

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

S

1

SENATE BILL 1257\*

Short Title: Electronic Criminal Process. (Public)

---

Sponsors: Senators Odom; Clodfelter and Kinnaird.

---

Referred to: Judiciary II.

---

June 6, 2002

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE LEGAL EFFECT OF THE USE OF ELECTRONIC  
3 TECHNOLOGY IN CRIMINAL PROCESS AND PROCEDURE, AS  
4 RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 1 of Chapter 15A of the General Statutes is amended by  
7 adding a new section to read:

8 **"§ 15A-101.1. Electronic technology in criminal process and procedure.**

9 As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the  
10 General Statutes, and in all other provisions of the General Statutes that deal with  
11 criminal process or procedure:

- 12 (1) "Copy" means all identical versions of a document created or existing  
13 in paper form, including the original and all other identical versions of  
14 the document in paper form.
- 15 (2) "Document" means any pleading, criminal process, subpoena,  
16 complaint, motion, application, notice, affidavit, commission, waiver,  
17 consent, dismissal, order, judgment or other writing intended in a  
18 criminal or contempt proceeding to authorize or require an action, to  
19 record a decision or to communicate or record information. The term  
20 does not include search warrants. A document may be created and  
21 exist in paper form or in electronic form or in both forms.
- 22 (3) "Electronic" means relating to technology having electrical, digital,  
23 magnetic, wireless, optical, electromagnetic, Internet or similar  
24 capabilities.
- 25 (4) "Electronic Repository" means an automated electronic repository for  
26 criminal process created and maintained pursuant to G.S. 15A-301.1.
- 27 (5) "Electronic signature" means any electronic method of signing a  
28 document that meets each of the following requirements:

- 1           a.     Identifies and authenticates a particular person as the signer of  
2           the document, is unique to the person using it, is capable of  
3           certification, and is under the sole control of the person using it.  
4           b.     Is attached to or logically associated with the document in such  
5           a manner that if the document is altered in any way without  
6           authorization of the signer, the signature is invalidated.  
7           c.     Indicates that person's intent to issue, enter or otherwise  
8           authenticate the document.  
9       (6)   "Entered" means signed and filed in the office of the clerk of superior  
10       court of the county in which the document is to be entered. A  
11       document may be entered in either paper form or electronic form.  
12       (7)   "Filing" or "filed" means:  
13       a.     When the document is in paper form, delivering the original  
14       document to the office where the document is to be filed. Filing  
15       is complete when the original document is received in the office  
16       where the document is to be filed.  
17       b.     When the document is in electronic form, creating and saving  
18       the document, or transmitting it, in such a way that it is  
19       unalterably retained in the electronic records of the office where  
20       the document is to be filed. A document is "unalterably  
21       retained" in an electronic record when it may not be edited or  
22       otherwise altered except by a person with authorization to do  
23       so. Filing is complete when the document has first been  
24       unalterably retained in the electronic records of the office where  
25       the document is to be filed.  
26       (8)   "Issued" applies to documents in either paper form or electronic form.  
27       A document that is first created in paper form is issued when it is  
28       signed. A document that is first created in electronic form is issued  
29       when it is signed, filed in the office of the clerk of superior court of the  
30       county for which it is to be issued, and retained in the Electronic  
31       Repository.  
32       (9)   "Original" means:  
33       a.     A document first created and existing only in paper form,  
34       bearing the original signature of the person who signed it. The  
35       term also includes each copy in paper form that is printed  
36       through the facsimile transmission of the copy bearing the  
37       original signature of the person who signed it.  
38       b.     A document existing in electronic form, including the electronic  
39       form of the document and any copy that is printed from the  
40       electronic form.  
41       (10)  "Signature" means any symbol, including but not limited to the name  
42       of an individual, which is executed by that individual, personally or  
43       through an authorized agent, with the intent to authenticate or to effect  
44       the issuance or entry of a document. The term includes an electronic

1           signature. Each signature shall include the full first and last name, and  
2           any middle initial, of the individual. A document may be signed by the  
3           use of any manual, mechanical or electronic means that causes the  
4           individual's signature to appear in or on the document. Any party  
5           challenging the validity of a signature shall have the burden of  
6           pleading, producing evidence and proving the following:

7           a.     The signature was not the act of the person whose signature it  
8           appears to be.

