

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 1140
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10627-NDa-166

Short Title: Various Modifications to Courts Provisions.-AB

(Public)

Sponsors: Representative Stevens.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY VARIOUS PROVISIONS AFFECTING OUR STATE COURT
3 SYSTEM AND TO APPROPRIATE FUNDS.

4 The General Assembly of North Carolina enacts:

5
6 **MAGISTRATES ACCEPT AUTHORIZED DOMESTIC VIOLENCE EX PARTE**
7 **ORDERS AND ISSUE SUMMONS WHEN CLERK'S OFFICE IS CLOSED**

8 **SECTION 1.(a)** G.S. 50B-2(c1) reads as rewritten:

9 "(c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge may
10 authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to
11 the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex
12 parte the district court is not in session and a district court judge is not and will not be available
13 to hear the motion for a period of four or more hours, the motion may be heard by the magistrate.
14 When the office of the clerk is closed and a magistrate has been authorized under this section to
15 hear a motion for emergency relief ex parte, an authorized magistrate shall accept for filing a
16 complaint alleging domestic violence and motion for emergency relief ex parte, note thereon the
17 filing date, and the magistrate shall issue a summons. Any endorsement or alias and pluries
18 summons pursuant to G.S. 1A-1, Rule 4(d) shall be issued by the clerk, assistant clerk, or deputy
19 clerk of the court in the county in which the action is commenced. Any complaint and motion for
20 emergency relief ex parte and any other documents accepted for filing under this section and any
21 order entered by the magistrate shall be delivered to the clerk's office for processing as soon as
22 that office is open for business. If it clearly appears to the magistrate from specific facts shown
23 that there is a danger of acts of domestic violence against the aggrieved party or a minor child,
24 the magistrate may enter orders as it deems necessary to protect the aggrieved party or minor
25 children from those acts, except that a temporary order for custody ex parte and prior to service
26 of process and notice shall not be entered unless the magistrate finds that the child is exposed to
27 a substantial risk of physical or emotional injury or sexual abuse. If the magistrate finds that the
28 child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request
29 of the aggrieved party, the magistrate shall consider and may order the other party to stay away
30 from a minor child, or to return a minor child to, or not remove a minor child from, the physical
31 care of a parent or person in loco parentis, if the magistrate finds that the order is in the best
32 interest of the minor child and is necessary for the safety of the minor child. If the magistrate
33 determines that it is in the best interest of the minor child for the other party to have contact with
34 the minor child or children, the magistrate shall issue an order designed to protect the safety and
35 well-being of the minor child and the aggrieved party. The order shall specify the terms of contact
36 between the other party and the minor child and may include a specific schedule of time and



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1 location of exchange of the minor child, supervision by a third party or supervised visitation
2 center, and any other conditions that will ensure both the well-being of the minor child and the
3 aggrieved party. An ex parte order entered under this subsection shall expire and the magistrate
4 shall schedule an ex parte hearing before a district court judge by the end of the next day on
5 which the district court is in session in the county in which the action was filed. Ex parte orders
6 entered by the district court judge pursuant to this subsection shall be entered and scheduled in
7 accordance with subsection (c) of this section."

8 **SECTION 1.(b)** G.S. 50C-6(d) reads as rewritten:

9 "(d) When the court is not in session, the complainant may file for a temporary order
10 before any judge or magistrate designated to grant relief under this Chapter. If the judge or
11 magistrate finds that there is an immediate and present danger of harm to the victim and that the
12 requirements of subsection (a) of this section have been met, the judge or magistrate may issue a
13 temporary civil no-contact order. The chief district court judge may designate for each county at
14 least one judge or magistrate to be reasonably available to issue temporary civil no-contact orders
15 when the court is not in session. When the office of the clerk is closed and a magistrate has been
16 authorized under this section to grant relief, an authorized magistrate shall accept for filing a
17 complaint for a civil no-contact order and motion for temporary civil no-contact order, note
18 thereon the filing date, and the magistrate shall issue a summons. Any endorsement or alias and
19 pluries summons pursuant to G.S. 1A-1, Rule 4(d) shall be issued by the clerk, assistant clerk, or
20 deputy clerk of the court in the county in which the action is commenced. Any complaint and
21 motion for temporary civil no-contact order and any other documents accepted for filing under
22 this section and any order entered by the magistrate shall be delivered to the clerk's office for
23 processing as soon as that office is open for business."

