

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 35\*

Select Committee on Courts Committee Substitute Adopted 2/24/94

Short Title: Mecklenburg Drug Court Funds.

(Public)

Sponsors:

Referred to: Appropriations.

February 9, 1994

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH ONE ADDITIONAL SUPERIOR COURT JUDGESHIP, ONE SPECIAL SUPERIOR COURT JUDGESHIP, AND FIVE ADDITIONAL ASSISTANT DISTRICT ATTORNEY POSITIONS; TO ESTABLISH A PILOT DRUG COURT PROGRAM IN THE THIRTEENTH JUDICIAL DISTRICT; TO APPROPRIATE FUNDS FOR THE MECKLENBURG COUNTY DRUG COURT PROGRAM AND THE PILOT DRUG COURT PROGRAM; AND TO REQUIRE THE IMPOSITION OF SANCTIONS FOR AN UNFOUNDED AFFIDAVIT CHARGING A DISTRICT ATTORNEY WITH GROUNDS FOR REMOVAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank,	2

1		Perquimans	
2	2	Beaufort, Hyde,	1
3		Martin,	
4		Tyrrell, Washington	
5	3A	Pitt	2
6	3B	Carteret, Craven,	2
7		Pamlico	
8	4A	Duplin, Jones,	1
9		Sampson	
10	4B	Onslow	1
11	5	New Hanover,	3
12		Pender	
13	6A	Halifax	1
14	6B	Bertie, Hertford,	1
15		Northampton	
16	7A	Nash	1
17	7B	(part of Wilson,	1
18		part of Edgecombe,	
19		see subsection (b))	
20	7C	(part of Wilson,	1
21		part of Edgecombe,	
22		see subsection (b))	
23	8A	Lenoir and Greene	1
24	8B	Wayne	1
25	Second 9	Franklin, Granville,	2
26		Vance, Warren	
27	9A	Person, Caswell	1
28	10A	(part of Wake,	2
29		see subsection (b))	
30	10B	(part of Wake,	2
31		see subsection (b))	
32	10C	(part of Wake,	1
33		see subsection (b))	
34	10D	(part of Wake,	1
35		see subsection (b))	
36	11	Harnett, Johnston,	2
37		Lee	
38	12A	(part of Cumberland,	1
39		see subsection (b))	
40	12B	(part of Cumberland,	1
41		see subsection (b))	
42	12C	(part of Cumberland,	2
43		see subsection (b))	
44	13	Bladen, Brunswick,	2

1		Columbus		
2	14A	(part of Durham,	1	
3		see subsection (b))		
4	14B	(part of Durham,	3	
5		see subsection (b))		
6	15A	Alamance	2	
7	15B	Orange, Chatham	1	
8	16A	Scotland, Hoke	1	
9	16B	Robeson	2	
10	Third	17A	Rockingham	2
11		17B	Stokes, Surry	2
12		18A	(part of Guilford,	1
13		see subsection (b))		
14		18B	(part of Guilford,	1
15		see subsection (b))		
16		18C	(part of Guilford,	1
17		see subsection (b))		
18		18D	(part of Guilford,	1
19		see subsection (b))		
20		18E	(part of Guilford,	1
21		see subsection (b))		
22		19A	Cabarrus	1
23		19B	Montgomery,	1
24			Randolph	
25		19C	Rowan	1
26		20A	Anson, Moore,	2
27			Richmond	
28		20B	Stanly, Union	2
29		21A	(part of Forsyth,	1
30		see subsection (b))		
31		21B	(part of Forsyth,	1
32		see subsection (b))		
33		21C	(part of Forsyth,	1
34		see subsection (b))		
35		21D	(part of Forsyth,	1
36		see subsection (b))		
37		22	Alexander, Davidson,	2
38			Davie, Iredell	
39		23	Alleghany, Ashe,	1
40			Wilkes, Yadkin	
41	Fourth	24	Avery, Madison,	1
42			Mitchell,	
43			Watauga, Yancey	
44		25A	Burke, Caldwell	2

