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1979 LEGISLATION AFFECTING CRIMINAL LAW AND PROCEDURE

by

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PART I: Changes Effective Before October 1, 1979

This and one or more future memoranda will summarize acts of the 1979 session of the General Assembly that affect criminal law and procedure. This first publication concerns changes that have already gone into effect or will do so before October 1, 1979. Legislation that becomes effective on or after October 1 will be discussed in later memoranda.

For some of the matters discussed here, it seemed useful to reproduce the text of the statutory change. An asterisk next to a subheading indicates that the text of the change has been reproduced at the back of this memorandum; only the affected section or subsection is reproduced, as it will read with the changes made by the General Assembly. When the new or amended statute seems self-explanatory, the discussion is kept as brief as possible.

For each bill discussed, references are given to the chapter number of the 1979 Session Laws for that enacted bill (Ch. 741, for example), to the number of the original bill that became law (H 1199, for example), and the effective date of the legislation. If the act specified the codification of a new section of the General Statutes, we have given the section number stated in the act, though it should be kept in mind that the Codifier of Statutes might change that.

We hope to have available in the fall the 1979 Supplement to North Carolina Criminal Law and Procedure, which will contain the text of all statutory changes made in the 1979 session.

NEW AND AMENDED CRIMES

*First-degree burglary punishment. Effective May 29, 1979, first-degree burglary is made punishable by a minimum of ten years to a maximum of life imprisonment, replacing the mandatory life imprisonment penalty. G.S. 14-52(a) will require that the first seven years be served without benefit of probation or parole. Since the new law (Ch. 672, S 668) contains no savings clause, it affects all defendants whose cases had not reached final judgment by May 29.

*Altering court documents. Ch. 526 (H 952), effective May 8, 1979, makes it a ten-year felony for any unauthorized person to intentionally enter a judgment upon or materially alter any criminal or civil process or pleading or other official case record.

Statewide wound reporting law. Effective July 1, 1979, Ch. 529 (S 337) makes the wound reporting law (G.S. 90-21.20) applicable to all counties in the state.

Assaults on juvenile facility workers. Effective May 28, 1979, G.S. 14-33(b)(4) is amended to make it a two-year misdemeanor to assault personnel of a juvenile detention facility or training school while discharging their duties.

Weapon permit amendments. Effective July 1, 1979, Ch. 895 (S 213) amends G.S. 14-402 and G.S. 14-409.1 to require that a person purchasing a pistol anywhere in the state obtain a permit from the sheriff or superior court clerk (which official depends on the statute the county comes under) of the purchaser's county of residence. Prior law required that the permit be obtained in the county of sale. Permit requirements were eliminated for purchases of a pump gun, bowie knife, dirk, dagger, slungshot, blackjack, or metallic knuckles.

*New capital case aggravating factor. Effective for murders committed after May 14, 1979, Ch. 565 (S 653) allows consideration of an additional aggravating factor in deciding whether to punish first-degree murder by death or life imprisonment. The additional factor is whether the murder was part of a course of conduct in which the defendant committed other violent crimes. This factor may be considered whether or not the defendant has been convicted of the other violent crimes at the time of the murder trial.

*Contributing to delinquency of minor. Ch. 692 (H 476), effective May 30, 1979, rewrites G.S. 14-316.1 to make it unlawful to cause, encourage, or aid a juvenile in doing anything that "could" make him delinquent, undisciplined, abused, or neglected as those terms are defined in the new juvenile code (Ch. 815, H 474) which is not effective until January 1, 1980. The Attorney General has ruled that Ch. 692 is in effect at present, even though Ch. 815 is not. He reasons that since a prior adjudication of delinquency, undisciplined, etc. is not an element of the crime, it does not matter that Ch. 692 is not in effect; it is sufficient that Ch. 692 as a ratified bill is accessible to the public so that they can know the meaning of the words used in G.S. 14-316.1 (letter of Attorney General to Claire McNaught, Winston-Salem Public Safety Attorney, July 11, 1979).

The new law provides that only those over 16 may be found guilty of violating the statute and eliminates the prior specific provision making it unlawful to have sexual intercourse with anyone under 16.

Embezzling state property penalty. Ch. 716 (S 820), effective May 30, 1979, changes the penalty for violation of G.S. 14-91 (embezzlement of state property) from a mandatory minimum of twenty years to a maximum of ten years.

Simulating court process. Effective July 1, 1979, G.S. 14-118.1 was rewritten to clarify its provisions that make it a misdemeanor to simulate court process or official paper in the collection of a private debt. Ch. 263 (H 375) rewrites the statute to specify that use of any paper is unlawful when it would create in the ordinary person a false impression of official sanction.

Tear gas for self-defense. Ch. 661 (H 1184), effective May 28, 1979, amends G.S. 14-401.6 to allow private individuals who have not been convicted of a felony to use tear gas "for self-defense purposes only" so long as the tear gas container does not have the capability of discharging a cartridge larger than 50 cubic centimeters.

