This issue distributed to:

Judges, Prosecutors, Public Defenders, Superior Court Clerks, Magistrates, Police Attorneys, Sheriffs, SBI, Probation and Parole Officers, Police Chiefs, Campus Police

ADMINISTRATION OF JUSTICE MEMORANDA

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
University of North Carolina at Chapel Hill

August 1979 No. 79/12

RECEIVED
SEP 18 1979
INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA
LIBRARY

1979 Legislation Affecting Criminal Law and Procedure

by

Michael Crowell, Robert Farb, and Michael Smith

PART II: Changes effective October 1, 1979 and later

This is the second in a series of memoranda summarizing acts of the 1979 General Assembly affecting criminal law and procedure. This publication concerns acts that go into effect on or after October 1, 1979. For a discussion of legislation that became effective before that date, see the memorandum (No. 79/08) published in July 1979.

A few matters that are effective after October 1 are not included here; they will be discussed in separate memoranda. They include presumptive sentencing, juvenile code revision, sex offense law revision, and DUI mandatory safety school legislation. The presumptive sentencing law is effective July 1, 1980 and the others are all effective January 1, 1980.

None of the amended statutes are reproduced because we expect to have available in the fall the 1979 Supplement to North Carolina Criminal Law and Procedure. This publication will contain the text of all statutory changes made by the 1979 General Assembly.

NEW AND AMENDED CRIMES

Assaults on specified officials. Ch. 524 (H 623), effective October 1, 1979, amends G.S. 14-33(b) to make it a two-year misdemeanor to assault an "officer of the General Court of Justice" while he is engaged in official judicial duties or on account of the performance of his judicial duties. "Officer" is probably limited to judicial officers such as judges, magistrates, and clerks. In the earlier memorandum, we noted that Ch. 656 (H 475), effective May 28, 1979, added personnel of a juvenile detention facility or training school to G.S. 14-33(b). That statement was only partially correct, since Ch. 656 added personnel of any detention facility, not just a juvenile facility. Thus, jailers who are not law enforcement officers are now covered.

Copyright © 1978, Institute of Government, University of North Carolina at Chapel Hill. Made in the United States. This publication is issued occasionally by the Institute of Government. An issue is distributed to public officials, listed in the upper left-hand corner, to whom its subject is of interest. Copies of this publication may not be reproduced without permission of the Institute of Government, except that criminal justice officials may reproduce copies in full, including the letterhead, for use by their own employees. 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.

Child abuse made a felony. Effective January 1, 1980, Ch. 897 (S 332) adds new G.S. 14-318.3 to make it a felony punishable for up to five years for a parent or other person who provides care to a child under 16 to intentionally inflict serious injury on the child that results in permanent disfigurement, a broken bone, or substantial impairment of physical health or of the function of any organ or limb.

Breaking or entering boats and planes. Effective January 1, 1980, Ch. 437 (H 382) adds aircraft and boats or other watercraft to G.S. 14-56, which now makes it a felony to break or enter motor vehicles, railroad cars, etc. with intent to commit any felony or larceny.

Larceny amounts increased. For crimes committed on or after January 1, 1980, the felony/misdemeanor cut-off is raised to $400 by Ch. 408 (H 491). Otherwise the larceny statute is unchanged. This amendment will automatically result in the same change in the crimes of receiving and possessing stolen goods, since the categorization of those offenses depends on whether the original taking of the property was a misdemeanor or a felony. A separate act, Ch. 468 (S 331), also effective January 1, 1980, adds to G.S. 14-168 (the statute on conversion of property by a bailee, lessee, or other person with power of attorney) a provision for felony punishment if the conversion is of property valued at more than $400. The crime is now always a misdemeanor.

Prostitute loitering. Effective October 1, 1979, Ch. 873 (H 1104) makes it a misdemeanor if a person "remains or wanders about" in a public place and (1) repeatedly attempts to stop passers-by or engage them in conversation, (2) repeatedly stops motor vehicles, or (3) repeatedly interferes with the free passage of other persons for the purpose of violating G.S. 14-204 (prostitution) or G.S. 14-177 (crime against nature). "Public place" as defined in the act specifically includes doorways and entrance ways to buildings that front a street or parking lot. If convicted, a person is punished the same as for a violation of G.S. 14-204.

