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# ADMINISTRATION OF JUSTICE MEMORANDA

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

**September 1983** **No. 83/06**

# 1983 Legislation Affecting Criminal Law and Procedure

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This memorandum will summarize acts of the 1983 General Assembly affecting criminal law and procedure. The new driving-while-impaired law is discussed in the Institute of Government's new book titled *The Safe Roads Act of 1983: A Summary and Compilation of Statutes Amended or Affected by the Act,* by James C. Drennan. This publication also contains the complete text of liquor offenses created or amended by the act and the extra session held on August 26, 1983. The new law governing towing of vehicles by law enforcement officers is discussed in *Administration of Justice Memorandum* No. 83/03, by Joan G. Brannon. Both publications may be ordered from the Institute.* The new evidence code, which is effective July 1, 1984, will be discussed later in a separate *Administration of Justice Memorandum.*

Each new law discussed is referred to by the 1983 Session Laws chapter number of the ratified act and by the number of the original bill that became law—for example, Ch. 741 (H 199). The effective date of each new law is also given. If the act specified the codification of a new section of the General Statutes, the section number stated in the act also appears, though you should be aware that the Codifier of Statutes may change that number.

The statutory changes are not reproduced here, since the 1983 advance legislative service offered by the Michie Company now is complete. For magistrates, prosecutors, and other criminal justice officials, a new edition of *Arrest Warrant Forms* will be available from the Institute of Government within a few months; the 1983 changes will be incorporated. You may obtain a free copy of any bill by writing the Printed Bills Office, State Legislative Building, Raleigh, NC 27611, or by calling that office at 919-733-5648.

Some of the material in this memorandum is excerpted from articles by Institute of Government faculty members in *North Carolina Legislation 1983* (available from the Institute for $10, plus applicable sales tax).

## Drug Law Changes

**Methaqualone Rescheduled.** Effective for offenses committed on or after October 1, 1983, Ch. 695 (H 1215) reschedules methaqualone from a Schedule II to a Schedule I controlled substance.

**Selling Drugs to Minors.** Effective for offenses committed on or after October 1, 1983, Ch. 414 (S 337) makes it clear that the stiffer punishment provided in G.S. 90-95(e)(5) for delivering illegal drugs to minors applies also to selling these drugs to minors.

**Drug Money Subject to Forfeiture.** Ch. 528 (H 711), effective July 1, 1983, makes money used in purchasing, delivering, selling, or manufacturing illegal drugs subject to forfeiture to the state under G.S. 90-112. The forfeited money will go to the county school fund.

**Misuse of Otherwise Legal Drugs.** Ch. 773 (H 767), effective August 1, 1983, adds new two prohibitions to G.S.

*Publications Office, Institute of Government, Knapp Building 059A, The University of North Carolina at Chapel Hill, Chapel Hill, N.C. 27514. Telephone: 919-966-4119. *The Safe Roads Act,* $5.00 plus 3% sales tax; *AJM* 83/03, $2.00, plus 3% tax (4% for Orange County residents).

90-108: (1) obtaining controlled substances by legal prescription by willfully misrepresenting to or withholding information from a doctor or other practitioner; and (2) embezzling controlled substances by an employee of a doctor or other practitioner or registrant.

## Changes Affecting Children

**Sexual Abuse of Children.** Ch. 916 (S 165), effective October 1, 1983, responds to growing concern about sexual abuse of children. It adds new G.S. 14-190.12 to make these offenses Class I felonies: (1) using a child under 16 in a sexual performance; (2) consenting by a parent, guardian, or custodian to his child's participation in the performance; and (3) promoting such a performance knowing its character and content. "Sexual performance" is defined as any play, motion picture, photograph, dance, etc., exhibited before an audience if the performance includes sexual intercourse, masturbation, or other sexual acts by a child under 16. Ch. 916 also amends the felonious child-abuse law (G.S. 14-318.4) to prohibit any parent or guardian of a child under 16 from committing or allowing (1) any act of prostitution with or by the child, or (2) any sexual act upon "a" juvenile (as the law is drafted, although the possibility was probably not intended, a parent of a child under 16 could be guilty of this crime even though he committed or allowed a sexual act on a juvenile who was not his child).

**Child Abuse Felony Punishment.** Ch. 653 (S 318) amends the felonious child-abuse law [G.S. 14-318.4(a)] to increase the punishment from a Class I to a Class H felony. However, this act will not take effect because a later enactment [Ch. 916 (S 165), discussed above] inadvertently changed the punishment back to a Class I felony.

