

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1396

Short Title: Superior Court Criminal Case Calendaring. (Public)

Sponsors: Representatives Glazier, Ross, Stam (Primary Sponsors); Burr and Lucas.

Referred to: Judiciary II, if favorable, Appropriations.

April 13, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT CRIMINAL CASES IN SUPERIOR COURT SHALL BE
3 CALENDARIED BY THE COURT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 7A-49.4 reads as rewritten:

6 "**§ 7A-49.4. Superior court criminal case docketing.**

7 (a) Criminal Docketing. – Criminal cases in superior court shall be calendared by the
8 ~~district attorney court~~ at administrative settings according to a criminal case docketing plan
9 developed by the ~~district attorney~~ senior resident superior court judge for each superior court
10 district in consultation with the superior court judges residing in that district and after
11 opportunity for comment by members of the local ~~bar~~ bar and the district attorney. The criminal
12 case docketing plan shall provide, as much as practicable, for the random assignment of cases
13 to available judges for trial consistent with the criminal case and specialized experience of the
14 judges. Each criminal case docketing plan shall, at a minimum, comply with the provisions of
15 this section, but may contain additional provisions not inconsistent with this section.

16 (b) Administrative Settings. – An administrative setting shall be calendared for each
17 felony within 60 days of indictment or service of notice of indictment if required by law, or at
18 the next regularly scheduled session of superior court if later than 60 days from indictment or
19 service if required. At an administrative setting:

- 20 (1) The court shall determine the status of the defendant's representation by
21 counsel;
- 22 (2) After hearing from the parties, the court shall set deadlines for the delivery
23 of discovery, arraignment if necessary, and filing of motions;
- 24 (3) If the district attorney has made a determination regarding a plea
25 arrangement, the district attorney shall inform the defendant as to whether a
26 plea arrangement will be offered and the terms of any proposed plea
27 arrangement, and the court may conduct a plea conference if supported by
28 the interest of justice;
- 29 (4) The court may hear pending pretrial motions, set such motions for hearing
30 on a date certain, or defer ruling on motions until the trial of the case; and
- 31 (5) The court may schedule more than one administrative setting if requested by
32 the parties or if it is found to be necessary to promote the fair administration
33 of justice in a timely manner.

34 Whenever practical, administrative settings shall be held by a superior court judge residing
35 within the district, but may otherwise be held by any superior court judge.

36 If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the
37 final administrative setting, the ~~district attorney court~~, after providing the parties with an



1 opportunity to be heard, shall announce a proposed trial date. ~~The court shall set that date as the~~
2 ~~tentative trial date unless, after providing the parties an opportunity to be heard, the court~~
3 ~~determines that the interests of justice require the setting of a different date. In that event, the~~
4 ~~district attorney shall set another tentative trial date during the final administrative setting.~~
5 Upon application of either party, for good cause shown, the court may set an alternative trial
6 date. The trial shall occur no sooner than 30 days after the final administrative setting, except
7 by agreement of the State and the defendant.

8 Nothing in this section precludes the disposition of a criminal case by plea, deferred
9 prosecution, or dismissal prior to an administrative setting.

10 (c) Definite Trial Date. – When a case has not otherwise been scheduled for trial within
11 120 days of indictment or of service of notice of indictment if required by law, then upon
12 motion by the defendant at any time thereafter, the senior resident superior court judge, or a
13 superior court judge designated by the senior resident superior court judge, may hold a hearing
14 for the purpose of establishing a trial date for the defendant.

15 (d) Venue for Administrative Settings. – Venue for administrative settings may be in
16 any county within the district when necessary to comply with the terms of the criminal case
17 docketing plan. The presence of the defendant is only required for administrative settings held
18 in the county where the case originated.

19 (e) Setting and Publishing of Trial Calendar. – No less than 10 working days before
20 cases are calendared for trial, the ~~district attorney~~court shall publish the trial calendar. The trial
21 calendar shall schedule the cases in the order in which the ~~district attorney~~court anticipates they
22 will be called for trial and ~~should not contain cases that the district attorney does not reasonably~~
23 ~~expect to be called for trial~~. In counties in which multiple sessions of court are being held, the
24 ~~district attorney~~court may publish a trial calendar for each session of court.

25 (f) Order of Trial. – The ~~district attorney, court~~, after calling the calendar and
26 determining cases for pleas and other disposition, shall announce ~~to the court~~ the order in which
27 the ~~district attorney intends to call for trial the cases remaining on the calendar~~calendar are to
28 be called for trial. ~~Deviations from the announced order require approval by the presiding judge~~
29 ~~if the defendant whose case is called for trial objects; but the defendant may not object if all the~~
30 ~~eases scheduled to be heard before the defendant's case have been disposed of or delayed with~~
31 ~~the approval of the presiding judge or by consent of the State and the defendant. A case may be~~
32 ~~continued from the trial calendar~~The court shall deviate from the announced order or grant a
33 continuance from the trial calendar only by consent of the State and the defendant or upon
34 order of the presiding judge or resident superior court judge for good cause shown. The ~~district~~
35 ~~attorney, court~~, after consultation with the parties, shall schedule a new trial date for cases not
36 reached during that session of court.

37 (f1) When the volume of cases in any judicial district warrants the temporary assignment
38 to those cases of one or more judges from another judicial district, the senior resident superior
39 court judge in the judicial district requiring that temporary assignment shall submit a written
40 request to the Director of the Administrative Office of the Courts explaining the reasons for the
41 assignment and the anticipated duration and location of the assignment. The Administrative
42 Office of the Courts shall promptly post the request on its public Web site.

43 (g) Nothing in this section shall be construed to deprive any victim of the rights granted
44 under Article I, Section 37 of the North Carolina Constitution and Article 46 of Chapter 15A of
45 the General Statutes.

46 (h) Nothing in this section shall be construed to affect the authority of the court in the
47 call of cases calendared for trial."

48 **SECTION 2.** This act becomes effective January 1, 2010.