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SENATE BILL 52  
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Short Title: Clarifications Regarding Mediation.

(Public)

Sponsors:

Referred to:

February 17, 2003

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THAT PERSONNEL MEDIATIONS BY THE UNIVERSITY  
2 OF NORTH CAROLINA SYSTEM ARE NOT CONSIDERED "PRACTICE  
3 LAW"; THAT RECORDS CREATED AS PART OF THOSE PERSONNEL  
4 MEDIATIONS ARE NOT PUBLIC RECORDS; AND THAT PARTICIPANTS IN  
5 THOSE PERSONNEL MEDIATIONS ARE TREATED SIMILARLY TO  
6 PARTICIPANTS IN OTHER MEDIATIONS, TO PROVIDE FOR OPEN  
7 DISCOVERY IN ALL FELONY CASES, AND TO MAKE CERTAIN OTHER  
8 AMENDMENTS TO THE LAWS REGARDING DISCOVERY IN CRIMINAL  
9 CASES.  
10

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** Part 2 of Article 1 of Chapter 116 of the General Statutes is  
13 amended by adding a new section to read:

14 **"§ 116-3.3. Mediation matters.**

15 (a) Evidence of statements made and conduct occurring in a mediation of a  
16 personnel matter involving The University of North Carolina or a constituent institution  
17 shall not be subject to discovery and shall be inadmissible in any proceeding in any  
18 action on the same claim or any other claim, administrative or judicial, except in a  
19 proceeding to enforce a signed settlement agreement. Such evidence is not a public  
20 record under Chapter 132 of the General Statutes. Any evidence discoverable or  
21 admissible prior to the mediation shall remain discoverable and admissible, whether or  
22 not it is presented or discussed during mediation.

23 (b) No mediator, person training to become a mediator, nor participant in a  
24 mediation of a personnel matter involving The University of North Carolina or a  
25 constituent institution shall be compelled to testify or produce evidence with respect to  
26 the mediation of the personnel matter in any civil proceeding, except to attest to the  
27 signing of any such agreement."

1           **SECTION 2.** G.S. 84-2.1 reads as rewritten:

2   **"§ 84-2.1. "Practice law" defined.**

3       The phrase "practice law" as used in this Chapter is defined to be performing any  
4 legal service for any other person, firm or corporation, with or without compensation,  
5 specifically including the preparation or aiding in the preparation of deeds, mortgages,  
6 wills, trust instruments, inventories, accounts or reports of guardians, trustees,  
7 administrators or executors, or preparing or aiding in the preparation of any petitions or  
8 orders in any probate or court proceeding; abstracting or passing upon titles, the  
9 preparation and filing of petitions for use in any court, including administrative  
10 tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or  
11 otherwise in any legal work; and to advise or give opinion upon the legal rights of any  
12 person, firm or corporation: Provided, that the above reference to particular acts which  
13 are specifically included within the definition of the phrase "practice law" shall not be  
14 construed to limit the foregoing general definition of the term, but shall be construed to  
15 include the foregoing particular acts, as well as all other acts within the general  
16 definition. The phrase "practice law" does not encompass the writing of memoranda of  
17 understanding or other mediation summaries by mediators at community mediation  
18 centers authorized by ~~G.S. 7A-38.5~~ G.S. 7A-38.5 or by mediators of personnel matters  
19 for The University of North Carolina or a constituent institution."

20           **SECTION 3.** G.S. 15A-902 reads as rewritten:

21   **"§ 15A-902. Discovery procedure.**

22       (a) A party seeking discovery under this Article must, before filing any motion  
23 before a judge, request in writing that the other party comply voluntarily with the  
24 discovery request. A written request is not required if the parties agree in writing to  
25 voluntarily comply with the provisions of Article 48 of Chapter 15A of the General  
26 Statutes. Upon receiving a negative or unsatisfactory response, or upon the passage of  
27 seven days following the receipt of the request without response, the party requesting  
28 discovery may file a motion for discovery under the provisions of this Article  
29 concerning any matter as to which voluntary discovery was not made pursuant to  
30 request.

31       (b) To the extent that discovery authorized in this Article is voluntarily made in  
32 response to a ~~request, request or written agreement~~, the discovery is deemed to have  
33 been made under an order of the court for the purposes of this Article.

