C.3

ARCHIVAL COPY. DO NOT REMOVE FROM LIBRARY

Judges, Prosecutors, Public Defenders and Assistants, Clerks of Court, Magistrates, Police Attorneys, Sheriffs, Police Chiefs, SBI, Campus Security Officers, Law Enforcement Trainers

Copyright 1986

Administration OF JUSTICE Memorandum

Published by the Institute of Government, The University of North Carolina at Chapel Hill

September 1986 **No. 86/03**

1986 Legislation Affecting Criminal Law and Procedure

Robert L. Farb and Benjamin B. Sendor

This memorandum will summarize acts of the 1986 session of the General Assembly that affect criminal law and procedure. Each new law discussed is referred to by the Session Laws chapter number of the ratified act and by the number of the original bill that became law--for example, Ch. 841 (S 438). 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 1986 Interim Supplement offered by the Michie Company should be available soon. 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.

Stevens H. Clarke wrote the Sentencing and Corrections section of this memorandum. The new infractions legislation, effective Septmber 1, 1986, is discussed in a separate Administration of Justice Memorandum (No. 86/02) by James C. Drennan.

DRUG TRAFFICKING INVESTIGATIVE GRAND JURY

Ch. 843 (S 634), effective October 1, 1986 and expiring October 1, 1988, adds a new subsection (h) to G.S. 15A-622 to permit the use of an investigative grand jury, but only to investigate a drug trafficking offense [G.S. 90-95(h)] or a conspiracy to commit such an offense (G.S. 90-95.1). If a dis-

This publication is issued by the Institute of Government. *An issue is distributed to public officials, listed in the upper lefthand corner, to whom its subject is of interest. Copies of this publication may not be reproduced without permission of the Institute of Government, except that criminal justice officials may reproduce copies in full, including the letterhead, for use by their own employees. Comments, suggestions for future issues, and additions or changes to the mailing lists should be sent to: Editor, Administration of Justice Memoranda, Institute of Government, Knapp Building 059A, The University of North Carolina at Chapel Hill, Chapel Hill, North Carolina 27514.*

trict attorney wants an investigative grand jury, he must obtain the concurrence of the Attorney General to file a petition with the Chief Justice, who will appoint a three-judge panel to determine whether an investigative grand jury should be convened (the sitting grand jury or a new grand jury could be convened as an investigative grand jury). The district attorney's petition must be accompanied by an affidavit that alleges the commission of a drug trafficking offense and that persons named in the petition (a) know the identities of the perpetrators but they will not reveal them voluntarily, or (b) want to testify before the grand jury. The petition and affidavit must be kept secret.

If the grand jury is convened, the district attorney must subpoena the witnesses, and a court- ppointed grand jury officer must serve the subpoenas--the name of those subpoenaed and the issuance and service of the subpoenas must be kept secret, except a subpoenaed person may reveal that he has been subpoenaed.

A prosecutor must be present during grand jury proceedings to examine the witnesses, and a court reporter must record their testimony (presumably, grand jurors also can examine witnesses, as provided by current law). The prosecutor may grant (in writing) a witness "use" immunity from prosecution if he refuses to testify. [Ch. 843 amends G.S. 15A-1051(a), applicable to all grants of immunity, to provide "use" rather than "transactional" immunity--for a discussion of the distinctions between these two forms of immunity, see Kastigar v. United States, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972).] If a witness continues to refuse to testify after a judge orders him to do so, he may imprisoned up to eighteen months for contempt of court. Ch. 843 amends G.S. 5A-12(a) to increase the punishment for contempt from six to 18 months for refusing to testify after being granted immunity. Ch. 843 permits a witness to leave the grand jury to consult with his lawyer at reasonable intervals.

The examining prosecutor is entitled to the record of his examination of the witnesses, and he may provide it, when appropriate, to law enforcement officers. The record also may be used at trial to corroborate or impeach a witness who testified before the grand jury. In addition, a superior court judge may order disclosure if necessary to (1) prosecute a grand jury witness for contempt or perjury, or (2) protect a defendant's constitutional or statutory discovery rights.

