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Administration OF JUSTICE Memorandum

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1985 Legislation Affecting Criminal Law and Procedure

Robert L. Farb and Benjamin B. Sendor

This memorandum will summarize acts of the 1985 General Assembly affecting criminal law and procedure. Each new law discussed is referred to by the 1985 Session Laws chapter number of the ratified act and by the number of the original bill that became law—for example, Ch. 764 (H 533). 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 (except for the obscenity offenses, which reflect the recodified numbers), though you should be aware that the Codifier of Statutes may change that number.

The statutory changes are not reproduced here, since the 1985 advance legislative service offered by the Michie Company is now complete. For magistrates, prosecutors, and other criminal justice officials, a supplement to *Arrest Warrant Forms* will be available from the Institute of Government within a few months; the 1985 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. The request should be by bill number rather than chapter number.

Some of the material in this memorandum is excerpted from articles by Institute of Government faculty members in *North Carolina Legislation 1985* [available from the Institute of Government Publications Office: 919-966-4119.]

Ch. 764 (H 533), effective July 1, 1986, which categorizes numerous traffic offenses as infractions and provides a court procedure to dispose of infractions, will be discussed in a later publication.

Drug Law Changes

Definition of marijuana. To make it clear that all species of marijuana are included in Schedule VI of the Controlled Substances Act, Ch. 491 (H 1223), effective June 27, 1985, redefines marijuana in G.S. 90-87(16) as "the plant of the genus Cannabis."

Possession of marijuana. Effective for offenses committed on or after October 1, 1985, Ch. 675 (H 891) amends G.S. 90-95(d)(4) to change the punishment for possession of marijuana and other Schedule VI controlled substances. Under the new punishment scale (a) a defendant's first conviction for possession of up to a half-ounce of marijuana is punishable by maximum imprisonment of 30 days, and/or a maximum fine of $100; a sentence of imprisonment must be suspended and the defendant may not be required to serve active time as a special condition of probation; (b) possession of more than a half-ounce of marijuana or more than 1/20 ounce of hashish is a general misdemeanor, punishable by maximum imprisonment of two years and/or a fine; (c) possession of more than 1½ ounces of marijuana, more than 3/20 ounce of hashish, or any amount of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from marijuana resin is a Class I felony punishable by maximum imprisonment of five years and/or a fine (presumptive sentence two years).

The new punishment scale changes the former one in two ways. First, since punishment for possession of up to

one ounce of marijuana was only a maximum fine of $100, the new scale will increase the punishment for such possession. Second, since possession of more than an ounce of marijuana, more than 1/10 ounce of hashish, or any amount of tetrahydrocannabinols was a Class I felony, the new scale will decrease the punishment for possession of one ounce to 1½ and 1/10 to 3/20 ounce of hashish from a Class I felony to a two-year misdemeanor.

Ch. 675 also makes a conforming change in G.S. 90--95(e)(7) to provide that a defendant convicted of possession of up to a half-ounce of marijuana who previously was convicted of a controlled substances offense is guilty of a misdemeanor punishable by maximum imprisonment of six months and/or a maximum fine of $500.

Possession of Dilaudid. Beginning for offenses committed on or after October 1, 1985, Ch. 569 (S 244) amends G.S. 90-95(d)(2) to make possession of more than four tablets, capsules, or other dosage units of Dilaudid (a Schedule II controlled substance chemically known as "hydromorphone") a Class I felony, punishable by maximum imprisonment of five years and/or a fine (presumptive sentence two years). Under former law, such possession was only a misdemeanor, punishable by maximum imprisonment of two years and a maximum fine of $2,000.

Scheduling of Controlled Substances. Ch. 172 (H 605), effective May 10, 1985, makes the following changes in the schedules of controlled substances:

—Amends G.S. 90-89(a) and (c) to add alfentanil; alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1 (1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine; tilidine; and parahexyl as Schedule I controlled substances;
—Adds a new G.S. 90-89(e) to add the stimulant known as fenethylline as a Schedule I controlled substances;
—Amends G.S. 90-90(b) and (c) to add sufentanil and phenylacetone as Schedule II controlled substances;
—Amends G.S. 90-92(a), (d), and (e) to add alprazolam, halazepam, temazepan, triazolam, mazindol, pipradol, and SPA ((-)-1-dimethylamino-1, 2-diphenylethane) as Schedule IV controlled substances; and
—Amends G.S. 90-93(a) to delete loperamide from the list of Schedule V controlled substances.

Obscenity and Adult Establishment Law Changes

The 1985 General Assembly made major changes to the laws regulating obscenity and adult establishments. This memorandum only will summarize the major changes. Institute of Government faculty member L. Poindexter Watts has written a comprehensive analysis of both acts. If you are interested in obtaining a copy of his analysis, please call [919-966-4327] or write his secretary, Linda McVey, Institute of Government, Knapp Building 059A, The University of North Carolina, Chapel Hill, North Carolina 27514.

