

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2018-40
SENATE BILL 168**

AN ACT TO MAKE VARIOUS CHANGES TO THE LAW GOVERNING THE
ADMINISTRATION OF JUSTICE.

The General Assembly of North Carolina enacts:

PART I. REDUCE DISTRIBUTION OF APPELLATE REPORTER ADVANCE SHEETS

SECTION 1. G.S. 7A-6(c) is repealed.

PART II. INCREASE MAXIMUM INSURANCE BENEFICIARY DISTRIBUTIONS

SECTION 2.1. G.S. 7A-111 reads as rewritten:

"§ 7A-111. Receipt and disbursement of insurance and other moneys for minors and incapacitated adults.

(a) When a minor under 18 years of age is named beneficiary in a policy or policies of insurance, and the insured dies prior to the majority of such minor, and the proceeds of each individual policy do not exceed ~~twenty five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000) such proceeds may be paid to and, if paid, shall be received by the public guardian or clerk of the superior court of the county wherein the beneficiary is domiciled. The receipt of the public guardian or clerk shall be a full and complete discharge of the insurer issuing the policy or policies to the extent of the amount paid to such public guardian or clerk.

Any person having in his possession ~~twenty five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000) or less for any minor under 18 years of age for whom there is no guardian, may pay such moneys into the office of the public guardian, if any, or the office of the clerk of superior court of the county of the recipient's domicile. The receipt of the public guardian or clerk shall constitute a valid release of the payor's obligation to the extent of the sum delivered to the clerk.

The clerk is authorized under this section to receive, to administer and to disburse the monies held in such sum or sums and at such time or times as in his judgment is in the best interest of the child, except that the clerk must first determine that the parents or other persons responsible for the child's support and maintenance are financially unable to provide the necessities for such child, and also that the child is in need of maintenance and support or other necessities, including, when appropriate, education. The clerk shall require receipts or paid vouchers showing that the monies disbursed under this section were used for the exclusive use and benefit of the child.

...."

PART III. CLARIFY FEES FOR POWER OF ATTORNEY PROCEEDINGS BEFORE A CLERK

SECTION 3. G.S. 7A-307 reads as rewritten:

"§ 7A-307. Costs in administration of estates.

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, ~~and in the administration of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, in power of attorney proceedings under G.S. 32C-1-116(a),~~ and in collections of personal property by affidavit, the following costs shall be assessed:



...."

PART V. REDUCE HARD COPY APPELLATE DIVISION REPORT EXPENDITURES

SECTION 5. G.S. 7A-343.1 reads as rewritten:

"§ 7A-343.1. Distribution of copies of the appellate division reports.

(a) The Administrative Officer of the Courts shall, upon request and at the State's ~~expense~~ expense, distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11 <u>5</u>
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environmental Quality, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
Adult Correction and Juvenile Justice, Division of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8 <u>1</u>
Industrial Commission	11 <u>1</u>
State Human Resources Commission	1
Office of State Human Resources	1
Office of Administrative Hearings	2
Community Colleges, Department of	3 <u>8</u>
Department of Commerce	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Public Safety, Department of	2
Natural and Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court of North Carolina Library	1
	AS MANY AS REQUESTED
Appellate Division Reporter	1

University of North Carolina, Chapel Hill <u>Carolina School of Law</u>	715
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University <u>School of Law</u>	175
Western Carolina University	1
Duke University <u>School of Law</u>	175
Davidson College	2
Wake Forest University <u>School of Law</u>	255
Lenoir Rhyne College	1
Elon College <u>University School of Law</u>	15
Campbell University <u>School of Law</u>	255
Federal, Out of State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
United States Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1
Library of Congress	51
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States <u>Librarian, Supreme Court of the United States</u>	1
Federal District <u>United States Attorneys resident in North Carolina</u>	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1
Cherokee Supreme Court, Eastern Band of Cherokee Indians	13

~~Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished to each justice or of the Supreme Court and judge of the Court of Appeals as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports by the justice or judge.~~

~~...."~~

PART VI. INDIGENT SERVICES APPOINTMENT PLANS

SECTION 6. G.S. 7A-498.3 reads as rewritten:

"§ 7A-498.3. Responsibilities of Office of Indigent Defense Services.

~~...~~

(b1) The Office of Indigent Defense Services shall develop a model appointment plan with minimum qualification standards for appointed private counsel by July 1, 2019, for adoption and promulgation by each judicial district. Judicial districts may request modifications to the model plan and qualification standards. If a judicial district has not adopted an appointment plan with the Indigent Defense Services' minimum qualification standards by January 2, 2021, the model plan and qualification standards developed by Indigent Defense Services will become effective on that date in that judicial district. Indigent Defense Services shall review the model plan and

qualification standards every five years and, in the event it modifies the model plan and/or qualification standards, shall notify the judicial districts of the change. Judicial districts will have 18 months from the date Indigent Defense Services gives notice of a change to seek modifications to the revised model plan or to the qualification standards.

