ADMINISTRATION OF JUSTICE memoranda

INSTITUTE OF GOVERNMENT University of North Carolina at Chapel Hill

Topic: Drunkenness

This issue distributed to: District Attorneys, District Court Judges, Sheriffs, Police Chiefs, Clerks of Court, Magistrates and Special ABC Personnel

September 1978

No. 78/12

THE NEW LAW ON PUBLIC DRUNKENNESS

by Michael Crowell

The 1978 General Assembly enacted the Attorney General's proposal for handling public drunks, repealing the criminal offense of public drunkenness as of October 1 and replacing it with a new scheme of assistance and commitment. The legislation originated as House Bill 802 in 1977 and was enacted as Chapter 1134 of the 1977 Session Laws. This memorandum will provide background on the passage of the act and offer suggestions for its implementation, including forms to be used. The text of the new statutes is reproduced at the end of the memorandum.

The new law has five basic parts, each of which will be discussed below. These are: (1) repeal of G.S. 14-335, the crime of public drunkenness, and a prohibition against any local government adopting an ordinance punishing simple public drunkenness; (2) enactment of a new crime of drunk and disruptive, to give law enforcement officers arrest authority when the drunk is difficult to handle; (3) authorization for law enforcement officers and others hired specifically for this purpose to assist, without arresting, public drunks who are not disruptive, including the authority to take to shelters or detox centers--or to the jail for drying out if no other place is available; (4) provisions for both short-term (30 days) and long-term (180 days) court-ordered treatment of drunks who are alcoholics, which provisions supplement rather than replace existing involuntary commitment laws; and (5) amendment of the bail statute to allow intoxication to be considered in determining the conditions of pretrial release.

I. BACKGROUND

The problem of public drunkenness. For the last dozen years there has been agitation in North Carolina and throughout the country to find some better way to deal with public drunks. Drunkenness has accounted for up to a quarter of the arrests made in the country, but most of the people taken to jail are 40-50 year old, homeless, unskilled men who are alcoholics with little or no control over their drinking. Putting them in jail for a few days does nothing to solve their drinking problems and they get arrested time and time again. In North Carolina, drunkenness arrests have averaged about 50,000 a year.

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. Listed above are those to whom this issue was distributed and 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, North Carolina 27514.

Several events in 1966 and 1967 sparked the interest in change. First, in a case from Durham, the Fourth Circuit Court of Appeals held it cruel and unusual to punish Joe Driver, a derelict alcoholic with several hundred drunkenness arrests, for what the court considered an involuntary act of being drunk in public. Driver v. Hinnant, 356 F.2d 761. The federal appeals court for the District of Columbia made a similar ruling the same year, Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966). Then, the President's Crime Commission in its report published in 1967 singled out drunkenness as the "victimless" crime that used the most police and court time, up to two million arrests a year. The commission offered a promising alternative to arresting drunks: if they were taken to a detoxification center, like the one recently opened in St. Louis, instead of jail, they would get more help for their real problem, alcoholism, and might end up on the street less often.

In 1968 the United States Supreme Court in Powell v. Texas, 392 U.S. 514, restored the suspect drunkenness statutes when it rejected the arguments that had prevailed in Driver and Easter. However, the justices were narrowly divided and emphasized that they were concerned about making arrest unconstitutional when so few communities had any other place to take the derelict alcoholic. In any event, the momentum toward decriminalization had begun and was not particularly slowed by the Court's decision.

Legislation elsewhere. A number of organizations have endorsed the detoxification approach to public drunkenness. Generally the scheme favored is that incorporated in the uniform act of the National Conference of Commissioners of Uniform State Laws, an act providing for repeal of the drunkenness offense, enactment of new authority for officers to assist drunks, revision of commitment laws for alcoholics, and reorganization of state alcoholism programs. The American Bar Association and the National Institute of Mental Health are among those who have endorsed this approach. In the last decade approximately two-thirds of the states have enacted legislation on the subject, with about a third of those closely following the uniform act. Congress supplements its alcoholism grants (Hughes funds) to states that repeal the drunkenness crime. (It will take a year, however, before any additional federal money reaches North Carolina.)

Earlier North Carolina legislation. Following the Driver decision, the General Assembly enacted G.S. 122-65.6 through -65.9 to allow a person charged with public drunkenness to plead alcoholism as a defense and avoid criminal punishment. That alternative has been infrequently used since a successful alcoholism defense subjects a person to court-ordered treatment for up to two years rather than the maximum 20 days sentence for the crime. These provisions are repealed by the new law.

Bills repealing the drunkenness crime altogether have been introduced in each session of the General Assembly for the last decade. Though not willing to go that far, the legislature in 1973 enacted G.S. 14-335.1, authorizing officers to take drunks home or to treatment facilities rather than arresting. Some district court judges have held this statute, which is also repealed by the new law, to be an unconstitutional delegation of legislative authority because it gives the officer no direction on which drunks to arrest and which to assist.

The Attorney General's Committee. In late 1975 Attorney General Rufus Edmisten appointed a committee to study the problem of public drunkenness and recommend legislation. That committee, chaired by Carlos Murray, Jr., consisted of judges, physicians, attorneys, businessmen, educators, state and local government officials, law enforcement officers, and other citizens. The legislation enacted this year is essentially what the committee proposed. It might be useful in understanding some parts of the legislation to realize that most of the committee's work was done in subcommittee--for example, there were separate subcommittees on law enforcement, on treatment, and on funding--and the final proposal is an amalgamation of the views of the different subcommittees. Sometimes those views were not wholly compatible.

The Attorney General's Committee also recommended revision of the liquor taxation laws to provide additional state money to implement its proposal, but that legislation never made any progress in the General Assembly and no additional state funding was provided.

II. REPEAL OF THE DRUNKENNESS CRIME

Chapter 1134 repeals both G.S. 14-335 (public drunkenness) and G.S. 14-334 (drunk and disorderly--a vague statute which has been used only infrequently since the enactment of the more specific disorderly conduct provisions in G.S. 14-288.4). The new G.S. 14-447 provides that no person may be prosecuted solely for being intoxicated in public, which eliminates authority for cities and counties to adopt public drunkenness ordinances.

