

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 558

Short Title: Expedite Eviction/Drug Offenders.

(Public)

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Sponsors: Senators Odom, Winner, Dannelly, and Blackmon.

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Referred to: Judiciary I/Constitution

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April 3, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR EXPEDITED EVICTION OF PERSONS ENGAGED IN  
3 DRUG-RELATED CRIMINAL ACTIVITY AND OTHER CRIMINAL ACTIVITY  
4 THAT THREATENS THE HEALTH, SAFETY, OR PEACEFUL ENJOYMENT OF  
5 RENTAL PROPERTY.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 42 of the General Statutes is amended by adding a new  
8 Article to read:

9 **"ARTICLE 7.**  
10 **"EXPEDITED EVICTION OF DRUG TRAFFICKERS AND OTHER**  
11 **CRIMINALS.**

12 **"§ 42-59. Definitions.**

13 As used in this Article:

- 14 (1) 'Complete eviction' means the eviction and removal of a tenant and all  
15 members of the tenant's household.  
16 (2) 'Criminal activity' means (i) activity that would constitute a violation of  
17 G.S. 90-95 other than a violation of G.S. 90-95(a)(3), or a conspiracy to  
18 violate any provision of G.S. 90-95 other than G.S. 90-95(a)(3); or (ii)  
19 other criminal activity that threatens the health, safety, or right of

1 peaceful enjoyment of the entire premises by other residents or  
2 employees of the landlord.

3 (3) 'Entire premises' or 'leased residential premises' means a house,  
4 building, mobile home, or apartment, whether publicly or privately  
5 owned, which is leased for residential purposes. These terms include  
6 the entire building or complex of buildings or mobile home park and all  
7 real property of any nature appurtenant thereto and used in connection  
8 therewith, including all individual rental units, streets, sidewalks, and  
9 common areas. These terms do not include a hotel, motel, or other  
10 guest house or part thereof rented to a transient guest.

11 (4) 'Felony' means a criminal offense that constitutes a felony under North  
12 Carolina law.

13 (5) 'Guest' means any natural person who has been given express or implied  
14 permission by a tenant, a member of the tenant's household, or another  
15 guest of the tenant to enter an individual rental unit or any portion of the  
16 entire premises.

17 (6) 'Individual rental unit' means an apartment or individual dwelling or  
18 accommodation which is leased to a particular tenant, whether or not it  
19 is used or occupied or intended to be used or occupied by a single  
20 family or household.

21 (7) 'Landlord' means a person, entity, corporation, or governmental  
22 authority or agency who or which owns, operates, or manages any  
23 leased residential premises.

24 (8) 'Partial eviction' means the eviction and removal of specified persons  
25 from a leased residential premises.

26 (9) 'Resident' means any natural person who lawfully resides in a leased  
27 residential premises who is not a signatory to a lease or otherwise has no  
28 contractual relationship to a landlord. The term includes members of  
29 the household of a tenant.

30 (10) 'Tenant' means any natural person or entity who is a named party or  
31 signatory to a lease or rental agreement, and who occupies, resides in, or  
32 has a legal right to possess and use an individual rental unit.

33 **"§ 42-60. Nature of actions and jurisdiction.**

34 The causes of action established in this Article are civil actions to remove tenants or  
35 other persons from leased residential premises. These actions shall be brought in the  
36 district court of the county where the individual rental unit is located. If the plaintiff files  
37 the complaint as a small claim, the parties shall not be entitled to discovery from the  
38 magistrate. However, if such a case is filed originally in the district court or is appealed  
39 from the judgment of a magistrate for a new trial in the district court, all of the  
40 procedures and remedies in this Article shall be applicable.

41 **"§ 42-61. Standard of proof.**

42 The civil causes of action established in this Article shall be proved by a  
43 preponderance of the evidence, except as otherwise expressly provided in G.S. 42-64.