Abandoning animals offense. Ch. 687 (H 1226), effective May 29, 1979, makes it a two-year misdemeanor for a person to willfully abandon an animal he owns or possesses.

Cutting timber on state land. Ch. 15 (H 132), effective February 8, 1979, modernizes G.S. 14-130, the statute prohibiting building a building or cutting timber on state property. The new version makes the statute applicable to all state land and continues the right of the state to recover three times the value of the timber cut, but it removes the requirement that the sheriff must first order the violator to leave.

Separating child from parent. G.S. 14-320 has made it unlawful to separate a child less than six months old from her mother for purposes of adoption. Now Ch. 779 (H 1014), effective June 5, 1979, makes that crime applicable when the separation is from any parent that has lawful custody of the child.

*FINANCIAL TRANSACTION CARD CRIMES

The Credit Card Crime Act (Art. 19B, G.S. Chapter 14) was rewritten and renamed (Financial Transaction Card Crime Act) by Ch. 741 (H 1199), effective August 1, 1979. The existing credit card crimes have all been expanded to include the illegal use of financial transaction cards. A financial transaction card includes, in addition to credit cards, any check guarantee card and any of the new bank cards that give the holder access to bank accounts for the purpose of withdrawing and transferring funds and obtaining account information. It is made a crime under G.S. 14-113.9 for a person to (1) take or obtain a financial transaction card from another without the cardholder's consent; (2) receive a financial transaction card knowing it was wrongfully obtained with the intent to use, sell, or transfer it; (3) retain a misplaced financial transaction card for a wrongful purpose; and (4) buy or sell a financial transaction card from someone other than the issuer. Possession of financial transaction cards issued in the name of two or more persons other than members of a person's immediate family is still prima facie evidence that the cards were wrongfully obtained.

Many financial transaction cards have information electronically or magnetically encoded that permits acceptance of the card by an automated banking machine. G.S. 14-113.11 is amended to make a person who falsely encodes information on a financial transaction card to permit acceptance of that card by a banking

machine guilty of a felony punishable by a maximum three years imprisonment, $3,000 fine, or both. A person commits this offense if a card is encoded so that it will be accepted by a machine, even if it would not result in access to account funds or information.

Most of the remaining changes involve various sorts of fraud using a financial transaction card. It has been made a crime to receive money or goods with intent to defraud by the use of financial transaction card received with the knowledge that it was wrongfully obtained. Also, introducing such a card into an automated banking device or displaying it to any person providing money or goods with intent to defraud is a crime. A person using a financial transaction card to willfully and knowingly exceed the actual balance of a demand or time deposit account or to exceed an authorized credit line by $500 or 50 per cent of the credit authorized, whichever is greater, is guilty of financial transaction card fraud. Finally, it is financial transaction card fraud to deposit into an account by means of an automated banking device a check or document belonging to someone else or to receive anything of value as a result of using such documents knowing at the time that the deposited document was forged or not his lawful property. Conviction of financial card transaction fraud is either a misdemeanor or a felony depending on the value of items wrongfully received during any six-month period.

Other fraudulent acts involving the application for and receipt of financial transaction cards are made crimes. The new law prohibits a person from knowingly making a false statement in an application to influence the issuance of a card. Moreover, it is made a crime for a person to falsely report the theft, loss, a nonreceipt of a card intending to defraud someone of goods or services. These two new offenses are made misdemeanors punishable by imprisonment for not longer than one year, a $1,000 fine, or both.

BINGO AND RAFFLES

Under present North Carolina law bingo and raffles are a form of gambling. Over the years, however, a number of counties have had the General Assembly pass local acts legalizing those games under certain conditions. Perhaps a third of the counties have such acts, some restricting the games to tax-exempt organizations and limiting the number of sessions, but others allowing practically anyone to run a game for any length of time for any amount of money. Although the State Constitution prohibits local acts regulating trade, and there is a case holding that a local act on dog-racing is an act regulating trade, no one has challenged the constitutionality of these local bingo and raffle acts. Beginning September 1, 1979, however, that argument will be moot since all the local acts are repealed on that date and the operation of bingo and raffles is subject to a new statewide law enacted by Ch. 893 (S 127).

The new law legalizes bingo and raffles throughout the state but subjects the games to restrictive conditions. The most important of those are: (1) only tax-exempt nonprofit organizations may operate the games; (2) proceeds may be used only for the purposes of the organization or to pay the cost of running the game, but not to hire someone to run the game or to pay for social functions; (3) the number of games is limited, generally to no more than two five-hour sessions of bingo per week and one raffle per month per county; (4) the maximum

prize is limited, generally to $500 per game of bingo, $1,500 per night of bingo, and $500 per raffle; (5) the organization operating the game must have a special committee responsible for the game, whose members must register with the sheriff; and (6) records must be kept, including a separate bank account and an annual audit, subject to inspection by the sheriff and district attorney. Any bingo or raffle not in accordance with these provisions is gambling, a two-year misdemeanor. There are of course some loopholes in the law, such as the ones allowing outsiders to be hired to run games held as part of agricultural fairs held under Art. 45, General Statutes Ch. 106, and exempting those games from the limit on the number of sessions that are allowed. Bingo games where no more than ten dollars is given as a prize do not have to comply with the new law. The act makes expressly unlawful "instant bingo" where a person simply pays for a card to see it he has won a prize.

