAFT 31-JAN-97 16:16:41

Short Title: Waiver of Recording/Dist. Ct.

(Public)

Sponsors:

Referred to:

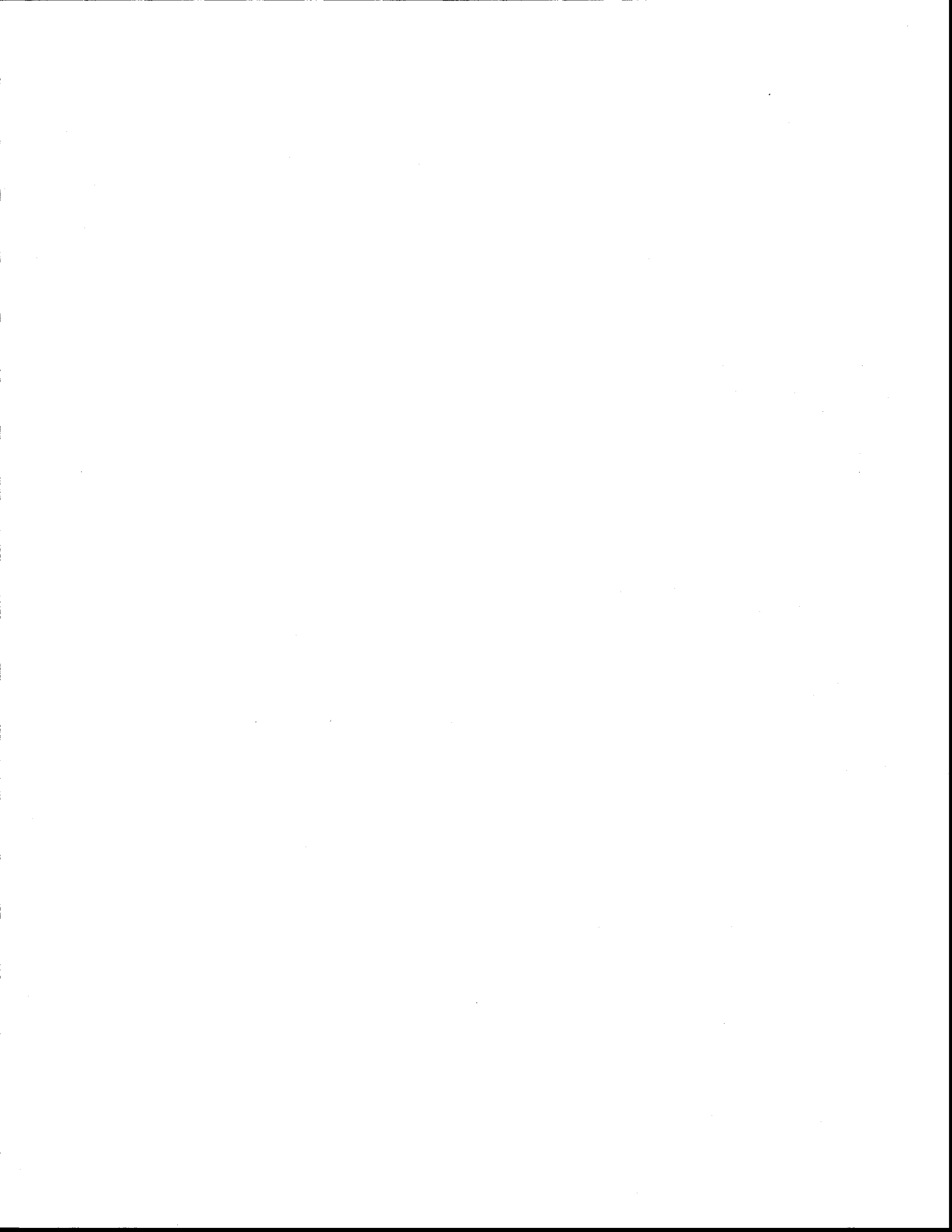
1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A CIVIL TRIAL IN DISTRICT COURT WILL NOT
3 BE REPORTED UNLESS A PARTY REQUESTS REPORTING IN WRITING OR THE
4 COURT ORDERS REPORTING.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 7A-198(d) reads as rewritten:
7 (d) Reporting of any trial ~~may be waived by consent of the~~
8 ~~parties.~~ is waived unless a party requests reporting in writing.
9 Except as otherwise provided in subsection (e), a trial shall be
10 reported if a party requests reporting in writing or if the
11 court, in its discretion, orders that the trial be reported.
12 Section 2. This act becomes effective October 1, 1997.

ANALYSIS OF PROPOSED LEGISLATION

This legislation would amend G.S. 7A-198(d) to provide that, except as provided in subsection (e), a civil trial in district court will not be reported unless a party requests in writing that it be reported or the court, in its discretion, orders that it be reported. Subsection (e) provides that trials before magistrates and hearings to adjudicate and dispose of infractions will not be reported.

The legislation would be effective on October 1, 1997.

APPENDIX M



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RGZ-003(1.24)
THIS IS A DRAFT 29-JAN-97 16:48:55

Short Title: Clerks/Year's Allowance.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSE'S AND CHILDREN'S
3 YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 30-16 reads as rewritten:
6 "§30-16. Duty of personal representative or magistrate to assign
7 allowance.
8 It shall be the duty of every administrator, collector, or
9 executor of a will, on application in writing, signed by the
10 surviving spouse, at any time within one year after the death of
11 the deceased spouse, to assign to the surviving spouse the year's
12 allowance as provided in this Article.
13 If there shall be no administration, or if the personal
14 representative shall fail or refuse to apply to a ~~magistrate,~~
15 magistrate or clerk of court, as provided in G.S. 30-20, for 10
16 days after the surviving spouse has filed the aforesaid
17 application, or if the surviving spouse is the personal
18 representative, the surviving spouse may make application to the
19 ~~magistrate,~~ magistrate or clerk, and it shall be the duty of the
20 magistrate or clerk to proceed in the same manner as though the
21 application had been made by the personal representative.

1 Where any personal property of the deceased spouse shall be
2 located outside the township or county where the deceased spouse
3 resided at the time of his death, the personal representative or
4 the surviving spouse may apply to any magistrate or to any clerk
5 of court of any township or county where such personal property
6 is located, and it shall be the duty of such magistrate or clerk
7 to assign the year's allowance as if the deceased spouse had
8 resided and died in that township."

9 Sec. 2. G.S. 30-17 reads as rewritten:

10 "§ 30-17. When children entitled to an allowance.

11 Whenever any parent dies leaving any child under the age of 18
12 years, including an adopted child or a child with whom the widow
13 may be pregnant at the death of her husband, or a child who is
14 less than 22 years of age and is a full-time student in any
15 educational institution, or a child under 21 years of age who has
16 been declared mentally incompetent, or a child under 21 years of
17 age who is totally disabled, or any other person under the age of
18 18 years residing with the deceased parent at the time of death
19 to whom the deceased parent or the surviving parent stood in loco
20 parentis, every such child shall be entitled, besides its share
21 of the estate of such deceased parent, to an allowance of two
22 thousand dollars (\$2,000) for its support for the year next
23 ensuing the death of such parent, less, however, the value of any
24 articles consumed by said child since the death of said parent.
25 Such allowance shall be exempt from any lien by judgment or
26 execution against the property of such parent. The personal
27 representative of the deceased parent, within one year after the
28 parent's death, shall assign to every such child the allowance
29 herein provided for; but if there is no personal representative
30 or if he fails or refuses to act within 10 days after written
31 request by a guardian or next friend on behalf of such child, the
32 allowance may be assigned by a ~~magistrate~~, magistrate or clerk of
33 court upon application of said guardian or next friend.

34 If the child resides with the widow of the deceased parent at
35 the time such allowance is paid, the allowance shall be paid to
36 said widow for the benefit of said child. If the child resides
37 with its surviving parent who is other than the widow of the
38 deceased parent, such allowance shall be paid to said surviving
39 parent for the use and benefit of such child, regardless of
40 whether the deceased died testate or intestate or whether the

1 widow dissented from the will. Provided, however, the allowance
2 shall not be available to an illegitimate child of a deceased
3 father, unless such deceased father shall have recognized the
4 paternity of such illegitimate child by deed, will or other
5 paper-writing. If the child does not reside with a parent when
6 the allowance is paid, it shall be paid to its general guardian,
7 if any, and if none, to the clerk of the superior court who shall
8 receive and disburse same for the benefit of such child.