Medicaid fraud. Ch. 510 (H 564), effective October 1, 1979, addresses the issue of Medicaid fraud by providing that any Medicaid provider who (1) makes a false statement in a payment application or regarding qualifications of a provider or a facility, or (2) knowingly conceals information affecting initial or continuing entitlement to payment or the amount of money due is guilty of a felony punishable by a fine up to $10,000 and/or five years in prison. It also provides that any person who willfully commingles a recipient resident's personal funds with those of the facility is guilty of a misdemeanor punishable by a fine up to $2,000 and/or by imprisonment for up to two years. Embezzling or converting a recipient's personal funds is a felony punishable by a fine up to $5,000 and/or five years in prison.

Welfare fraud. Ch. 907 (S 858) rewrites the welfare-fraud statute, G.S. 108-48, effective January 1, 1980, to clarify that the offense is also committed when a person makes false representations to help another obtain public assistance and to raise from $200 to $400 the amount that makes the fraud a felony rather than a misdemeanor. Ch. 510, mentioned above, also

rewrote the punishment provisions of G.S. 108-48 by making the felony punishable by five years instead of ten beginning October 1, but it will be overridden on January 1 by Ch. 907, which rewrites the entire session and restores the felony punishment to ten years.

Impair operation of railroads. Ch. 387 (H 507), effective October 1, 1979, adds new G.S. 14-279.1 to make it a two-year misdemeanor to willfully do any act to railroad equipment or rolling stock to impede the movement of railroad trains or to impair the operation of railroad equipment.

Ticket-Scalping. The ticket-scalping statute, G.S. 14-344, is completely rewritten by Ch. 909 (H 569), effective October 1, 1979. The most significant change is that a service fee of not more than 10 per cent of the ticket price may be added to the price if the inclusion of that fee is printed on the ticket. The revised statute does not say what tickets the law applies to (the present statute is limited to tickets to concerts and sporting events), so apparently the sale of any ticket at greater than the face value violates this statute.

Littering. Effective October 1, 1979, the maximum punishment for a first offense of littering under G.S. 14-399 is reduced from a $200 fine to $50. The $200 penalty will still apply to second or subsequent offenses. The change is made by Ch. 1065 (H 1468).

Abandoning animal offense. The punishment for abandoning an animal, Ch. 687 (H 1226) effective May 29, 1979, is only a $200 fine, not a two-year misdemeanor, as indicated in the earlier memorandum.

DOMESTIC VIOLENCE

Ch. 561 (S 171), effective October 1, 1979, adds new G.S. Ch. 50B (Domestic Violence) to allow certain persons who allege acts of domestic violence to apply in district court for emergency civil relief if they believe that a danger of serious and immediate injury exists. The civil remedy is available to past or present spouses and persons of the opposite sex who live or have lived together as if married. Homosexual couples may not use the new civil remedy.

Domestic violence is defined as one or more of the following acts between protected individuals: (1) attempting to cause or intentionally causing bodily injury; or (2) placing another person in fear of imminent serious bodily injury by the threat of force. If a protected individual applies for civil relief from domestic violence, a hearing must be held within ten days, but a judge may immediately issue a temporary order to protect the victim or minor children. A district court's protective order may direct a person to refrain from further acts of violence and may also grant exclusive possession of the family residence to one spouse and exclude the other. A district court judge may also: (1) award temporary custody of minor children; (2) require that a spouse and minor children be awarded suitable alternate housing; (3) order support payments for a spouse and minor children; and (4) award possession of the couple's personal property. And as a means of encouraging claims for relief under the civil remedy, a judge may award costs and attorney's fees to either party.

The civil provisions of the new law also include several means for assuring enforcement of protective orders. A party in whose favor such an order has been granted is authorized to file a motion for contempt if the order is violated. Morever, a law enforcement officer is required to arrest a person he has probable cause to believe is violating a court order that excludes the person from the residence of a victim of domestic violence or directs the person not to interfere with the victim. The officer is supposed to take the arrestee before a district court judge to show cause why he should not be held in civil contempt, even though civil contempt is designed to compel compliance with an order rather than to punish for its violation. Because a person arrested for a violation of the order would never be in civil contempt at the time he appears at the show cause hearing, an officer should arrest him, if at all, for the new crime of domestic criminal trespass.