**Child's Age in Rape and Sexual Offense Cases.** The North Carolina Supreme Court has interpreted provisions ("child of the age of 12 years or less") as to age in first-degree statutory rape [G.S. 14-27.2(a)(1)] and first-degree statutory sexual offense [G.S. 14-27.4(a)(1)] charges to mean that the consenting child-victim must not have passed his twelfth birthday in order for the elements of these offenses to be met. Ch. 175 (H 146) and Ch. 720 (H 1260) will change the age limit to "under . . . 13 years" (which includes a child who has not reached his thirteenth birthday), effective for offenses committed on or after October 1, 1983. The proper language for indictments, warrants, and other pleadings (for offenses committed on or after October 1, 1983) is:

> FIRST-DEGREE STATUTORY RAPE (G.S. 14-27.2)
> . . . unlawfully, willfully, and feloniously carnally know and abuse (name victim), a child under the age of 13 years.
>
> FIRST-DEGREE STATUTORY SEXUAL OFFENSE (G.S. 14-27.4)
> . . . unlawfully, willfully, and feloniously engage in a sex offense with (name victim), a child under the age of 13 years.

**Nondivertible Crimes by Juveniles.** Ch. 251 (S 101), effective for offenses committed on or after October 1, 1983, amends G.S. 7A-531 to add first- and second-degree sexual offense to those offenses that a juvenile intake counselor may not divert from the petition-filing process—that is, a juvenile charged with these offenses must be entered into the juvenile justice system.

**Informing Minor's Parent of Criminal Charge.** Ch. 681 (H 544), effective October 1, 1983, adds new G.S. 15A-505 to require a law enforcement officer who charges an unemancipated minor (generally, an unmarried person under 18) with a criminal offense to make a reasonable effort without unnecessary delay to inform the minor's parent or guardian of the charge. This duty does not apply to moving motor vehicle offenses for which three or fewer points are assessed (but it does apply to driving while impaired) or nonmoving motor vehicle offenses.

**Superior Court Jurisdiction Over Juveniles.** Ch. 532 (H 913), effective for offenses committed on or after October 1, 1983, amends G.S. 7A-610(a) to clarify superior court jurisdiction over a juvenile when a district court judge orders a felony charge transferred to superior court for trial as an adult. The superior court will have jurisdiction not only of the felony charge transferred but also of any greater- or lesser-included offense of that felony or any related felony or misdemeanor.

**Child Custody Removal Crime.** It is a Class J felony to take a child outside North Carolina with intent to violate a North Carolina court order awarding custody of the child. Ch. 563 (H 744), effective for offenses committed on or after October 1, 1983, amends this law (G.S. 14-320.1) to include violations of child custody orders of federal courts or other state courts.

**Access to Parent Locater Service.** Ch. 15 (S 9), effective February 17, 1983, adds new G.S. 110-139.1 to require the parent locater service of the Department of Human Resources to transmit requests for information about the whereabouts of any absent parent or child to the federal parent-locater service for the purpose of enforcing a state or federal law regarding the unlawful taking or restraint of a child or making or enforcing a child custody determination. The request must come from a judge, clerk of superior court, district attorney, or United States attorney.

**Parents Required to Participate in Treatment.** Ch. 837 (H 932), effective October 1, 1983, amends G.S. 7A-523 and G.S. 7A-650 to authorize a district court judge—if a child has been adjudicated to be delinquent, undisciplined, abused, neglected, or dependent—to order

the parents to participate in medical, psychiatric, psychological, or other treatment of the child if it is in the juvenile's best interest for the parent to be directly involved in the treatment. The judge must hold a special hearing set out in G.S. 7A-650 before he may issue such an order.

**Reports of Certain Abuse Cases to District Attorney.** Under present G.S. 7A-548, the county social services director must report child-abuse cases to the district attorney if he finds evidence that a child has been abused by its parent or caretaker. Ch. 199 (H 332), effective October 1, 1983, enlarges that mandate by providing that if the director receives information that a child has been physically harmed in violation of any criminal statute by any person other than the parents or caretaker, he must report that information to the district attorney either orally or in writing within 24 hours after receiving it.

## Escape Laws

**Allowing Prisoners to Escape.** Ch. 694 (H 1173), effective October 1, 1983, deletes from the law (G.S. 14-239) punishing sheriffs, deputy sheriffs, and jailers for willfully or wantonly allowing prisoners to escape the provisions that (1) require the removal from office of the convicted officer, (2) allow a conviction based on negligence in allowing an escape, (3) allow a conviction when permitting the escape of a person arrested pursuant to an order for arrest but not yet committed to jail, and (4) require the officer to show at trial that the prisoner did not escape by his consent or negligence.

**Local Jail Escapes.** Effective for offenses committed on or after October 1, 1983, the escape from a local jail of a prisoner who is serving a sentence for a felony conviction or has been convicted of a felony and is awaiting transfer to the state prison system is a Class J felony (Ch. 455, H 817). Present law (G.S. 14-256) makes all local jail escapes punishable only as misdemeanors.

**Escape by Use of Deadly Weapon.** G.S. 14-258.2 makes it a Class H felony for a prisoner in the state prison system or a local jail to use a deadly weapon either to assault someone and inflict injury or to escape. Effective October 1, 1983, Ch. 455 (H 817) adds a new provision to make it a Class H felony if a person who is assisting a prisoner to escape or attempt to escape assaults and injures someone with a deadly weapon or uses a deadly weapon to effect the prisoner's escape.