Obscenity law changes. Ch. 703 (H 1171), effective for offenses committed on or after October 1, 1985, strengthens the laws concerning the dissemination of obscenity by making the following major changes:

(1) Deletes the requirement in G.S. 14-190.1 that dissemination be in a public place;

(2) Specifies that obscenity must be judged in terms of "contemporary community standards" instead of "contemporary statewide community standards";

(3) Adds sado-maschosistic conduct to the definition of obscenity;

(4) Increases the punishment for a violation of G.S. 14-190.1 from a misdemeanor to a Class J felony;

(5) Repeals the adversary hearing requirement of G.S. 14-190.2, which had required a prior judicial determination that materials were obscene before a person could be prosecuted for disseminating those materials (thus, a person now may be prosecuted for disseminating obscenity without such a prior judicial determination);

(6) Requires the request of a prosecutor (district attorney or assistant district attorney) *before* a search warrant or any criminal process (arrest warrant, criminal summons, order for arrest, or citation) may be issued by a judicial official for all obscenity offenses in G.S. 14-190.1 (disseminating obscenity), 14-190.4 (coercing acceptance of obscene publications), and 14-190.5 (preparing obscene materials). Although the new law will permit warrantless arrests without a prosecutor's request for these obscenity offenses (since a magistrate's order is not "criminal process"), the constitutionality of warrantless arrests for obscenity offenses is unclear. Thus, an officer normally should not make a warrantless arrest without consulting with a prosecutor or his agency's legal advisor.

Ch. 703 increases the penalty for a violation of G.S. 14-190.6 (using minor to assist in obscenity offense) and G.S. 14-190.7 (disseminating obscenity to minor under 16) from a two-year misdemeanor to a Class I felony, and increases the penalty for a violation of G.S. 14-190.8 (disseminating obscenity to minor under 13) from a Class I to a Class H felony.

Ch. 703 revises the general-misdemeanor offense of public display of sexually oriented materials (by repealing G.S. 14-190.11 and adding new G.S. 14-190.14) to consist of displaying material "harmful to minors" in a commercial establishment so that it is open to view by minors as part of the invited general public. It modifies the punishment to authorize imprisonment of up to six months *and* imposition of a fine of *at least* $500, with each day's violation made a separate offense. It also defines material "harmful to minors" much more broadly than "sexually oriented materials" in former G.S. 14-190.11.

Ch. 703 revises the general-misdemeanor offense of disseminating sexually oriented material to a minor (by repealing G.S. 14-190.10 and adding new G.S. 14-190.15) to consist of dissemination to minors of either material or a performance that is "harmful to minors." It uses the same broad definition of "harmful to minors" mentioned above instead of "sexually oriented material" in former G.S. 14-190.10.

Ch. 703 revises the felony offense of using a child under age 16 in a sexual performance or promoting such a performance so that it now consists of two degrees of sexual exploitation of a minor (by repealing G.S. 14-190.12 and adding new G.S. 14-190.16 and -190.17). It expands former law to cover as victims all minors: anyone under age 18 who is not married or judicially emancipated. The first-degree offense is a Class G felony and the second-degree offense is a Class H felony; both provide for mandatory minimum terms of imprisonment. Ch. 703 greatly broadens the reach of the statutes by expanding the types of sexual activity by the child model or performer that will be covered. It also adds a provision intended to make it easier for the jury to infer that the model or performer was a minor, and expressly provides that mistake of age of the minor is no defense.

Ch. 703 adds a new offense (G.S. 14-190.18) of promoting prostitution of a minor to make it a Class G felony, with a mandatory minimum term of imprisonment. Mistake of age of the minor is no defense. It defines "prostitution" to cover a broad range of sexual activity with or for another in exchange for anything of value.

Ch. 703 adds a new offense (G.S. 14-190.19) of participating in prostitution of a minor to make it a Class H felony, with a mandatory minimum term of imprisonment, to patronize a minor prostitute. Again, mistake of age of the minor is no defense, and the broad definition of "prostitution" applies.

Adult establishment law changes. Ch. 731 (H 143), effective for offenses committed on or after October 1, 1985, revises Article 26A (G.S. 14-202.10 through 14-202.12) of Chapter 14 of the General Statutes to make the following major changes concerning the regulation of adult establishments:

(1) Defines "adult bookstore" to include a bookstore that receives a majority of its gross income in any calendar month from the sale of adult publications. This definition is an additional alternative to the present definition based on a preponderance of publications stocked.