9           b.     If the signature is an electronic signature, the requirements of  
10           subdivision (5) of this section have not been met."

11           **SECTION 2.** Article 17 of Chapter 15A of the General Statutes is  
12 amended by adding a new section to read:

13 **"§ 15A-301.1. Electronic Repository.**

14           (a)   The Administrative Office of the Courts shall create and maintain, in  
15           cooperation with State and local law enforcement agencies, an automated electronic  
16           repository for criminal process (hereinafter referred to as the Electronic Repository),  
17           which shall comprise a secure system of electronic data entry, storage and retrieval that  
18           provides for creating, signing, issuing, entering, filing and retaining criminal process in  
19           electronic form, and that provides for the following with regard to criminal process in  
20           electronic form:

21                   (1)   Tracking criminal process.

22                   (2)   Accessing criminal process through remote electronic means by all  
23                   authorized judicial officials and employees and all authorized law  
24                   enforcement officers and agencies that have compatible electronic  
25                   access capacity.

26                   (3)   Printing any criminal process in paper form by any authorized judicial  
27                   official or employee or any authorized law enforcement officer or  
28                   agency.

29           The Administrative Office of the Courts shall assure that all electronic signatures  
30           effected through use of the system meet the requirements of G.S. 15A-101.1(5).

31           (b)   Any criminal process may be created, signed and issued in electronic form,  
32           filed electronically in the office of a clerk of superior court, and retained in electronic  
33           form in the Electronic Repository.

34           (c)   Any process that was first created, signed and issued in paper form may  
35           subsequently be filed in electronic form and entered in the Electronic Repository by the  
36           judicial official who issued the process or by any person authorized to enter it on behalf  
37           of the judicial official. All copies of the process in paper form are then subject to the  
38           provisions of subsections (i) and (k) of this section.

39           (d)   Any criminal process in the Electronic Repository shall be part of the official  
40           records of the clerk of superior court of the county for which it was issued, and shall be  
41           maintained in the office of that clerk as required by G.S. 15A-301(a).

42           (e)   Any criminal process in the Electronic Repository may, at any time and at  
43           any place in this State, be printed in paper form and delivered to a law enforcement

1 agency or officer by any judicial official, law enforcement officer or other authorized  
2 person.

3 (f) When printed in paper form pursuant to subsection (e) of this section, any  
4 copy of a criminal process in the Electronic Repository confers the same authority and  
5 has the same force and effect for all other purposes as the original of a criminal process  
6 that was created and exists only in paper form.

7 (g) Service of any criminal process in the Electronic Repository may be effected  
8 by delivering to the person to be served a copy of the process that was printed in paper  
9 form pursuant to subsection (e) of this section.

10 (h) The tracking information specified in subsection (i) of this section shall  
11 promptly be entered in the Electronic Repository when one or both of the following  
12 occurs:

13 (1) A process is first created, signed and issued in paper form and  
14 subsequently entered in electronic form in the Electronic Repository as  
15 provided in subsection (c) of this section.

16 (2) A copy of a process in the Electronic Repository is printed in paper  
17 form pursuant to subsection (e) of this section.

18 (i) The following tracking information shall be entered in the Electronic  
19 Repository in accordance with subsections (c) and (h) of this section:

20 (1) The date and time when the process was printed in paper form.

21 (2) The name of the law enforcement agency by or for which the process  
22 was printed in paper form.

23 (3) If available, the name and identification number of the law  
24 enforcement officer to whom any copy of the process was delivered.

