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1981 Legislation Affecting Criminal Law and Procedure

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This memorandum will summarize acts of the 1981 General Assembly affecting criminal law and procedure. A separate memorandum will discuss speedy trial law amendments and a booklet, North Carolina's Fair Sentencing Act: Explanation, Text, and Felony Classification Table, explains the presumptive sentencing law. The booklet may be ordered from the Publications Office of the Institute of Government.

For each ratified bill discussed, references are given to the chapter of the 1981 Session Laws for that ratified bill (Ch. 741, for example), to the number of the original bill that became law (H 1199, for example), and the legislation's effective date. If the act specified the codification of a new section of the General Statutes, the section number stated in the act is given, though it should be kept in mind that the Codifier of Statutes might change that.

The statutory changes are not reproduced here since the 1981 advance legislative service offered by the Michie Company will soon be complete. For magistrates and other criminal justice officials, a new edition of Arrest Warrant Forms is available from the Institute of Government with 1981 changes incorporated. And you may obtain a free copy of any bill by calling [(919) 733-5648] or writing the Printed Bills Office, State Legislative Building, Raleigh, N.C. 27611.

Institute of Government faculty members Kenneth S. Cannaday and Michael R. Smith contributed much of the material in this memorandum from their articles in North Carolina Legislation 1981.

I. ASSAULTS ON SPECIFIED INDIVIDUALS

Assaults on handicapped persons

Ch. 780 (S 40), effective October 1, 1981, adds a new statute, G.S. 14-32.1, that generally increases the punishments for assaults committed on handicapped persons. "Handicapped person" is defined as someone with a physical or mental disability or infirmity that would substantially impair his ability to defend himself. If a prosecutor elects to proceed under this statute, he will have to allege and prove that the victim was handicapped.

G.S. 14-32.1 makes it a Class F felony to assault a handicapped person with a deadly weapon with intent to kill inflicting serious injury. But the same assault on a person who is not handicapped is also a Class F felony. Thus a prosecutor would never proceed under the new law for this offense because of the additional burden of proof.

The new statute raises from Class H to Class G an assault on a handicapped person with a deadly weapon inflicting serious injury or assault with a deadly weapon with intent to kill. It also raises what are now aggravated two-year misdemeanor assaults to Class I felonies if they are committed on handicapped persons: assault with a deadly weapon and assault inflicting serious injury. In addition, a simple assault on a handicapped person is punishable by a maximum one year's imprisonment instead of 30 days.

Assault on school personnel

Ch. 180 (H 321), effective October 1, 1981, amends G.S. 14-33(b) to add assaults on school administrators, teachers, substitute teachers, and teachers' aides to the two-year misdemeanor provisions.

Assault on emergency medical personnel

Ch. 535 (S 138), effective October 1, 1981, amends G.S. 14-34.2 to add emergency medical services personnel who are certified to transport patients to the provisions that now make it a Class I felony to assault a fireman or law enforcement officer with a deadly weapon or firearm.

Assault on state executive officers and legislators

Ch. 822 (H 775), effective July 3, 1981, adds a new Article 5A to G.S. Chapter 14 to make certain assaults and threats punishable as felonies if they are made against the Governor, Council of State members, and legislators.

II. WEAPONS OFFENSES

Teaching use of firearms for civil disorders

Ch. 880 (S 543), effective October 1, 1981, adds a new G.S. 14-288.20 to make it a Class I felony to: (1) teach the use, or making of, a firearm or explosive or incendiary device knowing or intending that it will be unlawfully used in a civil disorder; or (2) assemble with one or more persons to train or be instructed in the use of such weapons intending to employ them unlawfully in a civil disorder.

Weapons at public events prohibited

Ch. 684 (H 1132), effective October 1, 1981, adds a new G.S. 14-277.2 to make it a two-year misdemeanor if a participant or spectator at a parade, funeral procession, picket line, or demonstration on publicly-owned or -controlled property possesses or has immediate access to a dangerous weapon. "Dangerous weapon" includes weapons specified in G.S. 14-269, 14-269.2, 14-284.1, and 14-288.8, as well as any object capable of causing serious injury or death when used as a weapon.

Shooting into occupied property with air guns

Ch. 755 (H 21), effective July 1, 1981, amends G.S. 14-34.1 (discharging a firearm into occupied property) to include discharging "any barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second." This amendment expands the law's coverage to include air rifles. A prosecutor will have to prove the weapon's muzzle velocity in each case that involves an air rifle or other similar device. But he will not have to prove muzzle velocity in cases involving firearms.