(2) Adds two new categories of adult establishments that cannot be in the same building, premises, structure, or other facility in which there is any other adult establishment:

(a) Adult live entertainment businesses; and

(b) Establishments that have individual viewing booths in which adult motion pictures are watched.

(3) Adds a misdemeanor offense of permitting more than one person at a time to occupy an adult-establishment viewing booth.

(4) Clarifies who is criminally responsible for permitting two or more adult establishments to be in the same building, facility, etc., or for permitting any other violation of the Article to occur. It adds two provisions that allows owners to escape criminal liability:

(a) An owner is not liable unless it is proved that he knew or reasonably should have known the nature of the adult business *and* he refused to cooperate with public officials in reasonable measures designed to terminate the illegal use; and

(b) If there is an agent in charge of the property, an owner may not be prosecuted unless the owner had actual knowledge of the illegal use.

New, Amended, or Repealed Crimes

Child abuse. Before the enactment of Ch. 668 (H 77), effective for offenses committed on or after October 1, 1985, G.S. 14-318.4 provided that child abuse was felonious only if it inflicted on the child serious physical injury with specified types of consequences, such as permanent disfigurement or fractured bones. Ch. 668 broadens the scope of this statute by removing the requirement that the injury cause specified kinds of consequences. G.S. 14-318.4 now will cover an intentional act that inflicts "any serious physical injury" on a child. In addition, the act changes felony child abuse from a Class I felony to a Class H felony. Ch. 509 (S 396), effective for offenses committed on or after October 1, 1985, supplements Ch. 668 by changing felony child abuse under G.S. 14-318.4(a1) (committing, permitting, or encouragement of child prostitution) and (a2) (committing or allowing commission of a sexual act on a child) from a Class I felony to a Class H felony.

The statute that prohibits contributing to the delinquency and neglect of a juvenile (G.S. 14-316.1) also prohibits causing, encouraging, or helping a child to commit an act that could result in the child's adjudication as abused under G.S. 7A-517. Violation of that prohibition is a misdemeanor, punishable by maximum imprisonment of two years and/or a fine. Ch. 648 (H 516), effective July 8, 1985, expands the definition of an abused juvenile in connection with sexual activity [G.S. 7A-517(1)(c)]. It provides that a child is abused if his parent or another person responsible for his care commits, permits, or encourages commission of any of the following acts with or on the child: vaginal intercourse; any sexual act; obscene or pornographic photographing, filming, or depicting of a child in such acts for either commercial or noncommercial use; or any other offense against public morality and decency under G.S. Ch. 14, Article 26; or an act of prostitution with or by the child.

Ch. 205 (H 638), effective October 1, 1985, amends G.S. 7A-544 to require (1) that the investigation of reported

child abuse be initiated immediately, but no later than 24 hours after the report is received, and (2) that the investigation of reported child neglect be initiated within 72 hours following receipt of the report.

Assaults on social services employees. G.S. 14-33(b) increases the punishment for assaults against certain types of people from maximum imprisonment of 30 days to maximum imprisonment of two years. Ch. 321 (H 909), effective for offenses committed on or after October 1, 1985, amends G.S. 14-33(b) to include assaults against an officer or employee of a county social services department when he or she is carrying out or trying to carry out an official duty.

Felonious restraint. There are three related offenses for unlawful restraint: the statutory felonies of first- and second-degree kidnapping (G.S. 14-39) and the common law misdemeanor of false imprisonment. Effective for offenses committed on or after October 1, 1985, Ch. 545 (S 420) adds a fourth related offense: the statutory (new G.S. 14-43.3) Class J felony of felonious restraint. The elements of this crime are: (a) restraining a person; (b) without his consent or, if he is under 16, without the consent of his parent or legal custodian; and (c) moving him by motor vehicle or other conveyance from the place of initial restraint. Ch. 545 expressly provides that the new crime is a lesser-included offense of kidnapping. As a Class J felony, it is punishable by maximum imprisonment of three years and/or a fine. Note that the presumptive sentence of one year for this new felony is less than the two-year maximum imprisonment for the misdemeanor of false imprisonment. The act does not expressly or by implication abolish the crime of false imprisonment.

Carrying concealed weapons. Ch. 432 (H 87), effective October 1, 1985, makes several changes in the statute prohibiting the carrying of a concealed weapon (G.S. 14-269). First, it amends G.S. 14-269(a) to provide that the prohibition does not apply to an ordinary pocket knife carried in a closed position. An ordinary pocket knife is defined as a "small knife, designed for carrying in a pocket or purse, which has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive or spring action." Second, it adds shurikins (star-shaped martial arts throwing weapons) and stun guns to the list of weapons expressly designated as deadly weapons in G.S. 14-269(a). Third, it establishes a defense to a charge of carrying a concealed weapon based on the following criteria: the weapon was not a firearm, the defendant carried it to engage in an activity involving legitimate use of the weapon, and the defendant did not use or try to use the weapon for an illegal purpose.

