



SENATE BILL 255: 2021 AOC Legislative Changes.

2021-2022 General Assembly

Committee:	House Judiciary 1. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 2, 2021
Introduced by:	Sens. Britt, Daniel	Prepared by:	Brad Krehely
Analysis of:	PCS to Second Edition S255-CSRN-19		Committee Co-Counsel

OVERVIEW: *Senate Bill 255 would make various changes and technical and conforming corrections to the laws governing the administration of justice as requested by the Administrative Office of the Courts (AOC).*

The Proposed Committee Substitute does all of the following: (1) makes technical changes, (2) deletes former Section 9 of the bill which addressed the scope of magistrate marriage recusal, (3) corrects effective dates, (4) clarifies that in criminal and juvenile delinquency proceedings in which the right to confront witnesses is implicated, the use of audio and video transmission would be permitted only if there has been a valid waiver of the defendant's or juvenile's rights, (5) clarifies that litigants could be charged for "document management" in addition to reproduction of appellate records and briefs, (6) amends G.S. 1-239 to clarify the date on which a payment made to the clerk through execution should be applied and credited and makes additional conforming changes to related statutes, (7) permits the AOC to provide notice to State and local agencies of expunctions granted when charges or dismissed or there are findings of not guilty, (8) amends G.S. 15A-951 to provide that motions would be served upon an attorney of a party and proof of service would be made by filing a certificate as provided in Rule 5 of the Rules of Civil Procedure, and (9) authorizes unsworn documents under the penalty of perjury in certain circumstances.

BILL ANALYSIS:

Section 1.(a) would require the instructions given orally to the jury in medical malpractice cases to be reduced to writing and would encourage the court to provide the jury a written copy to take into the jury room during deliberations.

Section 1.(b) would require the Senior Resident Superior Court Judge to designate a specified judge to preside over all proceedings in each medical malpractice case, in consultation with the parties to the case.

This section would become effective October 1, 2021, and Section 1.(a) would apply to actions filed on or after that date.

Section 2 would permit the jury commission in each county that is preparing a two-year master jury list for 2022-2023 to base its list on the number of jurors whose names were drawn during the 2018-2019 biennium, if it determines that those data would be more representative of the number of jurors required than the number of names drawn during the 2020-2021 biennium. In each county using an annual master jury list, the jury commission would be permitted to use the numbers from 2019, rather than 2021, if doing so would produce a result more representative of the number of jurors required.

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Section 3 would provide that a judgment debtor as to whom statutory exemptions are not applicable is not required to be served with a notice of rights to claim exemptions before a writ of execution or writ of possession can be issued. Section 3 would also delete a provision stating that exemptions provided in Article X of the North Carolina Constitution are waived if a judgment debtor fails to request a hearing within 20 days after being served with a notice of rights and appear at the hearing. These changes would apply to motions and petitions filed on or after this act's effective date.

Section 4 would add one member to the Dispute Resolution Commission as a court management staff member appointed by the Chief Justice of the Supreme Court and would make the Commission's members and its employees immune from civil suit for all conduct undertaken in the course of their official duties. These changes would apply to conduct occurring on or after this act's effective date.

Section 5 would amend the statute establishing the Judicial Standards Commission to require the General Assembly to appoint alternates for the two Commission members appointed by the General Assembly, who would serve in the event of scheduling conflicts, conflict of interest, disability, or other disqualification arising in a particular case, and would make other conforming, and clarifying changes.

Section 6 would clarify that an order for arrest for failure to appear may be issued only if the defendant was charged with a criminal offense. This change would apply to orders for arrests issued on or after this act's effective date.

Section 7 would make conforming changes relating to the types of cases in which criminal pleas may be received from a defendant in writing rather than in open court and would make other technical and conforming changes. This section would apply to pleas received on or after this act's effective date.