1 **"§ 42-62. Parties.**

2 (a) Who May Bring Action. A civil action pursuant to this Article may be brought  
3 by the landlord of a leased residential premises, or the landlord's agent, as provided for in  
4 G.S. 1-57 of the General Statutes and in Article 3 of this Chapter.

5 (b) Defendants to the Action. A civil action pursuant to this Article may be  
6 brought against any person within the jurisdiction of the court, including a tenant, adult or  
7 minor member of the tenant's household, guest, or resident of the leased residential  
8 premises. If any defendant's true name is unknown to the plaintiff, process may issue  
9 against the defendant under a fictitious name, stating it to be fictitious and adding an  
10 appropriate description sufficient to identify him or her.

11 (c) Notice to Defendants. A complaint initiating an action pursuant to this Article  
12 shall be served in the same manner as serving complaints in civil actions pursuant to G.S.  
13 1A-1, Rule 4 and G.S. 42-29.

14 **"§ 42-63. Remedies and judicial orders.**

15 (a) Grounds for Complete Eviction. Subject to the provisions of G.S. 42-64 and  
16 pursuant to G.S. 42-68, the court shall order the immediate eviction of a tenant and all  
17 other residents of the tenant's individual unit where it finds that:

- 18 (1) Criminal activity has occurred on or within the individual rental unit  
19 leased to the tenant; or  
20 (2) The individual rental unit leased to the tenant was used in any way in  
21 furtherance of or to promote criminal activity; or  
22 (3) The tenant, any member of the tenant's household, or any guest has  
23 engaged in criminal activity on or in the immediate vicinity of any  
24 portion of the entire premises; or  
25 (4) The tenant has given permission to or invited a person to return or  
26 reenter any portion of the entire premises, knowing that the person has  
27 been removed and barred from the entire premises pursuant to this  
28 Article or the reasonable rules and regulations of a publicly assisted  
29 landlord; or  
30 (5) The tenant has failed to notify law enforcement or the landlord  
31 immediately upon learning that a person who has been removed and  
32 barred from the tenant's individual rental unit pursuant to this Article  
33 has returned to or reentered the tenant's individual rental unit.

34 (b) Grounds for Partial Eviction and Issuance of Removal Orders. The court shall,  
35 subject to the provisions of G.S. 42-64, order the immediate removal from the entire  
36 premises of any person other than the tenant, including an adult or minor member of the  
37 tenant's household, where the court finds that such person has engaged in criminal  
38 activity on or in the immediate vicinity of any portion of the leased residential premises.  
39 Persons removed pursuant to this section shall be barred from returning to or reentering  
40 any portion of the entire premises.

41 (c) Conditional Eviction Orders Directed Against the Tenant. Where the court  
42 finds that a member of the tenant's household or a guest of the tenant has engaged in  
43 criminal activity on or in the immediate vicinity of any portion of the leased residential

1 premises, but such person has not been named as a party defendant, has not appeared in  
2 the action or otherwise has not been subjected to the jurisdiction of the court, a  
3 conditional eviction order issued pursuant to subsection (b) of this section shall be  
4 directed against the tenant, and shall provide that as an express condition of the tenancy,  
5 the tenant shall not give permission to or invite the barred person or persons to return to  
6 or reenter any portion of the entire premises. The tenant shall acknowledge in writing  
7 that the tenant understands the terms of the court's order, and that the tenant further  
8 understands that the failure to comply with the court's order will result in the mandatory  
9 termination of the tenancy pursuant to G.S. 42-68.

