

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS65043-LL-135 (03/23)

Short Title: AOC Omnibus Courts Act.

(Public)

Sponsors: Senator Hartsell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AUTOMATIC REINSTATEMENT OF CASES THAT WERE DISMISSED WITH LEAVE IF THOSE CASES ARE WAIVABLE, TO CLARIFY THE CONDITIONS OF PRETRIAL RELEASE WHEN A DNA SAMPLE IS REQUIRED, TO ALLOW FOR SERVICE OF CRIMINAL PROCESS BY A LAW ENFORCEMENT OFFICER BEFORE A MAGISTRATE EVEN WHEN THE OFFICER IS OUTSIDE THE OFFICER'S TERRITORIAL JURISDICTION, TO ADD TO THE STATUTORY DUTIES OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS, TO DECREASE THE PERIOD OF TIME THAT STATE EMPLOYEES MUST BE SEPARATED FROM EMPLOYMENT PRIOR TO BEING SELECTED TO SERVE IN A POSITION WITHIN THE JUDICIAL BRANCH, TO ELIMINATE THE NECESSITY OF A HEARING TO REMOVE A PERSONAL REPRESENTATIVE IN ESTATE CASES, TO REPEAL THE REQUIREMENT THAT MAGISTRATES BE RESIDENTS OF THE COUNTY TO WHICH THEY ARE APPOINTED TO SERVE, TO CLARIFY WHEN A CLERK OF SUPERIOR COURT MAY RELEASE FUNDS HELD UNDER A CLAIM OF LIEN ON REAL PROPERTY, TO CHANGE THE DATE ON WHICH A NEWLY ELECTED CLERK OF SUPERIOR COURT TAKES OFFICE, TO GRANT THE COURT THE DISCRETION TO FIND THAT DISTANCE FROM THE COURT IS GOOD CAUSE TO EXEMPT A PARTY FROM CUSTODY MEDIATION, AND TO PROVIDE THAT FEES COLLECTED BY THE DISPUTE RESOLUTION COMMISSION ARE NONREVERTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-932 is amended by adding a new subsection to read:

"(d1) If the proceeding was dismissed pursuant to subdivision (2) of subsection (a) of this section and charged only offenses for which written appearance, waiver of trial or hearing, and plea of guilty or admission of responsibility are permitted pursuant to G.S. 7A-148(a), and the defendant later tenders to the court that waiver and payment in full of all applicable fines, costs, and fees, the clerk shall accept said waiver and payment without need for a written reinstatement from the prosecutor. Upon disposition of the case pursuant to this subsection, the clerk shall recall any outstanding criminal process in the case pursuant to G.S. 15A-301(g)(2)b."

SECTION 2. G.S. 15A-534(a) reads as rewritten:

"(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:



- 1 (1) Release the defendant on his written promise to appear.
- 2 (2) Release the defendant upon his execution of an unsecured appearance bond
- 3 in an amount specified by the judicial official.
- 4 (3) Place the defendant in the custody of a designated person or organization
- 5 agreeing to supervise him.
- 6 (4) Require the execution of an appearance bond in a specified amount secured
- 7 by a cash deposit of the full amount of the bond, by a mortgage pursuant to
- 8 G.S. 58-74-5, or by at least one solvent surety.
- 9 (5) House arrest with electronic monitoring.

10 If condition (5) is imposed, the defendant must execute a secured appearance bond under
11 subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may
12 elect to execute an appearance bond under subdivision (4). If the defendant is required to
13 provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to
14 ~~G.S. 15A-266.3A~~ or ~~G.S. 15A-266.4~~, G.S. 15A-266.3A, and (i) the fingerprints or DNA sample
15 have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA
16 sample, the judicial official shall make the collection of the fingerprints or DNA sample a
17 condition of pretrial release. The judicial official may also place restrictions on the travel,
18 associations, conduct, or place of abode of the defendant as conditions of pretrial release."

19 **SECTION 3.(a)** G.S. 15A-301(c) reads as rewritten:

20 "(c) Service. –

- 21 (1) ~~A law-enforcement~~ law enforcement officer or other employee designated as
- 22 provided in subsection (b) receiving for service or execution a criminal
- 23 process that was first created and exists only in paper form must note
- 24 thereon the date and time of its receipt. A law enforcement officer receiving
- 25 a copy of a criminal process that was printed in paper form as provided in
- 26 G.S. 15A-301.1 shall cause the date of receipt to be recorded as provided in
- 27 that section. Upon execution or service, a copy of the process must be
- 28 delivered to the person arrested or served.
- 29 (2) A corporation may be served with criminal summons as provided in
- 30 G.S. 15A-773.
- 31 (3) Notwithstanding any other provision of law, a municipal law enforcement
- 32 officer may serve criminal process in a building housing a court or office of
- 33 the General Court of Justice or before any judicial official authorized to
- 34 conduct an initial appearance if the officer otherwise has territorial
- 35 jurisdiction to serve criminal process in a municipality located in that
- 36 county. The officer may arrest the person named in the process as provided
- 37 in G.S. 15A-402(b). A municipal law enforcement officer serving criminal
- 38 process as provided in this subdivision shall be protected under subsection
- 39 (f) of this section."