Possession of weapon in Governor's office or residence

Ch. 646 (S 312), effective June 22, 1981, adds a new G.S. 14-269.4 to make it a two-year misdemeanor to possess (whether openly or concealed) a deadly weapon in the State Capitol Building, the Executive Mansion, or the Governor's Western Residence or on the grounds of those buildings. Ch. 646 provides certain exceptions for law enforcement officers and others.

III. AMENDMENTS TO EXISTING CRIMES

Statutory rape and sexual offense

Ch. 106 (H 206), effective March 19, 1981, amends G.S. 14-27.2(a) and G.S. 14-27.4(a) to provide that a defendant must be at least 12 years old to be convicted of statutory rape or statutory sexual offense. The requirement that a defendant be at least four years older than the victim is retained.

Ch. 106 will require no change in preparing indictments since the form indictments provided in G.S. 15-144.1 and G.S. 15-144.2 were not amended. However, a jury must be instructed to find that the defendant was over 12 years of age since his age is now a specific element of these crimes.

Counterfeit controlled substances

Ch. 732 (H 1204), effective October 1, 1981, amends G.S. 90-87(6) to expand the definition of a counterfeit controlled substance. It retains the present definition (which basically applies to false labeling) but also includes any substance that intentionally is represented as a controlled substance. Thus oregano would be a counterfeit controlled substance if it is alleged to be marijuana.

Selling, delivering, or possessing with intent to sell or deliver a counterfeit controlled substance is punishable as a Class I felony under G.S. 90-95(c) and G.S. 90-95(a)(2).

Accessory before the fact abolished

Ch. 686 (S 62), effective for offenses committed on or after July 1, 1981, abolishes all distinctions between accessories before the fact and principals to the commission of a felony, with one exception: A person who would have been guilty and punishable as an accessory before the fact under prior law and is convicted of a capital felony is guilty of only a Class B felony (mandatory life imprisonment) if the jury finds that his conviction was based solely on the uncorroborated testimony of principals, co-conspirators, or accessories to the crime. This exception will require a judge to submit this issue to the jury when there is sufficient evidence to do so. The significant effect of this new law is to punish an accessory before the fact the same as the principal, with the one exception discussed above. Now, for example, an accessory before the fact to armed robbery may be punished by up to forty years. Before Ch. 686, the maximum punishment was ten years.

The indictment for an accessory before the fact now will be the same as for a principal to the crime.

Abandonment and nonsupport

Ch. 683 (H 1091), effective July 1, 1981, consolidates the criminal abandonment and nonsupport statutes in one statute (G.S. 14-322) and makes it sex-neutral so that either spouse may be guilty of violating its provisions. It also makes sex-neutral G.S. 14-325.1 (when failure to support a child is considered committed in North Carolina).

Bingo and raffle changes

Ch. 962 (H 1214), effective October 1, 1981, makes a number of minor changes in the bingo and raffles law. It amends G.S. 14-292.1 to require the committee members of an exempt organization to register and file audits with the local law enforcement agency in whose jurisdiction the raffle or bingo game is to be conducted. Ch. 962 defines "local law enforcement agency" to mean: (1) the county police force (sheriff's department if there is no county police force) for a raffle or bingo game located outside a city or inside a city with no police force; and (b) the city police within a city with a police force. Before Ch. 962 was enacted, registration and audit filing always was with the sheriff of the county where the raffle or game was conducted.

Ch. 962 also amends G.S. 14-292.1 to permit an exempt organization to spend its raffle or bingo game proceeds for auditing expenses. It provides that the price of equipment bought with such proceeds may not exceed the equipment's fair market value.

Ch. 962 also changes the requirements for auditing the account containing funds from raffle or bingo games. For example, the annual audit must be prepared by a public accountant rather than the special committee, but quarterly statements of expenditures and receipts must be prepared by the special committee. A person who willfully gives false information in an audit or quarterly statement is guilty of a two-year misdemeanor.

Reselling admission tickets

G.S. 14-344 permits the resale of tickets at a price not to exceed the face value of the tickets plus a reasonable fee, which may not exceed 10 per cent of the ticket price. Ch. 36 (H 97), effective October 1, 1981, changes the 10 per cent fee to a fee not exceeding $1 per ticket.

