

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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1

HOUSE BILL 32*

Short Title: Transfer Criminal Calendar.

(Public)

Sponsors: Representatives Michaux; and Adams.

Referred to: Judiciary II.

January 26, 1995

A BILL TO BE ENTITLED

1 AN ACT TO TRANSFER THE CALENDARING AUTHORITY FOR CRIMINAL
2 CASES IN SUPERIOR COURT TO THE SENIOR RESIDENT SUPERIOR COURT
3 JUDGE AS RECOMMENDED BY THE LEGISLATIVE RESEARCH
4 COMMISSION COMMITTEE ON CRIMINAL LAW.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 7A-49.3 reads as rewritten:

8 **"§ 7A-49.3. Calendar for criminal trial sessions.**

9 (a) ~~At least one week before the beginning of any session of the superior court for~~
10 ~~the trial of criminal cases, the district attorney shall file with the clerk of superior court a~~
11 ~~calendar of the cases he intends to call for trial at that session. The calendar shall fix a~~
12 ~~day for the trial of each case listed thereon. The district attorney may place on the~~
13 ~~calendar for the first day of the session all cases which will require consideration by the~~
14 ~~grand jury without obligation to call such cases for trial on that day. No case on the~~
15 ~~calendar may be called for trial before the day fixed by the calendar except by consent or~~
16 ~~by order of the court. Any case docketed after the calendar has been filed with the clerk~~
17 ~~may be placed on the calendar at the discretion of the district attorney.~~

18 (a1) ~~If he has not done so before the beginning of each session of superior court at~~
19 ~~which criminal cases are to be heard, the District Attorney, after calling the calendar and~~
20 ~~disposing of nonjury matters, including guilty pleas, if any such nonjury matters are to be~~

1 ~~disposed of prior to the calling of cases for trial, shall announce to the court the order in~~
2 ~~which he intends to call for trial the cases remaining on the calendar. Deviations from the~~
3 ~~announced order require approval by the presiding judge, if the defendant whose case is~~
4 ~~called for trial objects; but the defendant may not object if all the cases scheduled to be~~
5 ~~heard before his case have been disposed of or delayed with the approval of the presiding~~
6 ~~judge or by consent.~~

7 (a2) For purposes of this section, 'to calendar or calendaring' means to select the
8 criminal cases to be tried or otherwise brought before the court for a particular session of
9 court and to publish those cases in a particular order on a trial calendar for that session.

10 The authority to calendar criminal cases in superior court is vested in the senior
11 resident superior court judge as defined in G.S. 7A-41.1. The senior resident superior
12 court judge is responsible for the calendaring of all superior court criminal cases,
13 motions, or other proceedings for trial or hearing. The senior resident superior court
14 judge retains the authority to amend the court calendar prepared under his or her direction
15 until court convenes for the calendared session of court.

16 Cases on the criminal court calendar shall be called in the order they appear on the
17 calendar; provided, however, that nothing in this section shall be construed to affect the
18 authority of the court in the call of cases. Any motion to amend the court calendar once a
19 session of court is convened shall be heard by the presiding superior court judge.

20 The responsibilities for the calendaring of criminal cases in superior court may be
21 delegated by the senior resident superior court judge to a trial court administrator or other
22 person designated by the judge as deemed appropriate by the judge. However, the
23 responsibilities for the calendaring of criminal cases in superior court may not be
24 delegated to the district attorney, to an assistant district attorney, or to any member of the
25 district attorney's staff. Calendars shall be published in sufficient time for all parties to a
26 case to have adequate notice.

27 If the district attorney or the defense attorney disagrees with a calendaring decision
28 made by a trial court administrator or other person designated by the senior resident
29 superior court judge to be responsible for the calendaring process regarding a criminal
30 case then the district attorney or the defense attorney may request the senior resident
31 superior court judge to review the calendaring decision and to revise the calendar as
32 appropriate.

33 The criteria used to determine which cases are to be placed on the calendar for a
34 particular session of criminal court and the order in which those cases are to be called
35 shall ensure that the district attorney and the defense attorney responsible for the case
36 have equal access to the calendaring process. The criteria used to determine which cases
37 are to be placed on the calendar for a particular session of criminal court and the order in
38 which those cases are to be called shall also ensure that the interests of the State and the
39 defendant are treated equitably and justly with regard to the calendaring process.

