

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 517

Short Title: Supervis. of Magistrates/Juries/Calendaring. (Public)

Sponsors: Representatives Stevens and Sager (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee B.

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR SUPERVISION OF MAGISTRATES BY THE CLERK OF SUPERIOR COURT IN EACH COUNTY, TO PROVIDE THE JUDICIAL STANDARDS COMMISSION WITH THE AUTHORITY TO INVESTIGATE AND DISCIPLINE MAGISTRATES, TO AUTHORIZE THE USE OF SIX-PERSON JURIES IN MISDEMEANOR CASES, AND TO PROVIDE FOR CERTAIN CONTROL OF CALENDARING IN SUPERIOR COURT BY THE SENIOR RESIDENT SUPERIOR COURT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 7A-103 reads as rewritten:

"§ 7A-103. Authority of clerk of superior court.

The clerk of superior court is authorized to:

- (1) Issue subpoenas to compel the attendance of any witness residing or being in the State, or to compel the production of any document or paper, material to any inquiry in his court.
- (1a) Prescribe times and places at which magistrates shall be available for the performance of their duties, consistent with the salaries set by the Administrative Officer of the Courts.
- (2) Administer oaths, and to take acknowledgment and proof of the execution of all instruments or writings.
- (3) Issue commissions to take the testimony of any witness within or without the State.
- (4) Issue citations and orders to show cause to parties in all matters cognizable in his court, and to compel the appearance of such parties.
- (5) Enforce all lawful orders and decrees, by execution or otherwise, against those who fail to comply therewith or to execute lawful process. Process may be issued by the clerk, to be executed in any county of the State, and to be returned before him.
- (6) Certify and exemplify, under seal of his court, all documents, papers or records therein, which shall be received in evidence in all the courts of the State.
- (7) Preserve order in this court, punish criminal contempts, and hold persons in civil contempt; subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina.
- (8) Adjourn any proceeding pending before him from time to time.



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- 1 (9) Open, vacate, modify, set aside, or enter as of a former time, decrees or
2 orders of his court.
- 3 (10) Enter default or judgment in any action or proceeding pending in his court as
4 authorized by law.
- 5 (11) Award costs and disbursements as prescribed by law, to be paid personally,
6 or out of the estate or fund, in any proceeding before him.
- 7 (12) Compel an accounting by magistrates and compel the return to the clerk of
8 superior court by the person having possession thereof, of all money,
9 records, papers, dockets and books held by such magistrate by virtue or color
10 of his office.
- 11 (13) Grant and revoke letters testamentary, letters of administration, and letters of
12 trusteeship.
- 13 (14) Appoint and remove guardians and trustees, as provided by law.
- 14 (15) Audit the accounts of fiduciaries, as required by law.
- 15 (16) Exercise jurisdiction conferred on him in every other case prescribed by
16 law."

17 **SECTION 1.(b)** G.S. 7A-146 reads as rewritten:

18 **"§ 7A-146. Administrative authority and duties of chief district judge.**

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

- 23 (1) Arranging schedules and assigning district judges for sessions of district
24 courts.
- 25 (2) Arranging or supervising the calendaring of noncriminal matters for trial or
26 hearing.
- 27 (3) Supervising the clerk of superior court in the discharge of the clerical
28 functions of the district court.
- 29 (4) Assigning matters to magistrates, ~~and consistent with the salaries set by the~~
30 ~~Administrative Officer of the Courts, prescribing times and places at which~~
31 ~~magistrates shall be available for the performance of their duties; however,~~
32 ~~the chief district judge may in writing delegate his authority to prescribe~~
33 ~~times and places at which magistrates in a particular county shall be~~
34 ~~available for the performance of their duties to another district court judge or~~
35 ~~the clerk of the superior court, and the person to whom such authority is~~
36 ~~delegated shall make monthly reports to the chief district judge of the times~~
37 ~~and places actually served by each magistrate.~~ magistrates.
- 38 (5) Making arrangements with proper authorities for the drawing of civil court
39 jury panels and determining which sessions of district court shall be jury
40 sessions.
- 41 (6) Arranging for the reporting of civil cases by court reporters or other
42 authorized means.
- 43 (7) Arranging sessions, to the extent practicable for the trial of specialized cases,
44 including traffic, domestic relations, and other types of cases, and assigning
45 district judges to preside over these sessions so as to permit maximum
46 practicable specialization by individual judges.
- 47 (8) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(b),
48 effective July 15, 1992.
- 49 (9) Assigning magistrates during an emergency to temporary duty outside the
50 county of their residence but within that district; and, upon the request of a
51 chief district judge of an adjoining district and upon the approval of the

1 Administrative Officer of the Courts, to temporary duty in the district of the
2 requesting chief district judge.

3 (10) Designating another district judge of his district as acting chief district judge,
4 to act during the absence or disability of the chief district judge.

5 (11) Designating certain magistrates to appoint counsel pursuant to Article 36 of
6 this Chapter. This designation may only be given to magistrates who are
7 duly licensed attorneys and does not give any magistrate the authority to: (i)
8 appoint counsel for potentially capital offenses, as defined by rules adopted
9 by the Office of Indigent Defense Services; or (ii) accept a waiver of
10 counsel."

11 **SECTION 2.** G.S. 7A-374.2 reads as rewritten:

12 **"§ 7A-374.2. Definitions.**

13 Unless the context clearly requires otherwise, the definitions in this section shall apply
14 throughout this Article:

15 ...