34       (c) A motion for discovery under this Article must be heard before a superior  
35 court judge.

36       (d) If a defendant is represented by counsel, ~~he the defendant~~ may as a matter of  
37 right request voluntary discovery from the State under subsection (a) ~~above of this~~  
38 section not later than the tenth working day after either the probable-cause hearing or  
39 the date ~~he the defendant~~ waives the hearing. If a defendant is not represented by  
40 counsel, or is indicted or consents to the filing of a bill of information before ~~he the~~  
41 defendant has been afforded or waived a probable-cause hearing, ~~he the defendant~~ may  
42 as a matter of right request voluntary discovery from the State under subsection (a)  
43 ~~above of this section~~ not later than the tenth working day after the later of:

1 (1) The defendant's consent to be tried upon a bill of information, or the  
2 service of notice upon ~~him~~the defendant that a true bill of indictment  
3 has been found by the grand jury, or

4 (2) The appointment of ~~counsel—whichever is later~~counsel.

5 For the purposes of this subsection a defendant is represented by counsel only if counsel  
6 was retained by or appointed for ~~him~~the defendant prior to or during a probable-cause  
7 hearing or prior to execution by ~~him~~the defendant of a waiver of a probable-cause  
8 hearing.

9 (e) The State may as a matter of right request voluntary discovery from the  
10 defendant, when authorized under this Article, at any time not later than the tenth  
11 working day after disclosure by the State with respect to the category of discovery in  
12 question.

13 (f) A motion for discovery made at any time prior to trial may be entertained if  
14 the parties so stipulate or if the judge for good cause shown determines that the motion  
15 should be allowed in whole or in part."

16 **SECTION 4.** G.S. 15A-903 reads as rewritten:

17 **"§ 15A-903. Disclosure of evidence by the State – Information subject to**  
18 **disclosure.**

19 (a) ~~Statement of Defendant.—Upon motion of a defendant, the court must order~~  
20 ~~the prosecutor:~~

21 (1) ~~To permit the defendant to inspect and copy or photograph any~~  
22 ~~relevant written or recorded statements made by the defendant, or~~  
23 ~~copies thereof, within the possession, custody, or control of the State~~  
24 ~~the existence of which is known or by the exercise of due diligence~~  
25 ~~may become known to the prosecutor; and~~

26 (2) ~~To divulge, in written or recorded form, the substance of any oral~~  
27 ~~statement relevant to the subject matter of the case made by the~~  
28 ~~defendant, regardless of to whom the statement was made, within the~~  
29 ~~possession, custody or control of the State, the existence of which is~~  
30 ~~known to the prosecutor or becomes known to him prior to or during~~  
31 ~~the course of trial; except that disclosure of such a statement is not~~  
32 ~~required if it was made to an informant whose identity is a prosecution~~  
33 ~~secret and who will not testify for the prosecution, and if the statement~~  
34 ~~is not exculpatory. If the statement was made to a person other than a~~  
35 ~~law enforcement officer and if the statement is then known to the~~  
36 ~~State, the State must divulge the substance of the statement no later~~  
37 ~~than 12 o'clock noon, on Wednesday prior to the beginning of the~~  
38 ~~week during which the case is calendared for trial. If disclosure of the~~  
39 ~~substance of defendant's oral statement to an informant whose identity~~  
40 ~~is or was a prosecution secret is withheld, the informant must not~~  
41 ~~testify for the prosecution at trial.~~

42 (b) ~~Statement of a Codefendant.—Upon motion of a defendant, the court must~~  
43 ~~order the prosecutor:~~

1           (1) To permit the defendant to inspect and copy or photograph any written  
2 or recorded statement of a codefendant which the State intends to offer  
3 in evidence at their joint trial; and

4           (2) To divulge, in written or recorded form, the substance of any oral  
5 statement made by a codefendant which the State intends to offer in  
6 evidence at their joint trial.

7           (e) Defendant's Prior Record.—Upon motion of the defendant, the court must  
8 order the State to furnish to the defendant a copy of his prior criminal record, if any, as  
9 is available to the prosecutor.