Local law enforcement agencies are also required to respond as soon as practicable to requests for assistance from alleged victims of domestic violence, unless the agency has received multiple complaints from the same complainant within a 48-hour period and has reasonable cause to believe that immediate assistance is not needed. The new law authorizes but does not require officers to provide certain emergency aid in responding to a request for assistance. An officer responding to such a request may take any steps reasonably necessary to protect a complainant from harm and, if feasible, transport the person to appropriate public or private assistance facilities. The officer may also accompany the complainant to the family residence in order to remove personal effects and necessities to enable the complainant and any minor children to remain elsewhere.

Ch. 561 also adds a criminal sanction against domestic violence by creating the crime of domestic criminal trespass. This new crime makes it a misdemeanor for a person to enter or remain after being forbidden to enter or remain on premises occupied by a person with whom he has lived as if married or by a present or former spouse if the complainant and the defendant are living apart. A court order under the law's civil provisions requiring the defendant to stay away from the premises may be considered as evidence that the parties are living apart. A controversial pretrial-release provision of the new law permits preventive detention of defendants charged with domestic criminal trespass or violation of a civil domestic violence order (also, assault on or communicating threats to the spouse or person whom the defendant has lived with as if married). A judicial official (judge, magistrate, clerk) may keep a defendant in custody for a "reasonable period of time" while determining his conditions of release if he finds that the defendant's immediate release on an appearance bond poses a danger of injury or will result in intimidation of the alleged victim and the execution of an appearance bond will not reasonably assure that such injury will not occur. After requiring the execution of a secured appearance bond, a judicial official may also order a defendant to stay away from the complainant, to leave specified property alone, and to visit the children at specified times provided in an existing order of a judge as additional conditions of pretrial release.

COMPUTER CRIMES

Ch. 831 (S 397), effective January 1, 1980, enacts several crimes involving computers. G.S. 14-449 makes it a felony for any person willfully to "access" (make use of) a computer or computer system to execute or plan a scheme to defraud or to obtain property or services by false representations. But a person who uses a computer or computer system without authorization for any other purpose, including to obtain or tamper with educational testing material or "false" grades, is only guilty of a misdemeanor.

New G.S. 14-450 makes it a felony for a person willfully and without authority to alter or damage any part of a computer or computer system. Also, it is a misdemeanor to alter or destroy any computer software, program, or data. Further, it is a felony for a person maliciously to threaten to commit any of the above acts, even if it is only a misdemeanor, for the purpose of extorting money or compelling a person to do something against his will. Any person who willfully and without authorization denies computer services to an authorized user of the services may be convicted of a misdemeanor.

PRIMA FACIE EVIDENCE AND RESTITUTION IN WORTHLESS-CHECK CASES

Ch. 615 (S 508), effective October 1, 1979, adopts several rules of evidence to make proving a worthless-check case easier.

Satisfaction of the following conditions constitutes prima facie evidence that a person charged under G.S. 14-107 (worthless checks) was the check passer: (1) the check was delivered in a face-to-face transaction with a person authorized to accept checks; (2) the name and address of the check passer are on the check; (3) the check taker identifies the check passer at the time of acceptance by a North Carolina driver's license or other serially numbered card containing the person's photo and mailing address; (4) the identification card number of the check passer appears on the check; (5) after dishonor, the acceptor sends the check passer a letter by certified mail setting forth the circumstances of dishonor and requesting that any error in connection with the transaction be disposed of in ten days; and (6) the acceptor files an affidavit with a judicial official before issuance of the first criminal process declaring, among other things, that the other conditions have been satisfied and that 15 days have transpired since he mailed the letter to the check passer and any error has not been remedied. A similar procedure is outlined for cases in which the check is delivered to the acceptor by mail.

Another rule of evidence enacted by Ch. 615 provides that if the bank that dishonors the check returns it in the regular course of business indicating the reason for dishonor and the acceptor mails the certified letter and files the above-described affidavits, the check may be introduced as prima facie evidence of dishonor. And, finally, the fact that the check was returned dishonored may be considered as evidence that the check passer had no credit with the bank available for payment.