Stealing horses, mules, swine, and cattle

Ch. 664 (S 396), effective October 1, 1981, rewrites G.S. 14-81 to make larceny of horses, mules, swine, or cattle a Class H felony regardless of the animal's value. It also requires a judge at a minimum to place a convicted defendant on probation subject to the following conditions: (1) restitution for the damage or loss caused by the larceny; and (2) a fine not less than the amount of the damage or loss. Of course, a judge could impose an active prison sentence instead of probation.

Setting forest fires

Ch. 892 (H 1211), effective October 1, 1981, amends G.S. 14-136 to make it a Class I felony to set a fire to grasslands

or woodlands with the intent to damage another's property (present law requires willful or malicious intent). A second offense will be a Class H felony. Ch. 892 also provides that a person who furnishes evidence sufficient for a conviction under G.S. 14-136 is entitled to receive $500 from the North Carolina Fire Suppression Fund.

Cemetery desecration

Ch. 752 (H 611), effective October 1, 1981, rewrites and consolidates the statutes prohibiting vandalism at cemeteries. It rewrites G.S. 14-148 to make the following acts a misdemeanor punishable by a maximum one year's imprisonment and $500 fine: (1) putting garbage in a cemetery; (2) disturbing or vandalizing tombstones, monuments, or other articles in a cemetery when the damage is less than $1,000; and (3) disturbing or vandalizing a cemetery enclosure such as a fence when the damage is less than $1,000. A judge must consider requiring restitution or reparation as a condition of probation as an alternative to imposing an active jail term or fine.

Ch. 752 also rewrites G.S. 14-149 to make it a Class I felony to disturb or desecrate any casket, human remains, or repository of such remains. It also is a Class I felony to commit any of the unlawful acts discussed above under (2) or (3) if the damage exceeds $1,000.

Bid-rigging made a felony

Ch. 764 (H 136), effective August 30, 1981, adds a new Art. 3 to G.S. Chapter 133 to make it a Class H felony to engage in bid-rigging (a conspiracy or act in restraint of trade or commerce) if it involves: (a) a purchase, construction, or repair contract let by a government agency; or (b) a purchase, construction, or repair subcontract with a prime contractor for a government agency. State and local governments and their agencies are covered by the act.

Ch. 764 also makes any violation of G.S. 75-1 (illegal restraint of trade) a Class H felony, whether or not it involves bid-rigging. A G.S. 75-1 violation under present law is a misdemeanor.

IV. OTHER NEW CRIMES

Drug paraphernalia

Ch. 500 (S 128), effective October 1, 1981, makes it unlawful for a person knowingly to use, or possess with intent to use, drug paraphernalia for any of the following purposes: (1) to cultivate, manufacture, process, or package a controlled substance that it would be unlawful to possess; or (2) to introduce such a controlled substance into the body. A viola-

tion is a misdemeanor punishable by imprisonment for not more than one year, a fine not to exceed $500, or both. It also is unlawful for a person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia knowing that it will be used for any of those reasons. For the latter crimes, each distinct item of drug paraphernalia delivered, possessed, or manufactured constitutes a separate offense. These offenses are misdemeanors punishable by imprisonment for not more than two years, a fine of at least $1,000, or both. However, the delivery of drug paraphernalia by a person over age 18 to someone under age 18 who is at least three years younger than the defendant is punishable as a Class I felony.

"Drug paraphernalia" includes all equipment and materials used or designed to facilitate violations of the Controlled Substances Act. The definition specifically includes the following: (1) kits for growing, harvesting, or preparing a controlled substance; (2) scales for weighing controlled substances; (3) sifters for removing twigs and seeds from marijuana; (4) blenders and bowls for compounding controlled substances; (5) envelopes and other containers for packaging small quantities of controlled substances; and (6) objects for introducing marijuana, cocaine, or hashish into the body, such as water pipes, roach clips, cocaine spoons, and "bongs." The statute also includes the following factors to be considered in determining whether an object is drug paraphernalia: (1) statements concerning its use by a person in control of the object; (2) prior convictions of a person for violations of controlled substances laws; (3) existence of any controlled-substance residue on the object; (4) advertising concerning its use; (5) possible legitimate uses of the object in the community; and (6) expert testimony concerning its use.