9 Sec. 3. Part 2 of Article 4 of Chapter 30 of the General
10 Statutes reads as rewritten:

11

12 "Part 2. Assigned by ~~Magistrate.~~ Magistrate or Clerk.

13

14 "**§ 30-19. Value of property ascertained.**

15 The value of the personal property assigned to the surviving
16 spouse and children shall be ascertained by a magistrate or the
17 clerk of court of the county in which administration was granted
18 or the will probated.

19 "**§ 30-20. Procedure for assignment.**

20 Upon the application of the surviving spouse, a child by his
21 guardian or next friend, or the personal representative of the
22 deceased, the clerk of superior court of the county in which the
23 deceased resided ~~shall~~ may assign the inquiry to a magistrate of
24 the county. The magistrate or clerk of court shall shall, upon
25 assignment, ascertain the person or persons entitled to an
26 allowance according to the provisions of this Article, and
27 determine the money or other personal property of the estate, and
28 pay over to or assign to the surviving spouse and to the
29 children, if any, so much thereof as they shall be entitled to as
30 provided in this Article. Any deficiencies shall be made up from
31 any of the personal property of the deceased, and if the personal
32 property of the estate shall be insufficient to satisfy such
33 allowance, the clerk of the superior court shall enter judgment
34 against the personal representative for the amount of such
35 deficiency, to be paid when a sufficiency of such assets shall
36 come into his hands.

37 "**§ 30-21. Report of magistrate.**

38 The magistrate or clerk of court shall shall, upon assignment,
39 make and sign three lists of the money or other personal property
40 assigned to each person, stating their quantity and value, and

1 the deficiency to be paid by the personal representative. Where
2 the allowance is to the surviving spouse, one of these lists
3 shall be delivered to him. Where the allowance is to a child, one
4 of these lists shall be delivered to the surviving parent with
5 whom the child is living; or to the child's guardian or next
6 friend if the child is not living with said surviving parent; or
7 to the child if said child is not living with the surviving
8 parent and has no guardian or next friend. One list shall be
9 delivered to the personal representative. One list shall be
10 returned by the ~~magistrate,~~ magistrate or clerk, within 20 days
11 after the assignment, to the superior court of the county in
12 which administration was granted or the will probated, and the
13 clerk shall file and record the same, together with any judgment
14 entered pursuant to G.S. 30-20.

15 "§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.

16 "§ 30-23. Right of appeal.

17 The personal representative, or the surviving spouse, or child
18 by his guardian or next friend, or any creditor, legatee or heir
19 of the deceased, may appeal from the finding of the magistrate or
20 clerk of court to the superior court of the county, and, within
21 10 days after the assignment, cite the adverse party to appear
22 before such court on a certain day, not less than five nor
23 exceeding 10 days after the service of the citation.

24 "§ 30-24. Hearing on appeal.

25 At or before the day named, the appellant shall file with the
26 clerk a copy of the assignment and a statement of his exceptions
27 thereto, and the issues thereby raised shall be decided ~~as other~~
28 ~~issues are directed to be.~~ de novo. ~~When the issues shall have~~
29 ~~been decided, judgment shall be entered accordingly, if it may be~~
30 ~~without injustice, without remitting the proceedings to the~~
31 ~~magistrate.~~

32 "§ 30-25. Personal representative entitled to credit.

33 Upon the settlement of the accounts of the personal
34 representative, he shall be credited with the articles assigned,
35 and the value of the deficiency assessed as aforesaid, if the
36 same shall have been paid, unless the allowance be impeached for
37 fraud or gross negligence in him.

38 "§ 30-26. When above allowance is in full.

39 If the estate of a deceased be insolvent, or if his personal
40 estate does not exceed ten thousand dollars (\$10,000), the

1 allowances for the year's support of the surviving spouse and the
2 children shall not, in any case, exceed the value prescribed in
3 G.S. 30-15 and [G.S.] 30-17; and the allowances made to them as
4 above prescribed shall preclude them from any further
5 allowances."

6 Sec. 4. G.S. 7A-307(b1) reads as rewritten:

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

- 8 (1) Filing and indexing a will with no probate
- 9 -- first page..... \$ 1.00
- 10 -- each additional page or fraction thereof. .25
- 11 (2) Issuing letters to fiduciaries, per letter over
- 12 five
- 13 letters issued..... 1.00
- 14 (3) Inventory of safe deposits of a decedent, per box,
- 15 per day 15.00
- 16 (4) Taking a deposition..... 5.00
- 17 (5) Docketing and indexing a will probated in another
- 18 county in the State
- 19 -- first page..... 1.00
- 20 -- each additional page or fraction thereof. .25
- 21 (6) Hearing petition for year's allowance to surviving
- 22 spouse or child, in cases not assigned to a
- 23 magistrate, and allotting the same..... 4.00

24 Sec. 5. This act becomes effective October 1, 1997, and
25 applies to applications for year's allowances filed on or after
26 that date.

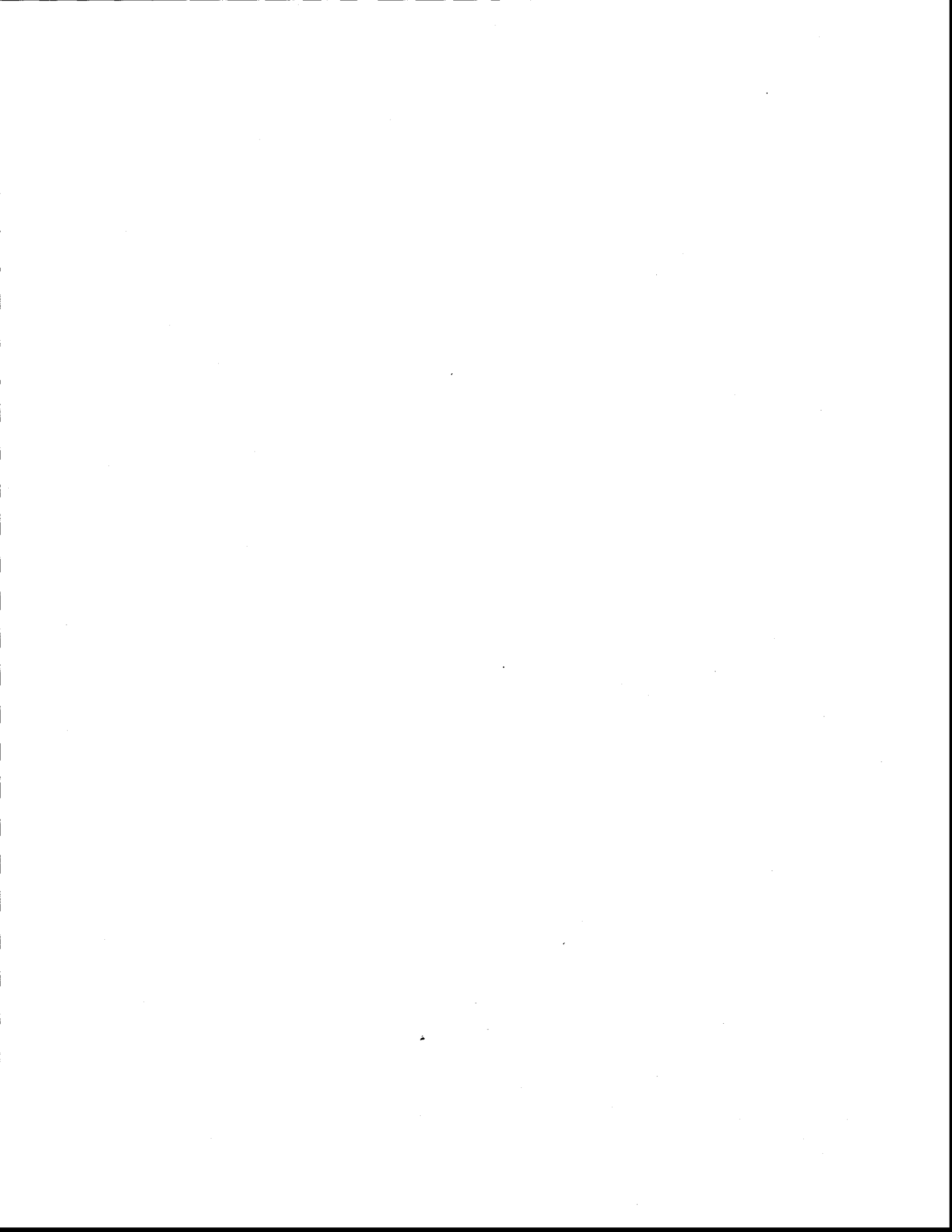
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ANALYSIS OF PROPOSED LEGISLATION

Article 4 of Chapter 30 governs the year's allowance given to the surviving spouse and children of an intestate or testator. A year's allowance is an amount (\$10,000 for a spouse, \$2,000 for a child) given from the personal property of the deceased to the deceased's spouse or children for their support. The allowance is exempt from any lien against the deceased's property.