FINANCIAL PRIVACY ACT

Ch. 1002 (H 286), effective October 1, 1986, enacts the "Financial Privacy Act" (G.S. 53B-1 through -10) that sets out procedures that government agencies and employees--including prosecutors and law enforcement officers--and financial institutions (banks, savings and loans, loan companies, and the like) must follow to obtain and to provide access to a customer's financial records. However, Ch. 1002 permits a financial institution--without complying with the act's procedures--to (a) notify a prosecutor or law enforcement officer (and others) that it has information that may be relevant to a possible violation of a law or regulation, or (b) disclose the name, address, account

number, and type of account of any customer (it also could reveal whether a customer has a security deposit box with the financial institution, since that fact is apparently not a "financial record" as defined in the act).

The following discussion of Ch. 1002 focuses only on those issues pertinent to criminal investigations, although Ch. 1002 also applies when a government official seeks financial records during a civil investigation.

Authority and procedures to obtain financial record. New G.S. 53B-4 provides that government officials may not have access to a financial record held by a financial institution unless the record is described with reasonable specificity and access is sought under: G.S. 53B-4(1) customer authorization that meets the requirments of the federal financial privacy law (a customer authorization form modeled on a United States Department of Justice form is provided at the end of this memorandum); G.S. 53B-4(3) search warrant; G.S. 53B-4(9) subpoena or court order in connection with a grand jury proceeding; or G.S. 53B-4(11) other court order [see, e.g., In re Superior Court Order, 315 N.C. 378 (1986)] or administrative or judicial subpoena if the requirements of G.S. 53B-5 are met. G.S. 53B-5 provides that if access is sought under the authority of G.S. 53B-4(11), access to a customer's financial record may be obtained only if (1) it is described with reasonable specificity; (2) a copy of the court order is served on the customer under Rule 4(j) of the Rules of Civil Procedure; (3) a written notice (as specified in the statute) is included with the subpoena or court order; (4) the customer has not challenged the court order or subpoena within ten days after service; and (5) the government official has certified in writing to the financial institution that he has complied with the law. G.S. 53B-6 sets out procedures by which a superior court judge may order that the customer notice required by G.S. 53B-5 may be delayed for a good reason (such as notice will result in tampering with evidence). It also allows the judge to specify the period of delay. G.S. 53B-7 sets out procedures by which a customer may challenge a court order or subpoena.

Paying fee to financial institution. When a government official has obtained a financial record from a financial institution under the authority of G.S. 53B-4 (1), (3), (9), or (11), discussed above, new G.S. 53B-9(b) requires that the financial institution must be reimbursed for assembling and delivering the record at the rate established by federal regulation 12 C.F.R. 219, a copy of which is provided at the end of this memorandum.

Civil penalties for violating financial privacy law. New G.S. 53B-10 provides that any government official who "participates in or induces or solicits a violation" of this new financial privacy law is liable to the customer whose financial record was obtained in an amount equal to the sum of (1) $1,000; (2) any actual damages sustained by the customer as a result of disclosing the record; and (3) punitive damages for willful or intentional violations. However, a government official may successfully defend against the imposition of these civil penalties if he acted in good faith in obtaining and relying on process issued under G.S. 53B-4.

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO)

To deter organized crime activity, the General Assembly enacted Ch. 999 (H 829), the Racketeer Influenced and Corrupt Organizations (RICO) Act, effective October 1, 1986 and expiring October 1, 1989. The act prohibits certain kinds of conduct categorized as "patterns of racketeering activity" and establishes civil remedies to penalize such conduct.

The act defines "racketeering activity" as committing or attempting to commit, or soliciting, intimidating, or coercing another person to commit a crime under Art. 5, G.S. Ch. 90 (controlled substances offenses), nearly all sections of G.S. Ch. 14 (criminal offenses), activity described in 18 U.S.C. § 1961(1) (federal RICO act), or money laundering. It prohibits anyone from engaging in or attempting or conspiring to engage in a "pattern of racketeering activity," which it defines as two or more incidents of related or similar racketeering activity within a four-year period.