Section 8 would clarify that a writ of possession can be issued in a summary ejectment action if a defendant appellant who has given notice of appeal fails to make a rental payment as required under the appeal bond within five business days of the due date under the rental agreement.

Section 9 would amend Article 7 of Chapter 7A governing the organization of the Superior Court Division of General Court of Justice, by adding a new section permitting all court proceedings to be conducted by audio and video transmission in which the parties, presiding official, and other participants can see and hear each other, subject to the following exceptions:

- In proceedings involving a jury, witnesses would be permitted to testify by audio and video transmission only upon a finding in the record that good cause exists for doing so under the circumstances.
- In criminal and juvenile delinquency proceedings in which the right to confront witnesses is implicated, the use of audio and video transmission would be permitted only if there has been a valid waiver of the defendant's or juvenile's rights.
- A proceeding would not be permitted to be conducted by audio and video transmission if an objecting party demonstrates good cause for that objection.

Proceedings conducted by audio and video transmission would have to use videoconferencing applications approved by the AOC, and for proceedings open to the public the presiding official would have to facilitate public and media access as nearly as practicable to that which would be available for an in-person proceeding.

This section would become effective when it becomes law and would apply to proceedings occurring on or after that date.

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Section 10 would repeal various provisions relating to the use of audio and video proceedings, to conform to the changes made in Section 9 of the bill. This section would become effective when it becomes law and would apply to proceedings occurring on or after that date.

Section 11 would authorize the Chief Justice to expand the list of emergency superior court judges to more than 25 judges, and to assign emergency judges to hold regular or special sessions of court to address case management issues related to the COVID-19 pandemic. This section would expire on July 1, 2022.

Section 12 would provide that a settlement agreement reached in a mediation that is reduced to writing is enforceable if it is signed by the designee of the party against whom enforcement is sought. This section would apply to settlement agreements reached on or after this act's effective date.

Section 13 would provide that by October 1, 2021, the AOC must prescribe rules of conduct for all magistrates, including rules governing:

- Standards of professional conduct and timeliness.
- Required duties and responsibilities.
- Methods for ethical decision making.
- Any other topic deemed relevant by the AOC.

This section would become effective October 1, 2021 and apply to magistrate conduct on or after that date.

Section 14 would clarify that litigants could be charged for "document management" in addition to reproduction of appellate records and briefs. These sections reflect that appellate courts' document management duties extend beyond printing documents for the parties.

Section 15 would amend G.S. 1-239 to clarify the date on which a payment made to the clerk through execution should be applied and credited and would make additional conforming changes to related statutes.

Section 16 would permit the AOC to provide notice to State and local agencies of expunctions granted when charges are dismissed or there are findings of not guilty. The AOC would be allowed to determine the manner of notice.

Section 17 would amend G.S. 15A-951 to provide that motions would be served upon an attorney of a party and proof of service would be made by filing a certificate as provided in Rule 5 of the Rules of Civil Procedure.

Section 18.(a) would create G.S. 7A-98 to provide that matters required to be established in writing under oath or affirmation may, if filed electronically pursuant to rules promulgated by the Supreme Court, be established by an unsworn declaration in writing subscribed by the declarant that the statement is true under the penalty of perjury. This section prescribes the form that will be deemed sufficient for this purpose. These unsworn declarations would not be sufficient for any of the following:

- Oral testimony.
- Oaths of office.
- Any statement under oath or affirmation that must be taken before a specified official other than a notary public.
- Any will or codicil under G.S. 31-11.6.
- Any real property, deed, contract, or lease requiring an acknowledgement under G.S. 47-17.

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Section 18.(b) would provide that a person committing perjury in an unsworn declaration is subject to the same criminal punishment as provided for perjury under oath or affirmation.

This section would become effective December 1, 2021, and would apply to offenses committed on or after that date.

Section 19 contains a standard severability provision.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.

Bill Patterson, Staff Attorney for the Legislative Analysis Division, contributed substantially to the drafting of this summary.