Under current law, application is made to a magistrate to approve the year's allowance. The proposed legislation would amend Article 4 of Chapter 30 to allow a clerk, in addition to a magistrate, to approve a year's allowance. In many cases, the clerk actually performs the work on the application and is the proper person to approve the year's allowance. The bill authorizes the clerk to assess a fee of \$4.00 for hearing the application, which is the same fee charged by a magistrate under the current law.

APPENDIX N



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RGZ-005(1.24)
THIS IS A DRAFT 29-JAN-97 16:36:53

Short Title: Eliminate Certified Notice.

(Public)

Sponsors:

Referred to:

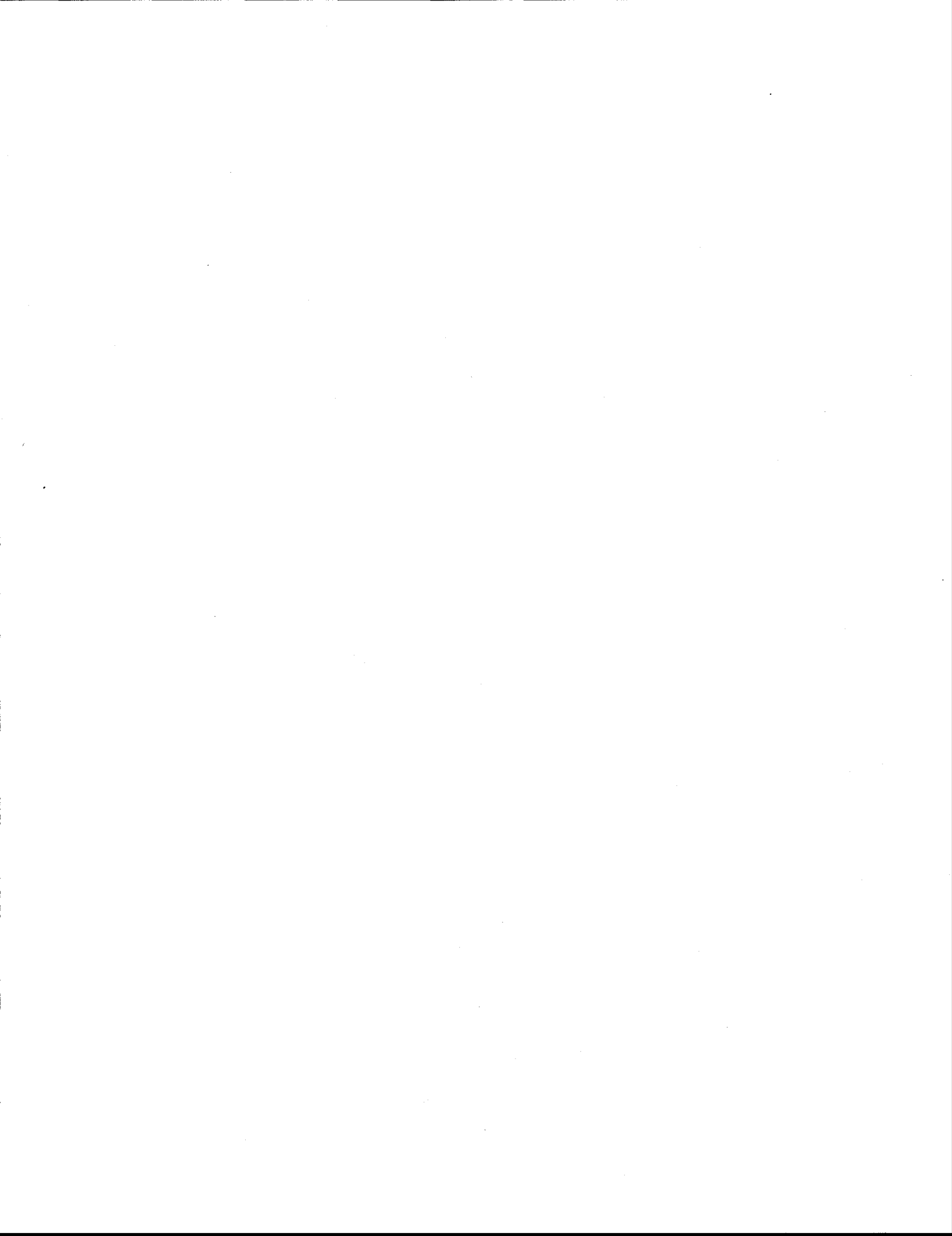
1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN
3 BOND FORFEITURE CASES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 15A-544(b) reads as rewritten:
6 "(b) If the principal does not comply with the conditions of
7 the bail bond, the court having jurisdiction must enter an order
8 declaring the bail to be forfeited. If forfeiture is ordered by
9 the court, a copy of the order of forfeiture and notice that
10 judgment will be entered upon the order after 60 days must be
11 served on each obligor. Service is to be made by the clerk
12 mailing by ~~certified mail, return receipt requested,~~ first class
13 mail a copy of the order of forfeiture and notice to each obligor
14 at each obligor's address as noted on the bond and note on the
15 original the date of mailing. Service is complete three days
16 after the mailing."
17 Sec. 2. This act is effective when it becomes law.

ANALYSIS OF PROPOSED LEGISLATION

Under changes made by the General Assembly during the 1995 Regular Session, an order of forfeiture of a bail bond must be served upon the defendant by certified mail, return receipt requested. Prior to the 1995 Session, service was attempted first by the sheriff, and if service was not obtained, the clerk mailed the order by regular mail. The legislature removed the requirement of attempted service by the sheriff and provided that service was to be made by certified mail.

The proposed legislation would delete the requirement of service by certified mail and allow service by first class mail. Service by certified mail often serves little purpose since the defendant has failed to appear in court and cannot be located.

APPENDIX O



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RSZ-007, mlm
THIS IS A DRAFT 31-JAN-97 16:16:08

Short Title: Cert. Copies/Custody & Wills

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE FILING AND REGISTRY OF CERTIFIED COPIES
3 OF OUT-OF-STATE CUSTODY DECREES AND FOR THE VALIDATION OF
4 CERTIFIED COPIES OF WILLS RECORDED WITHOUT PROBATE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 50A-15 reads as rewritten:
7 "§ 50A-15. Filing and enforcement of custody decree of another
8 state.
9 (a) An exemplified copy or a certified true copy of a custody
10 decree of another state may be filed in the office of the clerk
11 of any superior court of this State. The clerk shall treat the
12 decree in the same manner as a custody decree of a court of this
13 State. A custody decree so filed has the same effect and shall be
14 enforced in like manner as a custody decree rendered by a court
15 of this State.
16 (b) A person violating a custody decree of another state which
17 makes it necessary to enforce the decree in this State may be
18 required to pay necessary travel and other expenses, including
19 attorneys' fees, incurred by the party entitled to the custody or
20 such party's witnesses."

1 Section 2. G.S. 50A-16 reads as rewritten:
2 "§ 50A-16. Registry of out-of-state custody decrees and
3 proceedings.

4 The clerk of each superior court shall maintain a registry in
5 which ~~he~~ the clerk shall enter the following:

- 6 (1) Exemplified and certified true copies of custody
7 decrees of other states received for filing;
8 (2) Communications as to the pendency of custody
9 proceedings in other states;
10 (3) Communications concerning a finding of inconvenient
11 forum by a court of another state; and
12 (4) Other communications or documents concerning
13 custody proceedings in another state which may
14 affect the jurisdiction of a court of this State or
15 the disposition to be made by it in a custody
16 proceeding."

17 Section 3. G.S. 31-30 reads as rewritten:
18 "§31-30. Validation of wills recorded without probate by subscribing
19 witnesses.

