

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 292

Short Title: Sup. Ct. Crim. Case Docketing Plan.

(Public)

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Sponsors: Senators Ballance; Carpenter, Carrington, Hoyle, Jordan, Kerr, Kinnaird, Lee, Lucas, Martin of Pitt, Miller, Odom, Purcell, Reeves, Shaw of Cumberland, Warren, Weinstein, and Wellons.

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Referred to: Judiciary I.

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March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CRIMINAL CASES IN SUPERIOR COURT SHALL  
BE CALENDARED PURSUANT TO CRIMINAL CASE DOCKETING PLANS  
DEVELOPED FOR EACH DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 7A is amended by adding a new section to read:

**"§ 7A-49.4. Superior court criminal case docketing plans.**

(a) Criminal Docketing Plans. – Criminal cases in superior court shall be calendared according to a criminal case docketing plan developed for each district by a district committee composed of the senior resident superior court judge, the district attorney, and one member of the defense bar practicing in the district chosen by the membership of the district bar. Each criminal case docketing plan shall at a minimum comply with the provisions of this section, but may contain additional provisions not inconsistent with this section.

(b) Initial Administrative Setting. – An initial administrative setting shall be calendared for each felony within 30 days of indictment. At the initial administrative setting, the court shall determine the status of the defendant's representation by counsel.

1 The court shall also, after hearing from the parties, set deadlines for the delivery of  
2 discovery, the filing of pretrial motions, and the setting of a second administrative setting.  
3 The scheduling order shall require that discovery be provided no later than 21 days before  
4 the second administrative setting, and that each party shall have at least 10 days from the  
5 receipt of discovery to file pretrial motions.

6 (c) Second Administrative Setting. – No less than five days prior to the second  
7 administrative setting, the district attorney shall inform the defendant as to whether a plea  
8 arrangement will be offered and the terms of any proposed plea arrangement. During the  
9 second administrative setting the court shall hear all pending pretrial motions. Upon a  
10 showing of good cause, the court may schedule hearings on pending pretrial motions for  
11 a date certain, may permit the filing of additional pretrial motions, or may defer ruling on  
12 motions until the trial of the case. The court may also conduct a plea conference if  
13 supported by the interest of justice. Upon the conclusion of the hearing of any pretrial  
14 motions or plea conference, the court shall, after hearing from the parties as to a proposed  
15 trial date, set a date for trial. The trial shall occur no sooner than 30 days after the second  
16 administrative setting.

17 (d) Venue for Administrative Settings. – Venue for administrative settings may be  
18 in any county within the district when necessary to comply with the terms of the criminal  
19 case docketing plan.

20 (e) Setting and Publishing of Trial Calendar. – No less than 10 days before cases  
21 are calendared for trial, the district attorney shall set and publish the trial calendar. The  
22 trial calendar shall set the cases in the order in which they will be called for trial, and may  
23 not contain cases that the district attorney does not reasonably expect to be called for  
24 trial.

25 (f) Order of Trial. – Cases shall be called for trial in the order listed on the trial  
26 calendar. A case may be continued from the trial calendar only by consent of the State  
27 and the defendant or upon order of the presiding judge for good cause shown. The  
28 presiding judge, after consultation with the parties, shall set a new trial date for cases not  
29 reached during that session of court.

30 (g) Modification or Waiver of Deadlines. – The application of deadlines and other  
31 aspects of the criminal docketing plan may be modified or waived by consent of the State  
32 and the defendant, and with the approval of the court. Nothing in this section precludes  
33 the early production of discovery or early resolution of cases through plea.

34 (h) Development of the Plan. – Each superior court district shall develop a  
35 criminal case docketing plan by January 1, 2000. Each plan shall provide for transitional  
36 procedures for cases pending on the date that the plan becomes effective. Copies of the  
37 plan shall be made available to the district bar and the judicial officials in the district. In  
38 addition, a copy of the plan shall be sent to the Chief Justice no later than January 1,  
39 2000.

40 (i) Acceptance of the Plan. – The Chief Justice or the Chief Justice's designee  
41 shall examine each proposed criminal case docketing plan to determine whether it  
42 complies with the requirements of this section. Upon certification by the Chief Justice or  
43 the Chief Justice's designee, the plan shall be accepted and, beginning January 1, 2000,

1 shall be the exclusive and binding plan for criminal case docketing in that district  
2 beginning 60 days from the acceptance. If no plan has been accepted for a particular  
3 district by January 1, 2000, then an accepted plan for another district chosen by the Chief  
4 Justice or the Chief Justice's designee shall be the exclusive and binding plan for criminal  
5 case docketing in that district.

6 (j) Amendments to the Plan. – The district committee established pursuant to  
7 subsection (a) of this section may propose a new plan or amendments to the existing plan  
8 after full consultation with the district bar and the superior court judges in the district.  
9 The existing plan shall remain in effect until the new plan or amendments are accepted  
10 under the procedure set forth in subsection (i) of this section. Any new or amended plan  
11 shall be effective 60 days from the date of acceptance."

12 Section 2. G.S. 7A-49.3 is repealed.

13 Section 3. G.S. 7A-61 reads as rewritten:

14 **"§ 7A-61. Duties of district attorney.**

15 The district attorney shall prepare the trial ~~dockets,~~ dockets pursuant to the provisions  
16 of the criminal case docketing plan established under G.S. 7A-49.4, prosecute in the  
17 name of the State all criminal actions and infractions requiring prosecution in the superior  
18 and district courts of his prosecutorial district, advise the officers of justice in his district,  
19 and perform such duties related to appeals to the Appellate Division from his district as  
20 the Attorney General may require. Effective January 1, 1971, the district attorney shall  
21 also represent the State in juvenile cases in which the juvenile is represented by an  
22 attorney. Each district attorney shall devote his full time to the duties of his office and  
23 shall not engage in the private practice of law."

24 Section 4. G.S. 15A-9943 reads as rewritten:

25 **"§ 15A-943. Arraignment in superior court – Required calendaring.**

26 (a) In counties in which there are regularly scheduled 20 or more weeks of trial  
27 sessions of superior court at which criminal cases are heard, and in other counties the  
28 Chief Justice designates, ~~the prosecutor must calendar~~ arraignments in the superior court  
29 shall be calendared pursuant to the criminal case docketing plan established under G.S.  
30 7A-49.4 on at least the first day of every other week in which criminal cases are heard.  
31 No cases in which the presence of a jury is required may be calendared for the day or  
32 portion of a day during which arraignments are calendared.

33 (b) When a defendant pleads not guilty at an arraignment required by subsection  
34 (a), he may not be tried without his consent in the week in which he is arraigned.

35 (c) Notwithstanding the provisions of subsection (a) of this section, in any county  
36 where as many as three simultaneous sessions of superior court, whether criminal, civil,  
37 or mixed, are regularly scheduled, ~~the prosecutor may calendar~~ arraignments may be  
38 calendared pursuant to the criminal case docketing plan established under G.S. 7A-49.4  
39 in any of the criminal or mixed sessions, at least every other week, upon any day or days  
40 of a session, and jury cases may be calendared for trial in any other court at which  
41 criminal cases may be heard, upon such days."

42 Section 5. This act becomes effective January 1, 2000.