In 1998, the major substantive changes affecting the courts were the new Juvenile Code, which is discussed in the Chapter 13 (Juvenile Law), the adoption of the Victims’ Rights Act, which is discussed in Chapter 7 (Criminal Law and Procedure), and the modifications to the Driving While Impaired laws, discussed in Chapter 19 (Motor Vehicles).

As has been true in recent years, the most significant provisions regarding the structure and administration of the judicial system are found in the budget bill. Among the budget provisions affecting the state’s court system, the most notable are those creating additional deputy clerk positions and mandating studies by the Administrative Office of the Courts (AOC).

The Budget

The total appropriation for the Judicial Department for state fiscal year (SFY) 1998–99 is $336,753,376—an increase of $9.7 million (3 percent) over the budget adopted by the 1997 General Assembly for SFY 1998–99 and a 2.7 percent increase over the 1997–98 budget. Most of the increase funds the 226 new positions created in the Judicial Department, with the remaining funding allocated for program expansion.

Funding for New Court Personnel

District Court Judges. Effective December 1, 1998, Section 16.16 of S.L. 1998-212 (S 1336) creates twelve new district court judgeships, one each in Districts 3A (Pitt County); 4 (Sampson, Duplin, Jones, and Onslow); 7 (Nash, Edgecombe, and Wilson); 10 (Wake); 11 (Harnett, Johnston, and Lee); 12 (Cumberland); 14 (Durham); 19B (Montgomery, Moore, and Randolph); 19C (Rowan); 21 (Forsyth); 26 (Mecklenburg); and 29 (Henderson, McDowell, Polk, Rutherford, and Transylvania). The technical corrections act, S.L. 1998-217 (S 1279), adds a thirteenth district court judgeship in District 25 (Burke, Caldwell, and Catawba counties). Both acts require the Governor to appoint the new district court judges by June 30, 1999.

Superior Court Judges. Section 16.22 of S.L. 1998-212 creates one special superior court judgeship with a five-year term beginning on the date the judge takes office. The Governor may fill the position on or after December 15, 1998. S.L. 1998-212 also created a regular superior
court judgeship in District 20B (Stanly and Union). That provision, however, was repealed one day later by the technical corrections act, S.L. 1998-217 (§1279). In its 1998–99 budget request, the AOC had requested thirteen additional district court judges and, because of the flexibility in assigning special judges, had asked for additional special superior court judges rather than regular superior court judges. Apparently, the negotiations about the need for thirteen district court judges continued after the budget bill was adopted, and ultimately it was decided that an additional district court judge in District 25 was a higher priority than another regular superior court judge in District 20B.

S.L. 1998-212 also modifies G.S. 7A-45.1(a2) to provide that the terms of the four current special judges expire five years from the date each judge took office instead of December 14, 2001.

Superior Court Judicial Assistants and Court Reporters. S.L. 1998-212 also creates nine new judicial assistant positions as support for the superior court and provides funding for four new court reporters.

District Attorneys. Section 16.20 of S.L. 1998-212 creates four new assistant district attorney positions, one each in Prosecutorial Districts 14 (Durham County) and 30 (Cherokee, Clay, Graham, Haywood, Jackson, Macon, and Swain) and two in Prosecutorial District 21 (Forsyth). Section 16.21 of S.L. 1998-212 provides one investigatorial assistant for the district attorneys in Districts 13 (Bladen, Brunswick, and Columbus counties) and 19B (Montgomery, Moore, and Randolph).

Public Defenders. Section 16.12 of S.L. 1998-212 authorizes the AOC to use up to $179,220 from the Indigent Persons’ Attorney Fee Fund for four new assistant public defenders but does not specify the districts in which the positions must be established.

Clerks of Superior Court. Most of the new positions granted by the General Assembly went to the clerks of superior court. The AOC had indicated to the General Assembly that its highest personnel priorities were additional clerks and district court judges. The clerks had indicated that they needed 161 new positions, and the General Assembly funded 149 of those positions. Most counties will get at least one new position; eighteen counties will receive none because the clerks in those counties indicated that they needed no new staff; three counties (Guilford, Mecklenburg, and Wake) will get eleven or twelve new positions.

Magistrates. Section 16.11 of S.L. 1998-212 creates six new magisterial positions, one each in Currituck, Pamlico, Brunswick, Avery, Mecklenburg, and Gaston counties.

Program Funding

The General Assembly also continued funding for many pilot programs operating within the state Judicial Branch.

Bad Check Programs. Section 16.3 of S.L. 1998-212 appropriates $217,794 to continue funding the three existing bad check programs and to add a fourth program. (This program is discussed more fully in this chapter’s section on Alternative Dispute Resolution.)

Drug Treatment Courts. Section 16.15 of S.L. 1998-212 eliminates the “pilot” status of drug treatment courts and authorizes all judicial districts that choose to set up a drug treatment court program to apply to the AOC for funding from the Drug Treatment Court Program Fund. S.L. 1998-212 also increases funding for the three existing drug treatment courts (Mecklenburg, Wake, and Warren counties) and provides funds for planning grants to extend the program to four additional judicial districts.

Teen Courts. Section 16.4 of S.L. 1998-212 eliminates the reversion of 1997 funds provided for teen courts and expands the teen court program to three additional counties: Duplin, Guilford, and Onslow.

Juvenile Assessment Project. Section 16.6 of S.L. 1998-212 continues funding for the Juvenile Assessment Project in District 12 (Cumberland County), a program that provides prevention and intervention services for juveniles who are or may be at risk of becoming delinquent or undisciplined.