As mentioned earlier, various other statutes related to public drunkenness are also repealed: G.S. 14-335.1 (detention of public drunks) and G.S. 122-65.6 through -65.9 (chronic alcoholics).

III. DRUNK AND DISRUPTIVE

Elements of the crime. New G.S. 14-444 makes it unlawful to be intoxicated and disruptive in a public place. The definition of "intoxicated" in G.S. 14-443 is essentially the same as what the North Carolina appellate courts have used for "drunkenness" under the public drunkenness statute, meaning a more helpless condition than under the influence. Public place is also defined in G.S. 14-443, being "a place which is open to the public, whether it is publicly or privately owned." This definition establishes that the law covers bars, private parking lots and similar places. An automobile on a public street would also be a public place, as would the yard of a private home if the drunkenness were plainly visible to passers-by. A person inside his own home or the home of another would not be in a public place.

The third element of the new crime is that the person be disruptive, which includes various kinds of conduct listed in G.S. 14-444(a). Those activities generally involve some sort of public nuisance such as lying across a sidewalk or street, grabbing or pushing others, yelling at people or cursing them, or begging. If a person is both intoxicated and disruptive in one of those ways, and he is in a public place, he has committed a misdemeanor punishable by a fine of not more than $50 or imprisonment for not more than 30 days.

Procedures. Virtually all arrests for this crime will be without a warrant and the officer should follow the usual procedure of taking the person to a magistrate for the issuance of a magistrate's order. A form for the drunk and disruptive charge is included at the end of this memo, following the style of the Institute's Arrest Warrant Forms pamphlets.

Although drunk and disruptive is a crime which would normally come within a magistrate's guilty plea jurisdiction, G.S. 14-444(b) specifies that a magistrate may not accept a plea. Although most people now being arrested for public drunkenness might well qualify for a drunk and disruptive arrest, to do so would overwhelm the district courts. This should be a strong incentive for officers not to make many arrests for this offense. The charge should be reserved for cases where the drunk is creating a disturbance and is too unruly to handle in any way other than arrest.

Alcoholism defense. G.S. 14-445 makes it a defense to the charge of drunk and disruptive that the person is an alcoholic. Alcoholism is defined in G.S. 14-443 as "the state of a person who habitually lacks self-control as to the use of intoxicating liquor, or uses intoxicating liquor to the extent that his health is substantially impaired or endangered or his social or economic function is substantially impaired." The original bill contained a presumption of alcoholism if the person had a certain number of convictions for public drunkenness within the last year, but the legislature removed those provisions. It would seem, however, that several appearances drunk in public within several months--either being arrested or assisted--would be particularly strong and relevant evidence of alcoholism.

Subsection (b) of G.S. 14-445 may create problems. That subsection requires the district court judge to consider the defense of alcoholism even if the defendant does not raise it. Such a practice would seem acceptable if the defendant stands silent or fails to object to the defense, but due process might be abridged or the sixth amendment right to counsel denied if the defendant or his attorney affirmatively refuses the defense and the judge still insists on it. A successful alcoholism defense exposes the defendant to a potential 30-day commitment (see below).

If the defense of alcoholism is to be considered, the statute authorizes the judge to request information from an alcoholism court counselor or other person with information about the defendant's drinking history. This "information" will need to be taken as sworn testimony to be considered by the judge in making his determination. If the counselor is part of an alcoholism program directly or indirectly receiving federal funds it will be necessary to consider the federal regulations on confidentiality of alcohol patient records and either obtain the person's consent for the release of information or have the judge put his request in the form of a court order.

If the defendant is found not guilty by reason of alcoholism, the district court may immediately determine whether he is subject to the short-term treatment discussed below or retain jurisdiction over him for

up to 15 days to schedule a hearing on that question. There is no provision for keeping the alleged alcoholic in custody during the 15-day period before the hearing. If the defendant is simply found not guilty, not based on the defense of alcoholism, no further action toward commitment is possible.

If the defendant is found guilty of being drunk and disruptive, the judge has the same authority to suspend the sentence as with any other crime, including making a condition of the suspension that the defendant submit himself to treatment for a certain period of time.

"Unarrest" and citation. G.S. 14-447(b) says that if the officer makes an arrest for drunk and disruptive and then decides that the defendant could be safely taken to a shelter or detox facility, the officer can "unarrest" the defendant and give him a citation for the drunk and disruptive crime. This provision is in apparent conflict with G.S. 15A-501(2) which requires the officer to take any person he has arrested to a magistrate without unnecessary delay. However, under traditional rules of statutory construction the more recently enacted G.S. 14-447(b) "unarrest" provision would govern.

IV. ASSISTANCE WITHOUT ARREST

Authority to assist. The heart of the new law is the provision for aiding the nondisruptive public drunk without arresting him. G.S. 122-65.11 empowers a law enforcement officer to assist a person found intoxicated in public, with "intoxicated" and "public" being defined the same as for the drunk and disruptive statute (see above). The kind of assistance to be provided depends on the person's condition. If he is merely intoxicated, he may be taken home or to the home of anyone else willing to take him in. The statute also allows the officer to "direct" the drunk to those places, which would mean letting a friend drive him home or having a taxi or someone else carry him. These provisions are not likely to be used often.

If the person is not only intoxicated but is also in need of food, clothing of shelter--the last being the most likely--the officer may direct or transport him to a public or private "shelter facility" approved by the Department of Human Resources. The statute does not further define shelter facility, but the Attorney General's Committee had in mind what is known as a "social setting" or "non-medical" detoxification center, such as the Seventh Street Center in Charlotte. The emphasis is on drying out the patient, providing him with the necessary medication plus good food and a bed, but relying on referrals for medical care and real treatment of the alcoholism. This, the simplest form of detoxification center, can provide what is needed by most of those now arrested for public drunkenness. And it can cost less than a jail.