10 **"§ 42-64. Affirmative defense or exemption to a complete eviction.**

11 (a) Affirmative Defense. The court shall refrain from ordering the complete  
12 eviction of a tenant pursuant to G.S. 42-63(a) where the tenant has established that the  
13 tenant was not involved in the criminal activity and that:

14 (1) The tenant did not know or have reason to know that criminal activity  
15 was occurring or would likely occur on or within the individual rental  
16 unit, that the individual rental unit was used in any way in furtherance  
17 of or to promote criminal activity, or that any member of the tenant's  
18 household or any guest has engaged in criminal activity on or in the  
19 immediate vicinity of any portion of the entire premises; or

20 (2) The tenant had done everything that could reasonably be expected under  
21 the circumstances to prevent the commission of the criminal activity,  
22 such as requesting the landlord to remove the offending household  
23 member's name from the lease, reporting prior criminal activity to  
24 appropriate law enforcement authorities, seeking assistance from social  
25 service or counseling agencies, denying permission, if feasible, for the  
26 offending household member to reside in the unit, or seeking assistance  
27 from church or religious organizations.

28 Notwithstanding the court's denial of eviction of the tenant, if the plaintiff has proven that  
29 an evictable offense under G.S. 42-63 was committed by someone other than the tenant,  
30 the court shall order such other relief as the court deems appropriate to protect the  
31 interests of the landlord and neighbors of the tenant, including the partial eviction of the  
32 culpable household members pursuant to G.S. 42-63(b) and conditional eviction orders  
33 under G.S. 42-63(c).

34 (b) Subsequent Affirmative Defense to a Complete Eviction. The affirmative  
35 defense set forth in subsection (a) of this section shall not be available to a tenant in a  
36 subsequent action brought pursuant to this Article unless the tenant can establish by clear  
37 and convincing evidence that no reasonable person could have foreseen the occurrence of  
38 the subsequent criminal activity or that the tenant had done everything reasonably  
39 expected under the circumstances to prevent the commission of the second criminal  
40 activity.

41 (c) Exemption. Where the grounds for a complete eviction have been established,  
42 the court shall order the eviction of the tenant unless, taking into account the  
43 circumstances of the criminal activity and the condition of the tenant, the court is clearly

1 convinced that immediate eviction or removal would be a serious injustice, the  
2 prevention of which overrides the need to protect the rights, safety, and health of the  
3 other tenants and residents of the leased residential premises. The burden of proof for the  
4 exemption set forth shall be by clear and convincing evidence.

5 **"§ 42-65. Obstructing the execution or enforcement of a removal or eviction order.**

6 Any person who knowingly violates any order issued pursuant to this Article or who  
7 knowingly interferes with, obstructs, impairs, or prevents any law enforcement officer  
8 from enforcing or executing any order issued pursuant to this Article, shall be subject to  
9 criminal contempt under Article 1 of Chapter 5A of the General Statutes. Nothing in this  
10 section shall be constructed in any way to preclude or preempt prosecution for any other  
11 criminal offense.

12 **"§ 42-66. Motion to enforce eviction and removal orders.**

13 (a) A motion to enforce an eviction or removal order issued pursuant to G.S. 42-  
14 63(b) or (c) shall be heard on an expedited basis and within 15 days of the service of the  
15 motion.

16 (b) Mandatory Eviction. The court shall order the immediate eviction of the tenant  
17 where it finds that:

18 (1) The tenant has given permission to or invited any person removed or  
19 barred from the leased residential premises pursuant to this Article to  
20 return to or reenter any portion of the premises; or

21 (2) The tenant has failed to notify appropriate law enforcement authorities  
22 or the landlord immediately upon learning that any person who had been  
23 removed and barred pursuant to this Article has returned to or reentered  
24 the tenant's individual rental unit; or

25 (3) The tenant has otherwise knowingly violated an express term or  
26 condition of any order issued by court pursuant to this Article.

27 **"§ 42-67. Impermissible defense.**

28 It shall not be a defense to an action brought pursuant to this Article that the criminal  
29 activity was an isolated incident or otherwise has not recurred. Nor is it a defense that the  
30 person who actually engaged in the criminal activity no longer resides in the tenant's  
31 individual rental unit. However, evidence of such facts may be admissible if offered to  
32 support affirmative defenses or grounds for an exemption pursuant to G.S. 42-64.