Selling or giving weapons to minors. Ch. 199 (H 649), effective for offenses committed on or after August 1, 1985, amends G.S. 14-315 to add shurikins to the kinds of weapons that may not be given to a minor.

Impersonating a law enforcement officer. Ch. 761 (H 1340) rewrites G.S. 14-277 (impersonating a law enforcement officer), effective for offenses committed on or after October 1, 1985. As rewritten, G.S. 14-277 now prohibits a person from:

(1) Falsely representing to another person that he is a law enforcement officer
   (a) by telling him so;
   (b) by displaying a badge or other identification signifying to a reasonable person that he is a law enforcement officer; or
   (c) by unlawfully operating a vehicle with an operating blue or red warning light on a public street, highway, or public vehicular area.
(2) Carrying out an act pursuant to authority granted to a law enforcement officer while falsely representing that he is a law enforcement officer, including
   (a) ordering a person to remain in or leave a particular place;
   (b) detaining or arresting a person;
   (c) searching a vehicle, building, or premises with or without a search warrant or administrative inspection warrant; or
   (d) unlawfully operating on a public street, highway, or public vehicular area a vehicle equipped with an operating red or blue warning light or siren so as to cause a reasonable person to yield or stop his vehicle.

The act expressly states that it does not prohibit a person from detaining another person under G.S. 15A-404 or from helping a law enforcement officer under G.S. 15A-405. Violation of the prohibition against false representation is a misdemeanor, punishable by maximum imprisonment of two years and/or a fine. Violation of the prohibition against acting as a law enforcement officer is a misdemeanor, punishable by minimum imprisonment of 72 hours, maximum imprisonment of two years, and/or a fine. The term of imprisonment for acting as a law enforcement officer may be suspended on condition that the defendant serve at least 72 hours of active time as a condition of special probation, that he perform 72 hours of community service, that he pay a fine, or any combination of these conditions.

Ch. 761 also prohibits a person from acting as a state, county, or municipal employee upon false representation that he is such an employee. Violation of this prohibition is a misdemeanor, punishable by maximum imprisonment of two years and/or a fine (Ch. 761 formally repeals the identical provisions of Ch. 477 of the 1985 Session Laws, but re-enacts those provisions as part of rewritten G.S. 14-277).

Harassment of jurors or former jurors. G.S. 14-225.2 prohibits harassment of, intimidation of, or communication with a juror, his spouse, or another relative residing in his household in order to influence the juror's decision in a proceeding. Beginning with offenses committed on or

after October 1, 1985, Ch. 691 (H 841) expands that statute by also prohibiting threats against or intimidation of a former juror because of his decision in a proceeding. However, Ch. 691 also narrows the statute by limiting its protective scope to a juror and his spouse, eliminating protection of other relatives living in his household.

Prison escape. Ch. 226 (H 253), effective May 23, 1985, makes a technical change by repealing the criminal prohibitions in G.S. 148-45(a)(3) and (b)(3) against escape by a person convicted of a misdemeanor or felony who has been committed to state prison pending appeal under former G.S. 15-183. This change conforms G.S. 148-45 to the repeal of G.S. 15-183 by Ch. 711, Session Laws of 1977. Since G.S. 15A-1353(a) provides that a prison sentence begins when the court issues an order of commitment, G.S.148-45(a)(1) and (b)(1) now cover escapes of prisoners serving prison sentences pending appeal.

Possession of beer or wine on public school property. Ch. 566 (H 1066), effective July 2, 1985, eliminates the authority of local school boards under G.S. 18B-301(f)(7) to allow possession and consumption of malt beverages and unfortified wine on public school property, thereby making any such possession or consumption a misdemeanor, punishable by maximum imprisonment of two years and/or a fine. However, the act creates an exception for possession and consumption of unfortified or fortified wine used for sacramental purposes by a religious group in a public school building when the local school board approves the use of the building.

Beer, wine drinking age. Ch. 141 (H 101), effective September 1, 1986, raises the minimum age for the use of malt beverages or unfortified wine from 19 to 21. It makes the purchase or possession of beer or unfortified wine by a 19- or 20-year-old an infraction, punishable by a maximum $25 fine, but court costs may not be imposed.

Embezzlement by public employees and trustees. G.S. 14-92 prohibits embezzlement of money or other property by public employees and trustees. Ch. 509 (S 396), effective July 1, 1985, amends G.S. 14-92 to make clear that the following governmental bodies are protected by the statute: counties; cities; other units or agencies of local government; local school boards; and penal, charitable, religious, and educational institutions.

