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THE 1976 GENERAL ASSEMBLY: ACTIONS AFFECTING LAW ENFORCEMENT, THE COURTS, AND CORRECTIONS

Michael Crowell

Although the two-week 1976 session of the General Assembly was declared to be limited to budgetary matters, the legislators squeezed in consideration of a variety of other matters, several of which directly affect criminal justice. This memorandum will summarize the budgetary and other actions most important to criminal justice agencies. Unless otherwise indicated, all the matters mentioned here were enacted as part of the appropriations act (S 954, ratified as Ch. 983 of the 1975 Session Laws) and take effect on July 1, 1976.

Salary increases. The 1976 legislature appropriated funds for a salary increase for teachers and state employees amounting to 4 per cent of the present salary plus an additional $300. Salaries for judicial officials were increased to provide essentially the same benefits, as follows:

Office	Present Salary	Salary as of 7/1/76
Chief Justice, Supreme Court	$ 39,000	$ 40,860
Supreme Court justice	38,000	39,816
Chief Judge, Court of Appeals	36,500	38,256
Court of Appeals judge	35,500	37,224
Superior court judge	30,500	32,016
Chief district court judge	24,500	25,776
District court judge	23,500	24,744
District attorney, public defender	27,000	28,380
Assistant district attorney, assistant public defender (average)	17,500	18,504
Administrative officer of courts	32,500	34,104
Assistant administrative officer of courts	24,000	25,260

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For clerks of superior court, the schedule set out in G.S. 7A-101 is revised as follows:

Population of county	Present Salary	Salary as of 7/1/76
Less than 10,000	$ 9,900	$10,596
10,000 to 19,999	12,500	13,308
20,000 to 49,999	15,000	15,900
50,000 to 99,999	17,000	17,988
100,000 to 199,999	19,800	20,892
200,000 and above	24,000	25,260

The appropriations act apparently does not include funds for increases for those clerks whose salaries have been raised above the statutory schedule by merit increments.

For magistrates, G.S. 7A-172 is amended to change the maximum annual salary from $10,074 to $10,776.

In addition, the travel and subsistence allowance for superior court judges was raised, but the judges must apply for the supplemental funds. G.S. 7A-44 is amended so that, in addition to the $5,500 annual expense allowance, a superior court judge can receive up to $1,500 if he submits satisfactory proof to the Administrative Office of the Courts that he has already spent the $5,500; after that point he can receive $35 per day subsistence and 15 cents per mile for one round trip per week while holding court outside his home county, "upon proper certification" to the AOC. Presumably the AOC will soon clarify what is required by that quoted phrase.

Court costs. Separate legislation (H 1299, ratified as Ch. 980 of the 1975 Session Laws) increases the district and superior court fees, with the additional revenue being used to fund deputy clerk of court positions (see below). These increases are all effective on July 1, 1976. For criminal cases, G.S. 7A-304(a)(4) is amended to raise the General Court of Justice fee from $17 to $19 in district court and from $20 to $28 in superior court. For civil cases, G.S. 7A-305(a)(2) is amended to raise the General Court of Justice fee from $10 to $18 in district court cases involving more than $500, and from $20 to $28 in superior court.

New deputy clerks of court. The General Assembly specified the number of new deputy clerks of court that will go to each county: Alamance 2, Alexander 1, Alleghany 0, Anson 1, Ashe 1, Avery 1, Beaufort 1, Bertie 1, Bladen 2, Brunswick 1, Buncombe 3, Burke 2, Cabarrus 2, Caldwell 2, Camden 1, Carteret 2, Caswell 1, Catawba 3, Chatham 1, Cherokee 1, Chowan 1, Clay 0, Cleveland 2, Columbus 2, Craven 2, Cumberland 3, Currituck 1, Dare 1, Davidson 2, Davie 1, Duplin 1, Durham 3, Edgecombe 2, Forsyth 4, Franklin 1, Gaston 3, Gates 1, Graham 1, Granville 1, Greene 1, Guilford 4, Halifax 2, Harnett 1, Haywood 2, Henderson 1, Hertford 1, Hoke 1, Hyde 1, Iredell 2, Jackson 1, Johnston 2, Jones 1, Lee 1, Lenoir 2, Lincoln 1, Macon 1, Madison 1, Martin 1, McDowell 1, Mecklenburg 4, Mitchell 1, Montgomery 1, Moore 1, Nash 2, New Hanover 2, Northampton

1, Onslow 3, Orange 2, Pamlico 1, Pasquotank 1, Pender 1, Perquimans 1, Person 1, Pitt 3, Polk 1, Randolph 2, Richmond 1, Robeson 3, Rockingham 2, Rowan 2, Rutherford 1, Sampson 2, Scotland 1, Stanly 2, Stokes 1, Surry 2, Swain 0, Transylvania 1, Tyrrell 1, Union 2, Vance 1, Wake 4, Warren 1, Washington 1, Watauga 2, Wayne 3, Wilkes 2, Wilson 2, Yadkin 1, Yancey 0.