33 **"§ 42-68. Expedited proceedings.**

34 Where the complaint is filed as a small claim, the expedited process for summary  
35 ejectment, as provided in Article 3 of this Chapter and Chapter 7A of the General  
36 Statutes, applies. Where the complaint is filed initially in the district court or a judgment  
37 by the magistrate is appealed to the district court, the procedure in G.S. 42-34(b)  
38 through (g), if applicable, and the following procedures apply:

39 (1) Expedited Hearing. When a complaint is filed initiating an action  
40 pursuant to this Article, the court shall set the matter for a hearing which  
41 shall be held on an expedited basis and within the first term of court  
42 falling after 30 days from the service of the complaint on all defendants  
43 or from service of notice of appeal from a magistrate's judgment, unless

1           either party obtains a continuance. However, where a defendant files a  
2           counterclaim, the court shall reset the trial for the first term of court  
3           falling after 30 days from the defendant's service of the counterclaim.

4           (2) Standards for Continuances. The court shall not grant a continuance,  
5           nor shall it stay the civil proceedings pending the disposition of any  
6           related criminal proceedings, except as required to complete permitted  
7           discovery, to have the plaintiff reply to a counterclaim, or for  
8           compelling and extraordinary reasons or on application of the district  
9           attorney for good cause shown.

10          (3) When Presented. The defendant in an action brought in district court  
11          pursuant to this Article shall serve an answer within 20 days after  
12          service of the summons and complaint, or within 20 days after service  
13          of the appeal to district court when the action was initially brought in  
14          small claims court. The plaintiff shall serve a reply to a counterclaim in  
15          the answer within 20 days after service of the answer.

16          (4) Extensions of Time for Filing. The parties to an action brought  
17          pursuant to this Article shall not be entitled to an extension of time for  
18          completing an act required by subdivision (3) of this section, except for  
19          compelling and extraordinary reasons.

20          (5) Default. A party to an action brought pursuant to this Article who fails  
21          to plead in accordance with the time periods in subdivision (3) of this  
22          section shall be subject to the provisions of G.S. 1A-1, Rule 55.

23          (6) Rules of Civil Procedure. Unless otherwise provided for in this Article,  
24          G.S. 1A-1, the Rules of Civil Procedure, shall apply in the district court  
25          to all actions brought pursuant to this Article.

26 **"§ 42-69. Relation to criminal proceedings.**

27          (a) Criminal Proceedings, Conviction, or Adjudication Not Required. The fact  
28          that a criminal prosecution involving the criminal activity is not commenced or, if  
29          commenced, has not yet been concluded or has terminated without a conviction or  
30          adjudication of delinquency shall not preclude a civil action or the issuance of any order  
31          pursuant to this Article.

32          (b) Effect of Conviction or Adjudication. Where a criminal prosecution involving  
33          the criminal activity results in a final criminal conviction or adjudication of delinquency,  
34          such adjudication or conviction shall be considered in the civil action as conclusive proof  
35          that the criminal activity occurred.

36          (c) Admissibility of Criminal Trial Recordings or Transcripts. Any evidence or  
37          testimony admitted in the criminal proceeding, including recordings or transcripts of the  
38          adult or juvenile criminal proceedings, whether or not they have been transcribed, may be  
39          admitted in the civil action initiated pursuant to this Article.

40          (d) Use of Sealed Criminal Proceeding Records. In the event that the evidence or  
41          records of a criminal proceeding which did not result in a conviction or adjudication of  
42          delinquency have been sealed by court order, the court in a civil action brought pursuant  
43          to this Article may order such evidence or records, whether or not they have been

1 transcribed, to be unsealed if the court finds that such evidence or records would be  
2 relevant to the fair disposition of the civil action.

3 **"§ 42-70. Discovery.**

4 (a) The parties to an action brought pursuant to this Article shall be entitled to  
5 conduct discovery, if the action is filed originally in or appealed to the district court, only  
6 in accordance with this section.