The RICO act authorizes a variety of civil proceedings to investigate and punish violations. First, it permits the Attorney General or his designated representative to bring a proceeding in superior court for forfeiture of property used in or derived from racketeering activity or a pattern of racketeering activity. The act provides for a forfeiture hearing after notice to parties who have a legal interest in the property subject to forfeiture. However, it permits a judge to issue a writ of seizure directing a law enforcement officer to seize property before a hearing if the judge finds reasonable gro nds to believe the property is subject to forfeiture and that notice and a hearing before seizure would result in loss or destruction of the property. It also authorizes a law enforcement officer to seize property incident to a lawful arrest, search, or inspection if the officer has probable cause to believe property will be lost or destroyed if not seized (the Attorney General must initiate a forfeiture proceeding after such a seizure).

After a judgment of forfeiture, and subject to the interests of innocent parties in property, a court may order various alternative dispositions of the property: (a) destruction of property if its use or possession is illegal; (b) retention of property by a law enforcement agency or other state or local agency for official use; (c) retention of property by, or transfer of, property to an interested innocent party; (d) a judicial sale under Art. 29A, G.S. Ch. 1 (proceeds go to the State Treasurer); (e) transfer of historically or educationally valuable property to the Division of Archives and History; or (f) any other just disposition that protects interests of innocent parties (proceeds go to the State Treasurer). After a judgment of forfeiture, a court also may deter a defendant from engaging in future racketeering activity by ordering him to divest himself of property; ordering dissolution of an enterprise; ordering suspension or revocation of a state license; ordering forfeiture of a corporate charter or license to do business in North Carolina; restricting future activities of a defendant that are similar to prohibited activities; ordering the appointment of a receiver under Art. 3, G.S. Ch. 1 to collect, conserve, and dispose of property; and other remedies.

To facilitate RICO investigations, the act authorizes the Attorney General to compel any person or an officer of any enterprise (other than an attorney of such person or enterprise) who has information or documents

relevant to a prohibited racketeering activity to submit to an in camera examination by, and production of documents to the Attorney General. The Attorney General may seek a court order for such examination; disobedience of a court order is punishable as contempt. A witness in such an examination may be represented by an attorney. False testimony is punishable as perjury. Such an examination must be confidential; no one except the witness may disclose information obtained during the examination before the initiation of a RICO forfeiture proceeding. Violation of the confidentiality requirement is a misdemeanor, punishable by maximum imprisonment of two years and/or a fine of $200-$1,000.

The RICO act further permits an innocent party whose property or business has been injured by certain prohibited racketeering conduct to bring a civil action in superior court for treble damages plus attorney's fees. However, the court, on the motion of the Attorney General, may stay that private action if it finds that the proceeding probably will interfere materially with a public forfeiture action or if the public interest is so great that the Attorney General should investigate and bring a forfeiture action.

MISCELLANEOUS CHANGES

Additional assistance for crime victims and witnesses. Ch. 998 (S 595), effective October 1, 1986, provides more assistance to crime victims and witnesses. First, it provides funds so that each of the 35 district attorney offices in North Carolina will have at least one "victim and witness assistant." Presently, not all offices have this kind of employee (formerly known as a "witness assistant coordinator"). The Conference of District Attorneys must (a) assist in establishing uniform statewide training for victim and witness assistants, (b) implement and supervise the program, and (c) with the Director of the Administrative Office of the Courts, report annually (beginning by February 1, 1987) to the Joint Legislative Commission on Governmental Operations on the implementation and effectiveness of Ch. 998.

Ch. 998 also sets out in new G.S. 15A-824 through -827 the responsibilities--"[t]o the extent reasonably possible and subject to available resources"--of law enforcement agencies, prosecutors, courts, and the correctional system to assist crime victims and witnesses. The victim and witness assistants must coordinate these responsibilities (except for the correctional system). Some of these include (1) informing crime victims and witnesses about obtaining immediate medical assistance, (2) informing them about available protection from injury that might result from cooperating with law enforcement officers and prosecutors, and receiving such protection, (3) arranging the quick return of property used as evidence, (4) securing the cooperation of a witness's employer to minimize the loss of pay and other benefits that might result from the witness's participation in a criminal prosecution, (5) informing crime victims and witnesses about witness fees, victim compensation, and civil remedies for damages (including statutes of limitations), (6) giving them an opportunity to be present during the final disposition of the case or be informed of the final disposition, if the victim or witness has requested to be present or informed, and (7) notifying them in advance of a parole or other proceeding that will consider the release from

custody of a Class A through G felon (these felons include the most serious offenders--murderers, rapists, robbers, burglars)--and notifying them when that offender is released from custody or if he escapes from custody.