Project Challenge. Section 16.24 of S.L. 1998-212 appropriates $100,000 for Project Challenge of N.C., Inc., a private program that offers alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The program has been operating in District Court District 24 (Avery, Madison, Mitchell, Watauga, and Yancey counties) and will expand to Districts 25 (Caldwell, Burke, and Catawba), 29 (Henderson, McDowell, Polk, Rutherford, and Transylvania), and 30 (Cherokee, Clay, Graham, Haywood, Jackson, Macon, and Swain).

Technology
In 1997, the General Assembly appropriated substantial funds for technology—$3.6 million to replace worn equipment and $4.3 million for new equipment and expansion of programs—but required legislative approval before the funds could be spent. The General Assembly halted the expenditure of the appropriated funds for a time because of a concern about AOC’s lack of a good long-range plan for technology. To alleviate that concern, Section 16 of S.L. 1998-212 amends G.S. 143B-472.41 to require the AOC to receive approval for its information technology plans from the Information Resource Management Commission (IRMC). In the past, concerns about separation of powers had deterred the General Assembly from including the courts under the IRMC’s control, and the prior law merely allowed IRMC to comment on the AOC’s technology plans.

Under S.L. 1998-212, the AOC may expend $500,000 of its appropriated funds to contract for consultant services in the development of a strategic information systems and technology plan and must submit the plan to the General Assembly by May 1, 1999. The AOC will contract with an independent company to undertake a comprehensive assessment of technology needs.

The actual 1998–99 funding for equipment was much lower than requested or than appropriated last year: $100,000 in recurring funds and $1.7 million in nonrecurring funds for replacing worn and outdated computer equipment and for purchasing hardware and software to increase the capacity of the mainframe computer system and $300,000 in nonrecurring funds for equipment and supplies. In addition, Section 16.26 of S.L. 1998-212 allows the AOC to spend $500,000 of appropriated funds to replace computers and purchase hardware and software to upgrade the mainframe computer, but the AOC must report intended expenditures to the General Assembly before these funds may be spent. Next year, after the independent technology assessment has been submitted to the General Assembly, funding for computer equipment and software will likely be a very high priority in the AOC’s budget request.

Salaries
Judicial Branch Employees. S.L. 1998-153 (S 879) increased the salaries of most court officials by 3 percent, the same increase provided for most other state employees.

Appellate Judges. The Senate’s budget proposal, adopted June 30, would have given no raise to appellate judges while granting a 3 percent raise for all other judicial officials. News reports suggested that the Senate budget proposal reflected the body’s anger with a decision of the N.C. Supreme Court issued a week before the legislature convened. In Bailey v. State of North Carolina, 348 N.C. 130, 500 S.E.2d 54 (1998), the court held that the state had illegally taxed the retirement benefits of some state and local government retirees. The final settlement in the Bailey case required the state to repay federal, state, and local government retirees $799 million. By late October when the final budget was adopted, tempers apparently had calmed and appellate judges received the same increase as other employees.

Clerks and Magistrates. Two groups of judicial employees—assistant and deputy clerks and magistrates—have pay plans that provide automatic step increases. In 1997, the legislature
froze the steps of the pay plan for assistant and deputy clerks, which has automatic steps of approximately 5 percent every year, and gave each clerk the 4 percent increase that other state employees received. The magistrates’ pay plan has an automatic step increase of approximately 10 percent every two years for the first six years of employment and then every four years from six to eighteen years. In 1997, the General Assembly provided that magistrates who were eligible for a step increase during the fiscal year receive the step increase and those not eligible for a step increase receive a 4 percent increase. In 1998, the General Assembly gave assistant and deputy clerks the 3 percent increase, plus any step increase to which they are entitled under the pay plan. However, they continued the same practice begun last year for magistrates: Those magistrates who are eligible for a step increase during 1998–99 will receive the step increase on their anniversary date; those not eligible for a step increase received the 3 percent increase, effective July 1, 1998. Magistrates who receive a step increase in the 1997–99 biennium will receive about a 10 percent increase. For those in the four-year step range who have not received a step within this period, the increase has been 7 percent. However, these percentage increases are merely an advance on the step increase that the magistrate is due to receive in the future unless the General Assembly increases the pay at those steps. In fact, if no change is made in the steps next year, it is possible that a magistrate’s salary will be reduced when the magistrate advances to the next step.

Emergency Judges. Section 16.27 of S.L. 1998-212 increases the compensation for emergency judges from $200 to $300 per day of active service. Unused salary funds will be used to pay for the increase. The AOC had asked for an increase to $400, which would have required an additional appropriation, and will probably seek that additional increase next year.

Alternative Dispute Resolution

Since the 1980s the General Assembly has supported programs that use methods other than trials to resolve disputes.

Bad Check Pilot Programs

In 1997, the General Assembly created a bad check pilot program that operates in Columbus, Durham, and Rockingham counties. The goal of the program is to collect worthless checks in a more timely manner, to alleviate the need to prosecute these cases, and to provide an opportunity for the check writer to avoid criminal prosecution. Under the program, the person who accepts a worthless check first must attempt to collect the check; if the check remains uncollected, he or she may ask the district attorney to send a letter to the check writer explaining the worthless check program. A check writer must pay a $50 fee and restitution to the clerk’s office within a specified amount of time (the current programs require payment within thirty days). The fee is deposited in the Collection of Worthless Checks Fund, a nonreverting fund used for the expenses of the bad check programs. If the check writer does not pay the fee and restitution, the district attorney notifies the person who took the worthless check that he or she may seek the issuance of criminal process against the check writer.

