



SENATE BILL 255: 2021 Administrative Office of the Courts Legislative Changes.

2021-2022 General Assembly

Committee:		Date:	February 3, 2022
Introduced by:		Prepared by:	Brad Krehely Staff Attorney
Analysis of:	S.L. 2021-47		

OVERVIEW: *S.L. 2021-47 makes 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 act has various effective dates. Please see the full summary for more detail.*

BILL ANALYSIS:

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

Section 1.(b) requires 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 became effective October 1, 2021, and Section 1.(a) applies to actions filed on or after that date.

Section 2 permits 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 may use the numbers from 2019, rather than 2021, if doing so would produce a result more representative of the number of jurors required.

Section 3 provides 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 deletes 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 became effective June 18, 2021, and apply to motions and petitions filed on or after that date.

Section 4 adds one member to the Dispute Resolution Commission as a court management staff member appointed by the Chief Justice of the Supreme Court and makes the Commission's members and its employees immune from civil suit for all conduct undertaken in the course of their official duties. These changes became effective June 18, 2021, and apply to conduct occurring on or after that date.

Section 5 amends 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 makes other conforming and clarifying changes.

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Section 6 clarifies that an order for arrest for failure to appear may be issued only if the defendant was charged with a criminal offense. This change became effective June 18, 2021, and applies to orders for arrests issued on or after that date.

Section 7 makes 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 makes other technical and conforming changes. This section became effective June 18, 2021, and applies to pleas received on or after that date.

Section 8 clarifies 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 amends 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 civil proceedings involving a jury, witnesses may testify by audio and video transmission only upon a finding in the record that good cause exists for doing so under the circumstances.
- A civil proceeding involving a jury may not be conducted by audio and video transmission if an objecting party demonstrates good cause for that objection.
- Except as otherwise permitted by law, in criminal and juvenile delinquency proceedings in which the right to confront witnesses is implicated, the use of audio and video transmission is permitted only if there has been a valid waiver of the defendant's or juvenile's rights.

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

This section became effective June 18, 2021, and applies to proceedings occurring on or after that date.

Section 10 repeals various provisions relating to the use of audio and video proceedings, to conform to the changes made in Section 9 of the act. This section became effective June 18, 2021, and applies to proceedings occurring on or after that date.

Section 11 authorizes the Chief Justice to expand the list of emergency superior court judges to no 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 became effective June 18, 2021, and expires on July 1, 2022.

Section 12 provides 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 became effective June 18, 2021, and applies to settlement agreements reached on or after that date.

Section 13 provides that by October 1, 2021, the AOC must prescribe rules of conduct for all magistrates not inconsistent with the federal or State Constitutions, 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.

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This section became effective October 1, 2021, and applies to magistrate conduct on or after that date.

Section 14 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.

Section 15 permits 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 may determine the manner of notice.

Section 16 amends G.S. 15A-951 to provide that motions are served upon an attorney of a party and proof of service is made by filing a certificate as provided in Rule 5 of the Rules of Civil Procedure. This section became effective July 1, 2021, and applies to motions made on or after that date.

Section 17.(a) permits declarations under the penalty of perjury for court documents filed electronically. It creates 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 are not 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.

Section 17.(b) provides 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 became effective December 1, 2021, and applies to offenses committed on or after that date.

Section 18 contains a standard severability provision.

EFFECTIVE DATE: Except as otherwise provided, this act became effective June 18, 2021.

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