

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 1140
PROPOSED COMMITTEE SUBSTITUTE H1140-PCS10653-CHa-35

Short Title: Various Modifications to Courts Provisions.-AB

(Public)

Sponsors:

Referred to:

May 31, 2022

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)** G.S. 7A-211 reads as rewritten:

31 **"§ 7A-211. Small claim actions assignable to magistrates.**

32 In the interest of speedy and convenient determination, the chief district judge may, in his or
33 her discretion, by specific order or general rule, assign to any magistrate of ~~his~~ the district any
34 small claim action pending in ~~his~~ the district if the defendant is a resident of the county in which
35 the magistrate ~~resides~~ was appointed. If there is more than one defendant, at least one of them
36 must be a bona fide resident of the county in which the magistrate ~~resides~~ was appointed."

37 **SECTION 2.(c)** G.S. 7A-211.1 reads as rewritten:

38 **"§ 7A-211.1. Actions to enforce motor vehicle mechanic and storage liens.**

39 Notwithstanding the provisions of G.S. 7A-210(2) and ~~7A-211~~ G.S. 7A-211, the chief
40 district judge may in his or her discretion, by specific order or general rule, assign to any
41 magistrate of ~~his~~ the district actions to enforce motor vehicle mechanic and storage liens arising
42 under G.S. 44A-2(d) or ~~20-77(d)~~ G.S. 20-77(d) when the claim arose in the county in which the
43 magistrate ~~resides~~ was appointed. The defendant may be subjected to the jurisdiction of the court
44 over his or her person by the methods provided in G.S. 7A-217 or 1A-1, Rules 4(j) and 4(j1),
45 Rules of Civil Procedure."

46 **SECTION 2.(d)** This section becomes effective October 1, 2022.

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

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

49 **"§ 7A-146. Administrative authority and duties of chief district judge.**

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

5 ...
6 (13) Investigating written complaints against magistrates. Upon investigation and
7 written findings of misconduct, a chief district court judge may discipline a
8 magistrate in accordance with the Rules of Conduct for Magistrates. Written
9 complaints received by the chief district court judge and records of
10 investigations into those complaints are to be treated as personnel records
11 under Article 7 of Chapter 126 of the General Statutes. Upon issuance of a
12 letter of caution, written reprimand, or suspension by the chief district court
13 judge, the written complaint and the record of the chief district court judge's
14 action on that complaint, including investigatory records, are no longer
15 confidential personnel records."

16 **SECTION 3.(b)** This section becomes effective October 1, 2022.

17 18 **APPOINTMENT OF VICE-CHAIR TO JUDICIAL STANDARDS COMMISSION**

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

21 "**§ 7A-375. Judicial Standards Commission.**

22 (a) Composition. – The Judicial Standards Commission shall consist of the following
23 residents of North Carolina: ~~one two~~ Court of Appeals ~~judge, judges,~~ two superior court judges,
24 and two district court judges, each appointed by the Chief Justice of the Supreme Court; four
25 members of the State Bar who have actively practiced in the courts of the State for at least 10
26 years, elected by the State Bar Council; and four citizens who are not judges, active or retired,
27 nor members of the State Bar, two appointed by the Governor, and two appointed by the General
28 Assembly in accordance with G.S. 120-121, one upon recommendation of the President Pro
29 Tempore of the Senate and one upon recommendation of the Speaker of the House of
30 Representatives. The General Assembly shall also appoint alternate Commission members for
31 the Commission members the General Assembly has appointed to serve in the event of
32 scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a
33 particular case. The alternate members shall have the same qualifications for appointment as the
34 original members.

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

42"

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

44 45 **MEDICAL MALPRACTICE JUDICIAL ASSIGNMENT**

46 **SECTION 5.(a)** G.S. 7A-47.3(e), as enacted by Section 1(b) of S.L. 2021-47, reads
47 as rewritten:

48 "(e) The senior resident superior court judge, in consultation with the parties to the case,
49 shall designate a specific resident judge or a specific judge assigned to hold court in the district
50 to preside over all proceedings that occur 150 days after the case was filed in a case-cases subject
51 to G.S. 90-21.11(2)."

1 **SECTION 5.(b)** This section becomes effective July 1, 2022, and applies to actions
2 filed on or after that date.

3
4 **REPEAL ANNUAL LEGISLATIVE REPORTS ON THIRD-PARTY ELECTRONIC**
5 **RECORDS ACCESS AND LOCAL GOVERNMENT CONTRACTS**

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

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

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

9
10 **CLARIFY JURY EXCUSE DEFERRALS**

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

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

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

25 **"§ 9-6.1. Requests to be excused.**

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

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

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

1 be immediately notified by the ~~trial court administrator~~ judicial support staff member or the clerk
2 of court by telephone, letter, or personally."

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

4 "**§ 9-7.1. ~~Trial court administrator~~ Judicial support staff may assist clerk with performance**
5 **of duties.**

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

10 (b) For purposes of this Article, judicial support staff shall mean employees of the
11 Judicial Branch who provide case management and administrative support under the authority of
12 a judge, including court assistants, court coordinators, court managers, and court administrators.
13 It shall not include employees of the Clerk of Superior Court."

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

15
16 **EXPAND THE ABILITY OF THE CHIEF JUSTICE OF THE SUPREME COURT TO**
17 **ASSIGN EMERGENCY JUDGES TO HOLD REGULAR AND SPECIAL SESSIONS OF**
18 **COURT**

19 **SECTION 8.(a)** Section 11(c) of S.L. 2021-47 reads as rewritten:

20 "**SECTION 11.(c)** This section is effective when it becomes law and shall expire on July 1,
21 ~~2022-2023.~~"

22 **SECTION 8.(b)** This section is effective when it becomes law.

23
24 **FUNDS FOR COURT SYSTEM EDUCATION**

25 **SECTION 9.(a)** There is appropriated from the General Fund to the Administrative
26 Office of the Courts the sum of fifty thousand dollars (\$50,000) in nonrecurring funds for the
27 2022-2023 fiscal year to be used to educate court system staff and affected public stakeholders
28 of the statutory changes made in this act.

29 **SECTION 9.(b)** This section becomes effective July 1, 2022.

30
31 **SEVERABILITY CLAUSE**

32 **SECTION 10.** If any section or provision of this act is declared unconstitutional or
33 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
34 the part so declared to be unconstitutional or invalid.

35
36 **EFFECTIVE DATE**

37 **SECTION 11.** Except as otherwise provided, this act is effective when it becomes
38 law.