The 1997 authorization for the pilot program included a sunset clause. Section 16.3 of S.L. 1998-212 (S 1336) extends the worthless check program in Columbus, Durham, and Rockingham counties until June 30, 1999, and expands the program to Wake County.

Mediated Settlement of Family Law Cases

The 1998 General Assembly also modified the 1997 pilot program for settlement of district court actions involving family issues. Section 16.19 of S.L. 1998-212 amends G.S. 7A-38.4 to give the N.C. Supreme Court, rather than the Dispute Resolution Commission, authority to adopt rules for the program. The 1998 amendments to G.S. 7A-38.4 also allow any district court judge
to order a mediated settlement conference or another settlement procedure in a pending action involving equitable distribution, alimony, or child or spousal support. Thus, referral of a particular case to arbitration or a settlement procedure other than a mediated settlement conference no longer requires consent of the parties. The law, however, continues to provide that only mediated settlement conferences may be mandated in every case by local rule. The AOC may require the chief district judge of a participating district to report statistical data about settlement procedures in order to evaluate the effectiveness of the program.

**Dispute Resolution Commission**
Section 16.19 of S.L. 1998-212 amends G.S. 7A-38.2(c) to increase the membership of the Dispute Resolution Commission from nine to fourteen, effective October 1, 1998. It increases from two to five the number of judges on the commission and provides that at least two of the judges must be superior court judges and at least two must be district court judges. The section also increases from two to four the number of mediators on the commission and requires that two be certified to conduct superior court mediated settlement conferences and two be certified to conduct equitable distribution mediated settlement conferences. The new members serve initial terms of two years. After the initial term, which varies for persons appointed before October 1, 1998, and those appointed on or after October 1, the term of all members of the commission is three years. Effective October 1, 1999 (when the term of a currently sitting member expires), one of the two attorneys appointed by the president of the N.C. State Bar must be a family law specialist.

The addition of these new members to the commission recognizes that the commission’s work in regulating mediators now includes family law mediators. In an unusual provision, the new law authorizes the appointing authorities to receive and consider recommendations for appointees from organizations that have an interest in dispute resolution, including the Dispute Resolution Commission; the Family Law, Litigation, and Dispute Resolution Sections of the N.C. Bar Association; the N.C. Association of Professional Family Mediators; the N.C. Association of Clerks of Superior Court; the N.C. Conference of Court Administrators; the Mediation Network of N.C.; the Dispute Resolution Committee of the Supreme Court; the Conference of Chief District Judges; the Conference of Superior Court Judges; the Director of the AOC; and the Child Custody Mediation Advisory Committee of the AOC.

**Studies**
The 1998 Appropriations Act, S.L. 1998-212 (S 1366), requires the AOC to undertake a number of studies during the next year. The two that have the highest potential for long-term impact are those regarding the independent evaluation and strategic plan for technology, discussed in this chapter’s section on Technology, and those reorganizing superior court divisions.

**Reorganizing Superior Court Divisions**
In 1996, the Commission on the Future of Justice and the Courts in North Carolina (Futures Commission) filed its report recommending substantial changes to the court system to meet the needs of the twenty-first century. Among its recommendations was a proposal to consolidate the forty district court and superior court districts into twelve to eighteen judicial circuits and to designate a chief judge and a circuit administrator to oversee the trial courts within each circuit. Although none of the commission’s recommendations was implemented in 1997 or 1998, the recommendation to establish circuit courts did move one step closer to possible implementation as a pilot program.
Section 16.17A of S.L. 1998-212 requests the Chief Justice to convene a task force to make recommendations for the reorganization and expansion of the Superior Court Division into no fewer than eight nor more than twelve divisions and to recommend the actions that would be necessary to establish pilot programs in up to three of the new judicial divisions for implementation of the “circuit court” proposal by the Futures Commission. The AOC must report the results of the study to the General Assembly by March 1, 1999.

District Court Case Management

Section 16.19 of S.L. 1998-212 requires the AOC to submit a follow-up report by April 1, 1999, on the civil case management pilot programs established in District Court Districts 13, 18, and 30. The AOC had reported to the General Assembly by May 1, 1998; however, at that time, the programs had not been operational long enough to complete an evaluation, so the report included only anecdotal comments. By 1999 the data will be available for the General Assembly to determine whether to continue funding the project.

Sentencing and Conviction Statistics

Section 16.18 of S.L. 1998-212 requires the Judicial Department, through the N.C. Sentencing and Policy Advisory Commission (Sentencing Commission), and the Department of Correction to jointly evaluate the community corrections programs and in-prison treatment programs and report to the General Assembly by April 15, 2000. The Sentencing Commission must collect the data necessary to create an expanded database containing information on prior convictions, current conviction and sentence, program participation, and outcome measures.

Section 16.2 of S.L. 1998-212 requires the AOC to continue to report annually to the General Assembly the recidivism rate of juveniles who are adjudicated delinquent for offenses that would be Class A, B1, B, C, D, or E felonies if committed by an adult. The reporting date is changed from December 31 to February 15.

Other AOC Studies

The AOC must undertake two studies on the cost effectiveness of various methods of providing counsel to indigent defendants in criminal cases. Those studies are discussed in this chapter’s section on Indigent Representation.