FORFEITURE OF VEHICLES

Present law provides that vehicles used for certain offenses may be seized and sold: vehicles used for illegally transporting drugs, for certain liquor offenses, for unlawful racing, and for some game and fish law violations. After October 1, 1979, vehicles, boats, and airplanes used in connection with some thefts may also be forfeited. Conveyances will be subject to these new provisions when used to conceal or transport property as part of a felony violation of (a) the receiving-stolen-property statute, G.S. 14-71; (b) the possession-of-stolen-goods statute, G.S. 14-71.1; and (c) the possession-of-stolen-vehicles crime, G.S. 20-106; or when the conveyance is used in

committing a larceny of property worth more than $400. Since one element of larceny is carrying the goods away, a vehicle that carries stolen televisions (for example) from the scene of the break-in would be "used in the commission of" that larceny and would satisfy the requirement of the forfeiture statute. The car, boat, or plane can be seized by the officer when making the arrest, or if he has a search warrant for it, or if the State already has a court judgment for forfeiture. Otherwise, he will need to have process issued for the seizure from a district or superior court with jurisdiction over the crime for which the forfeiture is sought. The police agency that seizes the car is to hold it until trial, though the owner may get it back pending trial by posting a bond in twice the vehicle's value. If forfeiture is ordered, the agency may either keep the car for official use or let the Department of Justice or the Department of Crime Control and Public Safety have it; otherwise it must be sold as other surplus property and the revenue turned over to the county school fund. The new statute (G.S. 14-86.1) enacted by Ch. 592 (H 406), recognizes the rights of innocent owners, those who hold security interests, and others similarly situated and gives them an opportunity to prevent forfeiture or to protect their interests.

INVOLUNTARY COMMITMENT

Effective October 1, 1979, Ch. 915 (S 324) makes two important changes in the involuntary commitment laws (other changes were made but they will not be discussed here). First, the Attorney General is required to represent the state's interest at all court proceedings concerning involuntary commitment. Second, the word "imminently" is deleted from the phrase "imminently dangerous to himself and others", and the phrases "dangerous to himself" and "dangerous to others" are redefined; these changes are intended to make it easier to commit individuals.

A person is "dangerous to himself" if, within the recent past:

1. He has acted in such a manner as to indicate that:

   (a) He would be unable without care, supervision, and continuous assistance from other people not otherwise available (i.e., not available to him unless he is committed) to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

   (b) There is a reasonable probability of serious physicial debilitation to him within the "near future" unless he receives "adequate treatment" under the involuntary commitment laws; <u>or</u>

2. He has attempted suicide or threatened suicide and there is a reasonable probability of suicide unless he receives "adequate treatment" under the involuntary commitment laws; <u>or</u>

3. He has mutilated himself or attempted to mutilate himself and there is a reasonable probability that he will seriously multilate himself unless he receives "adequate treatment" under the involuntary commitment laws.

A person is "dangerous to others" if, within the recent past, he has inflicted, or threatened to inflict serious bodily harm on another or has acted in such a way as to create a substantial risk or serious bodily harm to another and there is a reasonable probability that he will repeat his conduct.

MISCELLANEOUS

Accessory not lesser-included offense. Effective October 1, 1979, Ch. 811 (S 670) provides that accessory before the fact is not a lesser-included offense of the principal felony and a person charged with a felony may not be convicted as an accessory before the fact on the same indictment. The result of the wording of this latter provision is that a prosecutor cannot charge accessory before the fact as a separate count in the same bill of indictment.

First Appearance. Effective October 1, 1979, the clerk of superior court may conduct the first appearance for a felony under G.S. 15A-601 if a district court judge is not available within the 96-hour period required by the statute (Ch. 651, H 1165).

Amending Citation. Effective October 1, 1979, citations will be included in those kinds of charging documents that may be amended before or after final judgment under G.S. 15A-922(f). The change is made by Ch. 770 (S 821).

Release of Seized Property. The statute on release on seized property, G.S. 15-11.1, is amended by Ch. 593 (H 414), effective October 1, 1979, to clarify that (a) the district attorney may release property on his own determination that is not longer needed for trial, and (b) an application to a judge need be made only if the district attorney refuses to release the property.

Alternate Jurors. Ch. 711 (S 654), effective October 1, 1979, transfers to G.S. 15A-1215 the provisions currently in G.S. 9-18 concerning selection of alternate jurors in capital cases.