1	25B	Catawba	2
2	26A	(part of Mecklenburg,	<del>2</del> <sup>3</sup>
3		see subsection (b))	
4	26B	(part of Mecklenburg,	2
5		see subsection (b))	
6	26C	(part of Mecklenburg,	2
7		see subsection (b))	
8	27A	Gaston	2
9	27B	Cleveland, Lincoln	2
10	28	Buncombe	2
11	29	Henderson,	2
12		McDowell, Polk,	
13		Rutherford,	
14		Transylvania	
15	30A	Cherokee, Clay,	1
16		Graham, Macon,	
17		Swain	
18	30B	Haywood, Jackson	1."

19 Sec. 2. Effective April 1, 1995, the Governor shall appoint the superior court  
 20 judge for District 26A authorized by Section 1 of this act, whose term shall expire  
 21 December 31, 1996. This judge's successor shall be chosen in the 1996 general  
 22 election.

23 Sec. 3. G.S. 7A-45.1(a) reads as rewritten:

24 "(a) Effective November 1, 1993, the Governor may appoint a special superior  
 25 court judge to serve a term expiring December 31, 1998. Effective October 1, 1994, the  
 26 Governor may appoint a special superior court judge to serve a term expiring December  
 27 31, 1996. Successors to the special superior court judges appointed pursuant to this  
 28 subsection shall be appointed to four-year terms. A special judge takes the same oath of  
 29 office and is subject to the same requirements and disabilities as are or may be  
 30 prescribed by law for regular judges of the superior court, save the requirement of  
 31 residence in a particular district."

32 Sec. 4. G.S. 7A-60(a1) reads as rewritten:

33 "(a1) The counties of the State are organized into prosecutorial districts, and each  
 34 district has the counties and the number of full-time assistant district attorneys set forth  
 35 in the following table:

36				No. of Full-Time
37				Asst. District
38	District	Counties	Attorneys	
39	1	Camden, Chowan, Currituck,	7	
40		Dare, Gates, Pasquotank,		
41		Perquimans		
42	2	Beaufort, Hyde, Martin,	4	
43		Tyrrell, Washington		
44	3A	Pitt	6	

1	3B	Carteret, Craven, Pamlico	6
2	4	Duplin, Jones, Onslow, 10	
3		Sampson	
4	5	New Hanover, Pender	9
5	6A	Halifax	3
6	6B	Bertie, Hertford, 3	
7		Northampton	
8	7	Edgecombe, Nash, Wilson	10
9	8	Greene, Lenoir, Wayne	8
10	9	Franklin, Granville, 7	
11		Vance, Warren	
12	9A	Person, Caswell	2
13	10	Wake	19
14	11	Harnett, Johnston, Lee	9
15	12	Cumberland	12
16	13	Bladen, Brunswick, Columbus	<del>6-7</del>
17	14	Durham	9
18	15A	Alamance	6
19	15B	Orange, Chatham	5
20	16A	Scotland, Hoke	3
21	16B	Robeson	7
22	17A	Rockingham	4
23	17B	Stokes, Surry	4
24	18	Guilford	17
25	19A	Cabarrus	4
26	19B	Montgomery, Randolph	5
27	19C	Rowan	4
28	20	Anson, Moore, Richmond,	11
29		Stanly, Union	
30	21	Forsyth	12
31	22	Alexander, Davidson, Davie,	11
32		Iredell	
33	23	Alleghany, Ashe, Wilkes,	4
34		Yadkin	
35	24	Avery, Madison, Mitchell,	3
36		Watauga, Yancey	
37	25	Burke, Caldwell, Catawba	11
38	26	Mecklenburg	23
39	27A	Gaston	8
40	27B	Cleveland,	5
41		Lincoln	
42	28	Buncombe	8
43	29	Henderson, McDowell, Polk,	8
44		Rutherford, Transylvania	

1           30    Cherokee, Clay, Graham,     6  
 2                    Haywood, Jackson, Macon,  
 3                    Swain."