...."

PART VII. ARREST WARRANT MODIFICATIONS

SECTION 7.1. G.S. 15A-304(b) reads as rewritten:

"(b) When Issued. –

- (1) Generally. – A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.
- (2) ~~Upon a finding of probable cause pursuant to subsection (d) of this section, the issuing official shall issue a criminal summons instead of a warrant, unless the official finds that the accused should be taken into custody. Circumstances to be considered in determining whether the accused should be taken into custody may include, but are not limited to, any of the following:~~
 - a. ~~The accused has a history of failure to appear before the court as required, or there is other evidence that the person is unlikely to appear in response to a summons for the current proceeding.~~
 - b. ~~There is evidence that the accused is likely to escape or otherwise flee the State in order to avoid prosecution for the offense alleged.~~
 - c. ~~There is evidence of imminent danger of harm to persons or property if the accused is not taken into custody.~~
 - d. ~~The location of the accused is not readily discoverable, such that a criminal summons would be unlikely to be served before any court date assigned at the time of issue.~~
 - e. ~~A relevant statute provides that arrest is mandatory for an offense charged.~~
 - f. ~~The seriousness of the offense. However, the fact that the offense charged is a felony shall not, by itself, constitute grounds for the issuance of a warrant.~~
- (3) ~~Notwithstanding subsection (d) of this section, an official shall only find probable cause based solely on information provided by a person who is not a sworn law enforcement officer if the information is provided by written affidavit.~~ When Citizen-initiated. – If the finding of probable cause pursuant to subsection (d) of this section is based solely upon the written or oral testimony under oath or affirmation of a person who is not a sworn law enforcement officer, the issuing official shall not issue a warrant for arrest and instead shall issue a criminal summons, unless one of the following circumstances exists:
 - a. There is corroborating testimony of the facts establishing probable cause from a sworn law enforcement officer or at least one disinterested witness.

- b. The official finds that obtaining investigation of the alleged offense by a law enforcement agency would constitute a substantial burden for the complainant.
- c. The official finds substantial evidence of one or more of the ~~grounds~~ circumstances listed in subdivision (2)(1) of this subsection."

SECTION 7.2. This section becomes effective October 1, 2018, and applies to warrants issued on or after that date.

Part VIII. INCREASE MAXIMUM ESTATE DISTRIBUTION TO MINOR

SECTION 8.1. G.S. 28A-22-7 reads as rewritten:

"§ 28A-22-7. Distribution to parent or guardian of a minor.

(a) If a devise of personal property to a person under the age of 18 has a total value of less than ~~one thousand five hundred dollars (\$1,500)~~, five thousand dollars (\$5,000), and the devisee is residing in the same household with a parent or a guardian appointed prior to the decedent's death, the personal representative may distribute to the parent or guardian the devise. However, such distribution shall only be made with the prior approval of the clerk of court who issued the letters testamentary or of administration.

...

(d) This section may also be applied to several devises of personal property to a single devisee having a combined total value of less than ~~one thousand five hundred dollars (\$1,500)~~, five thousand dollars (\$5,000)."

SECTION 8.2. This section becomes effective January 1, 2019.

PART IX. INCREASE IN SPOUSAL YEARLY ALLOWANCE

SECTION 9.1. G.S. 30-15 reads as rewritten:

"§ 30-15. When spouse entitled to allowance.

Every surviving spouse of an intestate or of a testator, whether or not the surviving spouse has petitioned for an elective share, shall, unless the surviving spouse has forfeited the surviving spouse's right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ~~thirty-sixty thousand dollars (\$30,000)~~ (\$60,000) for the surviving spouse's support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

SECTION 9.2. This section becomes effective January 1, 2019, and applies to allowance applications made on or after that date.

PART X. STRIKE DUPLICATIVE PROVISION

SECTION 10. G.S. 35A-1114 reads as rewritten:

"§ 35A-1114. Appointment of interim guardian.

(a) At the time of or subsequent to the filing of a petition under this Article, the petitioner or guardian ad litem may also file a verified motion with the clerk seeking the appointment of an interim guardian.