Conflict of interest. G.S. 14-234(d1)(v) exempts a physician, pharmacist, or dentist appointed to a county social services board, local health board, or area mental health board serving one or more counties with no municipality over 7,500 in population from the conflict-of-interest prohibitions set forth in G.S. 14-234(a) on certain conditions. Ch. 190 (H 475), effective May 16, 1985, adds optometrists, veterinarians, and nurses to the list of professionals covered by that exemption.

Consumer protection. Effective for offenses committed on or after October 1, 1985, Ch. 652 (H 1135) adds a new G.S. 14-401.13 to protect the right of consumers to cancel certain types of transactions known as "off-premises sales." The act defines an "off-premises sale" as a sale, lease, or rental of consumer goods or services (including courses of instruction or training) for a price of at least $25 (under either single or multiple contracts) in which the seller solicits the sale and the purchase agreement or buyer's offer to purchase is made at a place other than the seller's place of business. Ch. 652 requires a seller, when making such a sale, to provide written and oral notice to the buyer that the buyer may cancel the sale within three business days of the sale; the notice must comply with specified requirements regarding form and content. The seller must return to the buyer any payments made, property traded, or negotiable instrument executed by the buyer within ten days of receiving the buyer's notice of cancellation. The buyer must return or make available to the seller at the buyer's residence any goods obtained through the sale. Violation of the notice requirements is a misdemeanor, punishable by imprisonment for 30 days and a fine of $100. Willful failure by a seller to honor a valid notice of cancellation is a misdemeanor (since Ch. 652 does not state the punishment, this offense is a general misdemeanor, punishable by maximum imprisonment of two years and/or a fine).

The act expressly exempts the following types of transactions from these requirements: (1) sales made pursuant to negotiations at a retail store with a fixed, permanent location; (2) sales for which cancellation rights are governed by the federal Consumer Credit Protection Act (15 U.S.C. § 1635); (3) sales in which the buyer has initiated contact and the goods or services are needed to meet the buyer's emergency; (4) sales conducted entirely by mail or telephone; (5) transactions in which the buyer has initiated contact and has requested the seller to repair or maintain property in the buyer's home; (6) sales or rental of real property; (7) sales of insurance; and (8) sales of securities or commodities by a broker-dealer licensed with the federal Securities and Exchange Commission.

DWI on the water. Ch. 615 (H 284), effective for offenses committed on or after October 1, 1985, adds a new G.S. 75A-10(b1) to make it a misdemeanor punishable by up to six months imprisonment and a maximum $500 fine if a person operates a motorboat or motor vessel while underway on the waters of North Carolina (1) while under the influence of an impairing substance, or (2) after having consumed sufficient alcohol that he has, at any relevant time after the boating, an alcohol concentration of 0.10 or more. It provides that the relevant definitions in Chapter 20 (motor vehicle law) apply to this offense. However, the implied consent provisions concerning chemical tests for alcohol are not incorporated in this new statute.

Criminal Procedure and Evidence

Grand jury's jurisdiction. In *State v. Randolph*, 312 N.C. 198 (1984), the North Carolina Supreme Court ruled that a grand jury has jurisdiction to issue indictments only for criminal offenses committed in its county. Effective July 1, 1985 (but not applicable to prosecutions pending on or before that date), Ch. 553 (S 393) adds new G.S. 15A-631 to modify that decision by providing that a grand jury may issue an indictment or presentment in any case if the county where it is sitting has venue for trial under the laws relating to trial venue. Since venue laws permit the trial of criminal cases in more than one county under certain circumstances, Ch. 553 will allow one grand jury to indict for several offenses that occurred in different counties so that they may be tried together at one trial.

Two lawyers for indigent defendant in capital case. Although a trial judge has discretionary authority to appoint a second lawyer to represent an indigent defendant charged with an offense (first-degree murder) that provides for the death penalty, Ch. 698 (H 1218)—effective for indictments issued on or after July 11, 1985—amends G.S. 7A-450 to *require* that a second lawyer be appointed in such a case. If the public defender's office is representing the indigent defendant, the second lawyer may come from that office.

Dismissal with leave when defendant cannot be found. A prosecutor may dismiss a case with leave when a defendant fails to appear in court and cannot be readily found, and he may reinstate the charge when the defendant is later arrested. Ch. 250 (S 419), effective October 1, 1985, amends G.S. 15A-932(a) to make it clear that a prosecutor also may dismiss a case with leave when the grand jury has indicted a defendant who cannot be readily found to be served with an order for arrest.

