

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H.B. 38  
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HOUSE PRINCIPAL CLERK

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HOUSE DRH30006-LL-18 (12/11)

Short Title: Judicial Efficiency/Effect. Admin. of Justice. (Public)

Sponsors: Representatives Davis and Burr (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE JUDICIAL EFFICIENCY AND THE EFFECTIVE  
3 ADMINISTRATION OF JUSTICE BY REDUCING THE NUMBER OF RECIPIENTS  
4 OF HARD COPIES OF THE APPELLATE DIVISION REPORTS DISTRIBUTED AT  
5 STATE EXPENSE, ESTABLISHING THE JOINT SELECT STUDY COMMITTEE ON  
6 THE PRESERVATION OF BIOLOGICAL EVIDENCE, DIRECTING THE STATE  
7 HIGHWAY PATROL TO STUDY THE FEASIBILITY AND COST-EFFECTIVENESS  
8 OF CONTRACTING WITH LOCAL BUSINESSES TO PERFORM MAINTENANCE  
9 ON STATE HIGHWAY PATROL VEHICLES IN LIEU OF REQUIRING THE  
10 VEHICLES TO BE TAKEN TO A REGIONAL MAINTENANCE FACILITY,  
11 DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A  
12 CASE MANAGEMENT SYSTEM FOR CIVIL CASES IN SUPERIOR COURT,  
13 DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A  
14 WRITTEN, COMPREHENSIVE POLICY FOR THE MANAGEMENT OF  
15 INFORMATION TECHNOLOGY RESOURCES, DIRECTING THE  
16 ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THE APPOINTMENT  
17 AND SUPERVISION OF MAGISTRATES, PROVIDING A MECHANISM FOR  
18 ENFORCING PAYMENT OF THE CRIMINAL MEDIATION FEE, AND PROVIDING  
19 FOR MEDIATED SETTLEMENT CONFERENCES IN DISTRICT COURT CIVIL  
20 ACTIONS.

21 The General Assembly of North Carolina enacts:

22 SECTION 1. G.S. 7A-343.1 reads as rewritten:

23 "§ 7A-343.1. Distribution of copies of the appellate division reports.

24 (a) The Administrative Officer of the Courts shall, at the State's expense distribute such  
25 number of copies of the appellate division reports to federal, State departments and agencies,  
26 and other named entities and to educational institutions of instruction, as follows:

27 <del>Governor, Office of the</del>	1
28 <del>Lieutenant Governor, Office of the</del>	1
29 <del>Secretary of State, Department of the</del>	2
30 <del>State Auditor, Department of the</del>	1
31 <del>Treasurer, Department of the State</del>	1
32 <del>Superintendent of Public Instruction</del>	1
33 <del>Office of the Attorney General</del>	14
34 <del>State Bureau of Investigation</del>	1
35 <del>Agriculture and Consumer Services, Department of</del>	1
36 <del>Labor, Department of</del>	1



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1	Insurance, Department of	1
2	Budget Bureau, Department of Administration	1
3	Property Control, Department of Administration	1
4	State Planning, Department of Administration	1
5	Environment and Natural Resources, Department of	1
6	Revenue, Department of	1
7	Health and Human Services, Department of	1
8	Juvenile Justice, Division of	1
9	Commission for the Blind	1
10	Transportation, Department of	1
11	Motor Vehicles, Division of	1
12	Utilities Commission	8
13	Industrial Commission	11
14	State Human Resources Commission	1
15	Office of State Human Resources	1
16	Office of Administrative Hearings	2
17	Community Colleges, Department of	38
18	Department of Commerce	1
19	Commission of Correction	1
20	Parole Commission	1
21	Archives and History, Division of	1
22	Public Safety, Department of	2
23	Cultural Resources, Department of	3
24	Legislative Building-Library	21
25	Justices of the Supreme Court	1 ea.
26	Judges of the Court of Appeals	1 ea.
27	Judges of the Superior Court	1 ea.
28	Clerks of the Superior Court	1 ea.
29	District Attorneys	1 ea.
30	Emergency and Special Judges of the Superior Court	1 ea.
31	Supreme Court Library	AS MANY AS REQUESTED <sup>5</sup>
32		
33	Appellate Division Reporter	1
34	University of North Carolina, Chapel Hill	71
35	University of North Carolina, Charlotte	1
36	University of North Carolina, Greensboro	1
37	University of North Carolina, Asheville	1
38	North Carolina State University, Raleigh	1
39	Appalachian State University	1
40	East Carolina University	1
41	Fayetteville State University	1
42	North Carolina Central University	17
43	Western Carolina University	1
44	Duke University	17
45	Davidson College	2
46	Wake Forest University	25
47	Lenoir Rhyne College	1
48	Elon College	1
49	Campbell University	25
50	Federal, Out of State and Foreign Secretary of State	1
51	Secretary of Defense	1

