Topic:
1977 LEGISLATION ON LAW AND PROCEDURE, PART II

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1977 LEGISLATION AFFECTING CRIMINAL LAW AND PROCEDURE

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PART II: Changes effective October 1, 1977, and later

This is the second in a series of memoranda summarizing acts of the 1977 General Assembly affecting criminal law and procedure. This publication concerns acts that go into effect on or after October 1, 1977. For a discussion of legislation that became effective before that date, see the memorandum distributed in August 1977.

A few matters that are effective after October 1 are not included here. The legislation concerning evidence in rape cases, which is effective next January, seemed worthy of a separate later memo. We have not yet decided what to do about the speedy-trial (effective October 1, 1978) and the trial and appellate procedure (July 1, 1978) acts; it may be that conferences and workshops will provide enough information that no memoranda are needed.

As in the first memorandum, the last part of the text of this memo is a discussion of legislation relating to corrections. That portion was written by Steve Clarke, and questions about it should be addressed to him.

The text of many of the statutory changes has been reproduced at the end of this memorandum. Old language that has not been repealed is in standard type, portions repealed are struck through, and new provisions are in italics. An asterisk next to a subheading in the memorandum indicates that the text of that change may be found at the back of the memo.

This publication is issued occasionally by the Institute of Government. An issue is distributed to those of the following groups to whom its subject is of interest: sheriffs, general law enforcement officers, special-purpose law enforcement officers, police attorneys, judges, clerks, district attorneys, public defenders, adult correction officers, juvenile correction personnel, jailers, and criminal justice trainers. The upper left-hand corner lists those to whom this issue was distributed and indicates a topic heading for this issue, to be used in filing. Comments, suggestions for future issues, and additions or changes to the mailing lists should be sent to: Editor, Administration of Justice Memoranda, Institute of Government, P.O. Box 990, Chapel Hill, N.C. 27514.

NEW AND AMENDED CRIMES

* Possession of stolen goods (G.S. 14-71.1). The language of this new statute is the same as G.S. 14-71 except that it covers possessing instead of receiving stolen goods. Warrant and indictment forms for receiving stolen goods should be sufficient for this new offense if the word "receive" is replaced with "possess." (Some forms may not include the language added in 1975, which allows conviction of receiving if the defendant had "reasonable grounds to believe" the goods were stolen. If not, that change should be made. The new possession statute is worded the same way.)

Probably it would never be preferable to charge receiving instead of possession. The punishment is the same for the two offenses, and possession should always be easier to prove. Whether possession of stolen goods is a misdemeanor or felony is determined in the same manner as for receiving; if the goods are worth over $200 or were taken by breaking or entering or if the stolen item was a firearm, etc., the crime is a felony; otherwise it is a misdemeanor.

* Alteration or removal of serial numbers (G.S. 14-160.1). This new offense seems self-explanatory. The difficulty in proving it should come in showing that the alteration, destruction, etc., was with the intent to conceal or misrepresent the identity of the property. It would seem that usually if there was enough evidence to show such an intent it would be just as possible to charge receiving or larceny. Note that subsection (b) makes it unlawful to knowingly sell, buy, or possess property with altered serial numbers. It is not clear what the "knowingly" applies to--whether it must be shown simply that the defendant knew that the numbers had been altered, or whether the proof must establish that he knew that the numbers had been altered with intent to conceal the true identity.

* Possession of firearm by felon (G.S. 14-415.1). The revision of the Felony Firearms Act makes its restrictions on possession of handguns applicable to those convicted of felony drug law violations or the common law crimes of robbery or maim. It also makes the statute apply to those convicted in other states or in the federal courts of crimes substantially similar to the North Carolina felonies listed in the statute. Although the previous version of the statute said that it covered non-North Carolina convictions, it could not have that effect, since it also said that the conviction had to be for one of the specified Chapter 14 offenses rather than just for similar offenses.

The only other 1977 amendment to the statute also prohibits possession of weapons of mass death and destruction as defined in G.S. 14-288.8, which most importantly includes machine guns and sawed-off shotguns.

The legislature rejected an effort to close the loophole that allows the convicted felon to possess a handgun at home or in his place of business.

* Carrying gun into assembly (G.S. 14-269.3). A few things should be noted about this new statute. It covers only guns, rifles, and pistols

and not the other dangerous weapons (like knives) that are covered by the concealed-weapon statute, but this offense applies even if the gun is openly displayed. An assembly for which an admission fee is charged would include theaters, rock concerts, fairs, dances, football games, night clubs, and many other places. The statute also covers places where intoxicating liquor is sold and consumed even if no admission is charged to that place. Intoxicating liquor is the broad term that includes any beverage with over one-half of 1 per cent alcohol. If a restaurant or club has only a brown-bagging permit, it is not a place where intoxicating liquor is sold, since that permit only allows possession and consumption, not sale. But if the restaurant or club also had a permit to sell beer, it is covered by this statute. Finally, note that this offense is a two-year misdemeanor, whereas the concealed-weapon offense carries only a six-month punishment.