Ch. 500 also makes it unlawful for a person to purchase any type of advertisement in a newspaper, magazine, etc. if he knows it is intended even partly to promote the sale of objects intended for use as drug paraphernalia. A violation is a misdemeanor punishable by imprisonment for not more than six months, a fine not to exceed $500, or both. Ch. 500 repeals G.S. 90-113.4 (possession of hypodermic syringes and needles).

Impersonating a fireman

Ch. 432 (S 296) effective October 1, 1981, makes it a 30-day misdemeanor to impersonate a fireman or any emergency medical services personnel with the intent to deceive if: (1) the impersonation is intended to impede the performance of their duties; or (2) someone reasonably relies on the impersonation and as a result suffers personal injury or property damage.

Forging school transcripts

Ch. 146 (H 248) effective October 1, 1981, makes it a two-year misdemeanor to make a false or altered transcript or diploma from any secondary school, college, or university. Using such a document with the intent to defraud is also a two-year misdemeanor.

Charitable solicitation by telephone

Ch. 805 (H 931), effective October 1, 1981, makes it a two-year misdemeanor for a professional solicitor to solicit charitable contributions by telephone or to compensate another person to solicit charitable contributions by telephone. The person compensated by a professional solicitor to solicit contributions by telephone also is guilty of a two-year misdemeanor. A professional solicitor is someone who receives consideration to solicit contributions on behalf of a charitable organization, but it does not include someone who is paid a fixed fee to plan or manage a charitable solicitation drive for a charitable organization. It also does not include a bona fide salaried officer or employee of: (1) a charitable organization with a permanent establishment in the state; or (2) a parent organization certified as tax exempt.

V. PROCEDURE AND EVIDENCE

Returning arrestee after no probable cause

Ch. 928 (H 430) adds a new G.S. 15A-504, effective July 10, 1981, pertaining to persons who have been arrested and brought before a magistrate but who must be released because the magistrate finds no probable cause for the arrest. The law enforcement officer may now return the arrested person (and anyone accompanying him) to the scene of arrest. If the person causes injury or damage after his release, the statute provides that the officer is not responsible.

Juvenile identification procedure

Ch. 454 (H 770), effective October 1, 1981, changes procedures for compelling certain juveniles to submit to nontestimonial identification procedures (line-ups, fingerprinting, etc.). If the juvenile's case has been transferred to the superior court to be tried as a criminal action, he will no longer be covered by the special procedures for juveniles specified in G.S. Chapter 7A. Rather, he will be subject to the rules relating to adults under G.S. Chapter 15A.

First appearance warnings

Beginning October 1, 1981, district court judges who conduct first-appearance hearings in felony cases must give the

defendant additional warnings about his right to a court-appointed lawyer. Ch. 409 (S 406) will require the judge to tell the defendant: (1) that if he is convicted and placed on probation, he may be required to pay the expense of his assigned counsel; and (2) that if he is acquitted, he will have no obligation to pay. Ch. 409 also places on the defendant and his appointed lawyer a duty to disclose to the court any change in the defendant's financial condition that would render him ineligible for court-appointed counsel.

Six-month grand juror terms

Ch. 440 (H 532), effective July 1, 1981, may provide some relief to grand jurors burdened by the requirement that they serve for a full year. Under this new law, the senior resident superior court judge may fix terms for grand jurors at six months to relieve any "disproportionate" burden on them or their employers.

City police telephone subpoenas

Ch. 267 (H 252) is an act originally intended to ease the burden of serving subpoenas in criminal cases. Under the old law, only a sheriff or his deputy could serve subpoenas by telephone. Ch. 267, effective April 27, 1981, amends G.S. 8-59 to provide that any local law enforcement officer may serve criminal subpoenas by telephone. But apparently a witness is not obliged to respond to a subpoena so served, since the act also provides that neither an order for arrest nor an order to show cause may be issued until the witness has been "served personally with the written subpoena." This latter provision does not apply to subpoenas served by sheriffs, since their authority derives from statutes (G.S. 15A-801 and G.S. 1A-1, Rule 45) that do not have this restriction.