Assistant district attorneys, secretaries, investigators. The appropriations act raised the number of assistant district attorneys authorized for the 4th judicial district (Duplin, Jones, Onslow, Sampson) from 4 to 5, and also raised from 2 to 3 the number authorized for both the 9th (Franklin, Granville, Person, Vance, Warren) and 30th (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain) districts.

Funds appropriated last year to the Administrative Office of the Courts were reduced for fiscal 1976-77 to eliminate funding for several vacant secretarial positions in superior court judges' offices, a vacant assistant public defender position, and vacant investigator and stenographer positions in offices of public defenders.

Pretrial criminal procedure. Other sections of the appropriations act included a variety of changes in G.S. Ch. 15A, mostly intended to reduce paperwork requirements and correct a few inconsistencies found in the statutes. The sections amended have been reproduced in an attachment at the end of this memorandum.

Some confusion has existed under Ch. 15A on what to do with a person arrested in one county for a crime committed in another county. Although the magistrate is a state officer, generally with statewide jurisdiction, many magistrates and officers have felt that he could conduct an initial appearance only for a crime committed in his county; thus the person arrested would have to be taken by the arresting officer to the county where the crime was committed for the initial appearance. Support for that view can be found in G.S. 15A-131, which states that venue for pretrial proceedings is in the county where the offense occurred. The amendment to that section specifies that the venue provision does not apply to the initial appearance. With the "venue" barrier eliminated, the magistrate's "jurisdiction" should allow him to conduct an initial appearance for anyone arrested anywhere. Because of paper-handling problems, it is still better for the initial appearance to be conducted in the county where the crime was committed, but that is not a legal limitation.

Under present G.S. 15A-141(3), an attorney can make a limited appearance in a criminal proceeding by filing written notice with the clerk indicating the extent of his representation or by giving oral notice to that effect when he first appears in the courtroom. The amendment to that section eliminates the option of giving oral notice in court.

Two changes are made in G.S. 15A-301. First, subsection (a)(1) was amended to eliminate the requirement that a copy of each criminal process be filed in the clerk's office; instead, the clerk is to keep a "record" of each process issued, which presumably might be the old warrants-issued

register (modified to reflect all process issued and not just warrants). Subsection (d)(4) was amended to specify that when an unserved criminal summons has been returned to the clerk, that summons may not be reissued until the clerk has placed on it a new time and date for the defendant's appearance. Amendments to G.S. 15A-303(d) and G.S. 15A-601 resolve technical difficulties in setting a date for a first appearance in a summons issued for a felony. Also, the latter section has been amended to change the procedure for continuance of a first appearance (following the issuance of any process, not just the summons). Under present law the defendant and district attorney must both consent to the continuance, which may not be for longer than seven days or until the next session of district court, whichever is greater. When the amendment takes effect, the continuance can be granted on the motion of the defendant without limit on length.

A new subdivision has been added to G.S. 15A-511(a) to give the magistrate some direction on what to do with a drunk or otherwise unruly defendant brought before him for an initial appearance. If the person is in such a condition or for some reason causing such a disruption that he cannot understand his rights, the magistrate may order him secured or confined, to be brought back at a certain time to complete the explanation of charges, setting of bail, and other requirements.

Another amendment repeals subdivision (4) of G.S. 15A-521(c), which now requires a judicial official to file with the clerk a copy of each order of commitment to a detention facility.

G.S. 15A-630 is completely rewritten to allow notice of indictment to be served by mail or some other method rather than by personal service on the defendant. The rewriting also clarifies that the giving of notice can be delayed if the judge has ordered the indictment sealed and kept secret until the defendant is before the court.

The final amendment is to G.S. 15A-1026. It eliminates the requirement that the record be transcribed whenever there is a proceeding in which the defendant pleads guilty or no contest or in which plea arrangements are discussed. The revision still requires a verbatim record to be made, but it need only be "preserved"--not transcribed in every case.