Distribution of mental competency report. When a defendant's competency to stand trial is questioned, a medical expert examines the defendant and submits a report to the presiding judge, and copies of the report are sent to the defendant's lawyer and the district attorney. A hearing then must be held to determine the defendant's competency to stand trial. Ch. 588 (S 696), effective October 1, 1985, amends G.S. 15A-1002(d) to provide that the district attorney is to receive a copy of the medical expert's report only if the defendant's competency is questioned. Since the medical expert's report is prepared and the hearing is held only if the issue of competency has already been raised, it is unclear how Ch. 588 will effectively restrict the circumstances when the district attorney will receive a copy of the report.

Continuances for legislators and others. Ch. 603 (H 85), effective July 4, 1985, amends G.S. 15A-701(b)(7) and Rule 40(b) of the Rules of Civil Procedure to provide that, in both criminal and civil cases, good cause for granting a continuance must include those instances when the criminal defendant, a party in a civil action, a witness, or a lawyer has an obligation of service to the State of North Carolina, including service as a legislator.

Clerk's criminal index admissible to prove prior conviction. In order to facilitate the destruction of old court records, Ch. 606 (H 591), effective October 1, 1985, adds new G.S. 8-35.2 to permit as proof of a prior conviction (when the original documents have been destroyed) a certified copy of a record of the conviction maintained in a criminal index by the clerk of superior court. Ch. 606 sets out the specific information that must be kept in the index so that a judge can accurately identify the person who was convicted and can determine whether he was represented by a lawyer or waived his right to a lawyer when he was convicted.

Applicability of the rape evidence shield rule. Rule 412 of the North Carolina Rules of Evidence restricts the use of evidence about the victim's prior sexual behavior in prosecutions of rape and sexual offenses. Ch. 547 (S 416), effective October 1, 1985, makes it clear that the rule also applies to any offense being tried jointly with these offenses.

Judge's jury instructions need not summarize evidence. Ch. 537 (H 698), effective July 1, 1985, amends G.S. 15A-1232 and Rule 51(a) of the Rules of Civil Procedure to delete the requirement in both criminal and civil cases that a judge summarize the evidence when he instructs the jury on the applicable law in the case.

Expungement of dismissed criminal charge if adult. Before Ch. 636 (H 997), effective July 5, 1985, was enacted, only a person under 18 could petition a court to issue an order to expunge all records concerning his arrest and trial for a misdemeanor or felony, if the case had been dismissed or he was found not guilty, and he had not previously been convicted of any felony or misdemeanor other than a traffic offense. Ch. 636 amends G.S. 15A-224 (now recodified as G.S. 15A-146) to remove the age restriction so that adults also may use the expunction provision. It also provides, however, that a person is entitled to only one such expungement.

Drug-trafficking offense fines must be paid. When a defendant fails to pay his fine and court costs, a judgment may be entered that becomes a lien on his real property. However, the judgment may not be executed if the defendant elects to serve a jail sentence imposed under a suspended sentence or, if no suspended sentence was imposed, he elects to serve 30 days. Ch. 411 (S 378), effective June 17, 1985, amends G.S. 15A-1365 to make it clear that a defendant who was convicted of a drug-trafficking offense may not elect to serve the sentence; he must pay the fine.

No arrest solely for refusing to sign citation. Before Ch. 385 (H 1001), effective June 13, 1985, was enacted, G.S. 15A-302(d) required the defendant to sign a receipt on the

original citation to indicate that he had received a copy of the citation. Ch. 385 amends this statute to provide that the person may sign a receipt on the original citation. If he refuses to sign it, the officer effectively certifies delivery by signing the original citation that he files in the clerk's office. Ch. 385 specifically provides that a person's refusal to sign a receipt cannot be grounds for his arrest or a requirement that he post a bond.

Warrantless arrest of shoplifter always permitted. A law enforcement officer may make a warrantless arrest for (1) any misdemeanor committed in his presence, or (2) any felony, whether or not it is committed in his presence. When a misdemeanor is not committed in an officer's presence (for example, he did not see the offense happen), the officer may make a warrantless arrest only if the defendant (1) would not likely be apprehended (pursuant to an arrest warrant) unless he was immediately arrested without a warrant, or (2) would likely damage property or injure himself or others unless he was immediately arrested. If a merchant sees a person shoplifting (for example, concealing merchandise in a store or switching price tags), he usually detains the person and calls for a law enforcement officer. If the person is a local resident, the officer often is not authorized to make a warrantless arrest for this misdemeanor offense (which was not committed in his presence), since facts under (1) or (2) do not exist. Thus the merchant or officer must go to a magistrate's office to apply for an arrest warrant or criminal summons, or the officer could issue a citation for the offense. Ch. 548 (S 440), effective October 1, 1985, amends G.S. 15A-401(b)(2) to authorize an officer to make a warrantless arrest at any time for a shoplifting offense (that is, a violation of G.S. 14-72.1) that is not committed in his presence, thus deleting the need for the facts in (1) or (2). Of course, Ch. 548 does not require an officer to make an arrest. For example, he still could issue a citation for the shoplifting offense.

