

NORTH CAROLINA GENERAL ASSEMBLY



NORTH CAROLINA COURTS COMMISSION

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

JANUARY, 2017

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TRANSMITTAL LETTER

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.

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 643 of the Legislative Office Building with Representative Sarah Stevens presiding.

The Commission received a report from the subcommittee examining various civil and criminal law matters recommending 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.
- Provide that a person who prevails in a civil action against a private entity for unlawfully disseminating criminal history records without first updating them has a right to recover a civil penalty in addition to any damages sustained.
- Make the requirement that a person convicted of sexual battery register as a sex offender discretionary with the court.

The working group examining the appointment and supervision of magistrates recommended 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.
- Mandate 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.

After discussion, the Commission approved its final report to the 2017 Regular Session of the 2017 General Assembly, with recommendations for legislative action as described in the report.

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, comprising:
 - A \$447,460 base budget adjustment for a recurring appropriation to make up for a shortfall in lab receipts.
 - A \$1.7M recurring appropriation to fund unfunded mandates.
 - A \$2.6M recurring appropriation for scientific equipment on a 5-year replacement schedule.
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 obtain prior legislative review and approval from the House Appropriations, Justice and Public Safety Committee and the Senate Appropriations on Justice and Public Safety Committee, before implementing any proposed change to the Safety Planning Policy for Safety Assessments (DSS-5132) and the use of Temporary Parental Safety Agreements.
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 at page 16 of this report.
5. The General Assembly should clarify that a defendant can be convicted of the crime of attempted robbery with a dangerous weapon regardless of whether or not personal property is taken from the victim, as set forth in bill draft 2017-MSz-10, enclosed at page 17 of this report.
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 18.
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 19.
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 20.
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 23.

10. The General Assembly should provide that a person who prevails in an action for damages sustained by the unlawful dissemination of information by a private entity in violation of G.S. 15A-152(b) is entitled to recover a civil penalty in the amount of \$10,000 in addition to any damages sustained as a result of the violation, as set forth in bill draft 2017-MSz-19, enclosed in Appendix C of this report at page 24.
11. As set forth in bill draft 2017-MSz-23 enclosed in Appendix C of this report at page 25, 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.
12. 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 29.
13. The General Assembly should enhance the penalty for first degree rape when a weapon is threatened.
14. The General Assembly should update the definition of "business" in Chapter 75 of the General Statutes.
15. The General Assembly should request the Courts Commission to study the current organization of the superior court, district court, and prosecutorial districts and to present its final report, including any recommended changes to the current districts, to the 2019 Regular Session of the 2019 General Assembly. In undertaking this study, the Courts Commission should be requested to consider the cost of redistricting, the time needed to implement any recommended changes, and the desirability of achieving one or more of the following results: coterminous administrative districts (having the same counties in each of the superior court, district court, and prosecutorial districts); electoral parity (equal power of each vote); uniformity of election processes; and uniformity in procedures for filling vacancies of judicial officials.

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)

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.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

BILL DRAFT 2017-MSz-8 [v.3] (12/08)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
01/19/2017 11:37:26 AM

Short Title: Facilitation of Reentry.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED
AN ACT TO REQUIRE THE COURT TO ATTEMPT TO IDENTIFY OUTSTANDING
WARRANTS BEFORE ENTERING AN ORDER IN A CRIMINAL CASE ONLY IN
CASES IN WHICH THE DEFENDANT IS IN CUSTODY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-301.1(p) reads as rewritten:
"§ 15A-301.1. Electronic Repository.

...

(p) Prior to the entry of any order of the court in a criminal case, the court shall attempt to identify all outstanding warrants against that individual, if in custody, and notify the appropriate law enforcement agencies of the location of the individual."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

BILL DRAFT 2017-MSz-10 [v.3] (12/08)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
01/10/2017 04:24:17 PM

Short Title: Property taken not preclude attempted robbery.