Venue for civil commitment hearing. Sheriffs have complained about the time spent transporting respondents in mental commitment hearings back and forth from the home county to regional mental hospitals. A new section has been added to G.S. Ch. 122 (tentatively numbered G.S. 122-58.7A) to provide that when a person has been taken to a regional mental health facility for examination before his first commitment hearing in district court, that hearing can be held in the county where the facility is located rather than necessarily in his home county. If the counsel of the person being committed objects, the hearing must return to the home county. If the hearing is held in the county where the facility is located, the clerk of that county must ask the home county for the files and assume all the clerk's responsibilities from that point, including appointment of the regional facility's counsel to aid the indigent respondent. The new section is reproduced at the end of this memorandum.

Department of Correction budget. This session of the legislature revised the fiscal 1976-77 appropriations that had been made by the 1975 session, including reducing a number of items in the Department of Correction's budget. For example, the 1976-77 appropriation was reduced by $120,000 through deferring purchase of metal lockers; by about $48,000 through eliminating the tuition refund program; and by about $77,000 through eliminating state funds for the public information office. As for all state agencies, purchase of automobiles for the Department of Correction was postponed a year. The funds for reimbursing counties for housing safe-keeper prisoners were considered more than were needed, so $110,000 was cut from that item. Around $1 million was returned to the General Fund from appropriations that had been made previously for new prison construction. The Prison Enterprises Fund was subject to the most drastic actions; $420,000 was taken from it to be placed in the Department's operating budget, and another $1.25 million was transferred to the General Fund. An earlier appropriation of $500,000 for food, clothing, and janitorial supplies was placed in a reserve so that it could be spent only for those purposes; any amount not spent will revert to the General Fund.

The Department did receive one substantial increase in funding--about $440,000 to pick up an expiring federal grant for pre-release and aftercare. No consideration was given to funding other expiring grants.

To deal with prison overcrowding, the General Assembly transferred the Richard T. Fountain training school and its equipment (except as needed by Youth Services) from the Department of Human Resources Division of Youth Services to the Department of Correction. No funds were provided to renovate the facilities, but the Governor and the Advisory Budget Commission were authorized to reallocate previous capital appropriations to the Department, to transfer excess cash in the Prison Enterprises Fund, and to use unanticipated federal funds in the coming year to improve Fountain.

Without appropriating any additional funds, the legislature directed the Secretary of Correction to use vacant positions to establish five new chaplain positions in the Department in the coming fiscal year.

State law enforcement salary study. During consideration of the budget, several proposals were made to grant a salary increase to the State Highway Patrol above that made to other state employees. Those higher increases were not approved (the Patrol got the same 4 per cent plus $300 as everyone else), but the Office of State Personnel was directed to study the salary classifications for all state law enforcement officers and recommend to the 1977 legislature a way to make the salaries scales for the different classifications equitable.

Miscellaneous. The sum of $111,000 was added to the SBI's appropriation to move its offices to the Garner Road campus of the Governor Morehead School. The State Highway Patrol had sought the Morehead property, and final disposition of it remains uncertain. The Legislative Commission on Governmental Operations (the "Crawford Commission") is to study and recommend to the 1977 General Assembly the best permanent use of the property.

The Board of Governors of the University of North Carolina has been

authorized to take steps toward merging the National Driving Center in the Research Triangle and the Highway Safety Research Center in Chapel Hill. The agency resulting from the merger is to be a new Institute for Transportation Research and Education.

The appropriation of $67,000 in state funds (to be matched by federal and local funds) for a long-term treatment program for alcoholics in the Blue Ridge mental health area will indirectly benefit the efforts to decriminalize the offense of public drunkenness. The Asheville area already has a detoxification program for public drunks, and this new facility apparently will provide a place for those who do not respond to any of the present treatment programs.

The appropriations act contains one section that became effective on ratification, May 14. That is the revision of the Administrative Procedure Act, which generally should not affect the readers of this memorandum. The changes include some narrowing of the occasions when a hearing is required, elimination of compliance with the rule-making requirements for rules concerning only internal agency organization and having various agencies file their rules with the Attorney General rather than the Secretary of State.

SECTIONS OF GENERAL STATUTES CHAPTERS 15A AND 122 AMENDED OR ADDED BY CHAPTER 983 OF THE 1975 SESSION LAWS (S 954), EFFECTIVE JULY 1, 1976.

Material struck through (~~struck through~~) is repealed; material typed *in italics* is new.

§ 15A-131. Venue generally.--(a) Venue for pretrial and trial proceedings in district court of cases within the original jurisdiction of the district court lies in the county where the charged offense occurred.

. . .

(f) For the purposes of this Article, pretrial proceedings ~~include all proceedings~~ *are proceedings occurring after the initial appearance before the magistrate and* prior to arraignment.

§ 15A-141. When entry of attorney in criminal proceeding occurs.--An attorney enters a criminal proceeding when he:

. . .

