

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1130
Judiciary I (Civil) Committee Substitute Adopted 5/22/07
House Committee Substitute Favorable 7/27/07
House Committee Substitute #2 Favorable 7/31/07

Short Title: Open Discovery/AOC Changes.

(Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

1
2 AN ACT CLARIFYING THAT DEFENDANTS MUST HAVE ACCESS TO THE
3 COMPLETE FILES OF ALL LAW ENFORCEMENT, TO ADD A NEW DUTY
4 TO THE DIRECTOR'S POWERS AND DUTIES, TO MODIFY OR REPEAL
5 CERTAIN STATUTES RELATED TO DRUG TREATMENT COURTS, TO
6 MAKE CLARIFYING CHANGES FOR CONTINUING TRAINING FOR
7 MAGISTRATES, TO ESTABLISH A PILOT PROGRAM ALLOWING JURORS
8 TO WAIVE PAYMENT OF PER DIEM FEES AND DESIGNATE FEES FOR
9 OTHER SERVICES, TO PROHIBIT MAGISTRATES FROM THE PRIVATE
10 PRACTICE OF LAW, AND TO MAKE TECHNICAL CHANGES TO THE
11 REVENUE PORTIONS OF THE CURRENT OPERATIONS AND CAPITAL
12 IMPROVEMENTS APPROPRIATIONS ACT OF 2007.

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** G.S. 15A-903(a)(1) reads as rewritten:

15 "(1) Make available to the defendant the complete files of all law
16 enforcement and prosecutorial agencies involved in the investigation
17 of the crimes committed or the prosecution of the defendant. The term
18 "file" includes the defendant's statements, the codefendants'
19 statements, witness statements, investigating officers' notes, results of
20 tests and examinations, or any other matter or evidence obtained
21 during the investigation of the offenses alleged to have been
22 committed by the defendant. The term "prosecutorial agency" includes
23 any public or private entity that obtains information on behalf of a law
24 enforcement agency or prosecutor in connection with the investigation
25 of the crimes committed or the prosecution of the defendant. Oral
26 statements shall be in written or recorded form. The defendant shall
27 have the right to inspect and copy or photograph any materials

1 contained therein and, under appropriate safeguards, to inspect,
2 examine, and test any physical evidence or sample contained therein."

3 **SECTION 2.** G.S. 7A-343 reads as rewritten:

4 **"§ 7A-343. Duties of Director.**

5 The Director is the Administrative Officer of the Courts, and ~~his~~ the director's duties
6 include all of the following:

- 7 (1) Collect and compile statistical data and other information on the
8 judicial and financial operation of the courts and on the operation of
9 other offices directly related to and serving the ~~courts;~~courts.
- 10 (2) Determine the state of the dockets and evaluate the practices and
11 procedures of the courts, and make recommendations concerning the
12 number of judges, district attorneys, and magistrates required for the
13 efficient administration of ~~justice;~~ justice.
- 14 (3) Prescribe uniform administrative and business methods, systems,
15 forms and records to be used in the offices of the clerks of superior
16 ~~court;~~court.
- 17 (4) Prepare and submit budget estimates of State appropriations necessary
18 for the maintenance and operation of the Judicial Department, and
19 authorize expenditures from funds appropriated for these
20 ~~purposes;~~purposes.
- 21 (5) Investigate, make recommendations concerning, and assist in the
22 securing of adequate physical accommodations for the General Court
23 of ~~Justice;~~Justice.
- 24 (6) Procure, distribute, exchange, transfer, and assign such equipment,
25 books, forms and supplies as are to be acquired with State funds for
26 the General Court of ~~Justice;~~Justice.
- 27 (7) Make recommendations for the improvement of the operations of the
28 Judicial ~~Department;~~Department.
- 29 (8) Prepare and submit an annual report on the work of the Judicial
30 Department to the Chief Justice, and transmit a copy to each member
31 of the General ~~Assembly;~~Assembly.
- 32 (9) Assist the Chief Justice in performing his duties relating to the transfer
33 of district court judges for temporary or specialized ~~duty;~~duty.
- 34 (9a) Establish and operate systems and services that provide for electronic
35 filing in the court system and further provide electronic transaction
36 processing and access to court information systems pursuant to
37 ~~G.S. 7A-343.2; and~~G.S. 7A-343.2.
- 38 (9b) Enter into contracts with one or more private vendors to provide for
39 the payment of fines, fees, and costs due to the court by credit, charge,
40 or debit cards; such contracts may provide for the assessment of a
41 convenience or transaction fee by the vendor to cover the costs of
42 providing this ~~service;~~service.
- 43 (9c) Prescribe policies and procedures for the appointment and payment of
44 foreign language interpreters in those cases specified in

1 G.S. 7A-314(f). These policies and procedures shall be applied
2 uniformly throughout the General Court of Justice. After consultation
3 with the Joint Legislative Commission on Governmental Operations,
4 the Director may also convert contractual foreign language interpreter
5 positions to permanent State positions when the Director determines
6 that it is more cost-effective to do so.