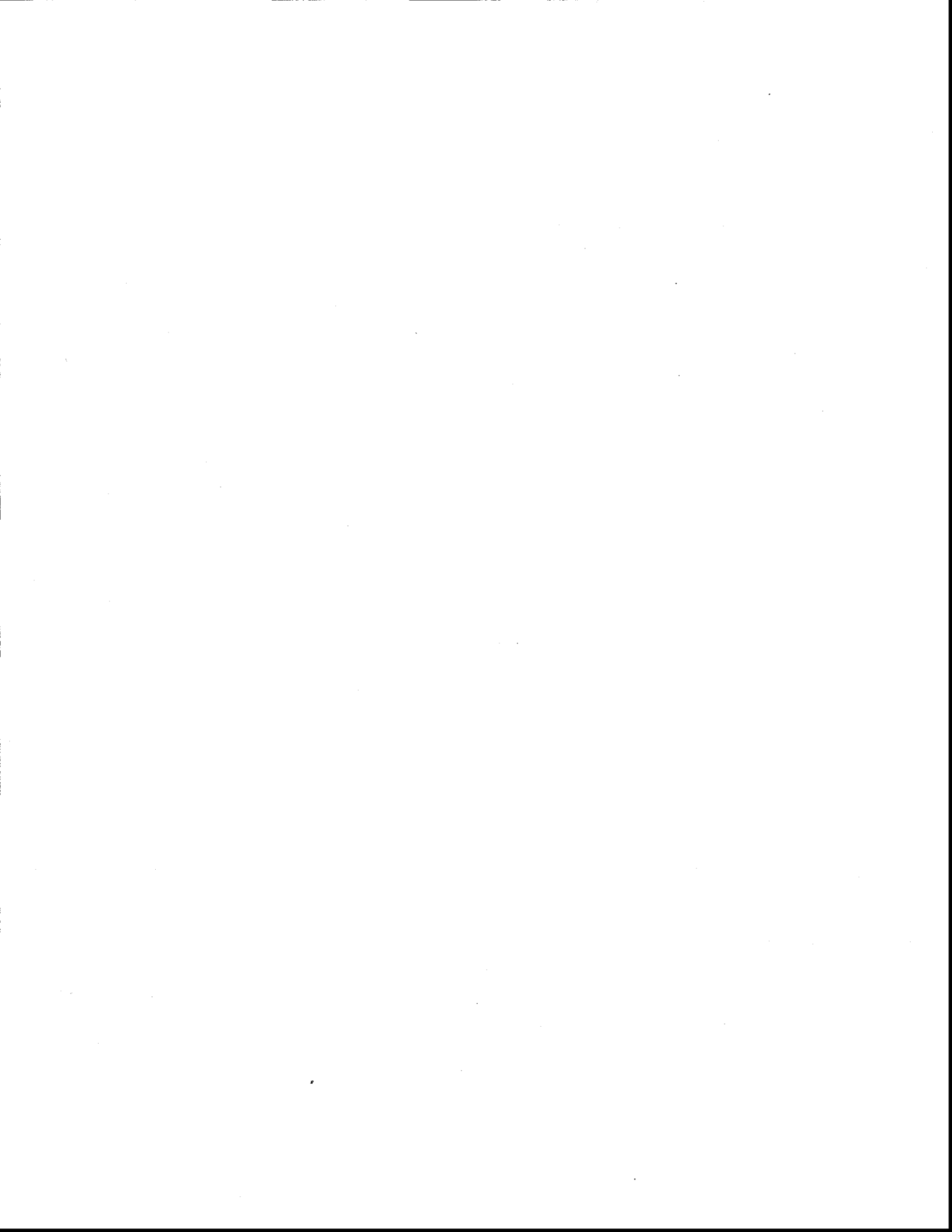
20 In all cases where wills and testaments were executed prior to the
21 first day of January, 1875, and which appear as recorded in the record
22 of last wills and testaments to have had two or more witnesses
23 thereto, and such last wills and testaments were admitted to probate
24 and recorded in the record of wills in the proper county in this State
25 prior to the first day of January, 1888, without having been duly
26 proven as provided by law, and such wills were presented to the clerk
27 of the superior court in any county in this State where the makers of
28 said wills owned property, and where the makers of such wills lived
29 and died, and were by such clerks recorded in the record of wills for
30 his county, said wills and testaments or exemplified copies or
31 certified true copies thereof, so recorded, if otherwise sufficient,
32 shall have the effect to pass the title to real or personal property,
33 or both, therein devised and bequeathed, to the same extent and as
34 completely as if the execution thereof had been duly proven by the two
35 subscribing witnesses thereto in the manner provided by law of this
36 State. Nothing herein shall be construed to prevent such wills from
37 being impeached for fraud."

38 Section 4. This act becomes effective October 1, 1997.

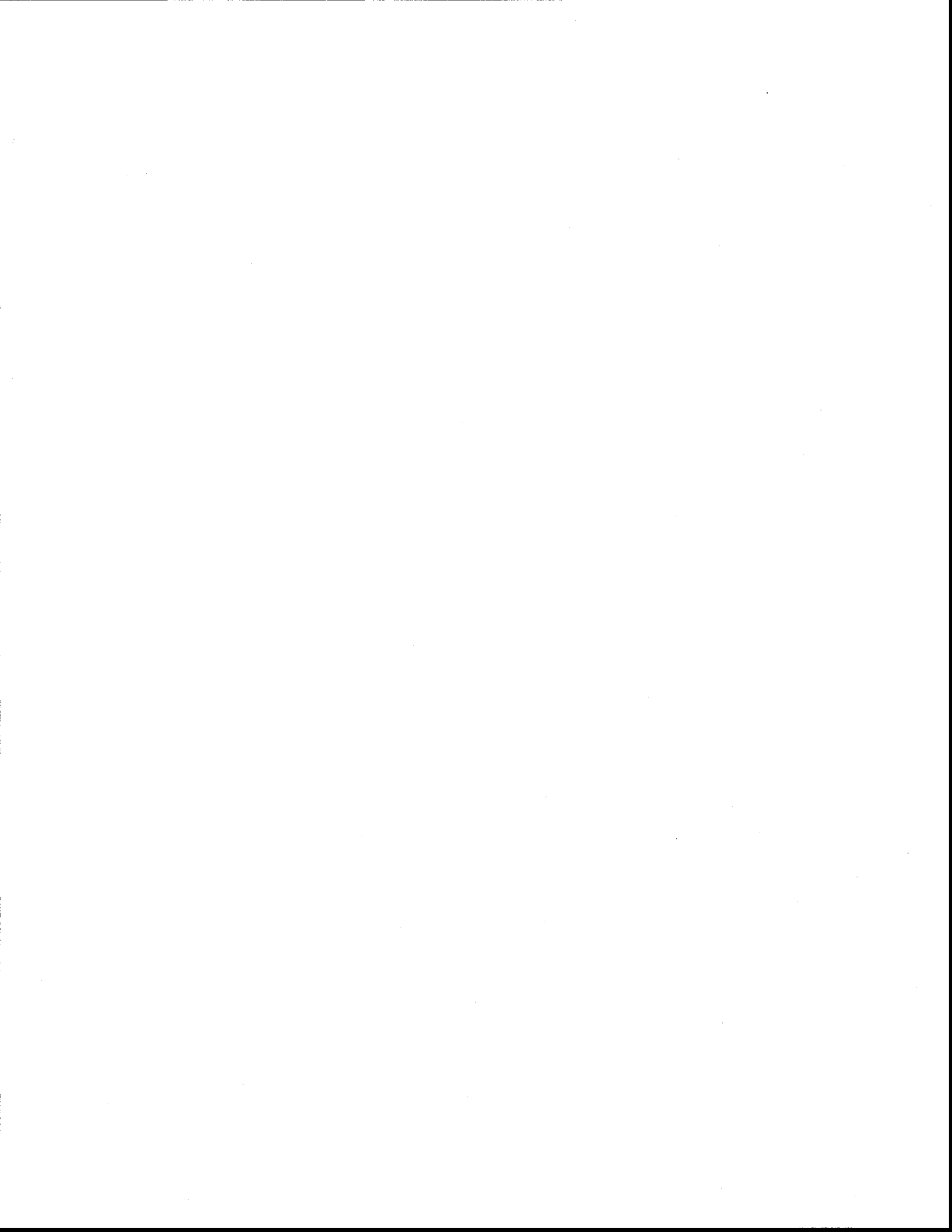
ANALYSIS OF PROPOSED LEGISLATION

This legislation would provide that certified true copies of certain documents will be treated the same as exemplified copies of those documents. First, it would amend G.S. 50A-15 and G.S. 50A-16 to allow a certified true copy of a decree of another state to be filed in a clerk of superior court's office and enforced as a custody decree of this state. Second, it would amend G.S. 31-30 to provide for validation of a certified true copy of a will recorded without probate.