1	<del>Secretary of Health, Education and Welfare</del>	<del>1</del>
2	<del>Secretary of Housing and Urban Development</del>	<del>1</del>
3	<del>Secretary of Transportation</del>	<del>1</del>
4	<del>Attorney General</del>	<del>1</del>
5	United States Department of Justice	1
6	<del>Internal Revenue Service</del>	<del>1</del>
7	<del>Veterans' Administration</del>	<del>1</del>
8	Library of Congress	5
9	Federal Judges resident in North Carolina	1 ea.
10	Marshal of the United States Supreme Court	1
11	<del>Federal District Attorneys resident in North Carolina</del>	<del>1 ea.</del>
12	Federal Clerks of Court resident in North Carolina	1 ea.
13	Supreme Court Library exchange list	1
14	Cherokee Supreme Court, Eastern Band of	
15	Cherokee Indians	1

16     The Administrative Officer of the Courts shall develop a process through which all other  
 17 persons or entities may obtain copies of the appellate division reports by purchase. The  
 18 purchase price shall represent the actual cost to the State of publication and shipping.

19     Each justice of the Supreme Court and judge of the Court of Appeals shall receive for  
 20 private use, one complete and up-to-date set of the appellate division reports. The copies of  
 21 reports furnished each justice or judge as set out in the table above may be retained personally  
 22 to enable the justice or judge to keep up-to-date the personal set of reports.

23     (b) The appellate division reports shall be made available by electronic means, at no  
 24 cost to the recipient, through publication in a downloadable format on a publicly available Web  
 25 site."

26     **SECTION 2.(a)** The Joint Select Study Committee on the Preservation of  
 27 Biological Evidence is established. The membership shall be as follows:

- 28         (1) Three members of the Senate appointed by the President Pro Tempore of the  
 29 Senate.
- 30         (2) Three members of the House of Representatives appointed by the Speaker of  
 31 the House of Representatives.
- 32         (3) The Attorney General or the Attorney General's designee.
- 33         (4) The Director of the North Carolina State Crime Laboratory or the Director's  
 34 designee.
- 35         (5) The Director of the Administrative Office of the Courts or the Director's  
 36 designee.
- 37         (6) The President of the North Carolina Association of Clerks of Superior Court  
 38 or the President's designee.
- 39         (7) The President of the North Carolina Association of Chiefs of Police or the  
 40 President's designee.
- 41         (8) The President of the North Carolina Sheriffs' Association or the President's  
 42 designee.
- 43         (9) The President of North Carolina Advocates for Justice or the President's  
 44 designee.
- 45         (10) One North Carolina district attorney appointed by the Speaker of the House  
 46 of Representatives.
- 47         (11) One North Carolina district attorney appointed by the President Pro Tempore  
 48 of the Senate.
- 49         (12) One public member appointed by the Speaker of the House of  
 50 Representatives.
- 51         (13) One public member appointed by the President Pro Tempore of the Senate.

1 The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall  
2 each appoint one legislative member of the Committee to serve as cochair. The Committee  
3 shall meet upon the call of the cochairs. A quorum of the Committee shall be a majority of its  
4 members.

5 **SECTION 2.(b)** The Committee shall review matters related to the preservation of  
6 DNA and biological evidence, including:

- 7 (1) The costs associated with the promulgation of minimum guidelines for the  
8 retention and preservation of biological evidence.
- 9 (2) Emerging technologies with regard to the retention and preservation of  
10 biological evidence.
- 11 (3) Procedures for the interagency transfer of biological evidence.
- 12 (4) Any other topic the Committee believes is related to its purpose.