(3) Appears in a criminal proceeding for a limited purpose and indicates the extent of his representation by filing written notice thereof with the clerk, ~~or entering oral notice thereof in open court at the time of his initial appearance~~; or

. . . .

§ 15A-301. Criminal process generally.--(a) Formal Requirements.--

(1) A ~~copy~~ *record* of each criminal process issued in the trial division of the General Court of Justice must be ~~filed~~ *maintained* in the office of the clerk.

. . .

(d) Return.--

(4) The clerk to which return is made may redeliver the process to a law-enforcement officer for further attempts at service. *If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance.*

. . . .

§ 15A-303. Criminal summons.--

. . .

(d) Order to Appear.--The summons must order the person named to appear in a designated court at a designated time and date and answer to the charges made against him and advise him that he may be held in contempt of court for failure to appear. *Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the issuance or reissuance of the criminal summons.*

. . .

§ 15A-511. Initial appearance.--(a) Appearance before Magistrate.--

. . .

(3) If the defendant brought before a magistrate is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, upon order of the magistrate he may be confined or otherwise secured. If this is done, the magistrate's order must provide for an initial appearance within a reasonable time so as to make certain that the defendant has an opportunity to exercise his rights under this Chapter.

. . . .

§ 15A-521. Commitment to detention facility pending trial.--

. . .

(c) Copies and Use of Order, Receipt of Prisoner.--

. . .

(4) ~~When a judicial official issues an order of commitment, or an order supplemental to an order of commitment, a copy must be filed in the office of the clerk. The clerk must keep the copy separately available until the original order or supplemental order is returned to him, at which time both may be placed in the case file. Upon a change of venue the copies must be transmitted with the other papers in the case~~.

. . . .

§ 15A-601. First appearance before a district court judge; right in felony and other cases in original jurisdiction of superior court; consolidation of first appearance before magistrate and before district court judge.--

. . .

(c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If

the defendant is not taken into custody, or is released pursuant to Article 26 of this Chapter, Bail, within 96 hours after being taken into custody, first appearance must be held at the next session of district court held in the county. *This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).*

(d) ~~With the consent~~ *Upon motion* of the defendant ~~and the solicitor~~, ~~it~~ *the first appearance before a district court judge* may be continued ~~for not more than seven additional days, or until the next session of district court, whichever period is greater~~ *to a time certain*. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding.

§ 15A-630. ~~Service of~~ Notice ~~upon~~ *to* defendant ~~required when grand jury returns~~ *of* true bill of indictment.--~~(a) Except as provided in subsection (b)~~, *Upon* the return of a bill of indictment as a true bill the presiding judge must immediately cause notice of the indictment to be ~~served upon~~ *mailed or otherwise given to* the defendant *unless he is then represented by counsel of record.* The notice must inform the defendant of the time limitations upon his right to discovery under Article 48 of this Chapter, Discovery in the Superior Court, and a copy of the indictment must be attached to the notice.

~~(b) The provisions of subsection (a) do not apply if~~:

~~(1) The defendant was afforded or waived a probable-cause hearing authorized under Article 30 of this Chapter, Probable-Cause Hearing, on the charge in the indictment~~;

~~(2) The defendant was represented by counsel of record, under Article 4 of this Chapter, Entry and Withdrawal of Attorney in Criminal Case, at the time the probable-cause hearing was held or waived; and~~

~~(3) The defendant is still represented by counsel of record at the time the indictment is returned.~~

If the judge directs that the indictment be sealed as provided in G.S. 15A-623(f), he may defer the giving of notice under this section for a reasonable length of time.

§ 15A-1026. Record of proceedings.--A verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest and of any preliminary consideration of a plea arrangement by the judge pursuant to G.S. 15A-1021(c) must be made and ~~transcribed~~ *preserved*. This record must include the judge's advice to the defendant, and his inquiries of the defendant, defense counsel, and the solicitor, and any responses. If the plea arrangement has been reduced to writing, it must be made a part of the record; otherwise the judge must require that the terms of the arrangement be stated for the record and that the assent of the defendant, his counsel, and the solicitor be recorded.

§ 122-58.7A. Venue of district court hearing when respondent held at regional facility pending hearing.--(a) In all cases where the respondent is held at a regional mental health facility pending the district court hearing as provided in G.S. 122-58.6, unless the respondent through counsel objects to the venue, the hearing required by G.S. 122-58.7 shall be held in the county in which the facility is located.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court with whom the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122-58.5. The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122-58.12.

Note: The codifier of statutes may choose to give this section a different number and catchline.