

# NORTH CAROLINA GENERAL ASSEMBLY



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## NORTH CAROLINA COURTS COMMISSION

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### REPORT TO THE 2017 SESSION of the 2017 GENERAL ASSEMBLY OF NORTH CAROLINA

JANUARY, 2017

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## TRANSMITTAL LETTER


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January 20, 2017

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TO THE MEMBERS OF THE 2017 REGULAR SESSION  
OF THE 2017 GENERAL ASSEMBLY

The NORTH CAROLINA COURTS COMMISSION respectfully submits the following report to the 2017 Regular Session of the 2017 General Assembly.



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Rep. Sarah Stevens (Chair)

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# COMMISSION PROCEEDINGS

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The North Carolina Courts Commission met five times after the 2016 Regular Session of the 2015 General Assembly. The following is a brief summary of the Commission's proceedings. Detailed minutes and information concerning each Commission meeting is available in the Legislative Library.

## **August 22, 2016**

The Commission met on August 22, 2016, at 10:30 a.m. in Room 415 of the Legislative Office Building. Representative Sarah Stevens presided. At this meeting, members discussed a number of topics for potential study by the Commission at its subsequent meetings, including: disclosure of personal identifying or contact information relating to victims and witnesses during criminal discovery; child pornography laws as they relate to teen sexting; classification of sex offenders; judicial and prosecutorial districts; magistrate appointment and supervision; court technology needs; issues with bills providing for automatic expunction of criminal offenses; raising the age of juvenile court jurisdiction; classification of motor vehicle offenses; resources available to poorer and smaller counties for dealing with drug addiction and mental health problems; resource allocation for judicial districts; and motions for appropriate relief.

Judge Athena Brooks agreed to lead a working group looking at the issue of magistrate appointment and supervision. Locke Bell, Bert Kemp, and Rep. Duane Hall were appointed to serve on a subcommittee to examine issues related to criminal and civil issues and report back to the Commission.

Before adjourning, the Commission agreed to hold additional meetings on September 16, 2016, October 21, 2016, December 9, 2016, and January 20, 2017.

## **September 16, 2016**

The Commission met on September 16, 2016 at 10:00 a.m. in Room 543 of the Legislative Office Building, with Representative Sarah Stevens presiding.

During its morning session, the Commission heard a presentation by Will Robinson, Executive Director of the North Carolina Commission on the Administration of Law and Justice (NCCALJ) on the NCCALJ "Committee Interim Reports, Public Comment, and Next Steps."

Next, the Commission received a presentation from Rick Brajer, Secretary of the Department of Health and Human Services (DHHS) and Sonya Brown, Justice Systems Section Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, DHHS, on the recommendations of the Governor's Task Force on Mental Health and Substance Use.

McKinley Wooten, Jr., Deputy Director, Program Services Division, Administrative Office of the Courts (AOC), discussed the Task Force's recommendation for continued funding of therapeutic courts, provided an updated chart on all of the problem-solving courts operating in the State, and expressed the AOC's support for the Task Force's recommendations.

Following these presentations the Commission discussed the issue of motions for appropriate relief (MAR). Messrs. Bell and Kemp discussed the history of the 2016 regular session's consideration of the bill recommended on this subject and suggested that the Commission recommend the bill again during the 2017 regular session.

Mr. Kemp also asked the Commission to again recommend funding for the North Carolina Legal Education Assistance Foundation (NC LEAF) program.

Before adjourning Chair Stevens announced that the MAR and NC LEAF matters would be taken up for a vote at the Commission's next meeting.

### **October 21, 2016**

The Commission met at 10:00 a.m. on October 21, 2016, in Room 643 of the Legislative Office Building with Representative Sarah Stevens presiding.

The Commission first received a presentation by the Hon. Joseph M. Buckner, Chief District Court Judge, District 15B, and Caroline Ginley, Program Manager, Community Resource Court (CRC). Judge Buckner described the work of the CRC, a collaboration between Judicial District 15A and the Orange-Person-Chatham Area Program, which oversees and manages publicly funded mental health services in these three counties. Judge Buckner and Ms. Ginley also explained the eligibility requirements to participate in the Community Resource Court (CRC) and described CRC utilization and outcomes.

Commission member the Hon. Athena Brooks, Chief District Court Judge, District 29B, updated the Commission on the working group focusing on magistrate selection and supervision. Judge Brooks reported the working group may recommend action during the 2017 Session of the General Assembly to include: enacting a uniform code of conduct for magistrates; changing the date for clerks to nominate candidates for vacancies from December to January; changing the number of names that the clerk is required to present; changing the number of times the Senior Resident Superior Court Judge can ask for more names; determining whether or not there should be uniform jurisdiction for all magistrates; and establishing a grievance procedure and providing options for enforcement of the code of conduct short of removal.

The Commission next heard a report from Bert Kemp on the work of the subcommittee he co-chairs with Locke Bell examining various civil and criminal procedure issues. Mr. Kemp reported that in its last meeting representatives of the AOC, the State Bureau of Investigation (SBI), and the Department of Public Safety (DPS) discussed non-legislative ways to shorten the expunction process to less than the current 3-6 months required to obtain an expunction. The subcommittee also discussed the sex-offender registry and various issues raised by the increasing number of persons subject to post-release supervision as sex offenders.

Next, the Commission approved a motion to recommend changes to the law governing motions for appropriate relief and an appropriation of \$500,000 to the Department of Justice to continue funding the NC LEAF program, as the Commission recommended in 2016.

During its afternoon session, Staff Attorney Susan Sitze, NC General Assembly Legislative Analysis Division, presented a summary of North Carolina criminal statutes relating to gang activity. Rep. Allen McNeill then described the work being done by a subcommittee of the Joint Legislative Oversight Committee on Justice and Public Safety (JPS) and invited the Commission to assist in identifying and addressing the challenges faced by law enforcement in dealing with gang-related criminal activity. The Commission also received presentations on law enforcement efforts to combat gang criminal activity from the following: Jon-Paul Guarino, GangNet Administrator, NC State Highway Patrol; Zeb Stroup, with the NC Highway Patrol; and Chuck Hastings, Detective with the Charlotte-Mecklenburg Police Department. Rep. McNeill also summarized the recommendations of the JPS subcommittee relating to the definition of gangs, gang activities, gang leaders, and gang members.