With no state appropriation to implement the act, the burden of providing shelter facilities will be on local governments. There are only about half a dozen social-setting detox centers in the state now, though many localities have either inpatient medical detoxification programs in hospitals (which are expensive) or outpatient programs (typically these are available only during weekday working hours). The Department of Human Resources has already estimated in its state plan for alcohol

abuse that 260 more social setting detox beds are needed at a cost of over two million dollars. A request for these funds will go to the next General Assembly, but not all the money will necessarily be forthcoming and local governments should prepare to make their contribution.

Providing medical care. If the intoxicated person is in need of immediate medical attention, which should not be often, the officer is authorized to take him to a community mental health center, hospital or physician's office, if any of those places are equipped and willing to accept him, or to any other health care facility approved by the Department of Human Resources. The legislation certainly does not anticipate new places being built for this purpose. Officers should simply continue to follow whatever present procedure they have for handling drunks who need medical care. This legislation does not require any facility which is not now accepting drunks to accept them.

Taking to jail. The final choice the officer has is to take the drunk to the local jail, still without arresting him. G.S. 122-65.13 provides that this may be done only if the person needs food, clothing or shelter, but does not need immediate medical attention, and there is no other place readily available to take him. This section was added to allow the jail to be used as a last resort when a community has no shelter or detox center. It was expected that the jail would be used regularly only in the rural areas of the state where it would be economically infeasible to build a detox center. The original bill would have allowed the jails to be used for this purpose for only a year, but that limitation was removed by the legislature.

New forms. At the end of this memorandum are several forms suggested for use when an intoxicated person is assisted without arrest. In each case, the form consists of a statement by the officer that he found the person in the condition required by the statute, and a statement by the facility accepting him verifying that conclusion. It is suggested that two copies of each form be completed, one for the officer and one for the facility. It might be wise to complete a third copy in case the intoxicated person wants one. The statute does not require that the drunk be taken before a magistrate for verification of his condition, thus the form would be completed by the officer and the person accepting the drunk.

Legal authority for assistance. Someone may challenge the legality of this authority to assist without arresting. There is virtually no case law on the question; the two cases cited most frequently as supporting the proposition that an officer can provide such assistance are Forsythe v. Ivey, 162 Miss. 471, 139 So. 615 (1932) and Orvis v. Brickman, 196 F.2d 762 (D.C. Cir. 1952). The National Conference of Commissioners of Uniform State Laws and the various states which have enacted some form of the uniform act have felt that officers could be given such authority, but so far no challenge has been made. Perhaps the strongest argument in support of this procedure is that it is not much different from other kinds of assistance officers perform all the time, such as helping heart attack and accident victims. If an officer can provide protective custody to someone who is incapacitated because of a heart attack, why can he not do the same for someone who is incapacitated because of drinking too much? To be certain of his legal authority, the

officer should consider "intoxicated" in this instance to mean "drunk to the point of not being able to take care of himself." That is the equivalent of "incapacitated" and no one seems to question the authority of an officer to aid someone who is incapacitated.

To further assure officers on this point, the Attorney General's Committee included subsection (b) of G.S. 122-65.11. That subsection says that an officer may use reasonable force to restrain the drunk when necessary and that he does not risk any civil or criminal liability for reasonable measures taken under authority of this legislation. It was not thought that adding this provision did anything to change the law of civil liability, but it was hoped that such language might discourage frivolous lawsuits. Of course, if the officer uses unreasonable force, restrains someone he has no good reason to believe is intoxicated, or otherwise abuses his authority, he would be liable for the harm done to that person.

Detention after being assisted. Once the intoxicated person is taken to the shelter or health care facility, he may be kept there until he becomes sober or a maximum of 24 hours. He must be released if he becomes sober before the end of 24 hours. The act only indirectly states that the person can be kept against his will, but that authority seems clear from G.S. 122-65.11(c). Once the person becomes sober, or at the end of 24 hours, he must be released unless he wishes to stay voluntarily. The only exception is when a magistrate or clerk has found probable cause that the person is an alcoholic in need of care and subject to court-ordered treatment for 30 days. If that probable cause finding has been made, the magistrate or clerk can order the person to be held for up to 96 hours longer for a district court hearing. (If the district court hearing cannot be arranged within 96 hours, the person must be released. If the appearance is made within 96 hours but the judge is unable to make his determination then and wishes more time, the alleged alcoholic can be required by the judge to return within 15 days to complete the hearing.) Any person could apply for the order; most likely it will be the assisting officer or someone working at the detox facility. Suggested forms for the application and order may be found at the end of the memorandum.

The section on use of the jail, G.S. 122-65.13, does not contain any reference to holding the drunk for the additional 96 hours. Apparently, if the drunk is taken to the jail--and remember he is not under arrest, he is only being "assisted"--he may be kept there only until he becomes sober or a maximum of 24 hours, but no longer. If someone wants to take the person home or to any other facility, the last sentence of G.S. 122-65.13 allows release from the jail at any time to a "relative or other person willing to be responsible for his care."

Papers needed by jail. Some jailers take the view that Chapter 15A prohibits holding a person in jail unless a magistrate or other judicial official has issued an order of commitment. G.S. 15A-521 actually does not go quite that far; what it says is that "every person charged with a crime and held in custody who has not been released pursuant to Article 26 of this Chapter, Bail, must be committed by a written order of the judicial official who conducted the initial appearance . . . ." If a person is to be held in jail for some other reason, such as safekeeping

by an officer awaiting a magistrate's arrival for an initial appearance, it is appropriate for the jailer to accept the person without a magistrate's order of commitment. The drunk who has been assisted without being arrested is in a similar situation; he is not a person charged with a crime and thus is not one of those persons for whom G.S. 15A-521 requires an order of commitment to be issued before he is accepted in the jail. G.S. 122-65.13 certainly grants authority for accepting the public drunk and the statute states that the jail employees do not run any additional risk of criminal or civil liability for accepting him. (As with all other residents of the jail, there is an obligation to determine whether the drunk needs medical attention and, if so, to provide it.) The form at the end of this memorandum should be used to be certain the jail has a written record of the reason for the person being there and who brought him there. And caution must be taken to see that the 24 hour maximum is not exceeded.