4           Sec. 5. G.S. 7A-60(a1) reads as rewritten:

5           "(a1) The counties of the State are organized into prosecutorial districts, and each  
 6 district has the counties and the number of full-time assistant district attorneys set forth  
 7 in the following table:

			No. of Full-Time Asst. District
Prosecutorial			
District	Counties	Attorneys	
11	1	Camden, Chowan, Currituck, 7	
12		Dare, Gates, Pasquotank,	
13		Perquimans	
14	2	Beaufort, Hyde, Martin, 4	
15		Tyrrell, Washington	
16	3A	Pitt           6	
17	3B	Carteret, Craven, Pamlico     6	
18	4	Duplin, Jones, Onslow, 10	
19		Sampson	
20	5	New Hanover, Pender   9	
21	6A	Halifax   3	
22	6B	Bertie, Hertford, 3	
23		Northampton	
24	7	Edgecombe, Nash, Wilson	10
25	8	Greene, Lenoir, Wayne 8	
26	9	Franklin, Granville,   7	
27		Vance, Warren	
28	9A	Person, Caswell 2	
29	10	Wake	19
30	11	Harnett, Johnston, Lee 9	
31	12	Cumberland   12	
32	13	Bladen, Brunswick, Columbus 7	
33	14	Durham   9	
34	15A	Alamance 6	
35	15B	Orange, Chatham     5	
36	16A	Scotland, Hoke 3	
37	16B	Robeson 7	
38	17A	Rockingham   4	
39	17B	Stokes, Surry 4	
40	18	Guilford 17	
41	19A	Cabarrus     4	
42	19B	Montgomery, Randolph 5	
43	19C	Rowan 4	
44	20	Anson, Moore, Richmond,   11	

1		Stanly, Union	
2	21	Forsyth	12
3	22	Alexander, Davidson, Davie,	11
4		Iredell	
5	23	Alleghany, Ashe, Wilkes,	4
6		Yadkin	
7	24	Avery, Madison, Mitchell,	3
8		Watauga, Yancey	
9	25	Burke, Caldwell, Catawba	11
10	26	Mecklenburg	<del>23-27</del>
11	27A	Gaston	8
12	27B	Cleveland,	5
13		Lincoln	
14	28	Buncombe	8
15	29	Henderson, McDowell, Polk,	8
16		Rutherford, Transylvania	
17	30	Cherokee, Clay, Graham,	6
18		Haywood, Jackson, Macon,	
19		Swain."	

20 Sec. 6. G.S. 7A-66 is rewritten to read:

21 **"§ 7A-66. Removal of district attorneys.**

22 The following are grounds for suspension of a district attorney or for his removal  
23 from office:

- 24 (1) Mental or physical incapacity interfering with the performance of his  
25 duties which is, or is likely to become, permanent;
- 26 (2) Willful misconduct in office;
- 27 (3) Willful and persistent failure to perform his duties;
- 28 (4) Habitual intemperance;
- 29 (5) Conviction of a crime involving moral turpitude;
- 30 (6) Conduct prejudicial to the administration of justice which brings the  
31 office into disrepute; or
- 32 (7) Knowingly authorizing or permitting an assistant district attorney to  
33 commit any act constituting grounds for removal, as defined in  
34 subdivisions (1) through (6) hereof.

35 A proceeding to suspend or remove a district attorney is commenced by filing with  
36 the clerk of superior court of the county where the district attorney resides a sworn  
37 affidavit charging the district attorney with one or more grounds for removal. The clerk  
38 shall immediately bring the matter to the attention of the senior regular resident superior  
39 court judge for the district or set of districts as defined in G.S. 7A-41.1(a) in which the  
40 county is located who shall within 30 days either review and act on the charges or refer  
41 them for review and action within 30 days to another superior court judge residing in or  
42 regularly holding the courts of that district or set of districts. If the superior court judge  
43 upon review finds that the charges if true constitute grounds for suspension, and finds  
44 probable cause for believing that the charges are true, he may enter an order suspending

1 the district attorney from performing the duties of his office until a final determination  
2 of the charges on the merits. During the suspension the salary of the district attorney  
3 continues. If the superior court judge finds that the charges if true do not constitute  
4 grounds for suspension or finds that no probable cause exists for believing that the  
5 charges are true, he shall dismiss the proceeding.

