

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 610

Short Title: Phone Subpoenas/Relieve Officers.

(Public)

Sponsors: Representatives Balmer; Blue, Cromer, Diggs, Flaherty, L. Etheridge, Grimmer, Kerr, Isenhower, and Rhyne.

Referred to: Judiciary.

March 15, 1989

A BILL TO BE ENTITLED

AN ACT TO ALLOW CIVILIANS TO SERVE SUBPOENAS BY TELEPHONE COMMUNICATION AND TO SERVE CRIMINAL SUMMONSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 45(e) reads as rewritten:

"(e) Service. - All subpoenas may be served by the sheriff, by his deputy, by a coroner or by any other person not less than 18 years of age, who is not a party. Service of a subpoena for the production of documentary evidence may be made only by the delivery of a copy to the person named therein or by registered or certified mail, return receipt requested. Service of a subpoena for the attendance of a witness may be made by telephone communication with the person named therein only by an authorized server who shall be a sheriff, his deputy, designee who is not less than 18 years of age and not a party, or coroner, or by delivery of copy to the person named therein or by registered or certified mail, return receipt requested, by any person authorized by this section to serve subpoenas. Personal service shall be proved by return of a sheriff, his deputy, or a coroner making service and by return under oath of any other person making service. Service by telephone communication shall be proved by return of the authorized process officer, server, noting the method of service. Service by registered or certified mail shall be proved by filing the return receipt with the return."

Sec. 2. G.S. 8-59 reads as rewritten:

"§ 8-59. Issue and service of subpoena.

In obtaining the testimony of witnesses in causes pending in the trial divisions of the General Court of Justice, subpoenas shall be issued and served in the manner provided

1 in Rule 45 of the Rules of Civil Procedure for civil actions. Provided that in criminal
2 cases any ~~law-enforcement officer authorized to make arrests and employed by~~ employee of a
3 local law-enforcement agency may effect service of a subpoena for the attendance of
4 witnesses by telephone communication with the person named. However, in the case of
5 a witness served by telephone communication pursuant to this section, neither an order
6 to show cause nor an order for arrest shall be issued until such person has been served
7 personally with the written subpoena."

8 Sec. 3. G.S. 15A-301 reads as rewritten:

9 **"§ 15A-301. Criminal process generally.**

10 (a) Formal Requirements. –

- 11 (1) A record of each criminal process issued in the trial division of the
12 General Court of Justice must be maintained in the office of the clerk.
13 (2) Criminal process, other than a citation, must be signed and dated by
14 the justice, judge, magistrate, or clerk who issues it. The citation must
15 be signed and dated by the law-enforcement officer who issues it.

16 (b) To Whom Directed. – Warrants for arrest and orders for arrest must be
17 directed to a particular officer, a class of officers, or a combination thereof, having
18 authority and territorial jurisdiction to execute the process. A criminal summons must
19 be directed to the person summoned to appear and must be delivered to and may be
20 served by any law-enforcement officer having authority and territorial jurisdiction to
21 make an arrest for the offense ~~charged.~~ charged, except that in those instances where the
22 defendant is called into a law-enforcement agency to receive a summons, any employee
23 so designated by the agency's chief executive officer may serve a criminal summons.
24 The citation must be directed to the person cited to appear.

25 (c) Service. –

- 26 (1) A law-enforcement officer or other employee designated as provided
27 in subsection (b) receiving criminal process for service or execution
28 must note thereon the date of its receipt. Upon execution or service, a
29 copy of the process must be delivered to the person arrested or served.
30 (2) A corporation may be served with criminal summons as provided in
31 G.S. 15A-773.

32 (d) Return. –

- 33 (1) The officer or other employee designated as provided in subsection (b)
34 who serves or executes criminal process must enter the date of the
35 service or execution on the process and return it to the clerk of court in
36 the county in which issued.
37 (2) If criminal process is not served or executed within a number of days
38 indicated below, it must be returned to the clerk of court in the county
39 in which it was issued, with a reason for the failure of service or
40 execution noted thereon.
41 a. Warrant for arrest – 180 days.
42 b. Order for arrest – 180 days.
43 c. Criminal summons – 90 days or the date the defendant is
44 directed to appear, whichever is earlier.

- 1 (3) Failure to return the process to the clerk does not invalidate the
2 process, nor does it invalidate service or execution made after the
3 period specified in subdivision (2).
- 4 (4) The clerk to which return is made may redeliver the process to a law-
5 enforcement officer or other employee designated as provided in
6 subsection (b) for further attempts at service. If the process is a
7 criminal summons, he may reissue it only upon endorsement of a new
8 designated time and date of appearance.
- 9 (e) Copies to Be Made by Clerk. –
- 10 (1) The clerk may make a certified copy of any criminal process filed in
11 his office pursuant to subsection (a) when the original process has been
12 lost or when the process has been returned pursuant to subdivision
13 (d)(2). The copy may be executed as effectively as the original process
14 whether or not the original has been redelivered as provided in G.S.
15 15A-301(d)(4).
- 16 (2) When criminal process is returned to the clerk pursuant to subdivision
17 (d)(1) and it appears that the appropriate venue is in another county,
18 the clerk must make and retain a certified copy of the process and
19 transmit the original process to the clerk in the appropriate county.
- 20 (3) Upon request of a defendant, the clerk must make and furnish to him
21 without charge one copy of every criminal process filed against him.
- 22 (4) Nothing in this section prevents the making and retention of
23 uncertified copies of process for information purposes under G.S. 15A-
24 401(a)(2) or for any other lawful purpose.
- 25 (f) Protection of ~~Officer~~ Process Server. – An officer or other employee
26 designated as provided in subsection (b) receiving criminal process which is complete
27 and regular on its face may ~~execute~~ serve the process in accordance with its terms and
28 need not inquire into its regularity or continued validity, nor does he incur criminal or
29 civil liability for its due service."
- 30 Sec. 4. This act shall become effective October 1, 1989.