7 (9d) Analyze the use of contractual positions in the Judicial Department
8 and, after consultation with the Joint Legislative Commission on
9 Governmental Operations, convert contractual positions to permanent
10 State positions when the Director determines it is in the best interests
11 of the Judicial Department to do so.

12 (10) Perform such additional duties and exercise such additional powers as
13 may be prescribed by statute or assigned by the Chief Justice."

14 **SECTION 3.** G.S. 7A-794 reads as rewritten:

15 **"§ 7A-794. Fund administration.**

16 The Drug Treatment Court Program Fund is created in the Administrative Office of
17 the Courts and is administered by the Director of the Administrative Office of the
18 Courts in consultation with the State Drug Treatment Court Advisory Committee. ~~The~~
19 ~~Director of the Administrative Office of the Courts shall award grants from this Fund~~
20 ~~and implement local drug treatment court programs. Grants shall be awarded based~~
21 ~~upon the general guidelines set forth by the Director of the Administrative Office of the~~
22 ~~Courts and the State Drug Treatment Court Advisory Committee."~~

23 **SECTION 4.** G.S. 7A-798 is repealed.

24 **SECTION 5.** G.S. 7A-801 reads as rewritten:

25 **"§ 7A-801. ~~Plan for evaluation.~~ Monitoring and annual report.**

26 The Administrative Office of the Courts shall ~~develop a statewide model and~~
27 ~~conduct ongoing evaluations of~~ monitor all State-recognized and funded local drug
28 treatment court programs. A report of these evaluations shall be submitted courts,
29 prepare an annual report on the implementation, operation, and effectiveness of the
30 statewide drug treatment court program, and submit the report to the General Assembly
31 by March 1 of each year. Each local drug treatment court program shall submit
32 evaluation reports to the Administrative Office of the Courts as requested."

33 **SECTION 6.** G.S. 7A-177(b) reads as rewritten:

34 "(b) ~~Training~~ In addition to the basic training course required in subsection (a) of
35 this section, continuing education courses shall be provided at such times and locations
36 as necessary to assure that they are conveniently available to all magistrates without
37 extensive travel to other parts of the State. ~~Courses shall be provided in Asheville for~~
38 the magistrates from the western region of the State."

39 **SECTION 7.** G.S. 7A-312 reads as rewritten:

40 **"§ 7A-312. Uniform fees for jurors; meals.**

41 (a) A juror in the General Court of Justice including a petit juror, or a coroner's
42 juror, but excluding a grand juror, shall receive twelve dollars (\$12.00) for the first day
43 of service and twenty dollars (\$20.00) per day afterwards, except that if any person
44 serves as a juror for more than five days in any 24-month period, the juror shall receive

1 forty dollars (\$40.00) per day for each day of service in excess of five days. A grand
2 juror shall receive twenty dollars (\$20.00) per day. A juror required to remain overnight
3 at the site of the trial shall be furnished adequate accommodations and subsistence. If
4 required by the presiding judge to remain in a body during the trial of a case, meals shall
5 be furnished the jurors during the period of sequestration. Jurors from out of the county
6 summoned to sit on a special venire shall receive mileage at the same rate as State
7 employees.

8 (b) Notwithstanding subsection (a) of this section, the 26th Judicial District may
9 operate a pilot program in which a juror may waive payment of the per diem fees
10 provided for in that subsection. A juror waiving the fee may designate that the fee be
11 used for any of the following services, if such services are provided in the district: (i)
12 client treatment and service programs associated with a drug treatment or DWI
13 treatment court program; (ii) courthouse self-help centers; (iii) courthouse child care
14 centers; (iv) legal aid programs operated by a nonprofit corporation operating within the
15 district; and (v) the Crime Victims Compensation Fund. If no such services are provided
16 within the district, then waived fees are transferred to the Crime Victims Compensation
17 Fund."