MISCELLANEOUS

Two grand juries. Effective March 22, 1979, Ch. 177 (H 175) amends G.S. 15A-622(b) to authorize the senior resident superior court judge to impanel a second grand jury to serve concurrently with the regular grand jury. The second jury continues until the judge terminates it.

Expunction of records. Two changes were made in the expunction laws. Ch. 61 (H 44), effective February 20, 1979, adds a new statute (G.S. 15-223.1) to allow anyone under 18 who is charged with but not convicted of a crime to apply to the court for removal of all records concerning the arrest and trial. The order must be issued if the person has no previous convictions other than traffic offenses. Ch. 431 (H 325), effective April 20, 1979, amends G.S. 15-223(a)(4), 90-96(b)(3), and 90-113.14(b)(3) to eliminate the requirement of submitting FBI and SBI records when petitioning for expungement of records; however, it requires an affidavit from the sheriff of the county of the petitioner's residence as well as from the sheriff of the county of conviction if the county of conviction is not the same county as the petitioner's residence. Ch. 431 also authorizes a judge to whom a petition is presented to require a probation officer to make any additional investigation of the petitioner's conduct during the probationary period.

*Prosecutor's appeal of suppression motion. Ch. 723 (H 325), effective May 31, 1979, amends G.S. 15A-979(c) to require a prosecutor's appeal of a suppression motion to go to the appellate court which would get the case if the defendant were convicted and given the maximum punishment. For instance, an appeal in an armed robbery case will go to the Supreme Court since the maximum punishment is life imprisonment.

Grand, petit juror pay increased. Ch. 985 (H 275), effective July 1, 1979, amends G.S. 7A-312 to increase grand juror pay from $8 to $12 per day and to increase petit juror pay to $30 per day for each day in excess of five days' service during a twenty-four month period.

*Photographing, fingerprinting juveniles. Ch. 850 (H 479), effective June 8, 1979, rewrites G.S. 15A-502(c) to authorize photographing and fingerprinting juveniles only under the nontestimonial identification procedures of the new juvenile code [Ch. 815, H 474]. The problem is that the new juvenile code is not effective until January 1, 1980; thus this new provision may not be used until that date. In addition, since Ch. 850 replaces the prior provision that

allowed photographing and fingerprinting of juveniles when their cases were transferred to superior court for trial as adults, this prior provision is no longer in effect. The result is that there is no statutory authority for photographing and fingerprinting juveniles from June 8, 1979, until January 1, 1980.

*Worthless check restitution. Ch. 837 (S 768) amends G.S. 14-107, effective July 1, 1979, to: (1) authorize a judge to require the defendant to pay restitution to the victim for the amount of the check, and (2) apparently require a judge in every case to tax as court costs the prosecuting witness' fee, whether or not the witness was under subpoena.

No decals on machines no defense. G.S. 14-56.1 (breaking into coin- or currency-operated machines) and G.S. 14-56.3 (breaking into paper currency machines) are amended (Ch. 767, S 747), effective June 4, 1979, to make clear that the lack of the required warning decal on the machine is no defense to a prosecution.

*Return of warrant. Ch. 725 (H 1190), effective May 31, 1979, extends the period of time in which the officer must return outstanding arrest process from 90 to 180 days. The officer is also given specific authority to make his own uncertified copy for information purposes, and the law is clarified so that the officer may make the arrest based on his knowledge of an outstanding warrant or order for arrest that has been returned to the clerk under the 180-day requirement.

*Administrative inspection warrants. The statute (G.S. 15-27.2) is read by some to require the owner to be present before the inspection may be made. Effective July 1, 1979, Ch. 729 (S 330) specifies that when the owner cannot be readily found the inspection may proceed and the officer may simply leave a copy of the warrant affixed to the property.

*Speedy trial amendments. Ch. 1018 (H 1005), effective June 8, 1979, amends the speedy trial law to provide the time limit for a misdemeanor appealed to superior court begins to run from the first regularly scheduled criminal session of superior court after notice of appeal; before this change, it ran from the notice of appeal. Ch. 1018 also amends G.S. 15A-701(a1)(3) (no corresponding change was made in -701(a)(3)) to exclude from its provisions dismissals by judges at probable cause hearings. The effect of this change will be to give a prosecutor a new 120 days if he decides to charge the defendant again.

Treatises admissible in district court. Ch. 8 (H 157) makes G.S. 8-40.1 applicable to district court.