* Definition of safecracking (G.S. 14-89.1). Recent court cases have made it clear that unless explosives, drills, or tools are used to force open, attempt to force open, or pick the combination of a safe, the safecracking statute is not violated. The new version of the statute defines safecracking as the opening or entering of a safe (or the attempt to do the same) by the use of explosives, drills, or tools; or by the use of a stolen combination, key, etc.; or by the use of a stethoscope, electronic device, etc.; or by the use of any other safecracking implement. The definition of safecracking also includes removing a safe from the premises for the purpose of stealing or tampering with its contents.

* Breaking or damaging currency machines (G.S. 14-56.1, -56.2). The act reproduced here amends G.S. 14-56.1 (breaking into or opening coin-operated machines) and G.S. 14-56.2 (damaging coin-operated machines) to make them apply to currency-operated and currency-activated machines. It also makes a second conviction of G.S. 14-56.1 a felony punishable by up to ten years' imprisonment. In the rush to adjournment, the General Assembly enacted another law, Ch. 853 (S 827) (G.S. 14-56.3, effective on October 1, not reproduced in this memorandum), which similarly punishes a person who breaks into a currency-operated or currency-activated machine. Prosecutors will never want to charge under new G.S. 14-56.3 because any prohibited act under that law is covered by G.S. 14-56.1 and a previous conviction under G.S. 14-56.1 (enacted in 1963) will make the second conviction a felony under G.S. 14-56.1 but not under G.S. 14-56.3.

Corporate fraud (G.S. 14-254). The present version of this statute prohibits the misapplication of corporate funds with the intent to defraud any officer of the corporation. If all corporate officers are involved in misapplying corporate funds, the statute is not violated since none of them has been defrauded. Ch. 809 (S 659), effective on October 1, remedies this defect by defining the offense to include the intent to defraud any person, corporation, partnership, etc.

* Concealing birth of child (G.S. 14-46). This change was recommended by the Legislative Research Commission committee concerned with sex discrimination. The main purpose was to make the statute cover those who aid and abet someone other than the mother. The fact that the provision on homicide prosecution was deleted seems immaterial; that language apparently was unnecessary and such prosecutions should still be possible.

* Tampering with utility meter (G.S. 14-159.1). This new statute is so broadly written that subsection (a) apparently prohibits any kind of altering or tampering with a utility meter, such as painting it, regardless of whether it is done with an intent to cause an inaccurate reading. Let us hope that the statute will not be used that way, however.

CHANGES IN PUNISHMENT

* Minimum sentences for armed robbery (G.S. 14-87) and second-degree burglary (G.S. 14-52). These changes apply only to offenses committed on or after October 1. The poor wording of the first sentence of new subsection (b) in G.S. 14-52 might lead a defendant to argue that the seven-year sentence provision applies to first-degree burglary as well as second-degree, but the language should not have that effect. The punishment for first-degree burglary is unchanged; it remains life imprisonment, with no parole eligibility until 20 years have been served.

PROCEDURE

* Specific motion when defendant incompetent (G.S. 15A-1002). The amendment to this section provides that the party who makes a motion questioning the defendant's capacity to proceed must detail the specific conduct of the defendant that leads him to make the motion. The change is apparently aimed at reducing frivolous motions.

* Dismissal with leave (G.S. 15A-932). Unlike the nol pros with leave eliminated under Chapter 15A, a voluntary dismissal under G.S. 15A-931 apparently does not allow the prosecutor to reinstitute the same charge he dismissed (he must bring a new charge), and the statute of limitations is not tolled. This new statute provides for a limited form of the old nol pros with leave. A prosecutor may take a dismissal with leave only when the defendant has failed to appear at a criminal proceeding at which his attendance is required and the prosecutor believes that he cannot be readily found. The dismissal with leave results in removing the case from the court docket but all criminal process remains valid. The prosecutor may reinstitute the proceedings when the defendant is apprehended or when he believes apprehension is imminent. Although the law is silent on the issue, apparently the statute of limitations would be tolled (even though an express provision tolling the statute was deleted in the House), since the law provides that "all process outstanding retains its validity" and the prosecutor may "reinstitute" the proceedings when the defendant is found.