(b) The motion filed by the petitioner or guardian ad litem shall set forth facts tending to show:

- (1) That there is reasonable cause to believe that the respondent is incompetent, and
- (2) One or both of the following:
 - a. That the respondent is in a condition that constitutes or reasonably appears to constitute an imminent or foreseeable risk of harm to his physical well-being and that requires immediate intervention;

- b. That there is or reasonably appears to be an imminent or foreseeable risk of harm to the respondent's estate that requires immediate intervention in order to protect the respondent's interest, and
- (3) That the respondent needs an interim guardian to be appointed immediately to intervene on his behalf prior to the adjudication hearing.
- (c) Upon filing of the motion for appointment of an interim guardian by the petitioner or the guardian ad litem, the clerk shall immediately set a date, time, and place for a hearing on the motion. ~~The motion and a notice setting the date, time, and place for the hearing shall be served promptly on the respondent and on his counsel or guardian ad litem and other persons the clerk may designate. The hearing shall be held as soon as possible but no later than 15 days after the motion has been served on the respondent.~~
- (c1) The motion and notice setting the date, time, and place for the hearing shall be served promptly on the petitioner, the respondent and on his counsel or guardian ad litem, and other persons the clerk may designate. The hearing shall be held as soon as possible but not later than 15 days after the motion has been served on the respondent.
- (d) If at the hearing the clerk finds that there is reasonable cause to believe that the respondent is incompetent, and:
 - (1) That the respondent is in a condition that constitutes or reasonably appears to constitute an imminent or foreseeable risk of harm to his physical well-being, and that there is immediate need for a guardian to provide consent or take other steps to protect the respondent, or
 - (2) That there is or reasonably appears to be an imminent or foreseeable risk of harm to the respondent's estate, and that immediate intervention is required in order to protect the respondent's interest,
 the clerk shall immediately enter an order appointing an interim guardian.
- (e) The clerk's order appointing an interim guardian shall include specific findings of fact to support the clerk's conclusions, and shall set forth the interim guardian's powers and duties. Such powers and duties shall be limited and shall extend only so far and so long as necessary to meet the conditions necessitating the appointment of an interim guardian. In any event, the interim guardianship shall terminate on the earliest of the following: the date specified in the clerk's order; 45 days after entry of the clerk's order unless the clerk, for good cause shown, extends that period for up to 45 additional days; when any guardians are appointed following an adjudication of incompetence; or when the petition is dismissed by the court. An interim guardian whose authority relates only to the person of the respondent shall not be required to post a bond. If the interim guardian has authority related to the respondent's estate, the interim guardian shall post a bond in an amount determined by the clerk, with any conditions the clerk may impose, and shall render an account as directed by the clerk.
- (f) When a motion for appointment of an interim guardian has been made, the petitioner may voluntarily dismiss the petition for adjudication of incompetence only prior to the hearing on the motion for appointment of an interim guardian."

PART XI. NOTICE OF FORECLOSURE SALE CANCELLATIONS

SECTION 11.1. G.S. 45-21.21 reads as rewritten:

"§ 45-21.21. Postponement of sale; notice of cancellation.

- (a) Any person exercising a power of sale may postpone the sale to a day certain not later than 90 days, exclusive of Sunday, after the original date for the sale –
 - (1) When there are no bidders, or
 - (2) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or

- (3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day, or
- (4) When he is unable to hold the sale because of illness or for other good reason, or
- (5) When other good cause exists.

The person exercising a power of sale may postpone the sale more than once whenever any of the above conditions are met, so long as the sale is held not later than 90 days after the original date for the sale.

(b) Upon postponement of a sale, the person exercising the power of sale shall personally, or through his agent or attorney –

- (1) At the time and place advertised for the sale, publicly announce the postponement thereof;
- (2) On the same day, attach to or enter on the original notice of sale or a copy thereof, posted at the courthouse door, as provided by G.S. 45-21.17, a notice of the postponement; and
- (3) Give written or oral notice of postponement to each party entitled to notice of sale under G.S. 45-21.17.

(c) The posted notice of postponement shall –

- (1) State that the sale is postponed,
- (2) State the hour and date to which the sale is postponed,
- (3) State the reason for the postponement, and
- (4) Be signed by the person authorized to hold the sale, or by his agent or attorney.

(d) If a sale is not held at the time fixed therefor and is not postponed as provided by this section, or if a postponed sale is not held at the time fixed therefor or within 90 days of the date originally fixed for the sale, then prior to such sale taking place the provisions of G.S. 45-21.16 need not be complied with but the provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be again complied with, or if on appeal, the appellate court orders the sale to be held, as to such sale so authorized the provisions of G.S. 45-21.16 need not be complied with again but those of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be.

(e) A sale may be postponed more than once provided the final postponed sale date is not later than 90 days, exclusive of Sunday and legal holidays when the courthouse is closed for transactions, after the original date for the sale.