### **December 9, 2016**

The Commission met at 10:00 a.m. on December 9, 2016, in Room 643 of the Legislative Office Building with Representative Sarah Stevens presiding.

During its morning session Rep. Duane Hall presented on raising the age of juvenile court jurisdiction. Rep. Hall explained the issues that he had sought to address by the introduction of House Bill 399 during the 2015 Regular Session. Rep. Hall listed the organizations that now support the proposed reforms. He noted most recently the North Carolina Commission on the Administration of Law and Justice (NCCALJ) has issued a report with recommendations more comprehensive than those contained in his earlier bill. Rep. Hall requested the Commission to support the recommendations of the NCCALJ committee. After discussion, the Commission voted to adopt the NCCALJ recommendations to raise the age of juvenile court jurisdiction to include youthful offenders (16- and 17-year olds) for all crimes, except Class A-E felonies and traffic offenses.

John Byrd, Director of the North Carolina State Crime Laboratory summarized the Crime Lab's FY2015-16 Annual Report, and described the fiscal challenges facing the Crime Lab. The Commission agreed to endorse the Crime Lab's funding request to the General Assembly as set forth in its annual report.

Next Brad Fowler, Planning and Organizational Development Officer, Administrative Office of the Courts presented information on criteria for consideration by the Commission in any future effort to study the reorganization of judicial and prosecutorial districts. Chair Stevens noted as a practical matter that the 2020 elections would be the earliest in which there could be any changes to districts that may be made by the General Assembly based on recommendations resulting from further Commission study of this subject.



The Commission next voted to propose for 2017 enactment legislation changing the law governing motions for appropriate relief and appropriating funds for the NC LEAF program identical to that recommended for the 2016 session. (These votes ratified the actions previously discussed at the Commission's October 21 meeting.)

Next, the Commission heard from Kevin Kelly, Chief of the Child Welfare Section, Division of Social Services, Department of Health and Human Services. Mr. Kelly responded to the Commission's request to address concerns with the potential burden on court resources resulting from a change to the Safety Planning Policy for Safety Assessments (DSS-5132) and the use of Temporary Parental Safety Agreements scheduled to take effect on January 1, 2017. After hearing concerns expressed by members about the policy change, Mr. Kelly stated that his section would issue a notice temporarily suspending the effective date of the policy change for six months in order to further study its implementation. Chair Stevens noted for the record that the policy change would be suspended for six months and that the legislature would be recommended to review it.

During its afternoon session the Commission received a presentation by Dr. Maureen Berner, Professor of Public Administration and Government, UNC School of Government, on the results of a study of whether jury pools in Judicial District 15B reflect the demographic composition of the jury-eligible population in Chatham and Orange Counties. This study was requested by the Executive Council in District 15B.

Next, Judge Athena Brooks announced the working group focusing on the appointment and supervision of magistrates will meet again on January 12, 2017 to finalize the recommendations to be presented to the Commission for consideration at its meeting on January 20, 2017.

Bert Kemp also reported the criminal and civil matters subcommittee met to discuss expunction, sex offenders, and gang-related issues. This subcommittee plans to meet one more time to finalize proposed legislation for consideration at the Commission's January 20 meeting.

Commission staff explained a bill draft prepared for the (JPS) Oversight Committee revising gang laws standardizing criteria for classifying criminal gang membership. Chair Stevens asked the civil and criminal law subcommittee to review and provide any comments at the Commission's January 20 meeting.

Chair Stevens raised the issue of changing the criminal laws providing an enhanced punishment if a rape is committed while the perpetrator displays a firearm to also apply if the perpetrator threatens the use of a firearm whether or not he actually has one in his possession. Proposed language for a bill to do this will be presented for consideration by the Commission at the January 20 meeting.

### **January 20, 2016**

The Commission met at 10:00 a.m. on January 20, 2017, in Room 544 of the Legislative Office Building with Representative Sarah Stevens presiding.

Bert Kemp and Locke Bell reported on their subcommittee's recommendations that the Commission request enactment of legislation to:

- Limit the requirement that a court attempt to identify all outstanding warrants before entering an order in a criminal case to cases in which the defendant is in custody.
- Clarify that a defendant can be convicted of attempted robbery with a dangerous weapon regardless of whether or not personal property is taken from the victim.
- Protect crime victims and witnesses by ensuring that certain discovery materials remain in the control of defense counsel and are not disseminated by the defendant.
- Require the Division of Adult Corrections and Juvenile Justice Combined Records Section to expunge from its records all entries resulting from expunged charges or convictions or certain charges dismissed upon completion of a conditional discharge.
- Make the requirement that a person convicted of sexual battery register as a sex offender discretionary with the court.

Judge Athena Brooks reported on her working group's recommendations that the Commission request enactment of legislation to:

- Grant chief district judges disciplinary authority over magistrates.
- Direct the AOC to draft a code of conduct for magistrates.
- Make changes to the deadlines for nomination and appointment of magistrates.
- Require designation of one chief magistrate in each county with higher pay and required training.
- Remove the "emergency only" restriction upon a chief district judge's authority to assign magistrates to temporary duty outside their county of residence.

The Commission also discussed proposals to recommend legislation that would enhance the penalty for first degree rape when a weapon is threatened and that would request the Commission to undertake a study of the need for changes to the current organization of district court, superior court, and prosecutorial districts.

After discussion, the Commission approved the recommendations and proposed legislation set forth in its final report to the 2017 Regular Session of the 2017 General Assembly.