(Public)

Sponsors:

Referred to:

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.

4 The General Assembly of North Carolina enacts:

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

6 **"§ 14-87. Robbery with firearms or other dangerous weapons.**

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

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

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

18

0GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

BILL DRAFT 2017-MSz-13 [v.3] (01/09)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
01/10/2017 04:27:34 PM

Short Title: Discovery not disseminated to defendant. (Public)

Sponsors: Representative Stevens.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PROTECTION FOR WITNESSES AND VICTIMS BY ENSURING
CERTAIN DISCOVERY MATERIALS REMAIN IN THE CONTROL OF DEFENSE
COUNSEL AND ARE NOT DISSEMINATED BY THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-920 is amended by adding a new subsection to read:

"§ 15A-902. Discovery procedure.

...

(g) Anytime the prosecutor's office provides discovery to defense counsel, the prosecutor's office may also give written notice that the discovery shall not be used by the defendant or his attorney for any purpose other than in direct relationship to the case and no further disclosure shall be made of these items. Upon receipt of such notice, all discovery shall remain in the sole custody and control of defense counsel. Defense counsel may allow the defendant to view and discuss the discovery, but defense counsel shall not permit the defendant to possess or control copies of the discovery. If served with such notice by the prosecutor, an attorney may file a motion with the Superior Court for such relief from the notice as the interests of justice require."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

BILL DRAFT 2017-MSz-15 [v.1] (01/10)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
01/10/2017 09:54:33 AM

Short Title: Motions for Appropriate Relief.

(Public)

Sponsors: Representative Stevens.

Referred to:

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.

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

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

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

44 "**§ 7A-173. ~~Suspension;~~Suspension pending removal; removal; reinstatement.**

45 (a) A magistrate may be suspended from performing the duties of ~~his office~~the
46 magistrate's office pending removal from office by the chief district judge of the district court
47 district in which ~~his~~the magistrate's county is located, or removed from office by the senior
48 regular resident superior court judge of, or any regular superior court judge holding court in,
49 the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located.

1 Grounds for suspension pending removal or removal are the same as for a judge of the General
2 Court of Justice.

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

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

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

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

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

31 "**§ 7A-171. Numbers; appointment and terms; vacancies.**

32 ...

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

42 (b) Not earlier than the Tuesday after the first Monday nor later than the third Monday
43 in ~~December~~January of each even-numbered year, the clerk of the superior court shall submit to
44 the senior regular resident superior court judge of the district or set of districts as defined in
45 G.S. 7A-41.1(a) in which the clerk's county is located the names of two (or more, if requested
46 by the judge) nominees for each magisterial office for the county for which the term of office
47 of the magistrate holding that position shall expire on ~~December 31~~January 31 of that year. Not
48 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 [v.1] (01/13)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
01/13/2017 11:10:24 AM

Short Title: Registration discretionary for Sexual Battery. (Public)

Sponsors: Representative Stevens.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE THE REQUIREMENT THAT A PERSON CONVICTED OF A
3 SEXUAL BATTERY REGISTER AS A SEX OFFENDER DISCRETIONARY WITH
4 THE COURT.

5 The General Assembly of North Carolina enacts:

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

7 "§ 14-27.33. Sexual battery.

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

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

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

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

17 (c) When a person is convicted of a violation of this section, the sentencing court shall
18 consider whether the person is a danger to the community and whether requiring the person to
19 register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of
20 that Article as stated in G.S. 14-208.5. At sentencing, the state shall provide all appropriate and
21 competent evidence of the person's danger to the community. Evidence to be considered may
22 include age, criminal record, relationship to victim, and a risk assessment conducted by the
23 Division of Adult Correction. If the sentencing court finds that the person is a danger to the
24 community and that the person shall register, then an order shall be entered requiring the person
25 to register."

26 SECTION 2. This act becomes effective December 1, 2017, and applies to
27 offenses committed on or after that date.
28

29

30