

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL 577  
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Short Title: Adjust Court Juris./Amend Magistrate Term.

(Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO RAISE THE JURISDICTIONAL AMOUNT FOR SMALL CLAIMS ACTIONS TO FIVE THOUSAND DOLLARS, TO CLARIFY JURISDICTION FOR REVOCATION OF PROBATION WHEN PLEAS WERE ENTERED IN DISTRICT COURT, TO DEFINE DRUG TREATMENT COURT AS AN INTERMEDIATE PUNISHMENT, TO REQUIRE THE COURT TO GIVE NOTICE OF RIGHTS TO CONTEST MECHANICS' LIEN STORAGE CHARGES OF VEHICLES SEIZED UNDER THE DWI FORFEITURE LAWS, TO PERMIT CLERKS OF COURT TO GRANT DIVORCES IN UNCONTESTED ABSOLUTE DIVORCE ACTIONS, TO TERMINATE AS A MATTER OF LAW CERTAIN PARENTAL RIGHTS OF A PERSON CONVICTED OF CERTAIN CRIMES THAT RESULT IN THE VICTIM BECOMING PREGNANT, AND TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO CHANGE THE TERM OF OFFICE OF MAGISTRATES FOR AN INITIAL TERM OF TWO YEARS AND SUBSEQUENT TERMS OF FOUR YEARS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7A-210 reads as rewritten:

**"§ 7A-210. Small claim action defined.**

For purposes of this Article a small claim action is a civil action wherein:

- (1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~four thousand dollars (\$4,000);~~ five thousand dollars (\$5,000); and
- (2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and
- (3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

1 The seeking of the ancillary remedy of claim and delivery or an order from the clerk  
2 of superior court for the relinquishment of property subject to a lien pursuant to G.S.  
3 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this  
4 Article from so qualifying."

5 **SECTION 2.** G.S. 7A-271 is amended by adding a new subsection to read:

6 "(e) The superior court has exclusive jurisdiction over all hearings held pursuant  
7 to G.S. 15A-1345(e) where the district court had accepted a defendant's plea of guilty or  
8 no contest to a felony under the provisions of G.S. 7A-272(c), except that the district  
9 court shall have jurisdiction to hear these matters with the consent of the State and the  
10 defendant."

11 **SECTION 3.** G.S. 15A-1340.11 reads as rewritten:

12 **"§ 15A-1340.11. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Active punishment. – A sentence in a criminal case that requires an  
15 offender to serve a sentence of imprisonment and is not suspended.  
16 Special probation, as defined in G.S. 15A-1351, is not an active  
17 punishment.
- 18 (2) Community punishment. – A sentence in a criminal case that does not  
19 include an active punishment, an intermediate punishment, or any of  
20 the conditions of probation listed in subdivision (6) of this section.
- 21 (3) Day-reporting center. – A facility to which offenders are required, as a  
22 condition of probation, to report on a daily or other regular basis at  
23 specified times for a specified length of time to participate in activities  
24 such as counseling, treatment, social skills training, or employment  
25 training.
- 26 (3a) Drug treatment court program. – Program to which offenders are  
27 required, as a condition of probation, to comply with the rules adopted  
28 for the program as provided for in Article 62 of Chapter 7A of the  
29 General Statutes and to report on a regular basis for a specified time to  
30 participate in:
- 31 a. Court supervision.  
32 b. Drug screening or testing.  
33 c. Drug or alcohol treatment programs.
- 34 (4) Repealed by Session Laws 1997-57, s. 2.
- 35 (4a) House arrest with electronic monitoring. – Probation in which the  
36 offender is required to remain at his or her residence unless the court  
37 or the probation officer authorizes the offender to leave for the purpose  
38 of employment, counseling, a course of study, or vocational training.  
39 The offender shall be required to wear a device which permits the  
40 supervising agency to monitor the offender's compliance with the  
41 condition electronically.
- 42 (5) Intensive probation. – Probation that requires the offender to submit to  
43 supervision by officers assigned to the Intensive Supervision Program  
44 established pursuant to G.S. 143B-262(c), and to comply with the rules

1 adopted for that Program. Unless otherwise ordered by the court,  
2 intensive supervision also requires multiple contacts by a probation  
3 officer per week, a specific period each day during which the offender  
4 must be at his or her residence, and that the offender remain gainfully  
5 and suitably employed or faithfully pursue a course of study or of  
6 vocational training that will equip the offender for suitable  
7 employment.