Two pending AOC studies were precipitated by concerns expressed by members of the General Assembly but not mandated in the 1998 Appropriations Act. Some time ago, the AOC developed weighted tables to determine how to allocate new court positions. Although those tables have been modified over the years, some legislators and judicial officials are concerned that they do not accurately reflect the relative needs of different offices within the court system. When the AOC asked chief district court judges about their needs last year, the judges said they needed thirty-four new judgeships, but some said they needed less than a full-time position. The General Assembly funded thirteen new district court judgeships but asked the AOC to be better able to justify the need for new judges and their placement. The AOC has contracted with the National Center for State Courts to conduct a workload study for the district court so that a more accurate assessment of needs and allocation of positions can be made. Similarly, the N.C. Association of Clerks of Superior Court received a grant from the Crime Commission and has contracted with the Jefferson Institute to undertake a study of needs within the clerks’ offices. Since the General Assembly fully funded the expressed personnel needs for the clerks this year, that study might focus more on nonpersonnel needs, such as technology.
Indigent Representation

How to better manage the rapidly rising cost of providing legal representation to indigent defendants in criminal cases is an ongoing concern of the General Assembly. The 1998 Appropriations Act, S.L. 1998-212 (§ 1366), includes three provisions to deal with the issue.

One perennial question is whether it is more economical to provide indigent services through a public defender system or the appointment of private counsel and whether one of the two systems provides better representation than the other. Two study bills seek answers to those and other questions.

Section 16.1 of S.L. 1998-212 requires the AOC to study the efficiency and cost-effectiveness of the public defender programs currently operating in eleven judicial districts and to make recommendations regarding implementing the program in additional districts. The AOC must analyze the average cost per defendant or case for each public defender program, compare that average to payments made to private counsel in that district, and list by type of offense the number of defendants represented by public defenders and by private counsel. The AOC must report the results of its study to the General Assembly by April 1, 1999.

Section 16.5 of S.L. 1998-212 establishes a Study Commission on Indigent Persons’ Attorney Fee Fund to study methods for improving the management and accountability of funds being expended to provide counsel to indigent defendants. The commission must report its findings to the General Assembly by May 1, 1999. The commission is composed of seven members appointed by the Speaker of the House, the President Pro Tempore of the Senate, the Chief Justice, the N.C. Association of Public Defenders, the N.C. State Bar, the N.C. Bar Association, and the N.C. Academy of Trial Lawyers. The commission must

• evaluate the procedures for determining whether a defendant is indigent;
• determine whether sufficient information is available when a judge evaluates compensation requests from private counsel and expert witnesses;
• assess the effectiveness of the current management structure for the Indigent Persons’ Attorney Fee Fund;
• evaluate whether to establish a council to oversee expenditures on a statewide, regional, or districtwide basis;
• evaluate the current system of providing representation, including the use of public defenders, private counsel, and contract lawyers;
• review methods used by other states to provide representation to indigent defendants;
• assess the effectiveness of distributing the funds in other ways, including expanding public defender programs and hiring contract attorneys on a retainer basis; and
• outline suggestions that would improve the provision of legal representation to indigent defendants.

Section 16.10 of S.L. 1998-212 requires the AOC to establish a capital case pilot program in the Office of the Appellate Defender to provide assistance to judicial districts that experience difficulty in locating qualified private counsel to handle capital cases. It creates positions for two new assistant public defenders, one legal assistant, and one investigator to work on capital cases and authorizes the AOC to spend $180,040 of the funds appropriated to it for that purpose. This plan was proposed by the public defenders as a method of providing quality capital case representation available throughout the state so that the state’s resources could be used fully and more efficiently. This will be the first time that attorneys in the Office of the Appellate Defender will be responsible for trying cases at the trial level, but it offers a new way of delivering needed services. The AOC must report to the General Assembly by May 1, 1999 on the effectiveness of the program.
Criminal Case Disposition Records

S.L. 1998-208 (H 1023), dealing primarily with pretrial release of persons accused of certain drug offenses, includes an amendment to Chapter 7A of the General Statutes that may have a significant effect on the court system and clerks. Effective for records compiled on or after January 1, 1999, it requires the clerk to ensure that all records of dispositions in criminal cases contain essential information about the case, including the identity of the presiding judge and the attorneys representing the State and the defendant. G.S. 7A-109.2. This provision will allow the press and public to keep a closer watch on patterns of judges with regard to convictions and with regard to particular attorneys. Similarly, patterns of attorneys can be monitored. It will be particularly important in district court where the judge is the trier of fact.

Civil Procedure

As originally enacted, G.S. 7A-228 provided that the sole remedy from a magistrate’s order and judgment was appeal for a trial de novo in district court. In 1981, the General Assembly amended the statute to provide that, with the consent of the chief district judge, a magistrate may set aside an order or judgment for mistake or excusable neglect pursuant to G.S. 1A-1, Rule 60(b)(1). In Stephens v. Koenig, 119 N.C. App. 323, 458 S.E.2d 233 (1995), the court of appeals held that, because of this amendment, a district court judge did not have jurisdiction to hear Rule 60 motions in small claims cases. The result was that a party who could show that the magistrate’s judgment or order was void or had been satisfied, or who had grounds to set it aside because of newly discovered evidence, had no remedy to set aside the judgment or order.

S.L. 1998-120 (H 1405) specifies that the grant of authority to a magistrate to hear Rule 60(b)(1) motions does not limit the authority of a district court judge to hear motions and set aside judgments or orders of magistrates pursuant to any of the six grounds under G.S. 1A-1, Rule 60(b). The provision also clarifies that the chief judge’s authorization to magistrates may be a general authorization and is not limited to a case-by-case approval by the judge.