Income withholding for child support arrearages. Ch. 949 (S 303), effective October 1, 1986, amends G.S. 15A-1344.1(d) to authorize income withholding (under new G.S. 110-136.5) as well as probation revocation when a criminal defendant is in arrears with his child support payments.

Shoplifting, tag switching punishment. Effective for offenses committed on or after October 1, 1986, Ch. S 841 (S 438) amends G.S. 14-72.1 to change the punishment for the crimes of concealing merchandise and switching price tags. The current punishment is a maximum term of imprisonment of six months and/or a maximum fine of $100 for a first offense and a maximum term of imprisonment of two years and/or a fine for the second and subsequent offenses. Ch. 841 establishes the following new punishment schedule: (1) for the first offense or for a subsequent offense not covered by the repeat offender provisions below, imprisonment of 24 hours to 60 days and/or a maximum fine of $100 (the court may suspend the term of imprisonment on condition that the defendant perform at least 24 hours of community service); (2) for the second offense committed within three years of a previous conviction under G.S. 14-72.1, imprisonment of 72 hours to six months and/or a maximum fine of $500 (the court may suspend the term of imprisonment on condition that the defendant be imprisoned for at least 72 hours and/or perform at least 72 hours of community service); (3) for the third or subsequent offense committed within five years of two previous convictions under G.S. 14-72.1, imprisonment of 14 days to two years and/or a fine (the court may suspend the term of imprisonment on condition that the defendant be imprisoned for at least 14 days).

If a court imposes an active term of imprisonment under G.S. 14-72.1, the act imposes the following limitations: (1) the court may not give the defendant credit for the first 24 hours of incarceration pending trial; (2) neither good time nor gain time may reduce the mandatory minimum period of imprisonment; and (3) the defendant may not be released or paroled unless he is otherwise eligible and has served the mandatory minimum period of imprisonment.

Ballistic knives prohibited. Ch. 810 (H 1666), effective October 1, 1986, adds a new G.S. 14-269.6 to prohibit anyone--including state and local law enforcement officers--from possessing or giving to another person a spring-loaded projectile knife, a ballistic knife, or any other similar weapon. The act exempts possession by law enforcement agencies for evidentiary, educational, or training purposes. Violation of the statute is a misdemeanor punishable by maximum imprisonment of two years and/or a fine.

Animal fights and cruelty to animals. G.S. 14-362 currently prohibits certain activities relating to animal fights and animal baiting. Effective for offenses committed on or after October 1, 1986, Ch. 967 (S 613) creates new offenses concerning animal fighting and baiting. It rewrites G.S. 14-362 to prohibit anyone from instigating, promoting, conducting, working at, being a spectator at, allowing property to be used for, or profiting from cock fighting. Violation of the statute is a misdemeanor punishable by maximum imprisonment of six months and a maximum fine of $500. The act voids any lease of property used or intended for use for cock fighting and requires a landlord who knows of such use to evict his tenant immediately.

The act also adds a new G.S. 14-362.1 to prohibit the following activity in connection with animal baiting and animal fighting other than cock fighting: instigating, promoting, conducting, working at, allowing property to be used for, or profiting from such baiting or fighting. Violation of this prohibition is a misdemeanor punishable by maximum imprisonment of two years and/or a fine. A subsequent offense committed within three years after a conviction of a prior offense is a Class J felony, punishable by maximum imprisonment of three years and/or a fine (the presumptive sentence is one year). The act also prohibits being a spectator at animal fighting or baiting, though it imposes a less severe punishment for such activity: maximum imprisonment of six months and a maximum fine of $500. G.S. 14-362.1 further prohibits anyone from owning, possessing, or training an animal other than a cock with the intent that the animal be used for fighting or baiting. Violation of this prohibition is punishable by maximum imprisonment of one year and a maximum fine of $1,000. The statute also voids any lease of property used or intended for use for animal baiting or fighting other than cock fighting and requires a landlord who knows of such use to evict his tenant immediately.