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## RECOMMENDATIONS

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1. In response to the request contained in the North Carolina Crime Lab's FY-2015-2016 Annual Report, the General Assembly should appropriate \$4,747,460 to the North Carolina Crime Laboratory, as set forth in bill draft 2017-MSza-43, enclosed in Appendix C of this report at page 17.
2. The General Assembly should adopt the recommendations of the North Carolina Commission on the Administration of Law and Justice to raise the age of juvenile court jurisdiction to include youthful offenders (16- and 17-year olds) for all crimes, except Class A-E felonies and traffic offenses.
3. The General Assembly should direct the Department of Health and Human Services to consult with the House and Senate Appropriation Committees on Justice and Public Safety before implementing any new Safety Planning Policy regarding Safety Assessments (DSS-5132) and the use of Temporary Parental Safety Agreements, as set forth in bill draft 2017-MSz-44, enclosed in Appendix C of this report at page 18.
4. The General Assembly should require the court in a criminal case to attempt to identify all outstanding warrants against a defendant prior to entry of an order in a criminal case only when the defendant is in custody, as set forth in bill draft 2017-MSz-8, enclosed in Appendix C of this report at page 19.
5. The General Assembly should clarify the law relating to the crime of attempted robbery with a dangerous weapon, as set forth in bill draft 2017-MSz-10, enclosed in Appendix C of this report at page 20.
6. The General Assembly should provide protection for witnesses to crime and victims of crime by ensuring certain discovery materials remain in the control of defense counsel and are not disseminated by the defendant, as set forth in bill draft 2017-MSz-13, enclosed in Appendix C of this report at page 21.
7. The General Assembly should appropriate funds for continuation of the North Carolina Legal Education Assistance Foundation (NC LEAF) program, as set forth in bill draft 2017-MSza-14, enclosed in Appendix C of this report at page 24.
8. The General Assembly should amend the procedure governing the making of motions for appropriate relief, as set forth in bill draft 2017-MSza-15, enclosed in Appendix C of this report at page 25.
9. The General Assembly should require the Division of Adult Corrections and Juvenile Justice to expunge from its records all entries made as a result of charges or convictions that have been ordered expunged under Article 5 of Chapter 15A of the General Statutes, or as a result of certain charges that have been dismissed upon completion of a conditional discharge, as set forth in bill draft 2017-MSz-16, enclosed in Appendix C of this report at page 28.

10. As set forth in bill draft 2017-MSz-23 enclosed in Appendix C of this report at page 29, the General Assembly should:
  - Grant chief district judges non-delegable disciplinary authority over magistrates.
  - Direct the Administrative Office of the Courts to draft a code of conduct applicable to magistrates.
  - Change the deadline relating to the nomination and appointment of magistrates, with conforming changes to the term starting date.
  - Provide that each county shall have a chief magistrate position, with higher pay and required training.
  - Remove the "emergency only" limitation on the authority of a chief district judge to assign magistrates to temporary duty outside their county of residence.
11. The General Assembly should provide that the requirement that a person convicted of sexual battery register as a sex offender is discretionary with the court, as set forth in bill draft 2017-MSz-24, enclosed in Appendix C of this report at page 33.
12. The General Assembly should enhance the penalty for first degree rape when a weapon is threatened, as set forth in bill draft 2017-MSz-9, enclosed in Appendix C of this report at page 36.
13. The General Assembly should request the Courts Commission to study the current organization of the superior court, district court, prosecutorial and public defender districts and to present its final report, including any recommended legislation, prior to the convening of the 2021 Regular Session of the General Assembly, as set forth in bill draft 2017-TGz-3, enclosed in Appendix C of this report at page 37.

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## COMMISSION MEMBERSHIP

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2016-2017

**President Pro Tempore of the Senate**  
**Appointments:**

Sen. Tamara Barringer  
Sen. Warren Daniel  
Sen. Michael V. Lee  
Ms. Tiffany Cone (Magistrate)  
Mr. Stephen J. Fowler (Public Member)  
Ms. Tonya Bunn Powell (Practicing Attorney)  
Ms. Lauren N. Raynor (Practicing Attorney)

**Governor Appointments:**

Rep. Dan Bishop  
Sen. Wesley Meredith  
Rep. David Rogers  
Ms. Pam W. Barlow (Clerk)  
Mr. Wallace W. Bradsher (District Attorney)  
Ms. Susan Campbell (Practicing Attorney)  
Mr. Tanner Robinson (Public Member)

**Ex Officio Appointments:**

Mr. J. Patrick Haywood (North Carolina Bar Association)  
Mr. Thomas West (North Carolina State Bar Council)  
Hon. Marion Warren (Administrative Office of the Courts)

**Speaker of the House of Representatives**  
**Appointments:**

Rep. Sarah Stevens (Chair)  
Rep. Rob Bryan  
Rep. Duane Hall  
Mr. R. Locke Bell (Public Member)  
Mr. Robert C. Kemp III (Public Member)  
Mr. Timothy Lea (Public Member)  
Hon. Karen B. Ray (Public Member)

**Chief Justice, Supreme Court Appointments:**

Hon. Barbara Jackson (Supreme Court Justice)  
Hon. Donna Stroud (Court of Appeals Judge)  
Hon. Allen Cobb (Superior Court Judge)  
Hon. Joseph Crosswhite (Superior Court Judge)  
Hon. Athena Brooks (District Court Judge)  
Hon. Regina Parker (District Court Judge)  
Eugene Flood, Jr., Ph.D. (Public Member)

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## COMMISSION CHARGE/STATUTORY AUTHORITY

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### 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 28 members, seven to be appointed by the Governor, seven to be appointed by the Speaker of the House of Representatives, seven to be appointed by the President Pro Tempore of the Senate, and seven 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, two shall be district court judges, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(c) Of the seven 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, at least two shall not be attorneys, and of the nonattorneys, one shall be a public member who is not an officer or employee of the Judicial Department.

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

(e) Of the seven 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, at least one shall be a magistrate, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(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. The two public members appointed by the Governor and the Speaker of the House of Representatives shall be appointed for four-year terms to begin July 1, 1997. The two public members appointed by the Chief Justice and the President Pro Tempore of the Senate shall be appointed for two-year terms to begin July 1, 1997. 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. The Administrative Officer of the Courts has 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. (1979, c. 1077, s. 1.)

**§ 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.

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## **LEGISLATIVE PROPOSALS**

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**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

**H**

**D**

**BILL DRAFT 2017-MSza-43**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)**

Short Title:    Funding to State Crime Lab.

(Public)

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Sponsors:

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Referred to:

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A BILL TO BE ENTITLED

1  
2 AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO PROVIDE  
3 THE NORTH CAROLINA STATE CRIME LAB THE FUNDS NECESSARY TO  
4 ADDRESS THE SHORTFALL IN LAB RECEIPTS, FUND CURRENTLY UNFUNDED  
5 MANDATES, AND TO PROVIDE FOR SCIENTIFIC EQUIPMENT TO BE  
6 REPLACED ON A FIVE YEAR REPLACEMENT SCHEDULE, AS RECOMMENDED  
7 BY THE NORTH CAROLINA COURTS COMMISSION.