40 **SECTION 3.(b)** G.S. 15A-402(b) reads as rewritten:

41 "(b) Territorial Jurisdiction of County and City Officers. – ~~Law-enforcement~~ Law
42 enforcement officers of cities and counties may arrest persons within their particular cities or
43 counties and on any property and rights-of-way owned by the city or county outside its limits.
44 Law enforcement officers of cities serving criminal process as provided in G.S. 15A-301(c)(3)
45 may arrest the person named in the process when required by the process."

46 **SECTION 4.(a)** G.S. 7A-343 reads as rewritten:

47 "**§ 7A-343. Duties of Director.**

48 The Director is the Administrative Officer of the Courts, and the Director's duties include
49 all of the following:

- 1 (1) Collect and compile statistical data and other information on the judicial and
2 financial operation of the courts and on the operation of other offices directly
3 related to and serving the courts.
- 4 (2) Determine the state of the dockets and evaluate the practices and procedures
5 of the courts, and make recommendations concerning the number of judges,
6 district attorneys, and magistrates required for the efficient administration of
7 justice.
- 8 (3) Prescribe uniform administrative and business methods, systems, forms and
9 records to be used in the offices of the clerks of superior court.
- 10 (3a) Maintain and staff as necessary an Internal Audit Division of the Judicial
11 Department and the Administrative Office of the Courts that:
 - 12 a. Evaluates and discloses potential weaknesses in the effectiveness of
13 internal controls in the court system for the purpose of safeguarding
14 public funds and assets and minimizing incidences of fraud, waste,
15 and abuse.
 - 16 b. Examines and analyzes the design and effectiveness of administrative
17 and procedural operations.
 - 18 c. Ensures overall compliance with federal and State laws, internal and
19 external regulations, rules and procedures, and other applicable
20 requirements.
 - 21 d. Inspects and reviews the effectiveness and efficiency of processes
22 and proceedings conducted by judicial officers.
 - 23 e. Collaborates with other divisions to guide, direct, and support court
24 officials in efforts to conform to both recommended and required
25 compliance standards.
 - 26 f. Executes routine audits of the Judicial Department's systems and
27 controls, including, but not limited to:
 - 28 1. Accounting systems and controls.
 - 29 2. Administrative systems and controls.
 - 30 3. Electronic data processing systems and controls.
- 31 (4) Prepare and submit budget estimates of State appropriations necessary for
32 the maintenance and operation of the Judicial Department, and authorize
33 expenditures from funds appropriated for these purposes.
- 34 (5) Investigate, make recommendations concerning, and assist in the securing of
35 adequate physical accommodations for the General Court of Justice.
- 36 (6) Procure, distribute, exchange, transfer, and assign such equipment, books,
37 forms and supplies as are to be acquired with State funds for the General
38 Court of Justice.
- 39 (7) Make recommendations for the improvement of the operations of the
40 Judicial Department.
- 41 (8) Prepare and submit an annual report on the work of the Judicial Department
42 to the Chief Justice, and transmit a copy to each member of the General
43 Assembly. The annual report shall include the activities of each North
44 Carolina Business Court site, including the number of new, closed, and
45 pending cases, the average age of pending cases, and the annual
46 expenditures for the prior fiscal year.
- 47 (9) Assist the Chief Justice in performing his duties relating to the transfer of
48 district court judges for temporary or specialized duty.
- 49 (9a) Establish and operate systems and services that provide for electronic filing
50 in the court system and further provide electronic transaction processing and
51 access to court information systems pursuant to G.S. 7A-343.2.