The legislation would be effective on October 1, 1997.



APPENDIX P



1 determined by the formula is less than ten dollars
 2 (\$10.00), a minimum ten dollar (\$10.00) fee will be
 3 collected. If the amount determined by the formula
 4 is more than two hundred dollars (\$200.00), a
 5 maximum two hundred dollar (\$200.00) fee will be
 6 collected.

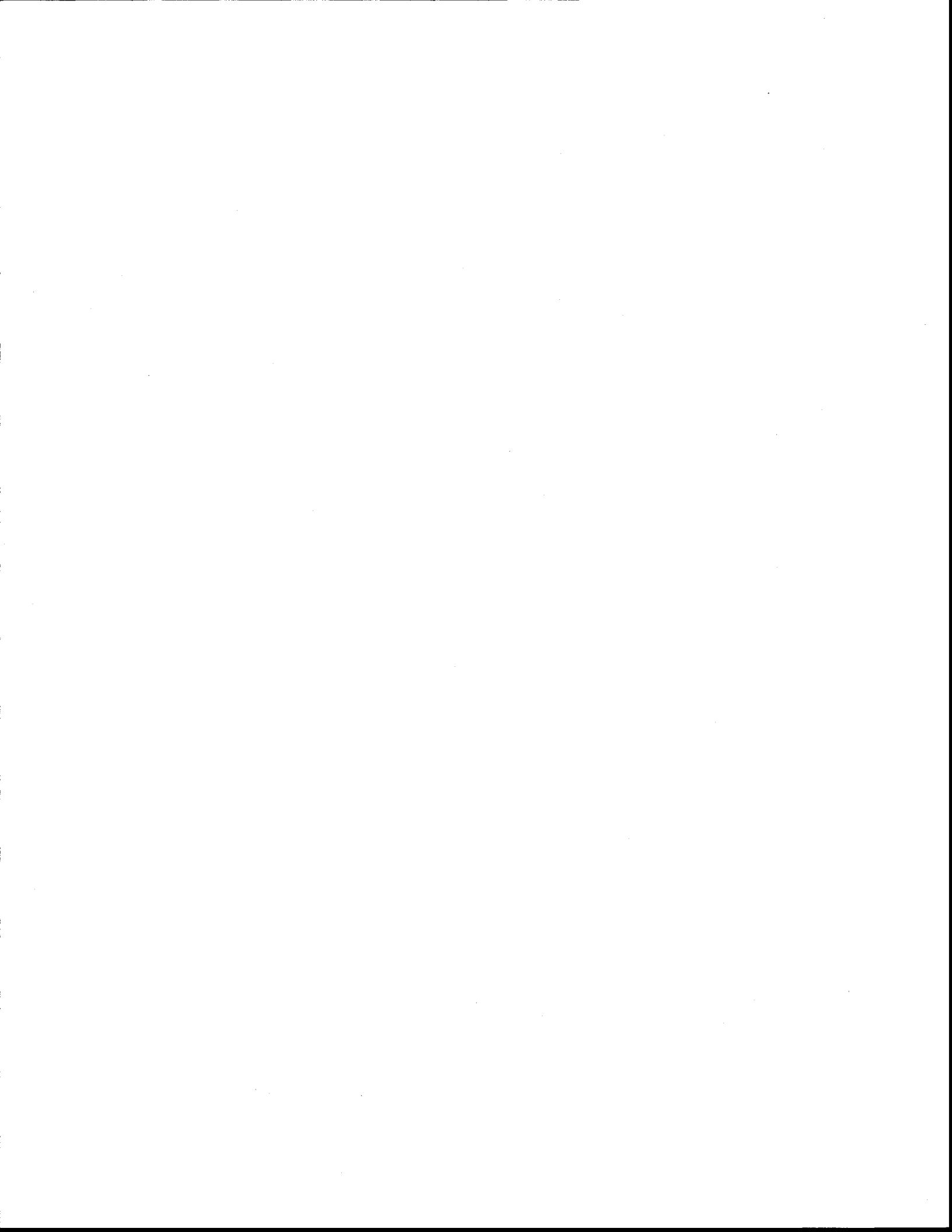
| | | |
|----|---|-------|
| 7 | (2) Proceeding supplemental to execution | 20.00 |
| 8 | (3) Confession of judgment | 15.00 |
| 9 | (4) Taking a deposition | 5.00 |
| 10 | (5) Execution | 15.00 |
| 11 | (6) Notice of resumption of former name | 5.00 |
| 12 | (7) Taking an acknowledgment or | |
| 13 | administering an oath, or both, with or | |
| 14 | without seal, each certificate (except | |
| 15 | that oaths of office shall be | |
| 16 | administered to public officials without | |
| 17 | charge) | 1.00 |
| 18 | (8) Bond, taking justification or approving | |
| 19 | 5.00 | |
| 20 | (9) Certificate, under seal | 2.00 |
| 21 | (10) Exemplification of records | 5.00 |
| 22 | (11) Recording or docketing (including | |
| 23 | indexing) any document | |
| 24 | -- first page | 4.00 |
| 25 | -- each additional page or fraction | |
| 26 | thereof | .25 |
| 27 | (12) Preparation of copies | |
| 28 | -- first page | 1.00 |
| 29 | -- each additional page or fraction | |
| 30 | thereof | .25 |
| 31 | (13) Preparation and docketing of transcript | |
| 32 | of judgment | 5.00 |
| 33 | (14) Substitution of trustee in deed of trust | |
| 34 | 5.00 | |
| 35 | (15) Execution of passport application -- the | |
| 36 | amount allowed by federal law | |
| 37 | (16) Repealed by Session Laws 1989, c. 783, | |
| 38 | s. 2. | |
| 39 | (17) Criminal record search except if search | |
| 40 | is requested by an agency of the State | |

ANALYSIS OF PROPOSED LEGISLATION

This legislation would raise the filing fee for foreclosure under power of sale in deed of trust or mortgage from \$25 to \$30. It would also provide for a minimum \$10 fee for property sold under the power of sale.

The legislation would be effective on October 1, 1997.

APPENDIX Q



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

97-RGZ-004(1.24)
THIS IS A DRAFT 10-APR-96

Short Title: Clerks of Court on Commissions.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY
3 ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND
4 THE GOVERNOR'S CRIME COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 164-37 reads as rewritten:
7 "**§ 164-37. Membership; chairman; meetings; quorum.**
8 The Commission shall consist of ~~28~~ 29 members as follows:
9 (1) The Chief Justice of the North Carolina Supreme
10 Court shall appoint a sitting or former Justice or
11 judge of the General Court of Justice, who shall
12 serve as Chairman of the Commission;
13 (2) The Chief Judge of the North Carolina Court of
14 Appeals, or another judge on the Court of Appeals,
15 serving as his designee;
16 (3) The Secretary of Correction or his designee;
17 (4) The Secretary of Crime Control and Public Safety or
18 his designee;
19 (5) The Chairman of the Parole Commission, or his
20 designee;

- 1 (6) The President of the Conference of Superior Court
2 Judges or his designee;
3 (7) The President of the District Court Judges
4 Association or his designee;
5 (8) The President of the North Carolina Sheriff's
6 Association or his designee;
7 (9) The President of the North Carolina Association of
8 Chiefs of Police or his designee;
9 (10) One member of the public at large, who is not
10 currently licensed to practice law in North
11 Carolina, to be appointed by the Governor;
12 (11) One member to be appointed by the Lieutenant
13 Governor;
14 (12) Three members of the House of Representatives, to
15 be appointed by the Speaker of the House;
16 (13) Three members of the Senate, to be appointed by the
17 President Pro Tempore of the Senate;
18 (14) The President Pro Tempore of the Senate shall
19 appoint the representative of the North Carolina
20 Community Sentencing Association that is
21 recommended by the President of that organization;
22 (15) The Speaker of the House of Representatives shall
23 appoint the member of the business community that
24 is recommended by the President of the North
25 Carolina Retail Merchants Association;
26 (16) The Chief Justice of the North Carolina Supreme
27 Court shall appoint the criminal defense attorney
28 that is recommended by the President of the North
29 Carolina Academy of Trial Lawyers;
30 (17) The President of the Conference of District
31 Attorneys or his designee;
32 (18) The Lieutenant Governor shall appoint the member of
33 the North Carolina Victim Assistance Network that
34 is recommended by the President of that
35 organization;
36 (19) A rehabilitated former prison inmate, to be
37 appointed by the Chairman of the Commission;
38 (20) The President of the North Carolina Association of
39 County Commissioners or his designee;