Lawyer's general entry into a criminal case (G.S. 15A-143). Formerly G.S. 15A-143 provided that a lawyer who made a general entry [i.e., not a limited entry under G.S. 15A-141(3)] into a criminal case

undertook to represent the defendant at all stages of the case in the division of the court in which it was being tried--district, superior, or appellate. Ch. 1117 (H 1373), effective on October 1, requires a lawyer who makes a general entry to represent the defendant at all stages of the case "until entry of final judgment, at the trial stage." The apparent result is that a lawyer who makes a general entry in a felony probable cause hearing or misdemeanor trial in district court undertakes to represent the defendant at the superior court trial but not on appeal to the appellate division. Of course, a judge has the authority under G.S. 15A-144 to allow a lawyer to withdraw from any stage of a criminal case upon a showing of good cause.

WHEN A DEFENDANT REQUESTS A PREARREST CHEMICAL TEST

Several issues are raised by a new subsection (i) of G.S. 20-16.2 (see the statutory text at the end of this memo).

First, the timing of the request for the test appears to be critical. If a person asks for a chemical test after the law enforcement officer has arrested him, the statute apparently does not apply and the officer should proceed as he usually does.

Second, what if a person makes a timely request and demands a blood test instead of a breath test? Since the statute does not expressly give a person the right to choose which test will be administered, G.S. 20-16.2(a) applies (it provides that the officer decides which test will be administered).

Third, if an officer fails to cause the administration of a chemical test when a person requests it before arrest, is a chemical test administered after arrest admissible in evidence? Assuming that the officer had probable cause to arrest, it appears under State v. Eubanks, 283 N.C. 556 (1973) (chemical test admissible despite arrest constitutionally valid but illegal by state statute), that the violation of G.S. 20-16.2(i) would not result in the exclusion of the chemical test. However, exclusion could result if a court found a legislative intent that a chemical test occurring after a violation of this law should be excluded in order to promote compliance with this law. See State v. Shadding, 17 N.C. App. 279, 282-83 (1973) (notification of right to call attorney to view chemical test procedure, "explicitly given by statute, would be meaningless if the breathalyzer results could be introduced into evidence despite non-compliance with the statute.")

NOTE: the following sections were written by Steve Clarke.

YOUTHFUL OFFENDERS

A bill drafted by the Department of Correction (Ch. 732, H 1183), effective October 1, 1977, rewrites and clarifies the law dealing with youthful offenders and committed youthful offenders. It repeals Article 3A of G.S. Ch. 148 and replaces it with a new Article 3B.

No guarantee of release in four years. Perhaps the most important change, from the point of view of the committed youthful offender ("CYO"), is the repeal of G.S. 148-49.8(c), which provided that a CYO "shall be paroled under supervision on or before the expiration of four years from the date of his commitment and may be discharged unconditionally before the expiration of the maximum term imposed." Although the language requiring parole in four years is quite clear, the Department of Correction for some time took the position that it could "disqualify" a CYO and thus terminate his right to parole in four years. It did so in reliance on G.S. 148-49.6, which provides that the Secretary may terminate the "segregation and treatment" of any CYO who has a bad influence on his fellow prisoners or fails to take advantage of treatment opportunities. Then the Attorney General ruled (opinion of November 24, 1976, to David L. Jones) that the right to parole in four years was not part of CYO "treatment," and in any case, taking the right away would require a complete judicial process to satisfy constitutional due process requirements. Ch. 732 ends the right to parole in four years for CYOs sentenced after its effective date. It also removes any authority to release a CYO unconditionally (i.e., without parole) before he serves his maximum sentence.

General provisions. Former G.S. 148-49.2 defined a "youthful offender" as a "person under the age of 21 at the time of conviction." Ch. 732 defines the term as "a person under 21 years of age in the custody of the Secretary of Correction," thus making it clear that the Department need not continue to handle prisoners as youthful offenders when they reach age 21 in its custody. A "committed youthful offender" is defined as one who has the benefit of possible early parole (described later in this section); this benefit apparently does not cease when the CYO becomes 21.

Treatment of youthful offenders. Ch. 732 requires the Secretary to house all youthful offenders (under present law, only committed youthful offenders are included) separately from older prisoners "[t]o the extent practicable in light of the needs of the youthful offenders and of the needs and resources of the prison system." It provides that when a youthful offender (now only CYOs are included) enters prison, he must receive a "classification study" in which information on his school and family life, personal traits, and criminal experience are gathered for use in planning his treatment program. Facilities and personnel for handling youthful offenders are to be specially suited for their needs. The Department of Human Resources is authorized to establish special facilities for youthful offenders (present law seems to limit this provision to CYOs) to be kept under the supervision of itself or the Department of Correction. Appropriate use of medical and psychiatric treatment is required. The Secretary of Human Resources may allow youthful offenders to leave their institutions briefly under prescribed conditions and may contract with other agencies to obtain services for them.