13 **SECTION 2.(c)** Members of the Committee shall receive per diem, subsistence,  
14 and travel allowance as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The expenses  
15 of the Committee shall be considered expenses incurred for the joint operation of the General  
16 Assembly. All expenses of the Committee shall be paid from the Legislative Services  
17 Commission's Reserve for Studies. The Legislative Services Officer shall assign professional  
18 and clerical staff to assist the Committee in its work.

19 **SECTION 2.(d)** The Committee shall submit a final report on the results of its  
20 study, including any proposed legislation, to the General Assembly on or before April 1, 2016.  
21 The Committee shall file a copy of its report with the President Pro Tempore's office, the  
22 Speaker's office, and the Legislative Library. The Committee shall terminate on April 1, 2016,  
23 or upon the filing of its final report, whichever occurs first.

24 **SECTION 3.** The Department of Public Safety shall study the feasibility and  
25 cost-effectiveness of contracting with local businesses to perform maintenance on State  
26 Highway Patrol vehicles in lieu of requiring the vehicles to be taken to a regional maintenance  
27 facility. The Department of Public Safety shall report the results of this study to the Joint  
28 Legislative Oversight Committee on Justice and Public Safety by March 1, 2016.

29 **SECTION 4.** The Administrative Office of the Courts shall study and develop a  
30 case management system for civil cases in superior court designed to make more efficient use  
31 of superior court time and resources, including a more flexible designation of mixed sessions.  
32 The study shall consider a system that would allow exceptional cases to be assigned to a  
33 superior court judge to oversee the case, including scheduling of pretrial hearings, motions  
34 hearings, and trial of the case. The Administrative Office of the Courts shall report on the study  
35 and the system developed as a result of the study to the Joint Legislative Oversight Committee  
36 on Justice and Public Safety by March 1, 2016.

37 **SECTION 5.** The Administrative Office of the Courts shall develop a written,  
38 comprehensive policy for the management of information technology resources that includes  
39 specific guidelines for the distribution and maintenance of information technology hardware.  
40 The Administrative Office of the Courts shall report on this policy to the Joint Legislative  
41 Oversight Committee on Justice and Public Safety and the Joint Legislative Oversight  
42 Committee on Information Technology by March 1, 2016.

43 **SECTION 6.** The Administrative Office of the Courts shall study the current law  
44 for the appointment and supervision of magistrates. The study shall consider whether  
45 supervision of magistrates should be the responsibility of some person other than the chief  
46 district court judge and shall address whether any other changes should be made to the process  
47 for appointing and supervising magistrates. The Administrative Office of the Courts shall  
48 report the results of this study to the Joint Legislative Oversight Committee on Justice and  
49 Public Safety by March 1, 2016.

50 **SECTION 7.** G.S. 7A-38.7 reads as rewritten:

51 **"§ 7A-38.7. Dispute resolution fee for cases resolved in mediation.**

1 (a) In each criminal case filed in the General Court of Justice that is resolved through  
2 referral to a community mediation center, a dispute resolution fee shall be assessed in the sum  
3 of sixty dollars (\$60.00) per mediation to support the services provided by the community  
4 mediation centers and the Mediation Network of North Carolina. Prior to mediation, the parties  
5 shall be notified of the fee and the fee shall be paid as part of any mediation that results in  
6 dismissal. Fees assessed under this section shall be paid to the clerk of superior court in the  
7 county where the case was filed and remitted by the clerk to the Mediation Network of North  
8 Carolina. The Mediation Network may retain up to three dollars (\$3.00) of this amount as an  
9 allowance for its administrative expenses. The Mediation Network must remit the remainder of  
10 this amount to the community mediation center that mediated the case. The court may waive or  
11 reduce a fee assessed under this section only upon entry of a written order, supported by  
12 findings of fact and conclusions of law, determining there is just cause to grant the waiver or  
13 reduction.

14 (b) No criminal case shall be dismissed through referral to mediation unless the full  
15 amount of the dispute resolution fee as required by subsection (a) of this section is paid within  
16 45 days of the completion of the mediation. If payment has not been made within that time, the  
17 case shall be remanded back to the court for disposition. Before providing the district attorney  
18 with a dismissal form, the community mediation center shall require proof that the defendant  
19 has paid the dispute resolution fee as required by subsection (a) of this section and shall attach  
20 the receipt to the dismissal form."