Finally, Ch. 967 also increases the penalty for offenses involving cruelty to animals under G.S. 14-360 (cruelty to animals), -361 (instigating or promoting cruelty to animals), and -363 (conveying animals in a cruel manner) from maximum imprisonment of six months and/or a maximum fine of $500 to a maximum imprisonment of one year and a maximum fine of $1,000. It increases the penalty for violating G.S. 14-361.1 (abandonment of animals) from a maximum fine of $200 to a maximum imprisonment of six months and a maximum fine of $500. It increases the penalty for violating G.S. 14-363.1 (selling baby chicks and certain other animals less than eight weeks old as pets or novelties) from a maximum imprisonment of 30 days and/or a maximum fine of $100 to maximum imprisonment of 30 days and/or a maximum fine of $200.

SENTENCING AND CORRECTIONS

Extension of period of supervised probation. Ch. 960 (H 86), effective July 10, 1986, and applicable to people on probation or placed on probation on or after that date, amends G.S. 15A-1342(a) to allow a court, with a probationer's consent, to extend the period of probation beyond five years (the present limit) to allow the probationer either to complete making restitution payments or to continue medical or psychiatric treatment ordered as a condition of probation. The extension is limited to three years beyond the original period and may be ordered only in the last six months of the original period.

Good time and gain time to count toward community service parole of FSA felon. Ch. 960 (H 86), effective July 10, 1986 and applicable to people in prison on or after that date, amends G.S. 15A-1371(h) and 15A-1380.2(h) to require good time and gain time credit earned pursuant to G.S. 148-13 to be granted toward the period of time that must be served to become eligible to be considered by the Parole Commission for release on community service parole. This will mean, for example, that a felon sentenced under the Fair Sentencing Act (FSA), who formerly would have become eligible for community service parole after serving one-fourth of his sentence, will now ordinarily become

eligible after serving one-eighth of his sentence or less, since the average good time and gain time earned are at least equal to the time actually served under the FSA.

Early release of inmates to reduce prison population. Ch. 1014 (H 2055), effective July 1, 1986, amends G.S. 15A-1380.2(c) and 148-4.1(c) to allow the Parole Commission, when so directed by the Secretary of Correction because of a need to reduce the prison population, to grant early parole to, and also immediately terminate parole supervision of, a felon serving an FSA sentence who has six to nine months remaining on his prison term, if the Commission finds that the prisoner poses no threat to society and that the early parole will not be incompatible with the public interest.

Most traffic offenders may not be sentenced to state prison. Ch. 1014 (H 2055), effective October 1, 1986, and applicable to people sentenced on or after that date, adds new G.S. 20-176(c1) to prohibit imprisonment of an offender in state prison if he is convicted of any misdemeanor under G.S. Ch. 20 (motor vehicle laws) and has never previously been sentenced to a local jail for a Ch. 20 offense, except for G.S. 20-28 (driving while license revoked), G.S. 20-20-141(j) (speeding to elude arrest), G.S. 20-141.3(b) and -(c) (willful speed competition and allowing motor vehicle in prearranged speed competition), G.S. 20-141.4 (death by vehicle), or a repeat conviction under G.S. 20-138.1 (driving while impaired).

Judge may order misdemeanant work release. Ch. 1014 (H 2055), effective July 1, 1986, amends G.S. 15A-1351, 15A-1353, 20-179(s), 148-32.1, and 148-33.1 to allow the sentencing judge, with the offender's consent, to order that an offender convicted of a misdemeanor receive work release (formerly, the court could only recommend work release). The act also authorizes the judge to commit the work-release misdemeanant to the local jail or a specific prison unit in the local county. But the authority to specify a local prison unit is not absolute; the DOC may transfer a prisoner committed to a specific prison unit "when necessary to alleviate overcrowding or for other administrative purposes." The judge may also commit the misdemeanant to a jail in another county with the consent of the sheriff or county commissioners or to a prison in another county with the consent of the DOC. In his commitment order, the judge must specify the prison unit or jail where the misdemeanant is to be confined and the date when work release is to begin, must state that the offender will lose his work-release status if he loses his job or violates conditions of his work-release plan, and direct whether the offender's earnings are to be disbursed by the DOC or the clerk of court, and in what manner. (Formerly, the DOC handled all work-release earnings.)

