

# North Carolina Criminal Law Blog

## S 382 Enacts Provisions that Impact the Courts

December 12, 2024 [Shea Denning](#)

<https://nccriminallaw.sog.unc.edu/author/sdenning/>

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Yesterday, the General Assembly overrode [Governor Cooper's veto](#) <https://webservices.ncleg.gov/ViewBillDocument/2023/9566/0/S382-Bill-NBC-14728> to enact **S.L. 2024-57**

<https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S382v4.pdf> (S 382). The legislation, which was focused in part on disaster recovery following Hurricane Helene, impacts the court system in several notable ways:

- It appropriates \$8.2 million to the Office of Indigent Defense Services (IDS) to ensure timely payments to private assigned counsel representing indigent defendants (Section 2D.3);
- It creates two new special superior court judgeships to be filled by legislative appointment (Section 2D.4(a));
- It eliminates, as of January 1, 2029, two superior court districts, one in Wake County and one in Forsyth County (Section 2D.5);
- It modifies the process for filling vacancies on the appellate courts (Section 3C.1);
- It abolishes the Courts Commission (Section 3C.2);
- It provides for appointment of senior resident superior court judges by the Chief Justice of the North Carolina Supreme Court (Section 3C.3); and
- It authorizes the Director of the Administrative Office of the Courts (AOC) to employ or retain counsel to represent judicial branch officers and employees (Section 3D.2).

**IDS appropriation.** The News and Observer [reported](https://www.newsobserver.com/news/local/article291499580.html)

[<https://www.newsobserver.com/news/local/article291499580.html>](https://www.newsobserver.com/news/local/article291499580.html) in September that without legislative action, IDS would likely run out of money in the spring to pay private assigned counsel. IDS Director Mary Pollard openly worried that the estimated \$39 million budget shortfall would drive away more attorneys from the dwindling number who remain willing to accept court-appointed cases. S 382 filled a portion of the forecasted budgetary gap by appropriating \$8.2 million in nonrecurring funds “to be used to provide timely payments to private assigned counsel representing indigent defendants.”

**New special superior court judgeships.** In 2023, the General Assembly amended G.S. 7A-45.1 to [create 10 special superior court judgeships](https://nccriminallaw.sog.unc.edu/2023-appropriations-act-enacts-significant-court-related-changes/) [<https://nccriminallaw.sog.unc.edu/2023-appropriations-act-enacts-significant-court-related-changes/>](https://nccriminallaw.sog.unc.edu/2023-appropriations-act-enacts-significant-court-related-changes/) filled by legislative appointment. (Eleven other special superior court judgeships are filled by gubernatorial appointment and legislative confirmation.) S 382 enacts new G.S. 7A-45.1(a13), which creates two special superior court judgeships effective January 1, 2025. Those positions are to be filled by legislative appointment, with one nominee from the Speaker of the House and one from the President Pro Tempore of the Senate. One such appointment already has been made. [S.L. 2024-56](https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H1078v3.pdf) [<https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H1078v3.pdf>](https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H1078v3.pdf) (H 1078) appointed Thomas Currin of Wake County as a special superior court judge on the speaker’s recommendation.

**Elimination of superior court districts.** S 382 eliminates two superior court districts, effective January 1, 2029: District 10E in Wake County and District 31D in Forsyth County. The current resident superior court judges in each of those districts (Resident Superior Court Judge Bryan Collins, District 10E, and Senior Resident Superior Court Judge Todd Burke, District 21D) were elected in November 2020 to eight-year terms that expire January 1, 2029.

**Judicial vacancies.** S 382 amends the process for filling vacancies on the appellate courts. Before the amendments, **[G.S. 163-9](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-9.html)** [provided](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-9.html) that the governor appointed judges to fill such vacancies. (The appointee holds office until January 1 following the next general election held more than 60 days after the vacancy.) Now, when such a vacancy occurs, the governor must appoint a replacement from a list of three qualified persons recommended by the political party with which the vacating judge was affiliated. If the political party fails to make a recommendation within 30 days or the vacating judge was not affiliated with a political party at the time the judge was elected, the governor may appoint any qualified person to fill the vacancy. (A qualified person is an NC resident who is authorized to practice law.) These provisions are effective immediately.

**Elimination of the Courts Commission.** S 382 repeals **[Article 40A of Chapter 7A](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_7A/Article_40A.pdf)**

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_7A/Article\\_40A.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_7A/Article_40A.pdf), which provided for a North Carolina Courts Commission, a 28-member body with members appointed by the governor, legislature, and the chief justice. The Commission, created in 1979, was charged with making “continuing studies of the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and of the General Court of Justice,” and with making recommendations to the General Assembly with changes to “facilitate the administration of justice.” **[G.S. 7A-508](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_7a/GS_7a-508.html)** [https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_7a/GS\\_7a-508.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_7a/GS_7a-508.html), repealed by S.L. 2024-57, effective December 11, 2024. The Commission made what we now know to be its last **[report to the legislature](https://www.ncleg.gov/Documents/267/7196)** <https://www.ncleg.gov/Documents/267/7196> in March 2024.

**Chief Justice to select senior residents. G.S. 7A-41.1**

[https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_7A/GS\\_7A-41.1.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_7A/GS_7A-41.1.html) (b) formerly provided that in districts with more than one resident superior court judge, the senior resident superior court judge was the judge with the most continuous service as a resident superior court judge. If two or more judges in the district had the same seniority, the oldest was the senior resident. (There was — and there remains — an exception for Wake County, where the chief justice selects the senior resident.) S 382 amends G.S. 7A-41.1(b) to provide that the chief justice selects the senior resident for a district with more than one resident superior court judge. The selected senior resident serves at the chief justice's pleasure.

These provisions became effective upon enactment; all senior resident superior court judges in multi-judge districts are deemed to now be serving at the pleasure of the chief justice.

**Representation by AOC.** Finally, S 382 enacted new G.S. 7A-343.7, which allows the AOC Director to employ staff counsel or to retain private counsel to provide legal services, including litigation services, to judicial branch officials and employees in actions or matters that arise from the person's official duties. The Director also may employ or retain counsel to provide legal services, including litigation services, to an agency, commission, conference, or other judicial branch entity. This type of representation formerly was provided by the Department of Justice (DOJ) under the supervision of the Attorney General. G.S. 7A-343.7 does not require that representation be provided under the supervision of the Director rather than DOJ; instead, it authorizes that choice.



Knapp-Sanders Building  
Campus Box 3330, UNC Chapel Hill  
Chapel Hill, NC 27599-3330  
T: (919) 966-5381 | F: (919) 962-0654

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