10          (d) Documents and Tangible Objects.—Upon motion of the defendant, the court  
11 must order the prosecutor to permit the defendant to inspect and copy or photograph  
12 books, papers, documents, photographs, motion pictures, mechanical or electronic  
13 recordings, buildings and places, or any other crime scene, tangible objects, or copies or  
14 portions thereof which are within the possession, custody, or control of the State and  
15 which are material to the preparation of his defense, are intended for use by the State as  
16 evidence at the trial, or were obtained from or belong to the defendant.

17          (e) Reports of Examinations and Tests.—Upon motion of a defendant, the court  
18 must order the prosecutor to provide a copy of or to permit the defendant to inspect and  
19 copy or photograph results or reports of physical or mental examinations or of tests,  
20 measurements or experiments made in connection with the case, or copies thereof,  
21 within the possession, custody, or control of the State, the existence of which is known  
22 or by the exercise of due diligence may become known to the prosecutor. In addition,  
23 upon motion of a defendant, the court must order the prosecutor to permit the defendant  
24 to inspect, examine, and test, subject to appropriate safeguards, any physical evidence,  
25 or a sample of it, available to the prosecutor if the State intends to offer the evidence, or  
26 tests or experiments made in connection with the evidence, as an exhibit or evidence in  
27 the case.

28          (f) Statements of State's Witnesses.

29           (1) In any criminal prosecution brought by the State, no statement or  
30 report in the possession of the State that was made by a State witness  
31 or prospective State witness, other than the defendant, shall be the  
32 subject of subpoena, discovery, or inspection until that witness has  
33 testified on direct examination in the trial of the case.

34           (2) After a witness called by the State has testified on direct examination,  
35 the court shall, on motion of the defendant, order the State to produce  
36 any statement of the witness in the possession of the State that relates  
37 to the subject matter as to which the witness has testified. If the entire  
38 contents of that statement relate to the subject matter of the testimony  
39 of the witness, the court shall order it to be delivered directly to the  
40 defendant for his examination and use.

41           (3) If the State claims that any statement ordered to be produced under this  
42 section contains matter that does not relate to the subject matter of the  
43 testimony of the witness, the court shall order the State to deliver that  
44 statement for the inspection of the court in camera. Upon delivery the

1 court shall excise the portions of the statement that do not relate to the  
2 subject matter of the testimony of the witness. With that material  
3 excised, the court shall then direct delivery of the statement to the  
4 defendant for his use. If, pursuant to this procedure, any portion of the  
5 statement is withheld from the defendant and the defendant objects to  
6 the withholding, and if the trial results in the conviction of the  
7 defendant, the entire text of the statement shall be preserved by the  
8 State and, in the event the defendant appeals, shall be made available  
9 to the appellate court for the purpose of determining the correctness of  
10 the ruling of the trial judge. Whenever any statement is delivered to a  
11 defendant pursuant to this subsection, the court, upon application of  
12 the defendant, may recess proceedings in the trial for a period of time  
13 that it determines is reasonably required for the examination of the  
14 statement by the defendant and his preparation for its use in the trial.

15 (4) If the State elects not to comply with an order of the court under  
16 subdivision (2) or (3) to deliver a statement to the defendant, the court  
17 shall strike from the record the testimony of the witness, and direct the  
18 jury to disregard the testimony, and the trial shall proceed unless the  
19 court determines that the interests of justice require that a mistrial be  
20 declared.

21 (5) The term "statement," as used in subdivision (2), (3), and (4) in  
22 relation to any witness called by the State means  
23 a. A written statement made by the witness and signed or  
24 otherwise adopted or approved by him;  
25 b. A stenographic, mechanical, electrical, or other recording, or a  
26 transcription thereof, that is a substantially verbatim recital or  
27 an oral statement made by the witness and recorded  
28 contemporaneously with the making of the oral statements.

29 (g) DNA Laboratory Reports. The defendant shall have the right to obtain a  
30 copy of DNA laboratory reports provided to the district attorney revealing that there  
31 was a DNA match to the defendant that was derived from a CODIS match during a  
32 comparison search involving the defendant's DNA sample, in accordance with the  
33 procedure set forth in G.S. 15A-902.