24 **SECTION 1.(c)** This section becomes effective December 1, 2022.

25 **MAGISTRATE RESIDENCY**

26 **SECTION 2.(a)** G.S. 7A-171.2(a) reads as rewritten:

27 "(a) In order to be eligible for nomination or for renomination as a magistrate an individual
28 shall be a resident of the county or a contiguously bordering county of North Carolina for which
29 he the magistrate is appointed."

30 **SECTION 2.(b)** This section is effective when it becomes law.

31 **MAGISTRATE DISCIPLINE IN ACCORDANCE WITH RULES OF CONDUCT**

32 **SECTION 3.(a)** G.S. 7A-146 reads as rewritten:

33 **"§ 7A-146. Administrative authority and duties of chief district judge.**

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

37 ...
38 (13) Investigating written complaints against magistrates. Upon investigation and
39 written findings of misconduct, a chief district court judge may discipline a
40 magistrate in accordance with the Rules of Conduct for Magistrates. Written
41 complaints received by the chief district court judge and records of
42 investigations into those complaints are to be treated as personnel records
43 under Article 7 of Chapter 126 of the General Statutes. Upon issuance of a
44 letter of caution, written reprimand, or suspension by the chief district court
45 judge, the written complaint and the record of the chief district court judge's
46 action on that complaint, including investigatory records, are no longer
47 confidential personnel records."

48 **SECTION 3.(b)** G.S. 7A-173 reads as rewritten:

49 **"§ 7A-173. ~~Suspension;~~ Suspension pending removal; removal; reinstatement.**

1 (a) A magistrate may be suspended from performing the duties of ~~his~~the magistrate's
2 office by the chief district judge of the district court district in which his county is located, or
3 removed from office by the senior regular resident superior court judge of, or any regular superior
4 court judge holding court in, the district or set of districts as defined in G.S. 7A-41.1(a) in which
5 the county is located. Grounds for suspension or removal are the same as for a judge of the
6 General Court of Justice.

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

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

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

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

35 **SECTION 3.(c)** This section is effective when it becomes law.

37 **APPOINTMENT OF VICE-CHAIR TO JUDICIAL STANDARDS COMMISSION**

38 **SECTION 4.(a)** G.S. 7A-375, as amended by Section 5 of S.L. 2021-47, reads as
39 rewritten:

40 **"§ 7A-375. Judicial Standards Commission.**

41 (a) Composition. – The Judicial Standards Commission shall consist of the following
42 residents of North Carolina: ~~one~~two Court of Appeals ~~judge~~judges, two superior court judges,
43 and two district court judges, each appointed by the Chief Justice of the Supreme Court; four
44 members of the State Bar who have actively practiced in the courts of the State for at least 10
45 years, elected by the State Bar Council; and four citizens who are not judges, active or retired,
46 nor members of the State Bar, two appointed by the Governor, and two appointed by the General
47 Assembly in accordance with G.S. 120-121, one upon recommendation of the President Pro
48 Tempore of the Senate and one upon recommendation of the Speaker of the House of
49 Representatives. The General Assembly shall also appoint alternate Commission members for
50 the Commission members the General Assembly has appointed to serve in the event of
51 scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a

1 particular case. The alternate members shall have the same qualifications for appointment as the
2 original members.