Sentencing as a CYO. Ch. 732 provides that when a person under 21 years of age is convicted of a crime punishable by imprisonment, the court may sentence him to the custody of the Secretary of Correction as a CYO. (The result of the CYO sentence is that the offender may be released

early, as described in the next subsection.) The act requires the court to fix a maximum prison term for the CYO that is not greater than the maximum legal penalty for the offense or 20 years, whichever is less; also, this maximum term must be at least one year if the maximum legal penalty is one year or more. (The upper limit of 20 years was not in the former law, G.S. 148-49.4.) The new law makes no mention of a minimum prison term for a CYO , but such a term imposed on a CYO is invalid (see, e.g., State v. Williams, 28 N.C. App. 320 (1976). The act provides that if an offender punishable by imprisonment is under 21, the court must either sentence him as a CYO or enter on the record a finding that he will not benefit from CYO treatment. (This provision simply incorporates the holding of State v. Mitchell, 24 N.C. App. 484 (1975), which held that when the judge fails to sentence as a CYO or make a "no benefit" finding, the case must be remanded for resentencing.)

Unlike the former law, the new law provides that when the court suspends a prison sentence and imposes probation, it "shall not" order commitment as a CYO, but if probation is later revoked while the offender is still under 21, the court may then commit him as a CYO.

Parole of a CYO. Like present G.S. 148-49.8(a), Ch. 732 will allow the Parole Commission to parole a CYO at any time after notice to the Secretary of Correction and allow him to recommend parole to the Commission. This possibility of early parole before serving any specific portion of the sentence (normally one-fourth; see G.S. 148-58, -60.2, -60.3) will then be the only legal factor distinguishing a CYO from any other youthful offender. As noted earlier, this possibility of early parole apparently will not terminate when the CYO reaches age 21.

Revocation of CYO parole. Ch. 732 provides that parole of a CYO may be revoked, just like any other parole, according to G.S. Ch. 148, Art. 4; therefore in 1978 parole of a CYO will become subject to the provisions of the Trial and Appellate Procedure Act. Ch. 732 also directs that the CYO receive credit toward his unserved active sentence just as if he had "been paroled pursuant to Article 4"; the effect of this provision will become unclear when the Trial and Appellate Procedure Act (Ch. 711) takes effect (July 1, 1978), since that act will repeal the parole time credit provision of Article 4 (G.S. 148-58.1).

RESTITUTION

Ch. 614 (H 426), effective October 1, 1977, and applicable to crimes committed on or after that date, changes the law relating to restitution ordered by a sentencing court and make restitution a possible condition of parole. (S 812, which would have provided for compensating victims of crime from state funds, died in committee.)

Definitions. The bill defines "restitution" as "compensation for damage or loss [caused by a crime] as could ordinarily be recovered

by an aggrieved party in a civil action," presumably in the form of money, and "reparation" as "the performing of community services, volunteer work" and other things that "aid the defendant in his rehabilitation."

Restitution and reparation as probation condition. Restitution, in the sense of money payments by the offender to the victim, is authorized as a condition of probation by G.S. 15-199(10). Ch. 614 amends this statute (1) to allow the court to order restitution or reparation to an aggrieved party named by the court for loss caused by the offense, (2) to require the court to take the defendant's resources into account when fixing the amount of restitution, (3) to limit the amount to "that supported by the record," and (4) to prohibit restitution to a government agency (e.g., a police department) except for "particular. . . loss to it over and above its normal operating costs." [The last two restrictions are based on Shore v. Edmisten, 290 N.C. 628 (1976), in which the North Carolina Supreme Court held that (1) the amount of restitution must be supported by the record, and (2) a defendant could be required to reimburse a police agency, as a condition of probation, for any sum paid by its agents to the defendant to obtain evidence of a crime, but not to pay for costs of general law enforcement.] A conforming change was made to G.S. 15-197.1 regarding special probation ("split sentencing").

Restitution incorporated in plea-bargaining. Ch. 614 amends G.S. 15A-1021(c) to allow consideration of restitution or reparation by the defendant in plea-bargaining, a common practice already allowed by the law.

Restitution ordered by court as condition of work release and parole. Ch. 614 allows the sentencing court to order restitution or reparation as a condition of work release or parole, if the offender receives an active sentence. The Parole Commission will have to "implement the order of the sentencing court" if it paroles the offender--i.e., order restitution or reparation as a condition of parole. Confusing language in the act seems to require the Commission to "implement" such an order only when restitution or reparation is imposed "pursuant to a plea agreement made under the provisions of G.S. 15A-1021." The sentencing judge will also have to make a nonbinding recommendation to the Parole Commission that it impose restitution or reparation as a condition of parole.