8 (6) Intermediate punishment. – A sentence in a criminal case that places  
9 an offender on supervised probation and includes at least one of the  
10 following conditions:

- 11 a. Special probation as defined in G.S. 15A-1351(a).
- 12 b. Assignment to a residential program.
- 13 c. House arrest with electronic monitoring.
- 14 d. Intensive probation.
- 15 e. Assignment to a day-reporting center.
- 16 f. Assignment to a drug treatment court program.

17 (7) Prior conviction. – A person has a prior conviction when, on the date a  
18 criminal judgment is entered, the person being sentenced has been  
19 previously convicted of a crime:

- 20 a. In the district court, and the person has not given notice of  
21 appeal and the time for appeal has expired; or
- 22 b. In the superior court, regardless of whether the conviction is on  
23 appeal to the appellate division; or
- 24 c. In the courts of the United States, another state, the armed  
25 services of the United States, or another country, regardless of  
26 whether the offense would be a crime if it occurred in North  
27 Carolina,

28 regardless of whether the crime was committed before or after the  
29 effective date of this Article.

30 (8) Residential program. – A program in which the offender, as a  
31 condition of probation, is required to reside in a facility for a specified  
32 period and to participate in activities such as counseling, treatment,  
33 social skills training, or employment training, conducted at the  
34 residential facility or at other specified locations."

35 **SECTION 4.** G.S. 20-28.4 reads as rewritten:

36 "**§ 20-28.4. Release of impounded motor vehicles by judge.**

37 (a) Release Upon Conclusion of Trial. – If the driver of a motor vehicle seized  
38 pursuant to G.S. 20-28.3:

- 39 (1) Is subsequently not convicted of an offense involving impaired driving  
40 due to dismissal or a finding of not guilty; or
- 41 (2) The judge at a forfeiture hearing conducted pursuant to  
42 G.S. 20-28.2(d) fails to find that the drivers license was revoked as a  
43 result of a prior impaired driving license revocation as defined in  
44 G.S. 20-28.2; and

1           (3) The vehicle has not previously been released to a lienholder pursuant  
2           to G.S. 20-28.3(e3),  
3 the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to  
4 G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be released to the motor vehicle owner  
5 conditioned upon payment of towing and storage costs. The court shall not waive the  
6 payment of towing and storage costs. The court shall include in its order notice to the  
7 owner of the seized motor vehicle still being held, that within 30 days of the date of the  
8 court's order, the owner must make payment of the outstanding towing and storage costs  
9 for the motor vehicle and retrieve the motor vehicle, or give notice to Division of Motor  
10 Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the  
11 motor vehicle for towing and storage costs.

12       (b) Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does  
13 not obtain release of the vehicle within 30 days from the date of the court's order, the  
14 possessor of the seized motor vehicle has a mechanics' lien on the seized motor vehicle  
15 for the full amount of the towing and storage charges incurred since the motor vehicle  
16 was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter  
17 44A of the General Statutes. Notice of the right to a judicial hearing on the validity of  
18 the mechanics' lien given to the owner of the motor vehicle in open court in accordance  
19 with subsection (a) of this section or delivery to the owner of the vehicle of a copy of  
20 the court's order entered in accordance with subsection (a) of this section shall satisfy  
21 the notice requirement of G.S. 44A-4(b)."

22       **SECTION 5.** G.S. 44A-4(b) reads as rewritten:

23       "(b) Notice and Hearings. –

24       (1) If the property upon which the lien is claimed is a motor vehicle that is  
25 required to be registered, the lienor following the expiration of the  
26 relevant time period provided by subsection (a) shall give notice to the  
27 Division of Motor Vehicles that a lien is asserted and sale is proposed  
28 and shall remit to the Division a fee of ten dollars (\$10.00). The  
29 Division of Motor Vehicles shall issue notice by registered or certified  
30 mail, return receipt requested, to the person having legal title to the  
31 property, if reasonably ascertainable, to the person with whom the  
32 lienor dealt if different, and to each secured party and other person  
33 claiming an interest in the property who is actually known to the  
34 Division or who can be reasonably ascertained. The notice shall state  
35 that a lien has been asserted against specific property and shall identify  
36 the lienor, the date that the lien arose, the general nature of the services  
37 performed and materials used or sold for which the lien is asserted, the  
38 amount of the lien, and that the lienor intends to sell the property in  
39 satisfaction of the lien. The notice shall inform the recipient that the  
40 recipient has the right to a judicial hearing at which time a  
41 determination will be made as to the validity of the lien prior to a sale  
42 taking place. The notice shall further state that the recipient has a  
43 period of 10 days from the date of receipt in which to notify the  
44 Division by registered or certified mail, return receipt requested, that a

1 hearing is desired and that if the recipient wishes to contest the sale of  
2 his property pursuant to such lien, the recipient should notify the  
3 Division that a hearing is desired. The notice shall state the required  
4 information in simplified terms and shall contain a form whereby the  
5 recipient may notify the Division that a hearing is desired by the return  
6 of such form to the Division. The Division shall notify the lienor  
7 whether such notice is timely received by the Division. In lieu of the  
8 notice by the lienor to the Division and the notices issued by the  
9 Division described above, the lienor may issue notice on a form  
10 approved by the Division pursuant to the notice requirements above. If  
11 notice is issued by the lienor, the recipient shall return the form  
12 requesting a hearing to the lienor, and not the Division, within 10 days  
13 from the date the recipient receives the notice if a judicial hearing is  
14 requested. If the registered or certified mail notice has been returned as  
15 undeliverable and the notice of a right to a judicial hearing has been  
16 given to the owner of the motor vehicle in accordance with  
17 G.S. 20-28.4, no further notice is required. Failure of the recipient to  
18 notify the Division or lienor, as specified in the notice, within 10 days  
19 of the receipt of such notice that a hearing is desired shall be deemed a  
20 waiver of the right to a hearing prior to the sale of the property against  
21 which the lien is asserted, and the lienor may proceed to enforce the  
22 lien by public or private sale as provided in this section and the  
23 Division shall transfer title to the property pursuant to such sale. If the  
24 Division or lienor, as specified in the notice, is notified within the  
25 10-day period provided above that a hearing is desired prior to sale, the  
26 lien may be enforced by sale as provided in this section and the  
27 Division will transfer title only pursuant to the order of a court of  
28 competent jurisdiction.

29 If the registered or certified mail notice has been returned as  
30 undeliverable, or if the name of the person having legal title to the  
31 vehicle cannot reasonably be ascertained and the fair market value of  
32 the vehicle is less than eight hundred dollars (\$800.00), the lienor may  
33 institute a special proceeding in the county where the vehicle is being  
34 held, for authorization to sell that vehicle. Market value shall be  
35 determined by the schedule of values adopted by the Commissioner  
36 under G.S. 105-187.3.

37 In such a proceeding a lienor may include more than one vehicle,  
38 but the proceeds of the sale of each shall be subject only to valid  
39 claims against that vehicle, and any excess proceeds of the sale shall  
40 be paid immediately to the Treasurer for disposition pursuant to  
41 Chapter 116B of the General Statutes.

42 The application to the clerk in such a special proceeding shall  
43 contain the notice of sale information set out in subsection (f) hereof.  
44 If the application is in proper form the clerk shall enter an order

1 authorizing the sale on a date not less than 14 days therefrom, and the  
 2 lienor shall cause the application and order to be sent immediately by  
 3 first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom  
 4 notice was mailed pursuant to this subsection. Following the  
 5 authorized sale the lienor shall file with the clerk a report in the form  
 6 of an affidavit, stating that the lienor has complied with the public or  
 7 private sale provisions of G.S. 44A-4, the name, address, and bid of  
 8 the high bidder or person buying at a private sale, and a statement of  
 9 the disposition of the sale proceeds. The clerk then shall enter an order  
 10 directing the Division to transfer title accordingly.

11 If prior to the sale the owner or legal possessor contests the sale or  
 12 lien in a writing filed with the clerk, the proceeding shall be handled in  
 13 accordance with G.S. 1-301.2.

14 ...."