Matters of Particular Interest to Clerks

Decedents’ Estates

Inventories of Safe-Deposit Boxes. The 1998 General Assembly enacted two laws affecting the responsibilities of clerks with respect to decedents’ estates.

First, S.L. 1998-69 (S 1229), enacted July 30, 1998, amended North Carolina’s inheritance tax law (G.S. 105-24) to abolish the requirement that a bank or other institution obtain from the Secretary of Revenue an inheritance tax waiver before it transfers a decedent’s deposits, assets, or property to the decedent’s personal representative, survivor, or other persons, thereby eliminating the clerk’s duty to send a copy of the clerk’s inventory of the contents of the decedent’s safe-deposit box to the Secretary of Revenue and repealing the clerk’s power to authorize a bank to transfer a decedent’s funds to the decedent’s personal representative when the total amount of the decedent’s deposited funds is $2,000 or less and these funds constitute the total cash assets of the decedent’s estate. S.L. 1998-69, however, retained the provisions of G.S. 105-24(b) requiring the clerk to inventory the contents of a safe-deposit box after the death of a person who used or had access to the box and amended G.S. 105-24 to give the collector of a decedent’s estate and the lessee of a safe-deposit box the same rights as the decedent’s personal representative (executor or administrator) or cotenant of a safe-deposit box with respect to the clerk’s inventory of a safe-deposit box used by a decedent or a safe-deposit box to which a decedent had access. S.L. 1998-69 was effective with respect to the estates of persons dying on or after August 1, 1998.
Later in the session, the General Assembly enacted legislation [sec. 29A.2 of S.L. 1998-212 (S 1366)] repealing North Carolina’s inheritance tax, including the provisions of G.S. 105-24 regarding the clerk’s inventory of safe-deposit boxes to which a decedent had access. S.L. 1998-212 adds a new section, G.S. 28A-15.13, which, in most cases, eliminates the need for clerks to inventory safe-deposit boxes after the death of a person who used or had access to the box. The new statute provides that “a qualified person” may inventory a decedent’s safe-deposit box without the clerk’s being present when the box is opened. A “qualified person” is a person who

- has letters of administration or letters testamentary;
- has an affidavit for collection of personal property;
- has an order of summary administration;
- is a lessee of the safe-deposit box to which the decedent had access;
- is a cotenant of the safe-deposit box to which the decedent had access; or
- has a letter signed by the clerk or the clerk’s representative and directed to the bank or other entity having possession of the safe-deposit box designating the person entitled to receive the contents of a safe-deposit box.

[There is little likelihood that clerks will often use the last provision (authorizing a person who is entitled to receive the contents of a safe-deposit box to inventory the box when the person is not administering the decedent’s estate and is not a lessee or cotenant of the box). This provision could be used when a decedent dies intestate with only one heir (for example, if the decedent is survived by a spouse but no children, grandchildren, or parents; or if the decedent is survived by only one child and no spouse) but the estate is not being administered because there is little or no property in the decedent’s estate. In that instance, the clerk could issue a letter authorizing the decedent’s sole heir to inventory the safe-deposit box. But because the clerk would have no idea whether the safe-deposit box contained valuable property that would necessitate administration of the decedent’s estate, most clerks probably would require the person to qualify under one of the other provisions of G.S. 28A-15.13 or would inventory the safe-deposit box themselves.]

Under new G.S. 28A-15.13, the “qualified person” must furnish a copy of the inventory of the contents of the box to the bank and to the person possessing a key to the box. The inventory is not filed with the clerk and is not sent to the state Department of Revenue. However, if the safe-deposit box contains a writing that appears to be a will, the “qualified person” must file the instrument in the office of the clerk of superior court. The bank may not release the contents of the decedent’s safe-deposit box to anyone other than the “qualified person.”

Under the new law, the only time the clerk must inventory a safe-deposit box is when there is no “qualified person”—a situation that will rarely occur. If the clerk inventories a decedent’s safe-deposit box, the clerk must (1) open the box in the presence of the person possessing the key to the box and a representative of the bank; (2) make an inventory of the contents of the box and furnish a copy to the bank and to the person possessing a key to the box; and (3) take from the safe-deposit box and file any writing that appears to be a will. Although there is no requirement that the clerk file a copy of the inventory in the estate file, it is likely that most clerks will continue to do so.

The safe-deposit box provisions of S.L. 1998-212 apply to estates of decedents dying on or after January 1, 1999. For persons dying on or after August 1, 1998, but before January 1, 1999, the more limited changes of S.L. 1998-69 apply.

Replacement of Inheritance Tax by Estate Tax. Section 29A.2 of S.L. 1998-212 (S 1366) also repeals the North Carolina inheritance tax and replaces it with an estate tax. The estate tax applies whenever a federal estate tax is imposed (currently, the estate must be at least $650,000); the amount of the state tax is the maximum credit for state death taxes allowed under the federal law. The state estate tax is payable from the assets of the estate, but the person who receives property from the estate is liable for the amount of estate tax attributable to that property and the personal representative of an estate is liable (up to the value of the assets that were in the personal representative’s control) for a tax not paid within two years after it was due. [The repeal of the state inheritance tax and enactment of the new estate tax are also discussed in Chapter 26 (State Taxation).]

New G.S. 105-32.3(c) makes the clerk liable for the estate taxes if the clerk allows a personal representative to make a final settlement of an estate without presenting (a) the personal
representative’s certification that no estate tax is due because an estate tax return is not required for the estate (Inheritance or Estate Tax Certification, AOC-E-207) or (b) a certification by the Secretary of Revenue that the estate’s tax liability has been satisfied.