6 If a hearing, with or without suspension, is ordered, the district attorney should  
7 receive immediate written notice of the proceedings and a true copy of the charges, and  
8 the matter shall be set for hearing not less than 10 days nor more than 30 days  
9 thereafter. The matter shall be set for hearing before the judge who originally examined  
10 the charges or before another regular superior court judge resident in or regularly  
11 holding the courts of that district or set of districts. The hearing shall be open to the  
12 public. All testimony shall be recorded. At the hearing the superior court judge shall  
13 hear evidence and make findings of fact and conclusions of law and if he finds that  
14 grounds for removal exist, he shall enter an order permanently removing the district  
15 attorney from office, and terminating his salary. If he finds that no grounds exist, he  
16 shall terminate the suspension, if any.

17 The district attorney may appeal from an order of removal to the Court of Appeals  
18 on the basis of error of law by the superior court judge. Pending decision of the case on  
19 appeal, the district attorney shall not perform any of the duties of his office. If, upon  
20 final determination, he is ordered reinstated either by the appellate division or by the  
21 superior court upon remand his salary shall be restored from the date of the original  
22 order of removal.

23 If the court finds that any affidavit upon which a proceeding under this section is  
24 brought is not grounded in fact, or is unwarranted by existing law or a good faith  
25 argument for the extension, modification or reversal of existing law, or is filed for an  
26 improper purpose such as harassment, the court, upon motion or upon its own initiative,  
27 shall impose sanctions against the person making or filing the affidavit. The sanctions  
28 may include an order to pay the district attorney the amount of the reasonable expenses  
29 incurred, including reasonable attorneys' fees."

30 Sec. 7. There is established a pilot drug court program in the Thirteenth  
31 Judicial District, to be administered by the Administrative Office of the Courts. The  
32 purpose of the pilot program is to determine whether the establishment of drug courts  
33 statewide is feasible and cost-effective. The Administrative Office of the Courts shall  
34 evaluate the pilot and file a report on the pilot with the General Assembly on or before  
35 the convening of the 1997 Regular Session of the 1996 General Assembly. The pilot  
36 shall terminate on April 1, 1996. The pilot program shall be conducted within existing  
37 funds of the Administrative Office of the Courts, except for any appropriations in this  
38 act.

39 Sec. 8. There is appropriated from the General Fund to the Judicial  
40 Department the sum of two hundred thirty-one thousand three hundred thirty-four  
41 dollars (\$231,334) for the 1994-95 fiscal year to continue funding the Mecklenburg  
42 County Drug Court program during the fourth quarter of the 1994-95 fiscal year. The  
43 Governor's Crime Commission grant supporting this program expires March 31, 1995.



1           Sec. 9. There is appropriated from the General Fund to the Judicial  
2 Department the sum of fifty-nine thousand nine hundred twenty-seven dollars (\$59,927)  
3 for the 1994-95 fiscal year to fund the assistant district attorney position established in  
4 Section 4 of this act.

5           Sec. 10. There is appropriated from the General Fund to the Judicial  
6 Department the sum of one hundred fifteen thousand four hundred seven dollars  
7 (\$115,407) for the 1994-95 fiscal year to fund the special superior court judgeship  
8 established in Section 3 of this act.

9           Sec. 11. There is appropriated from the General Fund to the Department of  
10 Correction the sum of eight thousand seven hundred fifty dollars (\$8,750) for the 1994-  
11 95 fiscal year to establish one probation officer position to work with the Mecklenburg  
12 County Drug Court Program.

13           Sec. 12. Sections 4, 7, and 9 of this act become effective July 1, 1994.  
14 Sections 3 and 10 of this act become effective November 1, 1994. Sections 1, 2, 5, 8,  
15 and 11 of this act become effective April 1, 1995. The remainder of this act is effective  
16 upon ratification.