County must pay for jail "safekeeper" sent to state prison. Ch. 1014 (H 2055), effective July 1, 1986, amends G.S. 162-39 as follows: when a prisoner in a county or municipal jail is ordered by a court to be transferred to a state prison unit for the prisoner's safety or because of jail overcrowding, the transferring county or municipality must pay the Department of Correction (DOC) for the prisoner's transportation plus the maintenance of the prisoner at the same rate that the DOC would have to pay the local jail for maintaining a prisoner (under G.S. 148-32.1--see next section), but the county or municipality need not pay if the prisoner was not a resident of the county or municipality when he allegedly committed his crime. (Formerly, transferring counties and municipalities were required by G.S. 162-39 to pay the DOC

the "actual cost" of transporting and maintaining "safekeepers", and there was no exception for nonresidents, but in practice the DOC never collected what was owed.)

State reimbursement for jail confinement costs. Ch. 1014 (H 2055), effective July 1, 1986, amends G.S. 148-32.1 to require the DOC to pay each local jail for the cost of maintaining male prisoners serving sentences of 30 days or more (formerly, the requirement was limited to sentences of 30 to 180 days), and raises the rate paid to $12.50 per day (formerly, it was $11 per day).

Probation and parole supervision fees. Ch. 859 (H 1573), effective October 1, 1986 and applicable to people placed on probation for offenses committed on or after that date, amends G.S. 15A-1343, which now allows a $10 monthly supervision fee to be imposed as a condition of supervised probation, to (1) forbid a court to exempt a supervised probationer from the fee without a written motion by the probationer and a finding of good cause, (2) allow the court to require the fee to be "paid in advance or in a lump sum or sums", and (3) allow the probation officer to require advance payment if the court has authorized the officer to set the payment schedule. Ch. 859 amends G.S. 15A-1380.2(d), regarding the automatic "90-day re-entry parole" of felons sentenced under the FSA, to require the re-entry parolee to pay the same $10 monthly parole supervision fee that other parolees must pay under G.S. 15A-1374(c); the amendment applies to persons paroled on or after October 1, 1986. The act makes a similar change in G.S. 148-65.1 to require parolees supervised here for another state under an interstate compact to pay the supervision fee; this change applies only to parolees whose offense occurs on or after October 1, 1986.

Increase of DWI traffic school and community service program fees. Ch. 1012 (H 1970), effective August 1, 1986, amends G.S. 20-179.2(c) to require all impaired drivers who enroll in a state alcohol and drug education traffic school to pay a $100 fee (formerly, the fee was reduced to $50 for those who were also ordered by the court to perform community service). The act also amends G.S. 15A-1371(i) and 15A-1380.2(i) to raise the fee for offenders granted community service parole from $50 to $100, adding that this fee "may be paid as prescribed by the supervising parole officer." Finally, the act raises from $50 to $100 the fee set by G.S. 143B-475.1 for all who participate in the state community service program, which is administered by the Department of Crime Control and Public Safety (the fee was already $100 for impaired drivers who participate).

A total of 2,600 copies of this public document were printed by the Institute of Government, The University of North Carolina at Chapel Hill, at a cost of $1,076.40, or $.41 per copy. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs.

(Draft of customer consent form for N.C. Financial Privacy Act, G.S. Ch. 53B, modeled after United States Department of Justice Form DOJ-462, 4-4-79)

CUSTOMER CONSENT AND AUTHORIZATION FOR ACCESS TO FINANCIAL RECORDS

I, ______________________________, having read the explanation of
(Name of Customer)

my rights which is attached to this form, authorize the

____
(Name and Address of Financial Institution)

to disclose these financial records:

to ____
(Name of Government Agency or Officials Allowed Access)

for the following purpose(s): ______________________________

____

____

I understand that I may revoke this authorization in writing any time before the above-described records are disclosed, and that this authorization is valid for no longer than three months from the date below.

________________, 19__

____
(Signature of Customer)

____

____
(Address of Customer)

North Carolina Financial
Privacy Act, G.S. 53B-4(1)

STATEMENT OF CUSTOMER RIGHTS UNDER NORTH CAROLINA FINANCIAL PRIVACY ACT

North Carolina law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, or other financial institutions may give your financial records to a state or local government agency, certain procedures must be followed.