Does this provision violate the principle of separation of powers? The North Carolina Constitution (Art. I, sec. 6) makes the legislative, executive, and judicial powers "forever separate and distinct from each other." Since the Department of Correction and the Parole Commission are given control of work release and parole by statute (G.S. 143B-266, G.S. 148-33.1), it might be thought that to have a court set any specific condition of work release or parole is judicial invasion of the executive sphere. The Governor once had the power to grant parole (conditional release from imprisonment) as part of his constitutional power to pardon and commute [In re Williams, 149 N.C. 436 (1908)], but lost it through a 1954 amendment to what is now Article III, sec. 5, of the North Carolina Constitution.* The Constitution does not specifically establish a Parole Commission or Department of Correction; it authorizes the General Assembly

(Art. XI, sec. 3) to establish "[s]uch charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require." This general authority would not seem to prohibit the legislature's allowing the courts to set some conditions of work release and parole, even though this practice is new in North Carolina.

Ch. 614 will require the Secretary of Correction and the Parole Commission to issue regulations by which (1) a prisoner must be given notice and an opportunity to be heard if restitution or reparation is being considered as a condition of work release or parole, and (2) facts must be obtained to supplement the sentencing court's order. If the Parole Commission finds the court's restitution order "cannot reasonably be implemented" (for example, because of the prisoner's "disability"), it will have to say so in writing and forward its statement to the sentencing court. The sentencing court will then have to consider the Commission's statement "and shall issue such further orders as it may deem necessary." The reason for these provisions is clear: When a defendant has been in prison, his financial ability changes (usually for the worse), and the victim's situation may also change. However, the hearing and notice requirements may mean that restitution as a condition of work release or parole will be rare.

REVOCATION OF PROBATION

Ch. 364 (S 440), effective on October 1, 1977, amends G.S. 15-199(13) to prohibit revocation of probation solely because the offender was convicted of a misdemeanor punishable by 30 days' imprisonment or less. The odd result is that probation cannot be revoked solely for a simple assault [G.S. 14-33(a)] conviction, but can be revoked solely for most traffic offenses since they are punishable by 60 days' imprisonment [G.S. 20-176(b)].

*Under Art. III, sec. 6, of the Constitution of 1868, the North Carolina Supreme Court held in 1946 that a trial court could not impose a "split sentence"--i.e., a prison term partly active and partly suspended under certain conditions--because this was an "anticipatory parole," and parole was the exclusive constitutional prerogative of the Governor [State v. Lewis, 226 N.C. 249 (1946)]. In 1954, the Governor's pardoning power was amended by this addition: "The terms reprieves, commutations and pardons shall not include paroles." The 1954 amendment also included a provision--now repealed--specifically authorizing creation of a Board of Paroles. In 1971, the State Supreme Court held that giving paroling power to the Board of Paroles did not deprive the judiciary of rightful jurisdiction and (in dictum) that this would be true even without the constitutional provision explicitly authorizing the Board of Paroles [Jernigan v. State, 10 N.C. App. 562 (1971), aff'd 279 N.C. 556 (1971)]. The Jernigan holding does not seem to imply that granting the courts some authority over parole would be invalid.

STATUTES

NOTE: In this compilation of statutes, portions typed in regular type (regular type) are unchanged; portions typed in italic type *(italic type)* are new; and portions struck through (~~struck-through~~) have been repealed.

§ 14-46. Concealing birth of child.--If any person shall, by secretly burying or otherwise disposing of the dead body of a newborn child, endeavor to conceal the birth of such child, such person shall be guilty of a felony any punished by fine or imprisonment, or both, ~~such-imprisonment-to-be-in the-county-jail-or-State's-prison,-at~~ *in* the discretion of the court~~:--Provided that-the-imprisonment-in-the-State's-prison-shall-in-no-case-exceed-a-term of-ten-years:--Provided-further,-that-nothing-in-this-section-shall-be-construed to-prevent-the-mother,-who-may-be-guilty-of-the-homicide-of-her-child,-from being-prosecuted-and-punished-for-the-same-according-to-the-principles-of-the common-law.~~ Any person aiding, counseling or abetting any ~~woman~~ *other person* in concealing the birth of ~~her~~ *a* child *in violation of this statute* shall be guilty of a misdemeanor.

[Ch. 577 (S 354), effective October 1, 1977]

§ 14-52. Punishment for burglary.--*(a)* Any person convicted of ~~the crime-of~~ burglary in the first degree shall be imprisoned for life in the State's prison. Any one ~~so~~ convicted of *the crime of* burglary in the second degree shall ~~suffer-imprisonment-in-the-State's-prison-for-life,-or for-a-term-of-years,-in-the-discretion-of-the-court~~ *be punished by imprisonment for not less than seven years nor more than life imprisonment in the State's prison.*

(b) Any person who has been convicted of a violation of G.S. 14-52(a) shall serve the first seven years of his sentence without benefit of parole, probation, suspended sentence, or any other judicial or administrative procedure except such good time as may be allowed as a result of good behavior, whereby the period of actual incarceration of the person sentenced is reduced to a period of less than seven years. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentences being served by the person sentenced hereunder.