40 (b) All witnesses shall be subpoenaed to appear on the date listed for the trial of
41 the case in which they are witnesses. Witnesses shall not be entitled to prove their
42 attendance for any day or days prior to the day on which the case in which they are
43 witnesses is set for trial, unless otherwise ordered by the presiding judge.

1 (e) ~~Nothing in this section shall be construed to affect the authority of the court in~~
2 ~~the call of cases for trial."~~

3 Sec. 2. G.S. 6-53 reads as rewritten:

4 **"§ 6-53. Witness to prove attendance; action for fees.**

5 (a) Every person summoned, who shall attend as a witness in any suit, shall,
6 before the clerk of the court, or before the referee or officer taking the testimony,
7 ascertain by his own oath or affirmation the sum due for traveling to and from court,
8 attendance and ferriage, which shall be certified by the clerk; and on failure of the party,
9 at whose instance such witness was summoned (witnesses for the State and municipal
10 corporations excepted), to pay the same previous to the departure of the witness from
11 court, such witness may at any time sue for and recover the same from the party
12 summoning him; and the certificate of the clerk shall be sufficient evidence of the debt.

13 (b) All witnesses shall be subpoenaed to appear on the date listed for the trial of
14 the case in which they are witnesses. Witnesses shall not be entitled to prove their
15 attendance for any day or days prior to the day on which the case in which they are
16 witnesses is set for trial, unless otherwise ordered by the presiding judge."

17 Sec. 3. G.S. 7A-61 reads as rewritten:

18 **"§ 7A-61. Duties of district attorney.**

19 Subject to the provisions of G.S. 7A-49.3, the ~~The~~ district attorney or the district
20 attorney's designee shall prepare the trial ~~dockets,~~ dockets in district court. The district
21 attorney shall prosecute in the name of the State all criminal actions and infractions
22 requiring prosecution in the superior and district courts of his prosecutorial district,
23 advise the officers of justice in his district, and perform such duties related to appeals to
24 the Appellate Division from his district as the Attorney General may require. Effective
25 January 1, 1971, the district attorney shall also represent the State in juvenile cases in
26 which the juvenile is represented by an attorney. Each district attorney shall devote his
27 full time to the duties of his office and shall not engage in the private practice of law."

28 Sec. 4. G.S. 15A-943 reads as rewritten:

29 **"§ 15A-943. Arraignment in superior court – Required calendaring.**

30 (a) In counties in which there are regularly scheduled 20 or more weeks of trial
31 sessions of superior court at which criminal cases are heard, and in other counties the
32 Chief Justice designates, ~~the prosecutor must calendar~~ arraignments must be calendared in
33 the superior court on at least the first day of every other week in which criminal cases are
34 heard. No cases in which the presence of a jury is required may be calendared for the day
35 or portion of a day during which arraignments are calendared.

36 (b) When a defendant pleads not guilty at an arraignment required by subsection
37 (a), he may not be tried without his consent in the week in which he is arraigned.

38 (c) Notwithstanding the provisions of subsection (a) of this section, in any county
39 where as many as three simultaneous sessions of superior court, whether criminal, civil,
40 or mixed, are regularly scheduled, ~~the prosecutor may calendar~~ arraignments may be
41 calendared in any of the criminal or mixed sessions, at least every other week, upon any
42 day or days of a session, and jury cases may be calendared for trial in any other court at
43 which criminal cases may be heard, upon such days."

1 Sec. 5. The North Carolina Supreme Court is requested, pursuant to its rule-
2 making authority, to adopt rules to implement the procedures set out in this act. The rules
3 shall include the criteria to be used to determine when a case is ready to be tried. The
4 Administrative Office of the Courts shall work with the North Carolina Supreme Court in
5 implementing the procedures set out in this act and shall report to the General Assembly
6 by January 1, 1996, on any statutory changes needed to implement and conform with the
7 procedures set out in this act and on the additional personnel and funding that is needed
8 to implement those procedures.

9 Sec. 6. The General Assembly is encouraged to make every feasible effort to
10 provide the funding requested by the North Carolina Supreme Court and the
11 Administrative Office of the Courts to implement the procedures set out in this act. No
12 positions existing in the district attorneys' offices shall be eliminated for the purpose of
13 implementing the procedures set out in this act.

14 Sec. 7. The Administrative Office of the Courts shall determine the
15 qualifications of the court personnel, other than the judges, district attorneys, and
16 assistant district attorneys needed to implement the procedures set out by this act.

17 Sec. 8. Sections 1, 2, 3, and 4 of this act become effective July 1, 1996; the
18 remainder of this act is effective upon ratification.