**Renunciation of Property.** S.L. 1998-148 (H 1342) modifies G.S. 31B-1 through 31B-4 to allow a renunciation to be filed after the time allowed under the federal law for it to be a qualified disclaimer for estate and gift tax purposes. It specifies that if a renunciation is filed within the time period under federal law to make it a qualified disclaimer, the property renounced devolves “as if the renouncer predeceased the date the transfer of the renounced interest to the renouncer was complete for federal and State estate, inheritance, and gift tax purposes.” If the renunciation is not filed within the time specified under the federal law, the property devolves as if the renouncer had died on the date the renunciation is filed. S.L. 1998-148 eliminates the provision that persons who succeed to a renounced interest may not receive from the renouncement a greater share than the renouncer would have received. It also eliminates the prohibition against renunciation after acceptance of the property or interest or benefit from it but provides that a renunciation after acceptance may be precluded from being a qualified renunciation for federal and state estate, inheritance, and gift tax purposes.

**Court Fees**

The 1998 General Assembly made several changes with respect to court fees.

**Court Facilities Fees.** Section 29A.12 of S.L. 1998-212 (S 1366) amends G.S. Ch. 7A to increase court costs in all criminal and civil actions, special proceedings, and proceedings involving estates by $6 for fees assessed or paid on or after February 1, 1999. This increase will result in the following court cost assessments:

- Criminal cases in district court: $86.
- Criminal cases in superior court: $106.
- Civil small claims cases: $40.
- Civil cases in district court: $56.
- Civil cases in superior court: $71.
- Special proceedings and estates: $36.

In past years, legislative increases in court costs have applied to the portion of costs reverting to the state. This year’s increase is allocated to the facilities fee portion of the court costs and thus will go to counties to assist them in meeting their responsibility to provide adequate facilities for the state courts.

**Additional Filing Fee in Divorce Actions.** S.L. 1998-219 (S 475) creates a Fund for Displaced Homemakers that will be used by the N.C. Council for Women to make grants to programs for homemakers who are displaced by divorce. The new fund will be supported by an additional $20 fee on civil actions for absolute divorce that are filed on or after December 1, 1998. The clerk will collect this additional $20 fee as part of the court costs when a plaintiff files any civil action in which absolute divorce is an issue. Thus, the court costs for divorce actions filed from December 1 through January 31 will be $70; and, because of the general increase in court facilities fees discussed above, the cost for divorce actions will rise to $76 on February 1. Like other court costs, the additional $20 fee in divorce actions is not collected if the plaintiff files the action as an indigent.

**Reimbursement for Out-of-State Witnesses.** At the suggestion of the N.C. Courts Commission, the General Assembly, in Section 16.25 of S.L. 1998-212, conformed the mileage reimbursement and lodging and meal reimbursement for out-of-state witnesses in criminal actions to that received by in-state witnesses. G.S. 7A-314 and 15A-813 provided that out-of-state witnesses who testified in criminal trials in North Carolina were reimbursed at the rate of ten cents per mile. Now, out-of-state witnesses are reimbursed for mileage at the same rate as state employees and are entitled to reimbursement for meals and lodging at the rate authorized for state employees traveling in the state.
Restitution Judgments

The General Assembly also enacted legislation [sec. 19.4 of S.L. 1998-212 (S 1366)] to implement the Crime Victims’ Rights amendment to the N.C. Constitution, which was adopted by the voters in 1996. [The provisions of the Crime Victims’ Rights Act are discussed in Chapter 7 (Criminal Law and Procedure).]

One provision of the new Crime Victims’ Rights Act is of particular importance to clerks of superior court. New G.S. 15A-1340.28 provides that when a criminal sentence requires the defendant to pay restitution in an amount in excess of $250, the order may be enforced in the same manner as a civil judgment. It must be docketed and indexed in the county of conviction, and a transcript of judgment may be sent to the clerk in another county to docket the judgment in the other county.

If the order to pay restitution is not a condition of probation, the order may be enforced in the same manner as a civil judgment. This means that the clerk may issue a writ of execution ordering the sheriff to seize the defendant’s property and sell it to satisfy the restitution order. The new act also amends G.S. 1C-1603 to provide that a judgment debtor’s exemptions from execution of judgments do not apply to criminal restitution orders that are docketed as civil judgments. Therefore, there is no requirement that notice of the defendant’s exemption rights under G.S. Ch. 1C be sent before the writ of execution is issued.

If the order to pay restitution is a condition of probation, the judgment is docketed and becomes a lien against any real property owned or thereafter acquired by the defendant in the county in which the judgment is docketed. However, the clerk may not enforce the judgment by issuance of an execution until the clerk is notified that probation has been terminated or revoked. The judge presiding at a probation revocation or termination hearing must enter an order making findings that (1) restitution in a sum certain remains due and payable, (2) the defendant’s probation has been terminated or revoked, and (3) the remaining balance may be collected by execution on the judgment. At that point the clerk must enter on the judgment docket the amount that remains due and payable and any other fees to which the court is entitled. Interest (at 8 percent per year) does not begin to accrue on the judgment until the entry of the order terminating or revoking probation and finding the amount due and payable. The clerk must notify the victim by first-class mail at the victim’s last known address of the amount of the judgment and that it may be enforced. (This seems to mean that the clerk need not issue a writ of execution until the victim requests that the writ be issued.) Any partial payments on an order of restitution that is a condition of probation need not be reflected on the judgment docket until the clerk receives notification of the termination or revocation of the probation. If the defendant transfers real property while still on probation, the clerk may issue a writ of execution against the transferred property without waiting for an order revoking or terminating probation.