7 (b) Any defendant must initiate all discovery within the time allowed by this  
8 Article for the filing of an answer or counterclaim.

9 (c) The plaintiff must initiate all discovery within 20 days of service of an answer  
10 or counterclaim by a defendant.

11 (d) All parties served with interrogatories, requests for production of documents,  
12 and requests for admissions under G.S. 1A-1, Rules 33, 34, and 36 shall serve their  
13 responses within 20 days.

14 (e) Upon application by the plaintiff, or agreement of the parties, the court shall  
15 issue a preliminary injunction against all alleged illegal activity by the defendant or other  
16 identified parties who are residents of the individual rental unit or guests of defendants,  
17 pending the completion of discovery and any other wait before the trial has occurred.

18 **"§ 42-71. Protection of threatened witnesses or affiants.**

19 If proof necessary to establish the grounds for eviction depends, in whole or in part,  
20 upon the affidavits or testimony of witnesses who are not peace officers, the court may,  
21 upon a showing of prior threats of violence or acts of violence by any defendant or any  
22 other person, issue orders to protect those witnesses, including the nondisclosure of the  
23 name, address, or any other information which may identify those witnesses.

24 **"§ 42-72. Availability of law enforcement resources to plaintiffs or potential**  
25 **plaintiffs.**

26 A law enforcement agency may make available to any person or entity authorized to  
27 bring an action pursuant to this Article any police report or edited portion thereof, or  
28 forensic laboratory report or edited portion thereof, concerning criminal activity  
29 committed on or in the immediate vicinity of the leased residential premises. A law  
30 enforcement agency may also make any officer or officers available to testify as a fact  
31 witness or expert witness in a civil action brought pursuant to this Article. The agency  
32 shall not disclose such information where, in the agency's opinion, such disclosure would  
33 jeopardize an investigation, prosecution, or other proceeding, or where such disclosure  
34 would violate any federal or State statute.

35 **"§ 42-73. Collection of rent.**

36 A landlord shall be entitled to collect rent due and owing with knowledge of any  
37 illegal acts that violate the provisions of this act without such collection constituting a  
38 waiver of the alleged defaults.

39 **"§ 42-74. Preliminary or emergency relief.**

40 The district court shall have the authority at any time to issue a temporary restraining  
41 order, grant a preliminary injunction, or take such other actions as the court deems  
42 necessary to enjoin or prevent the commission of criminal activity on or in the immediate  
43 vicinity of leased residential premises, or otherwise to protect the rights and interests of

1 all tenants and residents. A violation of any such duly issued order or preliminary relief  
2 shall subject the violator to civil or criminal contempt.

3 **"§ 42-75. Cumulative remedies.**

4 The causes of action and remedies authorized by this Article shall be cumulative with  
5 each other and shall be in addition to, not in lieu of, any other causes of action or  
6 remedies which may be available at law or equity, including causes of action and  
7 remedies based on express provisions of the lease not contrary to this Article.

8 **"§ 42-76. Civil immunity.**

9 Any person or organization who, in good faith, institutes, participates in, or  
10 encourages a person or entity to institute or participate in a civil action brought pursuant  
11 to this Article, or who in good faith provides any information relied upon by any person  
12 or entity in instituting or participating in a civil action pursuant to this Article shall have  
13 immunity from any civil liability that might otherwise be incurred or imposed. Any such  
14 person or organization shall have the same immunity from civil liability with respect to  
15 testimony given in any judicial proceeding conducted pursuant to this Article."

16 Sec. 2. The provisions of this act are severable, and if any provision of this act,  
17 or the application of any provision of this act to any person or circumstance, is held  
18 unconstitutional or otherwise invalid by a court of competent jurisdiction, the invalidity  
19 shall not affect other provisions or applications of the act which can be given effect  
20 without the invalid provision or application.

21 Sec. 3. This act becomes effective October 1, 1995, and applies to acts  
22 committed on or after that date.