Paternity case blood tests. Science has apparently progressed to the point that blood tests can show not only that a person could not be the parent of a child but also that it is highly likely that the person is the parent. Consequently, Ch. 576 (S 230), effective May 16, 1979, amends the bastardy (G.S. 49-7) and evidence (G.S. 8-50.1) statutes to authorize the judge, on motion of the state or defendant, in any case in which parentage is in issue to order the parents and child to submit to blood tests and to have testimony given to the jury as to the statistical likelihood of the person being the parent. Included is a provision requiring a special verdict that the defendant is not the parent if that is shown conclusively by the tests. Previous law allowed

blood tests only on the defendant's motion. A separate act, Ch. 542 (S 616), specifies that sexual intercourse within North Carolina is sufficient grounds for giving the courts of the state jurisdiction for actions involving nonsupport of the child.

Drugs and glue-sniffing. Each session a bill is ratified to conform the schedules in North Carolina's controlled substances act to the federal law. The act this session is Ch. 434 (S 511), effective July 1, 1979, and we do not pretend to understand the nature of the drugs listed there (for example, "N-ethyl-1-phenylcyclohexylamine"). A separate act, Ch. 550 (H 471), repealed the provisions requiring the clerks of court to send to Human Resources the names of all persons convicted of drug offenses. More significantly, Ch. 781 (H 1065) allows tetrahydrocannibols, the active ingredient in marijuana, to be dispensed by doctors in pharmaceutical form for treatment according to rules to be adopted by the Drug Commission.

A complete revision of the glue-sniffing statutes is enacted by Ch. 671 (S 664), effective July 1, 1979. The statutes will continue to punish inhaling toxic substances, possessing such substances for that purpose, and selling substances for illegal use, but the new law gives a more precise definition of what kinds of compounds are covered, listing the substances that might be included. Also, a somewhat more precise definition is provided for the term intoxication. The offenses remain two-year misdemeanors.

MOTOR VEHICLE LAW CHANGES

*Motor vehicle ownership evidence. Ch. 980 (H 1397), effective June 8, 1979, extends to criminal cases the rule already applied by G.S. 8-37 to certain civil cases, that evidence of tag letters and numbers plus a certified copy of the Division of Motor Vehicles registration or certificate of title is prima facie evidence of the ownership of the motor vehicle.

Public vehicular area re-defined. Ch. 680, effective July 1, 1979, amends G.S. 20-4.01(32) to include within the definition of public vehicular area any street opened to vehicular traffic within a subdivision which has been offered for dedication to the public by filing a map, plat, or written instrument in the Register of Deeds office and no public authority maintains the road or has accepted the dedication. Ch. 423, effective April 20, 1979, adds to the same definition roads on federal property that is subject to North Carolina jurisdiction.

Limited privilege modifications. Ch. 453 (H 530), effective April 24, 1979, amends G.S. 20-179(b)(1) to allow any district court judge who holds court in the county the limited driving privilege was issued to modify the privilege if it was issued by a district court judge; a parallel provision applies to privileges issued by superior court judges.

No passing where solid lines. Ch. 472 (H 1064), effective July 1, 1979, amends G.S. 20-150(e) to prohibit passing where there are "markings" placed by the Department of Transportation. The Attorney General has issued an opinion stating that "markers" means solid center lines (opinion issued to Claire McNaught, Winston-Salem Public Safety Attorney, July 2, 1979).

SENTENCING, PROBATION, AND PAROLE

*All felons to Department of Correction. Ch. 787 (H 1455) and Ch. 456 (S 166) rewrite G.S. 15A-1352, effective June 5, 1979, to require that all felons must be committed to the Department of Correction except that, on request of the sheriff or county board of commissioners, the presiding judge may sentence the defendant to a local confinement facility in that county.

Probation law amendments. Ch. 749 (H 159), effective June 4, 1979, makes several amendments to probation law provisions: (1) G.S. 15A-1345(c) is amended to increase the time within which a preliminary hearing on a probation violation must be held after a probationer's arrest from five to seven days; however, since no change was made to the provision requiring his release from custody within four working days after his arrest, he must be released from custody at that time if the preliminary hearing has not yet been held; (2) G.S. 15A-1344(d) is amended to toll the running of probationary term if a probationer has criminal charges pending against him that could result in a revocation of probation if he is convicted; (3) G.S. 15A-1355(c) is amended to make clear that a person imprisoned as a condition of special probation must serve his term day-for-day without any Department of Correction credits toward his term of service.

Parole law amendments. Ch. 749 (H 159), effective June 4, 1979, makes several important changes in the law governing parole eligibility. One change deletes the provision in G.S. 15A-1371(a) that makes a prisoner eligible for release on parole after he completes one-fourth of his minimum sentence if the minimum sentence was imposed only because it was required by law. As a consequence of the new law, all defendants convicted on or after the ratification date whose sentence includes a minimum term of imprisonment, whether required by law or given in the judge's discretion, will be eligible for release on parole only after they serve the entire minimum term or one-fifth of the maximum penalty allowed for the offense, whichever is less, minus time for good behavior. Defendants convicted before June 4, however, are still eligible for parole under the one-fourth rule.