- 1 (21) The Governor shall appoint the member of the
2 academic community, with a background in criminal
3 justice or corrections policy, that is recommended
4 by the President of The University of North
5 Carolina;
- 6 (22) The Attorney General, or a member of his staff, to
7 be appointed by the Attorney General;
- 8 (23) The Governor shall appoint the member of the North
9 Carolina Bar Association that is recommended by the
10 President of that organization.
- 11 (24) A member of the Justice Fellowship Task Force, who
12 is a resident of North Carolina, to be appointed by
13 the Chairman of the Commission.
- 14 (25) The President of the Association of Clerks of
15 Superior Court of North Carolina, or his designee.
- 16 The Commission shall have its initial meeting no later than
17 September 1, 1990, at the call of the Chairman. The Commission
18 shall meet a minimum of four regular meetings each year. The
19 Commission may also hold special meetings at the call of the
20 Chairman, or by any four members of the Commission, upon such
21 notice and in such manner as may be fixed by the rules of the
22 Commission. A majority of the members of the Commission shall
23 constitute a quorum."
- 24 Sec. 2. G.S. 143B-273.6 reads as rewritten:
25 "§ 143B-273.6. State Criminal Justice Partnership Advisory
26 Board; members; terms; chairperson.
- 27 (a) There is created the State Criminal Justice Partnership
28 Advisory Board. The State Board shall act as an advisory body to
29 the Secretary with regards to this Article. The State Board
30 shall consist of ~~21~~ 22 members as follows:
- 31 (1) A member of the Senate.
32 (2) A member of the House of Representatives.
33 (3) A judge of the Superior Court.
34 (4) A judge of the district court.
35 (5) A district attorney.
36 (6) A criminal defense attorney.
37 (7) A county sheriff.
38 (8) A chief of a city police department.

- 1 (9) Two county commissioners, one from a predominantly
2 urban county and one from a predominantly rural
3 county.
4 (10) A representative of an existing community-based
5 corrections program.
6 (11) A member of the public who has been the victim of a
7 crime.
8 (12) A rehabilitated ex-offender.
9 (13) A member of the business community.
10 (14) Three members of the general public, one of whom is
11 a person recovering from chemical dependency or who
12 is a previous consumer of substance abuse treatment
13 services.
14 (15) A victim service provider.
15 (16) A member selected from each of the following
16 service areas: mental health, substance abuse, and
17 employment and training.
18 (17) A clerk of superior court.
19 (b) The membership of the State Board shall be selected as
20 follows:
21 (1) The Governor shall appoint the following members:
22 the county sheriff, the chief of a city police
23 department, the member of the public who has been
24 the victim of a crime, a rehabilitated ex-offender,
25 the members selected from each of the service
26 areas.
27 (2) The Lieutenant Governor shall appoint the following
28 members: the member of the business community, one
29 member of the general public who is a person
30 recovering from chemical dependency or who is a
31 previous consumer of substance abuse treatment
32 services, the victim service provider.
33 (3) The Chief Justice of the North Carolina Supreme
34 Court shall appoint the following members: the
35 superior court judge, the district court judge, the
36 district attorney, the clerk of superior court, the
37 criminal defense attorney, the representative of an
38 existing community-based corrections program.
39 (4) The President Pro Tempore of the Senate shall
40 appoint the following members: the member of the

1 Senate, the county commissioner from a
2 predominantly urban county, one member of the
3 general public.

4 (5) The Speaker of the House shall appoint the
5 following members: the member of the House of
6 Representatives, the county commissioner from a
7 predominantly rural county, one member of the
8 general public.

9 In appointing the members of the State Board, the appointing
10 authorities shall make every effort to ensure fair geographic
11 representation of the State Board membership and that minority
12 persons and women are fairly represented.

13 (c) The initial members shall serve staggered terms, one-third
14 shall be appointed for a term of one year, one-third shall be
15 appointed for a term of two years, and one-third shall be
16 appointed for a term of three years. The members identified in
17 subdivisions (1) through (7) of subsection (a) of this section
18 shall be appointed initially for a term of one year. The members
19 identified in subdivisions (8) through (13) in subsection (a) of
20 this section shall be appointed initially for a term of two
21 years. The members identified in subdivisions (14) through (16)
22 of subsection (a) of this section shall each be appointed for a
23 term of three years. The additional member identified in
24 subdivision (17) in subsection (a) of this section shall be
25 appointed initially for a term of three years.

26 At the end of their respective terms of office their successors
27 shall be appointed for terms of three years. A vacancy occurring
28 before the expiration of the term of office shall be filled in
29 the same manner as original appointments for the remainder of the
30 term. Members may be reappointed without limitation.

31 (d) Each appointing authority shall have the power to remove a
32 member it appointed from the State Board for misfeasance,
33 malfeasance, or nonfeasance.

34 (e) The members of the State Board shall, within 30 days after
35 the last initial appointment is made, meet and elect one member
36 as chairman and one member as vice-chairman.

37 (f) The State Board shall meet at least quarterly and may also
38 hold special meetings at the call of the chairman. For purposes
39 of transacting business, a majority of the membership shall
40 constitute a quorum.

1 (g) Any member who has an interest in a governmental agency or
2 unit or private nonprofit agency which is applying for a State-
3 County Criminal Justice Partnership grant or which has received a
4 grant and which is the subject of an inquiry or vote by a grant
5 oversight committee, shall publicly disclose that interest on the
6 record and shall take no part in discussion or have any vote in
7 regard to any matter directly affecting that particular grant
8 applicant or grantee. 'Interest' in a grant applicant or grantee
9 shall mean a formal and direct connection to the entity,
10 including, but not limited to, employment, partnership, serving
11 as an elected official, board member, director, officer, or
12 trustee, or being an immediate family member of someone who has
13 such a connection to the grant applicant or grantee.

14 (h) The members of the State Board shall serve without
15 compensation but shall be reimbursed for necessary travel and
16 subsistence expenses."

17 Sec. 3. 143B-478 reads as rewritten:

18 § 143B-478. Governor's Crime Commission -- creation;
19 composition; terms; meetings, etc.

20 (a) There is hereby created the Governor's Crime Commission of
21 the Department of Crime Control and Public Safety. The
22 Commission shall consist of 34 voting members and six nonvoting
23 members. The composition of the Commission shall be as follows:

24 (1) The voting members shall be:

25 a. The Governor, the Chief Justice of the Supreme
26 Court of North Carolina (or his alternate),
27 the Attorney General, the Director of the
28 Administrative Office of the Courts, the
29 Secretary of the Department of Human
30 Resources, the Secretary of the Department of
31 Correction, and the Superintendent of Public
32 Instruction;

33 b. A judge of superior court, a judge of district
34 court specializing in juvenile matters, a
35 chief district court judge, a clerk of
36 superior court, and a district attorney;

37 c. A defense attorney, three sheriffs (one of
38 whom shall be from a "high crime area"), three
39 police executives (one of whom shall be from a
40 "high crime area"), six citizens (two with

