

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

2

HOUSE BILL 1224\*  
Committee Substitute Favorable 4/26/99

Short Title: Expand Magist. Authority.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR MAGISTRATES WHO  
ARE LICENSED TO PRACTICE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273 reads as rewritten:

**"§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars (\$50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section~~, subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of

1 offenses and fines or penalties promulgated by the Conference of  
2 Chief District Judges pursuant to G.S. 7A-148, and in such cases, to  
3 enter judgment and collect the fines or penalties and costs;

4 (3) To issue arrest warrants valid throughout the State;

5 (4) To issue search warrants valid throughout the county;

6 (5) To grant bail before trial for any noncapital offense;

7 (6) Notwithstanding the provisions of subdivision (1) of this section, to  
8 hear and enter judgment as the chief district judge shall direct in all  
9 worthless check cases brought under G.S. 14-107, when the amount of  
10 the check is two thousand dollars (\$2,000) or less. Provided, however,  
11 that under this section magistrates may not impose a prison sentence  
12 longer than 30 days;

13 (7) To conduct an initial appearance as provided in G.S. 15A-511; and

14 (8) To accept written appearances, waivers of trial and pleas of guilty in  
15 violations of G.S. 14-107 when the amount of the check is two  
16 thousand dollars (\$2,000) or less, restitution, including service  
17 charges and processing fees allowed by G.S. 14-107, is made, and the  
18 warrant does not charge a fourth or subsequent violation of this  
19 statute, and in these cases to enter judgments as the chief district judge  
20 directs.

21 (9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s.  
22 118(d).

23 (b) In criminal actions or infractions, a magistrate who is licensed to practice law in  
24 this State has the additional authority, if so assigned by the chief district court judge and  
25 subject to any limitations imposed by the chief district court judge:

26 (1) To hear, decide, and enter judgment in all infractions cases, regardless  
27 of penalty or offense;

28 (2) To accept binding waivers of counsel in criminal cases."

29 Section 2. G.S. 7A-292 reads as rewritten:

30 "**§ 7A-292. Additional powers of magistrates.**

31 (a) In addition to the jurisdiction and powers assigned in this Chapter to the  
32 magistrate in civil and criminal actions, each magistrate has the following additional  
33 powers:

34 (1) To administer oaths;

35 (2) To punish for direct criminal contempt subject to the limitations  
36 contained in Chapter 5A of the General Statutes of North Carolina;

37 (3) When authorized by the chief district judge, to take depositions and  
38 examinations before trial;

39 (4) To issue subpoenas and capiases valid throughout the county;

40 (5) To take affidavits for the verification of pleadings;

41 (6) To issue writs of habeas corpus ad testificandum, as provided in G.S.  
42 17-41;

- 1 (7) To assign a year's allowance to the surviving spouse and a child's
- 2 allowance to the children as provided in Chapter 30, Article 4, of the
- 3 General Statutes;
- 4 (8) To take acknowledgments of instruments, as provided in G.S. 47-1;
- 5 (9) To perform the marriage ceremony, as provided in G.S. 51-1;
- 6 (10) To take acknowledgment of a written contract or separation
- 7 agreement between husband and wife; and
- 8 (11) Repealed by Session Laws 1973, c. 503, s. 9.
- 9 (12) To assess contribution for damages or for work done on a dam, canal,
- 10 or ditch, as provided in G.S. 156-15.
- 11 (13) Repealed by Session Laws 1973, c. 503, s. 9.

12 (b) In addition to the jurisdiction and powers assigned in this Chapter to the  
13 magistrate in civil and criminal actions, a magistrate who is licensed to practice law in  
14 this State has the additional authority, if so assigned by the chief district court judge and  
15 subject to any limitations imposed by the chief district court judge:

- 16 (1) To hear, decide, and enter judgment in nonjury civil actions within the  
17 amount in controversy for the district court division as provided in  
18 G.S. 7A-243;
- 19 (2) To give judgment of absolute divorce in favor of the plaintiff pursuant  
20 to G.S. 50-10, but only in actions in which:
  - 21 a. The only claim asserted in the plaintiff's complaint is a claim for  
22 absolute divorce;
  - 23 b. The complaint and summons were served on the defendant  
24 personally, or service of the complaint and summons was  
25 accepted by the defendant personally in the manner provided in  
26 G.S. 1A-1, Rule 4(j)(1); and
  - 27 c. No answer or other responsive pleading is filed within the time  
28 provided by law or the only responsive pleading admits all the  
29 allegations of the complaint;
- 30 (3) To determine and issue orders establishing child support and issue  
31 show cause orders in child support proceedings;
- 32 (4) To order blood tests in paternity cases and take acknowledgments of  
33 paternity;
- 34 (5) To determine and issue orders for the emancipation of minors;
- 35 (6) To authorize in forma pauperis divorce actions by prisoners under  
36 G.S. 1-110; and
- 37 (7) To accept binding waivers of counsel in civil contempt cases.

38 (c) Appeal from judgment of a magistrate under subsection (b) of this section shall  
39 be as provided for in Article 19 of Chapter 7A of the General Statutes."

40 Section 3. G.S. 50-10 reads as rewritten:

41 **"§ 50-10. Material facts found by judge or jury in divorce or annulment**  
42 **proceedings; when notice of trial not required; procedure same as**  
43 **ordinary civil actions.**

1 (a) The material facts in every complaint asking for a divorce or for an annulment  
2 shall be deemed to be denied by the defendant, whether the same shall be actually denied  
3 by pleading or not, and no judgment shall be given in favor of the plaintiff in any such  
4 complaint until such facts have been found by a judge or jury.

5 (b) Nothing herein shall require notice of trial to be given to a defendant who has  
6 not made an appearance in the action.

7 (c) The determination of whether there is to be a jury trial or a trial before the  
8 judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

9 (d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for  
10 absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any  
11 genuine issue of material fact remains for trial by jury, but in the event the court  
12 determines that no genuine issue of material fact remains for trial by jury, the court must  
13 find the facts as provided herein. The court may enter a judgment of absolute divorce  
14 pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from  
15 nontestimonial evidence presented by affidavit, verified motion or other verified  
16 pleading.

17 (e) As used in this section, the terms 'judge' and 'court' include the magistrate."

18 Section 4. G.S. 15A-1115 reads as rewritten:

19 "(a) Appeal of District Court Decision. – A person who denies responsibility and is  
20 found responsible for an infraction in the district ~~court~~, court or before a magistrate  
21 pursuant to G.S. 7A-273(b)(1), within 10 days of the hearing, may appeal the decision to  
22 the criminal division of the superior court for a hearing de novo. Upon appeal, the  
23 defendant is entitled to a jury trial unless he consents to have the hearing conducted by  
24 the judge. The State must prove beyond a reasonable doubt that the person charged is  
25 responsible for the infraction unless the person admits responsibility. Unless otherwise  
26 provided by law, the procedures applicable to misdemeanors disposed of in the superior  
27 court apply to those infraction hearings. In the superior court, a prosecutor must represent  
28 the State. Appeal from the judgment in the superior court is as provided for other criminal  
29 actions in superior court, and the Attorney General must represent the State in an appeal  
30 of such actions."

31 Section 5. This act is effective when it becomes law and applies to actions by  
32 magistrates on or after that date.