18 **SECTION 8.** G.S. 84-2 reads as rewritten:

19 **"§ 84-2. Persons disqualified.**

20 No justice, judge, magistrate, full-time district attorney, full-time assistant district
21 attorney, public defender, assistant public defender, clerk, deputy or assistant clerk of
22 the General Court of Justice, register of deeds, deputy or assistant register of deeds,
23 sheriff or deputy sheriff shall engage in the private practice of law. Persons violating
24 this provision shall be guilty of a Class 3 misdemeanor and only fined not less than two
25 hundred dollars (\$200.00)."

26 **SECTION 9.** Section 24.3(c) of S.L. 2007-323 reads as rewritten:

27 **"SECTION 24.3.(c)** This section is effective for taxable years beginning on or after
28 ~~January 1, 2007.~~January 1, 2008."

29 **SECTION 10.(a)** G.S. 105-522(a)(2), as enacted by Section 31.16.4(c) of
30 S.L. 2007-323, reads as rewritten:

31 "(2) Hold harmless amount. – The sum of the ~~following:~~following
32 distributed to a municipality for the month:

- 33 a. Fifty percent (50%) of the amount of sales and use tax revenue
34 distributed under Article 40 of this ~~Chapter to the municipality~~
35 ~~for a month, Chapter~~, other than revenue from the sale of food
36 that is subject to local tax but is exempt from State tax under
37 G.S. 105-164.13B.
- 38 b. Twenty-five percent (25%) of the amount of sales and use tax
39 revenue distributed under Article 39 of this Chapter or under
40 Chapter 1096 of the 1967 Session Laws, other than revenue
41 from the sale of food that is subject to local tax but is exempt
42 from State tax under G.S. 105-164.13B.
- 43 c. The amount determined ~~under sub-subdivision a. of this~~
44 ~~subdivision subtracted from the amount determined under~~

1 ~~sub-subdivision b. of this subdivision. by subtracting~~
2 ~~twenty-five percent (25%) of the amount of sales and use tax~~
3 ~~revenue distributed under Article 39 of this Chapter or under~~
4 ~~Chapter 1096 of the 1967 Session Laws from fifty percent~~
5 ~~(50%) of the amount distributed under Article 40 of this~~
6 ~~Chapter. This calculation determines the effect of distributing a~~
7 ~~one-quarter percent (.25%) tax on the basis of point of origin~~
8 ~~instead of on a per capita basis. If the difference is negative, the~~
9 ~~result increases the hold harmless amount."~~

10 **SECTION 10.(b)** G.S. 105-523(a)(2), as enacted by Section 31.16.4(d) of
11 S.L. 2007-323, reads as rewritten:

12 "(2) Repealed sales tax amount. – The sum of the ~~following~~following
13 distributed to a county for the month:

- 14 a. Fifty percent (50%) of the amount of sales and use tax revenue
15 distributed ~~to a county~~ under Article 40 of this Chapter, other
16 than revenue from the sale of food that is subject to local tax but
17 is exempt from State tax under G.S. 105-164.13B.
- 18 b. Twenty-five percent (25%) of the amount of sales and use tax
19 revenue distributed under Article 39 of this Chapter or under
20 Chapter 1096 of the 1967 Session Laws, other than revenue
21 from the sale of food that is subject to local tax but is exempt
22 from State tax under G.S. 105-164.13B.
- 23 c. The amount determined ~~under sub-subdivision a. of this~~
24 ~~subdivision subtracted from the amount determined under~~
25 ~~sub-subdivision b. of this subdivision. by subtracting~~
26 ~~twenty-five percent (25%) of the amount of sales and use tax~~
27 ~~revenue distributed under Article 39 of this Chapter or under~~
28 ~~Chapter 1096 of the 1967 Session Laws from fifty percent~~
29 ~~(50%) of the amount distributed under Article 40 of this~~
30 ~~Chapter. This calculation determines the effect of distributing a~~
31 ~~one-quarter percent (.25%) tax on the basis of point of origin~~
32 ~~instead of on a per capita basis. If the difference is negative, the~~
33 ~~result increases the hold harmless amount."~~

34 **SECTION 10.(c)** This section becomes effective October 1, 2009, and
35 applies to distributions for months beginning on or after that date.