Note carefully that Ch. 548 only applies to a violation of G.S. 14-72.1. It does not apply to misdemeanor larceny, for example. If a merchant has detained a person for committing misdemeanor larceny and no probable cause exists for a shoplifting offense in G.S. 14-72.1, the usual rules apply that govern an officer's authority to make an arrest for a misdemeanor that was not committed in his presence.

Auto club arrest bonds accepted. Ch. 623 (H 1258), effective October 1, 1985, adds new G.S. 109-40 and -41 to set out a procedure for a surety company to file with the Department of Insurance an undertaking to become a surety up to $500 for each guaranteed arrest bond certificate issued by an automobile club or association. It also requires that such a guaranteed bond be accepted (up to $500) as a bail bond when a person is arrested for a violation of a motor vehicle offense, but it may not be accepted for an impaired-driving offense or a felony.

Alcohol offenses waivable. Ch. 425 (H 894), effective June 19, 1985, amends G.S. 7A-148 and other statutory provisions to authorize the annual conference of chief district court judges to establish a uniform schedule of alcohol offenses under G.S. Ch. 18B so magistrates and clerks of court may accept written appearances, waivers of trial, and pleas of guilty.

Motor Vehicle Law

Mandatory seat belt law. Ch. 222 (S 39) adds a new G.S. 20-135.2A to require the driver and front seat occupants (who are sixteen or older) of a passenger motor vehicle (as defined in the statute) to have the seat belts properly fastened at all time when the vehicle is in forward motion on a street or highway. A driver who is transporting in the front seat any person who is under age sixteen (and not required to be in a child safety seat) must have that person secured by a seat belt also. (The statute sets out some exceptions to the seat belt requirement.) A violation between its effective date on October 1, 1985, and December 31, 1986, will result in a warning ticket only. Beginning January 1, 1987, a violation will be an infraction punishable by a $25 fine.

Child restraint law amendments. Ch. 218 (H 81), effective July 1, 1985, revises G.S. 20-137.1, the child restraint law. It now requires that every driver who is transporting a child under six years old to have the child secured in a child passenger restraint system (car safety seat) that meets federal standards. However, a child who has reached age three may be secured in a regular seat belt rather than in the car safety seat. The statute does not apply to vehicles registered in other states, and other exceptions are set out in the statute. A violation is punished by a fine up to $25. However, a driver may not be convicted if, with respect to a child under age three, he produces at trial proof satisfactory to the court that he has acquired an approved car safety seat.

Vehicular hit and run punishment. Ch. 324 (H 1027), effective October 1, 1985, clarifies the punishment for violations of G.S. 20-166(b), (c), and (c1) by providing that all misdemeanor hit-and-run offenses in those sections are punishable by maximum imprisonment of two years and/or a fine. It also corrects an error in G.S. 20-166(c)(2) by making clear that the lack-of-knowledge-of-death-or-injury element refers to knowledge of the defendant-driver, not that of the driver of the other vehicle.

Unsafe movement in public vehicular area. Ch. 96 (H 283), effective for offenses committed on or after October 1, 1985, makes the unsafe movement offense in G.S. 20-154(a) applicable to public vehicular areas.

Motor vehicle law definitions. Ch. 509 (S 396), effective July 1, 1985, amends G.S. 20-4.01 to make clear that

"operator" and "driver" and their cognates are synonymous, as well as "highway" and "street."

DWI sentencing; limited privilege. Ch. 706 (S 596), effective for offenses committed on or after August 10, 1985, adds a new G.S. 20-179(r) to require that if a defendant is sentenced for impaired driving under Levels Three, Four, or Five, a judge must place him on unsupervised probation unless he determines that supervised probation is necessary and "includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary." If the judge places the defendant on supervised probation, he must authorize the probation officer to modify the defendant's probation by placing him on unsupervised probation upon completing the following conditions of his suspended sentence: (1) community service, (2) treatment and education under G.S. 20-179(l) and (m), (3) payment of fines, costs, and fees, or (4) any combination of conditions. Ch. 706 adds a new G.S. 20-179(s) to authorize (but not require) a judge (1) to order a term of imprisonment or community service to be served on weekends, and (2) to order that a sentence of seven or more consecutive days be served with work release privileges. Ch. 706 amends G.S. 20-179.3(i) to provide that if a judge who issued a limited driving privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke the privilege in accordance with the subsection.

Sentencing, Probation, and Parole

Gain time for convicted felons. Ch. 310 (H 382), effective June 3, 1985 and applicable to prisoners sentenced for felonies committed on or after July 1, 1981, amends G.S. 148A-13(d) to require that gain time credit must be given for participation in study, training, and other rehabilitative programs, as well as for work assignments.