Ch. 749 also changed the so-called "automatic parole" provisions of G.S. 15A-1371(g). If a defendant was serving a maximum sentence of six months or more for a misdemeanor or a felony sentence of between six months and 18 months, under prior law he was automatically to be released on parole after serving one-third of his maximum sentence if (a) he was also eligible for parole under the provisions of G.S. 15A-1371(a); and (b) the Parole Commission had not made certain findings that he was a poor risk for parole. The rule did not simply make the defendant eligible for parole after one-third; it required his release on parole. The parole is now no longer automatic.

As amended by Ch. 749, G.S. 15A-1371(g) provides that a defendant who is serving a sentence between 30 days and 18 months, whether for a felony or a misdemeanor, may be released on parole after he serves a third of his maximum sentence unless the Commission finds that he is a poor parole risk. While it is no longer necessary that the defendant also be eligible for parole under G.S. 15A-1371(a), he is now only eligible for release instead of automatically released on parole. Since the decision to release the defendant after one-third has been made discretionary rather than mandatory, the Commission may elect not to parole him even if its findings favor his release. Again, however,

defendants convicted before June 4 are governed by the former rule of automatic parole. Also, no defendant who is eligible for parole under the new rule may be released from confinement before the fifth full working day after he is placed in custody.

NOTE: In this compilation of statutes, only the affected section or subsection has been reproduced, as it will read with the changes made by the 1979 General Assembly. The statutes are in numerical order except for the Financial Transaction Card Crime Act (Art. 19B, G.S. Ch. 14), which appears at the end.

§ 8-37. Certificate of Commissioner of Motor Vehicles as to ownership of automobile.--In any civil or criminal action in which the ownership of a motor vehicle is relevant, evidence as to the letters and numbers appearing upon the registration plate attached to such vehicle or of the motor vehicle identification number, together with certified copies of records furnished pursuant to G.S. 20-42 by the Commissioner of Motor Vehicles showing the name of the owner of the vehicle to which such registration or vehicle identification number is assigned, or a certified copy of the certificate of title for such motor vehicle on file with the Commissioner of Motor Vehicles, is prima facie evidence of the ownership of such motor vehicle.
[Ch. 980 (H 1397), effective June 8, 1979]

§ 14-52. Punishment for burglary.--(a) Any person convicted of burglary in the first degree shall be imprisoned for a term of not less than ten years nor more than life in the State's prison. Anyone convicted of the crime of burglary in the second degree shall be punished by imprisonment for not less than seven years nor more than life imprisonment in the State's prison.

. . . .

[Ch. 672 (S 668), effective May 29, 1979]

§ 14-107. Worthless checks.--. . . .

. . . .

(5) In deciding to impose any sentence other than an active prison sentence, the sentencing judge may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for the amount of the check or draft and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant.

[Ch. 837 (S 768), effective July 1, 1979]

§ 14-221.2. Altering court documents or entering unauthorized judgments.--Any person who without lawful authority intentionally enters a judgment upon or materially alters or changes any criminal or civil process, criminal or civil pleading, or other official case record is guilty of a felony.
[Ch. 526 (H 952), effective May 8, 1979]

§ 14-316.1. Contributing to delinquency and neglect by parents and others.--Any person over 16 years of age who knowingly or wilfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7A-507 shall be guilty of a misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the Department of Human Resources under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the Division of Youth Services who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile.

[Ch. 692 (H 476), effective May 30, 1979]

§ 15-27.2 Warrants to conduct inspections authorized by law.--(a) . . . .

. . . .

(e) Any warrant issued under this section for a search or inspection shall be valid for only 24 hours after its issuance, must be personally served upon the owner or possessor of the property between the hours of 8:00 A.M. and 8:00 P.M. and must be returned within 48 hours. If the owner or possessor of the property is not present on the property at the time of the search or inspection and reasonable efforts to locate the owner or possessor have been made and have failed, the warrant or a copy thereof may be affixed to the property and shall have the same effect as if served personally upon the owner or possessor.

. . . .

[Ch. 729 (S 330), effective July 1, 1979]

§ 15A-301. Criminal process generally.--(a) . . . .

. . . .

(d) Return

(1) The officer who serves or executes criminal process must enter the date of the service or execution on the process and return it to the clerk of court in the county in which issued.

(2) If criminal process is not served or executed within the number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with the reason for the failure of service or execution noted thereon.

a. Warrant for arrest--180 days

b. Order for arrest--180 days

. . . .

. . . .

(e) Copies to Be Made by Clerk.--

(1) The clerk may make a certified copy of any criminal process filed in his office pursuant to subsection (a) when the original process has been lost or when the process has been returned pursuant to subdivision (d)(2). The copy may be executed as effectively as the original process whether or not the original has been redelivered as provided in G.S. 15A-301(d)(4).

. . . .

(4) Nothing in this section prevents the making and retention or uncertified copies of process for information purposes under G.S. 15A-401(a)(2) or for any other lawful purpose.