16 (5) "Judge" means any justice or judge of the General Court of Justice of North
17 Carolina, including any retired justice or judge who is recalled for service as
18 an emergency judge of any division of the General Court of Justice. For
19 purposes of this Article only, the term "judge" shall also include magistrates.

20"

21 **SECTION 3.** G.S. 15A-1201 reads as rewritten:

22 **"§ 15A-1201. Right to trial by jury.**

23 In all ~~criminal~~ felony cases the defendant has the right to be tried by a jury of 12 whose
24 verdict must be unanimous. In misdemeanor cases, the defendant has the right to be tried by a
25 jury of six whose verdict must be unanimous. In the district court the judge is the finder of fact
26 in criminal cases, but the defendant has the right to appeal for trial de novo in superior court as
27 provided in G.S. 15A-1431. In superior court all criminal trials in which the defendant enters a
28 plea of not guilty must be tried before a jury."

29 **SECTION 4.** G.S. 7A-49.4 reads as rewritten:

30 **"§ 7A-49.4. Superior court criminal case docketing.**

31 (a) Criminal Docketing. – Criminal cases in superior court shall be calendared by the
32 district attorney at administrative settings according to a criminal case docketing plan
33 developed by the district attorney for each superior court district in consultation with the
34 superior court judges residing in that district and after opportunity for comment by members of
35 the local bar. Each criminal case docketing plan shall, at a minimum, comply with the
36 provisions of this section, but may contain additional provisions not inconsistent with this
37 section.

38 (b) Administrative Settings. – An administrative setting shall be calendared for each
39 felony within 60 days of indictment or service of notice of indictment if required by law, or at
40 the next regularly scheduled session of superior court if later than 60 days from indictment or
41 service if required. At an administrative setting:

42 (1) The court shall determine the status of the defendant's representation by
43 counsel;

44 (2) After hearing from the parties, the court shall set deadlines for the delivery
45 of discovery, arraignment if necessary, and filing of motions;

46 (3) If the district attorney has made a determination regarding a plea
47 arrangement, the district attorney shall inform the defendant as to whether a
48 plea arrangement will be offered and the terms of any proposed plea
49 arrangement, and the court may conduct a plea conference if supported by
50 the interest of justice;

- 1 (4) The court may hear pending pretrial motions, set such motions for hearing
2 on a date certain, or defer ruling on motions until the trial of the case; and
3 (5) The court may schedule more than one administrative setting if requested by
4 the parties or if it is found to be necessary to promote the fair administration
5 of justice in a timely manner.

6 Whenever practical, administrative settings shall be held by a superior court judge residing
7 within the district, but may otherwise be held by any superior court judge.

8 If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the
9 final administrative setting, the district attorney shall announce a proposed trial date. The court
10 shall set that date as the tentative trial date unless, after providing the parties an opportunity to
11 be heard, the court determines that the interests of justice require the setting of a different date.
12 In that event, the district attorney shall set another tentative trial date during the final
13 administrative setting. The trial shall occur no sooner than 30 days after the final administrative
14 setting, except by agreement of the State and the defendant.

15 Nothing in this section precludes the disposition of a criminal case by plea, deferred
16 prosecution, or dismissal prior to an administrative setting.

17 (c) Definite Trial Date. – When a case has not otherwise been scheduled for trial within
18 120 days of indictment or of service of notice of indictment if required by law, then upon
19 motion by the defendant at any time thereafter, the senior resident superior court judge, or a
20 superior court judge designated by the senior resident superior court judge, may hold a hearing
21 for the purpose of establishing a trial date for the defendant. Notwithstanding the establishment
22 of a trial date under this subsection, if a case has not been tried within nine months after the
23 defendant has been indicted or bound over to superior court, the senior resident superior court
24 judge may give notice to the district attorney and the defendant's attorney and schedule a trial
25 conference for trial of the case, unless the district attorney provides good cause that the case is
26 not yet ready for trial.

27 (d) Venue for Administrative Settings. – Venue for administrative settings may be in
28 any county within the district when necessary to comply with the terms of the criminal case
29 docketing plan. The presence of the defendant is only required for administrative settings held
30 in the county where the case originated.

31 (e) Setting and Publishing of Trial Calendar. – No less than 10 working days before
32 cases are calendared for trial, the district attorney shall publish the trial calendar. The trial
33 calendar shall schedule the cases in the order in which the district attorney anticipates they will
34 be called for trial and should not contain cases that the district attorney does not reasonably
35 expect to be called for trial. In counties in which multiple sessions of court are being held, the
36 district attorney may publish a trial calendar for each session of court.

37 (f) Order of Trial. – The district attorney, after calling the calendar and determining
38 cases for pleas and other disposition, shall announce to the court the order in which the district
39 attorney intends to call for trial the cases remaining on the calendar. Deviations from the
40 announced order require approval by the presiding judge if the defendant whose case is called
41 for trial objects; but the defendant may not object if all the cases scheduled to be heard before
42 the defendant's case have been disposed of or delayed with the approval of the presiding judge
43 or by consent of the State and the defendant. A case may be continued from the trial calendar
44 only by consent of the State and the defendant or upon order of the presiding judge or resident
45 superior court judge for good cause shown. The district attorney, after consultation with the
46 parties, shall schedule a new trial date for cases not reached during that session of court.

47 (g) Nothing in this section shall be construed to deprive any victim of the rights granted
48 under Article I, Section 37 of the North Carolina Constitution and Article 46 of Chapter 15A of
49 the General Statutes.

50 (h) Nothing in this section shall be construed to affect the authority of the court in the
51 call of cases calendared for trial."

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SECTION 5. This act becomes effective January 1, 2012.