8 The General Assembly of North Carolina enacts:

9        **SECTION 1.** There is appropriated from the General Fund to the Department of  
10 Justice the sum of four million seven hundred forty seven thousand four hundred and sixty  
11 dollars in recurring funds for the 2017-2018 and 2018-2019 fiscal years to the North Carolina  
12 Crime Laboratory to be allocated as follows: (i) four hundred forty-seven thousand four  
13 hundred and sixty dollars (\$447460) to be allocated to the base budget to make up for a  
14 shortfall in lab receipts; (ii) one million seven hundred thousand dollars (\$1,700,000) to be  
15 allocated to fund currently unfunded mandates; and (iii) two million six hundred thousand  
16 dollars (\$2,600,000) to be allocated for scientific equipment on a five year replacement  
17 schedule.

18        **SECTION 2.** This act becomes effective July 1, 2017.  
19  
20

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

**H**

**D**

**BILL DRAFT 2017-MSz-44**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)**

Short Title: Consultation Requirements for DHHS.

(Public)

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Sponsors:

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO CONSULT WITH THE HOUSE AND SENATE APPROPRIATIONS COMMITTEES ON JUSTICE AND PUBLIC SAFETY PRIOR TO IMPLEMENTING ANY NEW SAFETY PLANNING POLICY REGARDING SAFETY ASSESSMENTS (DSS-5132) AND THE USE OF TEMPORARY PARENTAL SAFETY AGREEMENTS, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** The Department of Health and Human Services shall consult with the House Appropriations Committee on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety prior to implementing any new Safety Planning Policy regarding Safety Assessments (DSS-5132) and the use of Temporary Parental Safety Agreements.

**SECTION 2.** This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

BILL DRAFT 2017-MSz-10

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Property taken not preclude attempted robbery.

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED

2 AN ACT TO ENSURE THAT VALUE IS NOT AN ESSENTIAL ELEMENT FOR A  
3 CONVICTION OF ATTEMPTED ROBBERY WITH A DANGEROUS WEAPON, AS  
4 RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-87 is amended by adding a new subsection to read:

7 "**§ 14-87. Robbery with firearms or other dangerous weapons.**

8 (a) Any person or persons who, having in possession or with the use or threatened use  
9 of any firearms or other dangerous weapon, implement or means, whereby the life of a person  
10 is endangered or threatened, unlawfully takes or attempts to take personal property from  
11 another or from any place of business, residence or banking institution or any other place where  
12 there is a person or persons in attendance, at any time, either day or night, or who aids or abets  
13 any such person or persons in the commission of such crime, shall be guilty of a Class D  
14 felony.

15 (a1) Evidence that the personal property of another was taken will not preclude  
16 conviction under subsection (a) of this section."

17 SECTION 2. This act becomes effective December 1, 2017, and applies to  
18 offenses committed on or after that date.

19

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

BILL DRAFT 2017-MSz-13

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Discovery not disseminated to defendant.

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE PROTECTION FOR WITNESSES AND VICTIMS BY ENSURING  
3 CERTAIN DISCOVERY MATERIALS REMAIN IN THE CONTROL OF DEFENSE  
4 COUNSEL AND ARE NOT DISSEMINATED BY THE DEFENDANT, AS  
5 RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 15A-903(a) reads as rewritten:

8 **"§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

9 (a) Upon motion of the defendant, the court must order:

10 (1) The State to make available to the defendant the complete files of all law  
11 enforcement agencies, investigatory agencies, and prosecutors' offices  
12 involved in the investigation of the crimes committed or the prosecution of  
13 the defendant.

14 a. The term "file" includes the defendant's statements, the codefendants'  
15 statements, witness statements, investigating officers' notes, results of  
16 tests and examinations, or any other matter or evidence obtained  
17 during the investigation of the offenses alleged to have been  
18 committed by the defendant. When any matter or evidence is  
19 submitted for testing or examination, in addition to any test or  
20 examination results, all other data, calculations, or writings of any  
21 kind shall be made available to the defendant, including, but not  
22 limited to, preliminary test or screening results and bench notes.

23 b. The term "prosecutor's office" refers to the office of the prosecuting  
24 attorney.

25 b1. The term "investigatory agency" includes any public or private entity  
26 that obtains information on behalf of a law enforcement agency or  
27 prosecutor's office in connection with the investigation of the crimes  
28 committed or the prosecution of the defendant.

29 c. Oral statements shall be in written or recorded form, except that oral  
30 statements made by a witness to a prosecuting attorney outside the  
31 presence of a law enforcement officer or investigatorial assistant  
32 shall not be required to be in written or recorded form unless there is  
33 significantly new or different information in the oral statement from  
34 a prior statement made by the witness.

1  
2 d. The Subject to any restrictions imposed pursuant to sub-subdivision  
3 (e) of this subdivision, the defendant shall have the right to inspect  
4 and copy or photograph any materials contained therein and, under  
5 appropriate safeguards, to inspect, examine, and test any physical  
6 evidence or sample contained therein.

7 (e) Anytime the State provides discovery to defense counsel, the State  
8 may also give written notice of discovery designating certain items of  
9 discovery that are not to be used by the defendant or his attorney for  
10 any other purpose than in direct relationship to the case and  
11 prohibiting further disclosure of these items. In the notice the State  
12 shall state the grounds for its view that limited disclosure of the  
13 designated discovery items is necessary for the protection of  
14 witnesses, victims, or officers. Upon receipt of such notice, all items  
15 of discovery designated in the notice shall remain in the custody and  
16 control of defense counsel. Defense counsel may allow the defendant  
17 to view the discovery items designated in the notice and may discuss  
18 those items with the defendant but shall not permit the defendant to  
19 possess or control any designated discovery items or any copies  
20 thereof. If served with a notice by the State pursuant to this  
21 sub-subdivision, defense counsel may file a motion with the Superior  
22 Court for such relief from the notice as the interests of justice  
23 require. If the defendant is pro se in a case that falls under this  
24 sub-subdivision, the State may move for a protective order restricting  
25 disclosure by the defendant of specified items of discovery, and shall  
26 state in its motion the grounds for its view that that limited disclosure  
27 of the designated discovery items is necessary for the protection of  
28 witnesses, victims, or officers.