15 **SECTION 6.** G.S. 50-10 reads as rewritten:

16 "**§ 50-10. Material facts found by judge or jury in divorce or annulment**  
 17 **proceedings; when notice of trial not required; procedure same as**  
 18 **ordinary civil actions.**

19 (a) ~~The~~ Except as provided for in subsection (e) of this section, the material facts  
 20 in every complaint asking for a divorce or for an annulment shall be deemed to be  
 21 denied by the defendant, whether the same shall be actually denied by pleading or not,  
 22 and no judgment shall be given in favor of the plaintiff in any such complaint until such  
 23 facts have been found by a judge or jury.

24 (b) Nothing herein shall require notice of trial to be given to a defendant who has  
 25 not made an appearance in the action.

26 (c) The determination of whether there is to be a jury trial or a trial before the  
 27 judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

28 (d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for  
 29 absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any  
 30 genuine issue of material fact remains for trial by jury, but in the event the court  
 31 determines that no genuine issue of material fact remains for trial by jury, the court must  
 32 find the facts as provided herein. The court may enter a judgment of absolute divorce  
 33 pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts  
 34 from nontestimonial evidence presented by affidavit, verified motion or other verified  
 35 pleading.

36 (e) The clerk of superior court, upon request of the plaintiff, may enter judgment  
 37 in cases in which the plaintiff's only claim against the defendant is for absolute divorce,  
 38 or absolute divorce and the resumption of a former name, and the defendant has been  
 39 defaulted for failure to appear, the defendant has answered admitting the allegations of  
 40 the complaint, or the defendant has filed a waiver of the right to answer, and the  
 41 defendant is not an infant or incompetent person."

42 **SECTION 7.** G.S. 14-27.2 reads as rewritten:

43 "**§ 14-27.2. First-degree rape.**

1 (a) A person is guilty of rape in the first degree if the person engages in vaginal  
2 intercourse:

3 (1) With a victim who is a child under the age of 13 years and the  
4 defendant is at least 12 years old and is at least four years older than  
5 the victim; or

6 (2) With another person by force and against the will of the other person,  
7 and:

8 a. Employs or displays a dangerous or deadly weapon or an article  
9 which the other person reasonably believes to be a dangerous or  
10 deadly weapon; or

11 b. Inflicts serious personal injury upon the victim or another  
12 person; or

13 c. The person commits the offense aided and abetted by one or  
14 more other persons.

15 (b) Any person who commits an offense defined in this section is guilty of a  
16 Class B1 felony.

17 (c) Upon conviction, a person convicted under this section has no rights to  
18 custody of or rights of inheritance from any child born as a result of the commission of  
19 the rape, nor shall the person have any rights related to the child under Chapter 48 or  
20 Subchapter 1 of Chapter 7B of the General Statutes."

21 **SECTION 8.** G.S. 14-27.3 reads as rewritten:

22 "**§ 14-27.3. Second-degree rape.**

23 (a) A person is guilty of rape in the second degree if the person engages in  
24 vaginal intercourse with another person:

25 (1) By force and against the will of the other person; or

26 (2) Who is mentally disabled, mentally incapacitated, or physically  
27 helpless, and the person performing the act knows or should  
28 reasonably know the other person is mentally disabled, mentally  
29 incapacitated, or physically helpless.

30 (b) Any person who commits the offense defined in this section is guilty of a  
31 Class C felony.

32 (c) Upon conviction, a person convicted under this section has no rights to  
33 custody of or rights of inheritance from any child conceived during the commission of  
34 the rape, nor shall the person have any rights related to the child under Chapter 48 or  
35 Subchapter 1 of Chapter 7B of the General Statutes."

36 **SECTION 9.** G.S. 48-3-603(a) reads as rewritten:

37 "(a) Consent to an adoption of a minor is not required of a person or entity whose  
38 consent is not required under G.S. 48-3-601, or:

39 (1) An individual whose parental rights and duties have been terminated  
40 under Article 11 of Chapter 7B of the General Statutes or by a court of  
41 competent jurisdiction in another state;

42 (2) A man described in G.S. 48-3-601(2), other than an adoptive father, if  
43 (i) the man has been judicially determined not to be the father of the

1 minor to be adopted, or (ii) another man has been judicially  
2 determined to be the father of the minor to be adopted;

3 (3) Repealed by Session Laws 1997-215, s. 11(a).