Probation upon deferral of prosecution

Ch. 377 (S 263) will make a program of deferred-prosecution probation available in certain cases beginning on October 1, 1981. Under this program, a defendant may, with the state's consent, have his trial deferred and be placed on pre-trial probation for up to two years. If he complies with all the conditions of probation, he is immunized from further prosecution under the deferred charge and will have no record of conviction. But if he violates probation, the court may order his case tried; or the defendant may, at any time, choose to be tried rather than remain on probation. This program of pre-trial probation is available only if: (1) the maximum penalty for the offense charged is 10 years or less; (2) the prosecution of the case has been deferred by a court-approved written agreement between the prosecutor and defendant for the purpose of allowing the defendant to demonstrate his good conduct (such an agreement stops the running of the speedy-trial law); and (3) the defendant has no prior conviction involving moral turpitude and has not previously been placed on probation.

Victims of the defendant's crime must be given an opportunity to be heard, and the court must find that the defendant is unlikely to commit another offense punishable by more than 30 days. This act allows a judge, with the defendant's consent, to order a presentence investigation or a presentence commitment for study in determining whether deferred-prosecution probation would be appropriate. Another act, Ch. 964 (H 42), contains an appropriation of $300,000 to the Department of Crime Control and Public Safety to implement programs involving deferred-prosecution probation.

Jurors selected from drivers' license list

As a result of Ch. 720 (H 915), both criminal and civil litigants may see a change in the composition of jury panels. The new law has eliminated the property-tax rolls as a mandatory source from which jurors are summoned. Effective July 1, 1983, a list of licensed drivers (including those whose licenses have been revoked or canceled) in each county will replace the tax rolls as a mandatory source of jurors. The mandatory use of the voter list is retained.

Photograph as substantive evidence

Ch. 451 (H 149), effective October 1, 1981, changes the North Carolina common-law rule that photographs are not admissible as substantive evidence (i.e., evidence that might prove some fact in issue in the case). Now photographs, motion pictures, video tapes, x-rays, and other pictorial representations may be used as substantive evidence upon laying a proper foundation. However, Ch. 451 also allows a party to introduce evidence solely for illustrative purposes if he wishes to do so.

Hypothetical question not required

Ch. 543 (H 394) changes a long-standing rule relating to testimony of expert witnesses, such as a physician who testifies about scientific principles. This rule requires that the expert's opinion be given in response to a hypothetical question if it is based on facts not within his knowledge. The question requires the physician (or other expert) to assume a set of facts, to apply scientific principles to those facts, and to render an opinion based on those facts. The question must contain every factual assumption relied on by the expert as a basis for his opinion, and the hypothetical question is not proper unless evidence has been introduced in support of each factual assumption. Effective October 1, 1981, the hypothetical question will no longer be required. Rather, the expert witness will be required to disclose his underlying assumptions upon request of the adverse party or upon cross-examination.

Paternity evidence rule change

Ch. 634 (H 696) repeals "Lord Mansfield's Rule," a rule that in paternity cases prevents the mother of a child from testifying that her husband did not have access to her during the period in which the child must have been conceived. Such evidence would allow her to "bastardize the issue" by placing paternity in someone other than the husband. Effective October 1, 1981, evidence of this nature will be admissible, making a paternity suit against a father who is not the husband of a married mother a more realistic possibility.

Capital case sentencing

Legislation dealing with sentencing includes two acts relating to capital punishment. Ch. 652 (S 541), effective June 22, 1981, adds to the list of aggravating factors that a jury may consider in determining whether to impose the death penalty. It amends G.S. 15A-2000(e)(5) to add the factor that the defendant committed the capital felony while he was attempting, committing, or fleeing after attempting or committing another homicide.

Ch. 900 (H 1228), effective July 9, 1981, rewrites G.S. 15-194 to provide a procedure for setting the date upon which a condemned person is to be executed when the original date set in the judgment of death has passed and the execution has not taken place because of an intervening procedure such as an appeal or reprieve. Under former law the execution would be automatically rescheduled for the third Friday following some specified event (such as expiration of a reprieve). Under the new law, a superior court judge will set a date for execution at a hearing calendared by the district attorney and attended by the defendant's attorney.

VI. MISCELLANEOUS

Criminal history reporting program

A step toward providing courts with complete criminal histories of offenders was taken by Ch. 862 (H 118), effective January 1, 1982. This law requires each senior resident superior court judge to devise a plan in his district for reporting criminal convictions (and other specified dispositions such as dismissals) in felony cases to the State Bureau of Investigation. The judge's plan will be entered in the form of an order. The defendant's fingerprints (including those of juveniles tried in superior court) will accompany the disposition report to the SBI in order to verify identity.