[Ch. 725 (H 1190), effective May 31, 1979]

§ 15A-401. Arrest by law-enforcement officer.--(a) Arrest by Officer Pursuant to a Warrant.--

. . . .

(2) Warrant Not in Possession of Officer.--An officer who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his possession, may arrest the person named therein at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him as soon as possible. This subdivision applies even though the arrest process has been returned to the clerk under G.S. 15A-301.

. . . .

[Ch. 725 (H 1190), effective May 31, 1979]

§ 15A-502. Photographs and fingerprints.--(a) . . . .

(c) This section does not authorize the taking of photographs or fingerprints of a juvenile except under G.S. 7A-550 through G.S. 7A-556.

. . . .

[Ch. 850 (H 479), effective June 8, 1979]

§ 15A-701. Time limits and exclusions.--(a) The trial of the defendant charged with a criminal offense shall begin within the time limits specified below;

. . . .

(2) Within 90 days from the first regularly scheduled criminal session of superior court held after the defendant has given notice of appeal in a misdemeanor case for a trial de novo in the superior court;

. . . .

(a1) Notwithstanding the provisions of G.S. 15A-701(a) the trial of a defendant charged with a criminal offense who is arrested,served with criminal process, waives an indictment or is indicted on or after October 1, 1978, and before October 1, 1980, shall begin within the time limits specified below:

. . . .

(2) Within 120 days from the first regularly scheduled criminal session of superior court held after the defendant has given notice of appeal in a misdemeanor case for a trial de novo in the superior court;

(3) When a charge is dismissed, other than under G.S. 15A-703, or a finding of no probable cause pursuant to G.S. 15A-612 and the defendant is afterwards charged with the same offense, based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan, then within 120 days from the date that the defendant was arrested, served with criminal process, waived an indictment, or is indicted, whichever occurs last, for the original charge;

. . . .

. . . .

[Ch. 1018 (H 1005), effective June 8, 1979]

§ 15A-979. Motion to suppress evidence in superior and district court; orders of suppression; effects of orders and of failure to make motion.--(a) . . . .

. . . .

(c) An order by the superior court granting a motion to suppress prior to trial is appealable to the appellate division of the General Court of Justice prior to trial upon certificate by the prosecutor to the judge who granted the motion that the appeal is not taken for the purpose of delay and that the evidence is essential to the case. The appeal is to the appellate court that would have jurisdiction if the defendant were found guilty of the charge and received the maximum punishment. If there are multiple charges affected by a motion to suppress, the ruling is appealable to the court with jurisdiction over the offense carrying the highest punishment.

. . . .

[Ch. 723 (H 325), effective May 31, 1979]

§ 15A-1352. Commitment to Department of Correction or local confinement facility.--(a) A person sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter shall be committed for the term designated by the court to the custody of the Department of Correction or to a local confinement facility. If the sentence imposed for a misdemeanor is for a period of 180 days or less, the commitment must be to a facility other than one maintained by the Department of Correction, except as provided in G.S. 148-32.1(b).

(b) A person sentenced to imprisonment for a felony under this Article shall be committed for the term designated by the court to the custody of the Department of Correction; except that, upon request of the sheriff or the board of commissioners of a county, the presiding judge may, in his discretion, sentence the person to a local confinement facility in that county.

(c) A person sentenced to imprisonment for nonpayment of a fine under Article 84, Fines, shall be committed for the term designated by the court:

(1) to the custody of the Department of Correction if the person was fined for conviction of a felony;

(2) to the custody of the Department of Correction or to a local confinement facility if the person was fined for conviction of a misdemeanor, provided that if the sentence imposed is for a period of 180 days or less, the commitment shall be to a facility other than one maintained by the Department of Correction, except as provided in G.S. 148-32.1(b).

[Ch. 787 (H 1455) and Ch. 456 (S 166), effective June 5, 1979]

§ 15A-2000. Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.--(a) . . . .

. . . . .

(e) Aggravating Circumstances.--Aggravating circumstances which may be considered shall be limited to the following:

. . . .

(11) The murder for which the defendant stands convicted was part of a course of conduct in which the defendant engaged and which included the commission by the defendant of other crimes of violence against another person or persons.

. . . .

[Ch. 565 (S 653), effective May 14, 1979]

ARTICLE 19B.
Financial Transaction Card Crime Act.

§ 14-113.8. Definitions.--The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) Automated banking device. "Automated banking device" means any machine which when properly activated by a financial transaction card and/or personal identification code may be used for any of the purposes for which a financial transaction card may be used.

(2) Cardholder. "Cardholder" means the person or organization named on the face of a financial transaction card to whom or for whose benefit the financial transaction card is issued by an issuer.

(3) Expired financial transaction card. "Expired financial transaction card" means a financial transaction card which is no longer valid because the term shown on it has elapsed.