**Penalties for Escape from State Prison.** Ch. 465 (S 235), effective October 1, 1983, makes two changes to the state prison escape law (G.S. 148-45). First, escape from the state prison system of a person convicted previously of escaping from the system, even if the prior conviction was a misdemeanor, is a felony. Second, it repeals G.S. 148-45(e), which (1) required an escape sentence to run consecutively to the sentence the prisoner was serving when he escaped, and (2) prohibited plea bargaining about escape charges.

## New, Amended, or Repealed Crimes

**Forgery Law Revision.** The forgery law (G.S. 14-119) was amended to reflect the expanding kinds of financial institutions that now offer checking accounts. Ch. 397 (S 469), effective for offenses committed on or after October 1, 1983, specifically applies the forgery law to checks of savings and loan associations, credit unions, mutual and money market funds, and federal, state, and local governments.

**Involuntary Servitude.** Concern about the subjection of migrant workers to working conditions that resemble involuntary servitude led to the enactment of Ch. 746 (H 684). Effective October 1, 1983, new G.S. 14-43.2 provides that a person who holds another person against his will (1) in order to perform labor, whether for compensation or for satisfying at debt, and (2) by coercion or intimidation using violence or threats will be guilty of a Class I felony. In addition, holding a person in involuntary servitude will be a violation of the kidnapping law (G.S. 14-39).

**Larceny of Animals.** Ch. 35 (S 72), effective for offenses committed on or after October 1, 1983, rewrites G.S. 14-84 to make the theft of all animals subject to the law of larceny and the $400 misdemeanor/felony distinction. Prior law did not recognize stealing a cat as a crime, and stealing a dog was a misdemeanor regardless of the animal's value. Ch. 35 did not repeal G.S. 14-81 (larceny of horses, mules, swine, or cattle is a Class H felony regardless of the animal's value), so a person still may be charged under its provisions.

**Public Purchases for Private Benefit.** Ch. 409 (H 1036), effective October 1, 1983, adds a new G.S. 143-58.1 to make it a two-year misdemeanor to use public contract procedures to purchase property or services for private use or benefit.

**Exemption of Public Officials from Self-Dealing Law.** The law (G.S. 14-234) that prohibits a public official from being involved in a contract for his own benefit was amended by Ch. 544 (H 1062), effective June 16, 1983, to provide that an official who owns less than 10 per cent of the business with which a contract is made has not violated the law. However, the governing board must approve the contract by specific resolution.

**Weapons of Mass Death and Destruction.** Ch. 413 (H 946), effective for offenses committed on or after October 1, 1983, made two significant changes to the law (G.S.

14-288.8) that prohibits possession of a weapon of mass death and destruction. First, the penalty for the offense was increased from a misdemeanor to a Class I felony. Second, the weapon in G.S. 14-288.8(c)(3) was redefined to (1) add sawed-off rifles and silencers or mufflers for any firearm (whether or not the firearm is a weapon of mass death and destruction) and (2) delete semiautomatic firearms.

**Harboring Fugitives.** The law (G.S. 14-259) that prohibits concealing or aiding escaped prisoners was broadened by Ch. 564 (H 947), effective October 1, 1983, to include concealing or aiding persons who are subject to outstanding arrest warrants or orders for arrest or have fled from another state to avoid prosecution.

**Bingos and Raffles.** Ch. 896 (H 489) and Ch. 923 (S 313), effective October 1, 1983, repeal existing laws regulating bingo and raffles and replace them with new provisions (G.S. 14-309.5 through -309.14) that regulate them more closely. In addition, the new laws create felony offenses of operating bingo games or raffles with a suspended license or without a license, willfully misapplying moneys received, and contracting with or providing consulting services to any licensee.

**Legislative Bribery.** Ch. 780 (H 1253), effective July 18, 1983, repeals G.S. 14-219 (bribery of legislators) but adds a new provision to G.S. 120-86 (which also prohibits bribery of legislators) to make the economic threatening of a legislator by his client, employer, or customer with the intent to influence him in performing his official duties a Class I felony.

**Contaminating Public Water System.** Ch. 507 (H 943), effective June 13, 1983, adds new G.S. 14-150 to make it a Class I felony willfully to (1) contaminate a public water system with a toxic chemical, biological agent, etc., or (2) damage property or equipment of a public water system with intent to impair service.

**Concealed Weapon Law.** Ch. 86 (H 67), effective October 1, 1983, simplifies the language of the concealed-weapon law (G.S. 14-269) but makes no substantive change other than substituting "slung shot" for "sling shot."

**Utility Reconnection Crime.** Ch. 508 (H 989), effective October 1, 1983, amends G.S. 14-151.1 to make unauthorized reconnection of electricity, gas, or water connections that were lawfully turned off a two-year misdemeanor.

**Vagrancy, Tramp Laws Repealed.** Ch. 17 (H 35), effective February 17, 1983, repeals three laws (G.S. 14-336, -338, and -339) concerning vagrants and tramps.

**Criminal Disturbance Laws Repealed.** Ch. 39 (H 36), effective October 1, 1983, repeals various criminal-disturbance laws (G.S. 14-272, -273, -274, -275) but adds a new provision to G.S. 14-288.4(a) to prohibit disturbing a religious service.