25 (j) The service requirements set forth in subsection (k) of this section shall apply  
26 to:

27 (1) Each copy of a criminal process that is first created in paper form and  
28 subsequently entered into the Electronic Repository as provided in  
29 subsection (c) of this section.

30 (2) Each copy of a criminal process in the Electronic Repository that is  
31 printed in paper form pursuant to subsection (e) of this section.

32 (k) Service Requirements for Process Entered in the Electronic Repository. –  
33 The copy of the process shall be served not later than 24 hours after it has been printed.  
34 The date, time and place of service shall promptly be recorded in the Electronic  
35 Repository and shall be part of the official records of the court. If the process is not  
36 served within 24 hours, that fact shall promptly be recorded in the Electronic Repository  
37 and all copies of the process in paper form shall be destroyed. The process may again be  
38 printed in paper form at later times and at the same or other places. Subsection (f) of this  
39 section applies to each successively printed copy of the process.

40 (l) A law enforcement officer or agency that does not have compatible remote  
41 access to the Electronic Repository shall promptly communicate, by any reasonable  
42 means, the information required by subsection (k) of this section to the clerk of superior  
43 court of the county in which the process was issued or to any other person authorized to

1 enter information into the Electronic Repository, and the information shall promptly be  
2 entered in the Electronic Repository.

3 (m) Failure to enter any information as required by subsection (i) or (k) of this  
4 section does not invalidate the process, nor does it invalidate service or execution made  
5 after the period specified in subsection (k) of this section.

6 (n) A warrant created and existing only in paper form is returned within the  
7 meaning of G.S. 132-1.4(k) when it is returned as provided in G.S. 15A-301(d). A  
8 warrant that exists only in electronic form in the Electronic Repository is returned  
9 within the meaning of G.S. 132-1.4(k), when the information specified in subsection (k)  
10 of this section is first entered in the Electronic Repository."

11 **SECTION 3.** G.S. 15A-301 reads as rewritten:

12 **"§ 15A-301. Criminal process generally.**

13 (a) Formal Requirements. –

14 (1) A record of each criminal process issued in the trial division of the  
15 General Court of Justice must be maintained in the office of the ~~clerk~~  
16 clerk in either paper form or in electronic form in the Electronic  
17 Repository as provided in G.S. 15A-301.1.

18 (2) Criminal process, other than a citation, must be signed and dated by  
19 the justice, judge, magistrate, or clerk who issues it. The citation must  
20 be signed and dated by the law-enforcement officer who issues it. Each  
21 signature shall include the full name of the signer, spelled out in  
22 legible characters.

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

32 (c) Service. –

33 (1) A law-enforcement officer or other employee designated as provided  
34 in subsection (b) receiving ~~criminal process~~ for service or execution a  
35 criminal process that was first created and exists only in paper form  
36 must note thereon the date and time of its receipt. A law enforcement  
37 officer receiving a copy of a criminal process that was printed in paper  
38 form as provided in G.S. 15A-301.1 shall cause the date of receipt to  
39 be recorded as provided in that section. Upon execution or service, a  
40 copy of the process must be delivered to the person arrested or served.

41 (2) A corporation may be served with criminal summons as provided in  
42 G.S. 15A-773.