Hiring other officers. To remove some of the burden of handling drunks from police officers, G.S. 122-65.12 authorizes cities and counties to hire officers other than police to assist drunks. These officers would not have any authority to arrest, they would only be empowered to provide the assistance specified in G.S. 122-65.11 which is the aid without arrest. Since G.S. 122-65.12 grants only the authority to take the actions listed in G.S. 122-65.11--taking the drunk home or to a shelter or medical facility--those officers would not be able to carry the drunk to the jail, an action authorized only under G.S. 122-65.13.

The only prerequisite to being employed for this purpose is that the officer be trained in giving assistance, including first aid, to people who are intoxicated. The limited nature of his duties make it seem that this kind of officer will not have to be certified by the Criminal Justice Training and Standards Council as a law enforcement officer.

If a city or county chooses to hire these officers--which might be worth the expense in a few of the larger cities--they would have the same territorial jurisdiction as the law enforcement officers of that unit of government. Reasonable force could be used if necessary, just as it could be used by a law enforcement officer performing the same job, but there would be no authority to carry a weapon.

V. COMMITMENT

Important limits. The new provisions for commitment of alcoholics are set out in G.S. 122-58.22 (short-term) and G.S. 122-58.23 (long-term). Two points need to be emphasized. One is that these new forms of commitment only supplement the present involuntary commitment statutes, they do not replace them. The second is that a person is subject to these new procedures only if he has been found intoxicated in public; that is, he has either been assisted under G.S. 122-65.11 and probably found to be in need of care or he has been arrested for being drunk and disruptive under G.S. 14-444 and then acquitted by reason of alcoholism. There is no procedure for someone to request that a person be committed under these new statutes unless that person has already been taken into custody in one of those two ways.

Short-term commitment. The provisions for short-term treatment are spelled out in G.S. 122-58.22. The hearing is before a district court judge and the alleged alcoholic is entitled to have counsel appointed if he is indigent and does not waive counsel. The hearing, which may be held in chambers, could come immediately after the person is acquitted of the drunk and disruptive charge or could be scheduled for any time within 15 days after that. If the person is assisted under G.S. 122-65.11 rather than being arrested, the clerk or magistrate who finds probable cause that the person is an alcoholic is to set a hearing within 96 hours of making that finding, but if the determination cannot be made by the district court judge within that time the judge may delay the hearing for up to 15 more days. G.S. 122-58.22(c) authorizes the judge to seek the assistance of the alcoholism court counselor in making his determination, though as mentioned earlier there may be problems of confidentiality of treatment records.

The district court judge must determine whether the person is "an alcoholic and is in need of care." The definition of alcoholic is the same used in determining whether a defendant must be found not guilty of a drunk and disruptive charge: "he habitually lacks self-control as to the use of intoxicating liquor, or uses intoxicating liquor to the extent that his health is substantially impaired or endangered or his social or economic function is substantially impaired." The second requirement is that he be in need of care. G.S. 122-58.22(a) defines that term to mean "his alcoholism is presently causing him to lose control over his own actions to the extent that he regularly has to depend on others to provide food, clothing, shelter, medical or other essential care for him." This definition is obviously written to cover the public drunk, the person whose drinking causes him to frequently appear in public and need the help of others for shelter or food. The original bill included a presumption that a person was an alcoholic in need of care if he had been found publicly drunk a specified number of times. Although that presumption was deleted, being drunk in public several times still seems the strongest evidence of being an alcoholic in need of care.

The statutes say that the judge is to use the standard of "clear and convincing evidence" in determining whether to order long-term treatment, but, because of an oversight in drafting, do not say what standard is to be applied in the short-term case. To avoid any problem, the district court judge should assume that the standard is the same--clear and convincing evidence--and should state in his order that he applied that standard.

Subsection (e) of G.S. 122-58.22 sets out the judge's options if he finds the person to be an alcoholic in need of care. Options (1), (3) and (4) involve essentially voluntary participation by the alcoholic; only (2) includes mandatory treatment. Under (2) the judge can either order the alcoholic to participate for up to 30 days in a particular alcoholism program, inpatient or outpatient, or he can commit the alcoholic for 30 days to the Division of Mental Health/Mental Retardation Services of the Department of Human Resources and have the Division decide which program the alcoholic should go to. In either case, the program must be one approved by the Department of Human Resources. If the judge has any questions about where to send the person, he should commit him to the

custody of the Division of Mental Health/Mental Retardation Services. The Division will most likely decide in advance what facilities it will use for this purpose and will adopt a policy that all alcoholics committed to the Division are to go to certain named facilities. The Division is given complete discretion in determining what facilities are most appropriate.

(Human Resources will soon be sending information to court officials about its plans for handling these alcoholics. Any questions should be directed to the Office of the Assistant Secretary for Alcohol and Drug Abuse, phone number 919 733-6650.)

Written findings of fact must be made before the mandatory treatment of G.S. 122-58.22(e)(2) may be ordered. Such findings are not required for the other options in subsection (e). Likewise, it is only the mandatory treatment from which an appeal may be made. The procedure for appeal is the same as in involuntary commitment cases.

If the alcoholic ordered into treatment under G.S. 122-58.22(e)(2) should fail to participate in the program or should leave before the end of the prescribed period, he could be ordered to return to the program and an officer could be authorized to carry him back. Persistent failure to participate might be contempt of court since the treatment is by court order. However, because the alcoholic being dealt with is the public drunk, it might save everyone trouble to simply ignore his withdrawal from the 30-day treatment and wait until the next time he is found publicly intoxicated to do anything about him.

As everyone who works in the alcoholism field will verify, there simply are not enough programs or facilities to "treat" all the people being arrested for public drunkenness. It would be a mistake for judges to attempt 30-day commitments on all persons found intoxicated in public, that would simply overload the existing programs and reduce their already slim chances of making any change in the derelict alcoholic. It is essential to the success of this legislation that judges and alcoholism people meet locally to develop a procedure for handling the derelict alcoholics most needing treatment. This is the only way to make a proper match of patients and programs and avoid overloading programs with patients they cannot help. Nothing would disrupt the implementation of the new legislation more than judges sending alcoholics to programs that turn them away. (There is nothing in the language of G.S. 122-58.22 requiring an alcoholism program to take patients it does not want.)