**Age Element in Assault on a Female and Contributing to Delinquency.** Ch. 175 (H 146) and Ch. 720 (H 1260), effective October 1, 1983, change the age element of assault on a female [G.S.14-33(b)(2)] from a male person "over the age of 18 years" to a male person "at least 18 years of age." This revision makes no substantive change (other than including the day of the person's 18th birthday), but language in criminal pleadings should be changed to conform with the new language (although failure to do so probably is not grounds for quashing the pleading). A similar nonsubstantive change was made to the contributing-to-delinquency law (G.S. 14-316.1); the language "at least 16 years old" replaces "over 16 years of age."

**Removal of Shopping Carts.** Ch. 705 (S 473), effective October 1, 1983, adds new G.S. 14-72.3 to make it a 30-day misdemeanor to remove a shopping cart from the parking lot of a store without permission.

**Harm to Law Enforcement Animal.** Ch. 646 (H 918), effective October 1, 1983, adds new G.S. 14-163.1 to make it a two-year misdemeanor to seriously injure or kill an animal used for law enforcement purposes if the defendant knew or reasonably should have known that it was being used for such a purpose.

## Criminal Procedure

**Discovery Law Changes.** Ch. 759 (H 1143), effective July 14, 1983, as modified by Ch. 6 (H 2) of the extra session, effective August 26, 1983, makes several significant changes to criminal discovery laws.

G.S. 15A-903(a)(2) is amended to require the State, on defendant's motion, to divulge in written or recorded form the substance of any relevant oral statement made by the defendant to anyone that is within the possession, custody, or control of the State, the existence of which is known by the prosecutor or becomes known before or during the trial. However, a nonexculpatory statement made by the defendant to an informant is not discoverable if the informant's identity is a "prosecution secret" and he will not testify for the prosecution. If a statement is withheld on this basis, the informant may not testify at trial.

G.S. 15A-903(a)(2) also contains a procedure that is intended to prevent the discovery of statements to nonlaw enforcement officers until 12 noon on the Wednesday before the beginning of the week during which the case is calendared for trial. Presumably statements to law enforcement officers will be discoverable at any appropriate time before trial, and discovery may not be delayed until 12 noon Wednesday.

G.S. 15A-908(a) is amended to provide specific examples (possible physical harm, intimidation, bribery, etc.) of what

may constitute "good cause" for issuing a protective order that denies, delays, or restricts discovery. G.S. 15A-910 is amended to add two new sanctions (mistrial, dismissal with or without prejudice) when a party fails to comply with discovery.

New G.S. 15A-903(f) is an almost verbatim copy of the federal Jencks Act (18 USC § 3500). It makes clear that a "statement" [defined in new G.S. 15A-903(f)(5) as a written statement signed or acknowledged by the witness or a recorded statement] of a State's witness is not discoverable until after the witness has testified on direct examination at trial. It sets out a procedure by which a defendant, upon motion, may obtain such a statement if it relates to the subject matter of the witness's testimony. This provision broadens discovery rights provided in *State v. Hardy,* 293 N.C. 105 (1977), since the *Hardy* decision was that a statement need be provided to the defendant only if it was material and favorable to the defendant.

G.S. 15A-903(d) is amended to give a defendant the right to inspect buildings and places or any other crime scene that is within the state's possession and custody. This provision is essentially a statutory codification of a constitutionally based holding in *State v. Brown* [306 N.C. 151 (1982)].

**Changes in the Speedy Trial Law.** Ch. 571 (H 384), effective October 1, 1983, makes several changes in the speedy-trial law. First, it makes permanent the 120-day indictment-to-trial requirement in G.S. 15A-701(al), thereby repealing the provision [G.S. 15A-701(a)] that would have changed the requirement to 90 days, effective October 1, 1983. It also makes permanent the exclusion of district court cases [G.S. 15A-703(b)] from the speedy-trial law. Second, to relieve the burden on rural counties, it amends G.S. 15A-701(b)(8) and G.S. 15A-702 to exclude from the 120-day provision all cases in a county that has fewer than eight regularly scheduled criminal or mixed weekly sessions of superior court each year.

**Calendaring of Criminal Cases in Superior Court.** Effective October 1, 1983, Ch. 761 (S 23) amends G.S. 7A-49.3 to require the district attorney, at the beginning of each superior court session (after disposing of any non-jury matters), to announce the order in which he intends to call cases for trial. Deviations from the announced order may be made only with the trial judge's approval or the defendant's consent.

**Dismissal with Leave of Incompetent Defendant's Case.** Ch. 460 (H 700), effective October 1, 1983, adds new G.S. 15A-1009 to allow a prosecutor to dismiss a case with leave when a defendant is found incapable of standing trial. He may reinstitute the charge if the defendant later becomes capable of standing trial.