Effect of multiple sentences. Ch. 21 (S 57), effective March 21, 1985, provides that multiple sentences run concurrently unless the judge specifies or a statute requires that they run consecutively.

Maternity leave for inmates. Ch. 483 (S 605), effective June 27, 1985, authorizes the Secretary of Correction to allow maternity leave, not exceeding 60 days, for pregnant inmates.

Restitution. Ch. 474 (H 1074), effective July 10, 1985, undoes some of the amendments to the restitution statutes in recent years. (Restitution is the payment—usually required as a condition of probation—by convicted offenders of compensation to their victims for their losses caused by the crime.) It amends G.S. 15A-1343(d) in several ways. It deletes, as an allowable form of judicially imposed restitution, the requirement that the defendant purchase a hunting or fishing license when he was convicted of hunting or fishing without the license; it adds this requirement to the list of special conditions of probation that the judge may impose [G.S. 15A-1343(b1)].

Ch. 474 also makes clear that when the sentencing judge imposes restitution as a condition of probation, he need not make formal findings of fact or conclusions of law in determining the amount of restitution to be made, as he would have to do in a civil case.

Another change clarifies the situation that arises when the offender is ordered to pay restitution to his victim and that victim is also compensated—or partially compensated—by insurance: Ch. 474 specifies that the judge may order full restitution, regardless of the liability of third parties. (The victim may have to reimburse his insurance company, depending on his insurance contract.)

The plea bargaining statute, G.S. 15A-1021(d), was amended in 1977 to permit the sentencing judge to order restitution by a defendant sentenced to prison as a condition of any future work release or parole when the defendant had agreed to this in a plea bargain. Ch. 474 amends the statute so that the judge may only recommend such restitution, not order it. (Conforming changes are made to G.S. 148-33.1, -33.2, and -57.1.)

Ch. 474 amends G.S. 148-33.2 (concerning restitution by work-release prisoners) to make clear that when the Department of Correction follows a sentencing judge's recommendation and requires that restitution be paid to the crime victim as a condition of work release, the restitution is to be *paid out of the prisoner's work-release earnings.* (Formerly, it was sometimes thought that restitution recommended or ordered by the judge had to be paid by the prisoner *before* he could receive work release.) Ch. 474 also amends G.S. 15A-1374(b) to require, as a possible condition of parole, that the parolee comply with a court order regarding the payment of any obligation in connection with any judgment rendered by the court.

Cost of appointed counsel. Ch. 474 adds to G.S. 15A-1343(b)(10), as a possible condition of probation, a requirement that the defendant pay the state for the costs of the attorney who represented him in an appeal (payment for the costs of a public defender or for assigned counsel is already a possible condition). The new law amends G.S. 7A-455 to include the costs of appellate defender services along with the costs of assigned counsel and public defender services with respect to the judgment debt filed against the indigent defendant who received such services, and to allow the court to order partial payment for such services by a partially indigent defendant. It further amends G.S. 7A-455 to provide that (a) in fixing the money value of the services of the public defender or appellate defender, the court must consider the factors normally involved in fixing the fees of private attorneys assigned to represent indigent defendants;

and (b) even if a trial, appeal, hearing, or other proceeding is never actually held, the attorney's preparation for it is compensable.

Community service parole. Ch. 453 (H 636), effective July 1, 1985, makes some clarifying and substantive changes to community service parole legislation, which is codified in G.S. 15A-1371 and G.S. 15A-1380.2. Community service must be supervised by a probation/parole officer (formerly, it could be supervised by an "intensive" probation/parole officer, a community penalties program, or a community service restitution program). Thirty-two hours of community service are now required to work off one month of a prison term, rather than 50. The community service must be planned by the supervising probation/parole officer and the community service coordinator. (Community service coordinators are employees of the State Department of Crime Control and Public Safety who supervise criminal offenders' performance of community service work and report to the supervising probation/parole officer or the court that has jurisdiction over the case if the offender willfully fails to perform the work.) The community service parolee must now pay a fee of $50 for the privilege of receiving community service parole. The fee must be paid to the clerk of court where the parolee is released, must be paid in full "within two weeks" (apparently this means within two weeks of release, but the language is unclear) unless the Parole Commission allows additional time on hardship grounds, and need not be paid before the parolee begins his community service unless the Parole Commission specifically orders prepayment. Fees paid must go into the General Fund. The parolee's community service coordinator must report any willful failure to perform the service to the supervising probation/parole officer. Parole may be revoked for willful failure to perform the service, subject to the provisions of G.S. 15A-1376 (concerning arrests and hearings for parole violations).

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