21 **SECTION 8.(a)** The catch line of G.S. 7A-38.4A reads as rewritten:  
22 "**§ 7A-38.4A. Settlement procedures in ~~district court~~family financial actions.**"

23 **SECTION 8.(b)** G.S. 7A-38.4A(c) reads as rewritten:

24 "(c) Any chief district court judge in a judicial district may order a mediated settlement  
25 conference or may order another settlement procedure, as provided under subsection (g) of this  
26 section, for any action pending in that district involving issues of equitable distribution,  
27 alimony, child or post separation support, or claims arising out of contracts between the parties  
28 under G.S. 52-10, G.S. 52-10.1, or Chapter 52B of the General Statutes. The chief district court  
29 judge may adopt local rules that order settlement procedures in all of the foregoing actions and  
30 designate other district court judges or administrative personnel to issue orders implementing  
31 those settlement procedures. However, local rules adopted by a chief district court judge shall  
32 not be inconsistent with any rules adopted by the Supreme Court."

33 **SECTION 8.(c)** Article 5 of Chapter 7A of the General Statutes is amended by  
34 adding a new section to read:

35 "**§ 7A-38.4B. Settlement procedures in district court general civil actions.**

36 (a) The General Assembly finds that a system of settlement events should be  
37 established to facilitate the settlement of district court civil actions, other than those involving  
38 family issues covered by the provisions of G.S. 7A-38.4A, in order to make that litigation more  
39 economical, efficient, and satisfactory to the parties, their representatives, and the State.  
40 District courts should be able to require parties to those actions and their representatives to  
41 attend a pretrial mediated settlement conference or other settlement procedure conducted under  
42 this section and rules adopted by the Supreme Court to implement this section.

43 (b) The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply in this section.

44 (c) The chief district court judge, or that person's designee, in a judicial district may  
45 order a mediated settlement conference or may order another settlement procedure, as provided  
46 under subsection (g) of this section, for any district court civil action, other than those  
47 involving family issues covered by the provisions of G.S. 7A-38.4A and issues exempted by  
48 the rules of the Supreme Court implementing this section. The chief district court judge may  
49 adopt local rules that order settlement procedures in all of the foregoing actions and designate  
50 other district court judges or administrative personnel to issue orders implementing those

1 settlement procedures. However, local rules adopted by a chief district court judge shall not be  
2 inconsistent with any rules adopted by the Supreme Court.

3 (d) The parties to a district court action where a mediated settlement conference or  
4 other settlement procedure is ordered, their attorneys, and other persons or entities with  
5 authority, by law or contract, to settle a party's claim, shall attend the mediated settlement  
6 conference or other settlement procedure, unless the rules ordering the settlement procedure  
7 provide otherwise. No party or other participant in a mediated settlement conference or other  
8 settlement procedure is required to make a settlement offer or demand that the party or  
9 participant deems contrary to that party's or participant's best interests. Parties who have been  
10 victims of domestic violence may be excused from physically attending or participating in a  
11 mediated settlement conference or other settlement procedure.

12 (e) Any person required to attend a mediated settlement conference or other settlement  
13 procedure under this section who, without good cause, fails to attend or fails to pay any or all of  
14 the mediator's or other neutral's fee in compliance with this section is subject to the contempt  
15 powers of the court and monetary sanctions imposed by a district court judge. A party seeking  
16 sanctions against another party or person shall do so in a written motion stating the grounds for  
17 the motion and the relief sought. The motion shall be served upon all parties and upon any  
18 person against whom sanctions are being sought. The court may initiate sanction proceedings  
19 upon its own motion by the entry of a show cause order. If the court imposes sanctions, it shall  
20 do so, after notice and hearing, in a written order making findings of fact and conclusions of  
21 law. An order imposing sanctions is reviewable upon appeal, and the entire record shall be  
22 reviewed to determine whether the order is supported by substantial evidence.

23 (f) The parties to a district court action in which a mediated settlement conference is to  
24 be held under this section shall have the right to designate a mediator. Upon failure of the  
25 parties to designate within the time established by the rules adopted by the Supreme Court, a  
26 mediator shall be appointed by a district court judge.