Nothwithstanding any other provision of law, neither the Parole Commission nor any other agency having responsibility for release of inmates prior to expiration of sentences shall authorize the release of an inmate sentenced under this section prior to his having been incarcerated for seven years, except such time as may be allowed for good behavior.

[Ch. 871 (S 318), effective October 1, 1977]

§ 14-56.1. Breaking into or forcibly opening coin~~-operated~~ *or currency-operated* machines.--Any person who forcibly breaks into, or by the unauthorized use of *a* key~~,-keys,~~ or other instrument~~,~~ opens, any coin~~-operated~~ *or currency-operated* ~~vending~~ machine~~,-coin-activated-machine-or-device,-or-coin-operated telephone-or-telephone-coin-receptacle,~~ with intent to steal any property or moneys therein~~,~~ shall be guilty of a misdemeanor ~~and-shall,-upon-conviction be-fined-or-imprisoned~~, *punishable by fine or imprisonment* or both~~,~~ in the discretion of the court, *but if such person has previously been convicted of violating this section, such person shall be guilty of a felony. The term "coin- or currency-operated machine" shall mean any coin- or currency-operated vending machine, pay telephone, telephone coin or currency receptacle, or other coin- or currency-activated machine or device.*

§ 14-56.2. <u>Damaging or destroying coin-~~operated~~ *or currency-operated* machine~~s~~</u>.--Any person who shall wil~~l~~fully and maliciously damage or destroy any coin-~~operated~~ *or currency-operated* ~~vending~~ machine~~,--coin-activated machine-or-device,--or-coin-operated-telephone-or-telephone-coin-receptacle~~ shall be guilty of a misdemeanor ~~and-shall,--upon-conviction,--be-fined-or imprisoned,~~ *punishable by a fine or imprisonment* or both~~,~~ in the discretion of the court. *The term "coin- or currency-operated machine" shall be defined as set out in G.S. 14-56.1.*

Uncodified Section

There shall be posted on the machines referred to in G.S. 14-56.1 a decal stating that it is a crime to break into vending machines, and that a second offense is a felony.

[Ch. 723 (H 1406), effective October 1, 1977]

§ 14-71.1. <u>Possessing stolen goods</u>.--If any person shall possess any chattel, property, money, valuable security or other thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing or having reasonable grounds to believe the same to have been feloniously stolen or taken, he shall be guilty of a criminal offense, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security or other thing, shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any such possessor may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession or in any county in which the thief may be tried,

in the same manner as such possessor may be dealt with, indicted, tried and punished in the county where he actually possessed such chattel, money, security, or other thing; and such possessor shall be punished as one convicted of larceny.

§ 14-72. Larceny of property; receiving stolen goods *or possessing stolen goods* not exceeding two hundred dollars in value.--(a) Except as provided in subsections (b) and (c) below, the larceny of property, ~~or~~ the receiving of stolen goods knowing them to be stolen *or the possessing of stolen goods knowing them to be stolen,* of the value of not more than two hundred dollars ($200.00) is a misdemeanor punishable under G.S. 14-3(a). In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.

[No change is made in subsection (b)]

(c) *The crime of possessing stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony or* the crime of receiving stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony, without regard to the value of the property in question.

[Ch. 978 (H 795), effective October 1, 1977]

§ 14-87. Robbery with firearms or other dangerous weapons.--(a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business,

residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not less than ~~five~~ *seven* years nor more than life imprisonment in the State's prison.

[Subsection (b) is unchanged]

(c) Any person who has been convicted of a violation of G.S. 14-87(a) shall serve the first seven years of his sentence without benefit of parole, probation, suspended sentence, or any other judicial or administrative procedure except such time as may be allowed as a result of good behavior, whereby the period of actual incarceration of the person sentenced is reduced to a period of less than seven years. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentences being served by the person sentenced hereunder.

Nothwithstanding any other provision of law, neither the Parole Commission nor any other agency having responsibility for release of inmates prior to expiration of sentences shall authorize the release of an inmate sentenced under this section prior to his having been incarcerated for seven years except such time as may be allowed as a result of good behavior.