43 (d) Return. –

- 1 (1) The officer or other employee designated as provided in subsection (b)  
2 who serves or executes a criminal process that was first created and  
3 exists only in paper form must enter the date and time of the service or  
4 execution on the process and return it to the clerk of court in the  
5 county in which issued. The officer or other employee designated as  
6 provided in subsection (b) of this section who serves or executes a  
7 copy of a criminal process that was printed in paper form as provided  
8 in G.S. 15A-301.1 shall promptly cause the date of the service or  
9 execution to be recorded as provided in that section.
- 10 (2) If criminal process that was created and exists only in paper form is  
11 not served or executed within a number of days indicated below, it  
12 must be returned to the clerk of court in the county in which it was  
13 issued, with a reason for the failure of service or execution noted  
14 thereon.
- 15 a. Warrant for arrest – 180 days.  
16 b. Order for arrest – 180 days.  
17 c. Criminal summons – 90 days or the date the defendant is  
18 directed to appear, whichever is earlier.
- 19 (3) Failure to return the process to the clerk as required by subdivision (2)  
20 of this subsection does not invalidate the process, nor does it invalidate  
21 service or execution made after the period specified in subdivision (2).
- 22 (4) The clerk to which return of a criminal process that was created and  
23 exists only in paper form is made may redeliver the process to a  
24 law-enforcement officer or other employee designated as provided in  
25 subsection (b) for further attempts at service. If the process is a  
26 criminal summons, he may reissue it only upon endorsement of a new  
27 designated time and date of appearance.
- 28 (e) Copies to Be Made by Clerk. –
- 29 (1) The clerk may make a certified copy of any criminal process that was  
30 created and exists only in paper form filed in his office pursuant to  
31 subsection (a) when the original process has been lost or when the  
32 process has been returned pursuant to subdivision (d)(2). The copy  
33 may be executed as effectively as the original process whether or not  
34 the original has been redelivered as provided in G.S. 15A-301(d)(4).
- 35 (2) When criminal process is returned to the clerk pursuant to subdivision  
36 (d)(1) and it appears that the appropriate venue is in another county,  
37 the clerk must make and retain a certified copy of the process and  
38 transmit the original process to the clerk in the appropriate county.
- 39 (3) Upon request of a defendant, the clerk must make and furnish to him  
40 without charge one copy of every criminal process filed against him.
- 41 (4) Nothing in this section prevents the making and retention of  
42 uncertified copies of process for information purposes under G.S.  
43 15A-401(a)(2) or for any other lawful purpose.

1 (f) Protection of Process Server. – An officer or other employee designated as  
2 provided in subsection (b), and serving process as provided in subsection (b), receiving  
3 under this section or under G.S. 15A-301.1 criminal process which is complete and  
4 regular on its face may serve the process in accordance with its terms and need not  
5 inquire into its regularity or continued validity, nor does he incur criminal or civil  
6 liability for its due service.

7 (g) Recall of Process – Authority. – A criminal process that has not been served  
8 on the defendant, other than a citation, shall be recalled by a judicial official or by a  
9 person authorized to act on behalf of a judicial official as follows:

10 (1) A warrant or criminal summons shall be recalled by the issuing  
11 judicial official when that official determines that probable cause did  
12 not exist for its issuance.

13 (2) Any criminal process other than a warrant or criminal summons may  
14 be recalled for good cause by any judicial official of the trial division  
15 in which it was issued. Good cause includes, without limitation, the  
16 fact that:

17 a. A copy of the process has been served on the defendant.

18 b. All charges on which the process is based have been disposed.

19 c. The person named as the defendant in the process is not the  
20 person who committed the charged offense.

21 d. It has been determined that grounds for the issuance of an order  
22 for arrest did not exist, no longer exist or have been satisfied.

23 (3) The dismissal of all charges on which a process is based shall effect  
24 the recall, without further action by the court, of that process and of all  
25 other outstanding process issued in connection with the charges,  
26 including all orders for arrest issued for the defendant's failure to  
27 appear to answer the charges.

28 When the process was first created and exists only in paper form, the recall shall  
29 promptly be communicated by any reasonable means to each law enforcement agency  
30 known to be in possession of the original or a copy of the process, and each agency shall  
31 promptly return the process to the court, unserved. When the process is in the Electronic  
32 Repository, the recall shall promptly be entered in the Electronic Repository, and no  
33 further copies of the process shall be printed in paper form. The recall shall also be  
34 communicated by any reasonable means to each agency that is known to be in  
35 possession of a copy of the process in paper form and that does not have remote  
36 electronic access to the Electronic Repository."

37 **SECTION 4.** This act becomes effective January 1, 2003, and applies to all  
38 acts done on and after that date.