29 (2) The prosecuting attorney to give notice to the defendant of any expert  
30 witnesses that the State reasonably expects to call as a witness at trial. Each  
31 such witness shall prepare, and the State shall furnish to the defendant, a  
32 report of the results of any examinations or tests conducted by the expert.  
33 The State shall also furnish to the defendant the expert's curriculum vitae,  
34 the expert's opinion, and the underlying basis for that opinion. The State  
35 shall give the notice and furnish the materials required by this subsection  
36 within a reasonable time prior to trial, as specified by the court. Standardized  
37 fee scales shall be developed by the Administrative Office of the Courts and  
38 Indigent Defense Services for all expert witnesses and private investigators  
39 who are compensated with State funds.

40 (3) The prosecuting attorney to give the defendant, at the beginning of jury  
41 selection, a written list of the names of all other witnesses whom the State  
42 reasonably expects to call during the trial. Names of witnesses shall not be  
43 subject to disclosure if the prosecuting attorney certifies in writing and under  
44 seal to the court that to do so may subject the witnesses or others to physical  
45 or substantial economic harm or coercion, or that there is other  
46 particularized, compelling need not to disclose. If there are witnesses that the  
47 State did not reasonably expect to call at the time of the provision of the  
48 witness list, and as a result are not listed, the court upon a good faith  
49 showing shall allow the witnesses to be called. Additionally, in the interest

1 of justice, the court may in its discretion permit any undisclosed witness to  
2 testify.

3 (b) If the State voluntarily provides disclosure under G.S. 15A-902(a),  
4 the disclosure shall be to the same extent as required by subsection  
5 (a) of this section.

6 (c) On a timely basis, law enforcement and investigatory agencies shall  
7 make available to the prosecutor's office a complete copy of the  
8 complete files related to the investigation of the crimes committed or  
9 the prosecution of the defendant for compliance with this section and  
10 any disclosure under G.S. 15A-902(a). Investigatory agencies that  
11 obtain information and materials listed in subdivision (1) of  
12 subsection (a) of this section shall ensure that such information and  
13 materials are fully disclosed to the prosecutor's office on a timely  
14 basis for disclosure to the defendant.

15 (d) Any person who willfully omits or misrepresents evidence or  
16 information required to be disclosed pursuant to subdivision (1) of  
17 subsection (a) of this section, or required to be provided to the  
18 prosecutor's office pursuant to subsection (c) of this section, shall be  
19 guilty of a Class H felony. Any person who willfully omits or  
20 misrepresents evidence or information required to be disclosed  
21 pursuant to any other provision of this section shall be guilty of a  
22 Class 1 misdemeanor.

23 **SECTION 2.** This act becomes effective December 1, 2017, and applies to offenses  
24 committed on or after that date.  
25





GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

BILL DRAFT 2017-MSz-15

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)**

Short Title: Motions for Appropriate Relief.

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING THE USE OF MOTIONS FOR  
3 APPROPRIATE RELIEF, AS RECOMMENDED BY THE NORTH CAROLINA  
4 COURTS COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 15A-1413(d) reads as rewritten:

7 "(d) All motions for appropriate relief filed in superior court shall, when filed, be  
8 referred to the senior resident superior court judge, who shall assign the motion as provided by  
9 this section for review and administrative action, including, as may be appropriate, dismissal,  
10 calendaring for hearing, entry of a scheduling order for subsequent events in the case, including  
11 disclosure of expert witness information described in G.S. 15A-903(a)(2) and  
12 G.S. 15A-905(c)(2) for expert witnesses reasonably expected to be called at a hearing on the  
13 motion, or other appropriate actions.

14 All motions for appropriate relief filed in district court shall, when filed, be referred to the  
15 chief district court judge, who shall assign the motion as provided by this section for review  
16 and administrative action, including, as may be appropriate, dismissal, calendaring for hearing,  
17 entry of a scheduling order for subsequent events in the case, or other appropriate actions."

18 **SECTION 2.** G.S. 15A-1420(b1) reads as rewritten:

19 "**§ 15A-1420. Motion for appropriate relief; procedure.**

20 ...

21 (b1) Filing Motion With Clerk. –

22 (1) The proceeding shall be commenced by filing with the clerk of superior  
23 court of the district wherein the defendant was indicted a motion, with  
24 service on the district attorney in noncapital cases, and service on both the  
25 district attorney and Attorney General in capital cases.

26 (2) The clerk, upon receipt of the motion, shall place the motion on the criminal  
27 docket. When a motion is placed on the criminal docket, the clerk shall  
28 promptly bring the motion, or a copy of the motion, to the attention of the  
29 senior resident superior court judge or chief district court judge, as  
30 appropriate, for assignment to the appropriate judge pursuant to  
31 G.S. 15A-1413.

32 (3) The judge assigned to the motion shall conduct an initial review of the  
33 motion. If the judge determines that all of the claims alleged in the motion  
34 are frivolous, the judge shall deny the motion. If the motion presents

1 sufficient information to warrant a hearing or the interests of justice so  
2 require, the judge shall appoint counsel for an indigent defendant who is not  
3 represented by counsel. Counsel so appointed shall review the motion filed  
4 by the petitioner and either adopt the motion or file an amended motion.  
5 After post-conviction counsel files an initial or amended motion, or a  
6 determination is made that the petitioner is proceeding without counsel, the  
7 judge may direct the State to file an answer. Should the State contend that as  
8 a matter of law the defendant is not entitled to the relief sought, the State  
9 may request leave to file a limited answer so alleging."