(f) A sale shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after the time fixed therefor unless it is delayed by other sales held at the same place. The sale shall be held between the hours of 10:00 A.M. and 4:00 P.M. on any day on which the Clerk's office is normally open for transactions.

(g) If it is determined that the sale cannot be held in accordance with this section or is postponed pursuant to this section, then the person exercising the power of sale shall, immediately upon determining that the sale will not occur and prior to the scheduled time of the sale, deliver a written notice to the Clerk of Superior Court that is to include all of the following:

- (1) The case number assigned by the Clerk.
- (2) The mortgagor(s) and record owner(s) name(s).
- (3) The United States Postal Service address of the property or, if no address has been assigned, a brief description of the location of the property.
- (4) The originally scheduled date and time for the sale.
- (5) A statement that the foreclosure sale has been withdrawn, rescheduled for a specific date and time, or postponed with no date yet set, as appropriate.

(h) If the notice required by subsection (b) of this section is not received by the Clerk prior to the scheduled time of the sale, then the person exercising the power of sale shall personally, or through his or her agent or attorney, do all of the following:

- (1) At the time and place advertised for the sale, publicly announce the cancellation thereof;
- (2) On the same day, attach to or enter on the original notice of sale or a copy thereof, posted at the courthouse door, as provided by G.S. 45-21.17, a notice of the cancellation;
- (3) Give written or oral notice of cancellation to each party entitled to notice of sale under G.S. 45-21.17; and
- (4) Hand-deliver the written notice required under subdivision (2) of this subsection to the Clerk's office.

(i) So that the notices required by subsection (b) of this section may be delivered in the time frame required therein, the Clerk's office shall, upon request, provide to the person exercising the power of sale an e-mail address and/or fax telephone number to use for delivery of said notices.

(j) Should the Clerk's office be unexpectedly closed on the day of the sale, the requirements of this subsection shall be delayed until the next day the Clerk's office is open for transactions.

(k) All notices of a scheduled foreclosure sale, withdrawal of a scheduled sale, or postponement of a scheduled sale shall, on the day of receipt by the Clerk, be posted by the person exercising the power of sale in the location at the county courthouse normally used for the posting of public notices. If a scheduled sale has been withdrawn, that notice shall remain in that location for no less than 30 days. If the sale has been postponed, that notice shall remain in that location until it is replaced by a notice of a rescheduled sale or of a withdrawn sale.

(l) The delivery of notices required by this section in no way removes any responsibility of any party to file documents with the Clerk as required elsewhere by law.

(m) A clerk of superior court may report habitual noncompliance with this subsection to the Administrative Office of the Courts."

SECTION 11.2. This section becomes effective July 1, 2018, and applies to foreclosure sales noticed on or after that date.

PART XII. ADOPTION RECORD MODIFICATIONS

SECTION 12. G.S. 48-9-102 reads as rewritten:

"§ 48-9-102. Records confidential and sealed.

...

(c) When a decree of adoption becomes final, all records and all indices of ~~records~~ records, except for the Special Proceedings Index, on file with the court, an agency, or this State shall be retained permanently and sealed. Sealed records shall not be open to inspection by any person except as otherwise provided in this Article.

(d) All records filed in connection with an adoption, including a copy of the petition giving the date of the filing of the original petition, the original of each consent and relinquishment, additional documents filed pursuant to G.S. 48-2-305, any report to the court, any additional documents submitted and orders ~~entered~~ entered, any orders of dismissal, and a copy of the final decree, shall be sent by the clerk of superior court to the Division within 10 days after the appeal period for a decree of adoption is entered ~~is entered~~ has expired or 10 days following the final disposition of an appeal pursuant to G.S. 48-2-607(b). The original petition and final decree or order of dismissal shall be retained by the clerk.

...."

PART XIII. AUTOMATED COURT PROCEEDING NOTIFICATION SYSTEM RECORDS

SECTION 13.1. G.S. 132-1.10 reads as rewritten:

"§ 132-1.10. Social security numbers and other personal identifying information.

...
(f2) The Administrative Office of the Courts or a clerk of superior court may keep confidential the names, phone numbers, and e-mail addresses collected for the purpose of a court proceeding notification system.

...."

SECTION 13.2. G.S. 75-104 reads as rewritten:

"§ 75-104. Restrictions on use of automatic dialing and recorded message players.

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call only under one or more of the following circumstances:

...
(8) The call is generated from a court proceeding notification system established by the Administrative Office of the Courts."

PART XIV. SEVERABILITY CLAUSE

SECTION 14. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

PART XV. EFFECTIVE DATE

SECTION 15. Except where otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of June, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 9:24 a.m. this 22nd day of June, 2018