

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 580

Short Title: AOC Omnibus Courts Act.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

April 14, 2011

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR AUTOMATIC REINSTATEMENT OF CASES THAT WERE
2 DISMISSED WITH LEAVE IF THOSE CASES ARE WAIVABLE, TO CLARIFY THE
3 CONDITIONS OF PRETRIAL RELEASE WHEN A DNA SAMPLE IS REQUIRED, TO
4 ALLOW FOR SERVICE OF CRIMINAL PROCESS BY A LAW ENFORCEMENT
5 OFFICER BEFORE A MAGISTRATE EVEN WHEN THE OFFICER IS OUTSIDE THE
6 OFFICER'S TERRITORIAL JURISDICTION, TO ADD TO THE STATUTORY DUTIES
7 OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS, TO
8 DECREASE THE PERIOD OF TIME THAT STATE EMPLOYEES MUST BE
9 SEPARATED FROM EMPLOYMENT PRIOR TO BEING SELECTED TO SERVE IN A
10 POSITION WITHIN THE JUDICIAL BRANCH, TO ELIMINATE THE NECESSITY OF
11 A HEARING TO REMOVE A PERSONAL REPRESENTATIVE IN ESTATE CASES,
12 TO REPEAL THE REQUIREMENT THAT MAGISTRATES BE RESIDENTS OF THE
13 COUNTY TO WHICH THEY ARE APPOINTED TO SERVE, TO CLARIFY WHEN A
14 CLERK OF SUPERIOR COURT MAY RELEASE FUNDS HELD UNDER A CLAIM OF
15 LIEN ON REAL PROPERTY, TO CHANGE THE DATE ON WHICH A NEWLY
16 ELECTED CLERK OF SUPERIOR COURT TAKES OFFICE, TO GRANT THE COURT
17 THE DISCRETION TO FIND THAT DISTANCE FROM THE COURT IS GOOD
18 CAUSE TO EXEMPT A PARTY FROM CUSTODY MEDIATION, AND TO PROVIDE
19 THAT FEES COLLECTED BY THE DISPUTE RESOLUTION COMMISSION ARE
20 NONREVERTING.
21

22 The General Assembly of North Carolina enacts:

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

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

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

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

35 (1) Release the defendant on his written promise to appear.



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

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

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

19 "(c) Service. –

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

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

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

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

46 **"§ 7A-343. Duties of Director.**

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

- 49 (1) Collect and compile statistical data and other information on the judicial and
- 50 financial operation of the courts and on the operation of other offices directly
- 51 related to and serving the courts.

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

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

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

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

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

9 "**§ 7A-146. Administrative authority and duties of chief district judge.**

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

14

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

22 "

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

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

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

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

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

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

47 (2) After letters testamentary have been issued:

48 a. The will is set aside, or

49 b. A subsequent testamentary paper revoking the appointment of the
50 executor is admitted to probate.

- 1 (3) Any personal representative or collector required to give a new bond or
2 furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the
3 time ordered.
- 4 (4) A nonresident personal representative refuses or fails to obey any citation,
5 notice, or process served on him or his process agent.
- 6 (5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for
7 any personal representative or collector, or any personal representative or
8 collector has executed an assignment for the benefit of creditors.
- 9 (6) A personal representative has failed to file an inventory or an annual account
10 with the clerk of superior court, as required by Article 20 and Article 21 of
11 this Chapter, and proceedings to compel such filing pursuant to
12 G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be
13 completed because the personal representative cannot be found.
- 14 (7) The person to whom they were issued has violated a fiduciary duty through
15 default or misconduct in the execution of his office."

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

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

18 "**§ 44A-16. Discharge of record claim of lien on real property.**

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

- 21 (1) The lien claimant of record, the claimant's agent or attorney, in the presence
22 of the clerk of superior court may acknowledge the satisfaction of the claim
23 of lien on real property indebtedness, whereupon the clerk of superior court
24 shall forthwith make upon the record of such claim of lien on real property
25 an entry of such acknowledgment of satisfaction, which shall be signed by
26 the lien claimant of record, the claimant's agent or attorney, and witnessed
27 by the clerk of superior court.
- 28 (2) The owner may exhibit an instrument of satisfaction signed and
29 acknowledged by the lien claimant of record which instrument states that the
30 claim of lien on real property indebtedness has been paid or satisfied,
31 whereupon the clerk of superior court shall cancel the claim of lien on real
32 property by entry of satisfaction on the record of such claim of lien on real
33 property.
- 34 (3) By failure to enforce the claim of lien on real property within the time
35 prescribed in this Article.
- 36 (4) By filing in the office of the clerk of superior court the original or certified
37 copy of a judgment or decree of a court of competent jurisdiction showing
38 that the action by the claimant to enforce the claim of lien on real property
39 has been dismissed or finally determined adversely to the claimant.
- 40 (5) Whenever a sum equal to the amount of the claim or claims of lien on real
41 property claimed is deposited with the clerk of court, to be applied to the
42 payment finally determined to be due, whereupon the clerk of superior court
43 shall cancel the claim or claims of lien on real property or claims of lien on
44 real property of record.
- 45 (6) Whenever a corporate surety bond, in a sum equal to one and one-fourth
46 times the amount of the claim or claims of lien on real property claimed and
47 conditioned upon the payment of the amount finally determined to be due in
48 satisfaction of said claim or claims of lien on real property, is deposited with
49 the clerk of court, whereupon the clerk of superior court shall cancel the
50 claim or claims of lien on real property of record.

(b) The clerk may release funds held or 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 <u>Monday day</u> 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.