- 1 (9b) Enter into contracts with one or more private vendors to provide for the
2 payment of fines, fees, and costs due to the court by credit, charge, or debit
3 cards; such contracts may provide for the assessment of a convenience or
4 transaction fee by the vendor to cover the costs of providing this service.
- 5 (9c) Prescribe policies and procedures for the appointment and payment of
6 foreign language interpreters in those cases specified in G.S. 7A-314(f).
7 These policies and procedures shall be applied uniformly throughout the
8 General Court of Justice. After consultation with the Joint Legislative
9 Commission on Governmental Operations, the Director may also convert
10 contractual foreign language interpreter positions to permanent State
11 positions when the Director determines that it is more cost-effective to do so.
- 12 (9d) Analyze the use of contractual positions in the Judicial Department and, after
13 consultation with the Joint Legislative Commission on Governmental
14 Operations, convert contractual positions to permanent State positions when
15 the Director determines it is in the best interests of the Judicial Department
16 to do so.
- 17 (9e) Prescribe policies and procedures for the appointment and payment of deaf
18 and hearing-impaired interpreters, in accordance with G.S. 8B-8(a), for those
19 cases specified in G.S. 8B-8(b) and (c). These policies and procedures shall
20 be applied uniformly throughout the General Court of Justice. After
21 consultation with the Joint Legislative Commission on Governmental
22 Operations, the Director may also convert contractual hearing-impaired
23 interpreter positions to permanent State positions when the Director
24 determines that it is more cost-effective to do so.
- 25 (9f) Prescribe policies and procedures for the payment of those experts acting on
26 behalf of the court or prosecutorial offices, as provided for in
27 G.S. 7A-314(d).
- 28 (10) Perform such additional duties and exercise such additional powers as may
29 be prescribed by statute or assigned by the Chief Justice.
- 30 (11) Prescribe policies and procedures for the assignment and compensation of
31 magistrates performing temporary duty outside their county of residence
32 during an emergency, as provided for in G.S. 7A-146(9).
- 33 (12) Issue photographic identification cards to appropriate Judicial Department
34 employees and officials authorizing those employees and officials to travel
35 to and from, enter, and work in court and court-related locations for the
36 conduct or support of essential court operations in preparation for, during, or
37 in the aftermath of emergency situations, including, but not limited to,
38 catastrophic conditions. Notwithstanding any other provision of the law, and
39 notwithstanding any emergency restrictions on travel or closures that may
40 have been issued due to the emergency situations, an identification card
41 issued pursuant to this subdivision shall be honored by all State and local
42 law enforcement, emergency and health officers, and other authorities to
43 permit the person to whom the card was issued to travel to and from court
44 and court-related locations and otherwise carry out the purposes authorized
45 by this subdivision. An identification card issued pursuant to this subdivision
46 shall set forth its effective date and the full name, position, and employing
47 unit of the person to whom the card is issued, with a provision, signed by the
48 person, stating that the person is credentialed solely for the purposes stated
49 in this subdivision and that the card shall not be used for any other purpose.
- 50 (13) Prescribe policies and procedures and establish and operate systems for the
51 exchange of criminal and civil information from and to the Judicial

1 Department and local, State, and federal governments and the Eastern Band
2 of Cherokee Indians.

3 (14) Transfer equipment and supply funds to the appropriate programs and
4 between programs as the equipment priorities and supply consumptions
5 occur during the operating year.

6 (15) Notwithstanding the provisions of G.S. 138-6(a)(1), elect to establish a
7 per-mile reimbursement rate for transportation by privately owned vehicles
8 at a rate less than the business standard mileage rate set by the Internal
9 Revenue Service."

10 **SECTION 4.(b)** G.S. 7A-146 reads as rewritten:

11 **"§ 7A-146. Administrative authority and duties of chief district judge.**

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

16

17 (9) Assigning magistrates during an emergency to temporary duty outside the
18 county of their residence but within that ~~district~~; district pursuant to the
19 policies and procedures prescribed under G.S. 7A-343(11); and, upon the
20 request of a chief district judge of an adjoining district and upon the
21 approval of the Administrative Officer of the Courts, to temporary duty in
22 the district of the requesting chief district ~~judge~~. judge pursuant to the
23 policies and procedures prescribed under G.S. 7A-343(11).

24"

25 **SECTION 5.** G.S. 135-1(20) reads as rewritten:

26 "(20) "Retirement" means the termination of employment and the complete
27 separation from active service with no intent or agreement, express or
28 implied, to return to service. A retirement allowance under the provisions of
29 this Chapter may only be granted upon retirement of a member. In order for
30 a member's retirement to become effective in any month, the member must
31 render no service, including part-time, temporary, substitute, or contractor
32 service, at any time during the six months immediately following the
33 effective date of ~~retirement~~. retirement, except for persons rendering service,
34 including part-time, temporary, substitute, or contractor service for the
35 Judicial Branch. For purposes of this subdivision, service as a member of a
36 school board or as an unpaid bona fide volunteer in a local school
37 administrative unit shall not be considered service. For persons selected to
38 render service, including part-time, temporary, substitute, or contractor
39 service for the Judicial Branch, a member's retirement becomes effective in
40 any month that the member has rendered no service, including part-time,
41 temporary, substitute, or contractor service, for a period of 30 days
42 immediately following the effective date of retirement."