36 **SECTION 11.** G.S. 105-538, as enacted by Section 31.17(b) of S.L.
37 2007-323, reads as rewritten:

38 "**§ 105-538. Administration of taxes.**

39 Except as provided in this Article, the adoption, levy, collection, administration, and
40 repeal of these additional taxes must be in accordance with Article 39 of this Chapter.
41 G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied
42 under this Article does not apply to the sales price of food that is exempt from tax
43 pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a
44 county between the county and the municipalities within the county. Notwithstanding

1 the provisions of G.S. 105-467(c), during the 2008 calendar year a tax levied under this
2 Article may become effective on the first day of any calendar quarter so long as the
3 county gives the Secretary at least 60 days' advance notice of the new tax levy."

4 **SECTION 12.(a)** G.S. 105-164.14(n), as enacted by Section 31.20(b) of S.L.
5 2007-323, reads as rewritten:

6 "(n) Analytical Services Supplies. – A taxpayer engaged in analytical services in
7 this State is allowed a refund of ~~fifty percent (50%) of the eligible amount of sales and~~
8 ~~use tax paid by it in this State on State.~~ The amount of the refund is the greater of the
9 following:

- 10 (1) Fifty percent (50%) of the eligible amount sales and use tax paid by it
11 on tangible personal property that is consumed or transformed in
12 analytical service activities. The eligible amount of sales and use tax
13 paid by the taxpayer in this State is the amount by which sales and use
14 taxes paid by the taxpayer in this State in the fiscal year exceed the
15 amount paid by the taxpayer in this State in the 2006-2007 State fiscal
16 year.
17 (2) Fifty percent (50%) of the amount of sales and use tax paid by it in the
18 fiscal year on medical reagents.

19 A request for a refund must be in writing and must include any information and
20 documentation that the Secretary requires. A request for a refund is due within six
21 months after the end of the State's fiscal year. Refunds applied for after the due date are
22 barred."

23 **SECTION 12.(b)** This section becomes effective July 1, 2007, and applies
24 to purchases made on or after that date.

25 **SECTION 13.** G.S. 105-129.95, as enacted by Section 31.23(a) of S.L.
26 2007-323, reads as rewritten:

27 "§ 105-129.95. **Definitions.**

28 The following definitions apply in this Article:

- 29 (1) Costs of construction. – The costs of acquiring and improving land,
30 constructing buildings and other structures, ~~and equipping the facility.~~
31 facility, and constructing and equipping rail tracks to the railroad
32 intermodal facility that are necessary to access and support facility
33 operations. In the case of property owned or leased by the taxpayer,
34 cost is determined pursuant to regulations adopted under section 1012
35 of the Code.
36 (2) Eligible railroad intermodal facility. – A railroad intermodal facility
37 whose costs of construction exceed thirty million dollars
38 (\$30,000,000).
39 (3) Intermodal facility. – A facility where freight is transferred from one
40 mode of transportation to another.
41 (4) Railroad intermodal facility. – An intermodal facility whose primary
42 purpose is to transfer freight between a railroad and another mode of
43 transportation."

44 **SECTION 14.(a)** Section 24.4 of S.L. 2007-323 is repealed.

1 **SECTION 14.(b)** Notwithstanding Page J2, Item 8, and Page J16, Item 49 of
2 the Joint Conference Committee Report on the Continuation, Expansion, and Capital
3 Budgets dated July 27, 2007, funds shall not be transferred from the Department of
4 Revenue to the Department of Administration for the support of the positions of an
5 Administrative Hearings Officer and an associated Administrative Assistant.

6 **SECTION 14.(c)** Notwithstanding Section 24.4 of S.L. 2007-323, as
7 repealed by this act, the actions taken by the Administrative Hearings Officer at the
8 Department of Revenue from the period beginning July 1, 2007, are given full force and
9 effect as if Section 24.4 of S.L. 2007-323 had never been enacted. Notwithstanding any
10 provision of G.S. 105-259 to the contrary, any officer, employee, or agent of the State
11 that provided access to tax information to the Administrative Hearings Officer or
12 Administrative Assistant transferred under Section 24.4. of S.L. 2007-323 is not guilty
13 of any offense to the extent that the provision of the information would have been
14 authorized by that statute if the transfer had not occurred.

15 **SECTION 15.** Sections 1 through 8 of this act become effective October 1,
16 2007. Section 14 of this act becomes effective July 1, 2007. Except as otherwise
17 provided, the remainder of his act is effective when it becomes law.