(4) Financial transaction card. "Financial transaction card" or "FTC" means any instrument or device whether known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder:

a. in obtaining money, goods, services, or anything else of value on credit; or
b. in certifying or guaranteeing to a person or business the availability to the cardholder of funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such person or business; or
c. in providing the cardholder access to a demand deposit account or time deposit account for the purpose of:
    1. making deposits of money or checks therein; or
    2. withdrawing funds in the form of money, money orders, or traveler's checks therefrom; or
    3. transferring funds from any demand deposit account or time deposit account to any other demand deposit account or time deposit account; or
    4. transferring funds from any demand deposit account or time deposit account to any credit card accounts, overdraft privilege accounts, loan accounts, or any other credit accounts in full or partial satisfaction of any outstanding balance owed existing therein; or
    5. for the purchase of goods, services or anything else of value; or
    6. obtaining information pertaining to any demand deposit account or time deposit account;
d. but shall not include a telephone number, credit number, or other credit device which is covered by the provisions of Article 19A of this Chapter.

(5) Issuer. "Issuer" means the business organization or financial institution or its duly authorized agent which issues a financial transaction card.

(6) Personal identification code. "Personal identification code" means a numeric and/or alphabetical code assigned to the cardholder of a financial transaction card by the issuer to permit authorized electronic use of that FTC.

(7) Presenting. "Presenting" means, as used herein, those actions taken by a cardholder or any person to introduce a financial transaction card into an automated banking device, including utilization of a personal identification code, or merely displaying or showing a financial transaction card to the issuer, or to any person or organization providing money, goods, services, or anything else of value, or any other entity with intent to defraud.

(8) Receives. "Receives" or "receiving" means acquiring possession or control or accepting a financial transaction card as security for a loan.

(9) Revoked financial transaction card. "Revoked financial transaction card" means a financial transaction card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

§ 14-113.9. Financial transaction card theft.--(a) A person is guilty of financial transaction card theft when:

(1) He takes, obtains or withholds a financial transaction card from the person, possession, custody or control of another without the cardholder's consent and with the intent to use it; or who, with knowledge that it has been so taken, obtained or withheld, receives the financial transaction card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder; or

(2) He receives a financial transaction card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder; or

(3) He, not being the issuer, sells a financial transaction card or buys a financial transaction card from a person other than the issuer; or

(4) He, not being the issuer, during any 12-month period, receives financial transaction cards issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute a violation of G.S. 14-113.13(a)(3) and subdivision (3) of subsection (a) of this section.

(b) Taking, obtaining or withholding a financial transaction card without consent is included in conduct defined in G.S. 14-75 as larceny.

Conviction of financial transaction card theft is punishable as provided in G.S. 14-113.17(b).

§ 14-113.10. Prima facie evidence of theft.--(a) When a person has in his possession or under his control financial transaction cards issued in the names of two or more other persons other than members of his immediate family, such possession shall be prima facie evidence that such financial transaction cards have been obtained in violation of G.S. 14-113.9(a).

§ 14-113.11. Forgery of financial transaction card.--(a) A person is guilty of financial transaction card forgery when:

(1) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely makes or falsely

embosses a purported financial transaction card or utters such a financial transaction card; or

(2) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely encodes, duplicates or alters existing encoded information on a financial transaction card or utters such a financial transaction card; or

(3) He, not being the cardholder or a person authorized by him, with intent to defraud the issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, signs a financial transaction card.

(b) A person falsely makes a financial transaction card when he makes or draws, in whole or in part, a device or instrument which purports to be the financial transaction card of a named issuer but which is not such a financial transaction card because the issuer did not authorize the making or drawing, or alters a financial transaction card which was validly issued.

(c) A person falsely embosses a financial transaction card when, without authorization of the named issuer, he completes a financial transaction card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder.

(d) A person falsely encodes a financial transaction card when, without authorization of the purported issuer, he records magnetically, electronically, electro-magnetically or by any other means whatsoever, information on a financial transaction card which will permit acceptance of that card by any automated banking device. Conviction of financial transaction card forgery shall be punishable as provided in G.S. 14-113.17(b).

§ 14-113.12. Prima facie evidence of forgery.--(a) When a person, other than the purported issuer, possesses two or more financial transaction cards which are falsely made or falsely embossed, such possession shall be prima facie evidence that said cards were obtained in violation of G.S. 14-113.11(a)(1) or G.S. 14-113.11(a)(2).

(b) When a person, other than the cardholder or a person authorized by him possesses two or more financial transaction cards which are signed, such possession shall be prima facie evidence that said cards were obtained in violation of G.S. 14-113.11(a)(3).