The new law specifically provides that a criminal restitution order does not prohibit a victim from bringing a civil action for damages but that any payment on the restitution order must be credited against the civil judgment. Likewise, payment satisfying the civil judgment must be credited against the order of restitution. When the order of restitution has been paid in full, the restitution judgment is satisfied and cancelled.

The provisions of the Crime Victims’ Rights Act regarding docketing of restitution judgments became effective December 1, 1998, and apply to offenses committed on or after that date. The provisions excepting restitution from the G.S. Ch. 1C exemptions became effective January 1, 1999, and apply to offenses committed on or after that date.

Other Legislation

Membership on Judicial Commissions. For the past two years, the North Carolina Courts Commission has recommended to the General Assembly that clerks of superior court be represented on all standing commissions that are charged with making recommendations concerning changes to the judicial system. S.L. 1998-170 (S 1243) provides that representation by adding one clerk each to the Sentencing and Policy Advisory Commission, the Criminal Justice Advisory Board, and the Governor’s Crime Commission.
**Notarial Acts by Clerks.** S.L. 1998-228 (S 1552), an act revising the law regarding notaries public, modifies the authority of assistant and deputy clerks in certifying notarial acts. Previously, G.S. 10A-14 provided that clerks of superior court, assistant clerks, and deputy clerks were notaries ex officio (by virtue of their office). S.L. 1998-228 continues the law with respect to the clerk of superior court but provides that, effective November 6, 1998, assistant and deputy clerks, by virtue of their office, may perform only the notarial acts of taking oaths and affirmations and verifications or proofs. In order to perform any other notarial acts in the performance of their official duties, assistant or deputy clerks must complete the course of study required generally for notaries public. A clerk of superior court or an assistant or deputy clerk who wishes to perform notarial acts not in the course of official duties must fully comply with all of the requirements to receive a notarial commission.

**Notice in Bond Forfeiture Proceedings.** When a defendant in a criminal case does not comply with the conditions of an appearance bond, the court enters an order of forfeiture and notice that judgment will be entered against the principal (defendant) and surety (bondsman) on the bond. That notice had to be served by certified mail, return receipt requested. Clerks felt that this provision necessitated an undue expenditure of state funds because it was not constitutionally required and the sureties were aware of the consequences of defendant’s failure to comply at the time they signed the bond. At the request of the Association of North Carolina Clerks of Superior Court and on recommendation from the N.C. Courts Commission, the General Assembly, in S.L. 1998-58 (S 354), amended G.S. 15A-544 to allow the clerks to mail the notices by first-class mail.

**Landlord-Tenant Law and Procedure**

**Bond to Stay Execution in Summary Ejectment Cases**

The General Assembly enacted a new provision regarding summary ejectment cases that are appealed from small claims court to district court. S.L. 1998-125 (H 1071) affects how magistrates and district court judges enter judgments in summary ejectment cases and the bond required to stay execution of the judgment while the case is on appeal. It applies to summary ejectment cases filed on or after October 1, 1998.

**Appeal from Small Claims Court.** G.S. 7A-227 requires a defendant who appeals a summary ejectment judgment issued by a magistrate to post a stay of execution bond as provided in G.S. 42-34 if the defendant wishes to remain in possession of the premises while the case is on appeal. G.S. 42-34 required the defendant to sign an undertaking to pay future rent through the clerk’s office and, if the judgment was entered more than five days before the next rent was due, to post, in cash, the prorated amount of rent from the date of the judgment until the day the next rental payment is due. The rationale for this provision was that, because the amount of past-due rent was the subject of the lawsuit, a tenant should not have to pay the past-due rent until the district court entered a final judgment in the case but that the tenant should be required to pay rent that became due while the case was on appeal in order to prevent the landlord from suffering further monetary loss and prevent the tenant from living in the premises without paying rent while the appeal was pending. The bond therefore preserved the status quo at the time of the magistrate’s judgment.

Landlords urged the General Assembly to modify the bond requirements in summary ejectment appeals because they were concerned that tenants could delay their eviction by appealing the case to district court without having to pay the past-due rent even when there was no dispute about the amount of past-due rent they owed. Essentially, the landlords wanted to remove what they considered to be an advantage to the tenant in filing an appeal when there was, in the landlords’ view, no serious basis for the appeal. Instead, landlords argued that a tenant who appeals a summary ejectment case to district court should be required to pay all of the rent that he or she owes in order to stay eviction while the case is on appeal.

In response to these arguments by landlords, S.L. 1998-125 amends G.S. 42-34 to require a tenant who wants to remain in the premises pending his or her appeal of a summary ejectment case to district court to post, in cash, the amount of undisputed past-due rent (as determined by the magistrate) as well
as signing an undertaking to pay future rent as it becomes due and posting the prorated amount of rent from the date of judgment until the date the next rent is due.

**Magistrate’s Determination of Past-Due Rent.** As amended by S.L. 1998-125, G.S. 42-34(b) requires the magistrate to make a finding in the small claims judgment of the amount of past-due rent a tenant owes or, if there is an actual dispute as to the amount of past-due rent, a finding as to the amount of rent that is in dispute. This requirement applies whether or not the magistrate enters a judgment for monetary damages for past-due rent. Before a magistrate may find that there is an actual dispute about the amount of rent, the defendant must appear at the trial and produce testimony or documentary evidence regarding the dispute. The magistrate’s finding is solely for the purpose of setting the stay of execution bond.