4 (4) An individual who has relinquished parental rights or guardianship  
5 powers, including the right to consent to adoption, to an agency  
6 pursuant to Part 7 of this Article;

7 (5) A man who is not married to the minor's birth mother and who, after  
8 the conception of the minor, has executed a notarized statement  
9 denying paternity or disclaiming any interest in the minor;

10 (6) A deceased parent or the personal representative of a deceased parent's  
11 estate; or

12 (7) An individual listed in G.S. 48-3-601 who has not executed a consent  
13 or a relinquishment and who fails to respond to a notice of the  
14 adoption proceeding within 30 days after the service of the notice.

15 (8) An individual notified under G.S. 48-2-206 who does not respond in a  
16 timely manner or whose consent is not required as determined by the  
17 court.

18 (9) An individual whose actions resulted in a conviction under  
19 G.S. 14-27.2 or G.S. 14-27.3 and the conception of the minor to be  
20 adopted."

21 **SECTION 10.** G.S. 50-13.1(a) reads as rewritten:

22 "(a) Any parent, relative, or other person, agency, organization or institution  
23 claiming the right to custody of a minor child may institute an action or proceeding for  
24 the custody of such child, as hereinafter provided. Any person whose actions resulted in  
25 a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the minor child  
26 may not claim the right to custody of that minor child. Unless a contrary intent is clear,  
27 the word "custody" shall be deemed to include custody or visitation or both."

28 **SECTION 11.** G.S. 7B-402 reads as rewritten:

29 **"§ 7B-402. Petition.**

30 The petition shall contain the name, date of birth, address of the juvenile, the name  
31 and last known address of the juvenile's parent, guardian, or custodian and shall allege  
32 the facts which invoke jurisdiction over the juvenile. A person whose actions resulted in  
33 a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile need  
34 not be named in the petition. The petition may contain information on more than one  
35 juvenile when the juveniles are from the same home and are before the court for the  
36 same reason.

37 Sufficient copies of the petition shall be prepared so that copies will be available for  
38 each parent if living separate and apart, the guardian, custodian, or caretaker, the  
39 guardian ad litem, the social worker, and any person determined by the court to be a  
40 necessary party."

41 **SECTION 12.** G.S. 7B-406(a) reads as rewritten:

42 "(a) Immediately after a petition has been filed alleging that a juvenile is abused,  
43 neglected, or dependent, the clerk shall issue a summons to the parent, guardian,  
44 custodian, or caretaker requiring them to appear for a hearing at the time and place



1 stated in the summons. No summons is required for any person whose actions resulted  
2 in a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile. A  
3 copy of the petition shall be attached to each summons. Service of the summons shall be  
4 completed as provided in G.S. 7B-407, but the parent of the juvenile shall not be  
5 deemed to be under a disability even though the parent is a minor."

6 **SECTION 13.** G.S. 7B-1103 is amended by adding a new subsection to  
7 read:

8 "(c) No person whose actions resulted in a conviction under G.S. 14-27.2 or  
9 G.S. 14-27.3 and the conception of the juvenile may file a petition to terminate the  
10 parental rights of another with respect to that juvenile."

11 **SECTION 14.** G.S. 7B-1104 reads as rewritten:  
12 "**§ 7B-1104. Petition or motion.**

13 The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner  
14 or movant and shall be entitled "In Re (last name of juvenile), a minor juvenile"; and  
15 shall set forth such of the following facts as are known; and with respect to the facts  
16 which are unknown the petitioner or movant shall so state:

- 17 (1) The name of the juvenile as it appears on the juvenile's birth  
18 certificate, the date and place of birth, and the county where the  
19 juvenile is presently residing.
- 20 (2) The name and address of the petitioner or movant and facts sufficient  
21 to identify the petitioner or movant as one authorized by G.S. 7B-1103  
22 to file a petition or motion.
- 23 (3) The name and address of the parents of the juvenile. If the name or  
24 address of one or both parents is unknown to the petitioner or movant,  
25 the petitioner or movant shall set forth with particularity the  
26 petitioner's or movant's efforts to ascertain the identity or whereabouts  
27 of the parent or parents. The information may be contained in an  
28 affidavit attached to the petition or motion and incorporated therein by  
29 reference. A person whose actions resulted in a conviction under  
30 G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile need  
31 not be named in the petition.
- 32 (4) The name and address of any person who has been judicially appointed  
33 as guardian of the person of the juvenile.
- 34 (5) The name and address of any person or agency to whom custody of the  
35 juvenile has been given by a court of this or any other state; and a copy  
36 of the custody order shall be attached to the petition or motion.
- 37 (6) Facts that are sufficient to warrant a determination that one or more of  
38 the grounds for terminating parental rights exist.
- 39 (7) That the petition or motion has not been filed to circumvent the  
40 provisions of Article 2 of Chapter 50A of the General Statutes, the  
41 Uniform Child-Custody Jurisdiction and Enforcement Act."

42 **SECTION 15.** G.S. 14-226 reads as rewritten:

43 "**§ 14-226. Intimidating or interfering with witnesses.**

1 (a) If any person shall by threats, menaces or in any other manner intimidate or  
2 attempt to intimidate any person who is summoned or acting as a witness in any of the  
3 courts of this State, or prevent or deter, or attempt to prevent or deter any person  
4 summoned or acting as such witness from attendance upon such court, he shall be guilty  
5 of a Class H felony.

6 (b) A defendant in a criminal proceeding who threatens a witness in the  
7 defendant's case with the assertion or denial of parental rights shall be a violation of this  
8 section."

9 **SECTION 16.** Section 10 of Article IV of the North Carolina Constitution  
10 reads as rewritten:

11 **"Sec. 10. District Courts.**

12 The General Assembly shall, from time to time, divide the State into a convenient  
13 number of local court districts and shall prescribe where the District Courts shall sit, but  
14 a District Court must sit in at least one place in each county. District Judges shall be  
15 elected for each district for a term of four years, in a manner prescribed by law. When  
16 more than one District Judge is authorized and elected for a district, the Chief Justice of  
17 the Supreme Court shall designate one of the judges as Chief District Judge. Every  
18 District Judge shall reside in the district for which he is elected. For each county, the  
19 senior regular resident Judge of the Superior Court serving the county shall appoint ~~for a~~  
20 ~~term of two years,~~ from nominations submitted by the Clerk of the Superior Court of the  
21 county, one or more Magistrates who shall be officers of the District Court. The initial  
22 term of appointment for a magistrate shall be for two years and subsequent terms shall  
23 be for four years. The number of District Judges and Magistrates shall, from time to  
24 time, be determined by the General Assembly. Vacancies in the office of District Judge  
25 shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the  
26 office of Magistrate shall be filled for the unexpired term in the manner provided for  
27 original appointment to the ~~office-office,~~ unless otherwise provided by the General  
28 Assembly."

29 **SECTION 17.** The amendment set out in Section 16 of this act shall be  
30 submitted to the qualified voters of the State at the general election in November 2004,  
31 which election shall be conducted under the laws then governing elections in the State.  
32 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the  
33 General Statutes. The question to be used in the voting systems and ballots shall be:

34 "[ ] FOR [ ] AGAINST

35 Constitutional amendment to provide for the first term of office for  
36 magistrates of the General Court of Justice to be two years and for subsequent terms to  
37 be four years."

38 **SECTION 18.** If a majority of the votes cast on the question are in favor of  
39 the amendment set out in Section 16 of this act, the State Board of Elections shall  
40 certify the amendment to the Secretary of State, who shall enroll the amendment so  
41 certified among the permanent records of that office. The amendment becomes effective  
42 January 1, 2005.

43 **SECTION 19.** G.S. 7A-171 reads as rewritten:

44 **"§ 7A-171. Numbers; appointment and terms; vacancies.**

1 (a) The General Assembly shall establish a minimum and a maximum quota of  
2 magistrates for each county. In no county shall the minimum quota be less than one.  
3 The number of magistrates in a county, within the quota set by the General Assembly, is  
4 determined by the Administrative Office of the Courts after consultation with the chief  
5 district court judge for the district in which the county is located.