10 **SECTION 3.** G.S. 7A-451(a) reads as rewritten:

11 **"§ 7A-451. Scope of entitlement.**

12 (a) An indigent person is entitled to services of counsel in the following actions and  
13 proceedings:

- 14 (1) Any case in which imprisonment, or a fine of five hundred dollars (\$500.00),  
15 or more, is likely to be ~~adjudged;~~adjudged.
- 16 (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the  
17 General ~~Statutes;~~Statutes.
- 18 (3) A motion for appropriate relief under Chapter 15A of the General Statutes if  
19 ~~appointment of counsel is authorized by Chapter 15A of the General Statutes~~  
20 ~~and~~ the defendant has been convicted of a felony, has been fined five  
21 hundred dollars (\$500.00) or more, or has been sentenced to a term of  
22 ~~imprisonment;~~imprisonment.
- 23 (4) A hearing for revocation of ~~probation;~~probation.
- 24 (5) A hearing in which extradition to another state is ~~sought;~~sought.
- 25 (6) A proceeding for an inpatient involuntary commitment to a facility under  
26 Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding  
27 for commitment under Part 8 of Article 5 of Chapter 122C of the General  
28 Statutes.
- 29 (7) In any case of execution against the person under Chapter 1, Article 28 of  
30 the General Statutes, and in any civil arrest and bail proceeding under  
31 Chapter 1, Article 34, of the General ~~Statutes;~~Statutes.
- 32 (8) In the case of a juvenile, a hearing as a result of which commitment to an  
33 institution or transfer to the superior court for trial on a felony charge is  
34 ~~possible;~~possible.
- 35 (9) A hearing for revocation of parole at which the right to counsel is provided  
36 in accordance with the provisions of Chapter 148, Article 4, of the General  
37 ~~Statutes;~~Statutes.
- 38 (10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and  
39 applicable to all petitions for sterilization pending and orders authorizing  
40 sterilization that have not been executed as of April 17, 2003.
- 41 (11) A proceeding for the provision of protective services according to Chapter  
42 108A, Article 6 of the General ~~Statutes;~~Statutes.
- 43 (12) In the case of a juvenile alleged to be abused, neglected, or dependent under  
44 Subchapter I of Chapter 7B of the General ~~Statutes;~~Statutes.
- 45 (13) A proceeding to find a person incompetent under Subchapter I of Chapter  
46 35A, of the General ~~Statutes;~~Statutes.
- 47 (14) A proceeding to terminate parental rights where a guardian ad litem is  
48 appointed pursuant to G.S. ~~7B-1101;~~7B-1101.

- 1 (15) An action brought pursuant to Article 11 of Chapter 7B of the General  
2 Statutes to terminate an indigent person's parental rights.  
3 (16) A proceeding involving consent for an abortion on an unemancipated minor  
4 pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes.  
5 G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.  
6 (17) A proceeding involving limitation on freedom of movement or access  
7 pursuant to G.S. 130A-475 or G.S. 130A-145.  
8 (18) A proceeding involving placement into satellite monitoring under Part 5 of  
9 Article 27A of Chapter 14 of the General Statutes."

10 **SECTION 4.** This act becomes effective December 1, 2017, and applies to motions  
11 for appropriate relief filed on or after that date.  
12

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

BILL DRAFT 2017-MSz-16

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: DOC and JJ Combined Records.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MANDATE THAT THE CLERK OF SUPERIOR COURT SEND A CERTIFIED COPY OF ORDERS GRANTING EXPUNCTIONS TO THE DIVISION OF ADULT CORRECTIONS AND JUVENILE JUSTICE COMBINED RECORDS SECTION AND TO THE STATE BUREAU OF INVESTIGATION, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-150(b) reads as rewritten:

"(b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, the clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to all of the agencies listed in this subsection. An agency receiving an order under this subsection shall expunge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

- (1) The sheriff, chief of police, or other arresting agency.
- (2) When applicable, the Division of Motor Vehicles.
- (3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
- (4) ~~The Department of Public Safety.~~The Department of Public Safety, Division of Adult Correction and Juvenile Justice, Combined Records Section.
- (5) The State Bureau of Investigation."

**SECTION 2.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

BILL DRAFT 2017-MSz-23

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Conduct and Discipline for Magistrates.

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED

2 AN ACT TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP  
3 A CODE OF CONDUCT FOR ALL MAGISTRATES; TO GIVE AUTHORITY FOR  
4 CHIEF DISTRICT COURT JUDGES TO DISCIPLINE MAGISTRATES; TO ALLOW  
5 FOR MAGISTRATES TO BE ASSIGNED TO TEMPORARY DUTY IN ANOTHER  
6 COUNTY; AND TO REQUIRE CHIEF DISTRICT COURT JUDGES OF EACH  
7 COUNTY TO APPOINT A CHIEF MAGISTRATE, AS RECOMMENDED BY THE  
8 NORTH CAROLINA COURTS COMMISSION.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1(a).** Code of Conduct. – The Administrative Office of the Courts shall  
11 develop a Code of Conduct for all magistrates. The purpose of the Code of Conduct is to create  
12 uniformity among all districts. The Code of Conduct shall provide guidance to magistrates  
13 regarding: (i) standards of professional conduct and timeliness, (ii) required duties and  
14 responsibilities, (iii) methods for ethical decision making, and (iv) any other information that is  
15 deemed relevant by the Administrative Office of the Courts.

16 **SECTION 1(b).** Time Frame. – The Administrative Office of the Courts shall  
17 establish the Code of Conduct for Magistrates required by subsection (a) of this section by July  
18 1, 2018.

19 **SECTION 2.** G.S. 7A-146 reads as rewritten:

20 "§ 7A-146. Administrative authority and duties of chief district judge.

21 The chief district judge, subject to the general supervision of the Chief Justice of the  
22 Supreme Court, has administrative supervision and authority over the operation of the district  
23 courts and magistrates in his district. These powers and duties include, but are not limited to,  
24 the following:

- 25 (1) Arranging schedules and assigning district judges for sessions of district  
26 courts.
- 27 (2) Arranging or supervising the calendaring of noncriminal matters for trial or  
28 hearing.
- 29 (3) Supervising the clerk of superior court in the discharge of the clerical  
30 functions of the district court.
- 31 (4) Assigning matters to magistrates, and consistent with the salaries set by the  
32 Administrative Officer of the Courts, prescribing times and places at which  
33 magistrates shall be available for the performance of their duties; however,  
34 the chief district judge may in writing delegate his authority to prescribe

1 times and places at which magistrates in a particular county shall be  
2 available for the performance of their duties to another district court judge or  
3 the clerk of the superior court, or the judge may ~~appoint a chief magistrate to~~  
4 ~~fulfill—delegate~~ some or all of the duties under subdivision (12) of this  
5 ~~section, section to the chief magistrate~~ and the person to whom such authority  
6 is delegated shall make monthly reports to the chief district judge of the  
7 times and places actually served by each magistrate.