**Clerk’s Responsibilities for Taking the Bond.** Under S.L. 1998-125, when a defendant who appeals a summary ejectment judgment to district court wishes to stay the execution of the judgment while the case is on appeal, the defendant must (1) sign a bond promising to pay future rent as it becomes due, (2) post, in cash, the amount of past-due rent set out in the “findings” portion of the magistrate’s judgment, and (3) if the judgment is entered more than five working days before the next rent is due, post the prorated amount of rent for the days between the date that the judgment was entered and the next day when rent will be due under the lease. Essentially, this requirement means that the tenant has to pay into the clerk’s office, in cash, all the rent that should have been paid to the landlord had the tenant paid the rent when due.

There are two situations in which the defendant need not post the amount of past-due rent to stay eviction. First, if the defendant appeared at the small claims trial and the magistrate’s findings indicate that the past-due rent was not in dispute but an attorney representing the defendant on appeal signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, the defendant must pay only the undisputed amount of rent indicated in the attorney’s pleading rather than the amount set out in the magistrate’s findings. Second, a defendant who is authorized to appeal as an indigent does not have to pay the past-due rent to stay eviction. (An indigent defendant, however, still must sign the bond agreeing to pay future rent as it becomes due and must pay in cash the prorated amount of rent if the magistrate’s judgment is entered more than five working days before the next rental payment is due.)

**District Court Judgment.** S.L. 1998-125 (H 1071) enacts a new section, G.S. 42-34.1, to deal with issues when the case reaches the district court. It provides that “if the judgment in district court is against the defendant appellant and the defendant appellant does not appeal the judgment, the defendant appellant shall pay rent to the plaintiff for the time the defendant remains in possession after the judgment is given.” The district court judgment should include a provision that the daily rate of rent is due until the defendant vacates the premises. The judgment must also indicate how the clerk should disperse any past-due rent paid into the clerk’s office.

**Bond on Appeal from District Court to the Court of Appeals.** One problem with the appeal of a summary ejectment judgment from district court to the court of appeals has been the bond required to stay execution. The summary ejectment bond in G.S. 42-34 applies to appeals from the magistrate to district court only and not to an appeal from the district court. G.S. 1-292, the general stay of execution bond for judgments requiring delivery of possession of real property, requires the defendant to sign a bond, with one or more sureties, that he or she will not commit any waste on the property and will pay the value of the use and occupation of the property from the time of appeal until delivery of possession if the judgment is affirmed. That statute has two problems when applied to a summary ejectment case. First, a tenant would probably find it almost impossible to find a surety to sign such a bond, and second, if the bond were signed, the landlord would not receive any rent until the case was heard in the court of appeals (which could be a year or more) and even then might have to bring a civil action against the surety to collect.

G.S. 42-34.1, enacted by S.L. 1998-125, provides that a tenant who appeals a summary ejectment judgment from district court to the court of appeals must post the same bond to stay eviction as is posted when the case is appealed from the magistrate to district court.
Landlord’s Duty to Provide Smoke Detectors

The Residential Rental Agreements Act places certain duties on a landlord who rents residential premises, including the duty to make repairs and keep the premises in a fit and habitable condition. In 1995, the General Assembly amended G.S. 42-42 to require landlords to provide operable smoke detectors and to repair or replace detectors if a tenant notifies the landlord in writing of needed replacement or repairs. The tenant is responsible for replacing batteries during the tenancy.

Section 17.16 of S.L. 1998-212 (S 1366) modifies that provision by requiring a landlord to repair a smoke detector within fifteen days after notice from a tenant. It also requires the landlord to ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. A landlord’s failure to install or repair a smoke detector within thirty days of receiving a written notice of lack of compliance from a tenant or any agent of the state or local government is an infraction subject to a fine of not more than $250 for each violation. If a smoke detector is disabled or damaged, other than through actions of the landlord or acts of God, the tenant must reimburse the landlord for the reasonable and actual cost of repairing or replacing the smoke detector within thirty days of notice to the tenant of the need for reimbursement. Failure to reimburse the landlord is an infraction subject to a fine of not more than $100 for each violation. These provisions are effective January 1, 1999.

Motor Vehicle Liens

Article 1 of Chapter 44A of the General Statutes gives a person who tows, stores, or repairs motor vehicles in the ordinary course of business a lien on those motor vehicles until payment for the services provided is received. However, a lienor who wishes to sell the motor vehicle pursuant to the lien must obtain permission from the Division of Motor Vehicles (DMV). After the lienor notifies DMV of the lienor’s intent to sell the vehicle, DMV attempts to notify the owner of the motor vehicle and all secured parties who can be reasonably ascertained. The notice must inform the owner that he or she may require the lienor to file a civil action if there is a dispute about the lien.

S.L. 1998-182 (S 1336) amends G.S. 44A-4(b) to provide an alternative notification process. It allows the lienor to directly notify the owner and secured parties on a form approved by DMV and then proceed to sell the vehicle if the owner waives the right to a judicial proceeding. The lienor continues to have the option to notify DMV, which must then notify the owner and secured parties. S.L. 1998-182 also removes the requirement that DMV issue the notice within fifteen days of receipt of the intent to sell from the lienor. That requirement was onerous for DMV, particularly when the name of the owner of the motor vehicle was unknown. Lienors who have dealt directly with owners and have the names and address of the owner are likely to use the new statutory method of notice, while those who do not know the name of the owner may continue to use DMV. S.L. 1998-182 became effective December 1, 1998.

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