**Procedure for Challenging Use of Prior Convictions.** Attempting to clarify some confusion about present law, Ch. 513 (H 1077), effective October 1, 1983, specifies the procedure to be followed at criminal trials and sentencing hearings when a defendant contends that a prior conviction (the fact of which the prosecutor seeks to use against him to impeach or to increase the degree of crime or length of sentence) was obtained in violation of his right to counsel. Ch. 513 adds new G.S. 15A-980 to require the defendant to move to suppress the use of the prior conviction under the procedures in Article 53 of G.S. Ch. 15A and to prove by a preponderance of evidence that the conviction was invalid. To prevail, he must show that at the time of the prior conviction he was indigent, had no counsel, and had not waived his right to counsel. A defendant waives his right to suppress the use of a prior conviction if he does not move to suppress it.

**Recordation of Jury Instruction Conference Required.** Ch. 635 (H 1192), effective June 28, 1983, requires that every jury instruction conference be recorded.

**Boating, Hunting, and Fishing Offense Waiver.** Ch. 586 (H 1214), effective January 1, 1984, amends various provisions of G.S. Ch. 7A and G.S. Ch. 15A to allow magistrates and clerks to accept written appearances, waivers of trial, and pleas of guilty to boating, hunting, and fishing violations in accordance with a uniform schedule of fines issued by the conference of chief district court judges. Minor wildlife and boating offenses then will be handled as minor traffic offenses are handled. Magistrates and clerks will have a list of offenses for which they can accept written waivers and the fines they must assess for the violations. Thus fines for these violations will be uniform throughout the state.

## Evidence Law

**Medical Records Admissible by Affidavit.** Effective July 1, 1983, Ch. 665 (H 1016) amends G.S. 8-44.1 and Rule 45(c) of the North Carolina Rules of Civil Procedure (made applicable to criminal cases by G.S. 15A-801 and -802) to make copies of medical records (relating to diagnosis, care, or treatment) admissible. The act allows hospital employees under subpoena to authenticate such copies by affidavit rather then appearing in court, and the copies must be received into evidence if otherwise admissible. To take advantage of this provision, the medical records custodian must send the copies to the presiding judge (or the judge's designee) by registered mail or by personal messenger.

**Husband-Wife Testimony.** Ch. 170 (H 66), effective October 1, 1983, rewrites G.S. 8-57 to simplify the language and to conform the statute to the holding in *State v. Freeman,* 302 N.C. 591 (1981), that a spouse may testify against a spouse-defendant in a criminal case. The act

makes clear that a spouse may not be compelled to testify except in those instances already specified in the law.

**Chain of Custody of Evidence.** Ch. 375 (H 682), effective May 23, 1983, makes it clear that the evidence of chain of custody may be maintained by using the State Courier Service or private carrier as well as first-class mail. It also amends G.S. 90-101 so that the State Courier Service as well as private carrier may possess controlled substances without having to register them.

**Jurisdiction to Override Privilege.** Ch. 410 (H 235), effective October 1, 1983, amends G.S. 8-53 (doctor-patient), G.S. 8-53.3 (psychologist-client), G.S. 8-53.4 (school counselor-student), and G.S. 8-53.5 (marriage counselor-client) to make it clear that the proper judge to compel disclosure is in the division (district or superior) in which the case is being heard.

**Social Worker-Client and Counselor-Client Privileges.** Ch. 495 (S 83) and Ch. 755 (S 553), effective January 1, 1984, add provisions to G.S. Ch. 8 to create private social worker-client and private counselor-client evidentiary privileges that a judge may override if "necessary for the proper administration of justice."

**Subpoena for Documentary Evidence.** Ch. 722 (H 1354), effective July 11, 1983, amends Rule 45(a) of the North Carolina Rules of Civil Procedure to allow an attorney to sign a subpoena for documentary evidence; a clerk is not required to sign it.

## Sentencing, Probation, and Parole

**Conspiracy Punishments.** Present law provides that when a statute does not specify the punishment, conspiracy to commit a particular felony is a Class J felony. Ch. 451 (S 321), effective for offenses committed on or after October 1, 1983, adds new G.S. 14-2.4 that will make a conspiracy to commit a Class A through G felony a Class H felony when a statute does not specify the punishment.

**Pecuniary Gain As an Aggravating Factor.** Ch. 70 (H 192), effective October 1, 1983, rewrites G.S. 15A-1340.4(a)(1)c. of the Fair Sentencing Act to state the aggravating factor as "[t]he defendant was hired or paid to commit the offense." The former language was "[t]he offense was committed for hire or pecuniary gain."

**Honorable Discharge As a Mitigating Factor.** Ch. 606 (H 527), effective October 1, 1983, adds new G.S. 15A-1340.4(a)(2)o. to the Fair Sentencing Act to allow an honorable discharge to be considered as a mitigating factor in sentencing.

**No Findings Required When Consolidated Judgment.** Ch. 453 (H 1034), effective October 1, 1983, amends G.S. 15A-1340.4(a) and (b) to provide that when two or more felonies are consolidated for judgment and are subject to the Fair Sentencing Act, the judge need not give written reasons for imposing a prison term that (1) does not exceed the total of the presumptive terms for the felonies consolidated, (2) does not exceed the maximum term for the most serious felony consolidated, and (3) is not shorter than the presumptive term for the most serious felony consolidated.