27 (g) A chief district court judge, or that judge's designee, at the request of a party and  
28 with the consent of all parties, may order the parties to attend and participate in any other  
29 settlement procedure authorized by rules adopted by the Supreme Court or adopted by local  
30 district court rules, in lieu of attending a mediated settlement conference. Neutrals acting under  
31 this section shall be selected and compensated in accordance with rules adopted by the  
32 Supreme Court. Nothing herein shall prohibit the parties from participating in other dispute  
33 resolution procedures, including arbitration, to the extent authorized under State or federal law.  
34 Nothing herein shall prohibit the parties from participating in mediation at a community  
35 mediation center operating under G.S. 7A-38.5.

36 (h) Mediators and other neutrals acting under this section shall have judicial immunity  
37 in the same manner and to the same extent as a judge of the General Court of Justice, except  
38 that mediators and other neutrals may be disciplined in accordance with enforcement  
39 procedures adopted by the Supreme Court under G.S. 7A-38.2.

40 (i) Costs of mediated settlement conferences and other settlement procedures shall be  
41 borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the  
42 mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme  
43 Court shall set out a method whereby a party found by the court to be unable to pay the costs of  
44 settlement procedures is afforded an opportunity to participate without cost to that party and  
45 without expenditure of State funds.

46 (j) Evidence of statements made and conduct occurring in a mediated settlement  
47 conference or other settlement proceeding conducted under this section, whether attributable to  
48 a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding,  
49 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or  
50 other civil actions on the same claim, except in any of the following:

51 (1) Proceedings for sanctions under this section.

1           (2)    Proceedings to enforce or rescind a settlement of the action.

2           (3)    Disciplinary proceedings before the State Bar or any agency established to  
3           enforce standards of conduct for mediators or other neutrals.

4           (4)    Proceedings to enforce laws concerning juvenile or elder abuse.

5        As used in this subsection, the term "neutral observer" includes persons seeking mediator  
6        certification, persons studying dispute resolution processes, and persons acting as interpreters.

7        No settlement agreement to resolve any or all issues reached at the proceeding conducted  
8        under this section or during its recesses shall be enforceable unless it has been reduced to  
9        writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible  
10       merely because it is presented or discussed in a settlement proceeding.

11       No mediator, other neutral, or neutral observer present at a settlement proceeding under this  
12       section shall be compelled to testify or produce evidence concerning statements made and  
13       conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement  
14       conference or other settlement proceeding pursuant to this section in any civil proceeding for  
15       any purpose, including proceedings to enforce or rescind a settlement of the action, except to  
16       attest to the signing of any agreements, and except proceedings for sanctions under this section,  
17       disciplinary hearings before the State Bar or any agency established to enforce standards of  
18       conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or  
19       elder abuse.

20       (k)    The Supreme Court may adopt standards for the certification and conduct of  
21       mediators and other neutrals who participate in settlement procedures conducted under this  
22       section. The standards may also regulate mediator training programs. The Supreme Court may  
23       adopt procedures for the enforcement of those standards. The administration of mediator  
24       certification, regulation of mediator conduct, and decertification shall be conducted through the  
25       Dispute Resolution Commission.

26       (l)    An administrative fee not to exceed two hundred dollars (\$200.00) may be charged  
27       by the Administrative Office of the Courts to applicants for certification and annual renewal of  
28       certification for mediators and mediator training programs operating under this section. The  
29       fees collected may be used by the Director of the Administrative Office of the Courts to  
30       establish and maintain the operations of the Commission and its staff. The administrative fee  
31       shall be set by the Director of the Administrative Office of the Courts in consultation with the  
32       Dispute Resolution Commission.

33       (m)   The Administrative Office of the Courts, in consultation with the Dispute  
34       Resolution Commission, may require the chief district court judge of any district to report  
35       statistical data about settlement procedures conducted under this section for administrative  
36       purposes.

37       (n)    Nothing in this section or in rules adopted by the Supreme Court implementing this  
38       section shall restrict a party's right to a trial by jury.

39       (o)    The Supreme Court may adopt rules to implement this section."

40       **SECTION 9.** Sections 3 through 6 of this act become effective July 1, 2015.  
41       Section 7 of this act becomes effective October 1, 2015, and applies to criminal cases referred  
42       to mediation on or after that date. Section 8 of this act becomes effective July 1, 2015, and  
43       applies to actions filed on or after that date. The remainder of this act is effective when it  
44       becomes law.