Ch. 862 amends G.S. 15A-502(a) to make a law enforcement agency arresting a person charged with a felony responsible for fingerprinting him and forwarding the fingerprints to the SBI.

Appropriate relief motions

Ch. 470 (H 784) limits appeals on motions for appropriate relief made under G.S. 15A-1415(b) (motions made more than 10 days after a conviction, such as a motion to set aside the conviction on the grounds that there was a constitutional defect in the defendant's trial). Effective October 1, 1981, a Court of Appeals decision on such a motion will not be reviewable in the North Carolina Supreme Court.

Rape victim financial aid

Ch. 931 (H 72), effective July 10, 1981, provides some financial assistance for victims of rape and sexual offenses. The program is administered by the Governor's Crime Commission, which is authorized to make rules and award assistance. The assistance is limited to medical expenses incurred by the victim during examination and treatment and collection of evidence following the assault, and it may not exceed $500. The payment must be made directly to the hospital or physician, and is reduced by the amount of applicable public or private insurance. No award may be made if the victim did not report the crime to the police within 72 hours, except for good cause. The act is to be implemented with funds appropriated to the Department of Crime Control and Public Safety.

Criminal procedures relating to mental patients

Two new laws are designed to prevent premature release of mental patients who have been involuntarily committed. Ch. 537 (H 95), effective July 1, 1981, deals with patients committed after being charged with violent crimes and applies only to those who were found incompetent to proceed or were found not guilty by reason of insanity. Ch. 537 requires a hearing before a district court judge, with notice to the district attorney, before such a patient is released. For other patients who have been involuntarily committed, the law remains unchanged--the chief medical officer of the mental health facility may release such a person whenever he decides that hospitalization is no longer needed.

The second act, Ch. 936 (H 1349), effective October 1, 1981, deals with involuntarily committed patients who escape and are charged with committing a crime while on escape (or while residing in the mental health facility). If the patient's commitment is still valid, then he is not eligible for pretrial release on his criminal charge but must be returned to the treatment facility to be held pending trial.

Drug offense probation, records expunction

Ch. 922 (H 823) rewrites the provisions of G.S. 90-96 and G.S. 90-113.14 concerning probation and expunction of arrest and trial records for drug and toxic vapor offenses. Parts of Ch. 922 are complex and confusing. Therefore this summary only

will discuss the major changes and will allow you the opportunity to read and interpret the act's provisions.

Ch. 922 amends G.S. 90-96(a) (probation without adjudication of guilt and expunction of arrest and trial records) to make its provisions also applicable to: (1) misdemeanor Schedule II drug offenses (now, only Schedules III-VI are included); and (2) possession of drug paraphernalia. It also allows a judge to impose attendance at a drug education program of the Department of Human Resources as a condition of 90-96(a) probation.

Ch. 922 adds a new subsection to G.S. 90-96 to allow a defendant with a first conviction of possession of drug paraphernalia or felony or misdemeanor possession of any controlled substance to be placed on one year's minimum probation with the mandatory condition of attending the drug education program. It allows expunction of arrest and conviction records if the probation, including the drug education program, is completed satisfactorily. However, the expunction provisions apply only to misdemeanor Schedules II-VI and drug paraphernalia offenses and only to defendants who are not over 21 years of age.

Ch. 922 amends G.S. 90-113.14 to make similar changes as discussed above for toxic vapor offenses. It deletes the present provision for probation without adjudication of guilt and expunction of arrest and trial records for possession of cannibis.

Most of Ch. 922's changes are effective October 1, 1981.

Alcoholic commitment procedures

A number of clarifying changes were made in North Carolina's public-drunk law. Alcoholism is a defense to a charge of being drunk and disruptive in a public place (G.S. 14-444). G.S. 14-445 requires a judge to consider the defense of alcoholism even if the defendant did not raise it. Ch. 519 (H 179), effective July 1, 1981, amends this law to make it clear that a judge may defer the proceedings for 15 days without entering a judgment to consider the defense of alcoholism even if a defendant pleads guilty to a violation of G.S. 14-444. It also authorizes a judge to direct an alcoholism court counselor to gather information about a defendant's possible alcoholism.