34 (a) Upon motion of the defendant, the court must order the State to:

35 (1) Make available to the defendant the complete files of all law  
36 enforcement and prosecutorial agencies involved in the investigation  
37 of the crimes committed or the prosecution of the defendant. The term  
38 "file" includes the defendant's statements, the codefendants'  
39 statements, witness statements, investigating officers' notes, results of  
40 tests and examinations, or any other matter or evidence obtained  
41 during the investigation of the offenses alleged to have been  
42 committed by the defendant. Oral statements shall be in written or  
43 recorded form. The defendant shall have the right to inspect and copy  
44 or photograph any materials contained therein and, under appropriate

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

3           (2) Give notice to the defendant of any expert witnesses that the State  
4           reasonably expects to call as a witness at trial. Each such witness shall  
5           prepare, and the State shall furnish to the defendant, a report of the  
6           results of any examinations or tests conducted by the expert. The State  
7           shall also furnish to the defendant the expert's curriculum vitae, the  
8           expert's opinion, and the underlying basis for that opinion. The State  
9           shall give the notice and furnish the materials required by this  
10           subsection within a reasonable time prior to trial, as specified by the  
11           court.

12           (3) Give the defendant, at the beginning of jury selection, a written list of  
13           the names of all other witnesses whom the State reasonably expects to  
14           call during the trial. Names of witnesses shall not be subject to  
15           disclosure if the State certifies in writing and under seal to the court  
16           that to do so may subject the witnesses or others to physical or  
17           substantial economic harm or coercion, or that there is other  
18           particularized, compelling need not to disclose. If there are witnesses  
19           that the State did not reasonably expect to call at the time of the  
20           provision of the witness list, and as a result are not listed, the court  
21           upon a good faith showing shall allow the witnesses to be called.  
22           Additionally, in the interest of justice, the court may in its discretion  
23           permit any undisclosed witness to testify.

24           (b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the  
25           disclosure shall be to the same extent as required by subsection (a) of this section."

26           **SECTION 5.** G.S. 15A-904 reads as rewritten:

27           "**§ 15A-904. Disclosure of evidence by the State – Certain reports-information not**  
28           **subject to disclosure.**

29           (a) ~~Except as provided in G.S. 15A-903(a), (b), (c) and (e), this Article does not~~  
30           ~~require the production of reports, memoranda, or other internal documents made by the~~  
31           ~~prosecutor, law enforcement officers, or other persons acting on behalf of the State in~~  
32           ~~connection with the investigation or prosecution of the case, or of statements made by~~  
33           ~~witnesses or prospective witnesses of the State to anyone acting on behalf of the State.~~  
34           The State is not required to disclose written materials drafted by the prosecuting  
35           attorney or the prosecuting attorney's legal staff for their own use at trial, including  
36           witness examinations, voir dire questions, opening statements, and closing arguments.  
37           Disclosure is also not required of legal research or of records, correspondence, reports,  
38           memoranda, or trial preparation interview notes prepared by the prosecuting attorney or  
39           by members of the prosecuting attorney's legal staff to the extent they contain the  
40           opinions, theories, strategies, or conclusions of the prosecuting attorney or the  
41           prosecuting attorney's legal staff.

42           (b) ~~Nothing in this section prohibits a prosecutor~~the State ~~from making voluntary~~  
43           ~~disclosures in the interest of justice.~~justice ~~nor prohibits a court from finding that the~~  
44           ~~protections of this section have been waived.~~

1 (c) This section shall have no effect on the State's duty to comply with federal or  
2 State constitutional disclosure requirements."

3 **SECTION 6.** G.S. 15A-905 reads as rewritten:

4 "**§ 15A-905. Disclosure of evidence by the defendant – Information subject to**  
5 **disclosure.**

6 (a) Documents and Tangible Objects. – If the court grants any relief sought by  
7 the defendant under ~~G.S. 15A-903(d)~~, G.S. 15A-903, the court must, upon motion of the  
8 State, order the defendant to permit the State to inspect and copy or photograph books,  
9 papers, documents, photographs, motion pictures, mechanical or electronic recordings,  
10 tangible objects, or copies or portions thereof which are within the possession, custody,  
11 or control of the defendant and which the defendant intends to introduce in evidence at  
12 the trial.