Long-term commitment. The requirements for long-term commitment have already been discussed to some extent. Again it should be emphasized that this procedure can only be used if (1) the person has been taken into custody for being intoxicated in public and a clerk or magistrate has then found probable cause that he is an alcoholic in need of care, or (2) he has been arrested for being drunk and disruptive in public and then found not guilty because of alcoholism. For the long-term commitment hearing, G.S. 122-58.23(b) requires that notice be given to the alleged alcoholic and his counsel at least 48 hours in advance of the hearing unless counsel waives notice. The grounds for commitment are the same as for short-term --the person must be an alcoholic in need of care--plus a finding that the person has been given recent opportunities

for treatment (the 30-day program would be an example) and has either willfully refused to participate or cooperate or has failed to show any significant and sustained progress. These findings, which are to be based on clear and convincing evidence, are designed for the derelict alcoholic who keeps going from one treatment program to another yet keeps appearing intoxicated in public.

If the judge finds what is required under G.S. 122-58.23(a), he can commit the person for up to 180 days to the custody of a residential facility operated or approved by the Department of Human Resources. The Attorney General's Committee did not have any existing DHR facility in mind when it included this provision. The alcoholic rehabilitation centers' 28-day programs would be more intense and shorter than what was intended in the legislation. More appropriate would be a place like the First Step Farm near Asheville or Archway East in the eastern part of the state, or even a half-way house. The main purpose of such a program is to give the alcoholic a place to live and develop regular work habits. Professional staff is kept to a minimum. These existing residential facilities, though, can take care of only a handful of the state's derelict alcoholics, therefore judges should be particularly reluctant to consider using the 180-day commitment unless they know a space is available. The Department of Human Resources will be requesting funds for such facilities from the next legislature, but it will be some time before many derelict alcoholics can receive this care.

G.S. 122-58.23 allows the director of the residential facility to release the alcoholic earlier than 180 days if he believes the person no longer needs the facility's care. He may also request an additional 180 days commitment if thought necessary. The procedure for the additional commitment would be essentially the same as for the first.

VI. BAIL

Drunk defendants. Chapter 1134 also makes a change in the bail statutes, an aspect of the legislation which has largely been ignored. Magistrates and officers continually face the problem of what to do with the drunk driver or other drunk defendant who has been arrested and must be given bail. G.S. 15A-511(a)(3) already allows a delay in the initial appearance if the defendant is unruly or grossly intoxicated, but that provision may be used only when the defendant is so drunk that he does not understand his rights, a rare situation. The defendant can also be released in the custody of another person, but the other person cannot always be trusted to keep the defendant from getting back in the car and driving drunk again. In any event, the defendant has the option of paying money bond and rejecting the release to someone's custody.

The public drunkenness legislation amends the bail statute, G.S. 15A-534, by adding to subsection (c) that a factor to be considered in determining the form of pretrial release is "whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision." At a minimum this means the magistrate can consider the defendant's drunken condition in setting the amount of the money bail. For example, faced with a driver who has blown .23 on the breathalyzer, the magistrate might set his bond substantially higher than what

would be normal for a drunk driver, then reduce the amount in a few hours when the driver is sober. This certainly will not solve the problem of releasing drunk defendants, but it does give the magistrate more authority than he had before.

VII. SUMMARY

As the length of this memorandum indicates, the new public drunkenness legislation is complicated and requires considerable study by law enforcement and judicial officers if there is to be any improvement in the handling of public drunks. Several points deserve reemphasis:

-- Arrests for the new crime of drunk and disruptive should be infrequent. Each person arrested for that crime must appear in district court; very many arrests would soon clog the courts.

-- Officers should be encouraged to provide assistance to public drunks rather than arresting them. A short stay in a shelter or detox center will not do much for the derelict alcoholic's drinking problem, but he is better off there than in the jail. Law enforcement and court time can be saved if warrant forms and other court papers do not have to be completed.

-- District court judges should be discriminating about ordering 30-day and longer commitments under the new statutes. There are not now many places to take the derelict alcoholic. This category of alcoholics is least likely to respond to treatment and many programs with more promising patients are reluctant to admit the street drunk.

-- It is most important for local law enforcement, judicial and alcoholism people to meet and decide where officers will take public drunks and what programs are available for 30-day commitments. Unless this planning takes place, there may be considerable confusion and more time rather than less will be consumed by the public drunk.

-- If this legislation is to provide any real benefit to law enforcement, local governments must establish shelter or detox centers or other places to take the public drunk. For this category of alcoholic, a modest facility probably does as much good as a more elaborate one during the drying out phase.

STATUTES ENACTED BY CH. 1134 (EFFECTIVE OCT. 1, 1978)

Chapter 14:

ARTICLE 59.

Public Intoxication.

§ 14-443. Definitions.--As used in this Article:

(1) "alcoholism" is the state of a person who habitually lacks self-control as to the use of intoxicating liquor, or uses intoxicating liquor to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted; and

(2) "intoxicated" is the condition of a person whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol; and

(3) a "public place" is a place which is open to the public, whether it is publicly or privately owned.

§ 14-444. Intoxicated and disruptive in public.--(a) It shall be unlawful for any person in a public place to be intoxicated and disruptive in any of the following ways:

(1) blocking or otherwise interfering with traffic on a highway or public vehicular area, or

(2) blocking or lying across or otherwise preventing or interfering with access to or passage across a sidewalk or entrance to a building, or

(3) grabbing, shoving, pushing or fighting others or challenging others to fight, or

(4) cursing or shouting at or otherwise rudely insulting others, or

(5) begging for money or other property.

(b) Any person who violates this section shall be guilty of a misdemeanor punishable by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days. Notwithstanding the provisions of G.S. 7A-273(1), a magistrate is not empowered to accept a guilty plea and enter judgment for this offense.

§ 14-445. Defense of alcoholism.--(a) It is a defense to a charge of being intoxicated and disruptive in a public place that the defendant suffers from alcoholism.