6 (a1) The initial term of appointment for a magistrate is two years and subsequent  
7 terms shall be for a period of four years. The term of office begins on the first day of  
8 January of the odd-numbered year after appointment. The service of an individual as a  
9 magistrate filling a vacancy as provided in subsection (d) of this section does not  
10 constitute an initial term. For purposes of this section, any term of office for a  
11 magistrate who has served a two-year term is for four years even if the two-year term of  
12 appointment was before the effective date of this section, the term is after a break in  
13 service, or the term is for appointment in a different county from the county where the  
14 two-year term of office was served.

15 (b) Not earlier than the Tuesday after the first Monday nor later than the third  
16 Monday in December of each even-numbered year, the clerk of the superior court shall  
17 submit to the senior regular resident superior court judge of the district or set of districts  
18 as defined in G.S. 7A-41.1(a) in which ~~his~~the clerk's county is located the names of two  
19 (or more, if requested by the judge) nominees for each magisterial office ~~in the~~  
20 ~~minimum quota established for the county.~~county for which the term of office of the  
21 magistrate holding that position shall expire on December 31 of that year. Not later than  
22 the fourth Monday in December, the senior regular resident superior court judge shall,  
23 from the nominations submitted by the clerk of the superior court, appoint magistrates  
24 to fill the ~~minimum quota established~~positions for each county of ~~his~~the judge's district  
25 or set of districts. ~~The term of a magistrate so appointed shall be two years,~~  
26 ~~commencing on the first day in January of the calendar year next ensuing the calendar~~  
27 ~~year of appointment.~~

28 (c) ~~After the biennial appointment of the minimum quota of magistrates,~~  
29 ~~additional magistrates in a number not to exceed, in total, the maximum quota~~  
30 ~~established for each county may be appointed in the following manner. The chief~~  
31 ~~district judge for the district court district in which the county is located, with the~~  
32 ~~approval of the Administrative Officer of the Courts, may certify to the clerk of superior~~  
33 ~~court that the minimum quota is insufficient for the efficient administration of justice~~  
34 ~~and that a specified additional number, not to exceed the maximum quota established~~  
35 ~~for the county, is required. Within 15 days after the receipt of this certification the clerk~~  
36 ~~of superior court shall submit to the senior regular resident superior court judge of the~~  
37 ~~district or set of districts as defined in G.S. 7A 41.1(a) in which his county is located the~~  
38 ~~names of two (or more, if requested by the judge) nominees for each additional~~  
39 ~~magisterial office. Within 15 days after receipt of the nominations the senior regular~~  
40 ~~resident superior court judge shall from the nominations submitted appoint magistrates~~  
41 ~~in the number specified in the certification. A magistrate so appointed shall serve a term~~  
42 ~~commencing immediately and expiring on the same day as the terms of office of~~  
43 ~~magistrates appointed to fill the minimum quota for the county.~~If an additional  
44 magisterial office for a county is approved to commence on January 1 of an

1 odd-numbered year, the new position shall be filled as provided in subsection (b) of this  
2 section. If the additional position takes effect at any other time, it is to be filled as  
3 provided in subsection (d) of this section.

4 (d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of  
5 superior court shall submit to the senior regular resident superior court judge the names  
6 of two (or more, if so requested by the judge) nominees for the office vacated. Within  
7 15 days after receipt of the nominations the senior regular resident superior court judge  
8 shall appoint from the nominations received a magistrate who shall take office  
9 immediately and shall serve ~~for the remainder of the unexpired term.~~until December 31  
10 of the even-numbered year, and thereafter the position shall be filled as provided in  
11 subsection (b) of this section."

12 **SECTION 20.** Sections 1 and 6 of this act become effective October 1,  
13 2004, and apply to actions filed on or after that date. Sections 7 through 15 of this act  
14 become effective December 1, 2004, and apply to offenses committed on or after that  
15 date. Sections 2, 3, 16, 17, 18, and 20 of this act are effective when they become law.  
16 Sections 4 and 5 of this act become effective October 1, 2004, and apply to orders  
17 entered on or after that date. Section 19 of this act becomes effective only upon  
18 approval by the voters of the constitutional amendment proposed in Section 16 of this  
19 act. If the constitutional amendment proposed in Section 16 is approved by the voters,  
20 Section 19 of this act becomes effective January 1, 2005, and applies to appointments  
21 that take effect after that date.