Consent to Financial Records

You may be asked to consent to make your financial records available to a government agency or official. You may withhold your consent, and your consent is not required as a condition of doing business with any financial institution. If you give your consent, you may revoke it in writing any time before your records are disclosed. Furthermore, your consent is effective for only three months, and your financial institution must keep a record of the instances when it discloses your financial information.

Without Your Consent

A state or local government agency that wants to see your financial records without your consent may do so ordinarily only by means of a lawful subpoena, search warrant, court order, or similar legal authority. Generally, the agency must give you advance notice of its request for your records, explain why it wants the records, and tell you how to object in court. While these procedures will be kept as simple as possible, you may want to consult with an attorney before you challenge an agency's request.

Exceptions

In some circumstances, a state or local government agency may obtain your financial records without advance notice or your consent. In most cases, the agency will be required to go to court to get permission to obtain your records without giving you advance notice. In these instances, the court will make the agency show that its investigation and request for your records are proper. When the reason for the delay in giving you notice no longer exists, you will usually be notified that your records were obtained.

Penalties

If a state or local government agency or financial institution violates the North Carolina Financial Privacy Act, you may sue for damages or to seek compliance with the law.

Additional Information

If you have any questions about your rights under this law or how to consent to the release of your financial records, please call the official whose name and telephone number appear below:

______________________________	______________________________
	(Name)
(Address)	(Title)
(Telephone)	(Government Agency)

Federal Regulations Setting Rates of Reimbursement to Financial Institutions For Assembling and Delivering Financial Records [G.S. 53B-9(b) of the North Carolina Financial Privacy Act provides that the reimbursement rates in these regulations are to be used to reimburse financial institutions for costs directly incurred in assembling and delivering financial records obtained under G.S. 53B-4(1), (3), (9), or (11)]

PART 219—REIMBURSEMENT TO FINANCIAL INSTITUTIONS FOR ASSEMBLING OR PROVIDING FINANCIAL RECORDS

Sec.
219.1 Authority, purpose and scope.
219.2 Definitions.
219.3 Cost reimbursement.
219.4 Exceptions.
219.5 Conditions for payment.
219.6 Payment procedures.
219.7 Effective date.

AUTHORITY: 12 U.S.C. 3415.

SOURCE: 44 FR 55813, Sept. 28, 1979, unless otherwise noted.

§ 219.1 Authority, purpose and scope.

This part is issued by the Board of Governors of the Federal Reserve System under section 1115 of the Right to Financial Privacy Act of 1978 (the "Act") (12 U.S.C. 3415). It establishes the rates and conditions for reimbursement of reasonably necessary costs directly incurred by financial institutions in assembling or providing customer financial records to a government authority.

§ 219.2 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) "Financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(*n*)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) "Government authority" means any agency or department of the United States, or any officer, employee or agent thereof.

(d) "Person" means an individual or a partnership of five or fewer individuals.

(e) "Customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name. "Customer" does not include corporations or partnerships comprised of more than five persons.

(f) "Directly incurred costs" means costs incurred solely and necessarily as a consequence of searching for, reproducing or transporting books, papers, records, or other data, in order to comply with legal process or a formal written request or a customer's authorization to produce a customer's financial records. The term does not include any allocation of fixed costs (overhead, equipment, depreciation, etc.). If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution.

§ 219.3 Cost reimbursement.

Except as hereinafter provided, a government authority requiring or requesting access to financial records pertaining to a customer shall pay to the financial institution that assembles or provides the financial records a fee for reimbursement of reasonably necessary costs which have been directly incurred according to the following schedule:

(a) *Search and processing costs.* (1) Reimbursement of search and processing costs shall be the total amount of personnel direct time incurred in locating and retrieving, reproducing, packaging and preparing financial records for shipment.

(2) The rate for search and processing costs is $10 per hour per person, computed on the basis of $2.50 per quarter hour or fraction thereof, and is limited to the total amount of personnel time spent in locating and retrieving documents or information or reproducing or packaging and preparing documents for shipment where required or requested by a government authority. Specific salaries of such persons shall not be included in search costs. In addition, search and processing costs do not include salaries, fees, or similar costs for analysis of material or for managerial or legal advice, expertise, research, or time spent for any of these activities. If itemized separately, search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the rate specified in this paragraph.

(b) *Reproduction costs.* (1) Reimbursement for reproduction costs shall be for costs incurred in making copies of documents required or requested.