- 8 (5) Making arrangements with proper authorities for the drawing of civil court  
9 jury panels and determining which sessions of district court shall be jury  
10 sessions.
- 11 (6) Arranging for the reporting of civil cases by court reporters or other  
12 authorized means.
- 13 (7) Arranging sessions, to the extent practicable for the trial of specialized cases,  
14 including traffic, domestic relations, and other types of cases, and assigning  
15 district judges to preside over these sessions so as to permit maximum  
16 practicable specialization by individual judges.
- 17 (8) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(b),  
18 effective July 15, 1992.
- 19 (9) Assigning magistrates ~~during an emergency~~ to temporary duty outside the  
20 county of their residence but within that district pursuant to the policies and  
21 procedures prescribed under G.S. 7A-343(11); and, upon the request of a  
22 chief district judge of an adjoining district and upon the approval of the  
23 Administrative Officer of the Courts, to temporary duty in the district of the  
24 requesting chief district judge pursuant to the policies and procedures  
25 prescribed under G.S. 7A-343(11).
- 26 (10) Designating another district judge of his district as acting chief district judge,  
27 to act during the absence or disability of the chief district judge.
- 28 (11) Designating certain magistrates to appoint counsel and accept waivers of  
29 counsel pursuant to Article 36 of this Chapter. This designation does not  
30 give any magistrate the authority to appoint counsel or accept waivers of  
31 counsel for potentially capital offenses, as defined by rules adopted by the  
32 Office of Indigent Defense Services.
- 33 (12) Designating a full-time magistrate ~~in ain each~~ county to serve as chief  
34 magistrate for that county for an indefinite term and at the judge's pleasure.  
35 The chief magistrate shall have the derivative administrative authority  
36 assigned by the chief district court judge under subdivision (4) of this  
37 section. ~~This subdivision applies only to counties in which the chief district~~  
38 ~~court judge determines that designating a chief magistrate would be in the~~  
39 ~~interest of justice.~~
- 40 (13) Investigating complaints against magistrates. Upon investigation and written  
41 findings of misconduct, a chief district court judge may issue a letter of  
42 caution, a written reprimand, or suspend a magistrate without pay for no  
43 longer than ten days within one pay period."

44 **SECTION 3.** G.S. 7A-173 reads as rewritten:

45 **"§ 7A-173. ~~Suspension;~~Suspension pending removal; removal; reinstatement.**

46 (a) A magistrate may be suspended from performing the duties of ~~his office~~the  
47 magistrate's office pending removal from office by the chief district judge of the district court  
48 district in which ~~his~~the magistrate's county is located, or removed from office by the senior  
49 regular resident superior court judge of, or any regular superior court judge holding court in,

1 the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located.  
2 Grounds for suspension pending removal or removal are the same as for a judge of the General  
3 Court of Justice.

4 (b) Suspension from performing the duties of the office may be ordered upon filing of  
5 sworn written charges in the office of clerk of superior court for the county in which the  
6 magistrate resides. If the chief district judge, upon examination of the sworn charges, finds that  
7 the charges, if true, constitute grounds for removal, he may enter an order suspending the  
8 magistrate from performing the duties of ~~his~~the magistrate's office until a final determination of  
9 the charges on the merits. During suspension pending removal the salary of the magistrate  
10 continues.

11 (c) If a hearing, with or without suspension, is ordered, the magistrate against whom the  
12 charges have been made shall be given immediate written notice of the proceedings and a true  
13 copy of the charges, and the matter shall be set by the chief district judge for hearing before the  
14 senior regular resident superior court judge or a regular superior court judge holding court in  
15 the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. The  
16 hearing shall be held in a county within the district or set of districts not less than 10 days nor  
17 more than 30 days after the magistrate has received a copy of the charges. The hearing shall be  
18 open to the public. All testimony offered shall be recorded. At the hearing the superior court  
19 judge shall receive evidence, and make findings of fact and conclusions of law. If ~~he~~the judge  
20 finds that grounds for removal exist, ~~he~~the judge shall enter an order permanently removing the  
21 magistrate from office, and terminating ~~his~~the magistrate's salary. If ~~he~~the judge finds that no  
22 such grounds exist, ~~he~~the judge shall terminate the suspension, if any.

23 (d) A magistrate may appeal from an order of removal to the Court of Appeals on the  
24 basis of error of law by the superior court judge. Pending decision of the case on appeal, the  
25 magistrate shall not perform any of the duties of his office. If, upon final determination, ~~he~~the  
26 magistrate is ordered reinstated, either by the appellate division or by the superior court on  
27 remand, ~~his~~the magistrate's salary shall be restored from the date of the original order of  
28 removal.

29 (e) This section shall only apply to suspensions pending removal from office and does  
30 not apply to disciplinary suspension pursuant to G.S. 7A-146."

31 **SECTION 4.** G.S. 7A-171 reads as rewritten:

32 **"§ 7A-171. Numbers; appointment and terms; vacancies.**

33 ...

34 (a1) The initial term of appointment for a magistrate is two years and subsequent terms  
35 shall be for a period of four years. The term of office begins ~~on the first day of January on the~~  
36 first day of February of the ~~odd-numbered~~even numbered year after appointment. The service  
37 of an individual as a magistrate filling a vacancy as provided in subsection (d) of this section  
38 does not constitute an initial term. For purposes of this section, any term of office for a  
39 magistrate who has served a two-year term is for four years even if the two-year term of  
40 appointment was before the effective date of this section, the term is after a break in service, or  
41 the term is for appointment in a different county from the county where the two-year term of  
42 office was served.

43 (b) Not earlier than the Tuesday after the first Monday nor later than the third Monday  
44 in ~~December~~January of each even-numbered year, the clerk of the superior court shall submit to  
45 the senior regular resident superior court judge of the district or set of districts as defined in  
46 G.S. 7A-41.1(a) in which the clerk's county is located the names of two (or more, if requested  
47 by the judge) nominees for each magisterial office for the county for which the term of office  
48 of the magistrate holding that position shall expire on ~~December 31~~January 31 of that year. Not  
49 later than the fourth Monday in ~~December~~January, the senior regular resident superior court

1 judge shall, from the nominations submitted by the clerk of the superior court, appoint  
2 magistrates to fill the positions for each county of the judge's district or set of districts.