13 (b) Reports of Examinations and Tests. – If the court grants any relief sought by  
14 the defendant under ~~G.S. 15A-903(e)~~, G.S. 15A-903, the court must, upon motion of the  
15 State, order the defendant to permit the State to inspect and copy or photograph results  
16 or reports of physical or mental examinations or of tests, measurements or experiments  
17 made in connection with the case, or copies thereof, within the possession and control of  
18 the defendant which the defendant intends to introduce in evidence at the trial or which  
19 were prepared by a witness whom the defendant intends to call at the trial, when the  
20 results or reports relate to his testimony. In addition, upon motion of ~~a prosecutor~~, the  
21 State, the court must order the defendant to permit the ~~prosecutor~~ State to inspect,  
22 examine, and test, subject to appropriate safeguards, any physical evidence or a sample  
23 of it available to the defendant if the defendant intends to offer such evidence, or tests or  
24 experiments made in connection with such evidence, as an exhibit or evidence in the  
25 case.

26 (c) Notice of Defenses, Expert Witnesses, and Witness Lists. – If the court grants  
27 any relief sought by the defendant under G.S. 15A-903, or if disclosure is voluntarily  
28 made by the State pursuant to G.S. 15A-902(a), the court must, upon motion of the  
29 State, order the defendant to:

30 (1) Give notice to the State of the intent to offer at trial a defense of alibi,  
31 duress, entrapment, insanity, mental infirmity, diminished capacity,  
32 self-defense, accident, automatism, involuntary intoxication, or  
33 voluntary intoxication. Notice of defense as described in this  
34 subdivision is inadmissible against the defendant. Notice of defense  
35 must be given within 20 working days after the date the case is set for  
36 trial pursuant to G.S. 7A-49.4, or such other later time as set by the  
37 court.

38 a. As to the defense of alibi, the court may order, upon motion by  
39 the State, the disclosure of the identity of alibi witnesses no  
40 later than two weeks before trial. If disclosure is ordered, upon  
41 a showing of good cause, the court shall order the State to  
42 disclose any rebuttal alibi witnesses no later than one week  
43 before trial. If the parties agree, the court may specify different

1                    time periods for this exchange so long as the exchange occurs  
2                    within a reasonable time prior to trial.

3                    b. As to only the defenses of duress, entrapment, insanity,  
4                    automatism, or involuntary intoxication, notice by the defendant  
5                    shall contain specific information as to the nature and extent of  
6                    the defense.

7                    (2) Give notice to the State of any expert witnesses that the defendant  
8                    reasonably expects to call as a witness at trial. Each such witness shall  
9                    prepare, and the defendant shall furnish to the State, a report of the  
10                   results of the examinations or tests conducted by the expert. The  
11                   defendant shall also furnish to the State the expert's curriculum vitae,  
12                   the expert's opinion, and the underlying basis for that opinion. The  
13                   defendant shall give the notice and furnish the materials required by  
14                   this subdivision within a reasonable time prior to trial, as specified by  
15                   the court.

16                   (3) Give the State, at the beginning of jury selection, a written list of the  
17                   names of all other witnesses whom the defendant reasonably expects  
18                   to call during the trial. Names of witnesses shall not be subject to  
19                   disclosure if the defendant certifies in writing and under seal to the  
20                   court that to do so may subject the witnesses or others to physical or  
21                   substantial economic harm or coercion, or that there is other  
22                   particularized, compelling need not to disclose. If there are witnesses  
23                   that the defendant did not reasonably expect to call at the time of the  
24                   provision of the witness list, and as a result are not listed, the court  
25                   upon a good faith showing shall allow the witnesses to be called.  
26                   Additionally, in the interest of justice, the court may in its discretion  
27                   permit any undisclosed witness to testify.

28                   (d) If the defendant voluntarily provides discovery under G.S. 15A-902(a), the  
29                   disclosure shall be to the same extent as required by subsection (c) of this section."

30                   **SECTION 7.** G.S. 15A-907 reads as rewritten:

31                   **"§ 15A-907. Continuing duty to disclose.**

32                   If a party, ~~subject to compliance with an order issued~~ who is required to give or who  
33                   voluntarily gives discovery pursuant to this Article, discovers prior to or during trial  
34                   additional evidence or witnesses, or decides to use additional ~~evidence,~~ evidence or  
35                   witnesses, and the evidence or witness is or may be subject to discovery or inspection  
36                   under this Article, ~~he~~ the party must promptly notify the attorney for the other party of  
37                   the existence of the additional ~~evidence.~~ evidence or witnesses."