[Ch. 871 (S 318), effective October 1, 1977]

§ 14-89.1. Safecracking ~~and-safe-robbery~~.~~--Any-person-who-shall,-by the-use-of-explosives,-drills,-or-tools,-unlawfully-force-open-or-attempt to-force-open-or-"pick"-the-combination-of-a-safe-or-vault-used-for-storing money-or-other-valuables,-shall,-upon-conviction-thereof,-receive-a~~

~~sentence,-in-the-discretion-of-the-trial-judge,-of-not-less-than-two-years nor-more-than-30-years'-imprisonment-in-the-State-penitentiary.~~ *(a) A person is guilty of safecracking if he unlawfully opens, enters, or attempts to open or enter a safe or vault:*

(1) by the use of explosives, drills, or tools; or

(2) through the use of a stolen combination, key, electronic device or other fraudulently acquired implement or means; or

(3) through the use of a master key, duplicate key or device made or obtained in an unauthorized manner, stethoscope or other listening device, electronic device used for unauthorized entry in a safe or vault, or other surreptitious means or

(4) by the use of any other safecracking implement or means.

(b) A person is also guilty of safecracking if he unlawfully removes from its premises a safe or vault for the purpose of stealing, tampering with, or ascertaining its contents.

(c) Safecracking is a felony punishable by imprisonment for a term of not less than two nor more than 30 years.

[Ch. 1106 (H 1408), effective October 1, 1977]

§ 14-159.1. Interfering with electric, gas or water meters; prima facie evidence of intent to alter, tamper with or bypass electric, gas or water meters; civil liability.--(a) It shall be unlawful for any unauthorized person to alter, tamper with or bypass a meter which has been installed for the purpose of measuring the use of electricity, gas or water or knowingly to use electricity, gas or water passing through any such tampered meter or use electricity, gas or water bypassing a meter provided by an electric,

gas or water supplier for the purpose of measuring and registering the quantity of electricity, gas or water consumed.

(b) Any meter or service entrance facility found to have been altered, tampered with, or bypassed in a manner that would cause such meter to inaccurately measure and register the electricity, gas or water to be diverted from the recording apparatus of the meter shall be <u>*prima facie*</u> *evidence of intent to violate and of the violation of this section by the person in whose name such meter is installed or the person or persons so using or receiving the benefits of such unmetered, unregistered or diverted electricity, gas or water.*

(c) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars ($500.00) or imprisoned not longer than two years, or both fined and imprisoned, in the discretion of the court.

(d) Whoever is found in a civil action to have violated any provision hereof shall be liable to the electric, gas or water supplier in triple the amount of losses and damages sustained or five hundred dollars ($500.00), whichever is greater.

(e) Nothing in this act shall be construed to apply to licensed contractors while performing usual and ordinary services in accordance with recognized customs and standards.

[Ch. 735 (H 1277), effective October 1, 1977]

§ 14-160.1. <u>*Alteration, destruction or removal of permanent identification marks from personal property*</u>*--(a) It shall be unlawful for any person to alter, deface, destroy or remove the permanent serial number, manufacturer's*

identification plate or other permanent, distinguishing number or identification mark from any item of personal property with the intent thereby to conceal or misrepresent the identity of said item.

(b) It shall be unlawful for any person knowingly to sell, buy or be in possession of any item of personal property, not his own, on which the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark has been altered, defaced, destroyed or removed for the purpose of concealing or misrepresenting the identity of said item.

(c) A violation of any of the provisions of this section shall be a misdemeanor, punishable on conviction thereof by imprisonment not to exceed two years or by a fine not to exceed one thousand dollars ($1,000) or both, in the discretion of the court.

(d) This section shall not in any way affect the provisions of G.S. 20-108, G.S. 20-109(a) or G.S. 20-109(b).

[Ch. 767 (H 432), effective October 1, 1977]

§ *14-269.3. Carrying weapons into assemblies and establishments where intoxicating liquors are sold and consumed.--(a) It shall be unlawful for any person to carry any gun, rifle, or pistol into any assembly where a fee has been charged for admission thereto, or into any establishment in which intoxicating liquors are sold and consumed. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court by fine or imprisonment or by both.*

(b) This section shall not apply to the following:

(1) A person exempted from the provisions of G.S. 14-269;

(2) The owner or lessee of the premises or business establishment;

(3) A person participating in the event, if he is carrying a gun, rifle, or pistol with the permission of the owner, lessee, or person or organization sponsoring the event; and

(4) A person registered or hired as a security guard by the owner, lessee, or person or organization sponsoring the event.