3 (c) If an additional magisterial office for a county is approved to commence on ~~January~~  
4 ~~February 1~~ of an ~~odd-numbered year, even numbered year~~, the new position shall be filled as  
5 provided in subsection (b) of this section. If the additional position takes effect at any other  
6 time, it is to be filled as provided in subsection (d) of this section.

7 (d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of  
8 superior court shall submit to the senior regular resident superior court judge the names of two  
9 (or more, if so requested by the judge) nominees for the office vacated. Within 15 days after  
10 receipt of the nominations the senior regular resident superior court judge shall appoint from  
11 the nominations received a magistrate who shall take office immediately and shall serve until  
12 ~~December 31~~January 31 of the even-numbered year, and thereafter the position shall be filled  
13 as provided in subsection (b) of this section."

14 **SECTION 5.** Section 3 of this act is effective December 1, 2017 and applies to all  
15 current and future magistrates. Section 4 of this act is effective December 1, 2017 and applies  
16 to all magistrates appointed to office January of 2018, currently appointed magistrates will  
17 finish their term as set at their appointment. The remainder of this act is effective when it  
18 becomes law.  
19



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

BILL DRAFT 2017-MSz-24

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Registration discretionary for Sexual Battery.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REQUIREMENT THAT A PERSON CONVICTED OF A SEXUAL BATTERY REGISTER AS A SEX OFFENDER DISCRETIONARY WITH THE COURT, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-27.33 is amended by adding a new subsection to read:

"§ 14-27.33. **Sexual battery.**

(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class A1 misdemeanor.

(c) When a person is convicted of a violation of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. At sentencing, the state shall provide all appropriate and competent evidence of the person's danger to the community. Evidence to be considered may include, but is not limited to, age, criminal record, relationship to victim, and a risk assessment conducted by the Division of Adult Correction. If the sentencing court finds that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register."

**SECTION 2.** G.S. 14-208.6(4) reads as rewritten:

"(4) "Reportable conviction" means:

...

f. A final conviction for a violation of G.S. 14-27.33, only if the court sentencing the individual issues an order pursuant to G.S. 14-27.33(c) requiring the individual to register."

**SECTION 3.** G.S. 14-202(l) reads as rewritten:

1       "(l) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is  
2 convicted of a second or subsequent violation of subsection (a), (a1), or (c) of this section, the  
3 sentencing court shall consider whether the person is a danger to the community and whether  
4 requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would  
5 further the purposes of that Article as stated in G.S. 14-208.5. At sentencing, the state shall  
6 provide all appropriate and competent evidence of the person's danger to the community.  
7 Evidence to be considered may include, but is not limited to, age, criminal record, relationship  
8 to victim, and a risk assessment conducted by the Division of Adult Correction. If the  
9 sentencing court rules that the person is a danger to the community and that the person shall  
10 register, then an order shall be entered requiring the person to register."

11       **SECTION 4.** G.S. 14-208.6(5) reads as rewritten:

12       "(5) "Sexually violent offense" means a violation of former G.S. 14-27.6  
13 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape),  
14 G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of  
15 a child by an adult), G.S. 14-27.25(a) (statutory rape of a person who is 15  
16 years of age or younger and where the defendant is at least six years older),  
17 G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27  
18 (second-degree forcible sexual offense), G.S. 14-27.28 (statutory sexual  
19 offense with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual  
20 offense), G.S. 14-27.30(a) (statutory sexual offense with a person who is 15  
21 years of age or younger and where the defendant is at least six years older),  
22 G.S. 14-27.31 (sexual activity by a substitute parent or custodian), G.S.  
23 14-27.32 (sexual activity with a student), ~~G.S. 14-27.33 (sexual battery)~~,  
24 G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a  
25 minor who is less than 18 years of age or (ii) the offense is committed  
26 against any person with the intent that they be held in sexual servitude, G.S.  
27 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S.  
28 14-178 (incest between near relatives), G.S. 14-190.6 (employing or  
29 permitting minor to assist in offenses against public morality and decency),  
30 G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first  
31 degree sexual exploitation of a minor), G.S. 14-190.17 (second degree  
32 sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual  
33 exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with  
34 children), G.S. 14-202.3 (Solicitation of child by computer or certain other  
35 electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking  
36 indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a  
37 prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b)  
38 (promoting prostitution of a minor or a mentally disabled person), G.S.  
39 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with  
40 or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual  
41 act upon a juvenile by parent or guardian). The term also includes the  
42 following: a solicitation or conspiracy to commit any of these offenses;  
43 aiding and abetting any of these offenses."

44       **SECTION 5.** G.S. 50-13.1(a1) reads as rewritten:

45       "(a1) Notwithstanding any other provision of law, any person instituting an action  
46 or proceeding for custody ex parte who has been convicted of a sexually  
47 violent offense as defined in G.S. 14-208.6(5) or who has been convicted of  
48 an offense under G.S. 14-27.33 and ordered to register under Article 27A of

1                    Chapter 14 of the General Statutes shall disclose the conviction in the  
2                    pleadings."  
3                    **SECTION 6.** This act becomes effective December 1, 2017, and applies to  
4 offenses committed on or after that date.  
5

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

BILL DRAFT 2017-MSz-9

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Threatened weapon inc. in first deg rape.

(Public)

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Sponsors:

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO ADD THE THREATENED USE OF A WEAPON TO ONE OF THE  
ELEMENTS FOR FIRST DEGREE FORCIBLE RAPE, AS RECOMMENDED BY THE  
NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S.14-27.21 reads as rewritten:

"§ 14-27.21. **First-degree forcible rape.**

(a) A person is guilty of first-degree forcible rape if the person engages in vaginal intercourse with another person by force and against the will of the other person, and does any of the following:

- (1) ~~Employs or displays a~~ Uses, threatens to use, or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon.
- (2) Inflicts serious personal injury upon the victim or another person.
- (3) The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes."

**SECTION 2.** This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