**Eligibility for CYO Status for Certain Nonviolent Crimes.** Ch. 531 (H 838), applicable to defendants convicted of crimes committed on or after July 1, 1983, amends various provisions of G.S. Ch. 148 to make eligible for committed youthful offender (CYO) status those defendants at least 21 but less than 25 who have been convicted of a misdemeanor or Class H, I, or J felony that is not "violent" (undefined).

**Early Parole If Prisons Are Overcrowded.** Ch. 557 (H 832), effective July 1, 1983, adds new G.S. 148-4.1 and amends G.S. 15A-1380.2 to provide that if the Secretary of Correction finds it "necessary to reduce the prison population to a more manageable level, he shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose." This parole release applies only to (1) inmates sentenced for misdemeanors and felonies not subject to the Fair Sentencing Act (FSA) who are already eligible for parole under existing law, and (2) inmates sentenced for felonies under the FSA who are within three months of their automatic 90-day parole. The Parole Commission also may parole and simultaneously terminate parole supervision for an FSA inmate when he has less than 180 days left to serve on his maximum prison sentence.

**Prison Sentence of Pregnant Defendants.** Ch. 389 (H 236), effective October 1, 1983, amends G.S. 15A-1353(a) to allow a judge, when a pregnant woman is convicted of a "nonviolent" (undefined) crime, to delay the service of her sentence until six weeks after her delivery or other termination of the pregnancy.

**Probation conditions.** Ch. 561 (H 455), effective October 1, 1983, and applicable to persons placed on probation on or after that date, amends G.S. 15A-1343 to authorize explicitly and to clarify what is already a fairly common practice—the use of "regular" and "special" conditions of probation. Regular conditions automatically apply to a defendant placed on probation without the judge's stating them in open court (although they must be set forth on the court's judgment), but the judge may exempt the defendant from any of the regular conditions in open court and in his written judgment. Special conditions may be imposed in the judge's discretion. The regular conditions include (1) not committing any other criminal offense, (2) remaining within the court's jurisdiction unless given permission to leave by the court or the probation officer, (3) reporting to the officer as required, (4) supporting

dependents, (5) not possessing firearms without the court's written permission, (6) paying a $10/month "supervision fee," (7) remaining employed or pursuing a course of study, (8) notifying the officer if the probationer fails to obtain or retain employment, (9) paying court costs and fines and making restitution or reparation, (10) paying to the state the costs of court-appointed counsel, and (11) visiting a prison unit with the probation officer. [Regular conditions (2), (3), (6), (8), and (11) do not apply to unsupervised probationers.] Special conditions enumerated by Ch. 561 include such things as undergoing medical or psychiatric treatment, surrendering the probationer's driver's license and not operating a motor vehicle, submitting to warrantless searches by the probation officer "for purposes specified by the court and reasonably related to . . . probation supervision," not using or possessing any illegal drug, submitting to special probation (probation that includes as a condition the service of a short period of imprisonment), and performing community service. The list is open ended; the court may impose any other conditions reasonably related to the probationer's rehabilitation.

Ch. 561 makes some other changes. In G.S. 15A-1343(d), the present statute on restitution to the crime victim as a condition of probation, Ch. 561 deletes this sentence: "The court shall fix the manner of performing the restitution or reparation, and in doing so, the court may take into consideration the recommendation of the probation officer." Presumably, the court must continue to set the amount of restitution to be paid. Ch. 561 adds new G.S. 15A-1343(g), which allows the court to delegate to a probation officer the scheduling of payments to the clerk of superior court of restitution or other payments that are conditions of probation (such delegation is already a common practice). The court may also authorize the officer to "transfer the [probationer] to unsupervised probation after all the monies are paid to the clerk," but the officer must notify the clerk of the transfer.

Ch. 561 [and also Ch. 135 (S 120), which Ch. 561 rewrites] allows the court, with the consent of the defendant's appointed attorney, to order that counsel costs imposed as a condition of probation be paid to the clerk on behalf of the attorney; the clerk must promptly pay those moneys to the attorney. This provision—a response to the exhaustion in 1983 of funds budgeted for indigents' counsel—expires on July 1, 1985.

**Special Probation Good Time and Gain Time.** Effective June 17, 1983, Ch. 560 (S 404) makes it clear that probationers who are serving a period of imprisonment as a condition of special probation under G.S. 15A-1344(e) or G.S. 15A-1351(a) are not entitled to any "good time" or "gain time" deductions from this period for good behavior or work assignments while in prison or jail.

**Enforcement of Child Support.** Ch. 567 (S 90) and Ch. 712 (H 1367), which corrects a statutory reference in Ch. 567, add new G.S. 15A-1344.1 to provide a new procedure for enforcing the payment of child support ordered as a condition of probation. The court may order at any time that child-support payments be made to the clerk of superior court for remittance to the person entitled to receive them. The clerk must keep records of payments made and names and addresses of persons affected. The probationer must inform the clerk of any change of address. If the probationer defaults on a payment, the clerk may mail a notice of delinquency to the probationer's last known address, but failure to receive the notice is not a defense in a proceeding to revoke probation for failing to pay. If the arrearage is not paid within 21 days after the notice is mailed or, if no notice is mailed, within 30 days after the defendant becomes delinquent, the clerk must certify the amount due to the district attorney and probation officer. These officials must then initiate revocation proceedings. The new procedure is effective October 1, 1983.