38                   **SECTION 8.** G.S. 15A-908(a) reads as rewritten:

39                   "(a) Upon written motion of a party and a finding of good cause, which may  
40                   include, but is not limited to a finding that there is a substantial risk to any person or  
41                   physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or  
42                   embarrassment, the court may at any time order that discovery or inspection be denied,  
43                   restricted, or deferred, or may make other appropriate orders. A party may apply ex  
44                   parte for a protective order and, if an ex parte order is granted, the opposing party shall



1 receive notice that the order was entered, but without disclosure of the subject matter of  
2 the order."

3 **SECTION 9.** G.S. 15A-910 reads as rewritten:

4 "**§ 15A-910. Regulation of discovery – Failure to comply.**

5 (a) If at any time during the course of the proceedings the court determines that a  
6 party has failed to comply with this Article or with an order issued pursuant to this  
7 Article, the court in addition to exercising its contempt powers may

8 (1) Order the party to permit the discovery or inspection, or

9 (2) Grant a continuance or recess, or

10 (3) Prohibit the party from introducing evidence not disclosed, or

11 (3a) Declare a mistrial, or

12 (3b) Dismiss the charge, with or without prejudice, or

13 (4) Enter other appropriate orders.

14 (b) Prior to finding any sanctions appropriate, the court shall consider both the  
15 materiality of the subject matter and the totality of the circumstances surrounding an  
16 alleged failure to comply with this Article or an order issued pursuant to this Article."

17 **SECTION 10.** G.S. 15A-959 reads as rewritten:

18 "**§ 15A-959. Notice of defense of insanity; pretrial determination of insanity.**

19 (a) If a defendant intends to raise the defense of insanity, ~~he the defendant~~ must  
20 ~~within the time provided for the filing of pretrial motions under G.S. 15A-952~~ file a  
21 notice of ~~his the defendant's~~ intention to rely on the defense of ~~insanity. insanity as~~  
22 provided in G.S. 15A-905(c) and, if the case is not subject to that section, within a  
23 reasonable time prior to trial. The court may for cause shown allow late filing of the  
24 notice or grant additional time to the parties to prepare for trial or make other  
25 appropriate orders.

26 (b) ~~If In cases not subject to the requirements of G.S. 15A-905(c), if~~ a defendant  
27 intends to introduce expert testimony relating to a mental disease, defect, or other  
28 condition bearing upon the issue of whether ~~he the defendant~~ had the mental state  
29 required for the offense charged, ~~he the defendant~~ must ~~within the time provided for the~~  
30 filing of pretrial motions under G.S. 15A-952(b) a reasonable time prior to trial file a  
31 notice of that intention. The court may for cause shown allow late filing of the notice or  
32 grant additional time to the parties to prepare for trial or make other appropriate orders.

33 (c) Upon motion of the defendant and with the consent of the State the court may  
34 conduct a hearing prior to the trial with regard to the defense of insanity at the time of  
35 the offense. If the court determines that the defendant has a valid defense of insanity  
36 with regard to any criminal charge, it may dismiss that charge, with prejudice, upon  
37 making a finding to that effect. The court's denial of relief under this subsection is  
38 without prejudice to the defendant's right to rely on the defense at trial. If the motion is  
39 denied, no reference to the hearing may be made at the trial, and recorded testimony or  
40 evidence taken at the hearing is not admissible as evidence at the trial."

41 **SECTION 11.** G.S. 15A-501 is amended by adding a new subdivision to  
42 read:

43 "**§ 15A-501. Police processing and duties upon arrest generally.**

1       Upon the arrest of a person, with or without a warrant, but not necessarily in the  
2 order hereinafter listed, a law-enforcement officer:

3           ...

4           (6) Must make available to the State on a timely basis all materials and  
5 information acquired in the course of all felony investigations. This  
6 responsibility is a continuing affirmative duty."

7       **SECTION 12.** Sections 3 through 11 of this act become effective October 1,  
8 2004, and apply to cases where the trial date set pursuant to G.S. 7A-49.4 is on or after  
9 October 1, 2004. The remainder of this act is effective when it becomes law.