3 (a1) Terms. – The Court of Appeals ~~judge judges shall act as chair~~ be designated by the
4 Chief Justice as chair and vice-chair of the Commission and shall serve at the pleasure of the
5 Chief Justice. Terms of other Commission members shall be for six years. No member who has
6 served a full six-year term is eligible for reappointment. Members who are not judges are entitled
7 to per diem, and all members are entitled to reimbursement for travel and subsistence expenses
8 at the rate applicable to members of State boards and commissions generally for each day
9 engaged in official business.

10"

11 **SECTION 4.(b)** This section is effective when it becomes law.

12 **MEDICAL MALPRACTICE JUDICIAL ASSIGNMENT**

13 **SECTION 5.(a)** G.S. 7A-47.3(e) reads as rewritten:

14 "(e) The senior resident superior court judge, in consultation with the parties to the case,
15 shall designate a specific resident judge or a specific judge assigned to hold court in the district
16 to preside over all proceedings that occur 180 days after the case was filed in a case-cases subject
17 to G.S. 90-21.11(2)."

18 **SECTION 5.(b)** This section is effective when it becomes law.

19 **REPEAL ANNUAL LEGISLATIVE REPORTS ON THIRD-PARTY ELECTRONIC** 20 **RECORDS ACCESS AND LOCAL GOVERNMENT CONTRACTS**

21 **SECTION 6.(a)** G.S. 7A-109(e) is repealed.

22 **SECTION 6.(b)** G.S. 7A-346.2(a) is repealed.

23 **SECTION 6.(c)** This section is effective when it becomes law.

24 **CLARIFY JURY EXCUSE DEFERRALS**

25 **SECTION 7.(a)** G.S. 9-6(b) reads as rewritten:

26 "(b) Pursuant to the foregoing policy, each chief district court judge shall promulgate
27 procedures whereby he or any district court judge of his district court district designated by him,
28 prior to the date that a jury session (or sessions) of superior or district court convenes, shall
29 receive, hear, and pass on applications for excuses from jury duty. The procedures shall provide
30 for the time and place, publicly announced, at which applications for excuses will be heard, and
31 prospective jurors who have been summoned for service shall be so informed. ~~In counties located~~
32 ~~in a district or set of districts as defined in G.S. 7A-41.1(a) which have a trial court administrator,~~
33 ~~the~~ The chief district judge may assign the duty of passing on applications for excuses from jury
34 service to the administrator, judicial support staff. In all cases concerning excuses, the clerk of
35 court or ~~the trial court administrator~~ judicial support staff shall notify prospective jurors of the
36 disposition of their excuses."

37 **SECTION 7.(b)** G.S. 9-6.1 reads as rewritten:

38 "**§ 9-6.1. Requests to be excused.**

39 (a) Any person summoned as a juror who is a full-time student and who wishes to be
40 excused pursuant to G.S. 9-6.1(b1) [G.S. 9-6(b1)] or who is 72 years or older and who wishes to
41 be excused, deferred, or exempted, may make the request without appearing in person by filing
42 a signed statement of the ground of the request with the chief district court judge of that district,
43 or the district court judge or ~~trial court administrator~~ judicial support staff member designated by
44 the chief district court judge pursuant to G.S. 9-6(b), at any time five business days before the
45 date upon which the person is summoned to appear.

46 (b) Any person summoned as a juror who has a disability that could interfere with the
47 person's ability to serve as a juror and who wishes to be excused, deferred, or exempted may
48 make the request without appearing in person by filing a signed statement of the ground of the
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request, including a brief explanation of the disability that interferes with the person's ability to serve as a juror, with the chief district court judge of that district, or the district court judge or ~~trial court administrator~~ judicial support staff member designated by the chief district court judge pursuant to G.S. 9-6(b), at any time five business days before the date upon which the person is summoned to appear. Upon request of the court, medical documentation of any disability may be submitted. Any privileged medical information or protected health information described in this section shall be confidential and shall be exempt from the provisions of Chapter 132 of the General Statutes or any other provision requiring information and records held by State agencies to be made public or accessible to the public.