**Prison Transfer Notice.** When the Secretary of Correction wishes to transfer a North Carolina inmate to another state prison system pursuant to G.S. Ch. 148, Art. 12 (the Interstate Corrections Compact), Ch. 874 (S 495), effective July 20, 1983, adds new G.S. 148-121 to require that he give notice at least 30 days before the transfer unless he finds that notice would "jeopardize the safety of persons or property...." Those who must be notified are the district attorney of the district where the prisoner was convicted, the trial judge, the law enforcement agency that arrested the prisoner, the victim of his crime, and any other person who has made a written request to receive notice of a transfer. A notice must also be posted at the courthouse in the county where the prisoner was convicted. Written comments regarding a transfer are public records under G.S. Ch. 132.

**Execution of Inmates Sentenced to Death.** Ch. 678 (S 323), effective July 5, 1983, amends G.S. 15-187 to provide that a person sentenced to death may choose, in writing, at least five days before his execution date, to die by "administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent," rather than by the standard method of administration of lethal gas.

**Filing of a Probation Revocation Order.** Cases often arise in which a probationer who has been convicted and sentenced to probation in County A later moves to County B, violates probation conditions there, and has his probation revoked by the court in County B. In this situation, effective July 1, 1983, Ch. 536 (H 774) provides that the clerk of superior court in County B must issue the commitment order sending the probationer to prison, file the order revoking probation plus the commitment order in his own files, and send certified copies of the revocation and commitment orders to County A. Under former G.S.

15A-1344(c), the clerk in County B issued only a temporary commitment and the clerk in County A issued the formal commitment.

## Mental Health Law

**Outpatient Involuntary Commitment.** Ch. 638 (H 124), effective Janaury 1, 1984, will allow certain persons to be involuntarily committed on an outpatient basis in their home community before they become dangerous. The law will also allow persons involuntarily committed to a mental hospital because they were dangerous to themselves or others to be kept on outpatient commitment after their release from the hospital as long as necessary to keep them from becoming dangerous. (Current law will still be followed if both the local physician and the inpatient physician determine that the patient meets the criteria for inpatient commitment.) If the patient fails to comply with his outpatient treatment, the physician must make reasonable efforts to get compliance; failing to get compliance, the physician may request the clerk to issue an order for a law enforcement officer to take the respondent into custody and bring him to the physician for examination.

**Commitment of Certain Criminal Defendants.** Two years ago the General Assembly enacted a law that set out special procedures for involuntarily committed persons who had been charged with a violent crime and had been found either not guilty by reason of insanity or incapable of proceeding. Those persons could be released only by a judge after a hearing; notice of their rehearings had to be given to the chief district court judge, the clerk of superior court, and the district attorney in the county where the respondent was found not guilty by reason of insanity or incapable of proceeding. Any person could have the place of those hearings transferred back to the county where the commitment proceeding was begun. Through oversight, those special procedures did not apply to the respondent on his initial hearing on commitment but applied only to any rehearings. Ch. 380 (S 75), effective October 1, 1983, corrects that deficiency and makes the same rules apply to the respondent on his first hearing.

Ch. 380 also will require that when a defendant is found incapable of proceeding or not guilty by reason of insanity, the judge who presides at the trial or rules that the defendant is incapable of proceeding shall determine whether there are reasonable grounds to believe that the defendant meets the criteria for involuntary commitment. If he determines that there are such grounds, he must issue the custody order normally issued by the magistrate and indicate on the custody order whether the respondent had been charged with a violent crime so that the district court judge who presides at the involuntary commitment proceeding, if he commits the respondent, will know to carry forward on the commitment order the finding that the respondent was found not guilty by reason of insanity or incapable of proceeding after having been charged with a violent crime. Another important procedural change requires that, if the judge issues a custody order for a respondent who had been charged with a violent crime, the respondent must be taken directly to the regional hospital, bypassing the local doctor.

## Motor Vehicle Law

**Limited Driving Privilege for Speeders.** Ch. 798 (H 1326) adds a new G.S. 20-16(el) to provide for limited driving privileges for a new category of speeders. Effective October 1, 1983, a driver whose license has been revoked by the Division of Motor Vehicles for two or more convictions of speeding in excess of 55, or one conviction of reckless driving and one of speeding in excess of 55, or one conviction of over 75 mph may receive a limited driving privilege from a district court judge. This limited driving privilege is available for a first suspension only and may not be issued if the driver has been convicted of any other motor vehicle moving violation within the previous twelve months.

**Mandatory Jail For Permanent Revocation Offense.** Ch. 51 (S 68), effective October 1, 1983, amends G.S. 20-28(b) to set the punishment for driving while one's license is permanently suspended or revoked at not less than 30 days or more than two years in prison and a fine up to $1,000. The first 30 days of imprisonment is *not* subject to suspension or parole. Prior law merely provided for imprisonment of not less than one year but did not require an active sentence.