- 1 knowledge of juvenile delinquency and the
2 public school system, two of whom shall be
3 under the age of 21 at the time of their
4 appointment, one representative of a "private
5 juvenile delinquency program," and one in the
6 discretion of the Governor), three county
7 commissioners or county officials, and three
8 mayors or municipal officials;
- 9 d. Two members of the North Carolina House of
10 Representatives and two members of the North
11 Carolina Senate.
- 12 (2) The nonvoting members shall be the Director of the
13 State Bureau of Investigation, the Secretary of the
14 Department of Crime Control and Public Safety, the
15 Director of the Division of Youth Services of the
16 Department of Human Resources, the Administrator
17 for Juvenile Services of the Administrative Office
18 of the Courts, the Director of the Division of
19 Prisons and the Director of the Division of Adult
20 Probation and Paroles.
- 21 (b) The membership of the Commission shall be selected as
22 follows:
- 23 (1) The following members shall serve by virtue of
24 their office: the Governor, the Chief Justice of
25 the Supreme Court, the Attorney General, the
26 Director of the Administrative Office of the
27 Courts, the Secretary of the Department of Human
28 Resources, the Secretary of the Department of
29 Correction, the Director of the State Bureau of
30 Investigation, the Secretary of the Department of
31 Crime Control and Public Safety, the Director of
32 the Division of Prisons, the Director of the
33 Division of Adult Probation and Paroles, the
34 Director of the Division of Youth Services, the
35 Administrator for Juvenile Services of the
36 Administrative Office of the Courts, and the
37 Superintendent of Public Instruction. Should the
38 Chief Justice of the Supreme Court choose not to
39 serve, his alternate shall be selected by the
40 Governor from a list submitted by the Chief Justice

- 1 which list must contain no less than three nominees
2 from the membership of the Supreme Court.
- 3 (2) The following members shall be appointed by the
4 Governor: the district attorney, the defense
5 attorney, the three sheriffs, the three police
6 executives, the six citizens, the three county
7 commissioners or county officials, the three mayors
8 or municipal officials.
- 9 (3) The following members shall be appointed by the
10 Governor from a list submitted by the Chief Justice
11 of the Supreme Court, which list shall contain no
12 less than three nominees for each position and
13 which list must be submitted within 30 days after
14 the occurrence of any vacancy in the judicial
15 membership: the judge of superior court, the clerk
16 of superior court, the judge of district court
17 specializing in juvenile matters, and the chief
18 district court judge.
- 19 (4) The two members of the House of Representatives
20 provided by subdivision (a)(1)d. of this section
21 shall be appointed by the Speaker of the House of
22 Representatives and the two members of the Senate
23 provided by subdivision (a)(1)d. of this section
24 shall be appointed by the President Pro Tempore of
25 the Senate. These members shall perform the
26 advisory review of the State plan for the General
27 Assembly as permitted by section 206 of the Crime
28 Control Act of 1976 (Public Law 94-503).
- 29 (5) The Governor may serve as chairman, designating a
30 vice- chairman to serve at his pleasure, or he may
31 designate a chairman and vice-chairman both of whom
32 shall serve at his pleasure.
- 33 (c) The initial members of the Commission shall be those
34 appointed pursuant to subsection (b) above, which appointments
35 shall be made by March 1, 1977. The terms of the present members
36 of the Governor's Commission on Law and Order shall expire on
37 February 28, 1977. Effective March 1, 1977, the Governor shall
38 appoint members, other than those serving by virtue of their
39 office, to serve staggered terms; seven shall be appointed for
40 one-year terms, seven for two-year terms, and seven for

1 three-year terms. At the end of their respective terms of office
2 their successors shall be appointed for terms of three years and
3 until their successors are appointed and qualified. The
4 Commission members from the House and Senate shall serve two-year
5 terms effective March 1, of each odd-numbered year; and they
6 shall not be disqualified from Commission membership because of
7 failure to seek or attain reelection to the General Assembly, but
8 resignation or removal from office as a member of the General
9 Assembly shall constitute resignation or removal from the
10 Commission. Any other Commission member no longer serving in the
11 office from which he qualified for appointment shall be
12 disqualified from membership on the Commission. Any appointment
13 to fill a vacancy on the Commission created by the resignation,
14 dismissal, death, disability, or disqualification of a member
15 shall be for the balance of the unexpired term.

16 (d) The Governor shall have the power to remove any member
17 from the Commission for misfeasance, malfeasance or nonfeasance.

18 (e) The Commission shall meet quarterly and at other times at
19 the call of the chairman or upon written request of at least
20 eight of the members. A majority of the voting members shall
21 constitute a quorum for the transaction of business.

22 Sec. 4. This act is effective when it becomes law.

ANALYSIS OF PROPOSED LEGISLATION

The proposed legislation would amend the authorizing legislation for the Sentencing and Policy Advisory Commission, the Criminal Justice Advisory Board, and the Governor's Crime Commission to add to the membership of each Commission a representative of the clerks of court.

APPENDIX R



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RSZ-009, mlm
THIS IS A DRAFT 31-JAN-97 16:15:38

Short Title: Courts Commission Membership

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA
3 COURTS COMMISSION.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 7A-506 reads as rewritten:
6 "§ 7A-506. Creation; members; terms; qualifications; vacancies.
7 (a) The North Carolina Courts Commission is created.
8 Effective July 1, 1993, it shall consist of ~~24~~ 28 members, ~~six~~
9 seven to be appointed by the Governor, ~~six~~ seven to be appointed
10 by the Speaker of the House of Representatives, ~~six~~ seven to be
11 appointed by the President Pro Tempore of the Senate, and ~~six~~
12 seven to be appointed by the Chief Justice of the Supreme Court.
13 (b) Of the appointees of the Chief Justice of the Supreme
14 Court, one shall be a Justice of the Supreme Court, one shall be
15 a Judge of the Court of Appeals, two shall be judges of superior
16 court, ~~and~~ two shall be district court ~~judges~~ judges, and one
17 shall be a public member who is not an attorney and who is not an
18 officer or employee of the Judicial Department.
19 (c) Of the ~~six~~ seven appointees of the Governor, one shall be
20 a district attorney, one shall be a practicing attorney, one

1 shall be a clerk of superior court, at least three shall be
2 members of the General Assembly, ~~and at least one~~ two shall not
3 ~~be an attorney.~~ attorneys, and of the non-attorneys, one shall be
4 a public member who is not an officer or employee of the Judicial
5 Department.

6 (d) Of the ~~six~~ seven appointees of the Speaker of the House,
7 at least three shall be practicing attorneys, at least three
8 shall be members of the General Assembly, ~~and at least one~~ two
9 shall not be ~~an attorney.~~ attorneys, and of the non-attorneys,
10 one shall be a public member who is not an officer or employee of
11 the Judicial Department.

12 (e) Of the ~~six~~ seven appointees of the President Pro Tempore
13 of the Senate, at least three shall be practicing attorneys, at
14 least three shall be members of the General Assembly, ~~and at~~
15 ~~least one~~ shall be a ~~magistrate.~~ magistrate, and one shall be a
16 public member who is not an attorney and who is not an officer or
17 employee of the Judicial Department.

18 (f) Of the initial appointments of each appointing authority,
19 three shall be appointed for four-year terms to begin July 1,
20 1993, and three shall be appointed for two-year terms to begin
21 July 1, 1993. The two public members appointed by the Governor
22 and the Speaker of the House shall be appointed for four-year
23 terms to begin July 1, 1997. The two public members appointed by
24 the Chief Justice and the President Pro Tempore of the Senate
25 shall be appointed for two-year terms to begin July 1, 1997.
26 Successors shall be appointed for four-year terms.