(c) A person may request either a temporary or permanent exemption under this section, and the judge or ~~trial court administrator~~ judicial support staff member may accept or reject either in the exercise of discretion conferred by G.S. 9-6(b), including the substitution of a temporary exemption for a requested permanent exemption. In the case of supplemental jurors summoned under G.S. 9-11, notice may be given when summoned. In case the chief district court judge, or the judge or ~~trial court administrator~~ judicial support staff member designated by the chief district court judge pursuant to G.S. 9-6(b), rejects the request for exemption, the prospective juror shall be immediately notified by the ~~trial court administrator~~ judicial support staff member or the clerk of court by telephone, letter, or personally."

SECTION 7.(c) G.S. 9-7.1 reads as rewritten:

"§ 9-7.1. ~~Trial court administrator~~ Judicial support staff may assist clerk with performance of duties.

Upon the request of the clerk of superior court and with the agreement of the clerk of superior court and the senior resident superior court judge, the duties and responsibilities of the clerk of superior court under this Article may be assigned to ~~the trial court administrator pursuant to G.S. 7A-356~~ judicial support staff."

SECTION 7.(d) This section is effective when it becomes law.

EXPAND WHICH JUDICIAL OFFICIALS MAY RECALL WARRANTS AND CRIMINAL SUMMONSES UNDER CERTAIN CIRCUMSTANCES

SECTION 8.(a) G.S. 15A-301(g) reads as rewritten:

"(g) Recall of Process – Authority. – A criminal process that has not been served on the defendant, other than a citation, shall be recalled by a judicial official or by a person authorized to act on behalf of a judicial official as follows:

...

- (2) Any criminal process ~~other than a warrant or criminal summons~~ may be recalled for good cause by any judicial official of the trial division in which it was issued. Good cause includes, without limitation, the fact that:
 - a. A copy of the process has been served on the defendant.
 - b. All charges on which the process is based have been disposed.
 - c. The person named as the defendant in the process is not the person who committed the charged offense.
 - d. It has been determined that grounds for the issuance of an order for arrest did not exist, no longer exist or have been satisfied.

...

When the process was first created and exists only in paper form, the recall shall promptly be communicated by any reasonable means to each law enforcement agency known to be in possession of the original or a copy of the process, and each agency shall promptly return the process to the court, unserved. When the process is in the Electronic Repository, the recall shall promptly be entered in the Electronic Repository, and no further copies of the process shall be printed in paper form. The recall shall also be communicated by any reasonable means to each

1 agency that is known to be in possession of a copy of the process in paper form and that does not
2 have remote electronic access to the Electronic Repository."

3 **SECTION 8.(b)** This section is effective when it becomes law and applies to
4 criminal processes issued before, on, or after that date.

5
6 **EXPAND THE ABILITY OF THE CHIEF JUSTICE OF THE SUPREME COURT TO**
7 **ASSIGN EMERGENCY JUDGES TO HOLD REGULAR AND SPECIAL SESSIONS OF**
8 **COURT**

9 **SECTION 9.(a)** Section 11(c) of S.L. 2021-47 reads as rewritten:

10 "SECTION 11.(c) This section is effective when it becomes law and shall expire on July 1,
11 ~~2022-2023.~~"

12 **SECTION 9.(b)** This section is effective when it becomes law.

13
14 **FUNDS FOR COURT SYSTEM EDUCATION**

15 **SECTION 10.(a)** There is appropriated from the General Fund to the Administrative
16 Office of the Courts the sum of fifty thousand dollars (\$50,000) in nonrecurring funds for the
17 2022-2023 fiscal year to be used to educate court system staff and affected public stakeholders
18 of the statutory changes made in this act.

19 **SECTION 10.(b)** This section becomes effective July 1, 2022.

20
21 **SEVERABILITY CLAUSE**

22 **SECTION 11.** If any section or provision of this act is declared unconstitutional or
23 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
24 the part so declared to be unconstitutional or invalid.

25
26 **EFFECTIVE DATE**

27 **SECTION 12.** Except as otherwise provided, this act is effective when it becomes
28 law.