(b) The presiding judge at the trial of a defendant charged with being intoxicated and disruptive in public shall consider the defense of alcoholism even though the defendant does not raise the defense, and may request additional information on whether the defendant is suffering from alcoholism.

§ 14-446. Disposition of defendant acquitted because of alcoholism.--If a defendant is found not guilty of being intoxicated and disruptive in a public place because he suffers from alcoholism, the court in which he was tried may retain jurisdiction over him for up to 15 days to determine whether he is an alcoholic in need of care as defined by G.S. 122-58.22 or G.S. 122-58.23. The trial judge may make that determination at the time the defendant is found not guilty or he may require the defendant to return to court for the determination at some later time within the 15-day period.

§ 14-447. No prosecution for public intoxication.--(a) No person may be prosecuted solely for being intoxicated in a public place. A person who is intoxicated in a public place and is not disruptive may be assisted as provided in G.S. 122-65.11.

(b) If, after arresting a person for being intoxicated and disruptive in a public place, the law enforcement officer making the arrest determines that the person would benefit from the care of a shelter or health care facility as provided in G.S. 122-65.11, and that he would not likely be disruptive in such a facility, the officer may transport and release the person to the appropriate facility and issue him a citation for the offense of being intoxicated and disruptive in a public place.

Chapter 122:

ARTICLE 7B.

Public Intoxication.

§ 122-65.10. Definitions.--As used in this Article:

(1) "intoxicated" is the condition of a person whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol; and

(2) "officer" is a law enforcement officer with the power of arrest, or an officer employed by a city or county under G.S. 122-65.12;

(3) a "public place" is a place which is open to the public, whether it is publicly or privately owned.

§ 122-65.11. Assistance to person who is intoxicated in public.--(a) An officer may assist a person found intoxicated in a public place by taking any of the following actions:

(1) the officer may direct or transport the intoxicated person home;

(2) the officer may direct or transport the intoxicated person to the residence of another person willing to accept him;

(3) if the intoxicated person is apparently in need of and unable to provide for himself food, clothing or shelter, but is not apparently in need of immediate medical care, the officer may direct or transport him to an appropriate public or private shelter facility approved for this purpose by the Department of Human Resources; or

(4) if the intoxicated person is apparently in need of but unable to provide for himself immediate medical care, the officer may direct or transport him to a community mental health center, hospital, or physician's office; or the officer may direct or transport the person to any other appropriate health care facility approved for this purpose by the Department of Human Resources.

(b) In providing the assistance authorized by subsection (a), the officer may use reasonable force to restrain the intoxicated person if it appears necessary to protect himself, the intoxicated person or others. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under authority of this Article.

(c) If the officer takes the action described in either subdivision (a)(3) or (a)(4) above, the facility to which the intoxicated person is

taken may detain him only until he becomes sober, or a maximum of 24 hours, unless the officer or someone at the facility has obtained an order from a clerk or magistrate under subsection (d). The person may stay a longer period if he wishes to do so and the facility is able to accommodate him.

(d) Upon finding that it is probable that a person assisted under subdivision (a)(3) or (a)(4) is an alcoholic in need of care as defined by G.S. 122-58.22 or G.S. 122-58.23, a clerk or magistrate may order that person detained until he can appear before a district court judge for a hearing to determine if he is an alcoholic in need of care. The person may be detained no more than 96 hours for this purpose. The clerk or magistrate may direct that the person be kept at the facility to which he was taken under subdivision (a)(3) or (a)(4), or at any other facility approved for this purpose by the Department of Human Resources. If the district court judge is unable to make a determination whether the person is an alcoholic in need of care at the time the alleged alcoholic is initially brought before him, he may order the person to return to court at any time within the next 15 days to complete the determination.

§ 122-65.12. Cities and counties may employ officers to assist intoxicated persons.--A city or county may employ officers to assist persons who are intoxicated in public. Officers employed for this purpose shall be trained to give assistance to those who are intoxicated in public, including the administration of first aid. An officer employed by a city or county to assist intoxicated persons shall have the powers and duties set out in G.S. 122-65.11 within the same territory in which criminal laws may be enforced by law enforcement officers of that city or county.

§ 122-65.13. Use of jail for care for intoxicated person.--In addition to the actions authorized by G.S. 122-65.11(a), an officer may assist a person found intoxicated in a public place by directing or transporting that person to a city or county jail. That action may be taken only if the intoxicated person is apparently in need of and unable to provide for himself food, clothing or shelter, but is not apparently in need of immediate medical care, and no other facility is readily available to receive him. The officer and employees of the jail shall be exempt from liability as provided in G.S. 122-65.11(b). The intoxicated person may be detained at the jail only until he becomes sober, or a maximum of 24 hours, and may be released at any time to a relative or other person willing to be responsible for his care.

ARTICLE 5A.

Involuntary Commitment.

§ 122-58.22. Short-term treatment for alcoholic in need of care.--(a) A district court judge may take any one or more of the actions specified in subsection (e) if he finds that a person is an alcoholic and is in need of care. A person is an alcoholic if he habitually lacks self-control as to the use of intoxicating liquor, or uses intoxicating liquor to the extent that his health is substantially impaired or endangered

or his social or economic function is substantially disrupted. An alcoholic is in need of care if his alcoholism is presently causing him to lose control over his own actions to the extent that he regularly has to depend on others to provide food, clothing, shelter, medical or other essential care for him.

(b) The alleged alcoholic may be brought before the district court judge under G.S. 14-446 after being found not guilty by reason of alcoholism of the offense of being intoxicated and disruptive in a public place, or under G.S. 122-65.11 after being assisted while intoxicated in public.

(c) If he believes it will be of value in making his determination, the district court judge may direct an alcoholism court counselor, if available, to conduct a prehearing review of the alleged alcoholic's drinking history and make recommendations on proper disposition for the person if he is found to be an alcoholic in need of care.