**Passing Stopped School Bus.** The law requiring vehicles to stop for school buses was rewritten by Ch. 779 (H 683). The new law, as contained in G.S. 20-217, requires a driver to stop only if the school bus is displaying its mechanical stop signal *and* has stopped to receive *or* discharge passengers. The old law required vehicles to stop if a school bus was displaying its mechanical stop signal or was stopped to receive or discharge passengers. Not all school buses have mechanical stop arms. For example, many buses that transport children to private schools are just regular buses with school bus signs displayed on the front and rear. The new law will not require vehicles to stop at all for these kinds of buses. New G.S. 20-217 also provides that a vehicle traveling in the opposite direction from the school bus need not stop when the street has been divided into two roadways separated by an intervening space (including a center lane for left turns on roads that have four or more lanes). Ch. 779 is effective October 1, 1983, and expires October 1, 1985.

**New Hit-and-Run Law.** Ch. 912 (H 806), effective October 1, 1983, rewrites the hit-and-run law (G.S. 20-166).

New G.S. 20-166(a) provides that any driver who knows or reasonably should know that he was involved in an accident that resulted in injury or death must immediately stop at the scene of the collision. He must remain there until a law enforcement officer completes an investigation or authorizes him to leave. But he may leave temporarily to call a law enforcement officer or to seek medical assistance or treatment. Willful violation of this subsection is a Class I felony. New G.S. 20-166(c) provides that a driver must also stop his vehicle at the scene of an accident that resulted in property damage only or injury or death that was not apparent; a violation of this subsection is a misdemeanor. Provisions of the previous hit-and-run law that requires medical assistance for injured parties to be secured and certain information (name, address, etc.) to be furnished were generally carried forward into new G.S. 20-166(b) and (c1). However, the punishment for violating these provisions when injury or death occurs has been reduced from a Class I felony to a misdemeanor.

**Property Damage Reports in Accidents.** Ch. 229 (H 499), effective October 1, 1983, amends G.S. 20-166.1(a) and (b) to provide that an accident that does not involve injury or death need not be reported to law enforcement authorities or the Division of Motor Vehicles unless there is property damage to an apparent extent of $500 or more. Prior law required a report if there was damage of $200 or more.

## Miscellaneous

**Resisting Unlawful Arrest.** Effective October 1, 1983, Ch. 762 (H 21) amends G.S. 15A-401 to prohibit a citizen from using deadly force when resisting an unlawful arrest; thus only the reasonable use of nondeadly force will be permitted.

**Forfeiture of Vehicle Used in Robbery.** Ch. 74 (H 264), effective October 1, 1983, amends G.S. 14-86.1(a) to allow the forfeiture of a vehicle used in an armed or common law robbery.

**Fire Investigative Searches.** Ch. 739 (S 315), effective July 13, 1983, amends G.S. 15-27.2 to allow fire investigators to execute an administrative inspection warrant at any time of day or night. The warrant also will be valid for 48 hours instead of 24 hours.

**SBI May Get Confiscated Weapons.** Ch. 517 (H 949), effective June 13, 1983, amends G.S. 14-269.1 to authorize judges to turn over to the SBI laboratory weapons confiscated for convictions of carrying a concealed weapon or other offense involving a deadly weapon.

**Judge Must Consider Worthless-Check Restitution.** Ch. 741 (H 567), effective October 1, 1983, amends G.S. 14-107(5) to require a judge to consider whether to order restitution to the victim for the amount of a worthless check.

**Pay Increase for Petit Jurors.** Ch. 881 (H 33), effective July 20, 1983, amends G.S. 7A-312 to increase petit juror pay from $8 to $12 per day.

**Prosecution Standards Study.** Ch. 905 (H 1142) authorizes the Legislative Research Commission to study whether a Prosecution Standards Commission should be established.

**Conference of District Attorneys.** The main appropriations act (Ch. 761, S 23) contained a provision establishing a Conference of District Attorneys. The conference consists of the elected district attorneys; one of its purposes is to improve the administration of the district attorneys' offices. The conference is authorized to hire an executive secretary and other supporting staff to assist it. The conference must meet annually and may meet more often if necessary.

**Attorney General, District Attorneys Must Be Lawyers.** Ch. 298 (H 458) submits to the voters at the November 1984 general election a proposed constitutional amendment that would require the Attorney General and elected district attorneys to be licensed to practice law in North Carolina.

**Compensation of Crime Victims.** Ch. 832 (H 177) establishes a Crime Victims' Compensation Commission to award compensation for economic harm suffered by crime victims. The act becomes effective when the General Assembly provides funds to implement its provisions; however, no funds were appropriated in the 1983 session.

**Criminal Code Revision Study Committee.** The Criminal Code Commission reported its proposal (H 1338) to the General Assembly to revise the criminal laws of North Carolina. The proposal was postponed indefinitely. Ch. 921 (H 1379) establishes a committee to study criminal laws; the committee must make a final report to the 1985 session.

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