(2) The rate for reproduction costs for making copies of required or requested documents is 15 cents for each page, including copies produced by reader/printer reproduction processes. Photographs, films, and other materials are reimbursed at actual cost.

(c) *Transportation costs.* Reimbursement for transportation costs shall be for (1) necessary costs, directly incurred, to transport personnel to locate and retrieve the information required or requested; and (2) necessary costs, directly incurred solely by the need to convey the required or requested material to the place of examination.

§ 219.4 Exceptions.

A financial institution is not entitled to reimbursement under the Act for costs incurred in assembling or providing the following financial records or information:

(a) *Security interests, bankruptcy claims, debt collection.* Any financial records provided as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary.

(b) *Government loan programs.* Financial records provided in connection

with a government authority's consideration or administration of assistance to a customer in the form of a government loan, loan guaranty, or loan insurance program; or as an incident to processing an application for assistance to a customer in the form of a government loan, loan guaranty, or loan insurance agreement; or as an incident to processing a default on, or administering, a government-guaranteed or insured loan, as necessary to permit a responsible government authority to carry out its responsibilities under the loan, loan guaranty, or loan insurance agreement.

(c) *Nonidentifiable information.* Financial records that are not identified with or identifiable as being derived from the financial records of a particular customer.

(d) *Financial supervisory agencies.* Financial records disclosed to a financial supervisory agency in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(e) *Internal Revenue summons.* Financial records disclosed in accordance with procedures authorized by the Internal Revenue Code.

(f) *Federally required reports.* Financial records required to be reported in accordance with any federal statute or rule promulgated thereunder (such as the Bank Secrecy Act).

(g) *Government civil or criminal litigation.* Financial records sought by a government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the government authority and the customer are parties.

(h) *Administrative agency subpoenas.* Financial records sought by a government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of Title 5, United States Code, and to which the government authority and the customer are parties.

(i) *Identity of accounts in limited circumstances.* Financial information sought by a government authority, in accordance with the Right to Financial Privacy Act procedures and for a legitimate law enforcement inquiry, and limited only to the name, address, account number and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)); the International Emergency Economic Powers Act (Title II, Pub. L. 95-223); or section 5 of the United Nations Participation Act (22 U.S.C. 287(c).

(j) *Investigation of a financial institution or its noncustomers.* Financial records sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer.

(k) *General Accounting Office requests.* Financial records sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(l) *Securities and Exchange Commission requests.* Until November 10, 1980, financial records sought by the Securities and Exchange Commission.

§ 219.5 Conditions for payment.

(a) *Limitations.* Payment for reasonably necessary, directly incurred costs to financial institutions shall be limited to material required or requested.

(b) *Separate consideration of component costs.* Payment shall be made only for costs that are both directly incurred and reasonably necessary. In determining whether costs are reasonably necessary, search and processing, reproduction, and transportation costs shall be considered separately.

(c) *Compliance with legal process, request, or authorization.* No payment shall be made until the financial institution satisfactorily complies with the legal process or formal written request, or customer authorization, except that in the case where the legal process or formal written request is withdrawn, or the customer authorization is revoked, or where the customer successfully challenges access by or disclosure to a government authority, the financial institution shall be reimbursed for reasonably necessary costs directly incurred in assembling financial records required or requested to be produced prior to the time that the government authority notifies the institution that the legal process or request is withdrawn or defeated, or that the customer has revoked his or her authorization.

(d) *Itemized bill or invoice.* No payment shall be made unless the financial institution submits an itemized bill or invoice showing specific details concerning the search and processing, reproduction, and transportation costs.

§ 219.6 Payment procedures.

(a) *Notice to submit invoice.* Promptly following a government authority's service of legal process or request, the government authority shall notify the financial institution that an itemized bill or invoice must be submitted for payment and shall furnish an office address for this purpose.

(b) *Special notice.* If a government authority withdraws the legal process or formal written request, or if the customer revokes his or her authorization, or if the legal process or request has been successfully challenged by the customer, the government authority shall promptly notify the financial institution of these facts, and shall also notify the financial institution that the itemized bill or invoice must be submitted for payment of costs incurred prior to the time that the financial institution receives this notice.

§ 219.7 Effective date.

This regulation shall become effective October 1, 1979.