Ch. 519 amends G.S. 122-58.22 to require that the judicial determination that a person is an alcoholic in need of care be based on clear, cogent, and convincing evidence. It also permits the director of an alcoholism treatment facility where someone is committed for short-term treatment to discharge that person any time he determines that the person no longer needs care. Notice of discharge must be furnished to the clerk of superior court in the county of commitment and the county where the facility is located.

Ch. 519 makes changes in the procedure for committing an assisted alcoholic in need of care. The most significant change permits a deputy clerk or magistrate with reasonable grounds to believe that a person is an alcoholic in need of care to order him detained for up to 10 days pending a district court hearing. Before Ch. 519 was enacted, a person could be detained no longer than 96 hours. But the new law also makes it clear that a public drunk assisted to a jail may not be held there pending his district court hearing but must be transferred to an approved facility. An assisted public drunk may never be held at a jail for more than 24 hours.

Assistance between law enforcement agencies

Law enforcement officers who are temporarily assisting another law enforcement agency are entitled to the same immunities as officers of the agency they are assisting. Ch. 93 (H 254), effective March 13, 1981, amends G.S. 90-95.2(a) and 160A-288(a) to make it clear that this provision includes immunities relating to the defense of civil actions and the payment of judgments.

Ch. 878 (H 1262), effective July 8, 1981, adds new G.S. 160A-288.1 to set rules that apply when a local law enforcement agency aids a state law enforcement agency. If the head of the state agency requests aid in writing and locally applicable laws and guidelines are followed, a local law officer working with a state agency now has the same jurisdiction and powers (and is subject to the same immunities, including those relating to the defense of civil lawsuits and the payment of judgments) as an officer of the state agency. The local officer also retains his normal jurisdictions, powers, and immunities. He is subject to commands of his superior officers in the state agency, but administratively remains an employee of the local agency.

Forfeiture of conveyances for drug law violations

G.S. 90-112(f) provides that all conveyances subject to forfeiture under G.S. Ch. 90, Art. 5 (N.C. Controlled Substances Act) for drug law violations are to be forfeited in accordance with the forfeiture procedures for conveyances used to commit liquor law violations. The 1981 General Assembly's liquor law revision (Ch. 412, H 9), effective January 1, 1982, clarifies those forfeiture procedures (G.S. 18B-504). For example, it permits an *in rem* action against the property when the owner is unknown or is known but unavailable for trial.

Reparation to government agency

Ch. 530 (H 1029), effective June 8, 1981, rewrites part of G.S. 15A-1343(d) to provide that a government agency may benefit by way of reparation if a criminal sentence so specifies and if the person in charge of the property or premises where the community service is to be done grants prior approval.

Interpreters for the deaf

Ch. 937 (H 427), effective October 1, 1981, and applicable to all court proceedings initiated or in process on or after that date, rewrites G.S. Chapter 8 (to become Ch. 8A) to expand the entitlement of deaf persons to interpreters in certain judicial, legislative, and administrative proceedings. Specifically covered are civil or criminal matters in superior or district court (including magistrate's court) and special proceedings before the clerk. In criminal matters, entitlements begins at the time of arrest, before interrogation, Miranda warnings, etc. The Department of Human Resources is required to furnish clerks of superior court with a list of qualified interpreters, and in judicial matters the Administrative Office of the Courts is required to pay the interpreters' fees.

VII. MOTOR VEHICLE LAW

Two acts made important changes affecting the law [G.S. 20-24(c)] that makes failure to answer a motor vehicle charge within 90 days a conviction for purposes of assessing driver's license points.

Ch. 896 (S 86), effective for convictions for 90-day failures occurring on or after October 1, 1981, provides that the Division of Motor Vehicles (DMV) may not issue or reissue a driver's license to any person who is guilty of a 90-day failure. A driver who appears in court within twelve months after a 90-day failure has been entered may receive a new driver's license by paying the court costs or answering the charge; after twelve months, paying the court costs will be a prerequisite to obtaining or renewing a driver's license (unless he shows good cause for failing to appear for the charge).

Ch. 416 (H 869), effective May 18, 1981, permits a judge to set aside a 90-day failure conviction at any time within twelve months after the conviction has been entered. However, to take advantage of this provision, the defendant will have to show that either: (1) his failure to appear was due to his excusable neglect or another person's neglect or mistake; or (2) the conviction was entered by clerical mistake. DMV must remove the conviction from the defendant's driving record when it is set aside pursuant to this provision.