§ 14-113.13. Financial transaction card fraud.--(a) A person is guilty of financial transaction card fraud when, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he

(1) uses for the purpose of obtaining money, goods, services or anything else of value a financial transaction card obtained or retained, or which was received with knowledge that it was obtained or retained, in violation of G.S. 14-113.9 or G.S. 14-113.11 or a financial transaction card which he knows is forged, altered, expired, revoked or was obtained as a result of a fraudulent application in violation of G.S. 14-113.13(c); or

(2) obtains money, goods, services, or anything else of value by:

a. representing without the consent of the cardholder that he is the holder of a specified card; or

b. presenting the financial transaction card without the authorization or permission of the cardholder; or
c. representing that he is the holder of a card and such card has not in fact been issued; or
d. using a financial transaction card to knowingly and willfully exceed:
1. the actual balance of a demand deposit account or time deposit account; or
2. an authorized credit line in an amount which exceeds such authorized credit line in the amount of five hundred dollars ($500.00), or fifty percent (50%) of such authorized credit line, whichever is greater; or

(3) obtains control over a financial transaction card as security for debt; or

(4) deposits into his account or any account, by means of an automatic banking device, a false, fictitious, forged, altered or counterfeit check, draft, money order, or any other such document not his lawful or legal property; or

(5) receives money, goods, services or anything else of value as a result of a false, fictitious, forged, altered, or counterfeit check, draft, money order or any other such document having been deposited into an account via an automated banking device, knowing at the time of receipt of the money, goods, services, or item of value that the document so deposited was false, fictitious, forged, altered or counterfeit or that the above deposited item was not his lawful or legal property.

(b) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person is guilty of a financial transaction card fraud when, with intent to defraud the issuer or the cardholder, he

(1) furnishes money, goods, services or anything else of value upon presentation of a financial transaction card obtained or retained in violation of G.S. 14-113.9, or a financial transaction card which he knows is forged, expired or revoked; or

(2) fails to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished.

Conviction of financial transaction card fraud as provided in subsections (a) or (b) of this section is punishable as provided in G.S. 14-113.17(a) if the value of all money, goods, services and other things of value furnished in violation of this section, or if the difference between the value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed five hundred dollars ($500.00) in any six-month period. Conviction of financial transaction card fraud as provided in subsections (a) or (b) of this section is punishable as provided in G.S. 14-113.17(b)if such value exceeds five hundred dollars ($500.00) in any six-month period.

(c) A person is guilty of financial transaction card fraud when, upon application for a financial transaction card to an issuer, he knowingly makes or causes to be made a false statement or report relative to his name, occupation, financial condition, assets, or liabilities; or willfully and substantially overvalues any assets, or willfully omits or substantially undervalues any indebtedness for the purpose of influencing the issuer to issue a financial transaction card. Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).

(d) A cardholder is guilty of financial transaction card fraud when he willfully, knowingly, and with an intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, submits, verbally or in writing, to the issuer or any other person, any false notice or report of the theft, loss, disappearance, or nonreceipt of his financial transaction card. Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).

(e) In any prosecution for violation of Section 14-113.13, the State is not required to establish and it is no defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.

(f) For purposes of this section, revocation shall be construed to include either notice given in person or notice given in writing to the person to whom the financial transaction card and/or personal identification code was issued. Notice of revocation shall be immediate when notice is given in person. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received after seven days from the date of the deposit in the mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone and Canada, notice shall be presumed to have been received 10 days after mailing by registered or certified mail.

§ 14-113.14. Criminal possession of financial transaction card forgery devices.--(a) A person is guilty of criminal possession of financial transaction card forgery devices when:

(1) he is a person other than the cardholder and possesses two or more incomplete financial transaction cards, with intent to complete them without the consent of the issuer; or

(2) he possesses, with knowledge of its character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be financial transaction cards of an issuer who has not consented to the preparation of such financial transaction cards.

(b) A financial transaction card is incomplete if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, encoded or written upon it.

Conviction of criminal possession of financial transaction card forgery devices is punishable as provided in G.S. 14-113.17(b).

§ 14-113.15. Criminal receipt of goods and services fraudulently obtained.--A person is guilty of criminally receiving goods and services fraudulently obtained when he receives money, goods, services or anything else of value obtained in violation of G.S. 14-113.13(a) with the knowledge or belief that the same were obtained in violation of G.S. 14-113.13(a). Conviction of criminal receipt of goods and services fraudulently obtained is punishable as provided in G.S. 14-113.17(a) if the value of all the money, goods, services and anything else of value, obtained in violation of this section, does not exceed five hundred dollars ($500.00) in any six-month period; conviction of criminal receipt of goods and services fraudulently obtained is punishable as provided in G.S. 14-113.17(b) if such value exceeds five hundred dollars ($500.00) in any six-month period.

§ 14-113.16. Presumption of criminal receipt of goods and services fraudulently obtained.--A person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company from other than an authorized agent of such company which was acquired in violation of G.S. 14-113.13(a) without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of G.S. 14-113.13(a).

§ 14-113.17. Punishment and penalties.--(a) A person who is subject to the punishment and penalties of this subsection shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both.

(b) A crime punishable under this subsection is a felony and shall be punishable by a fine of not more than three thousand dollars ($3,000) or imprisonment for not more than three years, or both.

[Ch. 741 (H 1199), effective August 1, 1979]