(d) If the alleged alcoholic is an indigent within the meaning of G.S. 7A-450, and does not waive counsel, the clerk of court or the district court judge shall appoint counsel to represent him. At the hearing in district court the alleged alcoholic shall be entitled to confront and cross-examine witnesses. The hearing may be held in chambers. If the person is found to be an alcoholic in need of care and ordered to participate in a treatment program as provided in subdivision (e)(2), the judge shall record the facts which support his findings and the alcoholic shall have the right of appeal from that order as set out in G.S. 122-58.9.

(e) If the district court judge finds the person to be an alcoholic in need of care, he may take any one or more of the following actions:

(1) direct the alcoholic in cooperation with any member of his family or other responsible person to make and follow plans for his treatment in an alcoholism program operated or approved by the court;

(2) order the alcoholic to participate for up to 30 days in a particular outpatient or inpatient alcoholism program operated or approved by the Department of Human Resources, or commit the person to the custody of the Division of Mental Health Services for up to 30 days for assignment to an appropriate alcoholism program;

(3) refer the alcoholic to an alcoholism program or to a particular physician or other professional qualified to assist alcoholics;

(4) direct any alcoholism agency operated or approved by the Department of Human Resources to work with the alcoholic to develop and carry out a program for his treatment or care.

(f) As part of the action taken under subsection (e) the judge may direct the alcoholic or any public official concerned to make periodic reports for up to 30 days relating to the alcoholic's participation and progress in the activity to which he has been assigned.

§ 122-58.23. Long-term residential care for alcoholic who has not progressed in treatment.--(a) A district court judge may order a person committed for up to 180 days to a residential facility operated or approved for that purpose by the Department of Human Resources, if the judge determines by clear and convincing evidence that:

(1) the person is an alcoholic who is in need of care as defined by G.S. 122-58.22; and

(2) he has been given recent opportunities to participate in alcoholism treatment programs; and

(3) he has willfully refused to participate or cooperate in such programs, or has failed to show significant and sustained progress toward overcoming his alcoholism.

(b) The alleged alcoholic may be brought before the district court judge under G.S. 14-446 after being found not guilty by reason of alcoholism of the offense of being intoxicated and disruptive in a public place, or under G.S. 122-65.11 after being assisted while intoxicated in public. The provisions of subsections (c) and (d) of G.S. 122-58.22 shall also be applicable to proceedings under this section. Notice of the district court hearing shall be given to the alleged alcoholic and his counsel by the clerk of court at least 48 hours in advance of the scheduled appearance unless counsel waived notice for the alleged alcoholic.

(c) A person committed to a residential facility for up to 180 days under subsection (a) may be released at any time prior to the end of that period when the director of the facility determines that the person is no longer in need of the care of that facility.

(d) If at the end of the period of commitment imposed under subsection (a), the director of the residential facility is of the opinion that the alcoholic is in need of further care at the facility, he may request a hearing for an additional commitment under the procedures of G.S. 122-58.11. The proceeding shall be the same as for involuntary commitment under that section except that the issue to be determined by the district court judge is whether the person should be committed under subsection (a).

SECTION AMENDED BY CHAPTER 1134 (EFFECTIVE OCT. 1, 1978)

§ 15A-534. Procedure for determining conditions of pretrial release.--

. . .

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions, his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

. . .

(The remainder of this section was not changed by Ch. 1134.)

ARREST WARRANT FORM FOR DRUNK AND DISRUPTIVE

DRUNK AND DISRUPTIVE G.S. 14-444

FORM OF CHARGE:

. . . did unlawfully, willfully, and feloniously appear intoxicated in a public place, the *(name or describe the public place in which the defendant was found)*, and was disruptive in that he did *(choose one or more of the following):*

(1) block and interfere with traffic on *(name the street, highway or public vehicular area)*, a *(choose one:* highway; public vehicular area);

(2) *(choose one or more:* block; lie across; prevent passage across; interfere with passage across*)* a sidewalk;

(3) *(choose one or more:* block; lie across; prevent access to; interfere with access to*)* an entrance to a building;

(4) *(choose one or more:* grab; shove; push*)* *(name person grabbed, shoved or pushed, if known; otherwise, state* a person whose name is not known at this time);

(5) fight with *(name person defendant fought with, if known);*

(6) challenge *(name person, if known)* to a fight;

(7) *(choose one or more:* curse, shout at; rudely insult*)* others by using the following words: *(describe what defendant said and name who it was said to, if known);*

(8) beg for money and other property;

in violation of the following law: G.S. 14-444.

SAMPLE AFFIDAVITS:

. . . did unlawfully, willfully, ~~and feloniously~~ appear intoxicated in a public place, the 400 block of S. Main St., Simpsonville, NC, and was disruptive in that he did block and interfere with traffic on S. Main St., a highway, in violation of the following law: G.S. 14-444.

. . . did unlawfully, willfully, ~~and feloniously~~ appear intoxicated in a public place, the 600 block of Greensboro Boulevard, Sawyer, NC, and was disruptive in that he did block, lie across and interfere with passage across a sidewalk in violation of the following law: G.S. 14-444.

PUNISHMENT:

Misdemeanor punishable by a fine of not more than $50 or imprisonment for not more than 30 days. (However, G.S. 14-444(b) provides that this is not an offense for which a magistrate may accept a guilty plea and enter judgment under G.S. 7A-273(1).)

FORM TO BE USED WHEN INTOXICATED PERSON IS TAKEN TO JAIL (WITHOUT ARREST)

OFFICER'S STATEMENT OF PROVIDING ASSISTANCE

On _____, 19___ at _____(a.m.)(p.m.), I found
(date) *(hour)*

_____ intoxicated in a public
(name intoxicated person)

place, the _____, and apparently
(name or describe the place)

in need of, but unable to provide himself, (food)(clothing)(shelter). He apparently was not in need of immediate medical care. I assisted that person as authorized by G.S. 122-65.13 by transporting him to the jail named below, there being no other facility readily available to receive him.