[Ch. 1016 (H 1002), effective October 1, 1977]

§ 14-415.1. Possession of firearms, etc., by felon prohibited.--(a) It shall be unlawful for any person who has been convicted ~~in-any-court-of-this State,-of-any-other-state-of-the-United-States,-or-of-the-United-States,-of feloniously-violating-any-provision-of-Articles-3,-4,-6,-7,-8,-10,-13,-14, 15,-17,-30,-33,-36,-36A,-52A,-or-53-of-Chapter-14-of-the-General-Statutes~~ *of any crime set out in subsection (b) of this section* to purchase, own, possess, or have in his custody, care, or control any handgun or other firearm with a barrel length less than 18 inches or an overall length of less than 26 inches, *or any weapon of mass death and destruction as defined in G.S. 14-288.8(c)*, within five years from the date of such conviction, or *the* unconditional discharge from a correctional institution, or termination of a suspended sentence, probation, or parole upon such conviction, whichever is later.

Every person violating the provisions of this section shall be guilty of a felony and shall be imprisoned for not more than five years in the State's prison or shall be fined an amount not exceeding five thousand dollars ($5,000), or both.

Nothing in this subsection would prohibit the right of any person to have possession of a firearm within his own home or on his lawful place of business.

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) felonious violations of Articles 3, 4, 6, 7, 8, 10, 13, 14, 15, 17, 30, 33, 36, 36A, 52A, or 53 of Chapter 14 of the General Statutes, or of Article 5 of Chapter 90 of the General Statutes;

(2) common law robbery and common law maim; and

(3) violations of criminal laws of other states or of the United States substantially similar to the crimes covered in subdivisions (1) and (2) which are punishable where committed by imprisonment for a term exceeding two years.

~~In-all-cases-where-the~~ *When a* person is charged under ~~the-provisions-of~~ this section, ~~the-record-or~~ records of prior convictions of any offense, whether in the courts ~~in~~ *of* this State, or in the courts of any other state or ~~in-any-court~~ of the United States shall be admissible in evidence~~,-but-only~~ for the purpose of proving ~~that-said-person-has-been-convicted-of-a-previous offense-the-punishment-for-which-may-be-more-than-two-years~~ *a violation of this section.* The term "conviction" is defined as a final judgment in any case ~~of-any-offense-having-a-maximum-permissible-penalty-of-more-than-two~~

years *in which felony punishment, or imprisonment for a term exceeding two years, as the case may be, is permissible,* without regard to the plea entered or to the sentence imposed. A judgment of a conviction or a plea of guilty to such an offense certified to a superior court judge of this State from the custodian of records of any state or federal court under the same name as that by which the defendant is charged shall be prima facie evidence that the identity of such person is the same as the defendant so charged and shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

[Ch. 1105 (H 1404), effective October 1, 1977]

§ 15A-932. Dismissal with leave when defendant fails to appear and cannot be readily found.--(a) When a defendant fails to appear at any criminal proceeding at which his attendance is required and the prosecutor believes that the defendant cannot be readily found, the prosecutor may enter a dismissal with leave for nonappearance under this section.

(b) Dismissal with leave for nonappearance results in removal of the case from the docket of the court, but all process outstanding retains its validity, and all necessary actions to apprehend the defendant,

investigate the case, or otherwise further its prosecution may be taken, including the issuance of nontestimonial identification orders, search warrants, new process, initiation of extradition proceedings, and the like.

(c) The prosecutor may enter the dismissal with leave for nonappearance orally in open court or by filing the dismissal in writing with the clerk. If the dismissal for nonappearance is entered orally, the clerk must note the nature of the dismissal in the case records.

(d) Upon apprehension of the defendant, or in the discretion of the prosecutor when he believes apprehension is imminent, the prosecutor may reinstitute the proceedings by filing written notice with the clerk.

[Ch. 777 (H.B. 1372) effective October 1, 1977]

§ 15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.--(a) The question of the capacity of the defendant to proceed may be raised at any time *on motion* by the prosecutor, the defendant, the defense counsel, or the court ~~on its own motion~~. *The motion shall detail the specific conduct that leads the moving party to question the defendant's capacity to proceed.*

[Subsections (b) and (c) are unchanged]

[Ch. 860 (S 841) effective October 1, 1977]

§ 20-16.2. Mandatory revocation of license in event of refusal to submit to chemical tests.--[Subsections (a) through (h) unchanged]

(i) Notwithstanding any other provision of this Chapter, a person, who is stopped, detained or questioned by a law enforcement officer having

reasonable grounds to believe that the person has been driving or operating a motor vehicle on a highway or public vehicular area while under the influence of intoxicating liquor, may request and the law enforcement officer shall cause the administration of the chemical tests provided for in this section prior to the person's arrest for violating any provision of G.S. 20-138. Prior to the administration of chemical tests under this subsection, the person who is stopped, detained or questioned shall sign a form, to be supplied by the Division, confirming his request. The tests provided for in this subsection shall be administered under the same conditions as are provided in this section for the administration of chemical tests after arrest. The results of the tests administered under this subsection may be used in evidence in the trial of a charge arising out of the occurrence.

[Ch. 812 (S 784), effective October 1, 1977]

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