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

31 Section 2. G.S. 7A-507 reads as rewritten:

32 "**§7A-507. Ex officio members.**

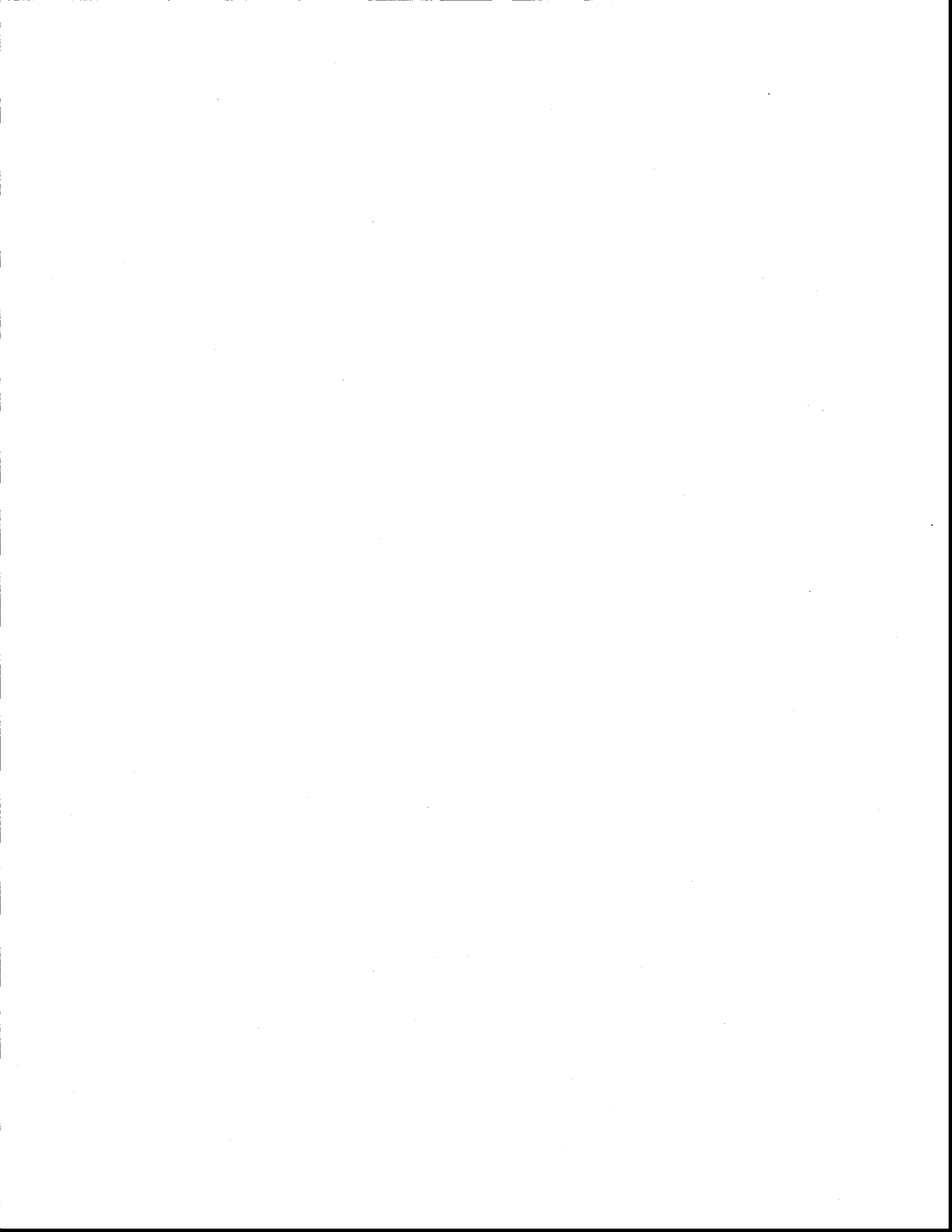
33 The following additional members shall serve ex officio: the
34 Administrative Officer of the Courts; a representative of the N.
35 C. State Bar appointed by the Council thereof; and a
36 representative of the N. C. Bar Association appointed by the
37 Board of Governors thereof. ~~Ex officio members have no vote. The~~
38 Administrative Officer of the Courts has no vote."

39 Section 3. This act is effective upon ratification.

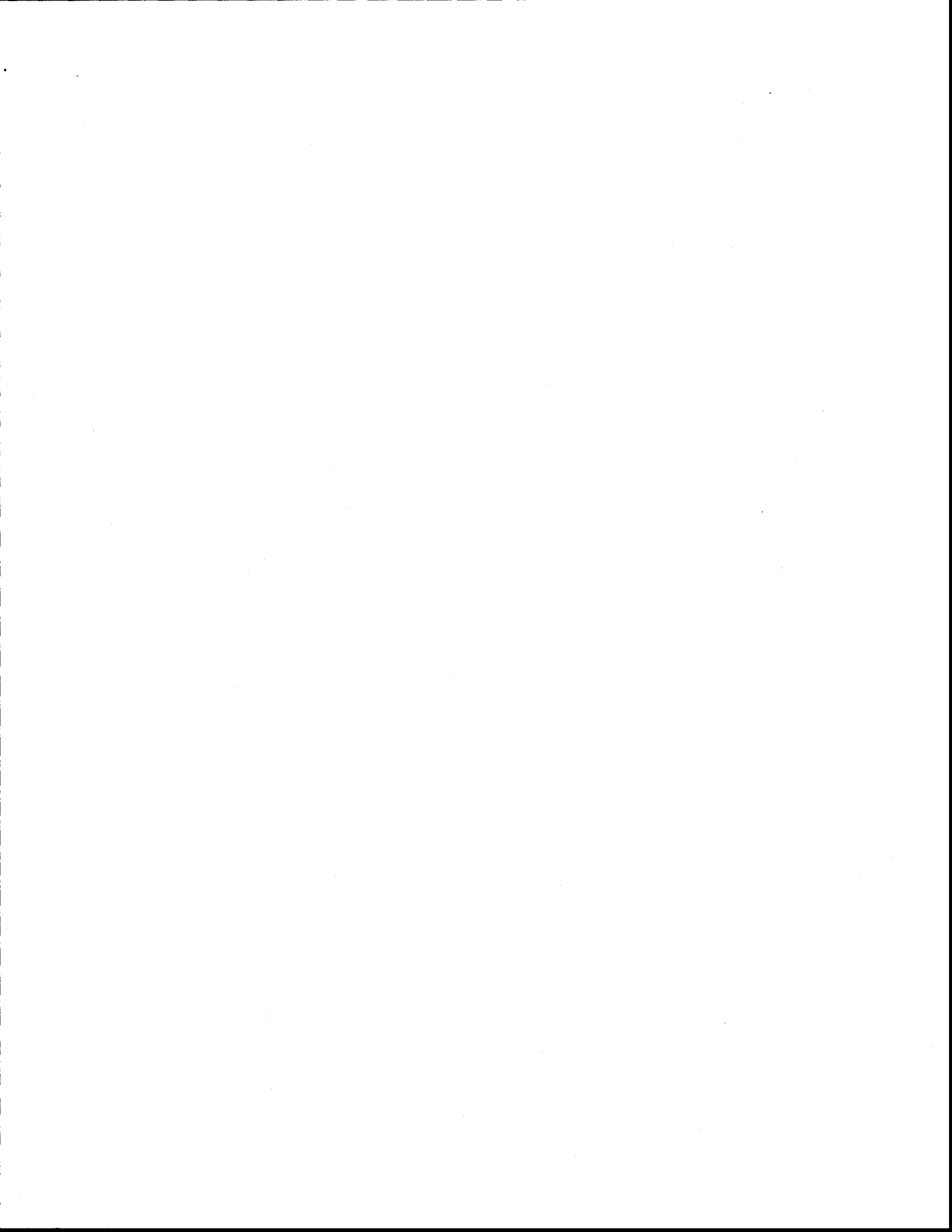
ANALYSIS OF PROPOSED LEGISLATION

This legislation would add four public, voting members to the Courts Commission, one person to be appointed by each of the following: the Chief Justice, the Governor, the Speaker of the House, and the President Pro Tempore of the Senate. The terms would be staggered. In addition, the legislation provides that the representatives on the Courts Commission from the N.C. State Bar and the N.C. Bar Association would become voting members.

The legislation would be effective when it becomes law.



APPENDIX S



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

97-RGZ-011(1.24)
THIS IS A DRAFT 29-JAN-97 16:34:09

Short Title: Conform Witness Travel Fees.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-
3 STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND
4 STATE EMPLOYEES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 7A-314(c) reads as rewritten:
7 "(c) A witness who resides in a state other than North Carolina
8 and who appears for the purpose of testifying in a criminal
9 action and proves his attendance may be compensated at the rate
10 ~~of ten cents (10¢) a mile~~ currently authorized for State
11 employees for one round-trip from his place of residence to the
12 place of appearance, and five dollars (\$5.00) for each day that
13 he is required to travel and attend as a witness, upon order of
14 the court based upon a finding that the person was a necessary
15 witness. If such a witness is required to appear more than one
16 day, he is also entitled to reimbursement for actual expenses
17 incurred for lodging and meals, not to exceed the maximum
18 currently authorized for State employees."
19 Sec. 2. G.S. 15A-813 reads as rewritten:

1 "§15A-813. Witness from another state summoned to testify in this
2 State.

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

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

36 Sec. 3. This act is effective when it becomes law, and
37 applies to all out-of-state witness travel expenses incurred on
38 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 when it becomes law and applies to out-of-state witnesses travel expenses incurred on or after that date.