_____
(signature of officer)

_____
(department and rank of officer)

JAILER'S STATEMENT OF ACCEPTANCE OF INTOXICATED PERSON

On the date given above at _____ (a.m.)(p.m.) the officer named
(hour)

above brought to this jail the person named above, who was intoxicated and apparently in need of, but unable to provide himself, (food)(clothing)(shelter). He apparently was not in need of immediate medical care. That person was accepted at this jail as authorized by G.S. 122-65.13, to be detained until sober or until released to a relative or other person willing to be responsible for his care, or a maximum of 24 hours.

_____
(signature of jailer)

_____
(name of jail)

NOTE: This form should be completed in duplicate, with the officer retaining one copy and the jail retaining the other.

FORM TO BE USED WHEN PROVIDING ASSISTANCE TO INTOXICATED PERSON WHO IS NOT IN NEED OF MEDICAL CARE

OFFICER'S STATEMENT OF PROVIDING ASSISTANCE

On _____, 19___ at _____(a.m.)(p.m.), I found
(date) *(hour)*
_____ intoxicated in a public
(name intoxicated person)
place, the _____,
(name or describe the place)
and apparently in need of, but unable to provide himself, (food) (clothing) (shelter). He apparently was not in need of immediate medical care. I assisted that person by transporting him to the facility named below, as authorized by G.S. 122-65.11.

_____
(signature of officer)

_____
(department and rank of officer)

FACILITY'S STATEMENT OF ACCEPTING INTOXICATED PERSON

On the date given above at _____(a.m.)(p.m.) the officer named above brought to this facility the person named above, who was intoxicated and apparently in need of, but unable to provide himself, (food)(clothing)(shelter). He apparently was not in need of immediate medical care. That person was accepted at this facility to be detained until sober or a maximum of 24 hours from the time he was brought to this facility, as authorized by G.S. 122-65.11.

_____
(signature of person accepting patient)

_____
(title)

_____
(name and address of facility)

NOTE: This form should be completed in duplicate, with the officer retaining one copy and the facility retaining the other.

FORM TO BE USED WHEN INTOXICATED PERSON IS TAKEN FOR MEDICAL CARE

OFFICER'S STATEMENT OF PROVIDING ASSISTANCE

On _____, 19___ at _____(a.m.)(p.m.), I found
(date) *(hour)*

_____ intoxicated in a public place,
(name intoxicated person)

the _____, and
(name or describe the place)

apparently in need of, but unable to provide himself, immediate medical care. I assisted that person by transporting him to the facility named below, as authorized by G.S. 122-65.11.

_____
(signature of officer)

_____
(department and rank of officer)

FACILITY'S STATEMENT OF ACCEPTANCE OF INTOXICATED PERSON

On the date given above at _____(a.m.)(p.m.) the officer named above brought to this facility the person named above, who was intoxicated and apparently in need of, but unable to provide himself, immediate medical care. That person was accepted at this facility as authorized by G.S. 122-65.11, to be detained until sober or until the medical condition for which he was brought to this facility was treated, or a maximum of 24 hours.

_____
(signature of person accepting patient)

_____
(title)

_____
(name and address of facility)

NOTE: This form should be completed in duplicate, with the officer retaining one copy and the facility retaining the other.

FORM TO BE USED WHEN INTOXICATED PERSON IS RELEASED

On _____, 19___, at _____(a.m.)(p.m.),
(date) *(hour)*

_____was released from this
(name intoxicated person)

facility:

[_] because he then appeared to be sober.

[_] because 24 hours had elapsed since he was first brought to this facility.

[_] to the custody of _____ who was
(name relative or other person)

willing and apparently capable of being responsible for his care.

[_] because the medical condition for which he was brought to this facility had been treated.

_____
(authorized signature)

_____
(title)

NOTE: Disregard language next to boxes which are not checked.

STATE OF NORTH CAROLINA

County of _____

In the Matter of

_____

_____

_____
(name and address of respondent)

File # _____

Film # _____

In the General Court of Justice
District Court Division

ORDER FOR HEARING TO DETERMINE WHETHER PERSON IS AN ALCOHOLIC IN NEED OF CARE

Instructions: Check one or both blocks as appropriate. Disregard language next to a box which is not checked.

Upon the petition of _____
(name the person who petitioned for the hearing)
and facts presented to me by that person and by _____
(name any other person
_____, I do find that it is probable that the
who gave evidence)
respondent named above is an alcoholic in need of care as defined by G.S. 122-58.22(a) and therefore do order the respondent to appear in the District Court of _____ County, _____, North Carolina, on the _____ day of _____, 19___, at _____(a.m.)(p.m.) for a hearing to determine whether he is an alcoholic in need of care.

TO: Any officer with lawful authority to take custody of the respondent named above. On the basis of the finding above, I do order you to take into custody the respondent named above to be taken to _____
(give the name
_____
and address of the facility where the person is to stay)
to be held there until the time of the District Court hearing scheduled above, or until the expiration of 96 hours from the time this order is issued, whichever occurs first. AND, TO: The director of the facility named above. I order the respondent to be held until the time of the District Court hearing scheduled above, or until the expiration of 96 hours from the time this order is issued, whichever occurs first.

_____
Magistrate/Deputy/Assistant
Clerk of Superior Court

Issued this the _____day of _____, 19___
at _____(a.m.(p.m.).

STATE OF NORTH CAROLINA

County of _____

In the Matter of

_____

_____

_____
(name and address of respondent)

File # _____

Film # _____

In the General Court of Justice
District Court Division

PETITION FOR HEARING TO DETERMINE WHETHER PERSON IS ALCOHOLIC IN NEED OF CARE

I, _____,
(printed or typed name of person requesting hearing)
do believe that the respondent named above is an alcoholic and is in need of care, as defined by G.S. 122-58.22(a), for the following reasons:

_____

_____

_____

_____

_____

_____

On the basis of this information I petition for a hearing to be scheduled to determine whether the respondent is an alcoholic in need of care.

_____
(signature)

_____
(office or address)

Sworn before me this the _____day of _____, 19___, at _____(a.m.)(p.m.).

_____
Magistrate/Deputy/Assistant Clerk of Superior Court

NOTE: This petition may be used only if the respondent has been assisted under the authority of G.S. 122-65.11 after being found intoxicated in public.