43 **SECTION 6.(a)** G.S. 28A-9-1(a)(3) is repealed.

44 **SECTION 6.(b)** G.S. 28A-9-2(a) reads as rewritten:

45 "(a) Grounds. – Letters testamentary, letters of administration, or letters of collection,
46 shall be revoked by the clerk of superior court without hearing when:

47 (1) After letters of administration or collection have been issued, a will is
48 subsequently admitted to probate.

49 (2) After letters testamentary have been issued:

50 a. The will is set aside, or

1 b. A subsequent testamentary paper revoking the appointment of the
2 executor is admitted to probate.

3 (3) Any personal representative or collector required to give a new bond or
4 furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the
5 time ordered.

6 (4) A nonresident personal representative refuses or fails to obey any citation,
7 notice, or process served on him or his process agent.

8 (5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for
9 any personal representative or collector, or any personal representative or
10 collector has executed an assignment for the benefit of creditors.

11 (6) A personal representative has failed to file an inventory or an annual account
12 with the clerk of superior court, as required by Article 20 and Article 21 of
13 this Chapter, and proceedings to compel such filing pursuant to
14 G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be
15 completed because the personal representative cannot be found.

16 (7) The person to whom they were issued has violated a fiduciary duty through
17 default or misconduct in the execution of his office."

18 **SECTION 7.** G.S. 7A-171.2(a) is repealed.

19 **SECTION 8.** G.S. 44A-16 reads as rewritten:

20 **"§ 44A-16. Discharge of record claim of lien on real property.**

21 (a) Any claim of lien on real property filed under this Article may be discharged by any
22 of the following methods:

23 (1) The lien claimant of record, the claimant's agent or attorney, in the presence
24 of the clerk of superior court may acknowledge the satisfaction of the claim
25 of lien on real property indebtedness, whereupon the clerk of superior court
26 shall forthwith make upon the record of such claim of lien on real property
27 an entry of such acknowledgment of satisfaction, which shall be signed by
28 the lien claimant of record, the claimant's agent or attorney, and witnessed
29 by the clerk of superior court.

30 (2) The owner may exhibit an instrument of satisfaction signed and
31 acknowledged by the lien claimant of record which instrument states that the
32 claim of lien on real property indebtedness has been paid or satisfied,
33 whereupon the clerk of superior court shall cancel the claim of lien on real
34 property by entry of satisfaction on the record of such claim of lien on real
35 property.

36 (3) By failure to enforce the claim of lien on real property within the time
37 prescribed in this Article.

38 (4) By filing in the office of the clerk of superior court the original or certified
39 copy of a judgment or decree of a court of competent jurisdiction showing
40 that the action by the claimant to enforce the claim of lien on real property
41 has been dismissed or finally determined adversely to the claimant.

42 (5) Whenever a sum equal to the amount of the claim or claims of lien on real
43 property claimed is deposited with the clerk of court, to be applied to the
44 payment finally determined to be due, whereupon the clerk of superior court
45 shall cancel the claim or claims of lien on real property or claims of lien on
46 real property of record.

47 (6) Whenever a corporate surety bond, in a sum equal to one and one-fourth
48 times the amount of the claim or claims of lien on real property claimed and
49 conditioned upon the payment of the amount finally determined to be due in
50 satisfaction of said claim or claims of lien on real property, is deposited with

the clerk of court, whereupon the clerk of superior court shall cancel the claim or claims of lien on real property of record.

(b) The clerk may release funds held on a corporate surety bond upon receipt of one of the following:

- (1) Written agreement of the parties.
- (2) A final judgment of a court of competent jurisdiction.
- (3) A consent order."

SECTION 9. G.S. 163-1(d) reads as rewritten:

"(d) If primaries for the State Senate or State House of Representatives are temporarily moved from the date provided in subsection (b) of this section for any election year, all primaries shall be held on the same day.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
...			
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday day in December next after election
...."			

SECTION 10. G.S. 50-13.1(c) reads as rewritten:

"(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court ~~shall~~ may be considered good cause."

SECTION 11. G.S. 7A-38.2(d) reads as rewritten:

"(d) An administrative fee, not to exceed two hundred dollars (\$200.00), may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediation training programs operating under this Article. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission."

SECTION 12. This act becomes effective July 1, 2011.